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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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ENVIRONMENT DEPARTMENT

NOTICE OF PUBLIC HEARING TO AMEND WASTEWATER FACILITY CONSTRUCTION LOAN POLICIES AND GUIDELINES – 20.7.6 NMAC AND REPEAL AND REPLACE REVIEW PROCEDURES FOR WASTEWATER CONSTRUCTION LOANS – 20.7.7 NMAC

The New Mexico Environment Department (“NMED”) will hold a public hearing beginning at 9:00 a.m. on Friday, January 17, 2020, and continuing thereafter as necessary in the Senator Fabian Chavez, Jr. Board Room at the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico. The hearing location may change prior to the hearing date, and those interested in attending should visit NMED’s notice website: <https://www.env.nm.gov/public-notices/> prior to the hearing. The purpose of the hearing is to consider amendments to Wastewater Facility Construction Loan Policies and Guidelines, 20.7.6 NMAC and repeal and replacement of Review Procedures for Wastewater Construction Loans, 20.7.7 NMAC (“Rules”).

The amendments would bring the Rules into compliance with recent changes to the Wastewater Facility Construction Loan Act (NMSA 1978, Sections 74-6A-1 to -15) in 2017 and 2018. Primarily, these amendments would add state agencies to the list of qualified borrowers; expand the definition of qualified borrowers to reflect changes contained in the Water Resources Reform and Development Act of 2014, WRRDA, H.R. 3080, 113th Cong. (2014), and U.S. Environmental Protection Agency Guidance; reflect changes to the financial criteria for zero percent loans found in NMSA 1978, Section 74-6A-8(E); bring NMED’s procedures in line with the New

Mexico Water Quality Control Commission’s revisions to 20.7.5 NMAC in 2018; and revise and update the procedures for clarity. Ultimately, these changes will allow for greater drawdown of existing funds in the Clean Water State Revolving Loan Fund.

NMED proposes that the NMED Secretary adopt the amendments pursuant to his authority under NMSA 1978, Sections 9-7A-6(D), 74-6-1 to -17, and 74-6A-1 to -15. Please note that formatting and minor technical changes in the Rules, 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 amendments may be reviewed during regular business hours at the NMED Hearing Office located in the Harold Runnels Building, 1190 South St. Francis Drive, Room S-2102, Santa Fe, NM 87505. The full text of the proposed amendments is also available online at <https://www.env.nm.gov/public-notices/>.

The hearing will be conducted in accordance with the NMED Rulemaking Procedures (20.1.9 NMAC); the Department of Environment Act, NMSA 1978, Section 9-7A-6; the State Rules Act, NMSA 1978, Section 14-4-5.3; and other applicable procedures.

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.

Those wishing to present technical testimony must file a written notice of intent to do so with the Hearing Office on or before 5:00 p.m. on Thursday, January 2, 2020. The notice of intent shall:

- Identify the person or entity for whom the witness(es) will testify;
- Identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;
- Include a copy of the direct testimony of each technical witness in narrative form, and state the estimated duration of the direct oral testimony of that witness;
- 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.

Notice of intent for the hearing must be received in the Hearing Office no later than 5:00 p.m. on Thursday, January 2, 2020, and should reference the name of the regulation, the date of the hearing, and docket number CPB 19-49 (R). 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

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 revisions may be addressed to Mr. Cody Barnes, Hearing Office Administrator, at the above address,

and should reference docket number NMED 19-49 (R).

If any person requires assistance, an interpreter, or an auxiliary aid to participate in this process, please contact Cody Barnes, Hearing Office Administrator, by Thursday January 2, 2020, at 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM, 87502, telephone (505) 827-2430 or cody.barnes@state.nm.us. (TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

Notice of Non-Discrimination

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. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kristine Yurdin, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. 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.

ENVIRONMENT DEPARTMENT

DEPARTAMENTO DE MEDIO AMBIENTE DE NUEVO MÉXICO AVISO DE AUDIENCIA PÚBLICA PARA ENMENDAR LAS POLÍTICAS Y DIRECTRICES DE PRÉSTAMOS PARA LA CONSTRUCCIÓN DE INSTALACIONES DE AGUAS RESIDUALES – 20.7.6 NMAC Y REVOCAR Y REEMPLAZAR LOS PROCEDIMIENTOS DE REVISIÓN DE LOS PRÉSTAMOS PARA CONSTRUCCIONES PARA AGUAS RESIDUALES – 20.7.7 NMAC

El Departamento de Medio Ambiente de Nuevo México (“NMED” por sus siglas en inglés) llevará a cabo una audiencia pública a partir de 9:00 de la mañana el viernes, 17 de enero de 2020, y continuará posteriormente según sea necesario en la Sala de Juntas Senado Fabián Chávez, Jr. en el Edificio PERA, 33 Plaza La Prensa, Santa Fe, Nuevo México. El lugar de la audiencia puede cambiar antes de la fecha de la audiencia, por lo que las personas interesadas en asistir deben visitar el sitio web del aviso de NMED en: <https://www.env.nm.gov/public-notice/> antes de la audiencia.

El propósito de la audiencia es considerar enmiendas a las Políticas y Directrices de Préstamos para la Construcción de Instalaciones para Aguas Residuales, 20.7.6 NMAC y la revocación y reemplazo de los Procedimientos de Revisión de Préstamos para Construcciones para Aguas Residuales, 20.7.7.7 NMAC (“Normas”).

Las enmiendas harán que las Normas se ajusten a los cambios recientes de la Ley de Préstamos para la Construcción de Instalaciones para Aguas Residuales (NMSA 1978, Secciones 74-6A-1 a -15) en 2017 y 2018. Principalmente, estas enmiendas añadirán agencias estatales a la lista de prestatarios calificados; ampliarán la definición de prestatarios calificados para reflejar los cambios contenidos en la

Ley de Reforma y Desarrollo de los Recursos Hídricos de 2014, WRRDA, H.R. 3080, 113th Cong. (2014), y la Guía de la Agencia de Protección Ambiental de los Estados Unidos; reflejarán los cambios en los criterios financieros para préstamos de cero por ciento encontrados en NMSA 1978, Sección 74-6A-8(E); pondrán los procedimientos de NMED en línea con las revisiones de la Comisión de Control de Calidad del Agua de Nuevo México de 20.7.5 NMAC en 2018; y revisarán y actualizarán los procedimientos para mayor claridad. En última instancia, estos cambios permitirán un mayor uso de los fondos existentes en el Fondo de Préstamo Rotatorio del Estado para el Agua Limpia.

NMED propone que el secretario de NMED adopte las enmiendas de acuerdo con su autoridad bajo NMSA 1978, Secciones 9-7A-6(D), 74-6-1 a -17, y 74-6A-1 a -15. Tenga en cuenta que el formato y cambios técnicos menores en las Normas, aparte de los propuestos por NMED, pueden ser propuestos en la audiencia. Además, el secretario puede hacer otros cambios según sea necesario en respuesta a los comentarios públicos y las pruebas presentadas en la audiencia.

Las enmiendas propuestas pueden ser revisadas durante horas hábiles regulares en la Oficina de Audiencias de NMED ubicada en el Edificio Harold Runnels, 1190 South St. Francis Drive, Sala S-2102, Santa Fe, NM 87505. El texto completo de las enmiendas propuestas también está disponible en línea en <https://www.env.nm.gov/public-notice/>.

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, Sección 9-7A-6; la Ley de Normas del Estado, NMSA 1978, Sección 14-4-5.3; y otros procedimientos aplicables.

Todas las personas interesadas tendrán una oportunidad razonable en la audiencia de presentar pruebas, datos, puntos de vista y argumentos pertinentes, oralmente o por escrito; de presentar documentos u objetos de pruebas y de interrogar a los testigos. Cualquier persona que desee presentar una declaración no técnica por escrito para que conste en actas en lugar de un testimonio oral debe presentar dicha declaración antes de la clausura de la audiencia.

Aquellos que deseen presentar testimonio de carácter técnico deben presentar un aviso por escrito de su intención de hacerlo ante la Oficina de Audiencias a más tardar a las 5:00 de la tarde del jueves 2 de enero de 2020. El aviso de intención deberá:

- Identificar a la persona o entidad para la cual testificará el testigo(s);
- Identificar a cada testigo técnico que la persona tiene la intención de presentar e indicar las calificaciones del testigo, incluyendo una descripción de su historial educativo y laboral;
- Incluir una copia del testimonio directo de cada testigo técnico en forma narrativa e indicar la duración estimada del testimonio oral directo de ese testigo;
- Incluir el texto de cualquier modificación recomendada al cambio normativo propuesto; y
- Enumerar y adjuntar todos los documentos u objetos de pruebas que se espera que esa persona presentará en la audiencia, incluyendo cualquier declaración propuesta de las razones para la adopción de las normas.

Los avisos de intención para la audiencia deben recibirse en la Oficina de Audiencias a más tardar a las 5:00 de la tarde del jueves 2 de enero de 2020, y debe hacer referencia al nombre del reglamento, la fecha de la audiencia y el número de expediente CPB 19-49 (R). Los avisos de intención de presentar testimonio técnico se presentarán a:

Cody Barnes, Hearing Office
Administrator
New Mexico Environment
Department
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502

Aquellos que deseen hacerlo pueden ofrecer comentarios públicos de carácter no técnico en la audiencia o presentar una declaración escrita de carácter no técnico en lugar de un testimonio oral en o antes de la audiencia. Los comentarios por escrito sobre las revisiones propuestas pueden dirigirse al Sr. Cody Barnes, administrador de la Oficina de Audiencias, a la dirección antes mencionada, y deben hacer referencia al número de expediente NMED 19-49 (R).

Si alguna persona requiere asistencia, un intérprete o un dispositivo auxiliar para participar en este proceso comuníquese con Cody Barnes, administrador de la Oficina de Audiencias, antes del jueves 2 de enero de 2020, en 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM, 87502; teléfono (505) 827-2430 o cody.barnes@state.nm.us. (Los usuarios de TDD o TTY deben acceder al número a través de la New Mexico Relay Network, 1-800-659-1779 (voz); los usuarios de TTY: 1-800-659-8331).

Aviso de no discriminación

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.

ENVIRONMENT DEPARTMENT

NOTICE OF PUBLIC HEARING FOR REPEALING AND REPLACING 20.7.11 NMAC, LIQUID WASTE TREATMENT AND DISPOSAL FEES

The Environmental Improvement Board ("EIB") will hold a public hearing beginning at **10:00 am on February 28, 2020** and continuing thereafter as necessary at **33 Plaza La Prensa, Santa Fe, NM 87507, in the Senator Fabian Chavez, Jr. Boardroom**. The hearing location may change prior to the hearing date, and those interested in attending should visit the New Mexico Environment Department's ("NMED") website prior to the hearing: <https://www.env.nm.gov/public-notices/>. The purpose of the hearing is to consider repealing and replacing 20.7.11, *Liquid Waste Treatment and Disposal Fees*, which authorizes liquid waste treatment and disposal fees for the administration of the state liquid waste regulations. The purpose of the state liquid waste treatment and disposal program is to protect the health and welfare of present and future citizens of New Mexico by providing for the

prevention and abatement of public health hazards and surface and ground water contamination from on-site liquid waste disposal practices.

NMED's Environmental Health Bureau ("Bureau") is the proponent of the proposed new rule.

The proposed replacement rules would allow the Bureau to bring New Mexico's liquid waste fees to a level comparable with contiguous states, while still charging fees below the average, as required by the Environmental Improvement Act, NMSA 1978, § 74-1-8(A)(3). The proposed rules would allow the Department to improve enforcement, tracking non-compliant systems, staffing, data collection and network hardware and software. These changes will enhance the Bureau's Liquid Waste Program ("LWP"), speeding up permit processing times and allowing for more timely inspections to better protect the health of New Mexico residents. Repealing and replacing 20.7.11 NMAC would also provide for a more precise description of persons required to pay liquid waste treatment and disposal fees, would provide greater clarity and consistency in applying rules, and standardize the methods and technologies used to treat liquid waste in accordance with national standards of terminology.

The Bureau proposes the EIB adopt the proposed replacement rules, 20.7.11 NMAC, *Liquid Waste Treatment and Disposal Fees*, pursuant to its authority under Section 74-1-5, Paragraph (3) of Subsection A of Section 74-1-8, and Section 74-1-9, NMSA 1978. Please note that formatting and minor technical changes to 20.7.11 NMAC, other than those proposed by NMED, may be proposed at the hearing. Additionally, other changes may be made as necessary in response to public comments and evidence presented at the hearing.

The proposed replacement rule 20.7.11 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 20.7.11 NMAC is also available online at https://www.env.nm.gov/liquid_waste/.

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 20.1.1.302 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 February 7, 2020, twenty (20) days before the hearing**. Notices of intent to present technical testimony should reference the name of the regulation, the date of the hearing, and the docket number, **NMED 19-42**.

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 19-42**. 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 February 7, 2020, twenty (20) days before the date of the hearing**.

The hearing will be conducted in accordance with the EIB's Rulemaking Procedures, 20.1.1 NMAC; the Environmental Improvement Act, Section 74-1-5, Paragraph (3) of Subsection A of Section 74-1-8, and the State Rules Act, Section 14-4-5.3 NMSA 1978, 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 19-42**.

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Cody Barnes, at the above address, by **February 21, 2020**. (TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

STATEMENT OF NON-DISCRIMINATION

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.

AVISO DE AUDIENCIA PÚBLICA PARA REVOCAR Y REEMPLAZAR 20.7.11 NMAC, TARIFAS DE TRATAMIENTO Y ELIMINACIÓN DE RESIDUOS LÍQUIDOS

La Junta de Mejoramiento Ambiental ("EIB", por sus siglas en inglés) celebrará una audiencia pública a partir de **10:00 am del febrero 28, 2020** y continuará a partir de entonces según sea necesario en **33 Plaza La Prensa, Santa Fe, NM 87507, en la Sala de juntas del senador Fabian Chavez Jr.** 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 revocar y reemplazar 20.7.11, *Tarifas de Tratamiento y Eliminación de Residuos Líquidos*, que autoriza las tarifas de tratamiento y eliminación de residuos líquidos para la administración de la normativa estatal de residuos líquidos. El propósito del programa estatal de tratamiento y eliminación de residuos líquidos es proteger la salud y el bienestar de los ciudadanos presentes y futuros de Nuevo México al proporcionar la prevención y la reducción de los riesgos para la salud pública y la contaminación de las aguas superficiales y subterráneas de las prácticas de eliminación de residuos líquidos en el sitio.

La Oficina de Salud Ambiental de NMED ("Oficina") es la proponente de la nueva norma propuesta. Las normas de reemplazo propuestas permitirían a la Oficina llevar las tarifas de residuos líquidos de Nuevo México a un nivel comparable a los estados contiguos, mientras que aún cobran tarifas por debajo del promedio, como lo requiere la Ley de Mejoramiento Ambiental, párrafo (3) de la subsección A de la sección 74-1-8 NMSA 1978. Las normas propuestas permitirían al Departamento dotar de personal más completo al Programa de Residuos Líquidos ("LWP", por sus siglas en inglés) de la Oficina, acelerando los tiempos de procesamiento de permisos y permitiendo inspecciones más oportunas para proteger mejor la salud de los residentes de Nuevo México. Revocar y reemplazar 20.7.11 NMAC también proporcionaría una descripción más precisa de las personas que deben pagar las tarifas de tratamiento y eliminación de residuos líquidos, proporcionaría una mayor claridad y facilidad de uso de las normas, y describiría con mayor precisión los métodos y tecnologías utilizados

para tratar los residuos líquidos de conformidad con los estándares nacionales de terminología.

La Oficina propone que el EIB adopte las normas de reemplazo propuestas, 20.7.11 NMAC, tarifas de tratamiento y eliminación de residuos líquidos, de conformidad con su autoridad bajo la Sección 74-1-5, Párrafo (3) de la Subsección A de la Sección 74-1-8, y Sección 74-1-9, NMSA 1978. Tenga en cuenta que el formato y los cambios técnicos menores a 20.7.11 NMAC, distintos de los propuestos por NMED, pueden proponerse en la audiencia. Además, se pueden hacer otros cambios según sea necesario en respuesta a los comentarios públicos y la evidencia presentada en la audiencia.

La norma de reemplazo propuesta 20.7.11 NMAC puede revisarse durante las horas hábiles regulares en la Oficina de Audiencias de NMED ubicada en el Edificio Harold Runnels, 1190 South St. Francis Drive, Santa Fe, NM, 87505. El texto completo de la propuesta 20.7.11 NMAC también está disponible en línea en https://www.env.nm.gov/liquid_waste/.

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

De conformidad con 20.1.1.302 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 p.m. el **febrero 7, 2020, veinte (20) días antes de la fecha de la audiencia**. Los avisos de intención de presentar testimonio técnico

deben hacer referencia al nombre del reglamento, la fecha de la audiencia y el número de expediente, **NMED 19-42**.

La forma y el contenido del aviso deberá:

- * Identificar a la persona para quien el testigo testificará;
- * 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 regulatorio propuesto; y
- * Hacer una lista y adjuntar todos los documentos u objetos de pruebas que se anticipa que esa persona ofrecerá en la audiencia, incluida cualquier declaración propuesta de razones para la adopción de normas.

Los avisos de intención de presentar testimonio técnico se presentarán 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

Aquellos que deseen hacerlo pueden ofrecer comentarios públicos no técnicos en la audiencia o presentar una declaración escrita no técnica en lugar de un testimonio oral en o antes de la audiencia. Los comentarios escritos 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 19-42**. 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 el **febrero 7, 2020, veinte (20) días antes de la fecha de la audiencia**.

La audiencia se llevará a cabo de conformidad con los Procedimientos de Reglamentación de la EIB, 20.1.1 NMAC; la Ley de Mejoramiento Ambiental, Sección 74-1-5, Párrafo (3) de la Subsección A de la Sección 74-1-8, y la Ley de Normas del Estado, Sección 14-4-5.3 NMSA 1978, y otros procedimientos aplicables. Los comentarios por escrito sobre la reglamentación propuesta pueden dirigirse a Cody Barnes, secretario de audiencias, a la dirección anterior, haciendo referencia al número de expediente **NMED 19-42**.

Si alguna persona requiere asistencia, un intérprete o ayuda auxiliar para participar en este proceso, comuníquese con Cody Barnes, en la dirección anterior, **antes de febrero 21, 2020**. (Los usuarios de TDD o TTY pueden acceder al número a través de la Red de Retransmisión de Nuevo México, 1-800-659-1779 (voz); los usuarios de TTY: 1-800-659-8331).

DECLARACIÓN DE NO DISCRIMINACIÓN

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 Yurdin, 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.

GAME AND FISH DEPARTMENT

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission ("Commission") has scheduled a regular meeting and rule hearing for Thursday January 17, 2020, beginning at 9:00 a.m. at the Farm and Ranch Heritage Museum, 4100 Dripping Springs Rd, Las Cruces, NM, 88011 to hear and consider action as appropriate on the following: 1) presentation of proposed changes to the Trapping and Furbearers rule; and 2) presentation of proposed changes to the Hunting and Fishing - Manner and Method of Taking rule.

Synopsis:

The proposals are to: 1) adopt a new Trapping and Furbearers rule, 19.32.2 NMAC, which will become effective April 1, 2020; and 2) amend the Hunting and Fishing - Manner and Method of Taking rule, 19.31.10 NMAC, which will become effective April 1, 2020. The current Trapping and Furbearers rule and the current Hunting and Fishing - Manner and Method of Taking rule are permanent rules.

The proposed new Trapping and Furbearers rule includes: 1) that the duration will be four years; 2) all furbearer hunters and trappers will be required to complete a trapper education course; 3) the nutria season will be April 1-March 31; 4) there will be a raccoon season May 16-Aug 31 with restricted trap types; 5) land sets will be prohibited on portions of Los Alamos County, the Sandia Ranger District, the eastern portion of Organ Mountain-Desert Peaks National Monument, within ½ mile of NM Hwy 475 on the Santa Fe National Forest, and within ½ mile of NM Hwy 150 on the Cason National Forest.

The following proposed provisions in the Trapping and Furbearers rule have been modified and transferred to the Hunting and Fishing - Manner and Method of Taking rule: 1) requiring a setback distance of 1/2 mile from trailheads, roadside rest areas, picnic areas, or occupied dwelling without permission of the landowner; 2) requiring water sets to be set fully in water; 3) requiring that no land set shall be placed within 30 feet of bait which is greater than two ounces in weight and visible to airborne raptors; 4) requiring all foothold traps to have at least two separate swivel points in the anchor chain; 5) requiring all foothold traps to have an anchoring or drag system that prevents a trapped animal from escaping with the trap; and 6) requiring break-away devices to be used for all snares set on land.

A full text of changes will be available on the Department's website at: www.wildlife.state.nm.us. Interested persons may submit comments on the proposed changes to the Trapping and Furbearers rule at: DGF-Furberarer-Rules@state.nm.us, or individuals may submit written comments to the physical address below. Comments are due by 9:00 a.m. on January 16, 2020. The final proposed rule will be voted on by the Commission during a public meeting on January 17, 2020. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on January 17, 2020.

Full copies of text of the proposed new rule, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department's website at www.wildlife.state.nm.us/commission/proposals-under-consideration/. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.

GAME AND FISH DEPARTMENT

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission ("Commission") has scheduled a regular meeting and rule hearing for Thursday January 17, 2020, beginning at 9:00 a.m. at the Farm and Ranch Heritage Museum, 4100 Dripping Springs Rd, Las Cruces, NM, 88011 to hear and

consider action as appropriate on the following: 1) presentation of proposed new Fair Chase rule.

Synopsis:

The proposal is to adopt a new Fair Chase rule, 19.30.18 NMAC, which will become effective February 11, 2020.

The proposed new Fair Chase rule will allow the Department to withhold data that could be used to locate a wild animal or be used contrary to the principles of fair chase. This includes location information from: 1) any live animal with a transmitter; 2) animals included in an ongoing study; 3) animals that may have limited distribution; 4) animals that could encourage illegal take or compromise a population's viability; 5) studies conducted by other agencies or researchers; and 6) VHF frequencies of the aforementioned animals. Any location that is disclosed may be buffered so that the information will not compromise the individual or population. Location data may be provided if an agreement is entered into for scientific, management, conservation, or educational purposes. A full text of changes will be available on the Department's website at: www.wildlife.state.nm.us. Interested persons may submit comments on the proposed changes to the Fair Chase rule at: Elise Goldstein@state.nm.us, or individuals may submit written comments to the physical address below. Comments are due by 9:00 a.m. on January 16, 2020. The final proposed rule will be voted on by the Commission during a public meeting on January 17, 2020. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on January 17, 2020.

Full copies of text of the proposed new rule, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department's

website at www.wildlife.state.nm.us/commission/proposals-under-consideration/. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.

GAME AND FISH DEPARTMENT

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission ("Commission") has scheduled a regular meeting and rule hearing for Friday, January 17, 2020, beginning at 9:00 a.m. at the Farm & Ranch Heritage Museum in Las Cruces, 4100 Dripping Springs Rd., Las Cruces, NM 88011, to hear and consider action as appropriate on the following: Presentation of proposed changes to the Game and Fish Licenses/Permits rule.

Synopsis:

The proposal is to repeal and replace the Game and Fish Licenses/Permits

rule, 19.30.9 NMAC, with the new rule effective April 1, 2020.

The proposed rule clarifies license vendor requirements for returning carcass tags monthly during the license year and at the end of the license year, reduces penalties for failure to return carcass tags and eliminates the requirement for immediate suspension. The proposal also reorganizes the rule to clarify financial obligations to the Department and eligibility and application requirements, clarifies the Director's authority to specify that requiring a surety bond may be required under certain circumstances and clarifies the conditions and requirements for vendors to request a hearing to challenge the Director's determinations. A more detailed summary, and the full text of changes, is available on the Department's website at: www.wildlife.state.nm.us.

Interested persons may submit comments on the proposed changes to the Game and Fish Licenses/Permits rule at chad.nelson@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 12:00 p.m. on January 16, 2020. The final proposed rule will be voted on by the Commission during a public meeting on January 17, 2020. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on January 17, 2020.

Full copies of text of the proposed new rule, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department's website at www.wildlife.state.nm.us/commission/proposals-under-consideration/. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.

HEALTH, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health (Department) will hold a public hearing on the proposed repeal and replacement of 7.34.4 NMAC, and the proposed amendment of Department rule sections 7.34.2.7 and 7.34.3.7 NMAC. The hearing will be held on January 16, 2020 at 9:00 a.m. in the auditorium of the Harold Runnels Building, located at 1190 St. Francis Drive in Santa Fe, New Mexico. This is the second public hearing concerning proposed rule revisions.

The proposed rule revisions include new provisions in 7.34.4 NMAC concerning reciprocity for individuals who hold proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States, or a New Mexico Indian nation, tribe or pueblo.

The proposed rule revisions also include provisions in 7.34.4 NMAC

for the establishment and operation of cannabis consumption areas for qualified patients, that are operated by licensed nonprofit producers.

The proposed rule revisions also include various modifications to the licensing requirements at 7.34.4 NMAC for licensed nonprofit producers, manufacturers, couriers, and laboratories, including but not limited to:

- Cannabis testing standards and requirements, including but not limited to microbiological, mycotoxin, residual solvent, and THC potency testing, new requirements for testing for pesticide residue, heavy metals, and end products, and new sampling standards;
- Cannabis packaging and labeling requirements;
- Application requirements and licensing standards for nonprofit producers, manufacturers, laboratories, and couriers;
- Fees for couriers and manufacturers;
- Provisions concerning compliance by licensees' employees with the NM Parental Responsibility Act; and
- Disciplinary actions and appeals for producers, manufacturers, laboratories, and couriers.

The proposed rule revisions also include modifications to definitions at sections 7.34.2.7, 7.34.3.7, and 7.34.4.7 NMAC.

The legal authority for the proposed rule amendments is at Subsection E of Section 9-7-6 NMSA 1978, and Subsection A of Section 26-2B-7 NMSA 1978.

Free copies of the full text of the proposed rule amendments can be obtained online from the New Mexico Department of Health's website at <http://nmhealth.org/about/asd/cmo/rules/> or from Andrea Sundberg using the contact information below.

The public hearing will be conducted to receive public comment on the

proposed repeal and replacement of 7.34.4 NMAC, and the proposed amendment of 7.34.2.7, 7.34.3.7, and 7.34.4.7 NMAC. Any interested member of the public may attend the hearing and submit data, views, or arguments either orally or in writing on the proposed rule amendments during the hearing. Written public comment may also be submitted prior to the date of the hearing. Please submit any written comments regarding the proposed rule amendments to the attention of:

Andrea Sundberg
NM Department of Health
Medical Cannabis Program
P.O. Box 26110
Santa Fe, NM 87502-6110

Or at:

MCP.comment@state.nm.us

Written comments must be received by the close of the public rule hearing on January 16, 2020. All written comments will be published on the agency website at <http://nmhealth.org/about/asd/cmo/rules/> within 3 days of receipt, and will be available at the New Mexico Department of Health Medical Cannabis Program for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Andrea Sundberg by telephone at (505) 827-2318. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The New Mexico Human Services Department (HSD) will hold a public hearing to allow public comment to adopt the General Provision, SNAP and Cash rules. The Human Services

Department (HSD) is proposing to amend the rule to comply with the CFR, provide clarifying language and to consolidate rules into General Provisions that apply to both SNAP and Cash programs to remove redundancy. The rule will be amended under the following statutory authority: Under the statutory authority of The Food Stamp Program as authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Administration of the Human Services Department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983). The hearing will be held on Friday January 17, 2020 from 9:00 a.m. to 10:00 a.m. at the HSD Administrative Services Division (ASD) conference room, 1474 Rodeo Road, Santa Fe, NM 87505.

The Department is promulgating proposed regulations to update the following General Provision rules: Amend 8.100.100 NMAC and 8.100.640 NMAC to add rule regarding the Benefit Issuance System and EBT Adjustments.

The Benefit Issuance language is being removed from SNAP regulations to be consolidated into General Provisions as this rule applies to both SNAP and Cash programs. The Department is promulgating proposed regulations to update the following SNAP rules: Amend Subparagraph (a) of Paragraph (4) of Subsection B of 8.139.110.12 NMAC, "Cooperation with quality control (QC): Period of ineligibility." This will align current NMAC regulations with 7 CFR 273.2(d)(2)(i), stating the Quality Control (QC) sanction period is 125 days for the State Sanction and 9 months for the Federal Sanction. Amending this rule ensures that the Department is federally compliant. Remove 8.139.610.8

NMAC Benefit Issuance System and place this rule in General Provisions as this rule applies to both SNAP and Cash programs. The Department is promulgating proposed regulations to update the following Cash Assistance rules: Annual adjustments to the income limits found in 8.102.500 NMAC and 8.106.500 NMAC: Each year the Department is required to make changes to the income and resource eligibility standards and the deduction amounts available to otherwise eligible households. These amounts are determined by the United States Department of Agriculture (USDA) and Food and Nutrition Services (FNS). The Department received notification of the adjusted amounts on July 24, 2019 and made the adjustments effective for benefit month October 2019 for Federal Fiscal Year (FFY) 2020 to comply with federal law and regulations. The emergency rule that was effective October 1, 2019 does not permanently amend or repeal the existing rule and will only remain in effect until this permanent rule takes effect under the normal rule making process. Adding language to 8.106.610.8 NMAC and 8.102.610.8 NMAC to clarify that any Cash benefit less than ten dollars will not be issued, as this amount is counted towards the lifetime limit of an individual and to be in compliance with 45 CFR 233.20. Define who is considered school age, based on the Public Education Department (PED) definition in 8.106.500.8 NMAC. This definition will be used to for the purposes of determining eligibility for the clothing allowance. Remove 8.102.610.9 NMAC Stale Benefit Accounts as this will remain in General Provisions. Remove 8.106.610.10 NMAC Stale Benefit Accounts as this will remain in General Provisions.

The Human Services Register Vol. 42 No. 25 outlining the proposed regulations are available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. Individuals wishing to testify or to request a copy of the proposed

regulation should contact the Income Support Division, P.O. Box 2348, Santa Fe, New Mexico 87504-2348, or by calling 505-827-7250 or 505-827-7254.

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

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, January 17, 2020. The agency shall post all written comments on its website, if one exists, as soon as practicable and no more than 3 business days following receipt to allow for public review. All written comments received by the agency shall also be available for public inspection at the main office of the agency. Please send comments to:

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

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

NURSING, BOARD OF

NOTICE OF PUBLIC RULEMAKING HEARING

The New Mexico Board of Nursing (NMBON) will hold a Public Rulemaking Hearing on Thursday, February 6, 2020. The Rulemaking Hearing will begin at 9:00 a.m., at the National Hispanic Cultural Center in the Bank of America

Theatre, 1701 Fourth St. SW, Albuquerque, NM 87102.

Statutory authority for this rulemaking can be found in Section 61-3-10 et seq. NMSA 1978.

The purpose of the Rulemaking Hearing is to hear public testimony and comments regarding the proposed amendment to the rule:

Title 16 Occupational and Professional Licensing, Chapter 12 Nursing and Health Care Related Providers Part 2 Nurse Licensure.

Pursuant to the amendment to the Nursing Practice Act, 61-3-23.5 NMSA 1978, the NMBON is mandated to promulgate rules related to the supervision of psychologists in the prescribing of psychotropic medication by a certified nurse practitioner (CNP) or clinical nurse specialist (CNS). Specifically the proposed language lists the requirements that must be met by the CNP or CNS to provide the supervision, and the obligation to report such supervision to the NMBON.

No specific technical information serves as a basis for this proposed rule.

Persons desiring to view the proposed rule to be repealed or the new rule may download them from <https://nmbon.sks.com/rule-changes.aspx>. If you do not have internet access, a copy of the proposed rules may be requested by contacting the NMBON at (505) 841-9083.

Written comments may be submitted via email to BON.Legal@state.nm.us. If submitting comments via email specify in the subject line the following: NMBON Public Comments. Written comments may also be filed by sending original, signed copies to: New Mexico Board of Nursing ATTN: NMBON Public Comments

6301 Indian School Road, NE, Suite 710
Albuquerque, NM 87110

Persons wishing to submit written comments regarding the proposed rules should submit them to the Board office no later than Wednesday, January 22, 2020. Written comments will be given the same consideration as oral testimony made at the public hearing. All written comments will be posted on the NMBON website within three days of receipt. All written comments must be received no later than 5:00 p.m. MST, Wednesday, January 22, 2020.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the NMBON at (505) 841-9083. The NMBON requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

RACING COMMISSION

NOTICE OF PUBLIC MEETING AND RULE HEARING

The New Mexico Racing Commission (Commission) will hold a rule hearing on January 16, 2020. The rule hearing will be held during the Commission's regular business meeting which begins at 9:00 a.m. The Commission will re-convene a regular meeting to adopt the rules and take care of regular business. The rule hearing and Commission meeting will be held in the Boardroom located at the New Mexico Racing Commission, 4900 Alameda Blvd., NE, Albuquerque, NM.

The Commission is proposing the following amendments listed below to the Rules Governing Horse Racing in New Mexico to include trainers and assistant trainers' requirements for licensing. The proposed rules ensure that the Breeders comply

with the New Mexico Horse Racing Act, NMSA 1978, Sections 60-1A-1 through -30, and also adds language to clarify rules.

16.47.1 NMAC – Occupational & Professional Licensing/General Provisions

15.2.1 NMAC – General Provisions

15.2.5 NMAC – Rules of the Race

A copy of the proposed rules may be found on the Commission's website @ <http://nmrc.state.nm.us/rules-regulations.aspx>. You may also contact Denise Chavez at (505) 222-0714 to request to receive a copy of the proposed rules by regular mail.

Interested persons may submit their written comments on the proposed rules to the Commission at the address below and/or may appear at the scheduled meeting and make a brief verbal presentation of their view. All written comments must be received by the Commission by 5:00 PM on January 16, 2020. Please submit comments to:

Denise Chavez, Paralegal
New Mexico Racing Commission
4900 Alameda Blvd. NE
Albuquerque, NM 87113
Telephone: 505.222.0714
Fax: 505.222.0713
Email: DeniseM.Chavez@state.nm.us

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

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

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

Statutory Authority: The New Mexico Horse Racing Act, NMSA 1978, Sections 60-1A-1 through 60-1A-30 (2007, as amended through 2017), which, among other

provisions, specifically authorizes the Commission to promulgate rules and regulations and carry out the duties of the Act to regulate horse racing in the State.

Summary of Proposed Changes:

Subsection A of 16.47.1.10 NMAC:

The purpose of the proposed amendment is to refine the process for an applicant to obtain a Trainer's License.

Subsection D of 16.47.1.10 NMAC:

The purpose of the proposed amendment is to include additional requirements for an applicant to obtain an Assistant Trainer's License.

Subsection H of 15.2.1.8 NMAC:

The purpose of the proposed rule deals with the accounting of all funds and deposits and the different types of insurances carried through the Breeders' Association.

Subsection B of 15.2.5.10 NMAC:

The purpose of this proposed amendment is to include language regarding a race in a dispute that involves the winner of a race.

Subsection A of 15.2.5.11 NMAC:

The purpose of this proposed amendment is to add language that will allow the rule to be better understood.

REGULATION AND LICENSING DEPARTMENT NUTRITION AND DIETETICS, BOARD OF

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Nutrition and Dietetics "Board" will hold a rule hearing on Wednesday, January 22, 2020. Following the rule hearing, the Board will convene a Board meeting to consider adoption of the rules and address regular business. The rule hearing and Board meeting will be held 10:00 a.m. at the Regulation

and Licensing Department, 5500 San Antonio Dr., NE, Albuquerque, NM in the Sandia Conference Room.

The purpose of the rule hearing is to consider proposed amendments to the following rules:

- 16.14.1 NMAC - Definitions
- 16.14.5 NMAC - Test Administration
- 16.14.6 NMAC - Annual Renewal
- 16.14.7 NMAC - Reinstatement of a Lapsed License
- 16.14.10 NMAC - Standards of Practice

The changes to Parts 1, 5, 6, 7, and 10 are to adopt and define reciprocity which will bring the board in compliance with Senate Bill 105. This adoption will allow individuals from other states with similar licensure requirements to acquire a license in New Mexico. Test administration change is being made to clarify the use of testing agencies rather than naming a specific company that administers the examination. The Board will also make changes for clerical corrections.

To obtain and review copies of the proposed changes you may go to the Board's website at: www.rld.state.nm.us/boards/Nutrition_and_Dietetics_Members_and_Meetings.aspx, or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Richard Espinoza, Executive Director, via electronic mail at: nutritiondieteticsbd@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Tuesday, January 21, 2020. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board's website at: www.rld.state.nm.us/boards/Nutrition_and_Dietetics_Members_and_Meetings.aspx.

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

Statutory Authority: The Nutrition and Dietetics Practice Act, Sections 61-7A-1 to -15 NMSA 1978 (1993, as amended through 2017), among other provisions, specifically authorizes the Board to "adopt and file all rules necessary for the implementation and enforcement of the provisions of the Nutrition and Dietetics Practice Act." See also Paragraph (8) of Subsection A of Section 61-7A-6, NMSA 1978.

Summary of Proposed Changes:

In addition to making minor clarification changes, the proposed rules are summarized as follows:

16.14.1.7. NMAC - Definitions

This adoption is to define "Reciprocity" which will bring the board in compliance with SB105.

16.14.5.9. NMAC – Test Administration

This change is being made to clarify the use of testing agency rather than naming a specific company that administers the examination.

16.14.6.8. NMAC – Annual Renewal

This change is being made for a clerical correction.

16.14.7.8 NMAC – Reinstatement of a Lapsed License

This change is being made for a clerical correction.

16.14.10.8. NMAC – Standards or Practice

Adding two new sections to the part.

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

Adopted Rules

Effective Date and Validity of Rule Filings

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

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
YOUTH CONSERVATION
CORPS**

At its 12/3/2019 meeting the Youth Conservation Corps Commission repealed its rule The Youth Conservation Corps (YCC) Program, 11.2.171 NMAC, filed 10/31/2006, and replaced it with a new rule entitled The Youth Conservation Corps (YCC) and Outdoor Equity Grant (OEG) Programs, 11.2.171 NMAC, adopted 12/3/2019 and effective 12/17/2019.

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
YOUTH CONSERVATION
CORPS**

**TITLE 11 LABOR AND
WORKERS COMPENSATION
CHAPTER 2 JOB TRAINING
PART 171 THE YOUTH
CONSERVATION CORPS (YCC)
AND OUTDOOR EQUITY
GRANT (OEG) PROGRAMS**

11.2.171.1 ISSUING
AGENCY: The New Mexico Youth Conservation Corps Commission.
[11.2.171.1 NMAC – Rp, 11.2.171.1 NMAC, 12/17/2019]

11.2.171.2 SCOPE: General Public.
[11.2.171.2 NMAC – Rp, 11.2.171.2 NMAC, 12/17/2019]

11.2.171.3 STATUTORY
AUTHORITY: Section 9-5B-1 et-seq. NMSA 1978.
[11.2.171.3 NMAC – Rp, 11.2.171.3 NMAC, 12/17/2019]

11.2.171.4 DURATION:
Permanent.
[11.2.171.4 NMAC – Rp, 11.2.171.4 NMAC, 12/17/2019]

11.2.171.5 EFFECTIVE
DATE: December 17, 2019, unless a later date is cited at the end of a section.
[11.2.171.5 NMAC – Rp, 11.2.171.5 NMAC, 12/17/2019]

11.2.171.6 OBJECTIVE:
The objective of this rule is to establish procedures and standards for the administration of the Youth Conservation Corps (YCC) program and the Outdoor Equity grant (OEG) program.
[11.2.171.6 NMAC – Rp, 11.2.171.6 NMAC, 12/17/2019]

11.2.171.7 DEFINITIONS:
A. “In-kind contribution” means a non-monetary donation of goods or services provided by the project sponsor for the purpose of carrying out a program.
B. “Low-income youth” for the purposes of the outdoor equity grant program means New Mexico residents up to the age of 18 who qualify for a state or federal assistance program, such as free or reduced lunch, Medicaid or other similar program.

C. “Native American” means a person having origins in any of the original peoples of North and South America (including Central America) and who maintain tribal affiliation or community attachment.

D. “Residential program” means a program where corps members and their supervisors are housed on-site in a residential facility.

E. “Rural” means an area not within a metropolitan statistical area as defined by the

United States office of management and budget.

F. “Summer program” means a program taking place between May and September.

G. “Seasonal program” means a program that takes place any time of year and is six months or less in duration.

H. “Under-resourced” means lacking sufficient resources, including, but not limited to funds, opportunity, work force, knowledge base, support systems, physical aids, communication devices, and other physical assets that limit access to job training and outdoor recreation.

I. “Urban” means an area within a metropolitan statistical area as defined by the United States office of management and budget.
[11.2.171.7 NMAC – Rp, 11.2.171.7 NMAC, 12/17/2019]

11.2.171.8 PROPOSALS:
At least annually, the commission will request proposals for YCC and OEG projects. The commission’s announcement will include where to obtain proposal information and the date by which proposals must be submitted.
[11.2.171.8 NMAC – Rp, 11.2.171.15 NMAC, 12/17/2019]

11.2.171.9 YCC PROJECT ELIGIBILITY:

- A.** Project sponsors: The YCC Commission will accept applications from:
- (1) A federally recognized sovereign tribal government within the state.
 - (2) A state agency.
 - (3) A local government agency.
 - (4) A federal agency operating within the state.
 - (5) A non-

profit organization with a 501(c) internal revenue service designation operating within the state.

(6) Any organization or agency with a 501(c) fiscal sponsor.

B. Projects must be consistent with the purposes of the NMYCC program and may include, but need not be limited to, projects that:

(1) protect, conserve, rehabilitate or increase resiliency of terrestrial and aquatic species, forests, refuges, rangelands and waters of the state;

(2) improve public parks, greenways, historic sites, libraries, museums, zoos, recreational areas and associated facilities;

(3) reinforce the “keep New Mexico true” campaign;

(4) provide emergency assistance, disaster relief or recovery; or

(5) improve disaster preparedness; increase energy efficiency.

C. Prohibited activities: The following activities are prohibited in the conduct of any NMYCC project:

(1) the displacement or substitution of an existing employee by a corps member or the replacement of a seasonal employee normally hired by the project sponsor;

(2) the participation by corps members in the removal or cleaning up of any toxic or hazardous waste or toxic or hazardous waste site; and

(3) the assignment of corps members to general work activities such as, but not limited to, routine lawn mowing, routine litter control, janitorial duties and clerical tasks.

[11.2.171.9 NMAC – Rp, 11.2.171.12 and 11.2.171.13 NMAC, 12/17/2019]

11.2.171.10 YCC PROJECT REQUIREMENTS:

A. Project sponsors shall ensure that all project sites and

practices conform to appropriate state and federal health and safety standards and requirements.

B. Project sponsors shall classify their programs as a summer, seasonal, or residential project; and also specify whether their project primarily engages Native American, rural, urban or other under-resourced populations.

C. Wages for corps members and corps leaders shall account for a minimum of seventy percent of the total funds requested.

D. Projects shall hire a minimum of four corps members and one corps crew leader or corps crew trainer.

E. Project sponsors must provide an education and training program to corps members for the duration of the project. The number of hours of training provided for each corps member shall be no less than twelve percent of the total hours budgeted per corps member for the entirety of the project.

F. Project sponsors shall match a minimum of twenty percent of total funds requested with in-kind or cash contributions.

G. Project sponsors shall provide proof they have obtained permission from all land owners or managers where the project shall take place.

H. Project sites: Projects may be undertaken on:

(1) public lands, waters or structures located within the state that are under the jurisdiction of the project sponsor or in accordance with a written agreement between the project sponsor and the agency that has jurisdiction over the public lands, waters or structures;

(2) lands, waters or structures owned or administered by a non-profit entity or federally recognized sovereign tribal government, provided that these facilities are open to the public on a reasonable basis, there is a public value or benefit to the project, and the facilities are located within the state; or

(3) lands, waters or structures owned or administered by a nonprofit organization or federally recognized sovereign tribal government in accordance with a written agreement between the project sponsor and the nonprofit entity or federally recognized sovereign tribal government, provided that these facilities are open to the public on a reasonable basis, there is a public value or benefit to the project, and the facilities are located within the state.

I. Project sponsors shall have worker’s compensation and unemployment insurance in place for the duration of the project.

J. Program applicants shall provide proof of adequate insurance coverage for any liability arising out of program activities for the duration of the program.

[11.2.171.10 NMAC – Rp, 11.2.171.11 NMAC, 12/17/2019]

11.2.171.11 YCC CORPS MEMBERS:

A. Project sponsors shall, at their own expense, comply with all applicable laws, regulations, rules ordinances, and requirements of local, state, and federal authorities, including but not limited to those pertaining to equal opportunity employment, workers compensation benefits, and fair labor standards.

B. Recruitment, selection, supervision, development and dismissal of corps members will be the responsibility of the project sponsors.

C. Sponsors shall verify corps members meet the following eligibility requirements at the time of enrollment and keep records of such:

- (1) are unemployed;
- (2) are New Mexico residents;
- (3) are in-school or out-of-school youth;
- (4) are between the ages of 14 and 25 years of age
- (5) have a work permit if under the age of 16.

D. Sponsors shall enforce all labor laws and shall be familiar with child labor laws as they apply to employees under the age of 18.

E. Compensation:
(1) Corps members shall be compensated as provided by law following the state or municipality established minimum wage.

(2) Corps members shall be individuals who meet the eligibility requirements and are at least 14 years of age at the beginning of the project.

(3) Corps crew leaders or corps crew trainers shall be individuals who meet the eligibility requirements, are at least 18 years of age at the beginning of the project, and serve in a leadership, trainer or mentor position.

(4) Project sponsors may request wage increases of no more than ten percent of starting wage for corps members based on promotion, performance or additional responsibilities; and if there are sufficient funds in the budget to complete the project as planned.

(5) The YCC will support the project sponsor's existing policy for holiday pay.

(6) Project sponsors may not budget overtime pay into the cost proposal, and under no circumstances will the commission reimburse project sponsors for overtime.

(7) The YCC will not reimburse the project sponsor for hazard pay.

(8) Project sponsors shall follow their established personnel policies for dismissal of corps members. Sponsors are encouraged to provide opportunities for improvement prior to dismissal.

F. The length of a corps member's employment shall be determined by the duration of the work project in which the corps member is participating.

G. The maximum accumulated length of service for which a corps member may be employed on a YCC crew, including

all projects in which the corps member participated, shall not exceed 24 months.

[11.2.171.11 NMAC – Rp, 11.2.171.13 and 11.2.171.14 NMAC, 12/17/2019]

11.2.171.12 YCC EDUCATIONAL TUITION VOUCHERS AND ADDITIONAL CASH COMPENSATION:

A. On completion of employment with the YCC, a corps member who has 12 full months of employment as a corps member during a period not to exceed 48 months, and who has received satisfactory evaluations throughout their employment, may apply for a \$500.00 additional cash compensation or a \$1500.00 educational tuition voucher.

B. The project sponsor shall certify that the corps member was employed for the duration of the project and the YCC staff shall verify same.

(1) The educational voucher is good for reimbursement of expenses at a New Mexico institution of higher education, including accredited universities, colleges, community colleges, vocational schools and on-line education associated with an accredited New Mexico institution of higher education.

(2) The educational tuition voucher is valid for two years and will be reimbursed upon presentation of receipts and proof of payment.

(a) Examples of reimbursable expenses include educational expenses such as tuition, textbooks, and classroom and lab supplies.

(b) Examples of non-reimbursable expenses include personal expenses, transportation, computers, residential rent, and food.

(3) A corps member who receives satisfactory employment evaluations and has completed a minimum of six months employment but less than 12 months in a four-year period due

to circumstances beyond the corps member's control, may receive a partial cash compensation or a partial educational tuition voucher.

(a)

Circumstances beyond a corps member's control may include but are not limited to: illness; death in the family; a return to school; family relocation.

(b)

Circumstances beyond the corps member's control do not include the unavailability of projects or that the project sponsor did not select them for employment with the project.

[11.2.171.12 NMAC – Rp, 11.2.171.18 NMAC, 12/17/2019]

11.2.171.13 OEG PROGRAM ELIGIBILITY

A. The YCC Commission will accept applications from:

(1) A federally recognized sovereign tribal government within the state.

(2) A state agency.

(3) A local government agency.

(4) A federal agency operating within the state.

(5) A non-profit organization with a 501(c) (3) internal revenue service designation operating within the state.

(6) Any organization or agency with a 501(c) (3) fiscal sponsor.

(7) A privately-owned New Mexico resident business.

B. Programs must be consistent with the purposes of the outdoor equity grant program as described in the act; and may include, but are not limited to, programs that provide recreational opportunities and enhance outdoor skills and knowledge of activities such as bicycling, birdwatching, boating, camping, climbing, farming, fishing, flora and fauna identification, hang-gliding, hiking, horse-back riding, hot-air ballooning, hunting, jet skiing, mountain biking, mushrooming, nature study, off-highway

vehicles, orienteering, paddling, rafting, ranching, rock-climbing, sandboarding, skiing, sledding, snowboarding, snowshoeing, and swimming.
[11.2.171.13 NMAC – N, 12/17/2019]

11.2.171.14 OEG PROGRAM REQUIREMENTS:

A. Program sponsors shall ensure that all program components and practices conform to appropriate state and federal health and safety standards and requirements.

B. The majority of the program must take place outdoors, and the program shall be designed so that participants are actively engaging in outdoor recreational or educational activities the majority of the time.

C. Program applicants will specify whether their proposal primarily engages Native American, rural, urban or other under-resourced populations.

D. Programs that shall not be funded include, but are not limited to, those that take place primarily indoors, such as classrooms or gymnasiums; museums, aquariums, zoos, festivals or events; organized youth sports, such as baseball or soccer ; and service projects.

E. Program sites: Programs may occur in whole or partially on:

(1) public lands, waters or structures located within the state that are under jurisdiction of the program applicant or in accordance with a written agreement between the program sponsor and the agency that has jurisdiction over the public lands; waters or structures;

(2) privately-owned lands located within the state owned or leased by the program applicant or in accordance with a written agreement between the program applicant and the property owner;

(3) any lands, waters or structures located within the state that are owned or administered by a non-profit entity or federally recognized sovereign

tribal government or in accordance with a written agreement between the program sponsor and the nonprofit entity or federally recognized sovereign tribal government.

F. Program applicants shall provide proof of adequate insurance coverage for any liability arising out of program activities for the duration of the program.

G. Service projects or publicly funded enhancements on private land that would increase the value of that land are prohibited.
[11.2.171.14 NMAC – N, 12/17/2019]

11.2.171.15 EVALUATION OF PROPOSALS:

A. The commission shall adopt a competitive evaluation process to guide the allocation of funds.

B. The commission shall review and evaluate all proposals to determine the proposal’s conformance with the goals of the programs as described in the act and 11.2.171 NMAC, Sections 9, 10, 11, 13 and 14.

C. The commission shall take appropriate measures to ensure the evaluation process is not influenced by donors to the youth conservation corps or outdoor equity fund. This may include, but is not limited to, appointing an external review committee; and concealing the identity of applicants during the review process.

D. The commission will distribute funds equitably among qualified projects that variously engage Native American, rural, urban or other under-resourced populations.
[11.2.171.15 NMAC – Rp, 11.2.171.16 NMAC, 12/17/2019]

11.2.171.16 AWARD AGREEMENTS: Successful applicants shall enter into a formal agreement with the commission for the expenditure of awarded funds.
[11.2.171.16 NMAC – Rp, 11.2.171.17 NMAC, 12/17/2019]

11.2.171.17 FUNDS:

A. The commission may establish limitations on the

availability and use of program funds. Any limitations shall be defined in the current application package

B. The commission may limit the amount of funding available for any element(s) of a program.

C. If money is not awarded in a given fiscal year due to the lack of applications meeting minimum requirements, the commission may reassign the funds to a non-funded or under-funded program that meets all the minimum requirements or may carry them over into the total program allocation for the next fiscal year.

[11.2.171.17 NMAC – Rp, 11.2.171.9 NMAC, 12/17/2019]

HISTORY of 11.2.171 NMAC:

Pre-NMAC History:

The material in this Part was derived from that previously filed with the state records center & archives under: NMYCC Rule No. 92-1, Rules and Regulations Governing the New Mexico Youth Conservation Corps, filed November 20, 1992.

History of Repealed Material:

11.2.171 NMAC, The Youth Conservation Corps (YCC) Program, filed 4/30/2001, was repealed and replaced by 11.2.171 NMAC, The Youth Conservation Corps (YCC) Program and Outdoor Equity Grant (OEG) Program, effective 12/17/2019.

Other History: 11 NMAC 2.YCC, The Youth Conservation Corps (YCC) Program, filed 5/14/1997, was reformatted, renumbered, and amended to 11.2.171 NMAC effective 4/30/2001.

**ENVIRONMENT
DEPARTMENT**

These are amendments to 20.6.4 NMAC, Section 97, effective 12/17/2019.

20.6.4.97 EPHEMERAL WATERS: Ephemeral surface waters of the state as identified below and additional ephemeral waters as identified on the department’s water quality standards website pursuant to Subsection C of 20.6.4.15 NMAC are subject to the designated uses and criteria as specified in this section. Ephemeral waters classified in 20.6.4.101-899 NMAC are subject to the designated uses and criteria as specified in those sections.

A. Designated uses: livestock watering, wildlife habitat, limited aquatic life and secondary contact.

B. Criteria: the use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses.

C. Waters:
(1) the following waters are designated in the Rio Grande basin:

(a) Cunningham gulch from Santa Fe county road 55 upstream 1.4 miles to a point upstream of the Lac minerals mine, identified as Ortiz mine on U.S. geological survey topographic maps;

(b) an unnamed tributary from Arroyo Hondo upstream 0.4 miles to the Village of Oshara water reclamation facility outfall;

(c) an unnamed tributary from San Pedro creek upstream 0.8 miles to the PAA-KO community sewer outfall;

(d) Inditos draw from the crossing of an unnamed road along a power line one-quarter mile west of McKinley county road 19 upstream to New Mexico highway 509;

(e) an unnamed tributary from the diversion channel connecting Blue canyon and Socorro canyon upstream 0.6 miles to

the New Mexico firefighters academy treatment facility outfall;

(f) an unnamed tributary from the Albuquerque metropolitan arroyo flood control authority (AMAFCA) Rio Grande south channel upstream of the crossing of New Mexico highway 47 upstream to I-25;

(g) the south fork of Cañon del Piojo from Canon del Piojo upstream 1.2 miles to an unnamed tributary;

(h) an unnamed tributary from the south fork of Cañon del Piojo upstream 1 mile to the Resurrection mine outfall;

(i) Arroyo del Puerto from San Mateo creek upstream 6.8 miles to the Ambrosia Lake mine entrance road;

(j) an unnamed tributary from San Mateo creek upstream 1.5 miles to the Roca Honda mine facility outfall;

(k) San Isidro arroyo, including unnamed tributaries to San Isidro arroyo, from [the Lee Ranch mine facility outfall] Arroyo Chico upstream to [Tinaja arroyo] its headwaters;

(l) Arroyo Tinaja [arroyo], including unnamed tributaries to Arroyo Tinaja, from San Isidro arroyo upstream to [Mulatto canyon; and] 2 miles northeast of the Cibola national forest boundary;

(m) Mulatto canyon from Arroyo Tinaja [arroyo] upstream to 1 mile northeast of the Cibola national forest boundary; and

(n) Doctor arroyo, including unnamed tributaries to Doctor arroyo, from San Isidro arroyo upstream to its headwaters, and excluding Doctor spring and Doctor arroyo from the spring to its confluence with the unnamed tributary approximately one-half mile downstream of the spring.

(2) the following waters are designated in the Pecos river basin:

(a) an unnamed tributary from Hart canyon upstream 1 mile to South Union road;

(b) Aqua Chiquita from Rio Peñasco upstream to McEwan canyon; and

(c) Grindstone canyon upstream of Grindstone reservoir.

(3) the following waters are designated in the Canadian river basin:

(a) Bracket canyon upstream of the Vermejo river;

(b) an unnamed tributary from Bracket canyon upstream 2 miles to the Ancho mine; and

(c) Gachupin canyon from the Vermejo river upstream 2.9 miles to an unnamed west tributary near the Ancho mine outfall.

(4) in the San Juan river basin an unnamed tributary of Kim-me-ni-oli wash upstream of the mine outfall.

(5) the following waters are designated in the Little Colorado river basin:

(a) Defiance draw from County Road 1 to upstream of West Defiance Road; and

(b) an unnamed tributary of Defiance draw from McKinley county road 1 upstream to New Mexico highway 264.

(6) the following waters are designated in the closed basins:

(a) in the Tularosa river closed basin San Andres canyon downstream of South San Andres canyon; and

(b) in the Mimbres river closed basin San Vicente arroyo from the Mimbres river upstream to Maudes canyon. [20.6.4.97 NMAC - N, 5/23/2005; A, 12/1/2010; A, 3/2/2017; A, 12/17/2019]

ETHICS COMMISSION

**TITLE 1 GENERAL
GOVERNMENT
ADMINISTRATION
CHAPTER 8 STATE ETHICS
COMMISSION
PART I GENERAL
PROVISIONS**

1.8.1.1 ISSUING

AGENCY: State ethics commission (the commission), 800 Bradbury Dr. SE, Ste. 217, Albuquerque, NM 87106.

[1.8.1.1 NMAC-N, 1/1/2020]

1.8.1.2 SCOPE: The rules of Chapter 8 provide for and govern the organization and administration of the state ethics commission.

[1.8.1.2 NMAC-N, 1/1/2020]

1.8.1.3 STATUTORY

AUTHORITY: Paragraph 2 of Subsection A of Section 10-16G-5, State Ethics Commission Act, Section 10-16G-1 NMSA 1978.

[1.8.1.3 NMAC-N, 1/1/2020]

1.8.1.4 DURATION:

Permanent.

[1.8.1.4 NMAC-N, 1/1/2020]

1.8.1.5 EFFECTIVE

DATE: January 1, 2020, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1.8.1.5 NMAC-N, 1/1/2020]

1.8.1.6 OBJECTIVE:

The rules of Chapter 8 are promulgated 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.

The rules adopted in Chapter 8 shall be interpreted and applied to achieve the purposes and objectives for which the commission has been established. [1.8.1.6 NMAC-N, 1/1/2020]

1.8.1.7 DEFINITIONS:

A. "Advisory opinions" are opinions written by the commission responding to questions presented by persons authorized under Paragraph 1 of Subsection A of Section 10-16G-8 NMSA 1978 about how ethics laws apply to specific fact situations.

B. "Interagency agreement" means an agreement between the commission and another state or federal agency, including memoranda of understanding, joint powers agreements, and services agreements.

C. "Joint powers agreement" as used in this part, has the same meaning as it does in the Joint Powers Agreements Act, Section 1-11-1 NMSA 1978.

D. Other words and phrases used in this part have the same meaning as found in 1.8.3.7 NMAC.

[1.8.1.7 NMAC-N, 1/1/2020]

1.8.1.8 DUTIES AND POWERS OF THE DIRECTOR:

Without limiting the duties and powers conferred by statute, the director shall have the power to:

A. review complaints filed with the commission for jurisdiction;

B. refer complaints over which the commission has jurisdiction to the general counsel for investigation and possible filing of a complaint;

C. refer complaints, or parts thereof, to other state or federal agencies with jurisdiction over such complaints, pursuant to the terms of any joint powers agreements or other interagency agreements with any such agency;

D. enter into contracts on behalf of the commission, including, with the commission's approval, joint powers agreements;

E. with the approval of

the commission and at the direction of the commission's chair, petition courts for the issuance and enforcement of subpoenas in relation to:

(1) the general counsel's investigations to determine probable cause in connection with a complaint filed with the commission;

(2) the adjudication of complaints filed with the commission; and

(3) an investigation related to the commission's determination whether to file a civil court action to enforce any available civil remedy corresponding to any statute or constitutional amendment over which the commission has jurisdiction;

F. with the approval of the commission, file a civil court action to enforce any available civil remedy corresponding to any statute or constitutional amendment over which the commission has jurisdiction;

G. select and hire staff, including a general counsel;

H. select and contract with hearing officers and other contractors;

I. recommend to the commission adoption of draft rules, forms or legislative changes;

J. prepare annual budgets and appropriation requests for commission approval;

K. authorize the general counsel to administer oaths and take depositions;

L. during a period of vacancy or extended absence in the office of the general counsel, assign any duties assigned to the general counsel by statute or rule to a qualified attorney who is either on the commission's staff or on contract with the commission;

M. draft advisory opinions for the commission's approval;

N. notify parties and the public of commission actions, including dismissals or referrals of complaints;

O. provide for the confidentiality of all records designated as confidential by law;

P. with commission approval, delay notification of a complaint to protect the integrity of a criminal investigation;

Q. perform such other duties as may be assigned from time to time by the commission;

R. issue standing orders to the extent authorized by the commission; and

S. delegate the responsibilities as set forth in this section to appropriate commission staff members.

[1.8.1.8 NMAC-N, 1/1/2020]

1.8.1.9 REFERENCE TO OTHER DOCUMENTS: When a rule issued by the commission refers to another rule, regulation or statute, or other document, the reference, unless stated specifically to the contrary, is continuous and intended to refer to all amendments of the rule, regulation, statute or document.
[1.8.1.9 NMAC-N, 1/1/2020]

1.8.1.10 INTERPRETATION OF TERMS: Unless the context otherwise requires:

A. Singular/plural. Words used in the singular include the plural; words used in the plural include the singular.

B. Gender. Words used in the neuter gender include the masculine and feminine. The personal pronoun in either gender may be used in these rules to refer to any person, firm or corporation.

C. Permissive/mandatory. May is permissive; shall and must are mandatory.
[1.8.1.10 NMAC-N, 1/1/2020]

1.8.1.11 USE OF PRESCRIBED FORMS: The director may prescribe forms to carry out specified requirements of these rules or the state ethics commission act. Prescribed forms, or their substantial equivalent, must be used when available, unless these rules state otherwise or the director waives this requirement in writing. The director shall accept filings made on legible copies of prescribed forms.
[1.8.1.11 NMAC-N, 1/1/2020]

1.8.1.12 ADDRESS FOR FILING DOCUMENTS:

A. By mail: Director, State Ethics Commission, 800 Bradbury Dr. SE, Ste. 217, Albuquerque, NM 87106.

B. In person: State Ethics Commission, 800 Bradbury Dr. SE, Ste. 217, Albuquerque, NM 87106.

C. By email: ethics.commission@state.nm.us.
[1.8.1.12 NMAC-N, 1/1/2020]

1.8.1.13 COMPUTATION OF TIME: In computing any period of time prescribed or allowed by these rules, the day from which the period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation, unless it is a Saturday, Sunday or a day on which the state observes a legal holiday or emergency closure. In case of any such closure, the period of time runs to the close of business on the next regular workday. If the period is less than 11 days, a Saturday, Sunday, legal holiday or emergency closure day is excluded from the computation.
[1.8.1.13 NMAC-N, 1/1/2020]

1.8.1.14 SEVERABILITY: If any provision of Chapter 8 of these rules, or the application or enforcement thereof, is held invalid, such invalidity shall not affect other provisions or applications of Chapter 8 of these rules which can be given effect without the invalidated provisions or applications, and to this end the several provisions of Chapter 8 of these rules are hereby declared severable.
[1.8.1.14 NMAC-N, 1/1/2020]

History of 1.8.1 NMAC:
[RESERVED]

ETHICS COMMISSION

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 8 STATE ETHICS COMMISSION
PART 2 RECUSAL AND DISQUALIFICATION OF COMMISSIONERS**

1.8.2.1 ISSUING AGENCY: State ethics commission (the commission), 800 Bradbury Dr. SE, Ste. 217, Albuquerque, NM 87106.
[1.8.2.1 NMAC-N, 1/1/2020]

1.8.2.2 SCOPE: This part applies to all proceedings, cases, and hearings before the commission and all parties that appear before the commission, unless a more specific statutory or regulatory provision applies to the specific type of hearing being conducted.
[1.8.2.2 NMAC-N, 1/1/2020]

1.8.2.3 STATUTORY AUTHORITY: Subsection H of Section 10-16G-7 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978.
[1.8.2.3 NMAC-N, 1/1/2020]

1.8.2.4 DURATION: Permanent.
[1.8.2.4 NMAC-N, 1/1/2020]

1.8.2.5 EFFECTIVE DATE: January 1, 2020, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[1.8.2.5 NMAC-N, 1/1/2020]

1.8.2.6 OBJECTIVE: The objective of this part 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, and to fairly and honestly consider such issues whether or not raised by parties. When appropriate, commissioners shall 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. The rules adopted in this part shall be interpreted and applied to achieve the purposes and objectives for which the commission has been established.

[1.8.2.6 NMAC-N, 1/1/2020]

1.8.2.7 DEFINITIONS:

A. "Disqualification" means the removal by the commission of a commissioner from involvement in a matter of any kind upon a motion by any party alleging a real or apparent conflict of interest or other cause that reasonably calls into question the commissioner's ability to act impartially in that matter;

B. "Pecuniary interest" means the stricter applicable definition of "financial interest" in Subsection F of Section 10-16-2 NMSA 1978, the Governmental Conduct Act, Section 10-16-1 NMSA 1978, or in Section 13-1-57 NMSA 1978, the Procurement Code, Section 13-1-28 NMSA 1978;

C. "Personal bias or prejudice" of a commissioner means a predisposition toward or against a person based on a previous or ongoing relationship that renders the commissioner unable to exercise the commissioner's functions impartially;

D. "Recusal" means the withdrawal of a commissioner from a commission matter of any kind on the grounds that it is inappropriate for the commissioner to participate because of an actual or apparent conflict of interest or lack of impartiality in that matter;

E. Other words and phrases used in this part have the same meaning as found in 1.8.1.7 NMAC and 1.8.3.7 NMAC.

[1.8.2.7 NMAC-N, 1/1/2020]

1.8.2.8 RECUSAL AND DISQUALIFICATION OF COMMISSIONERS:

A. GROUNDS FOR RECUSAL: A commissioner shall recuse from a matter in which the commissioner is unable to make a fair and impartial decision, or in

which there is reasonable doubt over whether the commissioner can make a fair and impartial decision, because the commissioner:

(1) has, or appears to have, a personal bias or prejudice concerning a party to the matter;

(2) has prejudged a disputed evidentiary fact involved in the matter;

(3) has a pecuniary interest in the outcome of the matter;

(4) has previously served as an attorney, advisor, consultant or witness in the matter in controversy;

(5) has served as a hearing officer in the matter pursuant to Subsection A of 1.8.3.13 NMAC; or

(6) believes it is inappropriate to participate in the matter because of an actual or apparent conflict of interest or lack of impartiality in the matter.

B. NOTICE OF RECUSAL: The commissioner shall send notice in writing to the director of a decision to recuse on a matter. That decision shall be communicated to the other commissioners and be publicly disclosed in accordance with the disclosure provisions that apply to commission proceedings.

C. PROCEDURE FOR REQUESTING RECUSAL OR DISQUALIFICATION: When a commissioner subject to recusal under subpart A of this rule does not recuse on his or her own initiative:

(1) a party may request that the commissioner be disqualified, in a motion setting forth the grounds for the request;

(2) such a motion shall be filed with the director, not less than 10 days prior to a hearing in which the commissioner may participate, unless the party did not or could not reasonably have known of the alleged grounds for the request at that time;

(3) the director shall immediately notify the subject commissioner of the motion and ascertain whether the commissioner intends to recuse;

(4) if the commissioner does not recuse, the commissioner shall provide and make available to the public a full written explanation of the refusal to recuse.

D. APPEAL FROM REFUSAL TO RECUSE:

(1) The party requesting recusal may appeal to the full commission the decision by the commissioner not to recuse.

(2) The rest of the commissioners shall, by majority vote, decide whether to disqualify the commissioner who is the subject of the disqualification motion.

[1.8.2.8 NMAC-N, 1/1/2020]

1.8.2.9 LIMITATIONS ON PARTICIPATION BY A COMMISSIONER WHO HAS RECUSED OR BEEN DISQUALIFIED:

A. A commissioner who has recused or been disqualified on a matter:

(1) shall not participate further in any proceedings relating to the matter;

(2) shall be excused from the meeting for any part of the proceedings relating to the matter.

B. The minutes of the commission meetings shall record the name of any commissioner not voting on a matter by reason of disqualification or recusal.

[1.8.2.9 NMAC-N, 1/1/2020]

1.8.2.10 APPOINTMENT OF TEMPORARY COMMISSIONERS WHEN SEVERAL COMMISSIONERS RECUSE OR ARE DISQUALIFIED

A. Upon recusal or disqualification of two or more commissioners from a proceeding, the remaining commissioners shall, by a majority vote, appoint temporary commissioners to participate in that proceeding.

B. Temporary commissioners shall be appointed in accordance with the political affiliation, geographical representation, cultural diversity and

other qualifications set forth in the State Ethics Commission Act.
[1.8.2.10 NMAC-N, 1/1/2020]

History of 1.8.2 NMAC:
[RESERVED]

ETHICS COMMISSION

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 8 STATE ETHICS COMMISSION
PART 3 ADMINISTRATIVE HEARINGS**

1.8.3.1 ISSUING
AGENCY: State ethics commission (the commission), 800 Bradbury Dr. SE, Ste. 217, Albuquerque, New Mexico 87106.
[1.8.3.1 NMAC-N, 1/1/2020]

1.8.3.2 SCOPE: This part applies to all proceedings, cases, and hearings before the commission and all parties that appear before the commission.
[1.8.3.2 NMAC-N, 1/1/2020]

1.8.3.3 STATUTORY AUTHORITY: Paragraphs 2 and 3 of Subsection A of Section 10-16G-5 NMSA 1978; Paragraph 5 of Subsection B of Section 10-16G-6 NMSA 1978; Subsection H of Section 10-16G-7 NMSA 1978; Subsection C of Section 10-16G-12 NMSA 1978; Section 1-19-34.8 of the Campaign Reporting Act, Section 1-19-1 NMSA 1978; Section 2-11-8.3 of the Lobbyist Regulation Act, Section 2-11-1 NMSA 1978; Section 2-15-8 NMSA 1978 ; Sections 10-16-11, 10-16-13, 10-16-14 and 10-16-18 of the Governmental Conduct Act, 10-16-1 NMSA 1978; Sections 10-16A-5, 10-16A-6, and 10-16A-8 of the Financial Disclosure Act, 10-16A-1 NMSA 1978; Section 10-16B-5 of the Gift Act, Section 10-16B-1 NMSA 1978; and Section 13-1-196.1 of the Procurement Code, Section 13-1-28 NMSA 1978.
[1.8.3.3 NMAC-N, 1/1/2020]

1.8.3.4 DURATION:
Permanent.
[1.8.3.4 NMAC-N, 1/1/2020]

1.8.3.5 EFFECTIVE DATE: January 1, 2020, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[1.8.3.5 NMAC-N, 1/1/2020]

1.8.3.6 OBJECTIVE:
The objective of this part is to provide general procedural rules for proceedings before the state ethics commission.
[1.8.3.6 NMAC-N, 1/1/2020]

1.8.3.7 DEFINITIONS:
The following terms apply to these rules unless their context clearly indicates otherwise:

A. “Appellant”
is a party who requests that the commission review and change the decision of the hearing officer.

B. “Appellee” is a party to an appeal arguing that the hearing officer’s decision is correct and should stand.

C. “Blackout period”
means the period beginning 60 days before a primary or general election in which a person against whom a complaint is filed is a candidate, and ending on the day after that election.

D. “Brief” is a document summarizing the facts and points of law of a party’s case. It may be offered to or requested by a hearing officer or filed in an appeal to the commission. For example, a “brief in chief” is filed with the commission by the appellant. An “answer brief” is filed by the appellee in response to the brief-in-chief.

E. “Claim” is a complainant’s allegation that a respondent violated a particular provision of law.

F. “Designated district court judge” is an active or pro tempore district judge who has been appointed by the chief justice of the supreme court to consider the issuance and enforcement of subpoenas applied for by the commission.

G. “Discriminatory practice,” as used in this part, has the same meaning as it does in Subsection L of Section 28-1-2 of the Human Rights Act, Section 28-1-1 NMSA 1978.

H. “Lobbyist’s employer” as used in this part, has the same meaning as it does in Subsection F of Section 2-11-2 of the Lobbyist Regulation Act, Section 2-11-1 NMSA 1978.

I. “Meeting” means a meeting of the commission duly noticed and conducted in compliance with the requirements of the Open Meetings Act, Section 10-15-1 NMSA 1978.

J. “Party” and “Parties” means the named persons in a proceeding before the commission or a hearing officer.

K. “Person” means any individual or entity.

L. “Pleading” means any written request, motion, or proposed action filed by a party with the hearing officer or commission.

M. “Qualified hearing officer” means an official appointed by the director in accordance with these rules to conduct an administrative hearing to enable the commission to exercise its statutory powers.

N. “Records” means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, whether or not the records are required by law to be created or maintained.
[1.8.3.7 NMAC-N, 1/1/2020]

1.8.3.8 STANDING ORDERS: The director may issue, or withdraw, standing orders addressing general practice issues and filing protocols for the handling of cases before the commission or its hearing officers. Such standing orders will be displayed publicly at commission facilities, any commission website, and in any applicable information provided with a notice of hearing. The parties appearing before the commission or its hearing officers

are expected to comply with standing orders.
[1.8.3.8 NMAC-N, 1/1/2020]

1.8.3.9 COMPLAINTS: FILING REQUIREMENTS, TIME LIMITATIONS, NOTICE:

A. The commission shall investigate allegations of violations of any statutes or constitutional provisions over which the legislature gives it jurisdiction. Such complaints may be filed against any public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist’s employer.

(1) The commission may initiate a proceeding before the commission concerning an alleged violation:

(a) through the filing of a complaint with the commission by any person which alleges that the complainant has actual knowledge of the alleged violation of such statutes or constitutional provisions;

(b) by initiating its own complaint alleging a violation of any statute or constitutional provision over which the commission has jurisdiction against a person subject to the jurisdiction of the commission, pursuant to Paragraph (1) of Subsection C of Section 10-16G-5 NMSA (1978); or

(c) by accepting a complaint filed with another public agency and forwarded by that agency to the commission pursuant to Subsection B or E of Section 10-16G-9 NMSA 1978.

(2) A complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, shall:

(a) be filed on a form prescribed by the commission and provided at no cost to the complainant, or in a substantially equivalent form;

(b) state the name and, to the extent known to the complainant, the mailing address, email address,

telephone number, and public office or other position of the person against whom the complaint is filed;

(c) set forth in detail the specific claims against the respondent and the supporting factual allegations, including, if known to the complainant, any law that the respondent has allegedly violated;

(d) include any evidence that the complainant has that supports the complaint, which may include documents, records and names of witnesses; and

(e) be signed, notarized and sworn to by the complainant, under penalty of false statement.

(3) Any complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC that fails to state either the mailing address or email address of the person against whom the complaint is filed, or is not signed, notarized and sworn to by the complainant, under penalty of false statement, shall be dismissed without prejudice, and the complainant will have the opportunity to refile the complaint.

(4) Any party may represent themselves or may be represented by a licensed attorney. Corporations and other non-natural persons must be represented by counsel.

(a) Any legal counsel representing any party shall enter an appearance with the commission. Upon receipt of the appearance, the commission shall direct all official notices and correspondence to the attorney named in the written appearance, at the address or location stated therein, and any official notice received by any named attorney shall be deemed to have been received by the represented party. An attorney may withdraw from representing a party before the commission only with leave of the director and for a reason provided for by Section B of Rule 16-116 NMRA.

(b) If the respondent is a public official

or state public employee subject to a complaint alleging a violation made in the performance of the respondent’s duties, the respondent shall be entitled to representation by the risk management division of the general services department. “Respondent’s duties,” within the meaning of Subsection K of Section 10-16G-10 NMSA and this rule, excludes conduct undertaken by an elected public official in furtherance of his or her campaign for reelection.

(5) The commission may proceed with any complaint, irrespective of whether the complaint is notarized, that is forwarded to the commission by another state agency, or by the legislature or a legislative committee pursuant to Subparagraph (c) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, according to the terms of any agreement for shared jurisdiction between the commission and the referring agency or the legislative body, pursuant to Subsection E of Section 10-16G-9 NMSA 1978.

(6) No complaint may be accepted or considered by the commission unless the date on which the complaint is received by the commission, or the date on which the commission votes to initiate a complaint, falls within the later of two years from the date:

(a) on which the alleged conduct occurred; or

(b) the alleged conduct could reasonably have been discovered.

(7) For the purpose of applying the two-year statute of limitations established in Subsection A of Section 10-16G-15 NMSA 1978, the date on which a complaint is filed with a public agency that refers the complaint to the commission under the law, or under an agreement for shared jurisdiction, shall be deemed the date of filing with the commission.

B. The commission shall not adjudicate a complaint filed against a candidate, except under the Campaign Reporting Act or Voter

Action Act, fewer than 60 days before a primary or general election.

(1) This paragraph does not preclude during the blackout period:

(a) the dismissal of frivolous or unsubstantiated complaints, or dismissal or referral of complaints outside the jurisdiction of the commission, as provided by these rules; or

(b) an investigation related to the commission’s discretion to file a court action to enforce the civil compliance provisions of any statute or constitutional provision over which the commission has jurisdiction.

(2) For complaints filed during and subject to the blackout period, the director, or the director’s designee, shall notify the complainant:

(a) of the provisions of this section regarding the blackout period;

(b) that the complainant may refer allegations of criminal conduct to the attorney general or appropriate district attorney at any time; and

(c) of the deferral of commission action on the complaint for the duration of the blackout period.

(3) The director, or the director’s designee, shall within five days notify a person named as a respondent in a complaint filed during the 60-day pre-election blackout period of:

(a) the filing of the complaint;

(b) the specific allegations and violations charged in the complaint; and

(c) the deferral of commission action on the complaint for the duration of the blackout period.

C. The commission shall not adjudicate a complaint that alleges conduct occurring only before July 1, 2019. Any complaint filed with the commission or referred to the commission that alleges conduct occurring only before July 1, 2019

shall be either dismissed or returned to the referring entity.
[1.8.3.9 NMAC-N, 1/1/2020]

1.8.3.10 DIRECTOR’S RESPONSIBILITIES UPON RECEIVING A COMPLAINT; RESPONDENT’S OPPORTUNITY TO RESPOND; JURISDICTIONAL REVIEW; REFERRALS; NOTIFICATION TO PARTIES:

A. Within seven days of receiving the complaint, the director shall notify the respondent of the filing of the complaint.

(1) The respondent may file with the commission a responsive pleading within 15 days from the date of receiving the director’s notification and serve the same upon the complainant. Also, within 15 days from the date of receiving the director’s notification, the respondent may file with the commission, and serve upon the complainant, a motion to dismiss the complaint for:

(a) lack of subject matter jurisdiction;

(b) lack of personal jurisdiction; or

(c) failure to state a claim upon which relief may be granted.

(2) The complainant may file a response to the respondent’s motion. A response to a motion is due 15 calendar days from the date of the filing of the motion.

(3) If the respondent fails to submit a responsive pleading or motion within 15 days from the date of receiving the director’s notification, then the director shall review the complaint for jurisdiction, and if jurisdiction lies, shall refer the complaint to the general counsel.

B. Upon receiving a complaint pursuant to Subparagraph (a) or (c) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, and any responsive pleading, or motion and corresponding response, the director shall, within 10 days, review the submissions to determine whether the complaint is within the commission’s jurisdiction.

C. If the director determines that a complaint lies wholly or in part within the jurisdiction of the commission, the director shall forward the complaint to the general counsel to initiate an investigation.

D. If the director determines that the complaint is not wholly within the commission’s jurisdiction, or is within the jurisdiction of another state or federal agency, either in whole or in part, the director shall within ten days refer some or all claims within the complaint to the appropriate agency, in accordance with Subsection D of Section 10-16G-9, the terms of an agreement entered into pursuant to the terms of Subsection E of Section 10-16G-9 NMSA 1978, or Subsection D of Section 10-16-14 NMSA 1978.

E. If the director determines that the complaint is neither within the jurisdiction of the commission nor subject to referral to another agency under the terms of an agreement entered into pursuant to Subsection E of Section 10-16G-9 NMSA 1978, the commission shall dismiss the complaint.

F. Subject to Subsection E of Section 1.8.3.15 NMAC, the director shall notify the complainant and respondent in writing of any action taken under Subsections C through E of 1.8.3.10 NMAC, unless notification has been delayed by the commission pursuant to Subsection H of Section 10-16G-10 NMSA 1978 and Subsection E of 1.8.3.15 NMAC. Neither the complaint nor the action taken on the complaint shall be made public by the commission or any staff member or contractor of the commission, but the complainant or respondent shall not be prevented from making public the complaint or any action taken on the complaint.

G. The director shall consult with the attorney general, an appropriate district attorney or the United States attorney if:

(1) when reviewing a complaint for jurisdiction, the director determines that the complaint alleges conduct on the

part of the respondent or another that appears reasonably likely to amount to a criminal violation; or

(2) the commission, any commission staff member, or any commission hearing officer finds at any time that a respondent’s conduct appears reasonably likely to amount to a criminal violation.

(3) Nothing in Section 10-16G-14 NMSA 1978 or in this section prevents the commission from taking any action authorized by the State Ethics Commission Act or deciding to suspend an investigation pending resolution of any criminal charges.

[1.8.3.10 NMAC-N, 1/1/2020]

1.8.3.11 GENERAL COUNSEL’S RESPONSIBILITY TO INVESTIGATE COMPLAINTS; DISCOVERY AND SUBPOENAS; PROBABLE CAUSE DETERMINATIONS AND CONSEQUENCES; SETTLEMENT AUTHORITY:

A. Upon receiving notice of the director’s determination that the commission has full or partial jurisdiction over the complaint, the general counsel shall determine whether the complaint is frivolous or unsubstantiated, or supported by probable cause.

B. If the respondent moves to dismiss a complaint, either in whole or in part, for failure to state a claim for which relief can be granted, and if the director determines that the commission has jurisdiction over the claim that is the subject of the respondent’s motion to dismiss, the general counsel shall review the motion and any corresponding response. After reviewing the motion and any corresponding response, the general counsel shall make a recommendation on the disposition of the motion. Based on the general counsel’s recommendation, the hearing officer may either:

(1) grant the motion, either in whole or in part, dismiss the complaint or part of the complaint that fails to state a claim upon which relief can be granted, and

notify the complainant and respondent in writing of the decision and the reasons for dismissal; or

(2) deny the motion and notify the parties in writing of the denial. In that event, the general counsel shall initiate an investigation into whether the complaint is supported by probable cause.

C. To perform the investigation into whether probable cause supports the complaint, the general counsel, or the general counsel’s designee, may administer oaths, interview witnesses under oath, and examine books, records, documents and other evidence reasonably related to the complaint.

(1) The general counsel, or the general counsel’s designee, may send to any party requests for production of books, records, documents and other evidence reasonably related to a complaint; requests for admission; and interrogatories, to be responded to at a time therein specified.

(a) The general counsel shall serve a copy of the request for production of books, records, documents and other evidence and interrogatories on the respondent.

(b) If a claim is made that documents responsive to a request made under this subparagraph are privileged, the party asserting the claim of privilege must, within 14 days after making the claim of privilege, provide the general counsel with a written description of each document withheld that is sufficient to permit the general counsel to assess the applicability of the asserted privilege.

(2) The general counsel, or the general counsel’s designee, may notice and take the deposition of any person, including any party, subject to the following provisions:

(a) The general counsel, or the general counsel’s designee, may put the witness on oath or affirmation and shall personally, or by someone acting at the general counsel’s direction, record the testimony of the witness.

(b) Any objection during a deposition shall be stated concisely in a non-argumentative and non-suggestive manner. Objections to form or foundation may only be made by stating “objection—form” or “objection—foundation”. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. When a question is pending, or a document has been presented to the witness, no one may interrupt the deposition until the answer is given, except when necessary to preserve a privilege.

(c) All objections shall be noted by the general counsel or the general counsel’s designee upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections, except where the objection is based on an assertion of privilege made in good faith.

(d) The general counsel, or the general counsel’s designee, shall certify on the deposition that the witness was duly sworn by the general counsel or the general counsel’s designee and that the deposition is a true record of the testimony given by the witness.

(e) If a party refuses to respond to discovery requests, to attend a deposition, or to answer questions at a deposition noticed under this subsection, unless the party’s refusal is based on an assertion of privilege made in good faith, the general counsel, when deciding whether a complaint is supported by probable cause, may draw an adverse inference against the party refusing to testify. If a party fails to provide information or identify a witness in response to a request by the general counsel, the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or on appeal, unless the failure was substantially justified or is harmless.

(3) If the general counsel determines it is necessary, the director shall request the commission's authority to petition a district court:

(a) to issue a subpoena to obtain testimony of a person or the production of books, records, documents or other evidence reasonably related to an investigation;

(b) to order enforcement if the person subpoenaed neglects or refuses to comply; or

(c) to resolve any assertion of privilege.

D. Upon the commission's approval, the director, or the director's designee, may petition the designated district court judge, or another district court judge if the designated judge is not available, for a subpoena pursuant to the previous subsection. If a person neglects or refuses to comply with a subpoena, the director or the director's designee, upon the commission's approval, may apply to a district court for an order enforcing the subpoena and compelling compliance.

E. If the general counsel finds probable cause to support the allegations of the complaint, the director shall promptly notify both the complainant and the respondent:

(1) of the specific claims and allegations in the complaint that were the subject of the general counsel's investigation;

(2) of the finding of probable cause as to specific claims; and

(3) that a public hearing before a hearing officer will be set, *provided* that the notification has not been delayed by order of the commission pursuant to Subsection H of Section 10-16G-10 NMSA 1978.

F. If, after completing the investigation, the general counsel determines that a complaint is not supported by probable cause, a hearing officer must dismiss the complaint. In that event, the

complainant and the respondent shall be notified in writing of the decision and the reasons for the dismissal.

Neither the complaint nor the action taken on the complaint shall be made public by the commission or any staff member or contractor of the commission, but the complainant or respondent shall not be prevented from making public the complaint or any action taken on the complaint.

G. The general counsel may at any time enter into a proposed settlement agreement of the complaint with the respondent. The proposed settlement agreement shall be presented to the commission for approval. If the complaint alleges, or the general counsel has found probable cause to support, a discriminatory practice or action by the respondent against the complainant, no settlement agreement may be reached without prior consultation with the complainant. If approved by the commission, the settlement agreement shall be subject to public disclosure.

H. At any time, the complainant may voluntarily dismiss the complaint, either in whole or in part, by filing a notice of voluntary dismissal with the commission; however, any notice of voluntary dismissal does not diminish the power of the commission to initiate a complaint under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978. If the general counsel has determined the complaint is supported by probable cause, the complainant may dismiss the complaint only on motion and on such terms and conditions as the hearing officer deems proper.

[1.8.3.11 NMAC-N, 1/1/2020]

1.8.3.12 GENERAL COUNSEL'S INVESTIGATION REPORTS AND RECOMMENDATIONS TO COMMISSION; DISPOSITION BY AGREEMENT; NOTICE TO PARTIES:

A. Upon completion of the investigation of a complaint found to be supported by probable cause, the general counsel shall report promptly

the general counsel's findings and recommendations to the director.

(1) Upon the receipt of the general counsel's findings and recommendations, the director will designate a qualified hearing officer to conduct a hearing on the complaint if so recommended by the general counsel. Based on the report of the general counsel, the hearing officer will set a public hearing as soon as practicable.

(2) In referring a complaint to the hearing officer, the director may consolidate the complaint with any other pending complaint involving related questions of law or fact; *provided* that consolidation will not unduly delay resolution of an earlier-filed complaint, unduly prejudice any complaint, or compromise the right of any complainant or respondent to confidentiality under these rules.

B. If a hearing has not been scheduled concerning the disposition of a complaint within 90 days after the complaint has been received from the complainant or after referral from another agency, whichever is later, the director shall report to the commission at a duly convened meeting on the status of the investigation. The commission and the director shall thereafter proceed in accordance with Section 10-16G-11 NMSA 1978.

C. At any time before or during a hearing, the hearing officer may, at a duly convened public meeting, approve a disposition of a complaint agreed to by the general counsel and the respondent, provided that:

(1) the complainant shall be consulted on the proposed agreement prior to its execution, and

(2) the agreement shall be effective upon approval by the commission at a public meeting.

[1.8.3.12 NMAC-N, 1/1/2020]

1.8.3.13 HEARING OFFICERS; HEARINGS; INTERPRETERS; EVIDENCE:

A. The commission shall authorize the director to

contract, for reasonable hourly compensation, with qualified persons to act as hearing officers. Hearing officers shall be assigned to act on or preside over hearings on complaints. Hearing officers must be currently licensed attorneys, or retired judges of the appellate, district, or metropolitan courts of New Mexico or any federal court, who are familiar with the ethics and election laws enforced by the commission.

B. All hearings before the hearing officer will occur in Santa Fe or Albuquerque, or at such other location within the state as may be determined by the hearing officer. In selecting the location of a hearing other than in Santa Fe or Albuquerque, the hearing officer shall consider and give weight to the location and reasonable concerns of the respective parties, witnesses, and representatives in the proceeding. Upon a showing by any party of an undue burden, the hearing officer may move the hearing to a more appropriate venue.

C. If a hearing officer has not already notified the parties of a hearing through the issuance of a scheduling order, the director will notify the parties to the hearing by mail, directed to the address provided by the parties, of the date, time, and place scheduled for the hearing, at least 15 days before the scheduled hearing.

D. The hearing shall be conducted pursuant to the rules of evidence governing proceedings in the state courts, Rule 11-101 NMRA, and these procedural rules. All hearings shall be open to the public in accordance with the Open Meetings Act, Section 10-15-1 NMSA 1978, except for hearings or portions thereof exempted from the requirements of that Act.

E. Audio recordings shall be made of all hearings conducted pursuant to this section.

F. The parties may be represented by counsel, who shall enter an appearance at the earliest opportunity, pursuant to Paragraph (3) of Subsection A of 1.8.3.9 NMAC.

G. The hearing officer shall permit the general counsel to intervene upon request.

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

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

(2) to cause depositions to be taken;

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

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

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

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

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

(8) to schedule, continue and reschedule hearings;

(9) to consider and rule upon all procedural and other motions appropriate in the proceeding;

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

(11) to cause a complete audio record of hearings to be made;

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

(13) to reprimand, or with warning in extreme instances exclude from the hearing, any person for engaging in a continuing pattern of disruptive or other improper conduct that interferes with the conduct of a fair and orderly hearing or development of a complete record.

I. In the performance of these adjudicative functions, the hearing officer is prohibited from engaging in any improper *ex parte* communications about the substantive issues with any party on any matter, but may communicate with parties separately solely on scheduling issues if all parties are notified of such communications and do not object to them. An improper *ex parte* communication occurs when the hearing officer discusses the substance of a case without the opposing party being present, except that it is not an improper *ex parte* communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing despite having received timely notice thereof.

J. Parties who appear at the hearing may:

(1) request the director to request the commission's authority to petition a district court to compel the presence of witnesses. Subpoenas may be requested by the commission from a district court in the same manner as provided for in Subsection J of Section 10-16G-10 NMSA 1978 and Subsections C and D of 1.8.3.11 NMAC;

(2) present evidence and testimony;

(3) examine and cross-examine witnesses; and

(4) introduce evidentiary material developed by the general counsel. Before the hearing, the general counsel shall timely disclose to the parties all evidence in the possession or within the control of the general counsel, other than privileged information.

K. Any person may timely file an amicus brief, not to exceed ten pages, with the director, for consideration by the hearing officer.

L. Upon reasonable notice by the party to the director, a party needing language interpreter services for translation of one language into another, and any interpreter required to be provided under the American with Disabilities Act, shall be provided for by the

commission. While the person serving as an interpreter need not be a court-certified interpreter in order to provide interpretation at a hearing, any person serving as an interpreter in a hearing before the commission must affirm the interpreter's oath applicable in courts across this state.

M. After the termination of the hearing, if the hearing officer finds by a preponderance of the evidence that the respondent's conduct as alleged in the complaint constituted a violation of any law within the jurisdiction of the commission, the hearing officer, in a written decision:

(1) may impose any fines provided for by law; and

(b) recommend to the appropriate authority commensurate disciplinary action against the respondent;

(2) and must state the reasons for the hearing officer's decision; and

(b) provide the parties with notice of the right of appeal to the commission.

N. Clear and convincing evidence is required to support a finding by a hearing officer that a respondent's conduct was fraudulent or willful.

O. If the hearing officer finds by a preponderance of the evidence that the respondent's conduct as alleged in the complaint constituted a violation of the Governmental Conduct Act and was either unintentional or for good cause, then the hearing officer shall give the respondent 10 days to correct the violation, pursuant to Subsection B of Section 10-16-13.1 NMSA 1978, before taking any action under Subsection M of Section 1.8.3.13 NMAC.

P. If the hearing officer finds by a preponderance of the evidence that the respondent's conduct as alleged in the complaint does not constitute a violation of any law within the jurisdiction of the commission, the hearing officer, in

a written decision, shall dismiss the complaint and inform the complainant of their right to appeal to the commission.

Q. Either party may request copies of exhibits, documents, records in the administrative file, or a copy of the audio recording of the proceeding by submitting a written request to the director. The director may charge a reasonable fee for copies made, consistent with its fee schedule under the Inspection of Public Records Act. The director may also require the requesting party to submit a new, sealed computer storage device, such as a compact disc, dvd disc, or usb drive, or other tangible device for copying of any audio or video recording that is part of the administrative record. Every party is responsible for paying the cost of any transcription of the audio recording. [1.8.3.13 NMAC-N, 1/1/2020]

1.8.3.14 APPEALS:

A. Except as provided by Subsections E and F of 1.8.3.14 NMAC, the complainant or respondent may appeal the final decision of the hearing officer within 30 days of the issuance of the decision to the full commission by filing a notice stating:

- (1) each party taking the appeal and each party against whom the appeal is taken;
- (2) the name, address, telephone number and email address of counsel for the appellant;
- (3) the decision or part of a decision from which the party appeals; and
- (4) the specific grounds for the appeal, including specific references to any evidence or law interpreted by the hearing officer.

B. For the purpose of this rule, briefing time shall commence from the date the appellant files a notice of appeal to the full commission. Unless otherwise provided for by the commission,

(1) The appellant shall file and serve a brief in chief within 15 days;

(2) The appellee shall file and serve an answer

brief within 15 days after service of the brief of the appellant; and

(3) Neither the brief in chief nor the answer brief shall exceed 10 pages.

C. The commission shall schedule oral arguments, if requested by either party or ordered by the commission within sixty days of the notice of appeal.

D. Any person may timely file an amicus brief, not to exceed ten pages, with the director for consideration by the commission.

E. The commission shall review the whole record of the proceeding and shall, within 180 days of receiving the notice of appeal, issue its decision upholding or reversing the decision of the hearing officer. The commission may reverse all or part of the hearing officer's decision and remand the matter to the hearing officer for further proceedings.

F. If a hearing officer issues a decision granting a respondent's motion to dismiss for failure to state a claim and dismisses a complaint or part of a complaint pursuant to Paragraph (1) of Subsection B of 1.8.3.11 NMAC, then the complainant may appeal the hearing officer's decision to the commission as provided in these rules. If, however, a hearing officer issues a decision denying a respondent's motion to dismiss for failure to state a claim, then the respondent has no right to an interlocutory appeal of that decision to the commission, but may appeal any final decision of the hearing officer to the commission.

G. If a hearing officer dismisses a complaint, pursuant to Subsection G of 1.8.3.11, following the general counsel's determination that the complaint is not supported by probable cause, then the complainant has no right to an appeal of that dismissal to the commission.

H. A party may seek review of the commission's final decision by filing a petition of writ of certiorari pursuant to Rule 1-075 NMRA.

[1.8.3.14 NMAC-N, 1/1/2020]

1.8.3.15 OPEN RECORDS AND CONFIDENTIALITY:

A. 30 days after the director provides notice pursuant to Subsection F of 1.8.3.11 NMAC to the respondent of the allegations of a complaint, the general counsel's finding of probable cause, and the setting of the public hearing:

(1) the director shall make public the specific allegations of the complaint, the notification to the respondent, and any response filed by the respondent, and any related records, *provided* that:

(2) prior to the publication of any commission records pursuant to the preceding subparagraph, any proceedings in district court initiated by the commission to obtain subpoenas shall be sealed, and shall remain so until such time as the commission notifies the court that the commission has made the complaint public or the parties enter into an approved settlement agreement.

B. If a complaint is dismissed because the general counsel has found it to be frivolous or unsubstantiated, as provided in Subsection E of Section 10-16G-10 NMSA 1978, the commission shall not release to the public the complaint, the reason for its dismissal, or any related records. Nothing in this subsection shall prevent the making public of any document by a complainant or respondent to the proceeding.

C. Notwithstanding any other requirement in these rules or the law requiring notification to the complainant or respondent of commission actions on a complaint, the director may delay notifying parties or releasing to the public the complaint and related information if the director deems it necessary to protect the integrity of a criminal investigation.

(1) The director shall, within 10 days of making the decision to delay release of a complaint pursuant to this subsection, present to the commission the records and information to be withheld and the reasons for delaying their release.

(2) The commission may, by a majority vote pursuant to Subsection H of Section 10-16G-10 NMSA 1978, confirm the director's decision in a meeting closed pursuant to the requirements of the Open Meetings Act, Section 10-15-1 NMSA 1978, and the commission's open meetings resolution.

(3) The commission shall document in writing with reasonable specificity its decision on whether to confirm the director's decision, the reasons for its decision, and the time after which the release of documents must occur.

D. Except as otherwise provided by Section 10-16G-13 NMSA 1978, or these rules, all complaints, pleadings, evidence, findings of ethical violations, terms of settlements approved by the commission and other documents within the custody and control of the commission shall be public records subject to public inspection pursuant to the Inspection of Public Records Act, Section 14-2-1 NMSA 1978.

E. Notwithstanding the previous subsection, the commission, its staff and contractors shall not reveal any information that is:

(1) protected pursuant to any privilege in law or judicial rule, or

(2) otherwise made confidential by law.
[1.8.3.15 NMAC-N, 1/1/2020]

History of 1.8.3 NMAC:
[RESERVED]

GAME AND FISH DEPARTMENT

At its meeting on November 21, 2019, the State Game Commission repealed its rule entitled Hunting and Fishing Licenses and Application, 19.31.3 NMAC, filed April 1, 2016, and replaced it with a new rule entitled Hunting and Fishing Licenses and Application, 19.31.3 NMAC, effective January 1, 2020.

GAME AND FISH DEPARTMENT

**TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND FISHING REGULATIONS
PART 3 HUNTING AND FISHING LICENSES AND APPLICATION**

19.31.3.1 ISSUING

AGENCY: New Mexico department of game and fish.

[19.31.3.1 NMAC - Rp, 19.31.3.1 NMAC, 1/1/2020]

19.31.3.2 SCOPE:

Sportspersons interested in fishing, hunting and trapping and management of big game and furbearers in New Mexico. Additional requirements may be found in Chapter 17 NMSA 1978 and other Parts of Title 19, Chapter 31 NMAC.

[19.31.3.2 NMAC - Rp, 19.31.3.2 NMAC, 1/1/2020]

19.31.3.3 STATUTORY

AUTHORITY: Sections 17-1-14, 17-1-26, 17-3-2, 17-3-5, 17-3-7, 17-3-13, 17-3-14, and 17-3-14.1 NMSA 1978, which pertain to the types of licenses and permits available and grant the state game commission authority to create regulations setting the license fees and application procedure.

[19.31.3.3 NMAC - Rp, 19.31.3.3 NMAC, 1/1/2020]

19.31.3.4 DURATION:

Permanent.

[19.31.3.4 NMAC - Rp, 19.31.3.4 NMAC, 1/1/2020]

19.31.3.5 EFFECTIVE

DATE: January 1, 2020, unless a later date is cited at the end of a section.

[19.31.3.5 NMAC - Rp, 19.31.3.5 NMAC, 1/1/2020]

19.31.3.6 OBJECTIVE:

Basic regulation, rules and procedures governing the issuance of licenses, permits and stamps, as well as special draw permits and licenses issued by

the department pertaining to deer, elk, pronghorn, bighorn sheep, Barbary sheep, bear, turkey, oryx, ibex, javelina, furbearers, small game and other species determined by the state game commission.
[19.31.3.6 NMAC - Rp, 19.31.3.6 NMAC, 1/1/2020]

19.31.3.7 DEFINITIONS:
[RESERVED]

19.31.3.8 PUBLIC DRAW LICENSES AND PERMITS - APPLICATION FOR:

A. Application form: Application for all public licenses and permits shall be submitted via the department website.

B. Application deadline(s): Applications for all public licenses and permits, including population management hunts, Sandhill crane, pheasant, turkey, pronghorn, elk, Barbary sheep, bighorn sheep, bear, deer, oryx, javelina, and ibex hunts must be received by 5:00 p.m. on dates set by the state game commission. If any licenses or permits are available after the drawing is completed, those licenses or permits may be sold online via secondary sale.

C. One applicant per application: No more than one person may apply under each application number for bighorn sheep, bear, and GMU 5A private land deer.

D. Two applicants per application: No more than two persons may apply under the same application number for youth-only Sandhill crane, youth-only pheasant, turkey, ibex and oryx.

E. Four applicants per application: No more than four persons may apply under the same application number for Sandhill crane, pheasant, deer, elk, pronghorn, Barbary sheep and javelina.

F. Resident and non-resident application combination: Any mixture or combination of residents and non-residents may make application for special drawing providing the number of applicants does not exceed the restriction of this section (Subsection D or E).

G. Applications

rejected: Applications for licenses may be rejected by the department if an applicant did not:

- (1) apply on the proper online form as designated by the director;
- (2) submit the correct or required information;
- (3) submit the correct license or application fee, and any other required fee;
- (4) meet the deadline date; or
- (5) comply with a current statute or rule.

H. More applications

than permits: If more applications for public licenses or permits are received than there are licenses or permits available, the available licenses or permits shall be allotted by means of a public drawing.

I. Increase in licenses

or permits: The number of licenses or permits available may be increased to accommodate corrections or errors by the department which results in the addition of names to the successful list.

J. Additional choices:

Applicants for public permits and/or licenses may designate additional choices for hunt periods.

K. Application

categories: Applications for special drawing hunts will be placed into the appropriate categories, as specified in Section 17-3-16 NMSA 1978 by department personnel or their designee. Special drawings shall continue to draw applicants from the appropriate drawing pool progressively for each respective hunt code, starting with first choice applicants, then proceeding to second and subsequent choice applicants until the quota has been met or the pool of applicants has been exhausted.

L. Resident and non-resident applications:

- (1) To be placed in the separate pool designated for guided hunts, an applicant must have a valid registration number issued to a New Mexico outfitter as prescribed in Subsection H of Section 17-3-6 NMSA 1978, on their application.

(2) For an

application to be successfully drawn, there must be a sufficient number of licenses or permits available for that hunt code to accommodate all applicants from their respective drawing pools.

(3) Any

licenses left over from the appropriate drawing pool will be allocated as prescribed in Subsection C of Section 17-3-16 NMSA 1978.

M. New Mexico

department of game and fish customer identification number:

All persons purchasing licenses, making application to the department for hunt drawings for public licenses and permits, and converting private landowner authorizations to licenses must have a "New Mexico department of game and fish (NMDGF) customer identification number."

(1) "NMDGF

customer identification number" shall be obtained only from the department and must be obtained prior to the submission of any application or private landowner authorization.

(2) Each

person making application for public drawing license, permit or private landowner authorization must use their own valid NMDGF customer identification number on his or her application.

(3) Any

application received without a valid NMDGF customer identification number or false NMDGF customer number will be rejected.

N. Trapper license

restriction: No nonresident who resides in a state that does not permit New Mexico residents to procure nonresident trapper licenses may purchase a New Mexico nonresident trapper license.

O. Director's

authority to adjust licenses and permits: The director may adjust licenses or permit numbers for special drawings, by no more than one per hunt code, to comply with Chapter 17 NMSA 1978 and its corresponding rules.

[19.31.3.8 NMAC - Rp, 19.31.3.8 NMAC, 1/1/2020]

19.31.3.9 PRIVATE LAND - ELK LICENSES:

A. Private land licenses for elk will not be issued through the public draw.

B. The amount due for a private land elk license in the primary and special management zones as defined in 19.31.14 NMAC shall be composed of the "landowner authorization certificate" fee and the appropriate "certificate of application" fee as defined in 19.30.9 NMAC, and the appropriate license fees as defined in Sections 17-3-13 and 17-3-7 NMSA 1978.

C. Licenses for primary and special management zones will be issued only up to the number of authorizations allotted for each ranch and only to persons who provide a valid authorization and ranch number and pay the appropriate fees.

D. Ranch codes allowing purchase of private-land elk licenses in the secondary management zone, as defined in 19.31.14 NMAC, will be issued to landowners in accordance with 19.30.5 NMAC. [19.31.3.9 NMAC - Rp, 19.31.3.9 NMAC, 1/1/2020]

9.31.3.10 NEW MEXICO RESIDENT MILITARY AND VETERAN DISCOUNT:

A. A New Mexico resident, as defined in Section 17-3-4 NMSA 1978, who is active duty military or a veteran of the United States military as defined by the New Mexico department of veterans' services is eligible for a fifty percent discount on all licenses, permits and stamps as defined in 19.30.9 NMAC and in Section 17-3-13 NMSA 1978. Exceptions: No discount shall apply to the resident, disabled veteran game hunting and fishing combination license, or to any administrative fee, including the "landowner authorization certificate" fee, the "certificate of application" fee, and the license vendor fee.

B. Nonresident military personnel stationed on Fort Bliss who qualify for resident prices on big-game hunts that occur on Fort

Bliss are not eligible for the resident military and veteran discount.

C. The department shall conduct audits to determine eligibility for benefits as defined under 19.31.3.10 NMAC. Failure to provide requested documentation within the timeframe specified by the department shall result in the removal of the discount and suspension of any future discounts until such time as the requested documents are received and verified.

D. Any license, permit or stamp obtained by falsely claiming this discount is unlawful. [19.31.3.10 NMAC - Rp, 19.31.3.10 NMAC, 1/1/2020]

19.31.3.11 RESTRICTIONS/ REQUIREMENTS:

A. One license per big game species per year: It shall be unlawful for anyone to hold more than one permit or license for any one big game species during the current license year unless otherwise allowed by rule.

B. Improper license and permit: Any person who attempts to capture or shoot, hunts, kills, injures or takes, in any manner any big-game, small game or fur-bearing animal, turkey or game fish other than in accordance with the specified hunt code or dates, legal sporting arm, bag limit allowance or area designated on a license or permit issued by the department to that person is deemed to be hunting, fishing or trapping without a proper license as required by Section 17-3-1 NMSA 1978 unless otherwise exempted by a valid commission rule.

C. Transfer of permits or licenses: The director may grant the transfer of a hunting license or permit once it has been determined that prior to the hunt start date, a licensee or their official representative provides written, verifiable information indicating the licensee has died, sustained an injury or life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting. Transfer requests must be submitted in writing

prior to the hunt start date. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit.

D. Refunds: The director may grant the refund of a hunting license once it has been determined that a licensee or their official representative provides written, verifiable information indicating the licensee has died, sustained an injury or life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting. Refund requests must be submitted in writing prior to the hunt start date.

E. Donation of permits or licenses: Upon written request from a licensee or their official representative, the director may grant the donation of a hunting license for transfer to a youth 17 years of age or younger, a New Mexico resident veteran of the United States military as approved by the New Mexico department of veterans' services, or a "first responder" who is a resident of the state of New Mexico as defined by Subsection B of Section 12-10D-2 NMSA 1978 who has been qualified through an approved nonprofit organization that promotes hunting, fishing and trapping activities. The donor of the license shall not be eligible for a refund of license or application fees. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit. The state game commission must approve any nonprofit organizations prior to their participation in receiving, identifying or submitting recipients for donated licenses or permits. In order to be an approved nonprofit organization, the organization must demonstrate to the state game commission their history and ability to promote hunting, fishing, and trapping activities. A once-in-a-

lifetime licensee may be reinstated as eligible to participate in future drawings for the same species and hunt type if the licensee donated his or her license to an individual qualified by an approved nonprofit organization. Donation of a once-in-a-lifetime license will not prohibit the donor from applying for and receiving another license for the same species and restrictions in the future.

F. More than one application: It shall be unlawful to submit more than one application per species for any license or permit issued through a special drawing, unless otherwise permitted by regulation.

G. Handicapped fishing or handicapped game hunting license qualifications: To hold a handicapped fishing or handicapped game hunting license, the individual must be a resident of New Mexico and must attest to having a severe physical or developmental disability that substantially limits one or more major life activities. Reasonable accommodation may be made, relating to these licenses, upon request.

H. Mobility impaired (MI) deer, elk, oryx, or pronghorn license qualifications: To hold a mobility impaired deer, elk, oryx, or pronghorn license, a person must submit verifiable documentation on the proper department form that is attested to by a certified medical physician that the individual has a mobility restriction which limits their activity to a walker, wheelchair, or two crutches, or severely restricts the movement in both arms or who has a combination of permanent disabilities which cause comparable substantial functional limitation and then obtain department approval for MI hunt eligibility. Every person qualified as MI shall have their card/eligibility expire 48 months from the department's approval date or issuance date, whichever is later, and must resubmit their application and obtain department approval as required above prior to being eligible to apply for any MI hunt.

I. Youth only hunts:

Only applicants who are 17 years of age or younger on the opening day of the hunt are eligible to apply for or participate in any youth-only hunt, including federal youth waterfowl hunt days. Applicants must have a valid hunter education certificate number, or mentor youth number for appropriate species.

J. Required

information: An individual making license application shall supply the department on the appropriate form with all required personal information including, but not limited to name, address, date-of-birth, last four digits of his/her social security number prior to an application form being processed or a license being awarded.

K. Military only

hunts: Applicants must be full time active military and proof of military status must be received by the department prior to applying for any military only hunt.

L. Returning Iraq/

Afghanistan veteran oryx hunts: Applicants for returning Iraq/Afghanistan veteran oryx hunts must provide proof of appropriate service prior to applying for any returning Iraq/Afghanistan veteran oryx hunt.

M. NMDGF customer

identification number: It shall be unlawful for an applicant to use another person's NMDGF customer identification number or to provide false information to obtain a NMDGF customer identification number.

N. Application fee:

Prior to the drawing, all applicants for special hunt drawings for public draw licenses shall pay the applicable species license fees including depredation damage stamp, the required game hunting license fee and the non-refundable draw application fee as defined by 19.30.9.9 NMAC. Disabled American veterans certified as holders of lifetime general hunting and fishing licenses are exempt from paying the application fee when applying for deer hunt drawings.

O. License, permit

and stamp requirements: A game hunting or game hunting and fishing license is required to hunt any

small game species, and an annual game hunting or game hunting and fishing license is required to apply for or purchase any big-game or turkey license (exception: disabled veteran card holders). A habitat management and access validation is required in conjunction with any hunting, fishing, or trapping license (exceptions: persons under age 18, free fishing license holders over age 70, and disabled veteran card holders). A habitat stamp is required in conjunction with any hunting, fishing, or trapping license on forest service or bureau of land management (BLM) properties (exceptions: anglers and trappers under age 12, free fishing license holders over age 70, and disabled veteran card holders). Migratory bird hunters must possess a Harvest Information Program (HIP) number. Waterfowl hunters must also possess a federal duck stamp. Nonresidents must have a nongame hunting license or any valid hunting license to hunt unprotected or nongame species. Draw permits must be accompanied by the appropriate hunting license(s) and stamp(s). Additional permits may be required for specific hunting and fishing activities pursuant to 19.31.6.9 NMAC, 19.31.5.8 NMAC and 19.31.4.13 NMAC.

P. Penalty

assessments: When a person is issued a penalty assessment citation for fishing without a license, hunting small game without a license, or failing to possess an applicable habitat management and access validation, habitat stamp or second rod validation; the citation will serve as a license for that specific activity for 15 calendar days. The person must remit the prescribed penalty amount indicated on the face of the citation within 30 days of the date of citation issuance.

[19.31.3.11 NMAC - Rp, 19.31.3.11 NMAC, 1/1/2020]

19.31.3.12 DENIAL OR

REVOCATION: Any applicant for any license, permit, certificate or registration will be automatically rejected if their name and other

identifying factors appears on the department's revocation list or a list of provided by the wildlife violator compact.

[19.31.3.12 NMAC - Rp, 19.31.3.12 NMAC, 1/1/2020]

History of 19.31.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: Regulation No. 482, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 5/31/67; Regulation No. 487, Establishing 1967 Seasons On Javelina And Barbary Sheep, filed 12/15/67; Regulation No. 489, Establishing Turkey Seasons For The Spring of 1968, filed 3/1/68; Regulation No. 491, Establishing Big Game Seasons For 1968 For Jicarilla Reservation, filed 3/1/68; Regulation No. 492, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 6/6/68; Regulation No. 495, Establishing A Season On Bighorn Sheep, filed 10/2/68; Regulation No. 496, Establishing An Elk Season In The Tres Piedras Area, Elk Area P-6, filed 12/11/68; Regulation No. 502, Establishing Turkey Seasons For The Spring Of 1969, filed 3/5/69; Regulation No. 503, Establishing 1969 Deer Seasons For Bowhunting Only And Big Game Seasons For The Jicarilla Indian Reservation, filed 3/5/69; Regulation 504, Establishing Seasons on Deer, Bear, Turkey, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, And Barbary Sheep, filed 6/4/69; Regulation No. 507, Establishing A Season On Bighorn Sheep, filed 8/26/69; Regulation No. 512, Establishing Turkey Season For The Spring Of 1970, filed 2/20/70; Regulation No. 513, Establishing Deer Season For Bowhunting Only In Sandia State Game Refuge, filed 2/20/70;

Regulation No. 514, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Barbary Sheep And Bighorn Sheep, filed 6/9/70;

Regulation No 520, Establishing Turkey Seasons For The Spring Of 1971, filed 3/9/71;

Regulation No. 522, Establishing 1971 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/9/71;

Regulation No. 523, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel,

Elk, Antelope, Barbary Sheep And Bighorn Sheep, filed 6/9/71;

Regulation No. 531, Establishing A Season On Javelina, filed 12/17/71;

Regulation No. 532, Establishing Turkey Seasons For The Spring Of 1972, filed 3/20/72;

Regulation No. 534, Establishing 1972 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/20/72;

Regulation No. 536, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, filed 6/26/72;

Regulation No. 542, Establishing A Season On Javelina, filed 12/1/72;

Regulation No. 545, Establishing Turkey Seasons For The Spring Of 1973, filed 2/26/73;

Regulation No. 546, Establishing 1973 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 2/26/73;

Regulation No. 547, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, And Javelina, filed 5/31/73;

Regulation No. 554, Establishing Special Turkey Seasons For The Spring of 1974, filed 3/4/74;

Regulation No. 556, Establishing 1974 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/14/74;

Regulation No. 558, Establishing

Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex, filed 5/29/74;

Regulation No. 565, Establishing Special Turkey Seasons For The Spring Of 1975, filed 3/24/75;

Regulation No. 567, Establishing 1975 Seasons On Deer, Bear, And Turkey On The Jicarilla Apache And Navajo Indian Reservations And On Elk On The Jicarilla Apache Indian Reservation, filed 3/24/75;

Regulation No. 568, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 6/25/75;

Regulation No. 573, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/76;

Regulation No. 583, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/11/77;

Regulation No. 590, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/15/78;

Regulation No. 596, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/79;

Regulation No. 603, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1980 through March 31, 1981, filed 2/22/80;

Regulation No. 609, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1981 through March 31, 1982, filed 2/17/81;

Regulation No. 614, Establishing Open Seasons On Deer, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1982 through March 31, 1983, filed 3/10/82;

Regulation No. 622, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1983 through March 31, 1984, filed 3/9/83;

Regulation No. 628, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1984 through March 31, 1985, filed 4/2/84;

Regulation No. 634, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1985 Through March 31, 1986, filed 4/18/85;

Regulation No. 640, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1986 through March 31, 1987, filed 3/25/86;

Regulation No. 645, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1987 through March 31, 1988, filed 2/12/87;

Regulation No. 653, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1988 through March 31, 1989, filed 12/18/87;

Regulation No. 658, Establishing A System For Allocating Elk Licenses On Private And Public Lands Within Game Management Units, filed 6/1/88;

Regulation No. 663, Establishing Opening Spring Turkey For The Period April 1, 1989 through March 31, 1990, filed 3/28/89;

Regulation No. 664, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1989 through March 31, 1990, filed 3/20/89;

Regulation No. 674, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1990 through March 31, 1991, filed 11/21/89;

Regulation No. 683, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1991 through March 31, 1992, filed 2/8/91;

Regulation No. 689, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1992 through March 31, 1993, filed 3/4/92;

Regulation No. 700, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1993 through March 31, 1995, filed 3/11/93.

History of Repealed Material:

19.31.3 NMAC, Hunting and Fishing License Applications, filed 1/17/01 - Repealed effective 12/30/04.

19.31.3 NMAC, Hunting and Fishing License Applications, filed 12/30/04 - Repealed effective 4/1/16.

19.31.3 NMAC, Hunting and Fishing Licenses and Application, filed 4/1/16 - Repealed effective 10/31/17.

19.31.3 NMAC, Hunting and Fishing Licenses and Application, filed 10/5/2017 - Repealed effective 1/1/19.

19.31.3 NMAC, Hunting and Fishing Licenses and Application, filed 12/7/2018 - Repealed effective 1/1/2020.

GAME AND FISH DEPARTMENT

**TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND FISHING
PART 11 BEAR AND COUGAR**

19.31.11.1 ISSUING

AGENCY: New Mexico department of game and fish.

[19.31.11.1 NMAC - Rp, 19.31.11.1 NMAC, 4/1/2020]

19.31.11.2 SCOPE:

Sportspersons interested in bear and cougar management and hunting. Additional requirements may be found in Chapter 17 NMSA 1978 and Title 19 NMAC.

[19.31.11.2 NMAC - Rp, 19.31.11.2 NMAC, 4/1/2020]

19.31.11.3 STATUTORY

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

[19.31.11.3 NMAC - Rp, 19.31.11.3 NMAC, 4/1/2020]

19.31.11.4 DURATION:

April 1, 2020 through March 31, 2024.

[19.31.11.4 NMAC - Rp, 19.31.11.4 NMAC, 4/1/2020]

19.31.11.5 EFFECTIVE

DATE: April 1, 2020, unless a later date is cited at the end of a section.

[19.31.11.5 NMAC - Rp, 19.31.11.5 NMAC, 4/1/2020]

19.31.11.6 OBJECTIVE:

Establishing open hunting seasons and regulation, rules and procedures governing the distribution and issuance of bear and cougar licenses by the department.

[19.31.11.6 NMAC - Rp, 19.31.11.6 NMAC, 4/1/2020]

19.31.11.7 DEFINITIONS:

A. “Bear entry permit” shall mean a permit awarded through a public drawing which entitles the holder of an over-the-counter bear license to hunt in a limited entry area during season dates established in rule.

B. “Bear zones” shall define hunt areas consisting of one or more game management units as described in 19.30.4 NMAC.

C. “Cougar zones” shall define hunt areas consisting of one or more game management units as described in 19.30.4 NMAC.

D. “Department” shall mean the New Mexico department of game and fish.

E. “Director” shall mean the director of the New Mexico department of game and fish.

F. “Game management unit” or “GMU” shall mean those areas as described in 19.30.4 NMAC.

G. “Wildlife management areas” or “WMAs” shall mean those areas as described in 19.34.5 NMAC.
[19.31.11.7 NMAC - Rp, 19.31.11.7 NMAC, 4/1/2020]

19.31.11.8 ADJUSTMENT OF LICENSES, PERMITS AND HARVEST LIMITS:

A. The director, with verbal concurrence of the chairperson or their designee, may adjust the number of licenses, permits or harvest limits, up or down by no more than twenty percent within a bear zone or cougar zone, to address critical department management needs, significant changes in population levels or habitat availability. This adjustment may be applied for bear and cougar within the specified zones to any or all of: the specific hunt codes; total harvest limits; or female harvest sub-limits.

B. The director, with verbal concurrence of the chairperson or their designee, may take management actions independent of seasons and restrictions, harvest limits or female sub-limits for population management, or to address

critical situations including ungulate population protection, depredation, human health and safety or other wildlife management issues. The decision to take management actions pursuant to this subsection shall be reported to the commission.
[19.31.11.8 NMAC - Rp, 19.31.11.8 NMAC, 4/1/2020]

19.31.11.9 BEAR AND COUGAR LICENSE APPLICATION REQUIREMENTS AND RESTRICTIONS:

A. Bear entry hunt:
It shall be unlawful to hunt bear in designated wildlife management areas or other specifically designated special entry hunt areas without having a valid bear entry permit and a valid bear license in the hunter’s possession or as otherwise allowed by game commission rule. Bear entry hunters shall be allowed to hunt in any other open bear zone provided they have a valid bear license.

B. Mandatory cougar identification course: All persons shall complete the mandatory cougar identification course offered on the department’s website prior to purchasing a cougar license.
[19.31.11.9 NMAC - Rp, 19.31.11.9 NMAC, 4/1/2020]

19.31.11.10 BEAR AND COUGAR ZONE CLOSURES, BAG LIMITS AND AREA CLOSURES:

A. Zone closures:
Bear and cougar may be hunted or taken only in zones designated as open on the department hotline or website. Zones will close within 72 hours of when the reported number of bears or cougars harvested is within ten percent of the total limit or female sub-limit for that zone, whichever occurs first.

B. Bag limit: The bag limit for bear is one; the bag limit for cougar is two. It is unlawful to kill a bear sow with cub(s) or any bear cub less than one year old, or to kill a spotted cougar kitten or any female cougar accompanied by spotted kitten(s).

C. Areas closed to

bear and cougar hunting: Limited entry hunt areas listed in 19.31.11 NMAC are closed to over-the-counter bear hunters who do not possess an entry permit. Cougar hunting in these areas is allowed only by licensed deer or elk hunters in possession of a valid cougar license in the E.S. Barker, Colin Neblett, Humphries, Marquez, Sargent, and Urraca WMAs, and the Valle Vidal. Deer or elk hunters choosing to hunt cougar under this provision may not use dogs, may only hunt in open cougar zones, and must adhere to the weapon type restriction and season dates as specified by their deer or elk licenses. Cougar hunting is closed in the Florida mountains hunt area during any open Persian ibex season, except by legal Persian ibex hunters in possession of a valid cougar license. Persian ibex hunters may only hunt cougar if the cougar zone is open, and must adhere to the weapon type restrictions and season dates as specified by their Persian ibex license.
[19.31.11.10 NMAC - Rp, 19.31.11.10 NMAC, 4/1/2020]

19.31.11.11 BEAR HUNTING SEASONS:

A. Over-the-counter bear hunts for the 2020-21 through 2023-24 seasons: The following table lists bear zones, open GMUs, weapon type restrictions, season dates, total harvest limits, and female harvest sub-limits.

Continued Next Page

Bear zone	open GMUs or areas	bow only	any big game sporting arms	2020-21 total limit (female)	2021-22 total limit (female)	2022-23 total limit (female)	2023-24 total limit (female)
1	4, 5, 6, 7, 51, 52	9/1 - 24	9/25 - 11/15	158 (63)	158 (63)	158 (63)	158 (63)
2	2	9/1 - 24	9/25 - 11/15	15 (6)	15 (6)	15 (6)	15 (6)
3	49, 50, 53	9/1 - 24	8/16 - 8/31 and 9/25 - 11/15	65 (26)	65 (26)	65 (26)	65 (26)
4	45, 46, 48	9/1 - 24	8/16 - 8/31 and 9/25 - 11/30	109 (43)	109 (43)	109 (43)	109 (43)
5	54, 55	9/1 - 24	8/16 - 8/31 and 9/25 - 11/15	92 (37)	92 (37)	92 (37)	92 (37)
6	39, 40, 41, 42, 43, 47, 59	9/1 - 24	8/16 - 8/31 and 9/25 - 11/15	33 (13)	33 (13)	33 (13)	33 (13)
7	56, 57, 58	9/1 - 24	8/16 - 8/31 and 9/25 - 11/15	35 (14)	35 (14)	35 (14)	35 (14)
8	8	9/1 - 24	10/15 - 11/15	11 (4)	11 (4)	11 (4)	11 (4)
9	9, 10	9/1 - 24	8/16 - 8/31 and 9/25 - 11/15	36 (14)	36 (14)	36 (14)	36 (14)
10	12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 24, 26, 27	9/1 - 24	9/25 - 12/15	146 (58)	146 (58)	146 (58)	146 (58)
11	37, 38	9/1 - 24	8/16 - 8/31 and 9/25 - 11/30	36 (14)	36 (14)	36 (14)	36 (14)
12	34	9/1 - 24	9/25 - 12/15	33 (13)	33 (13)	33 (13)	33 (13)
13	36	9/1 - 24	9/25 - 11/30	16 (6)	16 (6)	16 (6)	16 (6)
14	14	9/1 - 24	10/15 - 11/15	19 (7)	19 (7)	19 (7)	19 (7)

B. Entry hunts for the 2020-21 through 2023-24 seasons shall be as indicated below, listing the open areas, hunt dates, hunt codes, and number of permits.

open GMUs or areas	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates	2023-2024 hunt dates	hunt code	licenses
2, youth only	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	BER-1-100	5
4: Sargent WMA only	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	BER-1-101	10
4: Humphries WMA only	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	BER-1-102	5
9: Marquez WMA only	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	BER-1-103	5
54:55: Uracca, E.S. Barker, and Colin Neblett WMAs, and Valle Vidal	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	BER-1-104	32
55: Valle Vidal	4/15-5/20	4/15-5/20	4/15-5/20	4/15-5/20	BER-1-105	20
57: Sugarite Canyon State Park/ bow only	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	BER-2-106	5

[19.31.11.11 NMAC - Rp, 19.31.11.11 NMAC, 4/1/2020]

19.31.11.12 COUGAR HUNTING SEASONS:

A. Over-the-counter cougar hunting season shall be from April 1 through March 31, or until the total harvest limit or female sub-limit, whichever comes first, is met in any given cougar zone.

B. The following table lists cougar zones, open GMUs, total harvest limits and female harvest sub-limits for the 2020-21 to 2023-24 seasons.

zone	open GMUs or areas	2020-21 total limit (female)	2021-22 total limit (female)	2022-23 total limit (female)	2023-24 total limit (female)
A	2, 7	42 (13)	42 (13)	42 (13)	42 (13)
B	5, 6, 50, 51	25 (8)	25 (8)	25 (8)	25 (8)
C	43, 45, 46, 48, 49, 53	57 (17)	57 (17)	57 (17)	57 (17)
D	41, 42, 47, 59	15 (5)	15 (5)	15 (5)	15 (5)
E	9, 10	43 (13)	43 (13)	43 (13)	43 (13)
G	13, 17	50 (15)	50 (15)	50 (15)	50 (15)
H	18, 19, 20	29 (9)	29 (9)	29 (9)	29 (9)
I	36, 37, 38	24 (7)	24 (7)	24 (7)	24 (7)
J	15, 16, 21	84 (25)	84 (25)	84 (25)	84 (25)
K	22, 23, 24	45 (14)	45 (14)	45 (14)	45 (14)
L	25, 26, 27	19 (6)	19 (6)	19 (6)	19 (6)
M	31, 32, 33, 39, 40	25 (7)	25 (7)	25 (7)	25 (7)
N	4, 52	13 (4)	13 (4)	13 (4)	13 (4)
O	12	17 (5)	17 (5)	17 (5)	17 (5)
P	56, 57, 58	14 (7)	14 (7)	14 (7)	14 (7)
Q	28, 29, 30, 34	35 (11)	35 (11)	35 (11)	35 (11)
R	54, 55	26 (8)	26 (8)	26 (8)	26 (8)
S	8, 14	17 (5)	17 (5)	17 (5)	17 (5)

[19.31.11.12 NMAC - Rp, 19.31.11.12 NMAC, 4/1/2020]

HISTORY OF 19.31.11 NMAC:

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

- Regulation No. 482, Establishing Seasons on Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared and Chickaree Squirrel, and Barbary Sheep, filed 5/31/1967;
- Regulation No. 487, Establishing 1967 Seasons on Javelina and Barbary Sheep, filed 12/15/1967;
- Regulation No. 489, Establishing Turkey Seasons for the Spring of 1968, filed 3/1/1968;
- Regulation No. 491, Establishing Big Game Seasons for 1968 for Jicarilla Reservation, filed 3/1/1968;
- Regulation No. 492, Establishing Seasons on Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared and Chickaree Squirrel, and Barbary Sheep, filed 6/6/1968;
- Regulation No. 495, Establishing a Season on Bighorn Sheep, filed 10/2/1968;
- Regulation No. 496, Establishing an Elk Season in the Tres Piedras Area, Elk Area P-6, filed 12/11/1968;
- Regulation No. 502, Establishing Turkey Seasons for the Spring Of 1969, filed 3/5/1969;
- Regulation No. 503, Establishing 1969 Deer Seasons for Bowhunting Only and Big Game Seasons for the Jicarilla Indian Reservation, filed 3/5/1969;
- Regulation 504. Establishing Seasons on Deer. Bear. Turkey. Dusky Grouse. Chickaree and Tassel-Eared Squirrel. and Barbary Sheep, filed 6/4/1969;
- Regulation No. 507, Establishing a Season on Bighorn Sheep, filed 8/26/1969;
- Regulation No. 512, Establishing Turkey Season for the Spring Of 1970, filed 2/20/1970;
- Regulation No. 513, Establishing Deer Season for Bowhunting Only in Sandia State Game Refuge, filed 2/20/1970;
- Regulation No. 514, Establishing Seasons on Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared and Chickaree Squirrel, Barbary Sheep and Bighorn Sheep, filed 6/9/1970;
- Regulation No 520, Establishing Turkey Seasons for the Spring of 1971, filed 3/9/1971;
- Regulation No. 522, Establishing 1971 Seasons on Deer, Bear, Turkey, and Elk on the Jicarilla Apache Indian Reservation, filed 3/9/1971;
- Regulation No. 523, Establishing Seasons on Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared and Chickaree Squirrel, Elk, Antelope, Barbary Sheep and Bighorn Sheep, filed 6/9/1971;
- Regulation No. 531, Establishing a Season on Javelina, filed 12/17/1971;
- Regulation No. 532, Establishing Turkey Seasons for the Spring of 1972, filed 3/20/1972;
- Regulation No. 534, Establishing 1972 Seasons on Deer, Bear, Turkey, and Elk on the Jicarilla Apache Indian Reservation, filed 3/20/1972;

Regulation No. 536, Establishing Seasons on Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree and Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep and Bighorn Sheep, filed 6/26/1972;

Regulation No. 542, Establishing a Season on Javelina, filed 12/1/1972;

Regulation No. 545, Establishing Turkey Seasons for the Spring Of 1973, filed 2/26/1973;

Regulation No. 546, Establishing 1973 Seasons on Deer, Bear, Turkey, and Elk on the Jicarilla Apache Indian Reservation, filed 2/26/1973;

Regulation No. 547, Establishing Seasons on Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree and Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep and Bighorn Sheep, and Javelina, filed 5/31/1973;

Regulation No. 554, Establishing Special Turkey Seasons for the Spring of 1974, filed 3/4/1974;

Regulation No. 556, Establishing 1974 Seasons on Deer, Bear, Turkey, and Elk on the Jicarilla Apache Indian Reservation, filed 3/14/1974;

Regulation No. 558, Establishing Seasons on Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared and Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, and Ibex, filed 5/29/1974;

Regulation No. 565, Establishing Special Turkey Seasons for the Spring of 1975, filed 3/24/1975;

Regulation No. 567, Establishing 1975 Seasons on Deer, Bear, and Turkey on the Jicarilla Apache and Navajo Indian Reservations and on Elk on the Jicarilla Apache Indian Reservation, filed 3/24/1975;

Regulation No. 568, Establishing Seasons on Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree and Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex, filed 6/25/1975;

Regulation No. 573, Establishing Seasons on Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared and Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex, filed 2/23/1976;

Regulation No. 583, Establishing Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex, filed 2/11/1977;

Regulation No. 590, Establishing Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex, filed 2/15/1978;

Regulation No. 596, Establishing Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex, filed 2/23/1979;

Regulation No. 603, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1980 through March 31, 1981, filed 2/22/1980;

Regulation No. 609, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1981 through March 31, 1982, filed 3/17/1981;

Regulation No. 614, Establishing Open Seasons on Deer, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1982 through March 31, 1983, filed 3/10/1982;

Regulation No. 622, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1983 through March 31, 1984, filed 3/9/1983;

Regulation No. 628, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1984 through March 31, 1985, filed 4/2/1984;

Regulation No. 634, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1985 Through March 31, 1986, filed 4/18/1985;

Regulation No. 640, Establishing

Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1986 through March 31, 1987, filed 3/25/1986;

Regulation No. 645, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1987 through March 31, 1988, filed 2/12/1987;

Regulation No. 653, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1988 through March 31, 1989, filed 12/18/1987;

Regulation No. 663, Establishing Opening Spring Turkey for the Period April 1, 1989 through March 31, 1990, filed 3/28/1989;

Regulation No. 664, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1989 through March 31, 1990, filed 3/20/1989;

Regulation No. 674, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1990 through March 31, 1991, filed 11/21/1989;

Regulation No. 683, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, and Ibex for the Period April 1, 1991 through March 31, 1992, filed 2/8/1991;

Regulation No. 689, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, and Ibex for the Period April 1, 1992 through March 31, 1993, filed 3/4/1992;

Regulation No. 700, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, and Ibex for the Period April 1, 1993 through March 31, 1995, filed 3/11/1993.

History of Repealed Material:

19.31.8 NMAC, Big Game, filed 3/1/2001 - duration expired 3/31/2003.

19.31.8 NMAC, Big Game and Turkey, filed 3/3/2003 - duration expired 3/31/2005.

19.31.8 NMAC, Big Game and Turkey, filed 12/15/2004 - duration expired 3/31/2007.

19.31.11 NMAC, Bear and Cougar, filed 12/1/2006 - duration expired 3/31/2009.

19.31.11 NMAC, Bear and Cougar, filed 3/13/2009 - duration expired 3/31/2011.

19.31.11 NMAC, Bear and Cougar, filed 2/22/2011 - duration expired 3/31/2016.

19.31.11 NMAC, Bear and Cougar, filed 2/29/2016 - duration expired 3/31/2020.

HEALTH, DEPARTMENT OF

TITLE 7 HEALTH CHAPTER 8 RESIDENTIAL HEALTH FACILITIES PART 4 GENERAL REQUIREMENTS FOR BOARDING HOMES

7.8.4.1 ISSUING

AGENCY: New Mexico department of health, division of health improvement.

[7.8.4.1 NMAC – N/E, 12/5/2019]

7.8.4.2 SCOPE: These requirements apply to public or private boarding homes which come within the statutory definition of “health facilities” as set out in Subsection F of Section 24.1.2 NMSA 1978 public health act and which are required to be licensed by the state licensing authority. This rule applies to all boarding home facilities which receive lodging for compensation and are operated to provide assistance with one or more instrumental activities of daily living to residents or assistance with the coordination of community services and who do not need the level of services and supervision

provided in a skilled nursing facility, intermediate care facility, assisted living facility, nor a general or special hospital or other institution, nor does it include boarding homes under the control of an institution of higher learning. These requirements shall not include any facility which is otherwise licensed and regulated by the department, or any hotel or other landlord-tenant relationship or homeless shelter.

[7.8.4.2 NMAC – N/E, 12/5/2019]

7.8.4.3 STATUTORY

AUTHORITY: The requirements set forth herein are promulgated by the secretary of the department of health, pursuant to the general authority granted under Subsection E of Section 9-7-6, NMSA 1978, as amended and the authority granted under Subsections F and J of Sections 24-1-2 and 24-1-3 respectively and 24-1-5, NMSA 1978, of the public health act as amended.

[7.8.4.3 NMAC – N/E, 12/5/2019]

7.8.4.4 DURATION:

Permanent.

[7.8.4.4 NMAC - N/E, 12/5/2019]

7.8.4.5 EFFECTIVE

DATE: December 5, 2019, unless a later date is specified at the end of a section.

[7.8.4.5 NMAC – N/E, 12/5/2019]

7.8.4.6 OBJECTIVE:

A. Establish standards for licensing boarding home facilities for adults in order to ensure the health, safety, and welfare of individuals in need of such services.

B. Encourage the establishment and maintenance of boarding home facilities for adults that provide a humane, safe and homelike environment for elderly, disabled, or other persons who need personal care services and supervision, but who do not need institutional residential care or assistance with activities of daily living.

C. Establish standards for the construction, maintenance and operation of boarding home facilities.

D. Regulate such facilities in providing the appropriate level of care for residents, and to use supportive services in the surrounding community to meet the needs of residents.

E. Provide for facility compliance with these requirements through surveys to identify any areas that could be dangerous or harmful to the health, safety, or welfare of the residents and staff.

[7.8.4.6 NMAC – N/E, 12/5/2019]

7.8.4.7 DEFINITIONS.

A. “Abuse” means,
(1) knowingly, intentionally and without justifiable cause inflicting physical pain, injury or mental anguish, and includes sexual abuse and verbal abuse; or
(2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person, or injury, sexual misuse, or neglect resulting in harm of an individual resident.

B. “Amended license” means a change of manager name, location, capacity, classification of any units as listed in these requirements requires a new license:

(1) the application shall be on a form provided by the licensing authority;

(2) the application shall be accompanied by the required fee for an amended license; and

(3) the application shall be submitted at least 10 working days prior to the change.

C. “Activities of daily living (ADLs)” as per 42 CFR § 441.505, “means basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring”

D. “Annual license” means a license issued for a one-year period to a boarding home that has met all license requirements prior to the initial state licensing survey, or when the licensing authority finds partial compliance with these requirements.

E. “Applicant” means the individual who, or organization which, applies for a license; if the applicant is an organization, then the individual signing the application on behalf of the organization must have the authority to sign for the organization.

F. “APS” means the adult protective services division of the New Mexico aging and long term services department.

G. “Assisted living facility” as per Subsection 2 of 7.8.2 NMAC means, a health facility operated for the care of two or more adults who need or desire assistance with one or more activities of daily living.

H. “Bed” is a piece of furniture which is used as a place to sleep. A bed is a cushioned mattress on a bed frame, the mattress resting on a solid base of wood slats or a box spring inner sprung base. A cot, futon, bunkbed or day bed shall not be use as a bed. The bed must be at a minimum a standard size “twin” or larger bed.

I. “Boarding home” also known as a “**board and care home**” means any facility that is required to be licensed by the department of health, that provides 24 hour a day assistance with instrumental activities of daily living or assistance with the coordination of community services, for two or more adults age 18 or older, not related to the owner, that admits residents discharged from any mental or behavioral health care institution.

J. “Care and supervision” means any one or more of the following activities provided by a person or facility to meet the needs of the residents:

(1) “Limited assistance with self-administered medication” means the individual is capable to self-administer their medication or treatment, but may need cues, reminders or prompts or assistive technology to self-administer their medications. It may include assisting (if needed) with opening of a medication container for the resident and other

assistance not involving medication administration. If limited assistance with self-administered medication is being provided, the resident retains all responsibility for taking their medications. Limited assistance with self-administered medication is not the same as medication administration which requires a registered nurse (RN) to perform or a certified medication assistant (CMA) under RN supervision who follows board of nursing regulations 16.12.5.10 NMAC.

(2) Central storing and/or distribution of medications, as specified in 16.19.11.1 NMAC as per the requirements for a boarding and residential care home defined as a licensed custodial care facility by the board of pharmacy.

(3) Arrangement of and assistance with medical and dental care.

(4) Maintenance of house rules for the protection of residents.

(5) Supervision of resident schedules and activities.

(6) Maintenance and/or supervision of resident’s cash resources or property, money management.

(7) Monitoring food intake or special diets.

(8) Providing basic services, such as, preparing meals, shopping, housework, using a phone or other technology, or assisting with filling out a job application.

K. “CMS” means centers for medicare & medicaid services.

L. “Consultant pharmacist” means a person licensed in New Mexico under the pharmacy act. Subsection D of Section 61-11-2, NMSA 1978, as a consultant pharmacist.

M. “Department” means the New Mexico department of health.

N. “Dormitory” means a space in a building where group sleeping accommodations are provided in one room, or in a series

of closely associated rooms, for persons not members of the same family group, under joint occupancy and single management, as in college dormitories or fraternity houses.

O. “Instrumental activities of daily living (IADLs)” as per 42 CFR § 441.505, “means activities related to living independently in the community, including but not limited to, meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone or other media, and traveling around and participating in the community”.

P. “Legally authorized person” means a parent of a minor, a court appointed guardian, or a person authorized by the resident in accordance with law to act on the resident’s behalf.

Q. “Licensee” means the person(s) who, or organization which, has an ownership, leasehold, or similar interest in the facility and in whose name a license has been issued and who is legally responsible for compliance with these requirements.

R. “Licensing authority” means the agency within the department vested with the authority to enforce these requirements.

S. “Limited assistance with self-administered medication” means the individual is capable to self-administer their medication or treatment, but may need cues, reminders or prompts or assistive technology to self-administer their medications. It may include assisting (if needed) with opening of a medication container for the resident and other assistance not involving medication administration. If limited assistance with self-administered medication is being provided, the resident retains all responsibility for taking their medications.

T. “Manufactured home” means any home factory-built in the U.S. to the HUD Title 6 construction standards (commonly known as ‘the HUD-code’) and built on a permanent chassis to ensure transportability.

U. “Mechanical support”: means any article, device, or garment which is used only to achieve the proper position or balance of the resident, which may include but is not limited to a geriatric chair, posey belt, or jacket, waist belt, pillows, or wedges. Necessity for mechanical support use must be documented in the resident’s record and such use must be outlined in the resident’s needs and supports care plan. Mechanical supports shall not be considered physical restraints when used pursuant to the residents needs and supports care plan.

V. “Medication administration” also known as: **“administration of medications”**, means, a process whereby a prescribed drug or biological agent is given to a patient/client by a person licensed or certified by the board (board of nursing) to administer medications; as set forth in Paragraph (2) of Subsection A of 16.12.2.7 NMAC.

W. “Misappropriation of property” means the deliberate misplacement, misappropriation of residents’ property, or wrongful, temporary or permanent use of a resident’s belongings or money without the resident’s consent.

X. “Modular home”
A modular home is any home factory-built pursuant to the New Mexico regulation and licensing department construction industries & manufactured house regulations, Section 14.12.1 through 11 NMAC, may be built as an “on-frame” or “off-frame” modular. On-frame will be built on a permanent chassis, whereas, the off-frame modular will be built with removal of the chassis frame in mind. An off-frame modular will usually require additional cranes to assist with home placement.

Y. “Mobile home”
means (also known as: trailer home, or house trailer) is a prefabricated structure, built in a factory on a permanently attached chassis before being transported to site (either by being towed or on a trailer), and used permanently or semi-permanently in one place.

Z. “Needs and services plan” means a written comprehensive plan, that identifies all needs and services for a resident.

AA. “Neglect” means the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness. means, subject to a person’s right to refuse treatment and subject to a provider’s right to exercise sound medical discretion, the failure of an employee to provide basic needs such as clothing, food, shelter, supervision, protection and care for the physical and mental health of a person or failure by a person that may cause physical or psychological harm. Neglect includes the knowing and intentional failure of an employee to reasonably protect a recipient of care or services from nonconsensual, inappropriate or harmful sexual contact, including such contact with another recipient of care or services.

BB. “Nontransient”
means occupancy of a dwelling unit or sleeping unit for more than 30 days. See also; resident.

CC. “Owner” means the individual who, or organization which, applies for a license. If the owner is an organization, then the individual signing the application on behalf of the organization, must have authority to submit the application from the organization. The owner is also known as the applicant.

DD. “Personal care services” means instrumental activities of daily living.

EE. “Pharmacist”
means a person licensed in New Mexico under the Pharmacy Act, Sections 61-11-1 to 61-11-29, NMSA 1978.

FF. “Pharmacy” means a place where drugs are compounded or dispensed that is licensed by the New Mexico board of pharmacy.

GG. “Physical abuse”
means damaging or potentially damaging acts or incidents that result in bodily injury or death.

HH. “Registered nurse” means a person licensed as a professional registered nurse under the Nursing Practice Act, Sections 61-3-1 through 61-3-30, NMSA 1978.

II. “Resident” means an individual receiving services and residing in the licensed facility; including the relatives of a licensee.

JJ. “Resident safety plan” means the required plan of action to be taken by a boarding home to ensure resident health and safety in case of accidents or emergencies involving environmental hazards, behavioral incidents involving residents, and third-party acts of violence.

KK. “Residential services” means the provision of living accommodations, meals and certain levels of personal care services and supervision. Programmatic services beyond basic residential services are provided at some facilities.

LL. “Restraint” means anything which restricts freedom of movement or is used for discipline or for the convenience of the facility. This includes both chemical and physical restraints (such as; any article, device, or garment which is used primarily to modify resident behavior by interfering with the free movement of the resident, and which the resident is unable to remove easily, or confinement in a locked room or chemical restraint: which means a medication used primarily to modify behavior by interfering with the resident’s freedom of movement or mental alertness).

MM. “Transient”:
means occupancy of a dwelling unit or sleeping unit for not more than 30 days.

NN. “Variance”
means a decision that is made at the discretion of the licensing authority to allow a facility to deviate from a portion(s) or to modify a provision of this rule for an unspecified period of time, provided that the health, safety, or welfare of the residents and staff are not in danger.

OO. “Waive or waiver”
means a decision that is made at the discretion of the licensing authority to allow a facility to deviate from a portion(s) or to modify a provision of this rule for a limited and specified period of time, provided that the

health, safety, or welfare of the residents and staff are not in danger. [7.8.4.7 NMAC – N/E, 12/5/2019]

7.8.4.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory compliance. “May” means permissive compliance. The words “adequate”, “proper”, and other similar words mean the degree of compliance that is generally accepted throughout the professional field by those who provide services to the public in facilities. [7.8.4.8 NMAC – N/E, 12/5/2019]

7.8.4.9 SCOPE OF SERVICES:
A. General scope of services: These regulations apply to non-medical boarding homes that are required to be licensed under the public health act by the department of health to provide residential placement to individuals seeking assistance with instrumental activities of daily living or assistance with accessing or the coordination of community services who may have been discharged from any mental or behavioral health care institution. Individuals who need one or more activities of daily living or who need a higher level of services and supervision provided in a skilled nursing facility, intermediate care facility, assisted living facility, a general or special hospital or other institution, are not appropriate for placement in a boarding home.

B. Licensure is required.
(1) No boarding home facility as defined in Subsection I of 7.8.4.7 NMAC may operate in New Mexico unless it is licensed in accordance with the requirements of the New Mexico department of health.

(2) Any boarding home health facility providing services described in these regulations that is in operation on the effective date of these regulations

must apply for licensure within 30 days of the effective date. Such facilities will be permitted to operate during the licensure process and will have 180 days to obtain full licensure. During this licensure period however, immediate compliance with the following sections is required:

- (a)** Subsection D of 7.8.4.49 NMAC
- (b)** Subsections A and D of 7.8.4.50 NMAC
- (c)** Section 7.8.4.51 NMAC
- (d)** Subsections A and D of 7.8.4.52 NMAC
- (e)** Subsections E and F of 7.8.4.66 NMAC

(3) If an unlicensed boarding home is found to be providing services for which a license is required under these regulations or other health facility regulations, the secretary may issue a cease-and-desist order, to protect human health or safety or welfare.

C. Exemption from licensure:

- (1)** The boarding home facility regulations contained in this rule shall not apply to any of the following:
 - (a)** Any licensed health facility, as defined by the public health act Subsection F of Section 24-1-2, NMSA 1978 licensed by the department of health.
 - (b)** Any clinic, as defined by the public health act Subsection F of Section 24-1-2 NMSA 1978 licensed by the department of health.
 - (c)** Any home operated by a home and community-based medicaid waiver service provider, under contract with the department of health to provide waiver services.
 - (d)** Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, which provides no element of care and supervision

- (e)** Any school dormitory or similar facility where all of the following conditions exist:
 - (i)** The school is certificated/registered by the state department of education.
 - (ii)** The school and the school dormitory are on the same grounds.
 - (iii)** All children accepted by the school are six years of age or older.
 - (iv)** The program operates only during normal school terms unless the academic program runs year-around.
 - (v)** The school’s function is educational only.
 - (vi)** The school program is not designated as providing rehabilitative or treatment services.
- (f)** Any care and supervision of persons by a relative, guardian or conservator.
- (g)** Any care and supervision of persons from only one family by a close friend of the parent, guardian or conservator, provided that such arrangement is not for financial profit and does not exceed 10 hours per week. The provision of longer hours of care shall not be precluded when provided for a brief period of time for reasons, including but not limited to family emergencies, vacation, and military leave.
- (h)** Any arrangement for the care and supervision of an adult or adults from only one close friend, who is not a licensee or current employee of a residential care facility for the elderly or of an adult residential facility, and whose friendship pre-existed a provider/recipient relationship, and all of the following are met:
 - (i)** The care and supervision is provided in a home or residence chosen by the recipient, regardless of who owns the home or residence.
 - (ii)** The arrangement is not of a business nature, in that the provider does not

represent himself or herself as being in the business of provision of care, and any compensation that may be paid to the provider is only for the value of the services rendered.

(iii)

The arrangement occurs and continues only with the one resident.

(i)

Any housing project for elderly or disabled individuals that meets other federal requirements [7.8.4.9 NMAC – N/E, 12/5/2019]

7.8.4.10 GENERAL LICENSING REQUIREMENTS:

A. Application and requirements for licensure:

(1) All initial applications shall be made on forms provided by the licensing authority.

(a)

All information requested on the application must be provided.

(b)

The application must be dated and signed by the person who shall be the licensee.

(c)

The application must be notarized.

(2) In every

application, the applicant shall provide the following information:

(a)

The identities of all persons or business entities having the authority, directly or indirectly, to direct or cause the direction of the management or policies of the facility;

(b)

The identities of all persons or business entities having five percent ownership interest whatsoever in the facility, whether direct or indirect, and whether the interest is in the profits, land or building, including owners of any business entity which owns any part of the land or building, and

(c)

The identities of all creditors holding a security interest in the premises, whether land or building; and

(d) In

the case of a change of ownership, disclosure of any relationship or

connection between the old licensee and the new licensee, and between any owner or operator of the new licensee, whether direct or indirect.

(3) A

license shall not be granted to an owner/applicant who does not clear the caregiver criminal history screening process as set forth in 7.1.9.8 NMAC. The applicant shall also provide to the department information including, but not limited to, felony convictions, a civil judgement against you for fraud, embezzlement or misappropriation of property, and any state or federal adverse action resulting in suspension or revocation of license or permit. All criminal history records obtained pursuant to this section by the department of health are confidential pursuant to Section 29-17-5 NMSA 1978.

(4) The new

applicant shall submit evidence of sufficient resources to permit operation of the facility for a period of six months. The evidence shall include a credit report from one of the three recognized credit bureaus with a minimum credit score of 650 or above;

(5) No

license may be issued unless and until the applicant has supplied all information requested by the department.

(6) Fees:

All applications for initial licensure must be accompanied by the required fee.

(a)

Current fee schedules may be requested from the licensing authority.

(b)

Fees must be in the form of a certified check, money order, personal or business check made payable to the state of New Mexico.

(c)

Fees are non-refundable.

B. Notification and letter of intent: The license applicant shall advise the licensing authority of its intent to open a boarding home facility pursuant to these regulations by submitting a

letter of intent. The letter of intent must be on the applicant's letterhead and signed by a person with authority to make legal decisions for the license applicant and the facility and at a minimum, include the following:

(1) the name

of facility;

(2) the name

of the legal owner and licensee and the type of legal entity under which the facility shall be owned;

(3) the name

of the management company, if any;

(4) the type

of facility license requested;

(5) the name

and resume of the proposed manager;

(6) the

anticipated number of residents to be served;

(7) the number

of residential beds in the proposed facility;

(8) the

physical address of facility including building name or suite number;

(9) the mailing

address, if different from physical address;

(10) the

applicant's contact name(s), address, e-mail address, and telephone number(s);

(11) the

anticipated payers and sources of reimbursement; and

(12) a list of all

services to be provided at the facility location which is requesting the license.

C. License

application and fees: After review by the department of the letter of intent for general compliance with these regulations and verification that an application is appropriate under these regulations, the owner shall be required to complete a license application on a form provided by the department. Prior to any construction, renovation or addition to an existing building and after review and approval of the letter of intent by the department, the applicant must submit to the licensing authority an application

form provided by the department, fully completed, printed or typed, dated, signed, and notarized accompanied by the required fee. If electronic filing of license applications is available at the time of application, the applicant will be required to follow all electronic filing requirements, and may forgo any notary requirements, if specifically allowed under the applicable electronic filing statutes, regulations and requirements. The licensing authority will provide current fee schedules. The department reserves the right to require additional documentation to verify the identity of the applicant in order to verify whether any federal or state exclusions may apply to the applicant. Fees must be paid in the form of a certified check, money order, personal, or business check, or electronic transfer (if available), made payable to the state of New Mexico, and are non-refundable. The applicant must also attach to the application and submit to the department, a set of building plans which includes all of the information required by these rules, accompanied by proof of zoning approvals by the applicable building authority.

D. Program description: The applicant must submit with its license application a program outlines consistent with these regulations which includes at a minimum, the following information:

- (1) a list and description of all services and the scope of those services to be provided by the proposed facility;
- (2) projected number of residents to be served monthly;
- (3) a list of staffing and personnel requirements and duties to be performed;
- (4) proposed staffing plans;
- (5) admission and discharge criteria; and
- (6) an organizational structure diagram

or chart including the manager, governing body, direct care staff, and other staff.

E. Policies and procedures: The applicant must submit with its license application a copy of the facility’s policies and procedures with a crosswalk to these regulations to show compliance.

F. Building plans: the application for licensure must also include building plans as set in this rule. Boarding homes licensed for three or fewer residents are not required to submit building plans.

G. Additional documents required for license application: The following additional documents are required to be provided as part of the initial licensure process prior to the issuance of a temporary license, include, but are not limited to:

- (1) **Building approvals:** The applicant must submit all building approvals required for the facility to operate in the jurisdiction in which it is located, including but not limited to:
 - (a) written zoning approval,
 - (b) building permit final approval, and/or certificates of occupancy from the appropriate authority (state, city, county, or municipality) for business occupancy; and
 - (c) fire marshal approvals from the fire safety authority having jurisdiction

Environment department approvals: If applicable or required, the applicant must provide written approval from the New Mexico environment department for the following:

- (a) private water supply;
- (b) private waste or sewage disposal;
- (c) kitchen/food service;

Custodial pharmacy permit: Any facility licensed pursuant to these

regulations that supervises self-administration of medication for the residents or safeguards medication for residents must have an appropriate custodial drug permit from the state board of pharmacy. [7.8.4.10 NMAC – N/E, 12/5/2019]

7.8.4.11 ACTION BY THE DEPARTMENT:

A. After receiving complete application, the department shall investigate the applicant to determine the applicant’s ability to comply with these regulations.

B. Within 60 days after receiving a complete application for a license, the department shall either approve the application and issue a license or deny the application. If the application for a license is denied, the department shall give the applicant reasons, in writing, for the denial.

C. The licensing authority shall not issue a new license if the applicant has had a health facility license revoked or denied renewal or has surrendered a license under threat of revocation or denial of renewal, or has lost certification as a medicaid provider as a result of violations of applicable medicaid requirements. The licensing authority may refuse to issue a new license if the applicant has been cited repeatedly for violations of applicable regulations found to be class “A” or class “B” deficiencies as defined in health facility sanctions and civil monetary penalties, 7.1.8 NMAC, or has been noncompliant with plans of correction.

[7.8.4.11 NMAC – N/E, 12/5/2019]

7.8.4.12 TYPES OF LICENSE:

A. Annual license: An annual license is issued for a one year period to a boarding home facility which has met all requirements of these regulations. If a temporary license is issued, once the department has issued a written determination of full compliance

with these regulations, an annual license will be issued with the renewal date of the annual license based upon the initial date of the first temporary license.

B. Temporary

license: The Licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations.

(1) A

temporary license shall cover a period of time, not to exceed 120 days.

(2) In

accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.

(3)

a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations and the following:

(a)

submitted a license application, with required supporting documents;

(b)

has met all of the applicable life safety code requirements; and

(c)

its program description has been reviewed for compliance with these regulations;

(d)

a temporary license is not guaranteed under these regulations and shall be limited and restricted to:

(i)

a finding that the applicant is qualified and in full compliance with these requirements;

(ii)

the facility being allowed to accept residents and provide care services, subject to any requirements and restrictions attached to the temporary license;

(e)

a statement from the applicant that they are qualified, in full compliance with these regulations and has requested an initial health survey from the licensing authority.

C. Amended

license: A licensee must apply to the licensing authority for an amended license when there is a change of manager or when there is a change of name for the facility, but an amended license shall only be issued if the manager is not an owner. If the manager is also the owner, a new license application must be submitted as provided in this regulation. The amended license application must:

(1) be

on a form, or filed electronically if available, as required by the licensing authority;

(2) be

accompanied by the required fee for the amended license; and

(3) be

submitted within 10 working days of the change.

[7.8.4.12 NMAC – N/E, 12/5/2019]

7.8.4.13 SCOPE OF LICENSE:

A. The licensed

is issued only for the premises and the persons named in the license application and may not be transferred or assigned by the licensee.

B. The license shall

state any applicable restrictions, including maximum bed capacity and the level of care that may be provided, and any other limitations that the department considers appropriate and necessary taking all facts and circumstances into account.

C. A licensee shall

fully comply with all requirements and restrictions of the license.

[7.8.4.13 NMAC – N/E, 12/5/2019]

7.8.4.14 SEPARATE LICENSES:

Separate licenses shall be required for facilities which are maintained on separate premises even though they are under the same management. Separate licenses shall not be required for separate buildings on the same ground or adjacent ground.

[7.8.4.14 NMAC – N/E, 12/5/2019]

7.8.4.15 LICENSE

RENEWAL:

A. Licensee must

submit a renewal application, electronically, if available, or on forms authorized by the licensing authority, along with the required license fee at least 30 days prior to expiration of the current license. The applicant shall certify that the facility complies with all applicable state and federal regulations in force at the time of renewal. The department reserves the right to require that a renewal applicant provide all additional documents, including any necessary proof of current compliance, as part of its license renewal application for the department to determine whether the applicant and the facility are in full compliance with these regulations.

B. Upon receipt of

the renewal application and the required fee, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the facility is in substantial compliance with these regulations and all other applicable state and federal regulations.

C. If the existing

license expires and the licensee has failed to submit a renewal application, the department may charge the applicant a civil monetary penalty of \$200, in accordance with Section 24-1-5.2 NMSA 1978, as amended, providing that during such time the facility remains in full compliance with these regulations. If the facility does not renew its license and continues to operate without paying civil monetary penalties and without being in full compliance with these regulations, the facility shall cease operations until it obtains a new license through the initial licensure procedures and shall still be required to pay civil monetary penalties. Under Section 24-1-5 NMSA 1978, as amended, no boarding home shall be operated without a license and any such failure may subject the operators

to various sanctions and legal remedies, including at a minimum the imposition of civil monetary penalties.

D. It shall be the sole responsibility and liability of the licensee to be aware of the status, term and renewal date of its license. The licensing authority shall not be responsible to notify the facility of the renewal date or the expiration date of the facility's license.

E. After issuance of the initial license, if the facility is in substantial compliance with these regulations and provides an application and fee the facility may be issued a license renewal. The department, at its sole discretion, reserves the right to require additional documentation of compliance with these regulations and all applicable state and federal statutes and regulations by the licensee at the time of license renewal.

[7.8.4.15 NMAC – N/E, 12/5/2019]

7.8.4.16 POSTING: The license or a certified copy thereof shall be conspicuously posted in a location or accessible to public view within the facility.

[7.8.4.16 NMAC – N/E, 12/5/2019]

7.8.4.17 REPORT OF CHANGES:

A. The licensee shall notify the department in writing of any changes in the information provided, within 10 days of such changes. This notification shall include information and documentation regarding such changes.

B. When a change of manager occurs, the department shall be notified within 10 days in writing by the licensee. Such writing shall include the name and license number of the new manager.

C. Each licensee shall notify the department within 10 days in writing of any change of the mailing address of the licensee. Such writing shall include the new mailing address of the licensee.

D. When a change in the principal officer of a corporate license (chairman, president, general manager) occurs the department shall be notified within 30 days in writing by the licensee. Such writing shall include the name and business address of such officer.

E. Any decrease or increase in licensed bed capacity of the facility shall require notification by letter to the department and shall result in the issuance of a corrected license.

[7.8.4.17 NMAC – N/E, 12/5/2019]

7.8.4.18 NON-TRANSFERABLE RESTRICTION ON LICENSE:

A license granted under these regulations is not transferable to any other owner, whether an individual or legal entity, or to another location. The department shall not guarantee or be liable for or responsible for guaranteeing the transfer of the license to any other owner or other location. The existing license shall be void and must be returned to the licensing authority when any one of the following situations occurs:

- A.** Any ownership interest of the facility changes;
- B.** The facility changes location;
- C.** The licensee of the facility changes; or
- D.** The facility discontinues operation.

E. A facility wishing to continue operation as a boarding home facility under Subsections A through D above must submit an application for initial licensure in accordance with Paragraph (2) of Subsection B of 7.8.4.9 NMAC of these regulations, at least 30 days prior to the anticipated change.

[7.8.4.18 NMAC – N/E, 12/5/2019]

7.8.4.19 CHANGE OF OWNERSHIP: An individual or entity wishing to purchase and continue operation of an already licensed facility shall:

A. Submit a new application for an initial license in accordance with these regulations at least 60 days prior to the anticipated change. The department has the sole discretion to determine if it will issue a license under the same terms and conditions of the existing license.

B. The current owners will submit a letter citing the termination of current ownership, a closure plan and a request for a change of ownership to the licensing authority no later than 60 days prior to the date of sale.

C. The new owners will complete and submit a new license application and transition plan. The license application and transition plan must be submitted to the licensing authority no later than 60 days prior to the date of sale. The new owners must provide a letter agreeing to assume all liabilities to the state and provide the following as described in the initial licensure procedures section of these regulations:

- (1) letter of intent;
- (2) license application and fee;
- (3) program description;
- (4) transition plan; and
- (5) policies and procedures or a statement that the new owners are utilizing previously approved policies and procedures.
- (6) Transition plan with timelines must include the following:
 - (a) process for the reassessment of residents;
 - (b) process for hiring facility staff and staffing plan identifying staff that will cover all duties upon transition; and
 - (c) transfer agreements.
- (7) Failure by any individual or entity to apply for and obtain a new license while continuing to operate under these regulations, shall be considered in violation of these regulations and

the secretary may issue a cease-and-desist order, to protect human health or safety or welfare. The unlicensed facility may request a hearing that shall be held in the manner provided under these regulations and all other applicable regulations.
[7.8.4.19 NMAC – N/E, 12/5/2019]

7.8.4.20 AUTOMATIC EXPIRATION OF LICENSE: A existing license will automatically expire at midnight on the day indicated on the license as the expiration date, unless it is renewed sooner, or it has been suspended or revoked.

A. If a facility discontinues operation, is sold, leased or otherwise changes any ownership interest or changes location, the existing license shall automatically expire at midnight on the date of such action.

B. Failure by any owner or new owner to apply for a renewal or new license, while continuing to operate under these regulations, shall be considered a violation and subject to the imposition of civil monetary penalties, sanctions or other actions for operating without a license, allowed under these regulations and all other applicable statutes and regulations.
[7.8.4.20 NMAC – N/E, 12/5/2019]

7.8.4.21 PROGRAM FLEXIBILITY:

A. All facilities shall maintain compliance with the licensee requirements. If the use of alternate concepts, methods, procedures, techniques, equipment, personnel qualifications or the conducting of pilot projects conflicts with requirements, then prior written approval from the department shall be obtained in order to ensure provisions for safe and adequate care. Such approval shall provide for the terms and conditions under which the exception is granted. A written request and substantiating evidence supporting the request shall be submitted by the applicant or

licensee to the department.
B. Any approval of the department granted under this section, or a certified copy thereof shall be posted immediately adjacent to the facility’s license.
[7.8.4.21 NMAC – N/E, 12/5/2019]

7.8.4.22 WAIVERS AND VARIANCES:

A. Variances and waivers: At the licensing authority’s sole discretion, an applicant or licensee may be granted variances and waivers of these regulations, provided the granting of such variance or waiver shall not jeopardize the health, safety or welfare of the facility’s residents and staff and is not in violation of other applicable state and federal statutes and regulations. Variances and waivers are non-transferrable. Waivers and variances may be revoked at the discretion of the licensing authority due to changes in state or federal regulations, or change of circumstances that may jeopardize the health, safety or welfare of residents.

(1) All variances shall be in writing, attached to the license. A variance is made at the discretion of the licensing authority to allow a facility to deviate from a portion(s) or to modify a provision of this rule for an unspecified period of time, provided that the health, safety, or welfare of the residents and staff are not in danger. All variances shall expire upon remodel of the facility or change of ownership.

(2) All waivers shall be in writing, attached to the license, is made at the discretion of the licensing authority to allow a facility to deviate from a portion(s) or to modify a provision of this rule for a limited and specified period of time, and shall be limited to the term of the license. Upon renewal of a license, waivers shall only be extended or continued at the sole discretion of the licensing authority.

B. Waiver/variance applications:

(1) All applications for waiver or variance from the requirements of these regulations shall be made in writing to the department, specifying the following:

(a) The rule from which the waiver or variance is requested;

(b) The time period for which the waiver or variance is requested;

(c) If the request is for a variance, the specific alternative action which the facility proposes;

(d) The reasons for the request; and

(e) Justification that the goal or purpose of the rule or regulations would be satisfied.

(2) Requests for a waiver or variance may be made at any time.

(3) The department may require additional information from the facility prior to acting on the request.

C. Grants and denials:

(1) The department at its discretion shall grant or deny each request for waiver or variance in writing. A notice of denials shall contain the reasons for denial.

(2) The terms of a requested variance may be modified upon agreement between the Department and a facility.

(3) The department may impose such conditions on the granting of a waiver or variance which it deems necessary.

(4) The department may limit the duration of any waiver or variance.

(5) The department’s action on a request for a waiver is not subject to administrative appeal.

D. Revocation: The department may revoke a waiver or variance if:

(1) It is determined that the waiver or variance is adversely affecting the health, safety or welfare of the resident's; or

(2) The facility has failed to comply with the variance as granted; or

(3) The licensee notifies the department in writing that it wishes to relinquish the waiver or variance and be subject to the rule previously waived or varied;

(4) Required by a change in law.
[7.8.4.22 NMAC – N/E, 12/5/2019]

7.8.4.23 UNLICENSED FACILITIES. Any person or entity that opens or maintains a non-medical boarding home or board and care facility without a license is subject to the imposition of civil monetary penalties by the licensing authority. Failure to comply with the licensure requirements of this rule within 10 days of notice by the licensing authority may result in the following penalties pursuant to health facility sanctions and civil monetary penalties, 7.1.8 NMAC.

A. A civil monetary penalty not to exceed five-thousand dollars (\$5,000) per day.

B. A base civil monetary penalty, plus a per-day civil monetary penalty, plus the doubling of penalties as applicable, that continues until the facility is in compliance with the licensing requirements in this rule.

C. A cease and desist order to discontinue operation of a facility that is operating without a license.

D. Additional criminal penalties may apply and shall be imposed as necessary.

E. If it is determined that the boarding home is operating outside the scope of this license it will be deemed operating as an unlicensed health facility and will be required to obtain the required applicable health facility licensure.
[7.8.4.23 NMAC – N/E, 12/5/2019]

7.8.4.24 SURVEY OR MONITORING VISITS:

A. Application for licensure, whether initial or renewal, shall constitute permission for unrestricted entry into and survey of a facility by authorized licensing authority representatives during the pendency of the license application, and if licensed, during the licensure period.

B. The licensing authority shall perform on-site survey or monitoring visits at all non-medical boarding homes facilities to determine compliance with this rule.

C. The facility shall provide the licensing authority full access to all facility operations, buildings and information related to the operation of the facility. Surveys may be announced or unannounced at the sole discretion of the licensing authority.

D. The most recent survey inspection reports and related correspondence shall be posted in a conspicuous public place in the facility.

E. Failure by the facility to provide the licensing authority access to the premises or information, including resident records, may result in the imposition of sanctions including but not limited to civil monetary penalties, license revocation or an order to cease and desist, as deemed appropriate by the licensing authority.
[7.8.4.24 NMAC – N/E, 12/5/2019]

7.8.4.25 CORRECTIVE ACTION: If violations of this rule are cited, the facility will be provided with an official statement of deficiencies within 10 business days following the survey.

A. Plan of correction (POC). Upon receipt of a report of deficiency from the licensing authority, and after receipt of a revised statement of deficiencies, when the findings are changed pursuant to an IDR, the licensee or his/her representative shall be required to submit a plan of

correction to the licensing authority within 10 working days stating how the facility intends to correct each violation noted and the expected date of completion. All plans of correction for deficiencies, if any, shall be disclosed in compliance with applicable statutes and regulations. A plan of correction is not confidential once it has been approved and is admissible for all purposes in any adjudicatory hearing and all subsequent appeals relating to a facility license, including to prove licensee compliance violations. The plan of correction must contain the following:

(1) what measures will be put into place or what systematic changes will be made to ensure the deficient practice does not recur;

(2) the anticipated implementation date (a reasonable time-frame is allowed);

(3) how the corrective action will be monitored to ensure compliance;

(4) what quality assurance indicators will be put into place;

(5) who will be responsible to oversee their monitoring; and

(6) Plan of correction shall be signed and dated by the manager or authorized representative.

B. The licensing authority may at its sole discretion accept the plan of correction as written or require modifications of the plan by the licensee.

(1) If the first plan of correction (POC) is rejected by the licensing authority, the facility will be sent a second copy of the statement of deficiencies. The facility shall complete and return the second copy of the statement of deficiencies with an acceptable plan of correction within three business days. The process will repeat until an acceptable plan of correction is received by the department.

(2) Failure to provide an acceptable plan of correction (POC) within a reasonable period of time, may lead to civil monetary penalties or other sanctions.

(3) All cited violations shall be corrected within 30 calendar days from the date of the survey; unless the licensing authority approves an extended date.

(4) Failure to submit an acceptable plan of correction may result in sanctions, including but not limited to civil monetary penalties, suspension or non-renewal of the facility license.

(5) The licensing authority may accept, reject, or direct the plan of correction.

C. Informal dispute review (IDR). The facility may request an informal review of survey deficiencies by providing a written request to the licensing authority within 10 calendar days of receipt of the written survey findings. With the request, the facility shall include information or evidence that justifies the disagreement with a cited deficiency.

(1) The licensing authority will review the submitted information and make a determination.

(2) If the deficiency is removed, a new statement of deficiencies will be issued to the facility.

(3) The facility shall provide a new plan of correction for all remaining deficiencies upon receipt of the new statement of deficiencies.

(4) A copy of the "IDR operating rules" is available upon request.
[7.8.4.25 NMAC – N/E, 12/5/2019]

7.8.4.26

ENFORCEMENT:

A. **Suspension of license without prior hearing:** In accordance with Subsection H of Section 24-1-5 NMSA 1978,

if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.

B. Grounds for revocation or suspension of license, denial of initial or renewal application for license, or imposition of intermediate sanctions or civil monetary penalties: A license may be

revoked or suspended, an initial or renewal application for license may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following reasons:

(1) Failure to comply with any provision of these regulations.

(2) Failure to allow access to the facility and survey by authorized representatives of the licensing authority.

(3) Any person working at the facility under the influence of alcohol or drugs in a manner which harms the health, safety or welfare of the residents, staff or visitors;

(4) Misrepresentation or falsification of any information or application forms or other documents provided to the licensing authority.

(5) Discovery of repeat violations of these regulations during surveys.

(6) Failure to provide the required care and services as outlined by these regulations for the residents receiving care at the boarding home facility.

(7) Abuse, neglect or exploitation of any resident by facility operator, staff, or relatives or operator/staff.

(8) Allowing any person, subject to all applicable statutes and regulations, to work at the facility if that person is listed on the employee abuse registry,

nurse aid registry, or considered an unemployable caregiver or has a disqualifying conviction under the caregiver’s criminal history screen act, as amended, and related regulations as amended.

(9) The list above shall not limit the department from imposing sanctions and civil monetary penalties under all applicable statutes, regulations and codes.

[7.8.4.26 NMAC – N/E, 12/5/2019]

7.8.4.27 HEARING

PROCEDURES: Hearing procedures for an administrative appeal of an adverse action taken by the department against a facility’s license will be held in accordance with applicable rules relating to adjudicatory hearings, including but not limited to, 7.1.2 NMAC, as amended. A copy of the above regulations will be furnished at the time an adverse action is taken against a facility’s license by the licensing authority, if the regulations cannot be obtained from a public website.

[7.8.4.27 NMAC – N/E, 12/5/2019]

7.8.4.28 APPEALS:

A. A licensee that is subject to an adverse action may request an administrative appeal. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against the facility is in accordance with adjudicatory hearings for licensed facilities, 7.1.2 NMAC.

B. A copy of the adjudicatory hearing procedures will be forwarded to the facility when an adverse action is taken against the licensee by the licensing authority.

C. All notices, orders or decisions which the licensing authority issues to a facility prior to a transfer of ownership shall be in effect against both the former owner and the new owner, unless the transfer of penalties to the new owner is rescinded in writing by the department.

[7.8.4.28 NMAC – N/E, 12/5/2019]

7.8.4.29 POLICIES AND PROCEDURES: The facility shall establish written policies and procedures that are reviewed annually and approved by the governing body, which govern the facility's operation. The manager shall ensure that these policies and procedures are adopted, administered and enforced to provide quality services in a safe environment. At a minimum, the facility's written policies and procedures shall include how the facility intends to comply with all requirements of these regulations and address:

- A.** incident management system;
- B.** the maintenance of the facility, equipment and supplies; inspection and maintenance of emergency equipment; maintenance of emergency supplies; maintenance, upkeep and cleaning of the building(s) and equipment; fire and emergency evacuation procedures;
- C.** quality of care and services including appropriate and inappropriate admission and discharge criteria; and resident risk assessment;
- D.** referral of residents for services; transfer of residents to a hospital or other facility or program; ambulance transfer services; and emergency procedures and resuscitative techniques;
- E.** infectious waste and biohazard disposal in accordance with all applicable statutes and regulations;
- F.** infection control and prevention;
- G.** staffing plan, personnel records, and minimum staffing;
- H.** maintenance of the resident's confidential records including protection of resident confidentiality and privacy as required by law; secure release of medical information and records; and safe handling and storage of resident records including appropriate document destruction procedures;

- I.** the retention, maintenance, security and destruction of resident, personnel and facility records;
 - J.** dietary services including: meal service; staff in-service training; dietary records; clean and sanitary conditions; and food management;
 - K.** housekeeping services to keep the facility safe, clean, and free of hazards and clutter;
 - L.** If applicable, laundry services for the facility's laundry and resident's laundry including handling, process and storage of clean and dirty laundry;
 - M.** pharmacy practices including the storage, administration, and disposal of medications; medication management; and documentation;
 - N.** resident's personal belongings including locked storage and contraband;
 - O.** resident rights;
 - P.** smoking policy;
 - Q.** grievance policy;
 - R.** house rules, to include freedom permitted and limitations necessary to protect the rights of others;
 - S.** Visiting hours.
- [7.8.4.29 NMAC – N/E, 12/5/2019]

7.8.4.30 STAFFING REQUIREMENTS:

- A. Operator or manager:** A boarding home facility shall be supervised by a full-time manager. Multiple facilities that are located within a 40 mile radius may have one full-time manager. The manager shall:
 - (1)** be at least 21 years of age;
 - (2)** have a high school diploma or its equivalent;
 - (3)** pass the background check and screening process pursuant to 7.1.9 NMAC;
 - (4)** be able to communicate with the residents in the language understood by the residents;

- (5)** not work while under the influence of alcohol or illegal drugs;
 - (6)** have evidence of education and experience directly related to the services that are provided at the facility;
 - (7)** provide three notarized letters of reference from persons unrelated to the applicant; and
 - (8)** comply with the pre-employment requirements pursuant to the employee abuse registry, 7.1.12 NMAC;
 - (9)** be responsible for the daily operation of the boarding home and for the safety and well-being of the residents. In the manager's absence, there shall be a responsible designee at least 21 years of age (who is not a resident of the facility) to assume the responsibility of the boarding home;
 - (10)** provide orientation to all new employees which shall include resident rights, evacuation and emergency procedures, training in policies and procedures, and competent supervision designed to improve resident care;
 - (11)** not act as, or become, the legal guardian of or have power of attorney for any resident.
- B. Direct care staff:**
- (1)** shall be at least 18 years of age;
 - (2)** shall have adequate education, relevant training, or experience to provide for the needs of the residents;
 - (3)** shall comply with the pre-employment requirements pursuant to the employee abuse registry, 7.1.12 NMAC; and
 - (4)** shall comply with the current requirements of reporting and investigating incidents pursuant to incident reporting, intake processing and training requirements, 7.1.13 NMAC;

(5) if a facility provides transportation for residents, the employees of the facility who drive vehicles and transport residents shall have copies of the following documents on file at the facility:

(a) a valid New Mexico driver's license with the appropriate classification for the vehicle that is used to transport residents;

(b) proof of insurance; and

(c) documentation of a clean driving record;

(6) comply with the requirements of the caregivers criminal history screening requirements, 7.1.9 NMAC. [7.8.4.30 NMAC – N/E, 12/5/2019]

7.8.4.31 STAFF TRAINING:

A. Training and orientation for each new employee and volunteer that provides direct care shall include a minimum of the following training prior to providing unsupervised care for residents.

B. on-going training shall be provided to staff that provides direct care as needed; the training and proof of competency shall include at a minimum:

(1) fire safety and evacuation training;

(2) first aid and CPR;

(3) safe food handling practices (for persons involved in food preparation and service), to include:

(a) instructions in proper storage;

(b) preparation and serving of food;

(c) safety in food handling;

(d) appropriate personal hygiene; and

(e) infectious and communicable disease control.

(4) confidentiality of records and residents information;

(5) residents rights;

(6) reporting requirements for abuse, neglect or exploitation in accordance with 7.1.13 NMAC;

(7) smoking policy for staff, residents and visitors;

(8) emergency procedures;

(9) staff are familiar with each resident's needs and services plan;

C. Documentation of orientation and subsequent trainings shall be kept in the personnel records at the facility. [7.8.4.31 NMAC - N/E, 12/5/2019]

7.8.4.32 PERSONNEL POLICIES: The facility shall have and implement written personnel policies for the following:

A. staff, private duty attendant and volunteer qualifications;

B. staff, private duty attendant and volunteer conduct;

C. staff, private duty attendant and volunteer training policies;

D. staff and private duty attendant and volunteer criminal history screening;

E. emergency procedures;

F. medication administration restrictions

G. the retention and maintenance of current and past personnel records; and

H. facilities shall maintain records and files that reflect compliance with state and federal employment rules. [7.8.4.32 NMAC - N/E, 12/5/2019]

7.8.4.33 PERSONNEL RECORDS:

A. The facility shall have policies and procedures for managing personnel information and records.

B. Staff scheduling

records shall be maintained for at least three years.

C. Employee records shall be kept at the facility and include:

(1) Employment application;

(2) Training records;

(3) Licenses and certifications; if applicable; and

(4) caregiver criminal history screening documentation pursuant to 7.1.9 NMAC.

[7.8.4.33 NMAC - N/E, 12/5/2019]

7.8.4.34 STAFFING REQUIREMENTS AND RATIOS:

A. Minimum staffing requirements.

(1) There shall be an adequate number of personnel on duty to provide the basic care, resident assistance and the required supervision based on the assessment of the residents' needs. There shall be at least one staff member must be on duty or available to be on the premises within 30 minutes and responsible for care and supervision of residents in case of accidents or emergencies when residents are present in the facility.

(2) During resident sleeping hours, boarding home facilities shall have at least one direct care staff person available on the premises in case of emergency.

(3) Facilities that care for more than 15 residents must have an adequate number of personnel on duty to meet the needs of the residents with a minimum of at least one staff available at all times and a second staff member on call and capable of being on the premises of the boarding home within 30 minutes.

[7.8.4.34 NMAC - N/E, 12/5/2019]

7.8.4.35 RESIDENT ACCEPTANCE, ADMISSIONS AND DISCHARGE: The facility shall complete an admission

agreement for each resident. The manager of the facility or a designee responsible for admission decisions shall meet with the resident or the resident's surrogate decision maker prior to admission. No resident shall be admitted who is below the age of 18 or for whom the facility is unable to provide appropriate care as set forth in this regulation.

A. The facility shall develop admission and discharge criteria and agreements.

B. Admission criteria must be available in writing to all residents and visitors to the facility.

C. Materials describing services offered, eligibility requirements and resident rights and responsibilities must be provided in a form understandable to the resident and legal guardian(s) with consideration of the resident's and guardian's primary language, and the mode of communication best understood by persons with visual or hearing impairments, as applicable.

D. The admission agreement shall meet these criteria:

(1) The services that are provided by the facility and the charges for such services must be explained in full.

(2) The method of payment by the resident must be clearly stated.

(3) The terms and notification process for termination of the admission agreement must be explained and included in the admission agreement.

(4) A new admission agreement must be made whenever service to be provided or other terms are changed.

(5) The admission agreement shall also contain the responsibilities of the representative payee or other individuals who are assisting the resident, if any.

[7.8.4.35 NMAC - N/E, 12/5/2019]

7.8.4.36 RESIDENT ACCEPTANCE AND RETENTION LIMITATIONS:

A. Acceptable criteria for admission:

(1)

Residents are accepted who because of diminished mental or physical capacity find it difficult to care for themselves in their own residence and choose to arrange for food, shelter, oversight and limited services such as laundry and transportation from a boarding home provider.

(2) Although

unable to live independently and in need of some protective living accommodations, residents of a boarding home must be able to perform activities of daily living without assistance.

B. Individuals with the following criteria would be unacceptable for boarding home admission:

(1)

Persons who require more care and supervision than is provided by the facility.

(2) Persons

who require nursing care, or who are not ambulatory shall not be accepted into this type of facility.

(3) A

boarding home may not accept a resident with dementia or related disorders causing memory impairment.

(4) No

person may be admitted to a boarding home who has a primary diagnosis of developmental disability.

(5) A

boarding home may not accept a resident whose physician has prescribed a therapeutic diet if those dietary requirements cannot be met.

(6) Persons

who have needs that are in conflict with the needs of other residents or the program of services offered.

(7) Any

person who currently requires acute inpatient psychiatric care due to a mental disorder

(8) Persons

who require inpatient care in a health facility.

(9) Any

person who is unable to care for themselves and would be at risk if left alone.

(10) Any

person who requires services which the boarding home does not provide or make available shall not be admitted or retained.

(11) Any

person who is actively being destructive of property, self-destructive, disturbing or abusive to others, or suicidal or in need of acute inpatient psychiatric services, shall not be admitted.

C. Resident

retention limitations: Residents whose behavior exceed their safety plan and are referred to a higher level of care may be retained and return to their residency at the boarding home upon medical or behavioral stabilization according to their discharge plan and in accordance with their admission agreement.

[7.8.4.36 NMAC - N/E, 12/5/2019]

7.8.4.37 PROGRAM SERVICES:

A. The facility must

be able to provide oversight to the residents, such as reminding them of meals, medications and appointments, to monitor activities while on the premises of the facility,

B. Each resident

shall designate a personal physician and dentist to be called in case of emergency. In the event that the resident does not have a personal physician or dentist, the boarding home may assist the resident to make necessary arrangements to secure the services of a licensed physician and/or dentist as needed.

C. Boarding homes

shall provide assistance with instrumental activities of daily living and assistance with accessing or the coordination of community services, including but not limited to:

(1) coordinating travel to and from appointments

(2) assistance with communication or technology devices

(3) assistance with applying for services or employment

(4) “Limited assistance with self-administered medication” for the individual who is capable to self-administer their medication or treatment, but may need cues, reminders or prompts or assistive technology to self-administer their medications. It may include assisting (if needed) with opening of a medication container for the resident and other assistance not involving medication administration. If limited assistance with self-administered medication is being provided, the resident retains all responsibility for taking their medications. Limited assistance with self-administered medication is not the same as “assistance with taking medication” or “medication administration” which requires a registered nurse to perform or a certified medication assistant (CMA) under RN supervision who follows board of nursing regulations. 16.12.5.10 NMAC. [7.8.4.37 NMAC - N/E, 12/5/2019]

7.8.4.38 “NEEDS AND SERVICES PLAN”: Prior to admission, the licensee shall determine whether the facility’s program can meet the prospective resident’s service needs.

A. If the resident is to be admitted, then prior to admission, the licensee shall complete a written needs and services plan. The following individuals shall be included in developing the plan:

(1) the resident or resident’s surrogate decision maker, or his/her authorized representative, if any;

(2) any relative participating in the placement;

(3) the facility manager or designee responsible for facility admissions;

(4) the placement or referral entity, if any;

(5) optional: a health care professional who knows the resident, such as a community support worker, social worker, or therapist;

(6) optional: the hospice or home health clinician, if resident is receiving services from a hospice or home health provider respectively;

B. If the resident is to be admitted, then prior to admission, the licensee shall complete a written needs and services plan, which shall include:

(1) The resident’s desires and background, obtained from the resident’s family or his/her authorized representative, if any, and licensed professional, where appropriate, regarding the following:

(a) Medical conditions

(b) Dietary restrictions

(c) Prescribed medications

(d) Physical/mental and social function

(2) Specific service needs, if any.

(3) Facility plans for providing services to meet the individual needs identified above.

(a) Objectives, within a time frame, that relate to the resident’s problems and/or needs.

(b) Plans for meeting the objectives.

(c) Identification of any individuals or agencies responsible for implementing each part of the plan.

(d) Method of evaluating progress.

C. The written needs and services plan shall be updated as frequently as necessary to ensure its accuracy, and to document significant occurrences that result in changes in the resident’s physical, mental and/or social functioning.

(1) If modifications to the plan identify an individual resident service need

which is not being met by the general program of facility services, the following requirements shall be met:

(a) Consultation shall be secured from a dietitian, physician, social worker, psychologist, or other consultant as necessary to assist in determining if such needs can be met by the facility within the facility’s program of services.

(b) If it is determined that the resident’s needs cannot be met, the licensee shall inform the resident and/or his/her authorized representative, if any, or responsible person, if there is no authorized representative, of this fact and shall request that the resident relocate.

(c) If the resident refuses to relocate, the licensee may evict the resident in accordance with admission and discharge agreement [7.8.4.38 NMAC – N/E, 12/5/2019]

7.8.4.39 “RESIDENT RECORDS”: The licensee shall ensure that a separate, complete, and current record is maintained in the facility for each resident.

A. Each record must contain information including but not limited to the following:

(1) Name of resident, social security number, phone number;

(2) Birthdate;

(3) Gender;

(4) Date of admission;

(5) The source of referral and relevant referral information;

(6) Names, addresses, and telephone numbers of the authorized representative and emergency contact.

(7) A signed and dated copy of the admission agreement and resident’s rights document;

(8) Name, address, and telephone number of the resident’s physician and dentist, and any other medical and mental health providers

(9) Medical assessments and diagnosis, if applicable

(10) Record of any illness or injury requiring treatment by a physician or dentist and for which the facility will provide assistance to the resident in meeting his/her necessary medical and dental needs.

(11) An original or original copy of all physician medication and treatment orders signed by the physician;

(12) Record of current medications, including frequency and dosage; the name of the prescribing physician, and instructions, if any, regarding control and custody of medications.

(13) A record of all contacts with medical and other services;

(14) Needs and services plan

(15) Modified diet requirements;

(16) Advanced directives, or any preference for life saving measures if appropriate

(17) Resident records should also include but are not limited to the following:

(a) Medical and dental appointments;

(b) Accidents or injuries;

(c) Any problems or improvements observed in the resident;

(d) Any change in the resident's condition which would indicate a need for higher level of care;

(e) Date, time, and services provided by a visiting nurse service.

(18) Signed consent for the release of information, if information is released;

(19) Documentation of guardianship, agent or other legal decision maker other than resident;

(20) A written account of all personal possessions and funds deposited with the boarding home and accounting for all funds

spent and deposited subsequently by the resident.

B. All information and records obtained from or regarding residents shall be confidential.

(1) The licensee shall be responsible for safeguarding the confidentiality of record contents.

(2) Except as specified in (a) below, or as otherwise authorized by law, the licensee and all employees shall not reveal or make available confidential information.

(a) All resident records shall be available to the licensing agency to inspect, audit, and copy upon demand during normal business hours. Records may be removed if necessary for copying.

(b) Removal of records shall be subject to the following requirements:

(i) Licensing representatives shall not remove the following current records for current residents unless the same information is otherwise readily available in another document or format.

(ii) Original resident records or photographic reproductions shall be retained for at least three years following termination of service to the resident.

[7.8.4.39 NMAC – N/E , 12/5/2019]

7.8.4.40 RESIDENT RIGHTS:

A. All licensed facilities shall understand, protect and respect the rights of all residents. Prior to admission to a facility, a resident, parent, legal guardian and legal representative shall be given the applicable written description of the resident's legal rights, translated into resident's preferred language, if necessary, to meet the resident's understanding.

B. A written copy of the resident's legal rights shall be provided to the resident, the resident's legal guardian or agent, if applicable, or to the most significant responsible party in the following order:

(1) the resident's spouse;

(2) significant other;

(3) any of the resident's adult children;

(4) the resident's parents;

(5) the resident's advocate.

C. The resident rights shall be posted in a conspicuous public place in the facility and shall include the telephone numbers to contact the department to file a complaint which shall include the licensing authority and the state ombudsman's office.

D. To protect resident rights, the facility shall:

(1) treat all residents with courtesy, respect, dignity and compassion;

(2) not discriminate in admission or services based on gender, gender identity, sex, sexual orientation, resident's age, race, color, religion, physical or mental disability, or national origin;

(3) provide residents written information about all services provided by the facility and their costs and give advance written notice of any changes;

(4) provide residents with a clean, safe and sanitary living environment;

(5) provide a humane psychological and physical environment of care for all residents;

(6) protect the confidentiality of the resident's records;

(7) protect the right to personal privacy, including privacy in personal hygiene; privacy during visits with a spouse, family member or other visitor; privacy during medical examinations, consultations and treatment; and reasonable privacy in the residents' own rooms;

(8) protect the resident's right to receive visitors during designated visiting hours except when restricted for good cause.

(9) protect the resident's right to receive visits from

his attorney, physician, psychologist, clergyman, or social worker in private irrespective of visiting hours;

(10) provide residents the ability to send and receive unopened mail.

(11) To have access to telephones in order to make and receive confidential calls, provided that such calls do not infringe upon the rights of other residents and do not restrict availability of the telephone during emergencies.

(a) The licensee shall be permitted to require reimbursement from the resident or his/her authorized representative for long distance calls.

(b) The licensee shall be permitted to prohibit the making of long distance calls upon documentation that requested reimbursement for previous calls has not been received.

(12) ensure that residents:

(a) are free from physical and emotional abuse, neglect, and exploitation and restraint;

(b) are free to participate or abstain from the practice of religion and shall be afforded reasonable accommodations to worship;

(c) have the right to reasonable daily opportunities for physical exercise and outdoor exercise and shall have reasonable access to recreational areas and equipment if available;

(d) wear his/her own clothes.

(e) possess and use his/her own personal items, including his/her own toilet articles.

(f) have access to individual storage space for his/her private use.

(g) have the right to voice grievances to the facility staff, public officials, any state agency, or any other person, without fear of reprisal or retaliation;

(h) have the right to have their grievance addressed within five days;

(i) have the right to prompt and adequate medical attention for physical ailments;

(j) have the right to social interaction, including the right to associate freely with persons in and out of the facility, to participate in community groups and organizations, and to leave the facility and return to it without restriction;

(k) have the right to participate in treatment decisions and formulate advance directives such as living wills and powers of attorney;

(l) have the right to manage and control their personal finances.

(m) receive assistance in exercising the right to vote.

(n) move from the facility in accordance with the terms of the admission agreement.

[7.8.4.40 NMAC - N/E, 12/5/2019]

7.8.4.41 NUTRITION: The facility shall provide planned and nutritionally balanced meals from the basic food groups in accordance with the “recommended daily dietary allowance” of the american dietetic association, the food and nutrition board of the national research council, or the national academy of sciences. Meals shall meet the nutritional needs of the residents in accordance with the current USDA dietary guidelines for Americans. Vending machines shall not be considered a source of snacks.

A. Dietary services. The facility will develop and implement written policies and procedures that are maintained on the premises.

B. All food service operations for residents shall comply with current federal and state laws and rules concerning food service and shall include:

(1) At least three nutritious meals per day shall be served;

(2) No more than 14 hours may elapse between

the end of an evening meal and the beginning of a morning meal;

(3) Therapeutic diets shall be provided when ordered by the physician. Where indicated, food shall be cut, chopped or ground to meet individual needs.

(4) Under no circumstances may food be withheld for disciplinary reasons;

(5) Between meals, nourishment or snacks shall be available for all residents unless limited by dietary restrictions prescribed by a physician.

(6) A weekly menu is posted conspicuously for the residents.

(7) Copies of the menus of meals as served shall be dated and kept on file for at least 30 days. Menus shall be made available for review by the residents or their authorized representatives and the licensing agency upon request. [7.8.4.41 NMAC - N/E, 12/5/2019]

7.8.4.42 FOOD SERVICE: Requirements for boarding home facilities.

A. The facility shall have either contracted food preparation or prepare food on site.

B. A facility that provides onsite food preparation shall comply with the New Mexico environment department (NM ED) food preparation regulations.

C. The facility shall have the equipment and staff necessary to receive and serve the food.

D. The facility shall maintain the equipment necessary for in-house preparation, or have an alternate source for food preparation, and service of food in emergencies. In case of emergency, (weather, power outage or other conditions) the facility shall maintain a minimum of three days’ supply of drinking water and nonperishable food.

E. Individuals with food preparation responsibilities shall practice safe food handling techniques in accordance with the current edition of food code published by the U.S.

public health service, food and drug administration.

(1) such food handling techniques include preparing, holding and storing food at safe temperatures.

(2) reheating potentially hazardous leftover foods shall meet hazard analysis critical control point (HACCP) temperature guidelines for safety.

F. If a resident requires a special diet, a copy of the diet shall be obtained from the resident's physician. A copy of the diet order shall be kept in the resident's file and a copy of the diet shall be kept in the kitchen.

G. Dining: Meals served on the premises shall be served in dining rooms or similar areas in which the furniture, fixtures and equipment necessary for meal service are provided.

(1) Such dining areas shall be located near the kitchen so that food may be served quickly and easily.

(2) Facilities shall have tables and chairs in the dining area to accommodate the total number of residents.

(3) Residents shall be encouraged to have meals with other residents.

(4) Tray service shall be provided in case of temporary need to allow resident to eat in their room.

H. The licensee shall meet the following food supply and storage requirements:

(1) There should be adequate amount of food available on the premises to prepare for the next scheduled meal and snack.

(2) Freezers shall be large enough to accommodate required perishables and shall be maintained at a temperature of zero degrees F (17.7 degrees C).

(3) Refrigerators shall be large enough to accommodate required perishables and shall maintain a maximum temperature of 45 degrees F (7.2 degrees C).

[7.8.4.42 NMAC - N/E NMAC, 12/5/2019]

7.8.4.43

PHARMACEUTICAL SERVICES:

A. Any facility licensed pursuant to these regulations that supervises self-administration of medication for the residents or safeguards medication for residents must have an appropriate custodial drug permit from the state board of pharmacy.

(1) Only medications which can be self-administered by the resident, unless they will be administered by a licensed physician, dentist or registered nurse, can be kept by a facility.

(2) Medications prescribed for one resident must not be given to any other resident.

(3) Drugs and medications shall neither be supplied nor given to residents unless ordered or prescribed by a licensed physician, dentist or advanced practice registered nurse.

(4) Over the counter medications may be given to a resident by the facility if the facility has a written procedure for giving such medications reviewed and approved by a licensed physician or advanced practice registered nurse.

(5) Medications must be kept in a locked cabinet or other suitable container approved by the state board of pharmacy. Medications must be separated by individual in the storage area.

(6) The key for the medication storage area must be made available only to personnel duly authorized by the manager of the facility.

(7) Medication which requires refrigeration must be kept in a separate locked box within a refrigerator, a locked refrigerator or a refrigerator in a locked room.

(8) All medications must be kept in their original labeled containers.

(9)

Medications labeled "for external use only" must not be accessible to residents and must be kept separate from other medications.

(10) All outdated medications shall be disposed of in a manner approved by the state board of pharmacy.

(11) No facility will prepare dosages of medications in advance to be given to residents for self-administration. The medications must be in their original container. The staff member assisting may hold the container and assist the resident in opening the container.

B. Board of pharmacy permits: A copy of the facility's custodial drug permit issued by the state board of pharmacy must be displayed, if any medications are kept by the facility on behalf of any residents.

[7.8.4.43 NMAC - N/E, 12/5/2019]

7.8.4.44 INFECTION CONTROL:

A. The facility shall develop and implement policies and procedures for infection control and prevention. Policies shall address the following:

(1) proper hand washing techniques;

(2) prevention and treatment of needle stick or sharp injuries;

(3) proper disposal of sharps, if applicable, in accordance with OSHA and the New Mexico environment department standards.

(4) universal precautions when handling blood, body substances, excretions, secretions shall be used.

(5) the management of common illness and specific procedures to manage infectious diseases.

(6) ensure garbage containers are in good and sanitary condition to prevent the harborage and feeding of pests.

B. Staff shall be trained in and shall adhere to infection control practices, the release of

confidential information and reporting requirements related to infectious diseases.

C. Each facility shall have policies and procedures for the handling, processing, storing and transporting of clean and dirty laundry.

[7.8.4.44. NMAC - N/E, 12/5/2019]

7.8.4.45 RESIDENT

SAFETY: The facility shall ensure the safety of residents within the home and that staff are trained and able to respond in emergencies.

A. Staff responsible for providing direct care and supervision shall receive training in first aid and cardiopulmonary resuscitation (CPR) from persons qualified by agencies including but not limited to the American Red Cross.

(1) If the facility has no medical unit on the grounds, first aid supplies shall be maintained and be readily available in a central location in the facility.

(2) The supplies shall include at least the following:

(a) A current edition of a first aid manual approved by the American Red Cross, the American Medical Association or a state or federal health agency.

(b) Sterile first aid dressings.

(c) Bandages or roller bandages.

(d) Adhesive tape.

(e) Scissors.

(f) Tweezers.

(g) Thermometers.

(h) Antiseptic solution.

B. If resident experiences a medical emergency, facility staff should immediately telephone 9-1-1. There shall be at least one person capable of and responsible for communicating with emergency personnel.

(1) The following information shall be readily available:

(a) The name, address and telephone number of each resident's physician and dentist, and other medical and mental health providers, if any.

(b) The name, address and telephone number of each emergency agency, including but not limited to the fire department, crisis center or paramedical unit. There shall be at least one medical resource available to be called at all times.

(c) The name and telephone number of an ambulance service.

(d) An advance directive and/or request regarding resuscitative measures.

(2) For residents with an advance directive and/or request regarding resuscitative measures, during a medical emergency, the facility staff shall present the advance directive and/or request regarding resuscitative measures to emergency personnel.

(3) When a resident requires prosthetic devices, or vision or hearing aids, the staff shall be familiar with the use of these devices and aids and shall assist the resident with their utilization as needed.

C. If a resident or visitor is engaging in behavior which is a threat to his/her mental and/or physical health or safety, or to the health and safety of others in the facility, the facility staff must immediately telephone 9-1-1.

D. The facility must ensure that the following conditions are met if oxygen equipment is in use:

(1) The licensee makes a written report to the local fire jurisdiction that oxygen is in use at the facility.

(2) "No Smoking - oxygen in use" signs shall be posted in appropriate areas.

(3) Smoking is prohibited where oxygen is in use.

(4) All electrical equipment is checked for defects that may cause sparks.

(5) Oxygen tanks that are not portable are secured either in a stand or to the wall.

(6) Plastic tubing from the nasal canula (mask) to the oxygen source is long enough to allow the resident movement within his/her room but does not constitute a hazard to the resident or others.

(7) Residents use oxygen from a portable source when they are outside of their rooms or when walking in a day care setting.

(8) Equipment is operable.

(9) Equipment is removed from the facility when no longer in use by the resident.

E. The boarding home must have a valid custodial drug permit issued by the state board of pharmacy, that supervise the self-administration of medications or safeguards with regard to medications for the residents. All medications, including non-prescription drugs, shall be stored in a locked compartment or in a locked room, as approved by the board of pharmacy and the key shall be in the care of the manager or designee.

(1) Internal medication shall be kept separate from external medications. Drugs to be taken by mouth shall be separated from all other delivery forms.

(2) A separate, locked refrigerator shall be provided by the facility for medications. The refrigerator temperature shall be kept in compliance with the state board of pharmacy requirements for medications.

(3) All medications, including non-prescription medications, shall be stored in separate compartments for each resident and all medications shall be labeled with the resident's name and in compliance with label instructions and state and federal laws.

(4) No person other than the dispensing pharmacist shall alter a prescription label.

(5) Each resident's medication shall be stored in its originally received container.

(6) No medications shall be transferred between containers.

(7) A resident may be permitted to keep his or her own medication in a locked compartment in his or her room for self-administration, if the physician's order deems it appropriate.

(8) The facility shall not require the residents to purchase medications from any particular pharmacy.
[7.8.4.45 NMAC - N/E, 12/5/2019]

7.8.4.46 COMPLAINTS:

The boarding home facility must investigate complaints made by a resident, caregiver or guardian regarding treatment or care, or regarding the lack of respect for the resident's property and must document both the existence of the complaint and the resolution of the complaint. The facility's investigation of a complaint(s) must be initiated within three working days of receipt of the complaint.
[7.8.4.46 NMAC - N/E, 12/5/2019]

7.8.4.47 REPORTING OF INCIDENTS: All facilities licensed under these regulations must comply with all incident intake, processing, training and reporting requirements under these regulations, as well as with all other applicable statutes and regulations.

A. All facilities shall report to the licensing authority any serious incidents or unusual occurrences which have threatened, or could have threatened the health, safety and welfare of the residents or staff, including but not limited to:

- (1) any serious incident or unusual occurrence;
- (2) injuries of unknown origin or known, suspected or alleged incidents of resident abuse, neglect, exploitation or mistreatment by staff or other person(s), or death.
- (3) fire, flood or other man-made or natural disasters including any damage to the facility caused by such disasters and any incident which poses or creates any life safety or health hazards;
- (4) any outbreak of contagious diseases and diseases dangerous to the

public health; Suspected diseases reportable by law shall be reported to the local public health agency and the department of health bureau of community health and prevention within time frames specified by these agencies.

(5) any human errors by staff and employees which may or has resulted in the death, serious illness, hospitalization, or physical impairment of a resident or staff; and

(6) abuse, neglect, exploitation, and injuries of unknown origin and other reportable incidents in accordance with 7.1.13 NMAC, as may be amended from time to time.

B. Documentation:

The facility is responsible for documenting all incidents, within five days of the incident, and having on file the following:

- (1) a narrative description of the incident;
- (2) evidence contact was made to the licensing authority;
- (3) results of the facility's investigation;
- (4) the facility action, if any.

[7.8.4.47 NMAC - N/E, 12/5/2019]

7.8.4.48 PHYSICAL ENVIRONMENT AND GENERAL BUILDING PLAN REQUIREMENTS:

A. Building plans:

Boarding homes licensed for four or more residents the facility must submit building plans. The facility building plans must be of professional quality, prepared and stamped by an architect licensed by the state of New Mexico pursuant to Section 61-15-9 NMSA 1978. One printed copy of the complete set of building plans must be submitted, drawn to an accurate scale of at least one-eighth inch to one foot, submitted in size format required by the licensing bureau. The building plans for renovations or building additions to an existing building must include sufficient information to clearly distinguish between new and existing construction, for the

department to make a compliance determination. The building plan(s), information required is noted below:

(1) Site plan:

showing the location of the building on a site/plot plan to determine surrounding conditions, driveways, all walks and steps, ramps, parking areas, handicapped and emergency vehicle spaces, accessible route to the main entrance, secure yard for residents, any permanent structures, including notes on construction materials used;

(2) Code

compliance plan and life safety plan: noting applicable code requirements and compliance data, locations of rated fire walls, smoke partitions (if any), exit paths & distances, fire extinguishers locations;

(3) Floor

plans: showing location use of each room, (e.g., waiting room, dining room, living/common rooms, office, resident rooms, kitchen, common elements, door locations (swings), window locations, restrooms, locations of all restrooms, plumbing fixtures (sinks, toilets, tubs-showers; location a of all level changes within and outside the building (e.g. steps or ramps, etc.); and all other pertinent explanatory information addressing the requirements in applicable regulations;

(4) Exterior

building elevations: noting all building heights, locations of exterior doors, and any operable and fixed windows (sill heights),

(5) Building

and wall sections: showing at least one building or wall section showing an exterior and interior wall construction section including the material composition of the floor, walls, and ceiling/roof construction.

(6) Schedule

sheets: Room Finish: noting all room finishes, (e.g., carpet, tile, gypsum board with paint, etc.); Door Schedule; noting door sizes/thickness, door types & ratings; window schedule, noting sizes, type and operation; skylight schedule, noting size, type;

(7) Special

systems plan: location of fire

extinguishers, heat and smoke detectors, nurse call systems, and operational elements of alarm system;

(8)

Mechanical plans: noting location of heating units, furnaces, hot water heaters, and fuel type and source; all heating, ventilating and air conditioning/cooling systems including locations of fire dampers;

(9) **Plumbing**

plan: noting all plumbing fixture locations, fixture types;

(10) **Electrical**

plan: noting power and lighting layouts, exit lighting, emergency lighting fixtures, emergency power systems (if any), electrical panel information;

(11) **Other**

plans: As necessary (i.e.; phasing plan) to describe compliance with the other requirements in applicable regulations.

B. Existing or

renovated construction: If the proposed facility includes any remodeling, renovations or additions or new construction of any type, the building plans and specifications covering all portions of the proposed work delineating all existing construction and all new or proposed construction shall be submitted to the department for review and approval. Submit phasing plan if project construction will be phased. New facilities proposed for licensure in existing buildings must comply with all requirements building requirements as if it were completely new construction.

C. New construction:

Building plans must be submitted and will be reviewed by the department for compliance with these licensing regulations, and applicable building and fire safety codes. If the department approves the facility's building plans and local building officials have issued a construction permit, construction may begin. This provision is an ongoing requirement and applies to, and includes all construction at the facility, which occurs before and after issuance of the initial license. This provision does not generally

apply to maintenance and repair.

However, if the maintenance or repair impacts or alters any of the facility requirements under these regulations, the applicant or licensee must notify the department and verify ongoing compliance with these regulations.

The department shall not be liable for any costs or damages incurred by the applicant relating to construction in the event the applicant incurs costs or damages in order to comply with these regulations or to obtain a license under these regulations. For all new and proposed construction, the applicant or licensee must submit for building plan approval by the department before construction begins.

D. Completed

construction: All new or renovated construction completed shall comply with the building plans approved by the department in the plan review process and prior to construction, these rules, and all other applicable rules and codes; and any of the department's approval(s) shall not waive any other rules or other applicable building and code requirements enforceable by other authorities having jurisdiction, in addition to New Mexico Administrative Code, Title 14 Housing and Construction, chapters 5 through 12. Applicant must receive initial life safety code approval and a temporary license from this department prior to accepting or admitting any residents into the facility.

[7.8.4.48 NMAC - N/E, 12/5/2019]

7.8.4.49 PHYSICAL ENVIRONMENT AND GENERAL BUILDING REQUIREMENTS:

A. Facilities licensed pursuant to these regulations must be accessible to and useable by disabled employees, staff, visitors, and residents shall comply with the americans with disabilities act (ADA), current edition.

B. All buildings of the premises providing resident use and services will be considered part of the facility and must meet all requirements of these regulations.

Where a part of the facility services is contained in another facility, separation and access shall be maintained as described in current building and fire codes.

C. A facility applying for licensure pursuant to these regulations may have additional requirements not contained herein. The complexity of building and fire codes and requirements of city, county, or municipal governments may stipulate these additional requirements. Any additional requirements will be outlined by the appropriate building and fire authorities, and in New Mexico Administrative Code, Title 14 Housing and Construction, chapters 5 through 12.

D. Use of manufactured homes, modular homes and mobile homes:

(1) Use of a manufactured home or modular home may be allowed if the structure meets all physical, environment and general building requirements in this rule and all other applicable state, county and municipal building codes.

(2) For facilities with four or more residents, trailers and mobile homes shall not be allowed.

(3) Prohibition on recreational vehicles, travel or camper trailers: The use of recreational vehicles, travel or camper trailers which are designed to be towed behind a road vehicle are prohibited.

E. Facilities with a licensed capacity of 16 or more residents shall also meet the following requirements:

(1) There shall be space available in the facility to serve as an office for business, administration and admission activities, and a private office to conduct private interviews.

(2) There shall be a reception area and a restroom facility designated for use by visitors.

[7.8.4.49 NMAC - N/E, 12/5/2019]

7.8.4.50 MAINTENANCE**OF BUILDING AND GROUNDS:**

The facilities buildings and systems shall be maintained in good repair at all times. Such maintenance shall include, but is not limited to, the following:

A. All electrical, mechanical, water supply, heating, fire protection, and sewage disposal systems must be maintained in a safe and functioning condition, including regular inspections of these systems;

B. All equipment and materials needed for resident use shall be maintained clean and in good repair;

C. All furniture and furnishings must be kept clean and in good repair; and

D. The grounds of the facility must be maintained in a safe and sanitary condition at all times. [7.8.4.50 NMAC - N/E, 12/5/2019]

7.8.4.51 HAZARDOUS AREAS:

A. Hazardous areas include the following:

(1) fuel fired equipment rooms;

(2) bulk laundries or laundry rooms with more than 100 square feet;

(3) storage rooms with more than 50 square feet but less than 100 square feet not storing combustibles;

(4) storage rooms with more than 100 square feet storing combustibles;

(5) chemical storage rooms with more than 50 square feet; and

(6) garages, maintenance shops, or maintenance rooms.

B. Hazardous areas on the same floor or abutting a primary means of escape or a sleeping room shall be protected as required by New Mexico building code, international building code (ICB), current edition as adopted by the New Mexico construction industries division.

C. All boiler, furnace or fuel fired water heater rooms shall be protected from other parts of the

building by construction having a fire resistance rating of not less than one hour. Doors to these rooms shall be one and three-quarter inch solid core. [7.8.4.51NMAC - N/E, 12/5/2019]

7.8.4.52 EXITS:

A. Each floor of a facility shall have exits as required by the latest adopted edition of the New Mexico commercial building code and local codes.

B. Each exit must be marked by illuminated exit signs having letters at least six inches high whose principle strokes are at least three-quarters inch wide.

C. Illuminated exit signs must be maintained in operable condition at all times.

D. Exit ways must be kept free from obstructions at all times. [7.8.4.52 NMAC - N/E, 12/5/2019]

7.8.4.53 HALLWAYS AND CORRIDORS:

For facilities contained within existing commercial or residential buildings, corridor widths must conform with latest adopted edition of the New Mexico commercial building and residential codes, and local building codes. [7.8.4.53 NMAC - N/E, 12/5/2019]

7.8.4.54 HOUSEKEEPING:

A. The facility must be kept free from accumulations of refuse, discarded equipment, furniture, paper, dirt, rubbish, dust, and safety hazards and offensive odors.

B. Common rooms, kitchen, waiting areas, restrooms and other areas of daily usage must be cleaned as needed to maintain a clean and safe environment for the residents.

C. Deodorizers must not be used to mask odors caused by unsanitary conditions or poor housekeeping practices.

D. Janitorial cleaning supplies must be kept in a secure closet or cabinet. [7.8.4.54 NMAC - N/E, 12/5/2019]

7.8.4.55 PROVISIONS FOR EMERGENCY CALLS:

A. An easily accessible hard-wired telephone for summoning help, in case of emergency, must be available in the facility.

B. A list of emergency numbers including, but not limited to, fire department, police department, ambulance services, local hospital, poison control center, and the department's division of health improvement's complaint hotline must be prominently posted by the telephone(s). [7.8.4.55 NMAC - N/E, 12/5/2019]

7.8.4.56 MEDICATIONS STORAGE:

All medications, including non-prescription drugs, shall be stored in a locked compartment or in a locked room, as required and approved by the New Mexico board of pharmacy, and the key shall be in the care of the manager or designee. [7.8.4.56 NMAC - N/E, 12/5/2019]

7.8.4.57 OUTDOOR ACTIVITY SPACE:

A. An easily accessible outdoor activity area shall be available for use by residents.

B. A smoking area, if provided must be located 25 feet away from any exit door. And provide noncombustible metal ash urns. [7.8.4.57 NMAC - N/E, 12/5/2019]

7.8.4.58 KITCHEN AND DINING:

A. The facility shall prepare food on site or have contracted food preparation. A facility that provides onsite food preparation shall comply with the current standards and regulations of the New Mexico environment department (NM ED), and other local government authorities.

B. A facility with a kitchen area, whether used for on-site food preparation or not, must adhere to the following requirements:

(1) toilet facilities may not open directly into the kitchen.

(2) filters, exhaust hoods, ranges, deep fat fryers, ovens and all other similar items shall be operable and clean.

(3) kitchen exhaust hood shall be vented to exterior and provided with a fire-suppression system if required by NM ED or local authority.

(4) the kitchen, prep areas, and dining area shall be kept clean, and sanitary.

(5) all dishes and utensils used for eating and drinking and in the preparation of food and drink, shall be cleaned and sanitized after each usage.

[7.8.4.58 NMAC - N/E, 12/5/2019]

7.8.4.59 DINING, RECREATION AND INDOOR ACTIVITY OR MULTIPURPOSE ROOMS:

A boarding home shall have common rooms, including a living room, dining room, den or other recreation/activity rooms for the resident's use. The furnishings shall be well constructed, comfortable and in good repair.

A. At least one such room shall be available to residents for relaxation and visitation with friends and/or relatives, and which can be closed for private visits.

B. A dining area shall be provided for meals and shall have tables and chairs to accommodate the residents.

C. Each activity area shall have a minimum net glazed area (window) not less than eight percent of the floor area of the room served.

D. Total Area: The combined floor space of dining, recreation, and activity areas shall not be less than 25 square feet per bed. Solaria and lobby sitting areas, exclusive of traffic areas, shall be categorized as living room space.
[7.8.4.59 NMAC - N/E, 12/5/2019]

7.8.4.60 RESIDENT ROOMS:

Resident bedrooms must meet, at a minimum, the following requirements:

A. A facility shall not exceed the resident (bed) capacity approved by the licensing authority.

Any beds or bedroom, provided for boarding home staff are not included in the approved bed capacity.

B. No resident bedroom shall be used as a public or general passageway to another room, bath or toilet. Resident rooms must connect directly to a hallway or other common areas of the facility.

C. No room commonly used for other purposes shall be used as a bedroom for any resident. Such rooms shall include but not be limited to halls, stairways, unfinished attics or basements, garages, storage areas, and sheds, or similar detached buildings.

D. Resident rooms may be private (single), semi-private or dormitory style sleeping room. Required square footage excludes any closets or fixed cabinetry.

(1) Private (single) rooms must be of a minimum room size of 100 square feet.

(2) Semi-private rooms may not house more than two residents and shall provide 80 square feet per resident.

(3) Dormitory rooms shall be of a minimum room size of 150 square feet and must provide 50 square feet per occupant with a maximum occupancy of eight.

E. Resident rooms shall not be less than nine feet in any horizontal direction.

F. Each resident room shall have operable window(s) with screens. The area of the outdoor window shall be at least one tenth of the floor area of the room. At least one window in each resident room must allow for emergency egress and comply with state commercial or residential building code requirements.

G. Each resident room shall be furnished with well-constructed, comfortable furniture in good repair:

(1) An individual bedframe with a clean, fire-retardant mattress & pillow, with firm support.

(2) Cots, daybeds, bunk beds or futons are not allowed.

(3) In addition to the bed, each resident shall be furnished with a chair, a night stand, and lights necessary for reading.

(4) Two residents sharing a semi-private bedroom shall be permitted to share one-night stand.

(5) Lockers, portable or permanent closets and drawer space in each bedroom to accommodate the resident's clothing and personal belongings. A minimum of two drawers, or eight cubic feet of drawer space, whichever is greater, shall be provided for each resident.

(6) Consenting couples may be allowed to share one double or larger sized bed in a semi-private room.

H. Each resident shall be provided with the following items:

(1) Clean linen in good repair, including lightweight, warm blankets and bedspreads; top and bottom bed sheets; pillow cases; mattress pads; rubber or plastic sheeting, when necessary; and bath towels, hand towels and wash cloths.

(2) The quantity of linen provided shall permit changing the linen at least once each week or more often when necessary to ensure that clean linen is in use by residents at all times.

(3) The use of common towels and washcloths shall be prohibited.

(4) The boarding home shall ensure provision to each resident, the necessary items for personal care and maintenance of personal hygiene, including but not limited to the following items: toilet paper, feminine napkins, nonmedicated soap, toothbrush, toothpaste, and comb.

[7.8.4.60 NMAC - N/E, 12/5/2019]

7.8.4.61 TOILETS, LAVATORIES AND BATHING FACILITIES:

A. General requirements: The number of and location of toilets, lavatories and bathing facilities shall be provided and installed in accordance with the latest adopted edition of the New

Mexico commercial building and local building codes.

(1) All toilet rooms must be provided with a lavatory for hand washing.

(2) All toilets must be kept supplied with toilet paper.

(3) All lavatories for hand washing must be kept supplied with disposable towels for hand drying or provided with mechanical blower.

(4) A minimum of one toilet, one lavatory and one bathing unit (tub, shower, or combo unit) shall be provided for every eight residents or fraction thereof.

(5) If a facility has live-in staff, a separate toilet, hand washing, and bathing facilities for staff must be provided.

(6) Facilities with four or more residents shall provide one handicap accessible bathroom or as required by the New Mexico residential building or commercial building code, or local building codes.

(7) Toilets and bathrooms shall be located near resident bedrooms.

(8) Individual privacy shall be provided in all toilet, bath and shower areas.

[7.8.4.61 NMAC - N/E, 12/5/2019]

7.8.4.62 LAUNDRY SERVICES:

A. General requirements: A boarding home facility shall provide laundry services, either on the premises or through a commercial laundry and linen service.

(1) On-site laundry facilities shall be located in areas separate from the resident units and shall be provided with necessary washing and drying equipment.

(2) Soiled laundry shall be kept separate from clean laundry, unless the laundry facility is provided for resident use only.

(3) Soiled laundry shall not be stored in the kitchen or dining areas. The building

design and layout shall ensure the separation of laundry room from kitchen and dining areas.

(4) Facility laundry supplies and cleaning supplies shall not be kept in the same storage areas used for the storage of foods and clean storage.

(5) All linens and bedding shall be changed as needed or when a new resident is to occupy the bed.

B. Personal laundry: Residents who are able, and who so desire, may be allowed to use at least one washing machine, dryer, iron and ironing board for their personal laundry, provided that the equipment is of a type and in a location, which can be safely used by the residents. If that washing machine is coin operated, residents on SSI/SSP shall be provided with coins or tokens and laundry supplies.

[7.8.4.62 NMAC - N/E, 12/5/2019]

7.8.4.63 PLUMBING SYSTEMS; WATER AND WASTE DISPOSAL:

All plumbing systems including water supply and sewer systems shall be in accordance with latest adopted editions of the New Mexico commercial building, New Mexico plumbing code, New Mexico mechanical code, and local building codes.

A. Water: A facility licensed pursuant to these regulations must be provided with an adequate supply of water that is of a safe and sanitary quality suitable for domestic use.

(1) If the water supply is not obtained from an approved public system, the private water system must be inspected, tested, and approved by the New Mexico environment department prior to licensure. It is the facility's responsibility to ensure that subsequent periodic testing or inspection of such private water systems be made at intervals prescribed by the New Mexico environment department or recognized authority.

(2) Hot and cold running water under pressure

must be distributed at sufficient pressure to operate all fixtures and equipment during maximum demand periods.

(3) Water distribution systems are arranged to provide hot water at each hot water outlet at all times.

(4) Hot water for hand washing and bathing facilities must not exceed 120 degrees F.

B. Water heaters: Must be able to supply hot water to all hot water taps within the facility at full pressure during peak demand periods and maintain a maximum temperature of 120 degrees F.

(1) Fuel fired hot water heaters must be enclosed and separated from other parts of the building by construction as required by current state and local building codes.

(2) All water heaters must be equipped with a pressure relief valve (pop-off valve).

C. Sewage and waste disposal: All sewage and liquid wastes must be disposed of into a municipal or public sewage system where such facilities are available.

(1) Where a municipal sewage system is not available, the system used must be inspected and approved by the New Mexico environment department or recognized local authority.

(2) Where municipal or community garbage collection and disposal service are not available, the method of collection and disposal of solid wastes generated by the facility must be inspected and approved by the New Mexico environment department or recognized local authority.

(3) All garbage and refuse receptacles must be durable, have tight fitting lids, must be insect and rodent proof, washable, leak proof and constructed of materials which will not absorb liquids. Receptacles must be kept closed and clean.

[7.8.4.63 NMAC - N/E, 12/5/2019]

7.8.4.64 ELECTRICAL POWER & LIGHTING STANDARDS:

A. All electrical equipment and installation shall comply with the latest adopted edition of the New Mexico electrical code, applicable national standards, and local codes.

B. Lighting shall be provided at all spaces occupied by people, machinery, or equipment within buildings, approaches to buildings, and parking lots.

C. Emergency lighting shall be provided which will activate automatically upon disruption of electrical services.

(1) Facilities with four or more residents shall have emergency lighting to light exit passageways and the exterior area near the exits that activates automatically upon disruption of electrical service.

(2) Facilities with three or fewer residents shall have a flashlight that is immediately available for use in lieu of electrically interconnected emergency lighting.

D. Electrical cords and extension cords shall:

- (1)** be U/L approved;
- (2)** be replaced as soon as they show wear;
- (3)** be plugged into an electrical receptacle within the room where used;
- (4)** not be used as a general wiring method; and
- (5)** not be used in series.

E. Electrical receptacles shall:

(1) Be duplex-grounded type electrical receptacles (convenience outlets) and installed in all areas in sufficient quantities for tasks to be performed as needed.

(2) Be a ground fault circuit interrupter if located within six feet of a water source; and

F. The use of multiple sockets (gang plugs) in electrical receptacles is strictly prohibited.

[7.8.4.64 NMAC - N/E, 12/5/2019]

7.8.4.65 HEATING, VENTILATION, AND AIR-CONDITIONING:

A. Heating, ventilation, air-conditioning, piping, boilers, and furnaces must be installed and maintained to meet all requirements. The latest adopted edition of the state plumbing, mechanical, and electrical codes, applicable national standards, and local codes.

(1)

The heating, ventilation and air-conditioning system must be able to maintain interior temperatures in all rooms used by residents, staff or visitors with interior temperatures between 65 degrees fahrenheit and 78 degrees fahrenheit year-round.

(2) The use of non-vented heaters, open flame heaters or portable heaters is prohibited.

(3) An ample supply of outside air must be provided in all spaces where fuel fired boilers, furnaces, or heaters are located to assure proper combustion.

(4) All fuel fired boilers, furnaces, or heaters must be connected to an approved venting system to take the products of combustion directly to the outside air.

(5) All gas-fired heating equipment must be provided with a 100 percent automatic cutoff control valve in event of pilot failure.

B. A facility must be adequately ventilated at all times to provide fresh air and the control of unpleasant odors.

(1) All restrooms, bathroom, and laundry rooms shall be provided with exhaust fans vented to the exterior.

(2) Kitchen hoods must be vented to the exterior.

C. The facility must be provided with an evaporative or refrigerated air conditioning system for maintaining residents and staff's comfort during periods of hot weather.

(1) All building code requirements must be met regarding emergency egress for an outside window or door.

(2) A window unit air conditioner or fan shall not be installed in the required emergency egress window.

D. Fireplace and/or wood burning stoves must be properly vented, have exterior combustion air, securely screened or have tempered glassed doors. Fireplaces or wood burning stoves are allowed in resident rooms.

[7.8.4.65 NMAC - N/E, 12/5/2019]

7.8.4.66 FIRE SAFETY SYSTEMS AND COMPLIANCE:

All Boarding homes shall comply with the current applicable requirements of the state fire marshal, or local fire authority having jurisdiction, for fire prevention, safety, and fire safety systems. All equipment shall be properly maintained and inspected as recommended by the manufacturer, state fire marshal, or the local fire authority.

A. Fire clearance and inspections: Each facility must request from the New Mexico state fire marshal, or local fire authority having jurisdiction, an annual fire inspection. Records of inspection shall be kept on file in the facility.

(1) Copies of the fire inspection records must be kept on file at the facility for the following:

- (a)** fire extinguishers,
- (b)** smoke and fire alarm systems,
- (c)** automatic detection equipment, including carbon monoxide detectors,
- (d)** kitchen hoods with fire suppression,
- (e)** automatic fire suppression systems, and
- (f)** other fire safety equipment.

(2) If the policy of the fire authority having jurisdiction does not provide for annual inspection of the facility, the facility must document the date the request was made and to whom. If the fire authorities conduct annual

inspections; a copy of the latest inspection must be kept on file in the facility.

B. Staff fire and safety training: All staff of the facility must know the location of, and instructed in proper use of fire extinguishers, fire safety systems, and other procedures to be observed in case of fire or other emergencies.

(1) Facility staff must be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, faulty equipment, blocked exits or exit ways, and any other condition which could cause burns, falls, or other personal injury to the residents or staff.

(2) The facility should request the fire authority having jurisdiction to give periodic instruction in fire prevention and techniques of evacuation.

C. Evacuation plan: Each facility must have a fire evacuation plan conspicuously posted in each separate area of the building for residents in case of fire or other emergencies, showing routes of evacuation and designated areas to meet. Staff shall be trained to direct and assist residents during an emergency evacuation.

D. Fire drills: All facilities shall conduct monthly fire drills which are to be documented. A record of the monthly fire drills shall be maintained on file in the facility and readily available.

(1) There shall be at least one documented fire drill per month. There shall be one documented fire drill for each daily work shift (i.e.: day, night or graveyard) per quarter, that employs the use of the fire alarm system or the detector system in the facility. Fire drill records shall show:

- (a) the date and time of the drill;
- (b) the number of staff participating in the drill;
- (c) any problem noted during the drill; and

(d) the evacuation time in total minutes.

(e) if applicable, the local fire department may be requested to supervise and participate in fire drills.

E. Fire alarms, smoke detectors and other equipment: The system shall comply with the current applicable requirements of the New Mexico State Fire Marshal, or local fire authority having jurisdiction.

(1) Facilities shall have an automatic fire alarm system, the fire alarm system(s) shall be inspected and approved in writing by the fire authority with jurisdiction.

(2) Approved smoke detectors shall be installed on each floor that when activated provides an alarm which is audible in all sleeping areas. Areas of assembly, such as the dining, living or activity room(s) must also be provided with smoke detectors.

(3) Approved carbon monoxide detectors shall be installed on each floor that when activated provides an alarm which is audible in all sleeping areas.

F. Fire extinguishers: Fire extinguisher(s) shall be installed in the facility, as approved by the state fire marshal or the local fire prevention authority with jurisdiction.

(1) Facilities must as a minimum have two 2A10BC fire extinguishers:

- (a) One extinguisher located in the kitchen or food preparation area;
- (b) One extinguisher centrally located in the facility;
- (c) The maximum distance between fire extinguishers shall be 50 feet.

(d) All fire extinguishers shall be inspected yearly, recharged as needed and tagged noting the date of the inspection;

(2) Fire extinguishers, alarm systems, automatic detection equipment and other firefighting equipment shall be properly maintained and inspected as recommended by the manufacturer,

state fire marshal, or the local fire authority.

G. Automatic fire protection (fire sprinkler) system: Facilities shall have an automatic fire protection (sprinkler) system. The system shall be in accordance with the latest adopted editions of the New Mexico commercial building & residential building codes, and New Mexico state fire marshal, or local fire authority having jurisdiction.

(1) Exception: Boarding homes designated as "R-3 in the NM commercial building & residential building codes," with 10 (transient) residents or less, are not required to have a fire sprinkler system, when they are housed in a one- or two-family dwellings units that are not more than three stories above grade plane in height and that have separate means of egress and their accessory structures. (as referenced in section 310.5 Residential Group R-3).

(2) Exception: Boarding homes designated as "R-3 in the NM commercial building & residential building codes," with 16 (nontransient) residents or less, are not required to have a fire sprinkler system, when they are housed in a one- or two-family dwellings units that are not more than three stories above grade plane in height and that have separate means of egress and their accessory structures. (as referenced in section 310.5 Residential Group R-3). [7.8.4.66 NMAC - N/E, 12/5/2019]

7.8.4.67 INCORPORATED AND RELATED CODES:

The facilities that are subject to this rule are also subject to other rules, codes and standards that may, from time to time, be amended. This includes but not limited to the following:

- A.** Health facility licensure fees and procedures, department of health, 7.1.7 NMAC.
- B.** Health facility sanctions and civil monetary penalties, department of health, 7.1.8 NMAC.
- C.** Adjudicatory hearings for licensed facilities, department of health, 7.1.2 NMAC.

D. Caregiver’s criminal history screening requirements, 7.1.9 NMAC.

E. Employee abuse registry, 7.1.12 NMAC.

F. Incident reporting, intake processing and training requirements, 7.1.13 NMAC.

G. New Mexico Administrative Code, Title 14 Housing and Construction, chapters 5 through 12. [7.8.4.67 NMAC – N/E, 12/5/2019]

History of 7.8.4 NMAC:

Pre-NMAC history:
 Material in this part was derived from that previously filed with the commission of public records state records center and archives:
 HSSD 72-1, New Mexico Licensing regulations and standards for boarding homes, filed 05-26-72.
 HSSD 76-6, Adult residential shelter care homes, regulations and standards, filed 09-24-76.
 HED 80-2A (HSD), Regulations for community residential facilities for developmentally disabled individuals, filed 09-26-80.
 HED 86-3 (HSD), Regulations governing residential shelter care and boarding home facilities for adults, filed 07-11-86.
 HED 90-1 (PHD), Regulations governing residential shelter care and boarding home facilities for adults, filed 01/11/90.

History of Repealed Material:

Other History:

**HUMAN SERVICES
 DEPARTMENT
 MEDICAL ASSISTANCE
 DIVISION**

The Human Services Department - Medical Assistance Division reviewed at its 10/16/2019 hearing, 8.321.2 NMAC, Specialized Behavioral Health Provider Enrollment and Reimbursement filed 12/17/2013. The Department has decided to repeal 8.321.2 NMAC, Specialized Behavioral Health Provider

Enrollment and Reimbursement filed 12/17/2013 and replace it with 8.321.2 NMAC, Specialized Behavioral Health Provider Enrollment and Reimbursement, adopted 11/22/2019 and effective 1/1/2020.

**HUMAN SERVICES
 DEPARTMENT
 MEDICAL ASSISTANCE
 DIVISION**

**TITLE 8 SOCIAL
 SERVICES
 CHAPTER 321 SPECIALIZED
 BEHAVIORAL HEALTH
 SERVICES
 PART 2 SPECIALIZED
 BEHAVIORAL HEALTH
 PROVIDER ENROLLMENT AND
 REIMBURSEMENT**

**8.321.2.1 ISSUING
 AGENCY:** New Mexico Human Services Department (HSD). [8.321.2.1 NMAC - Rp, 8.321.2.1 NMAC, 1/1/2020]

8.321.2.2 SCOPE: The rule applies to the general public. [8.321.2.2 NMAC - Rp, 8.321.2.2 NMAC, 1/1/2020]

**8.321.2.3 STATUTORY
 AUTHORITY:** The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-2-12 et seq., NMSA 1978. [8.321.2.3 NMAC - Rp, 8.321.2.3 NMAC, 1/1/2020]

8.321.2.4 DURATION: Permanent. [8.321.2.4 NMAC - Rp, 8.321.2.4 NMAC, 1/1/2020]

**8.321.2.5 EFFECTIVE
 DATE:** January 1, 2020, unless a later date is cited at the end of a section.

[8.321.2.5 NMAC - Rp, 8.321.2.5 NMAC, 1/1/2020]

8.321.2.6 OBJECTIVE: The objective of these rules is to provide instruction for the service portion of the New Mexico medical assistance programs (MAP). [8.321.2.6 NMAC - Rp, 8.321.2.6 NMAC, 1/1/2020]

8.321.2.7 DEFINITIONS: [RESERVED]

**8.321.2.8 MISSION
 STATEMENT:** To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities. [8.321.2.8 NMAC - Rp, 8.321.2.8 NMAC, 1/1/2020]

**8.321.2.9 GENERAL
 PROVIDER INSTRUCTION:**
A. Health care to New Mexico eligible recipients is furnished by a variety of providers and provider groups. The reimbursement for these services is administered by the HSD medical assistance division (MAD). Upon approval of a New Mexico MAD provider participation agreement (PPA) a licensed practitioner, a facility or other providers of services that meet applicable requirements are eligible to be reimbursed for furnishing MAD covered services to an eligible recipient. A provider must be approved before submitting a claim for payment to the MAD claims processing contractors. Information necessary to participate in health care programs administered by HSD or its authorized agents, including New Mexico administrative code (NMAC) program rules, program policy manuals, billing instructions, supplements, utilization review (UR) instructions, and other pertinent materials is available on the HSD website, on other program specific websites or in hard copy format. When approved, a provider receives instructions on how to

access these documents. It is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to obtain answers to questions related to the material or not covered by the material. To be eligible for reimbursement, providers and practitioners must adhere to the provisions of his or her MAD PPA and all applicable statutes, regulations, rules, and executive orders. MAD or its selected claims processing contractor issues payment to a provider using the electronic funds transfer (EFT) only. Providers must supply necessary information as outlined in the PPA for payment to be made.

B. Services must be provided within the licensure for each facility and scope of practice for each provider and supervising or rendering practitioner. Services must be in compliance with the statutes, rules and regulations of the applicable practice act. Providers must be eligible for reimbursement as described in 8.310.2 NMAC and 8.310.3 NMAC.

C. The following independent providers with active licenses (not provisional or temporary) are eligible to be reimbursed directly for providing MAD behavioral health professional services unless otherwise restricted or limited by NMAC rules:

(1) a physician licensed by the board of medical examiners or board of osteopathy who is board eligible or board certified in psychiatry, to include the groups they form;

(2) a psychologist (Ph.D., Psy.D. or Ed.D.) licensed as a clinical psychologist by the New Mexico regulation and licensing department's (RLD) board of psychologist examiners, to include the groups they form;

(3) a licensed independent social worker (LISW) or a licensed clinical social worker (LCSW) licensed by RLD's board of social work examiners, to include the groups they form;

(4) a licensed professional clinical counselor (LPCC) licensed by RLD's counseling and therapy practice board, to include the groups they form;

(5) a licensed marriage and family therapist (LMFT) licensed by RLD's counseling and therapy practice board, to include the groups they form;

(6) a licensed alcohol and drug abuse counselor (LADAC) licensed by RLD's counseling and therapy practice board or a certified alcohol and drug abuse counselor (CADC) certified by the New Mexico credentialing board for behavioral health professionals (CBBHP). Independent practice is for alcohol and drug abuse diagnoses only. The LADAC or CADC may provide therapeutic services that may include treatment of clients with co-occurring disorders or dual diagnoses in an integrated behavioral health setting in which an interdisciplinary team has developed an interdisciplinary treatment plan that is co-authorized by an independently licensed counselor or therapist. The treatment of a mental health disorder must be supervised by an independently licensed counselor or therapist; or

(7) a clinical nurse specialist (CNS) or a certified nurse practitioner (CNP) licensed by the New Mexico board of nursing and certified in psychiatric nursing by a national nursing organization, to include the groups they form, who can furnish services to adults or children as his or her certification permits.

(8) an out-of-state provider rendering a service from out-of-state must meet his or her state's licensing and certification requirements which are acceptable when deemed by MAD to be substantially equivalent to the license and certification requirements of New Mexico.

D. The following agencies are eligible to be reimbursed for providing behavioral health professional services when all conditions for providing services are met:

(1) a community mental health center (CMHC);

(2) a federally qualified health center (FQHC);

(3) an Indian health service (IHS) hospital, clinic or FQHC;

(4) a PL 93-638 tribally operated hospital, clinic or FQHC;

(5) a children, youth and families department (CYFD) facility;

(6) a hospital and its outpatient facility;

(7) a core service agency (CSA);

(8) a CareLink NM health home (CLNM HH);

(9) a crisis triage center licensed by the department of health (DOH);

(10) a behavioral health agency (BHA);

(11) an opioid treatment program in a methadone clinic;

(12) a political subdivision of the state of New Mexico; and

(13) a crisis services community provider as a BHA.

E. A behavioral health service rendered by a licensed practitioner listed in Paragraph (2) of Subsection E of 8.321.2.9 NMAC whose scope of licensure does not allow him or her to practice independently or a non-licensed practitioner listed in Paragraph (3) of Subsection E of 8.321.2.9 NMAC is covered to the same extent as if rendered by a practitioner licensed for independent practice, when the supervisory requirements are met consistent with the practitioner's licensing board within his or her scope of practice and the service is provided through and billed by one of the provider's agencies listed in numbers one through nine of Subsection D of 8.321.2.9 NMAC and numbers 10 through 13 of Subsection D of 8.321.2.9 NMAC when the agency has a behavioral health services division (BHSD)

supervisory certificate. All services must be delivered according to the medicaid regulation and current version of the behavioral health policy and billing manual. If the service is an evaluation, assessment, or therapy service rendered by the practitioner and supervised by an independently licensed practitioner, the independently licensed practitioner's practice board must specifically allow him or her to supervise the non-independent practitioner.

(1) Specialized behavioral health services, other than evaluation, assessment, or therapy services, may have specific rendering practitioner requirements which are detailed in each behavioral health services section of 8.321.2.9 NMAC.

(2) The non-independently licensed rendering practitioner with an active license which is not provisional or temporary must be one of the following:

(a) a licensed master of social work (LMSW) licensed by RLD's board of social work examiners;

(b) a licensed mental health counselor (LMHC) licensed by RLD's counseling and therapy practice board;

(c) a licensed professional mental health counselor (LPC) licensed by RLD's examiner board;

(d) a licensed associate marriage and family therapist (LAMFT) licensed by RLD's examiner board;

(e) a psychologist associate licensed by the RLD's psychologist examiners board;

(f) a licensed substance abuse associate (LSAA) licensed by RLD's counseling and therapy practice board will be eligible for reimbursement aligned with each tier level of designated scope of practice determined by the board;

(g) a registered nurse (RN) licensed by the New Mexico board of nursing under the supervision of a certified nurse practitioner, clinical nurse specialist or physician; or

(h) a licensed physician assistant certified by the state of New Mexico if supervised by a behavioral health physician or DO licensed by RLD's examiner board.

(3) Non-licensed practitioners must be one of the following:

(a) a master's level behavioral health intern;

(b) a psychology intern including psychology practicum students, pre-doctoral internship;

(c) a pre-licensure psychology post doctorate student;

(d) a certified peer support worker;

(e) a certified family peer support worker; or

(f) a provisional or temporarily licensed masters level behavioral health professional.

(4) An independently licensed professional art therapist (LPAT) licensed by RLD's licensing and therapy practice board is not paid directly, but through an agency listed under Subsection D of 8.321.2.9 NMAC. A supervisory certificate is not required.

(5) The rendering practitioner must be enrolled as a MAD provider.

F. An eligible recipient under 21 years of age may be identified through a tot to teen health check, self-referral, referral from an agency (such as a public school, child care provider or other practitioner) when he or she is experiencing behavioral health concerns.

G. Either as a separate service or a component of a treatment plan or a bundled service, the following services are not MAD covered benefits:

(1) hypnotherapy;

(2) biofeedback;

(3) conditions that do not meet the standard of

medical necessity as defined in NMAC MAD rules;

(4) educational or vocational services related to traditional academic subjects or vocational training;

(5) experimental or investigational procedures, technologies or non-drug therapies and related services;

(6) activity therapy, group activities and other services which are primarily recreational or diversional in nature;

(7) electroconvulsive therapy;

(8) services provided by a behavioral health practitioner who is not in compliance with the statutes, regulations, rules or renders services outside his or her scope of practice;

(9) treatment of intellectual disabilities alone;

(10) services not considered medically necessary for the condition of the eligible recipient;

(11) services for which prior authorization is required but was not obtained; and

(12) milieu therapy.

H. All behavioral health services must meet with the current MAD definition of medical necessity found in 8.302.1 NMAC. Performance of a MAD behavioral health service cannot be delegated to a provider or practitioner not licensed for independent practice except as specified within this rule, within his or her practice board's scope and practice and in accordance with applicable federal, state, and local statutes, laws and rules. When a service is performed by a supervised practitioner, the supervision of the service cannot be billed separately or additionally. Other than agencies as allowed in Subsections D and E of 8.321.2.9 NMAC, a behavioral health provider cannot himself or herself as a rendering provider bill for a service for which he or she was providing supervision and the service was in part or wholly performed by a different individual. Behavioral

health services are reimbursed as follows, except when otherwise described within a particular specialized service’s reimbursement section.

(1) Once enrolled, a provider receives instructions on how to access documentation, billing, and claims processing information. Reimbursement is made to a provider for covered services at the lesser of the following:

(a) the MAD fee schedule for the specific service or procedure; or

(b) the provider’s billed charge. The provider’s billed charge must be its usual and customary charge for services (“usual and customary charge” refers to the amount that the individual provider charges the general public in the majority of cases for a specific procedure or service).

(2) Reimbursement is made for an Indian health service (IHS) agency, a PL 93-638 tribal health facility, a federally qualified health center (FQHC), rural health clinic, or hospital-based rural health clinic by following its federal guidelines and special provisions as detailed in 8.310.4 and 8.310.12 NMAC.

I. All behavioral health services are subject to utilization review for medical necessity and program compliance. Reviews can be performed before services are furnished, after service is furnished but before a payment is made, or after the payment is made; see 8.310.2 NMAC. The provider must contact HSD or its authorized agents to request UR instructions. It is the provider’s and practitioner’s responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided, to comply with the requirements, and to obtain answers to questions not covered by these materials. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor’s

instructions for authorization of services. A specialized behavioral health service may have additional prior authorization requirements listed in that service’s prior authorization subsection. All prior authorization procedures must follow federal parity law.

J. For an eligible recipient to access behavioral health services, a practitioner must complete a diagnostic evaluation, progress and treatment notes and teaming notes, if indicated. Exceptions to this whereby a treatment or set of treatments may be performed before a diagnostic evaluation has been done, utilizing a provisional diagnosis based on screening results are outlined in 8.321.2.14, 8.321.2.18 and 8.321.2.34 NMAC and in the behavioral health (BH) policy and billing manual. For a limited set of treatments, (i.e. four or less), no treatment plan is required. All documentation must be signed, dated and placed in the eligible recipient’s file. All documentation must be made available for review by HSD or its designees in the eligible recipient’s file (see the BH policy and billing manual for specific instructions).

K. For recipients meeting the NM state definition of serious mental illness (SMI) for adults or severe emotional disturbances (SED) for recipients under 18 years of age or a substance use disorder (SUD) for any age, a comprehensive assessment or diagnostic evaluation and service plan must be completed (see the BH policy and billing manual for specific instructions).

(1) Comprehensive assessment and service plan can only be billed by the agencies listed in Subsection D of 8.321.2.9 NMAC.

(2) Behavioral health service plans can be developed by individuals employed by the agency who have Health Insurance Portability and Accountability Act (HIPAA) training and are working under the supervision of the rendering provider who must be a NM independently licensed clinician.

(3) A comprehensive assessment and service plan cannot be billed if care coordination is being billed through bundled service packages such as case rates, value based purchasing agreements, high fidelity wraparound or CareLink NM (CLNM) health homes.

L. For out-patient, non-residential recipients meeting the NM state definition of serious mental illness (SMI) for adults or severe emotional disturbance (SED) for recipients under 18 years of age or a moderate to severe substance use disorder (SUD) for any age, where multiple provider disciplines are required and engaged either for co-occurring conditions, or other social determinants of health, an update to the service plan may be made using interdisciplinary teaming. MAD covers service plan updates through the participation of interdisciplinary teams.

(1) Coverage, purpose and frequency of interdisciplinary team meetings:

(a) provides the central learning, decision-making, and service integrating elements that weave practice functions together into a coherent effort for helping a recipient meet needs and achieve life goals; and

(b) covered team meetings resulting in service plan changes or updates are limited to an annual review, when recipient conditions change, or at critical decision points in the recipient’s progress to recovery.

(2) The team consists of:

(a) a lead agency, which must be one of the agencies listed in Subsection D of 8.321.2.9 NMAC. This agency has a designated and qualified team lead who prepares team members, convenes and organizes meetings, facilitates the team decision-making process, and follows up on commitments made;

(b) a participating provider that is a MAD enrolled provider that is either already

treating the recipient or is new to the case and has the expertise pertinent to the needs of the individual. This provider may practice within the same agency but in a differing discipline, or outside of the lead agency;

(c)

other participating providers not enrolled with MAD, other subject matter experts, and relevant family and natural supports may be part of the team, but are not reimbursed through MAD; and

(d)

the recipient, who is the subject of this service plan update, must be a participating member of every teaming meeting.

(3)

Reimbursement:

(a)

only the team lead and two other MAD enrolled participating providers or agencies may bill for the interdisciplinary team update. When more than three MAD enrolled providers are engaged within the session, the team decides who will bill based on the level of effort or change within their own discipline.

(b)

when the team lead and only one other provider meet to update the service plan, the definition of teaming is not met and the service plan update may not be billed using the interdisciplinary teaming codes.

(c)

the six elements of teaming may be performed by using a variety of media (with the person's knowledge and consent) e.g., texting members to update them on an emergent event; using email communications to ask or answer questions; sharing assessments, plans and reports; conducting conference calls via telephone; using telehealth platforms conferences; and, conducting face-to-face meetings with the person present when key decisions are made. Only the last element, that is, conducting the final face-to-face meeting with the recipient present when key decisions that result in the updates to the service plan, is a billable event.

(d)

when the service plan updates

to the original plan, that was developed within the comprehensive assessment, are developed using the interdisciplinary teaming model described in the BH policy and billing manual, service codes specific for interdisciplinary teaming may be billed. If the teaming model is not used, only the standard codes for updating the service plan can be billed. An update to the service plan using a teaming method approach and an update to the service plan not using the teaming method approach, cannot both be billed.

(e)

billing instructions are found in the BH policy and billing manual.

M. For recipients

with behavioral health diagnoses and other co-occurring conditions, or other social determinants of health meeting medical necessity, and for whom multiple provider disciplines are engaged, MAD covers service plan development and one subsequent update per year for an interdisciplinary team.

(1) The team

consists of:

(a)

a lead MAD enrolled provider that has primary responsibility for coordinating the interdisciplinary team, convenes and organizes meetings, facilitates the team decision-making process, and follows up on commitments made;

(b) a

participating MAD enrolled provider from a different discipline;

(c)

other participating providers not enrolled with MAD, other subject matter experts, and relevant family and natural supports may be part of the team, but are not reimbursed through MAD; and

(d)

the recipient, who is the subject of this service plan development and update, must be a participating member of each team meeting.

(2)

Reimbursement:

(a)

only the team lead and one other MAD enrolled participating provider

may bill for a single session. When more than two MAD enrolled providers are engaged with the session, the team decides who will bill based on the level of effort or change within their own discipline;

(b)

this service plan development and subsequent update to the original plan can only be billed twice within one year; and

(c)

billing instructions are found in the BH policy and billing manual.

[8.321.2.9 NMAC - Rp, 8.321.2.9 NMAC, 1/1/2020]

8.321.2.10 ACCREDITED RESIDENTIAL TREATMENT CENTER (ARTC) FOR ADULTS WITH SUBSTANCE USE

DISORDERS: To help an eligible recipient 18 years of age and older, who has been diagnosed as having a substance use disorder (SUD), and the need for ARTC has been identified in the eligible recipient's diagnostic evaluation as meeting criteria of the American society of addiction medicine (ASAM) level of care three for whom a less restrictive setting is not appropriate, MAD pays for services furnished to him or her by an ARTC accredited by the joint commission (JC), the commission on accreditation of rehabilitation facilities (CARF) or the council on accreditation (COA). The effective date will be January 1, 2019, or as otherwise approved by the centers for medicare and medicaid services (CMS).

A. Eligible facilities:

(1) To

be eligible to be reimbursed for providing ARTC services to an eligible recipient, an ARTC facility:

(a)

must be accredited by JC, COA, or CARF as an adult (18 and older) residential treatment facility;

(b)

must have written policies and procedures specifying ASAM level of care three criteria as the basis for accepting eligible recipients into the sub-level treatment program;

(c)

must meet ASAM treatment service requirements for the ASAM level of care three recipients it admits into each sub-level of care;

(d)

must provide medication assisted treatment (MAT) for SUD, as indicated; and

(e)

all practitioners shall be trained in ASAM principles and levels of care.

(2)

An out-of-state or MAD border ARTC must have JC, CARF or COA accreditation, use ASAM level three criteria for accepting recipients, and be licensed in its own state as an ARTC residential treatment facility.

B. Coverage criteria:

(1)

Treatment must be provided under the direction of an independently licensed clinician/practitioner as defined by ASAM criteria level three for the sub-level of treatment being rendered.

(2)

Treatment shall be based on the eligible recipient's individualized treatment plans rendered by the ARTC facility's practitioners, within the scope and practice of their professions as defined by state law, rule or regulation. See Subsection B of 8.321.2.9 NMAC for general behavioral health professional requirements.

(3)

The following services shall be performed by the ARTC agency to receive reimbursement from MAD:

(a)

diagnostic evaluation, necessary psychological testing, and development of the eligible recipient's treatment plan, while ensuring that evaluations already performed are not repeated;

(b)

provision of regularly scheduled counseling and therapy sessions in an individual, family or group setting following the eligible recipient's treatment plan, and according to ASAM guidelines for level three, residential care, and the specific sub-level of care for which that client meets admission criteria;

(c)

facilitation of age-appropriate life skills development;

(d)

assistance to the eligible recipient in his or her self-administration of medication in compliance with state statute, regulation and rules;

(e)

maintain appropriate staff available on a 24-hour basis to respond to crisis situations, determine the severity of the situation, stabilize the eligible recipient, make referrals as necessary, and provide follow-up to the eligible recipient; and

(f)

consultation with other professionals or allied caregivers regarding the needs of the eligible recipient, as applicable.

(4) Admission

and treatment criteria based on the sub-levels of ASAM level three criteria must be met. The differing sub-levels of ASAM three are based on the intensity of clinical services, particularly as demonstrated by the degree of involvement of medical and nursing professionals. The defining characteristic of level three ASAM criteria is that they serve recipients who need safe and stable living environments to develop their recovery skills. They are transferred to lower levels of care when they have established sufficient skills to safely continue treatment without the immediate risk of relapse, continued use, or other continued problems, and are no longer in imminent danger of harm to themselves or others.

(5) Levels

of care without withdrawal management:

(a)

clinically managed low-intensity residential services as specified in ASAM level of care 3.1 are covered for recipients whose condition meets the criteria for ASAM 3.1:

(i)

is often a step down from a higher level of care and prepares the recipient for transition to the community and outpatient services; and

(ii)

requires a minimum of five hours per week of recovery skills development.

(b)

clinically managed population-specific high-intensity residential services as specified in ASAM levels of care 3.3 and 3.5 are covered for recipients whose condition meets the criteria of ASAM level 3.3 or 3.5:

(i)

level 3.3 meets the needs of recipients with cognitive difficulties needing more specialized individualized services. The cognitive impairments can be due to aging, traumatic brain injury, acute but lasting injury, or illness. These recipients need a slower pace and lower intensity of services.

(ii)

level 3.5 offers a higher intensity of service not requiring medical monitoring.

(c)

medically monitored intensive inpatient services as specified in ASAM level of care 3.7 are covered for recipients whose condition meets the criteria for ASAM level 3.7:

(i)

3.7 level is an organized service delivered by medical and nursing professionals which provides 24-hour evaluation and monitoring services under the direction of a physician or clinical nurse practitioner who is available by phone 24-hours a day.

(ii)

nursing staff is on-site 24-hours a day.

(iii)

other interdisciplinary staff of trained clinicians may include counselors, social workers, and psychologists available to assess and treat the recipient and to obtain and interpret information regarding recipient needs.

(6)

Withdrawal management (WM) levels of care:

(a)

clinically managed residential withdrawal management services as specified in ASAM level of care 3.2WM for recipients whose condition meets the criteria for ASAM 3.2WM:

(i)

managed by behavioral health professionals, with protocols in place should a patient's condition

deteriorate and appear to need medical or nursing interventions;

(ii) ability to arrange for appropriate laboratory and toxicology tests;

(iii) a range of cognitive, behavioral, medical, mental health and other therapies administered on an individual or group basis to enhance the recipient's understanding of addiction, the completion of the withdrawal management process, and referral to an appropriate level of care for continuing treatment;

(iv) the recipient remains in a level 3.2WM program until withdrawal signs and symptoms are sufficiently resolved that he or she can be safely managed at a less intensive level of care; or the recipient's signs and symptoms of withdrawal have failed to respond to treatment and have intensified such that transfer to a more intensive level of withdrawal management services is indicated; and

(v) 3.2WM typically lasts for no more than 30 days.

(b) medically monitored residential withdrawal management services as specified in ASAM level of care 3.7WM for recipients whose condition meets the criteria for ASAM 3.7WM:

(i) services are provided by an interdisciplinary staff of nurses, counselors, social workers, addiction specialists, peer support workers or other health and technical personnel under the direction of a licensed physician;

(ii) monitored by medical or nursing professionals, with 24-hour nursing care and physician visits as needed, with protocols in place should a patient's condition deteriorate and appear to need intensive inpatient withdrawal management interventions;

(iii) ability to arrange for appropriate laboratory and toxicology tests;

(iv) range of cognitive, behavioral,

medical, mental health and other therapies administered on an individual or group basis to enhance the recipient's understanding of addiction, the completion of the withdrawal management process, and referral to an appropriate level of care for continuing treatment; and

(v) the recipient remains in a level 3.7WM program until withdrawal signs and symptoms are sufficiently resolved that he or she can be safely managed at a less intensive level of care; or the recipient's signs and symptoms of withdrawal have failed to respond to treatment and have intensified such that transfer to a more intensive level of withdrawal management service is indicated.

(vi) 3.7WM typically last for no more than seven days.

C. Covered services:

(1) ARTCs treating all recipients meeting ASAM level three criteria. MAD covers residential treatment services which are medically necessary for the diagnosis and treatment of an eligible recipient's condition. A clinically-managed ARTC facility must provide 24-hour care with trained staff.

(2) Referrals from an independent practitioner are required.

D. Non-covered services: ARTC services are subject to the limitations and coverage restrictions that exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for general MAD behavioral health non-covered services or activities. MAD does not cover the following specific services billed in conjunction with ARTC services to an eligible recipient:

(1) comprehensive community support services (CCSS), except when provided by a CCSS agency in discharge planning for the eligible recipient from the facility;

(2) services for which prior approval was not requested and approved;

(3) services furnished to ineligible individuals;

(4) formal educational and vocational services which relate to traditional academic subjects or vocational training; and

(5) activity therapy, group activities, and other services primarily recreational or diversional in nature.

E. Treatment plan:
The treatment plan must be developed by a team of professionals in consultation with the eligible recipient and in accordance with ASAM and accreditation standards. The interdisciplinary team must review the treatment plan at least every 15 days.

F. Prior authorization: Prior authorization is not required for up to five days for eligible recipients meeting ASAM level three criteria to facilitate immediate admission and treatment to the appropriate level of care. Within that five day period, the provider must furnish notification of the admission and if the provider believes that continued care beyond the initial five days is medically necessary, prior authorization must be obtained from MAD or its designee. For out-of-state ARTCs prior authorization is required prior to admission. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process. All MAD services are subject to utilization review for medical necessity, inspection of care, and program compliance. Follow up auditing is done by the accrediting agency per their standards.

G. Reimbursement:
An ARTC agency must submit claims for reimbursement on the UB-04 form or its successor. See Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements and see 8.302.2 NMAC. Once enrolled, the agency receives instructions on how to access documentation, billing, and claims processing information.

(1) MAD reimbursement covers services considered routine in the residential setting. Routine services include, but are not limited to, counseling, therapy, activities of daily living, medical management, crisis intervention,

professional consultation, transportation, rehabilitative services and administration.

(2) Services which are not covered in routine services include other MAD services that an eligible recipient might require that are not furnished by the facility, such as pharmacy services, primary care visits, laboratory or radiology services. These services are billed directly by the applicable providers and are governed by the applicable sections of NMAC rules.

(3) MAD does not cover room and board.

(4) Detailed billing instructions can be accessed in the BH policy and billing manual. [8.321.2.10 NMAC - N, 1/1/2020]

8.321.2.11 ACCREDITED RESIDENTIAL TREATMENT CENTER (ARTC) FOR YOUTH:

To help an eligible recipient under 21 years of age when the need for ARTC has been identified in the eligible recipient's tot to teen health check screen (EPSDT) program (42 CFR section 441.57) or other diagnostic evaluation, and for whom a less restrictive setting is not appropriate, MAD pays for services furnished to him or her by an ARTC accredited by the joint commission (JC), the commission on accreditation of rehabilitation facilities (CARF) or the council on accreditation (COA).

A. Eligible facilities:

(1) In addition to the requirements of Subsections A and B of 8.321.2.9 NMAC, in order to be eligible to be reimbursed for providing ARTC services to an eligible recipient, an ARTC facility:

(a) must provide a copy of its JC, COA, or CARF accreditation as a children's residential treatment facility;

(b) must provide a copy of its CYFD ARTC facility license and certification; and

(c) must have written utilization review (UR) plans in effect which provide for review of the eligible recipient's need for the ARTC that meet federal

requirements; see 42 CFR Section 456.201 through 456.245;

(2) If the ARTC is operated by IHS or by a federally recognized tribal government, the youth based facility must meet CYFD ARTC licensing requirements, but is not required to be licensed or certified by CYFD. In lieu of receiving a license and certification, CYFD will provide MAD copies of its facility findings and recommendations. MAD will work with the facility to address recommendations. Details related to findings and recommendations for an IHS or federally recognized tribal government's ARTC are detailed in the BH policy and billing manual; and

(3) In lieu of New Mexico CYFD licensure, an out-of-state or MAD border ARTC facility must have JC, COA or CARF accreditation and be licensed in its own state as an ARTC residential treatment facility.

B. Covered services:

MAD covers accommodation and residential treatment services which are medically necessary for the diagnosis and treatment of an eligible recipient's condition. An ARTC facility must provide an interdisciplinary psychotherapeutic treatment program on a 24-hour basis to the eligible recipient. The ARTC will coordinate with the educational program of the recipient, if applicable.

(1) Treatment must be furnished under the direction of a MAD board eligible or certified psychiatrist.

(2) Treatment must be based on the eligible recipient's individualized treatment plans rendered by the ARTC facility's practitioners, within the scope and practice of their professions as defined by state law, rule or regulation. See Subsection B of 8.321.2.9 NMAC for general behavioral health professional requirements.

(3) Treatment must be reasonably expected to improve the eligible recipient's condition. The treatment must be designed to reduce or control symptoms or maintain levels of

functioning and avoid hospitalization or further deterioration is acceptable expectations of improvement.

(4) The following services must be performed by the ARTC agency to receive reimbursement from MAD:

(a) performance of necessary evaluations, psychological testing and development of the eligible recipient's treatment plans, while ensuring that evaluations already performed are not repeated;

(b) provide regularly scheduled counseling and therapy sessions in an individual, family or group setting following the eligible recipient's treatment plan;

(c) facilitation of age-appropriate skills development in the areas of household management, nutrition, personal care, physical and emotional health, basic life skills, time management, school attendance and money management to the eligible recipient;

(d) assistance to the eligible recipient in his or her self-administration of medication in compliance with state statute, regulation and rules;

(e) maintain appropriate staff available on a 24-hour basis to respond to crisis situations, determine the severity of the situation, stabilize the eligible recipient, make referrals, as necessary, and provide follow-up to the eligible recipient;

(f) consultation with other professionals or allied caregivers regarding the needs of the eligible recipient, as applicable;

(g) non-medical transportation services needed to accomplish the eligible recipient's treatment objective; and

(h) therapeutic services to meet the physical, social, cultural, recreational, health maintenance and rehabilitation needs of the eligible recipients.

C. Non-covered services: ARTC services are subject to the limitations and coverage

restrictions that exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for general MAD behavioral health non-covered services or activities. MAD does not cover the following specific services billed in conjunction with ARTC services to an eligible recipient:

- (1) CCSS, except when provided by a CCSS agency in discharge planning for the eligible recipient from the facility;
- (2) services for which prior approval was not requested and approved;
- (3) services furnished to ineligible individuals; ARTC and group services are covered only for eligible recipients under 21 years of age;
- (4) formal educational and vocational services which relate to traditional academic subjects or vocation training; and
- (5) activity therapy, group activities, and other services primarily recreational or diversional in nature.

D. Treatment

plan: The treatment plan must be developed by a team of professionals in consultation with the eligible recipient, his or her parent, legal guardian and others in whose care he or she will be released after discharge. The plan must be developed within 14 calendar days of the eligible recipient’s admission to an ARTC facility. The interdisciplinary team must review the treatment plan at least every 30 calendar days. In addition to the requirements of Subsection K of 8.321.2.9 NMAC, all supporting documentation must be available for review in the eligible recipient’s file. The treatment plan must also include a statement of the eligible recipient’s cultural needs and provision for access to cultural practices.

E. Prior

authorization: Before any ARTC services are furnished to an eligible recipient, prior authorization is required from MAD or its designee. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

F. Reimbursement:

An ARTC agency must submit claims for reimbursement on the UB-04 form or its successor. See Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements and see 8.302.2 NMAC. Once enrolled, the agency receives instructions on how to access documentation, billing, and claims processing information.

(1) The MAD fee schedule is based on actual cost data submitted by the ARTC agency. Cost data is grouped into various cost categories for purposes of analysis and rate setting. These include direct service, direct service supervision, therapy, admission and discharge planning, clinical support, non-personnel operating, administration and consultation.

(a) The MAD fee schedule reimbursement covers those services considered routine in the residential setting. Routine services include, but are not limited to: counseling, therapy, activities of daily living, medical management, crisis intervention, professional consultation, transportation, rehabilitative services and administration.

(b) Services which are not covered in routine services include other MAD services that an eligible recipient might require that are not furnished by the facility, such as pharmacy services, primary care visits, laboratory or radiology services, are billed directly by the applicable providers and are governed by applicable sections of NMAC rules.

(c) Services which are not covered in the routine rate and are not a MAD covered service include services not related to medical necessity, clinical treatment, and patient care.

(2) A vacancy factor of 24 days annually for each eligible recipient is built in for therapeutic leave and trial community placement. Since the vacancy factor is built into the rate, an ARTC agency cannot bill nor be reimbursed for days

when the eligible recipient is absent from the facility.

(3) An ARTC agency must submit annual cost reports in a form prescribed by MAD. Cost reports are due 90 calendar days after the close of the agency’s fiscal year end.

(a) If an agency cannot meet this due date, it can request a 30 calendar day extension for submission. This request must be made in writing and received by MAD prior to the original due date.

(b) Failure to submit a cost report by the due date or the extended due date, when applicable, will result in suspension of all MAD payments until the cost report is received.

(4) Reimbursement rates for an ARTC out-of-state provider located more than 100 miles from the New Mexico border (Mexico excluded) are at the fee schedule unless a separate rate is negotiated. [8.321.2.11 NMAC - Rp, 8.321.2.11 NMAC, 1/1/2020]

8.321.2.12 APPLIED BEHAVIOR ANALYSIS (ABA):

MAD pays for medically necessary, empirically supported, applied behavior analysis (ABA) services for eligible recipients who have a well-documented medical diagnosis of autism spectrum disorder (ASD), and for eligible recipients who have well-documented risk for the development of ASD. As part of a three-stage comprehensive approach consisting of evaluation, assessment, and treatment, ABA services may be provided in coordination with other medically necessary services (e.g., family infant toddler program (FIT) services, occupational therapy, speech language therapy, medication management, developmentally disabled waiver services, etc.). ABA services are part of the early periodic screening, diagnosis and treatment (EPSDT) program (CFR 42 section 441.57). There is no age requirement to receive ABA services and ABA is a covered benefit for medicaid-enrolled adults.

A. Coverage Criteria:
(1)

Confirmation of the presence or risk of ASD must occur through an approved autism evaluation provider (AEP) through a comprehensive diagnostic evaluation (CDE) used to determine the presence of and a diagnosis of ASD. A targeted evaluation is used when the eligible recipient who has a full diagnosis of ASD presents with behaviors that are changed from the last CDE. An ASD risk evaluation is used when an eligible recipient meets the at-risk criteria found in Subsection C of 8.321.2.12 NMAC.

(2) An

integrated service plan (ISP) must be developed by the AEP together with a referral to an approved ABA provider (AP) agency (stage one).

(3) The AP

agency completes a behavior or functional analytic assessment. The assessment results determine if a focused or comprehensive model is selected and a treatment plan is completed (stage two).

(4) ABA

stage two and three services are then rendered by a behavior analyst certification board (BACB) approved behavior analyst (BA), a board certified assistant behavior analyst (BCaBA) or a behavior technician (BT), in accordance with the treatment plan (stage three). A BCaBA is referred to 8.321.2 NMAC as a behavior analyst assistant (BAA).

B. Eligible providers:

ABA services are rendered by a number of providers and practitioners: an AEP; a behavior analyst (BA) and a behavior technician (BT) through an ABA provider (AP); and an ABA specialty care provider. Each ABA provider and practitioner has corresponding enrollment requirements and renders unique services according to his or her provider type and specialty. All providers must successfully complete a criminal background registry check.

(1) Stage

1: Autism Evaluation Provider

(AEP): Completes the CDE, ASD risk evaluation or targeted evaluation

and develops the ISP for an eligible recipient.

(2) Behavior

Analyst (BA): a BA who is a board certified behavior analyst (BCBA® or BCBA-D®) by the behavior analyst certification board (BACB®) or a psychologist who is certified by the American board of professional psychology in behavior and cognitive psychology and who was tested in the ABA part of his or her certification, may render ABA stage two-behavior analytic assessment, service model determination and treatment plan development and stage three services-implementation of an ABA treatment plan. MAD refers to this practitioner in rule and on the fee schedule as a BA.

(3) Stage

two and three BAA: A BAA who is a board certified assistant behavior analyst (BCaBA®) by the BACB® may assist his or her supervising BA in rendering a ABA stage two-behavior or functional analytic assessment, service model determination and ABA treatment plans development and stage three services implementation of the ABA treatment plans, when the BAA's supervising BA determines he or she has the skills and knowledge to render such services. This is determined in the contract the BAA has agreed to with his or her supervising BA.

(4) Stage

three Behavioral Technician (BT): A BT, under supervision of a BA, may assist stage two and implement stage three ABA treatment plan interventions and services.

(5)

Stage three ABA specialty care provider eligibility requirements: practitioners who are enrolled as BAs must provide additional documentation that demonstrates the practitioner has the skills, training and clinical experience to oversee and render ABA services to highly complex eligible recipients who require specialized ABA services.

(6) Additional

provider types: To avoid a delay in receiving stage two services, a recipient may be referred for ABA

services with a diagnosis of ASD by other medical provider types. While the practitioners listed below may not meet the requirements to be approved as AEPs and therefore are not considered AEPs, until further notice, MAD is recognizing the diagnosis of ASD of a recipient by the following provider types to expedite a recipient's access to ABA stage two services:

(a)

A New Mexico regulation and licensing department (RLD) licensed psychologist.

(b)

A New Mexico board of nursing licensed:

(i)

psychiatric clinical nurse specialist; or

(ii)

certified nurse practitioner with a specialty of pediatrics or psychiatry.

(c)

A New Mexico MD or DO board licensed:

(i)

psychiatrist who is board certified in child and adolescent; or

(ii)

pediatrician.

C. Identified

population: The admission criteria are separated into two types: at-risk for ASD and diagnosed with ASD.

(1) At-risk

for ASD: an eligible recipient may be considered 'at-risk' for ASD and therefore eligible for time-limited ABA services, if he or she does not meet full criteria for ASD per the latest version of the diagnostic statistical manual (DSM) or international classification of diseases (ICD). To be qualified for the ABA criteria of at-risk, the eligible recipient must meet all the following requirements:

(a) is

between 12 and 36 months of age;

(b)

presents with developmental differences and delays as measured by standardized assessments;

(c)

demonstrates some characteristics of the disorder (e.g., impairment in social communication and early

indicators for the development of restricted and repetitive behavior); and

(d)

presents with at least one genetic risk factor (e.g., genetic risk due to having an older sibling with a well-documented ASD diagnosis; eligible recipient has a diagnosis of Fragile X syndrome).

(2) **Diagnosed**

with ASD: an eligible recipient who has a documented medical diagnosis of ASD according to the latest version of the DSM or the ICD is eligible for ABA services if he or she presents with a CDE or targeted evaluation.

D. Covered services:

(1) **Stage one:**

An eligible recipient is referred to an AEP after screening positive for ASD. The AEP conducts a diagnostic evaluation (CDE or targeted evaluation), develops the ISP, and recommends ABA stage 2 services. For an eligible recipient who has an existing ASD diagnosis, diagnostic re-evaluation is not necessary, but the development of an ISP and the determination of the medical necessity for ABA services are required.

(2) **Stage**

two BA: For all eligible recipients, stage two services include a behavior or functional analytic assessment, ABA service model determination, and treatment plan development. The family, eligible recipient (as appropriate for age and developmental level), and the AP's supervising BA work collaboratively to make a final determination regarding the clinically appropriate ABA service model, with consultative input from the AEP as needed. A behavior or functional analytic assessment addressing needs associated with both skill acquisition and behavior reduction is conducted, and an individualized ABA treatment plan, as appropriate for the ABA service model, is developed by the supervising BA. The BA is responsible for completing all of the following services:

(a)

the recipient's assessment;

(b)

selection and measurement of goals; and

(c)

treatment plan formulation and documentation.

(3) **Stage**

three - treatment: Most ABA stage three services require prior authorization and may vary in terms of intensity, frequency and duration, the complexity and range of treatment goals, and the extent of direct treatment provided.

(4) **Stage**

three - clinical management and case supervision: All stage three services require clinical management. If a BAA or a BT is implementing the treatment plan, the BAA or BT requires frequent, ongoing case supervision from his or her BA or supervising BAA. The BH policy and billing manual provides a detailed description of the requirements for rendering clinical management and case supervision.

(5) **Stage**

three - ABA specialty care services: Specialty care services require prior authorization. In cases where the needs of the eligible recipient exceed the expertise of the AP and the logistical or practical ability of the AP to fully support the eligible recipient MAD covers the eligible recipient for a referral to a MAD enrolled ABA specialty care practitioner (SCP).

(6)

If the eligible recipient is in a residential facility or institutional setting that either specializes in or has as part of its treatment modalities MAD ABA services, and the residential facility is not an AP for ABA stage two and three services, and the eligible recipient has a MAD recognized CDE or targeted evaluation which recommends ABA stage two services, the residential facility is responsible to locate a MAD enrolled ABA stage two and three AP and develop an agreement allowing the AP to render stage two and three services at the residential facility. Reimbursement for ABA stage two and three services is made to the MAD enrolled AP, not the residential facility.

(7)

For an eligible recipient who meets the criteria for ABA services and who

is in a treatment foster care (TFC) placement, he or she is not considered to be in a residential facility and may receive ABA services outside of the TFC agency. An eligible recipient who meets the criteria for ABA services who is in a residential treatment center, accredited residential treatment center, or a group home may receive ABA services to the extent that the residential provider is able to provide the services.

(8)

See the BH policy and billing manual for specific instructions concerning stages one through three services.

E. Prior

authorization - general information stage three services:

(1)

Prior authorization to continue ABA stage three services must be secured every six months. At each six month authorization point, a UR contractor will assess, with input from the family and AP's BA, whether or not changes are needed in the eligible recipient's ISP or treatment plan. Additionally, the family or AP may request ISP modifications prior to the UR contractor's six-month authorization point if immediate changes are warranted to preserve the health and wellbeing of the eligible recipient.

(2)

To secure the initial and ongoing prior authorization for stage three services, the AP must submit the prior authorization request, specifically noting:

(a)

the CDE or targeted evaluation and the ISP from the AEP (developed in stage one) along with the ABA treatment plan (developed in stage two);

(b)

the requested treatment model (focused or comprehensive), maximum hours of service requested per week;

(c)

the number of hours of case supervision requested per week, if more than two hours of supervision per 10 hours of intervention is requested; the BH policy and billing manual provides detailed requirements for case supervision;

(d) the number of hours of clinical management requested per week, if more than two hours of clinical management per 10 hours of intervention is requested; and

(e) the need for collaboration with an ABA specialty care provider, if such a need has been identified through initial assessment and treatment planning; after services have begun, the AP agency may refer the eligible recipient to a SCP for a focused behavior or functional analytic assessment focusing on the specific care needs of the eligible recipient. The SCP will then request a prior authorization for specialty care services to the eligible recipient's UR contractor.

(3) The request must document hours allocated to other services (e.g., early intervention through FIT, physical therapy, speech and language therapy) that are in the eligible recipient's ISP in order for the eligible recipient's UR to determine if the requested intensity (i.e., hours per week) is feasible and appropriate.

(4) When an eligible recipient's behavior exceeds the expertise of the AP and logistical or practical ability of the AP to fully support him or her, MAD allows the AP to refer the eligible recipient to his or her UR contractor for prior authorization to allow an ABA specialty care provider to intervene. The UR contractor will approve a prior authorization to the ABA specialty care provider to complete a targeted assessment including a functional assessment and provide the primary AP with, or to implement his or herself, individualized interventions to address the behavioral concerns for which the referral is based on medical documentation.

(5) Services may continue until the eligible recipient no longer meets service criteria for ABA services as described in the BH policy and billing manual.

(6) See the BH policy and billing manual for specific instructions on prior authorizations.

F. Non-covered services:

(1) The eligible recipient's comprehensive or targeted diagnostic evaluation or the ISP and treatment plan updates recommend placement in a higher, more intensive, or more restrictive level of care (LOC) and no longer recommends ABA services.

(2) Activities that are not designed to accomplish the objectives delineated in covered services and that are not included in the ABA treatment plan.

(3) Activities that are not based on the principles and application of applied behavior analysis.

(4) Activities that take place in school settings and have the potential to supplant educational services.

(5) Activities that are better described as another therapeutic service (e.g., speech language therapy, occupational therapy, physical therapy, counseling, etc.), even if the practitioner has expertise in the provision of ABA.

(6) Activities which are better characterized as staff training certification or licensure or certification supervision requirements, rather than ABA case supervision.

G. Reimbursement:
Billing instructions for ABA services are detailed in the BH policy and billing manual.
[8.321.2.12 NMAC - Rp, 8.321.2.10 NMAC, 1/1/2020]

8.321.2.13 ASSERTIVE COMMUNITY TREATMENT SERVICES: To help an eligible recipient with medically necessary services MAD pays for covered assertive community treatment services (ACT).

A. Eligible providers:

(1) An ACT agency must demonstrate compliance with administrative, financial, clinical, quality improvement and information services infrastructure standards established by MAD or its designee, including compliance and outcomes consistent with the ACT fidelity

model. See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

(2) An ACT agency providing coordinated specialty care for an individual with first episode psychosis must provide services consistent with the coordinated specialty care (CSC) model.

(3) ACT services must be provided by an agency designated team of 10 to 12 members; see Paragraph (5) of Subsection A of 8.321.2.13 NMAC for the required composition. Lower number of team member compositions may be considered by BHSD for a waiver request dependent on the nature of the clinical severity and rural vs. urban environment pending BHSD approval. Each team must have a designated team leader. Practitioners on this team shall have sufficient individual competence, professional qualifications and experience to provide service coordination; crisis assessment and intervention; symptom assessment and management; individual counseling and psychotherapy; prescription, administration, monitoring and documentation of medications; substance abuse treatment; work-related services; activities of daily living services; support services or direct assistance to ensure that the eligible recipient obtains the basic necessities of daily life; and coordination, support and consultation to the eligible recipient's family and other major supports. The agency must coordinate its ACT services with local hospitals, local crisis units, local law enforcement agencies, local behavioral health agencies, and consider referrals from social service agencies.

(4) Each ACT team staff member must be successfully and currently certified or trained according to ACT fidelity model standards. The training standards focus on developing staff competencies for delivering ACT services according to the most recent ACT evidenced-based practices and ACT fidelity model. Each ACT team

shall have sufficient numbers of qualified staff to provide treatment, rehabilitation, crisis and support services 24-hours a day, seven days a week.

(5) Each ACT team shall have a staff-to eligible recipient ratio dependent on the nature of the team based on clinical severity and rural vs. urban environment pending BHSD approval to ensure fidelity with current model.

(6) Each ACT team must comply with 8.321.2.9 NMAC for specific licensing requirements for ACT staff team members as appropriate, and must include:

- (a) one team leader who is an independently licensed behavioral health practitioner (LPCC, LMFT, LISW, LCSW, LPAT, psychologist);
- (b) medical director/prescriber:
 - (i) board certified or board eligible psychiatrist; or
 - (ii) NM licensed psychiatric certified nurse practitioner; or
 - (iii) NM licensed psychiatric clinical nurse specialist; or
 - (iv) prescribing psychologist under the supervision or consultation of an MD; or
- (c) two licensed nurses, one of whom shall be a RN, or other allied medical professionals may be used in place of one nurse;
- (d) at least one other MAD recognized independently licensed behavioral health professional, see Subsection C of 8.321.2.9 NMAC;
- (e) at least one MAD recognized licensed behavioral health practitioner with expertise in substance use disorders;
- (f) at least one employment specialist;
- (g) at least one New Mexico certified peer support worker (CPSW) through the approved state of New Mexico

certification program; or certified family peer support worker (CFPSW);

- (h) one administrative staff person; and
- (i) the eligible recipient shall be considered a part of the team for decisions impacting his or her ACT services.

(7) The agency must have a HSD ACT approval letter to render ACT services to an eligible recipient. The approval letter will authorize an agency also delivering CSC services.

B. Coverage criteria:

(1) MAD covers medically necessary ACT services required by the condition of the eligible recipient.

(2) The ACT program provides four levels of interaction with the participating individuals:

- (a) Face-to-face encounters.
- (b) Collateral encounters designated as members of the recipient's family or household, or significant others who regularly interact with the recipient and are directly affected by or have the capability of affecting his or her condition, and are identified in the service plan as having a role in treatment.

(c) Assertive outreach defined as the ACT team having knowledge of what is happening with an individual. This occurs in either locating the individual or acting quickly and decisively when action is called for, while increasing client independence. This is done on behalf of the client, and can comprise only five percent per individual of total service time per month.

- (d) Group encounters defined by the following types:
- (i) Basic living skills development;
 - (ii) Psychosocial skills training;
 - (iii) Peer groups; or
 - (iv) Wellness and recovery groups.

(3) The ACT therapy model is based on empirical data and evidence-based interventions that target specific behaviors with an individualized treatment plan for the eligible recipient. Specialized therapeutic and rehabilitative interventions falling within the fidelity of the ACT model are used to address specific areas of need, such as experiences of repeated hospitalization or incarcerations, severe problems completing activities of daily living and individuals who have a significant history of involvement in behavioral health services.

C. Identified population:

(1) ACT services are provided to an eligible recipient aged 18 and older whose diagnosis or diagnoses meet the criteria of serious mental illness (SMI) with a special emphasis on psychiatric disorders, including schizophrenia, schizoaffective disorder, bipolar disorder or psychotic depression for individuals who have severe problems completing activities of daily living, who have a significant history of involvement in behavioral health services and who have experienced repeated hospitalizations or incarcerations due to mental illness.

(2) ACT services can also be provided to eligible individuals 15 to 30 years of age who are within the first two years of their first episode of psychosis.

(3) A co-occurring diagnosis of substance abuse shall not exclude an eligible recipient from ACT services.

D. Covered services:-

ACT is a voluntary medical, comprehensive case management and psychosocial intervention program provided on the basis of principles covered in the BH policy and billing manual.

E. Non-covered

services: ACT services are subject to the limitations and coverage restrictions that exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for MAD general

non-covered behavioral health services. MAD does not cover other psychiatric, mental health nursing, therapeutic, non-intensive outpatient substance abuse or crisis services when billed in conjunction with ACT services to an eligible recipient, except for medically necessary medications and hospitalizations. Psychosocial rehabilitation services can be billed for a six-month period for transitioning levels of care, but must be identified as a component of the treatment plan.

F. Reimbursement:

ACT agencies must submit claims for reimbursement on the CMS-1500 claim form or its successor. See Subsection H of 8.321.2.9 for MAD general reimbursement requirements. [8.321.2.13 NMAC - Rp 8.321.2.12 NMAC, 1/1/2020]

8.321.2.14 BEHAVIORAL HEALTH PROFESSIONAL SERVICES FOR SCREENINGS, EVALUATIONS, ASSESSMENTS AND THERAPY:

MAD covers validated screenings for high risk conditions in order to provide prevention or early intervention. Brief interventions or the use of the treat first clinical model may be billed with a provisional diagnosis for up to four encounters. After four encounters, if continuing treatment is required, a diagnostic evaluation must be performed, and subsequent reimbursement is based on the diagnosis and resulting service and treatment plan. See the BH policy and billing manual for a description of the treat first clinical model.

A. Psychological, counseling and social work: These services are diagnostic or active treatments with the intent to reasonably improve an eligible recipient’s physical, social, emotional and behavioral health or substance abuse condition. Services are provided to an eligible recipient whose condition or functioning can be expected to improve with these interventions. Psychological, counseling and social work services are performed by licensed psychological, counseling and social

work practitioners acting within their scope of practice and licensure (see Subsections B through E of 8.321.2.9 NMAC). These services include, but are not limited to assessments that appraise cognitive, emotional and social functioning and self-concept. Therapy includes planning, managing and providing a program of psychological services to the eligible recipient meeting a current DSM or ICD behavioral health diagnosis and may include consultation with his or her family and other professional staff.

B. An assessment as described in the BH policy and billing manual, must be signed by the practitioner operating within his or her scope of licensure (see Subsection B of 8.321.2.9 NMAC). A non-independently licensed behavioral health practitioner must have an independently licensed behavioral health practitioner review and sign the assessment with a diagnosis. Based on the eligible recipient’s current assessment, his or her treatment file must document the extent to which his or her treatment goals are being met and whether changes in direction or emphasis of the treatment are needed. See Subsection K of 8.321.2.9 NMAC for detailed description of the required eligible recipient file documentation.

C. Outpatient therapy services (individual, family and group) includes planning, managing, and providing a program of psychological services to the eligible recipient with a diagnosed behavioral health disorder, and may include consultation with his or her family and other professional staff with or without the eligible recipient present when the service is on behalf of the recipient. See the BH policy and billing manual for detailed requirements of service plans and treatment plans. [8.321.2.14 NMAC - Rp, 8.321.2.22 NMAC, 1/1/2020]

8.321.2.15 BEHAVIORAL HEALTH RESPITE CARE (Managed Care Organization (MCO Only)):

As part of centennial care’s comprehensive service system,

behavioral health (BH) respite service is for short-term direct care and supervision of the eligible recipient in order to afford the parent(s) or caregiver a respite for their care of the recipient and takes place in the recipient’s home or another setting.

A. Eligible providers and practitioners:

(1) Provider types:

- (a)** treatment foster care home;
- (b)** core service agency; and
- (c)** behavioral health agency.

(2)

Practitioners:

- (a)** Supervisor:
 - (i)** bachelor’s degree and three years’ experience working with the target population;
 - (ii)** supervision activities include a minimum of two hours per month individual supervision covering administrative and case specific issues, and two additional hours per month of continuing education in behavioral health respite care issues, or annualized respite provider training;

- (iii)** access to on call crisis support available 24-hours a day; and
- (iv)** supervision by licensed practitioners must be in accordance with their respective licensing board regulations.

(b)

Respite care staff:

- (i)** minimum three years’ experience working with the target population;
- (ii)** pass all criminal records and background checks for all persons residing in the home over 18;
- (iii)** possess a valid driver’s license, vehicle registration and insurance, if transporting member;
- (iv)** CPR and first aid; and

(v) documentation of behavioral health orientation, training and supervision as defined in the BH policy and billing manual.

B. Coverage criteria:

The provider agency will assess the situation and, with the caregiver, recommend the appropriate setting for respite. BH respite services may include a range of activities to meet the social, emotional and physical needs identified through the service or treatment plan, and documented in the treatment record. These services may be provided for a few hours during the day or for longer periods of time involving overnight stays. BH respite, while usually planned, can also be provided in an emergency or unplanned basis.

C. Identified

population:

(1) Members up to 21 years of age diagnosed with a severe emotional disturbance (SED), as defined by the state of New Mexico who reside with the same primary caregivers on a daily basis; or

(2) Youth in protective services custody whose placement may be at risk whether or not they are diagnosed with SED.

D. Non-covered

services:

(1) 30 days or 720 hours per year at which time prior authorization must be acquired for additional respite care;

(2) May not be billed in conjunction with the following medicaid services:

(a) treatment foster care;

(b) group home;

(c) residential services;

(d) inpatient treatment.

(3) Non-enrolled siblings of a child receiving BH respite services are not eligible for BH respite benefits; and

(4) Cost of room and board are not included as part of respite care.

[8.321.2.15 NMAC - N, 1/1/2020]

8.321.2.16 BEHAVIOR

MANAGEMENT SKILLS

DEVELOPMENT SERVICES:

To help an eligible recipient under 21 years of age who is in need of behavior management intervention receive services, MAD pays for behavior management services (BMS) as part of the EPSDT program and when the need for BMS is identified in a tot to teen health check screen or other diagnostic evaluation (see 42 CFR Section 441.57). BMS services are designed to provide highly supportive and structured therapeutic behavioral interventions to maintain the eligible recipient in his or her home or community. BMS assists in reducing or preventing inpatient hospitalizations or out-of-home residential placement of the eligible recipient through use of teaching, training and coaching activities designed to assist him or her in acquiring, enhancing and maintaining the life, social and behavioral skills needed to function successfully within his or her home and community settings. BMS is provided as part of a comprehensive approach to treatment and in conjunction with other services as indicated in the eligible recipient's comprehensive behavioral health treatment or service plan. BMS is not provided as a stand-alone service, but delivered as part of an integrated plan of services to maintain eligible recipients in their communities as an alternative to out-of-home services.

A. Eligible providers:

An agency must be certified by CYFD to provide BMS services. See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

B. Coverage criteria:

MAD reimburses for behavior management services specified in the eligible recipient's individualized treatment plan which are designed to improve his or her performance in targeted behaviors, reduce emotional and behavioral episodic events, increase social skills and enhance behavioral skills through a regimen of positive intervention and reinforcement.

(1)

Implementation of the eligible recipient's BMS treatment plan, which includes crisis planning, must be based on a clinical assessment that includes identification of skills deficits that will benefit from an integrated program of therapeutic services. A detailed description of required elements of the assessment and treatment plan are found in the BH policy and billing manual.

(2) 24-hour

availability of appropriate staff or implementation of crisis plan, which may include referral, to respond to the eligible recipient's crisis situations.

(3)

Supervision of behavioral management staff by an independent level practitioner is required for this service (8.321.2.9 NMAC). Policies governing supervisory responsibilities are detailed in the BH policy and billing manual. The supervisor must ensure that:

(a)

a clinical assessment of the eligible recipient is completed upon admission into BMS. The clinical assessment identifies the need for BMS as medically necessary to prevent inpatient hospitalizations or out-of-home residential placement of the eligible recipient;

(b)

the assessment is signed by the recipient or his or her parent or legal guardian; and

(c)

the BMS worker receives documented supervision for a minimum of two hours per month dependent on the complexity of the needs presented by recipients and the supervisory needs of the BMS worker.

(4) An

eligible recipient's treatment plan must be reviewed at least every 30 calendar days after implementation of the comprehensive service plan. The BMS, in partnership with the client and family as well as all other relevant treatment team members such as school personnel, juvenile probation officer (JPO), and guardian ad litem (GAL), shall discuss progress made over time relating to the BMS

service goals. If the BMS treatment team assesses the recipient’s lack of progress over the last 30 days, the treatment plan will be amended as agreed upon during the treatment team meeting. Revised BMS treatment plans will be reviewed and approved by the BMS supervisor, which must be documented in the recipient’s file.

C. Identified

population: In order to receive BMS services, an eligible recipient must be under the age of 21 years, be diagnosed with a behavioral health condition and:

- (1) be at-risk for out-of-home residential placement due to unmanageable behavior at home or within the community;
- (2) need behavior management intervention to avoid inpatient hospitalizations or residential treatment; or
- (3) require behavior management support following an institutional or other out-of-home placement as a transition to maintain the eligible recipient in his or her home and community.
- (4) either the need for BMS is NOT listed on an individualized education plan (IEP), or it is listed in the supplementary aid & service section of the IEP.

D. Non-covered

services: BMS services are subject to the limitations and coverage restrictions which exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for general non-covered MAD behavioral health services or activities. MAD does not cover the following specific services billed in conjunction with BMS services:

- (1) activities which are not designed to accomplish the objectives in the BMS treatment plan;
- (2) services provided in residential treatment facilities; and
- (3) services provided in lieu of services that should be provided as part of the eligible recipient’s individual

educational plan (IEP) or individual family service plan (IFSP).

(4) BMS is not a reimbursable service through the medicaid school based service program.

E. Reimbursement:

A BMS agency must submit claims for reimbursement on the CMS-1500 claim form or its successor. See Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements and 8.302.2 NMAC. [8.321.2.16 NMAC - Rp 8.321.2.13 NMAC, 1/1/2020]

8.321.2.17 COGNITIVE ENHANCEMENT THERAPY (CET):

CET services provide treatment service for an eligible recipient 18 years of age or older with cognitive impairment associated with the following serious mental illnesses: schizophrenia, bipolar disorder, major depression, recurrent schizoaffective disorder, or autism spectrum disorder. CET uses an evidence-based model to help eligible recipients with these conditions improve their processing speed, cognition, and social cognition. Any CET program must be approved by the behavioral health services division (BHSD) and ensure that treatment is delivered with fidelity to the evidence-based model.

A. Eligible providers:

Services may only be delivered through a MAD approved agency after demonstrating that the agency meets all the requirements of CET program services and supervision.

- (1) The following types of agencies are eligible to be reimbursed for providing CET services once gaining a letter of approval from BHSD:
 - (a) a CMHC;
 - (b) a FQHC;
 - (c) an IHS facility;
 - (d) a PL 93-638 tribal facility;
 - (e) a CSA;
 - (f) a CLNM health home; and

(g)

a behavioral health agency with a BHSD supervisory certificate.

(2) CET

services are provided through an integrated interdisciplinary approach by staff with expertise in the mental health condition being addressed and have received training from a state approved trainer. Staff can include independently licensed behavioral health practitioners, non-independently licensed behavioral health practitioners, RNs, or CSWs. For every CET cohort of eligible recipients, there must be two practitioners who have been certified in the evidence-based practice by a state approved trainer or training center. The agency shall retain documentation of the staff that has been trained. The size of each cohort who receives CET must conform to the evidence-based practice (EBP) model in use.

(3) The agency

must hold an approval letter issued by BHSD certifying that the staff have participated in an approved training or have arranged to participate in training and have supervision by an approved trainer prior to commencing services.

(4) Weekly

required participation in hourly fidelity monitoring sessions with a certified CET trainer for all providers delivering CET who have not yet received certification.

B. Covered services:

(1) CET

services include:

(a)

weekly social cognition groups with enrollment according to model fidelity;

(b)

weekly computer skills groups with enrollment according to model fidelity;

(c)

weekly individual face-to-face coaching sessions to clarify questions and to work on homework assignments;

(d)

initial and final standardized assessments to quantify social-

cognitive impairment, processing speed, cognitive style; and

(e) individual treatment planning.

(2) The duration of an eligible recipient's CET intervention is based on model fidelity. Each individual participating in CET receives up to three hours of group treatment and up to one hour of individual face-to-face coaching.

C. Identified

population: CET services are provided to an eligible adult recipient 18 years of age and older with cognitive impairment associated with the following serious mental illnesses:

- (1) schizophrenia;
- (2) bipolar disorder;
- (3) major depression, recurrent;
- (4) schizoaffective disorder; or
- (5) autism spectrum disorder.

D. Non-covered

services:

(1) CET services are subject to the limitation and coverage restrictions which exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for general non-covered MAD behavioral health services and 8.310.2 NMAC for MAD general non-covered services.

(2) MAD does not cover the CET during an acute inpatient stay.

E. Reimbursement:

See subsection H of 8.321.2.9 NMAC for MAD behavioral health general reimbursement.

(1) For CET services, the agency must submit claims for reimbursement on the CMS-1500 claim form or its successor.

(2) Core CET services are reimbursed through a bundled rate. Medications and other mental health therapies are billed and reimbursed separately from the bundled rate.

(3) CET services furnished by a CET team

member are billed by and reimbursed to a MAD CET agency whether the team member is under contract with or employed by the CET agency.

(4) CET services not provided in accordance with the conditions for coverage as specified in 8.321.2.9 NMAC are not a MAD covered service and are subject to recoupments.

(5) Billing instructions for CET services are detailed in the BH policy and billing manual.

[8.321.2.17 NMAC - N, 1/1/2020]

8.321.2.18 COMPREHENSIVE COMMUNITY SUPPORT SERVICES (CCSS): To help a New Mexico eligible recipient receive medically necessary services, MAD pays for covered CCSS.

This culturally sensitive service coordinates and provides services and resources to an eligible recipient and his or her family necessary to promote recovery, rehabilitation and resiliency. CCSS identifies and addresses the barriers that impede the development of skills necessary for independent functioning in the eligible recipient's community, as well as strengths that may aid the eligible recipient and family in the recovery or resiliency process.

A. Eligible providers and practitioners:

(1) In addition to the requirements of Subsections A and B of 8.321.2.9 NMAC, in order to be eligible to be reimbursed for providing CCSS services, an agency must be:

- (a) a FQHC;
- (b) an IHS hospital or clinic;
- (c) a PL 93-638 tribally operated hospital or clinic;
- (d) a MAD enrolled CSA;
- (e) a MAD enrolled behavioral health agency with a supervisory certificate;
- (f) a MAD designated CareLink NM health home; or

(g) a CMHC.

(2) To provide CCSS services, a provider must receive CCSS training through the state or state approved trainer and attest that they have received this training when contacting the state's fiscal agent to add the specialty service 107, CCSS to their existing enrollment in medicaid. The children, youth and families department (CYFD) will provide background checks for CCSS direct service and clinical staff for child/youth CCSS programs.

(3) Clinical services and supervision by licensed behavioral health practitioners must be in accord with their respective licensing board regulations:

- (a) Minimum staff qualifications for the community support worker (CSW):
 - (i) must be at least 18 years of age; and
 - (ii) hold a bachelor's degree in a human services field from an accredited university and have one year of relevant experience with the target population; or
 - (iii) hold an associate's degree and a minimum of two years of experience working with the target population; or
 - (iv) hold an associate's degree in approved curriculum in behavioral health coaching; no experience necessary; or
 - (v) have a high school diploma or equivalent and a minimum of three years of experience working with the target population; or
 - (vi) hold a certification from the New Mexico credentialing board for behavioral health professionals as a certified peer support worker (CPSW) or as a certified peer family specialist (CPFS).
- (b) Minimum staff qualifications for certified peer support workers (CPSW):
 - (i) must be 18 years of age or older; and

<p>have a high school diploma or equivalent; and</p>	<p>(ii) have one year demonstrated supervisory experience; and</p>	<p>B. Coverage criteria: (1) When</p>
<p>be self-identified as a current or former consumer of mental health or substance abuse services, and have at least two years of mental health or substance abuse recovery; and</p>	<p>(iii) provide documented clinical supervision on a regular basis to the CSW, CPS and CFS. (4) Staff training requirements:</p>	<p>identifying a need for this service, if the provider agency is utilizing the "Treat First" clinical model, they may be placed in this service for up to four encounters without having had a psychiatric diagnostic evaluation with the utilization of a provisional diagnosis for billing purposes.</p>
<p>have received certification as a CPSW.</p>	<p>(iv) Minimum staff training requirements for a community support worker includes:</p>	<p>After four encounters, an individual must have a comprehensive needs assessment, a diagnostic evaluation, and a CCSS treatment plan. Further details related to the CCSS treatment plan can be accessed in the BH policy and billing manual.</p>
<p>(c) Minimum staff qualifications for certified family support workers (CFSW):</p>	<p>(i) an initial training comprised of 20 hours of documented education within the first 90 days of employment drawn from an array of areas documented in the BH policy and billing manual;</p>	<p>(2) A</p>
<p>must be 18 years of age or older; and</p>	<p>(ii) documentation of ongoing training comprised of 20 hours is required of a CSW every year, after the first year of hire, with content of the education based upon agency assessment of staff need.</p>	<p>maximum of 16 units per each admission or discharge may be billed concurrently with:</p>
<p>have a high school diploma or equivalent; and</p>	<p>(iii) have personal experience navigating any of the child/family-servicing systems or advocating for family members who are involved with the child/family behavioral health systems. Must also have an understanding of how these systems operate in New Mexico; and</p>	<p>(a) accredited residential treatment center (ARTC);</p>
<p>have received certification as a CFSW or CPSW with a family support specialty.</p>	<p>(iv) the same 20 hours of documented training or continuing education as required for the CCSS community support worker;</p>	<p>(b) residential treatment center (RTC);</p>
<p>(d) Minimum staff qualifications for the CCSS program supervisor:</p>	<p>(i) an attestation of training related to providing clinical supervision of non-clinical staff.</p>	<p>(c) group home service;</p>
<p>must hold a bachelor's degree in a human services field from an accredited university; and</p>	<p>(ii) Documentation requirements: In addition to the standard client record documentation requirements for all services, the following is required for CCSS:</p>	<p>(d) inpatient hospitalization;</p>
<p>have four years relevant experience in the delivery of case management or CCSS with the target population; and</p>	<p>(5) The clinical supervisor and the CCSS program supervisor may be the same individual.</p>	<p>(e) treatment foster care (TFC); or</p>
<p>have one year demonstrated supervisory experience.</p>	<p>(6) Documentation requirements: In addition to the standard client record documentation requirements for all services, the following is required for CCSS:</p>	<p>(f) transitional living services.</p>
<p>(e) Minimum staff qualifications for the clinical supervisor:</p>	<p>(a) case notes identifying all activities and location of services;</p>	<p>C. Covered services:</p>
<p>must be a licensed independent practitioner (i.e. psychiatrist, psychologist, LISW, LPCC, LMFT), psychiatrically certified clinical nurse specialist or clinical nurse practitioner practicing under the scope of their NM licensure; and</p>	<p>(b) duration of service span (e.g., 1:00 p.m.-2:00 p.m.); and</p>	<p>The purpose of CCSS is to provide an eligible recipient and his or her family with the services and resources necessary to promote recovery, rehabilitation and resiliency. Community support services address goals specifically in the following areas of the eligible recipient's activities: independent living; learning; working; socializing and recreation. CCSS consists of a variety of interventions, based on coaching and addressing barriers that impeded the development of skills necessary for independent functioning in the community. Community support services also include assistance with identifying and coordinating services and supports identified in an individual's service plan; supporting an individual and family in crisis situations; and providing individual interventions to develop or enhance</p>
<p>have received certification as a CFSW or CPSW with a family support specialty.</p>	<p>(c) description of the service provided with reference to the CCSS treatment plan and related goals.</p>	

an individual's ability to make informed and independent choices.

D. Identified

population:

(1) CCSS is provided to an eligible recipient under 21 years who meets the NM state criteria for severe emotional disturbance (SED)/neurobiological/behavioral disorders; and

(2) CCSS is provided to an eligible recipient 21 years and older whose diagnosis or diagnoses meet the NM state criteria of serious mental illness (SMI) and for an eligible recipient with a diagnosis that does not meet the criteria for SMI, but for whom time-limited CCSS would support his or her recovery and resiliency process; and

(3) Recipients with a moderate to severe substance use disorder (SUD) according to the current DSM V or its successor; and

(4) Recipients with a co-occurring disorder (mental illness/substance use) or dually diagnosed with a primary diagnosis of mental illness.

E. Non-covered

services: CCSS is subject to the limitations and coverage restrictions which exist for other MAD services. See 8.310.2 NMAC for a detailed description of MAD general non-covered services and Subsection G of 8.321.2.9 NMAC for all non-covered MAD behavioral health services or activities. Specifically, CCSS may not be billed in conjunction with multi-systemic therapy (MST) or ACT services, or resource development by New Mexico corrections department (NMCD).

F. Reimbursement:

CCSS agencies must submit claims for reimbursement on the CMS-1500 claim form or its successor; see 8.302.2 NMAC. Once enrolled, a provider receives instructions on how to access documentation, billing, and claims processing information. General reimbursement instructions are found in this rule under Subsection H of 8.321.2.9 NMAC. Billing instructions for CCSS are found in the BH policy and billing

manual.
[8.321.2.18 NMAC - Rp, 8.321.2.14 NMAC, 1/1/2020]

8.321.2.19 CRISIS INTERVENTION SERVICES:

MAD pays for community-based crisis intervention services which are immediate, crisis oriented services designed to ameliorate or minimize an acute crisis episode or to prevent inpatient psychiatric hospitalization or medical detoxification. Services are provided to eligible recipients who have suffered a breakdown of their normal strategies or resources and who exhibit acute problems or disturbed thoughts, behaviors, or moods which could threaten the safety of self or others. MAD covers four types of crisis services: telephone crisis services; face-to-face crisis intervention in a clinic setting; mobile crisis services; and outpatient crisis stabilization services.

A. Coverage criteria:

(1) Telephone crisis services:

(a) Must provide 24-hour, seven day-a-week telephone services to eligible recipients that are in crisis and to callers who represent or seek assistance for persons in a mental health crisis;

(b) The establishment of a toll-free number dedicated to crisis calls for the identified service area;

(c) Assurance that a backup crisis telephone system is available if the toll-free number is not accessible;

(d) Assurance that calls are answered by a person trained in crisis response as described in the BH policy and billing manual;

(e) Processes to screen calls, evaluate crisis situation, and provide counseling and consultation to crisis callers are documented and implemented;

(f) Assurance that face-to-face intervention services are available immediately if clinically indicated

either by the telephone service or through memorandums of understanding with referral sources;

(g) Provision of a toll-free number to active clients and their support; and

(h) A crisis log documenting each phone call must be maintained and include:

- (i) date, time and duration of call;
- (ii) name of individual calling;
- (iii) responder handling call;
- (iv) description of crisis; and
- (v) intervention provided, (e.g. counseling, consultation, referral, etc.).

(2) Face-to-face clinic crisis services:

(a) The provider shall make an immediate assessment for purposes of developing a system of triage to determine urgent or emergent needs of the person in crisis. (Note: The immediate assessment may have already been completed as part of a telephone crisis response.)

(b) Within the first two hours of the crisis event, the provider will initiate the following activities:

- (i) immediately conduct the crisis assessment;
- (ii) protect the individual (possibly others) and de-escalate the situation;
- (iii) determine if a higher level of service or other supports are required and arrange, if applicable.

(c) Follow-up. Initiate telephone call or face-to-face follow up contact with individual within 24 hours of initial crisis.

(3) Mobile crisis intervention services: When mobile crisis is provided, the response will include a two member team capable of complying with the initial crisis requirements described in 8.321.2.19 NMAC.

<p>(4) Crisis stabilization services: Outpatient services for up to 24 hour stabilization of crisis conditions which may, but do not necessarily, include ASAM level two withdrawal management, and can also serve as an alternative to the emergency department or police department. Eligible population is 14 years and older.</p>	<p>(i) 20 hours of crisis intervention training that addresses the developmental needs of the full age span of the target population by a licensed independent mental health professional with two years crisis work experience; and</p> <p>(ii) 10 hours of crisis related continuing education annually.</p>	<p>(ii) community mental health center (CMHC);</p> <p>(iii) federally qualified health center (FQHC);</p> <p>(iv) IHS and tribal 638;</p> <p>(v) hospital outpatient clinics;</p>
<p>B. Eligible providers and practitioners:</p>	<p>(2) Face-to-face clinic crisis services:</p>	<p>(vi) behavioral health agency with supervisory certificate (BHA);</p>
<p>(1) Telephone crisis services (Independently licensed BH practitioner):</p>	<p>(a) core service agency (CSA);</p> <p>(b) community mental health center (CMHC);</p>	<p>(vii) political subdivision of the state of NM with supervisory certificate;</p>
<p>(a) Individual crisis workers who are covering the crisis telephone must meet the following:</p>	<p>(c) CareLink NM health home (CLNM HH);</p>	<p>(viii) opioid treatment program within a methadone clinic with supervisory certificate; and</p>
<p>(i) CPSW with one year work experience with individuals with behavioral health condition;</p>	<p>(d) federally qualified health center (FQHC);</p>	<p>(ix) agencies contracted with an eligible provider agency.</p>
<p>(ii) Bachelor level community support worker employed by the agency with one year work experience with individuals with a behavioral health condition;</p>	<p>(e) IHS and tribal 638;</p> <p>(f) hospital outpatient clinics;</p>	<p>(b) Staffing: must include all of the below positions and must be adequate to serve the expected population, but not less than:</p>
<p>(iii) RN with one year work experience with individuals with behavioral health condition;</p>	<p>(g) behavioral health agency with supervisory certificate (BHA);</p> <p>(h) political subdivision of the state of NM with supervisory certificate;</p>	<p>(i) one registered nurse (RN) licensed by the NM board of nursing with experience or training in crisis triage and managing intoxication and withdrawal management, if this service is provided during all hours of operation;</p>
<p>(iv) LMHC with one year work experience with individuals with behavioral health condition;</p>	<p>(i) opioid treatment program within a methadone clinic with supervisory certificate; and</p>	<p>(ii) one regulation and licensing department (RLD) master’s level licensed mental health professional on-site during all hours of operation;</p>
<p>(v) LMSW with one year work experience with individuals with behavioral health condition; or</p>	<p>(j) agencies contracted with an eligible provider agency.</p>	<p>(iii) certified peer support worker on-site or available for on-call response during all hours of operation;</p>
<p>(vi) Psychiatric physician assistant.</p>	<p>(3) Mobile crisis intervention services:</p>	<p>(iv) board certified physician or certified nurse practitioner licensed by the NM board of nursing either on-site or on call; and</p>
<p>(b) Supervision by a:</p>	<p>(a) Services must be delivered by licensed behavioral health practitioners employed by a mental health or substance abuse provider organization as described above.</p>	<p>(v) at least one staff trained in basic cardiac life support (BCLS), the use of the automated external defibrillator (AED) equipment, and first aid shall be on duty at all times.</p>
<p>(i) licensed independent behavioral health practitioner; or</p>	<p>(b) One of the team members may be a certified peer support or family peer support worker.</p>	
<p>(ii) behavioral health clinical nurse specialist; or</p>		
<p>(iii) psychiatric certified nurse practitioner; or</p>	<p>(4) Crisis stabilization services:</p>	
<p>(iv) psychiatrist.</p>	<p>(a) Agencies:</p>	
<p>(c) Training:</p>	<p>(i) core service agency (CSA);</p>	

<p>C. Covered services: (1) Telephone crisis services:</p>	<p>(iv) psychological and psychiatric consultation;</p>	<p>8.321.2.20 CRISIS TRIAGE CENTER: MAD pays for a set of services, either outpatient only or including residential, authorized by 2014 NM HB 212 Crisis Triage Center (CTC) to eligible adults and youth 14 years of age and older, to provide voluntary stabilization of behavioral health crises including emergency mental health evaluation and care. The effective date will be January 1, 2019, or as otherwise approved by the centers for medicare and medicaid services (CMS).</p>
<p>(a) The screening of calls, evaluation of the crisis situation and provision of counseling and consultation to the crisis callers.</p>	<p>(v) conducting or arranging for appropriate laboratory and toxicology test;</p>	<p></p>
<p>(b) Referrals to appropriate mental health professions, where applicable.</p>	<p>(vi) assistance in accessing transportation services for recipients who lack safe transportation.</p>	<p></p>
<p>(c) Maintenance of telephone crisis communication until a face-to-face response occurs, as applicable.</p>	<p>(b) Crisis stabilization includes but is not limited to:</p>	<p></p>
<p>(2) Face-to-face clinic crisis services:</p>	<p>(i) crisis triage that involves making crucial determinations within several minutes about an individual's course of treatment;</p>	<p>A. Coverage criteria for CTCs which include residential care:</p>
<p>(a) crisis assessment;</p>	<p>(ii) screening and assessment;</p>	<p>(1) The CTC shall provide emergency screening, and evaluation services 24-hours a day, seven days a week and shall admit 24-hours a day seven days a week and discharge seven days a week;</p>
<p>(b) other screening, as indicated by assessment;</p>	<p>(iii) de-escalation and stabilization;</p>	<p></p>
<p>(c) brief intervention or counseling; and</p>	<p>(iv) brief intervention or psychological counseling;</p>	<p>(2) Readiness for discharge shall be reviewed in collaboration with the recipient every day;</p>
<p>(d) referral to needed resource.</p>	<p>(v) peer support; and</p>	<p></p>
<p>(3) Mobile crisis intervention services:</p>	<p>(vi) prescribing and administering medication, if applicable.</p>	<p>(3) An independently licensed mental health practitioner or non-independent mental health practitioner under supervision must assess each individual with the assessment focusing on the stabilization needs of the client;</p>
<p>(a) crisis assessment;</p>	<p>(c) Navigational services for individuals transitioning to the community include:</p>	<p></p>
<p>(b) other screening, as indicated by assessment;</p>	<p>(i) prescription and medication assistance;</p>	<p>(4) The assessment must include medical and mental health history and status, the onset of the illness, the presenting circumstances, risk assessment, cognitive abilities, communication abilities, social history and history of trauma;</p>
<p>(c) brief intervention or counseling; and</p>	<p>(ii) arranging for temporary or permanent housing;</p>	<p></p>
<p>(d) referral to needed resource.</p>	<p>(iii) family and natural support group planning;</p>	<p></p>
<p>(4) Crisis stabilization services:</p>	<p>(iv) outpatient behavioral health referrals and appointments; and</p>	<p>(5) A licensed mental health professional must document a crisis stabilization plan to address needs identified in the assessment which must also include criteria describing evidence of stabilization and either transfer or discharge criteria;</p>
<p>(a) Ambulatory withdrawal management includes:</p>	<p>(v) other services determined through the assessment process.</p>	<p></p>
<p>(i) evaluation, withdrawal management and referral services under a defined set of physician approved policies and clinical protocols. The physician does not have to be on-site, but available during all hours of operation;</p>	<p>D. Reimbursement: See Subsection H of 8.321.9 NMAC for MAD behavioral health general reimbursement requirements. See the BH policy and billing manual for reimbursement specific to crisis intervention services. [8.321.2.19 NMAC - N, 1/1/2020]</p>	<p>(6) The CTC identifies recipients at high risk of suicide or intentional self-harm, and subsequently engages these recipients through solution-focused and harm-reducing methods;</p>
<p>(ii) clinical consultation and supervision for bio-medical, emotional, behavioral, and cognitive problems;</p>	<p></p>	<p></p>
<p>(iii) comprehensive medical history and physical examination of recipient at admission;</p>	<p></p>	<p></p>

(7) Education and program offerings are designed to meet the stabilization and transfer of recipients to a different level of care;

(8) The charge nurse, in collaboration with a behavioral health practitioner, shall make the determination as to the time and manner of transfer to ensure no further deterioration of the recipient during the transfer between facilities, and shall specify the benefits expected from the transfer in the recipient's record;

(9) The facility shall develop policies and procedures addressing risk assessment and mitigation including, but not limited to: assessments, crisis intervention plans, treatment, approaches to supporting, engaging and problem solving, staffing, levels of observation and documentation. The policies and procedures must prohibit seclusion and address physical restraint, if used, and the facility's response to clients that present with imminent risk to self or others, assaultive and other high-risk behaviors;

(10) Use of seclusion is prohibited;

(11) The use of physical restraint must be consistent with federal and state laws and regulation;

(12) Physical restraint, as defined in the BH policy and billing manual, shall be used only as an emergency safety intervention of last resort to ensure the physical safety of the client and others, and shall be used only after less intrusive or restrictive interventions have been determined to be ineffective;

(13) If serving both youth and adult populations, the service areas must be separate; and

(14) If an on-site laboratory is part of services, the appropriate clinical laboratory improvement amendments (CLIA) license must be obtained.

B. Coverage criteria for CTCs which are outpatient only:

(1) The outpatient CTC shall provide emergency screening, and evaluation

services during business hours of operation; and

(2) Paragraph (3) through (14) of Subsection A of 8.321.2.20 NMAC are conditions of coverage for outpatient only services.

C. Eligible providers and practitioners:

(1) A provider agency licensed through the department of health and certified by the human services department/behavioral health services division as a crisis triage center.

(2) Practitioners must be contracted or employed by the provider agency as part of its crisis triage center service delivery.

(3) All providers must be licensed in New Mexico for services performed in New Mexico. For services performed by providers licensed outside of New Mexico, a provider's out-of-state license may be accepted in lieu of licensure in New Mexico if the out-of-state licensure requirements are similar to those of the state of New Mexico.

(4) For services provided under the public health service including IHS, providers must meet the requirements of the public health service corps.

(5) The facility shall maintain sufficient staff including supervision and direct care and mental health professionals to provide for the care of residential and non-residential clients served by the facility, based on the acuity of client needs.

(6) The following individuals and practitioners must be contracted or employed by the provider agency as part of its crisis triage center service delivery:

(a) An on-site administrator which can be the same person as the clinical director. The administrator is specifically assigned to crisis triage center service oversight and administrative responsibilities and:
(i) is experienced in acute mental health; and

(ii) is at least 21 years of age; and
(iii) holds a minimum of a bachelor's degree in the human services field; or
(iv) is a registered nurse (RN) licensed by the NM board of nursing with experience or training in acute mental health treatment.

(b) A full time clinical director that is:
(i) at least 21 years of age; and

(ii) is a licensed independent mental health practitioner or certified nurse practitioner or clinical nurse specialist with experience and training in acute mental health treatment and withdrawal management services, if withdrawal management services are provided.

(c) A charge nurse on duty during all hours of operation under whom all services are directed, with the exception of the physician's and who is:

(i) at least 18 years of age; and

(ii) a RN licensed by the NM board of nursing with experience in acute mental health treatment and withdrawal management services, if withdrawal management services are provided.

(d) A regulation and licensing department (RLD) master's level licensed mental health practitioner.

(e) Certified peer support workers (CPSW) holding a certification by the New Mexico credentialing board for behavioral health professionals as a certified peer support worker staffed appropriate to meet the client needs 24 hours a day 7 days a week.

(f) An on call physician during all hours of operation who is a physician licensed to practice medicine (MD) or osteopathy (DO), or a licensed certified nurse practitioner (CNP), or a licensed clinical nurse specialist (CNS) with behavioral health experience as described in 8.310.3 NMAC.

(g) A part time psychiatric consultant or prescribing psychologist, hours determined by size of center, who is a physician (MD or DO) licensed by the board of medical examiners or board of osteopathy and is board eligible or board certified in psychiatry as described in 8.321.2 NMAC, or a prescribing psychologist licensed by the board of psychologist examiners or psychiatric certified nurse practitioner as licensed by the board of nursing. These services may be provided through telehealth.

(h) At least one staff trained in basic cardiac life support (BCLS), the use of the automated external defibrillator (AED) equipment, and first aid shall be on duty at all times.

D. Identified population:

(1) An eligible recipient is 18 years of age and older who meets the crisis triage center admission criteria if the CTC is an adults only agency.

(2) If serving youth, an eligible recipient is 14 years through 17 years.

(3) Recipients may also have other co-occurring diagnoses.

(4) The CTC shall not refuse service to any recipient who meets the agency's criteria for services, or solely based on the recipient being on a law enforcement hold or living in the community on a court ordered conditional release.

E. Covered services:

(1) Comprehensive medical history and physical examination of recipient at admission;

(2) Development and update of the assessment and plan as described in the BH policy and billing manual;

(3) Crisis stabilization including, but not limited to:

(a) crisis triage that involves making crucial determinations within several minutes about an individual's course

of treatment;

(b) screening and assessment as described in the BH policy and billing manual;

(c) de-escalation and stabilization;

(d) brief intervention and psychological counseling;

(e) peer support.

(4) Ambulatory withdrawal management (non-residential) based on American society of addiction medicine (ASAM) 2.1 level of care includes:

(a) evaluation, withdrawal management and referral services under a defined set of physician approved policies and clinical protocols;

(b) clinical consultation and supervision for bio-medical, emotional, behavioral, and cognitive problems;

(c) psychological and psychiatric consultation; and

(d) other services determined through the assessment process.

(5) Clinically or medically monitored withdrawal management in residential setting, if included, not to exceed services described in level 3.7 of the current ASAM patient placement criteria.

(6) Prescribing and administering medication, if applicable.

(7) Conducting or arranging for appropriate laboratory and toxicology testing.

(8) Navigational services for individuals transitioning to the community when available include:

(a) prescription and medication assistance;

(b) arranging for temporary or permanent housing;

(c) family and natural support group planning;

(d) outpatient behavioral health referrals and appointments; and

(e) other services determined through the assessment process.

(9) Assistance in accessing transportation services for recipients who lack safe transportation.

F. Non-covered services: are subject to the limitations and coverage restrictions that exist for other MAD services. See 8.310.2 and 8.321.2 NMAC for general non-covered services. Specific to crisis triage services, the following apply:

(1) Acute medical alcohol detoxification that requires hospitalization as diagnosed by the agency physician or certified nurse practitioner.

(2) Medical care not related to crisis triage intervention services beyond basic medical care of first aid and CPR.

G. Prior authorization and utilization

review: All MAD services are subject to utilization review (UR) for medical necessity and program compliance. The provider agency must contact HSD or its authorized agents to request UR instructions. It is the provider agency's responsibility to access these instructions or ask for hard copies to be provided, to understand the information provided, to comply with the requirements, and to obtain answers to questions not covered by these materials.

(1) **Prior authorization:** Crisis triage services do not require prior authorization, but are provided as approved by the crisis triage center provider agency. However, other procedures or services may require prior authorization from MAD or its designee when such services require prior authorization for other MAD eligible recipients, such as inpatient admission. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process, including after payment has been made. It is the provider agency's

responsibility to contact MAD or its designee and review documents and instructions available from MAD or its designee to determine when prior authorization is necessary.

(2) Timing of

UR: A UR may be performed at any time during the service, payment, or post payment processes. In signing the MAD PPA, a provider agency agrees to cooperate fully with MAD or its designee in their performance of any review and agree to comply with all review requirements.

H. Reimbursement:

Crisis triage center services are reimbursed through an agency specific cost based bundled rate relative to type of services rendered. Billing details are provided in the BH policy and billing manual. [8.321.2.20 NMAC - N, 1/1/2020

8.321.2.21 DAY

TREATMENT: MAD pays for services provided by a day treatment provider as part of the EPSDT program for eligible recipients under 21 years of age (42 CFR section 441.57). The need for day treatment services (DTS) must be identified through an EPSDT tot to teen health check or other diagnostic evaluation. Day treatment services include eligible recipient and parent education, skill and socialization training that focus on the amelioration of functional and behavioral deficits. Intensive coordination and linkage with the eligible recipient's school or other child serving agencies is included. The goals of the service must be clearly documented utilizing a clinical model for service delivery and support.

A. Eligible providers:

An agency must be certified by CYFD to provide day treatment services in addition to meeting the general provider enrollment requirements in Subsections A and B of 8.321.2.9 NMAC.

B. Coverage criteria:

(1)

Day treatment services must be provided in a school setting or other community setting; however, there must be a distinct separation between

these services in staffing, program description and physical space from other behavioral health services offered.

(2)

A family who is unable to attend the regularly scheduled sessions at the day treatment facility due to transportation difficulties or other reasons may receive individual family sessions scheduled in the family's home by the day treatment agency.

(3)

Services must be based upon the eligible recipient's individualized treatment plan goals and should include interventions with a significant member of the family which are designed to enhance the eligible recipients' adaptive functioning in their home and community.

(4)

The certified DTS provider delivers adequate care and continuous supervision of the client at all times during the course of the client's DTS program participation.

(5)

24-hour availability of appropriate staff or implementation of crisis plan (which may include referral) to respond to the eligible recipient's crisis situation.

(6)

Only those activities of daily living and basic life skills that are assessed as a clinical problem should be addressed in the treatment plans and deemed appropriate to be included in the eligible recipient's individualized program.

(7)

Day treatment services are provided at a minimum of four hours of structured programming per day, two to five days per week based on acuity and clinical needs of the eligible recipient and his or her family as identified in the treatment plan.

C. Identified

population: MAD covers day treatment services for an eligible recipient under age 21 who:

(1)

is diagnosed with an emotional, behavioral, and neurobiological or substance abuse problem;

(2)

may be at high risk of out-of-home placement;

(3)

requires structured therapeutic services in order to attain or maintain functioning in major life domains of home, work or school; and

(4)

through an assessment process, has been determined to meet the criteria established by MAD or its designee for admission to day treatment services.

D. Covered services:

(1)

Day treatment services are non-residential specialized services and training provided during or after school, weekends or when school is not in session. Services include parent and eligible recipient education, and skills and socialization training that focus on the amelioration of functional and behavioral deficits. Intensive coordination and linkage with the eligible recipient's school or other child serving agencies are included. Other behavioral health services (e.g. outpatient counseling, ABA) may be provided in addition to the day treatment services when the goals of the service are clearly documented, utilizing a clinical model for service delivery and support.

(2)

The goal of day treatment is to maintain the eligible recipient in his or her home or community environment.

(3)

The service is designed to complement and coordinate with the eligible recipient's educational system.

(4)

Services must be identified in the treatment plan, including crisis planning, which is formulated on an ongoing basis by the treatment team. The treatment plan guides and records for each client: individualized therapeutic goals and objectives; individualized therapeutic services provided; and individualized discharge and aftercare plans. Treatment plan requirements are detailed in the BH policy and billing manual.

(5)

The following services must be furnished by a day treatment service agency to receive reimbursement from MAD:

(a) the assessment and diagnosis of the social, emotional, physical and psychological needs of the eligible recipient and his or her family for treatment planning ensuring that evaluations already performed are not unnecessarily repeated;

(b) development of individualized treatment and discharge plans and ongoing reevaluation of these plans;

(c) regularly scheduled individual, family, multifamily, group or specialized group sessions focusing on the attainment of skills, such as managing anger, communicating and problem-solving, impulse control, coping and mood management, chemical dependency and relapse prevention, as defined in the DTS treatment plan;

(d) family training and family outreach to assist the eligible recipient in gaining functional and behavioral skills;

(e) supervision of self-administered medication, as clinically indicated;

(f) therapeutic recreational activities that are supportive of the clinical objectives and identified in each eligible recipient's individualized treatment plan;

(g) 24-hour availability of appropriate staff or implementation of crisis plan, which may include referral, to respond to the eligible recipient's crisis situations;

(h) advance schedules are posted for structured and supervised activities which include individual, group and family therapy, and other planned activities appropriate to the age, behavioral and emotional needs of the client pursuant to the treatment plan.

E. Non-covered services: Day treatment services are subject to the limitations and coverage restrictions which exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for non-covered MAD behavioral health services or activities. MAD does not cover the

following specific services billed in conjunction with day treatment services:

(1) educational programs;

(2) pre-vocational training;

(3) vocational training which is related to specific employment opportunities, work skills or work settings;

(4) any service not identified in the treatment plan;

(5) recreation activities not related to the treatment plan;

(6) leisure time activities such as watching television, movies or playing computer or video games;

(7) transportation reimbursement for the therapist who delivers services in the family's home; or

(8) a partial hospitalization program and residential programs cannot be offered at the same time as day treatment services.

F. Prior authorization: See Subsection J of 8.321.2.9 NMAC for general behavioral health services prior authorization requirements. This service does not require prior authorization.

G. Reimbursement:

(1) All services described in Subsection D of 8.321.2.21 NMAC are covered in the bundled day treatment rate;

(2) Day treatment providers must submit claims for reimbursement on the CMS-1500 claim form or its successor. See Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements, see 8.302.2 NMAC. Once enrolled, a provider receives instructions on how to access documentation, billing and claims processing information. [8.321.2.21 NMAC - Rp, 8.321.2.15 NMAC, 1/1/2020]

8.321.2.22 FAMILY SUPPORT SERVICES (FSS) (MCO reimbursed only): Family

support services are community-based, face-to-face interactions with children, youth or adults and their family, available to managed care members only. Family support services enhance the member family's strengths, capacities, and resources to promote the member's ability to reach the recovery and resiliency behavioral health goals they consider most important.

A. Eligible providers:

(1) Family support services can only be delivered by:

(a) core service agency;

(b) CareLink NM health home;

(c) community mental health center;

(d) FQHC;

(e) IHS and tribal 638;

(f) a political subdivision of the state of New Mexico with supervisory certificate; or

(g) an opioid treatment program in a methadone clinic with supervisory certificate.

(2) Family support service providers and staff shall meet standards established by the state of NM and documented in the New Mexico BH policy and billing manual.

(3) Family support service staff and supervision by licensed behavioral health practitioners must be in accordance with their respective licensing board regulations or credentialing standards for peer support workers or family peer support workers.

(4) Minimum staff qualifications for peer support workers or family peer support workers includes maintenance of credentials as a peer support worker or family peer support worker in New Mexico.

(5) Minimum staff qualifications for the clinical supervisor:

(a) Must be a licensed independent practitioner (i.e., psychiatrist, psychologist, LISW, LPCC, LMFT, or psychiatrically certified nurse practitioner) practicing under the scope of their NM licensure;

(b) Have four years' relevant experience in the delivery of case management or comprehensive community support services or family support services with the target population;

(c) Have one year demonstrated supervisory experience; and

(d) Have completed both basic and supervisory training regarding family support services.

B. Identified population:

(1) Members with parents, family members, legal guardians, and other primary caregivers who are living with or closely linked to the member and engaged in the plan of care for the member.

(2) Members are young persons diagnosed with a severe emotional disturbance or adults diagnosed with serious mental illness as defined by the state of New Mexico.

C. Covered services:

(1) Minimum required family support services activities:

(a) review of the existing social history and other relevant information with the member and family;

(b) review of the existing service and treatment plans;

(c) identification of the member and family functional strengths and any barriers to recovery;

(d) participation in service planning and delivery with the member and family; and

(e) adherence to the applicable code of ethics.

(2) The specific services provided are tailored to the individual needs of the member and family according to the individual's treatment or service plan and include but are not limited to support needed to:

(a) prevent members from being placed into more restrictive setting; or

(b) quickly reintegrate the member to their home and local community; or

(c) direct the member and family towards recovery, resiliency, restoration, enhancement and maintenance of the member's functioning; or

(d) increase the family's ability to effectively interact with the member.

(3) Family support services focus on psycho-education, problem solving, and skills building for the family to support the member and may involve support activities such as:

(a) working with teams engaged with the member;

(b) engaging in service planning and service delivery for the member;

(c) identifying family strengths and resiliencies in order to effectively articulate those strengths and prioritize their needs;

(d) navigating the community-based systems and services that impact the member's life;

(e) identifying natural and community supports;

(f) assisting the member and family to understand, adjust to, and manage behavioral health crises and other challenges;

(g) facilitating an understanding of the options for treatment of behavioral health issues;

(h) facilitating an understanding of the principles and practices of recovery and resiliency; and

(i) facilitating effective access and use of the behavioral health service system to achieve recovery and resiliency.

(4)

Documentation requirements:

(a) notes related to all family support service interventions to include how and to what extent the activity promoted family support in relationship to the member's recovery and resilience goals and outcomes;

(b) any supporting collateral documentation.

D. Non-covered

services: This service may be billed only during the transition phases from these services:

(a) accredited residential treatment;

(b) residential treatment services;

(c) group home services;

(d) inpatient hospitalization;

(e) partial hospitalization;

(f) treatment foster care;

(g) transitional living services;

(h) crisis triage centers.

E. Reimbursement:

To help an eligible MCO member receive medically necessary services, the centennial care MCOs pay for family support services. [8.321.2.22 NMAC - N, 1/1/2020]

8.321.2.23 INPATIENT PSYCHIATRIC CARE IN FREESTANDING PSYCHIATRIC HOSPITALS AND PSYCHIATRIC UNITS OF ACUTE CARE HOSPITALS:

To assist the eligible recipient in receiving necessary mental health services, MAD pays for inpatient psychiatric care furnished in freestanding psychiatric hospitals as part of the EPSDT program (42 CFR 441.57). A freestanding psychiatric hospital (an inpatient facility that is not a unit in a general acute care hospital), with more than 16 beds

is an institution for mental disease (IMD) subject to the federal medicaid IMD exclusion that prohibits medicaid payment for inpatient stays for eligible recipients aged 22 through 64 years. Coverage of stays in a freestanding psychiatric hospital that is considered an IMD are covered only for eligible recipients under age 21 and over age 64. A managed care organization making payment to an IMD as an in lieu of service may pay for stays that do not exceed 15 days. For stays in an IMD that include a substance use disorder (SUD) refer to 8.321.2.24 NMAC, *Institution for Mental Diseases (IMD)*. However, for freestanding psychiatric hospitals, if the eligible recipient who is receiving inpatient services reaches the age of 21 years, services may until one of the following conditions is reached: until the date the eligible recipient no longer requires the services, or until the date the eligible recipient reaches the age of 22 years, whichever occurs first. The need for inpatient psychiatric care in a freestanding psychiatric hospital must be identified in the eligible recipient's tot to teen health check screen or another diagnostic evaluation furnished through a health check referral. Inpatient stays for eligible recipients in an inpatient psychiatric unit of a general acute care hospital are also covered. As these institutions are not considered to be IMDs, there are no age exclusions for their services.

A. Eligible providers:

A MAD eligible provider must be licensed and certified by the New Mexico DOH (or the comparable agency if in another state), comply with 42 CFR 456.201 through 456.245; and be accredited by at least one of the following:

- (1) the joint commission (JC);
- (2) the council on accreditation of services for families and children (COA);
- (3) the commission on accreditation of rehabilitation facilities (CARF); or
- (4) another accrediting organization recognized

by MAD as having comparable standards; and

(5) be an approved MAD provider before it furnishes services, see 42 CFR Sections 456.201 through 456.245.

B. Covered services:

MAD covers inpatient psychiatric hospital services which are medically necessary for the diagnosis or treatment of mental illness as required by the condition of the eligible recipient.

(1) These services must be furnished by eligible providers within the scope and practice of his or her profession (see 8.321.2.9 NMAC) and in accordance with federal regulations; see (42 CFR 441.156);

(2) Services must be furnished under the direction of a physician;

(3) In the case of an eligible recipient under 21 years of age these services:

(a) must be furnished under the direction of a board prepared, board eligible, board certified psychiatrist or a licensed psychologist working in collaboration with a similarly qualified psychiatrist; and

(b) the psychiatrist must conduct an evaluation of the eligible recipient, in person within 24 hours of admission.

(4) In the case of an eligible recipient under 12 years of age, the psychiatrist must be board prepared, board eligible, or board certified in child or adolescent psychiatry. The requirement for the specified psychiatrist for an eligible recipient under age 12 and an eligible recipient under 21 years of age can be waived when all of the following conditions are met:

(a) the need for admission is urgent or emergent and transfer or referral to another provider poses an unacceptable risk for adverse patient outcomes;

(b) at the time of admission, a psychiatrist who is board prepared, board eligible, or board certified in child

or adolescent psychiatry, is not accessible in the community in which the facility is located;

(c) there is another facility which has a psychiatrist who is board prepared, board eligible, board certified in child or adolescent psychiatry, but the facility, is not available or is inaccessible to the community in which the facility is located; and

(d) the admission is for stabilization only and a transfer arrangement to the care of a psychiatrist who is board prepared, board eligible, board certified in child or adolescent psychiatry, is made as soon as possible with the understanding that if the eligible recipient needs transfer to another facility, the actual transfer will occur as soon as the eligible recipient is stable for transfer in accordance with professional standards.

(5) A freestanding hospital must provide the following components to an eligible recipient to receive reimbursement:

(a) performance of necessary evaluations and psychological testing for the development of the treatment plan, while ensuring that evaluations already performed are not repeated;

(b) a treatment plan and all supporting documentation must be available for review in the eligible recipient's file;

(c) regularly scheduled structured behavioral health therapy sessions for the eligible recipient, group, family, or a multifamily group based on individualized needs, as specified in the eligible recipient's treatment plan;

(d) facilitation of age-appropriate skills development in the areas of household management, nutrition, personal care, physical and emotional health, basic life skills, time management, school, attendance and money management;

(e) assistance to an eligible recipient in his or her self administration of medication in compliance with state regulations, policies and procedures;

(f) appropriate staff available on a 24-hour basis to respond to crisis situations; determine the severity of the situation; stabilize the eligible recipient by providing support; make referrals, as necessary; and provide follow-up;

(g) a consultation with other professionals or allied caregivers regarding a specific eligible recipient;

(h) non-medical transportation services needed to accomplish treatment objectives;

(i) therapeutic services to meet the physical, social, cultural, recreational, health maintenance, and rehabilitation needs of the eligible recipient; and

(j) plans for discharge must begin upon admittance to the facility and be included in the eligible recipient's treatment plan. If the eligible recipient will receive services in the community or in the custody of CYFD, the discharge must be coordinated with those individuals or agencies responsible for post-hospital placement and services. The discharge plan must consider related community services to ensure continuity of care with the eligible recipient, his or her family, and school and community.

(6) MAD covers "awaiting placement days" when the MAD UR contractor determines that an eligible recipient under 21 years of age no longer meets this acute care criteria and determines that the eligible recipient requires a residential placement which cannot be immediately located. Those days during which the eligible recipient is awaiting placement to the step-down placement are termed awaiting placement days. Payment to the hospital for awaiting placement days is made at the average payment for accredited residential treatment centers plus five percent. A separate claim form must be submitted for awaiting placement days.

(7) A treatment plan must be developed by a team of professionals in consultation

with an eligible recipient, his or her parent, legal guardian or others in whose care the eligible recipient will be released after discharge. The plan must be developed within 72 hours of admission of the eligible recipient's admission to freestanding psychiatric hospitals. The interdisciplinary team must review the treatment plan at least every five calendar days. See the BH policy and billing manual for a description of the treatment team and plan.

C. Non-covered services: Services furnished in a freestanding psychiatric hospital are subject to the limitations and coverage restrictions which exist for other MAD services; see Subsection G of 8.321.2.9 NMAC for MAD general non-covered services. MAD does not cover the following specific services for an eligible recipient in a freestanding psychiatric hospital in the following situations:

- (1) conditions defined only by Z codes in the current version of the international classification of diseases (ICD) or the current version of DSM;
- (2) services in freestanding psychiatric hospital for an eligible recipient 22 years of age through 64, except as allowed in 8.321.2 NMAC;
- (3) services furnished after the determination by MAD or its designee has been made that the eligible recipient no longer needs hospital care;
- (4) formal educational or vocational services, other than those covered in Subsection B of 8.321.2.9 NMAC, related to traditional academic subjects or vocational training; MAD only covers non-formal education services if they are part of an active treatment plan for an eligible recipient under the age of 21 receiving inpatient psychiatric services; see 42 CFR Section 441.13(b); or
- (5) drugs classified as "ineffective" by the food and drug administration (FDA) drug evaluation.

D. Prior authorization and utilization

review: All MAD services are subject to utilization review for medical necessity, inspection of care, and program compliance. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made; see 8.310.2 and 8.310.3 NMAC.

(1) All inpatient services for an eligible recipient under 21 years of age in a freestanding psychiatric hospital require prior authorization from MAD or its designee. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

(2) Prior authorization of services does not guarantee that individuals are eligible for MAD services. Providers must verify that an individual is eligible for MAD services at the time services are furnished and through his or her inpatient stay and determine if the eligible recipient has other health insurance.

(3) A provider who disagrees with prior authorization request denials or other review decisions can request a re-review and a reconsideration; see 8.350.2 NMAC.

E. Reimbursement: A freestanding psychiatric hospital service provider must submit claims for reimbursement on the UB-04 claim form or its successor; see 8.302.2 NMAC. Once enrolled, providers receive instructions on how to access documentation, billing, and claims processing information.

(1) Reimbursement rates for New Mexico freestanding psychiatric hospital are based on the Tax Equity and Fiscal Responsibility Act (TEFRA) provisions and principles of reimbursement; see 8.311.3 NMAC. Covered inpatient services provided in a freestanding psychiatric hospital will be reimbursed at an interim rate established by HSD to equal or closely approximate the final payment rates that apply under the cost settlement TEFRA principles.

(2) If a provider is not cost settled, the

reimbursement rate will be at the provider’s cost-to-charge ratio reported in the provider’s most recently filed cost report prior to February 1, 2012. Otherwise, rates are established after considering available cost-to-charge ratios, payment levels made by other payers, and MAD payment levels for services of similar cost, complexity and duration.

(3)

Reimbursement rates for services furnished by a psychiatrist and licensed Ph.D. psychologist in a freestanding psychiatric hospital are contained in 8.311.3 NMAC. Services furnished by a psychiatrist and psychologist in a freestanding psychiatric hospital cannot be included as inpatient psychiatric hospital charges.

(4)

When services are billed to and paid by a MAD coordinated services contractor, the provider must also enroll as a provider with the MAD coordinated services contractor and follow that contractor’s instructions for billing and for authorization of services.

(5)

The provider agrees to be paid by a MCO at any amount mutually-agreed upon between the provider and MCO when the provider enters into contracts with MCO contracting with HSD for the provision of managed care services to an eligible recipient.

(a)

If the provider and the HSD contracted MCO are unable to agree to terms or fail to execute an agreement for any reason, the MCO shall be obligated to pay, and the provider shall accept, one hundred percent of the “applicable reimbursement rate” based on the provider type for services rendered under both emergency and non-emergency situations.

(b)

The “applicable reimbursement rate” is defined as the rate paid by HSD to the provider participating in the medical assistance programs administered by MAD and excludes disproportionate share hospital and medical education payments. [8.321.2.23 NMAC - Rp, 8.321.2.16 NMAC, 1/1/2020]

8.321.2.24 INSTITUTION FOR MENTAL DISEASES (IMD) FOR SUBSTANCE ABUSE:

IMD is defined as any facility with more than 16 beds that is primarily engaged in the delivery of psychiatric care or treating substance use disorders (SUD) that is not part of a certified general acute care hospital. The federal medicaid IMD exclusion generally prohibits payment to these providers for recipients aged 22 through 64. Contingent upon approval of a New Mexico state plan amendment and 1115 waiver, MAD covers inpatient hospitalization in an IMD for SUD diagnoses only without the 15-day limitation with criteria for medical necessity and based on ASAM admission criteria. The coverage may also include co-occurring behavioral health disorders with the primary SUD. If an MCO covers stays in an IMD for eligible recipients as an in lieu of service, the stay cannot exceed 15 days. For other approved IMD stays for eligible recipients under age 21 or over age 64, the number of days is determined by medical necessity as the age restriction for IMDs does not apply to ages under 21 or over 65. Also refer to 8.321.2.23 NMAC, *Inpatient Psychiatric Care in Freestanding Psychiatric Hospitals and Psychiatric Units of Acute Care Hospitals*.

A. Eligible recipients:

Adolescents and adults with a mental health or substance use disorder or co-occurring mental health and SUD.

B. Covered

services: Withdrawal management (detoxification) and rehabilitation.

C. Prior

authorization is required. Utilize the substance abuse and mental health services administration (SAMHSA) admission criteria for medical necessity.

D. Reimbursement:

An IMD is reimbursed according to the provisions in Subsection E of 8.321.2.23 NMAC. [8.321.2.24 NMAC - N, 1/1/2020]

8.321.2.25 INTENSIVE OUTPATIENT PROGRAM FOR SUBSTANCE USE DISORDERS (IOP):

MAD pays for time-limited

IOP services utilizing a multi-faceted approach to treatment for an eligible recipient who requires structure and support to achieve and sustain recovery. IOP must utilize a research and evidence-based model approved by the IOP interdepartmental council, and target specific behaviors with individualized behavioral interventions.

A. Eligible providers:

Services may only be delivered through a MAD approved agency after demonstrating that the agency meets all the requirements of IOP program services and supervision.

(1)

The following types of agencies are eligible to be reimbursed for providing IOP services once gaining approval by the interdepartmental council:

- (a)** a CMHC;
- (b)** a FQHC;
- (c)** an IHS facility;
- (d)** a PL 93-638 tribal facility;
- (e)** a MAD CSA;
- (f)** a CLNM health home;
- (g)** a behavioral health agency with a BHSD supervisory certificate; or
- (h)** an opioid treatment program in a methadone clinic with a BHSD supervisory certificate.

(2)

IOP services are provided through an integrated interdisciplinary approach including staff expertise in both addiction and mental health treatment. This team may have services rendered by non-independent practitioners under the direction of the IOP supervisor including LMSW, LMHC, LADAC, CADC, LSAA, and a master’s level psych associates.

(3)

Each IOP program must have a clinical supervisor. Both clinical services and supervision by licensed practitioners must be conducted in accordance with respective licensing board regulations.

An IOP clinical supervisor must meet all the following requirements:

(a) be licensed as a MAD approved independent practitioner; see Subsection C of 8.321.2.9 NMAC;

(b) have two years relevant experience with an IOP program or approved exception by the interdepartmental council;

(c) have one year demonstrated supervisory experience; and

(d) have expertise in both mental health and substance abuse treatment.

(4) The IOP agency is required to develop and implement a program outcome evaluation system.

(5) The agency must maintain the appropriate state facility licensure if offering medication treatment or medication replacement services.

(6) The agency must hold an IOP interdepartmental council approval letter and be enrolled by MAD to render IOP services to an eligible recipient. In the application process each IOP must identify if it is a youth program, an adult program, a transitional age program, or multiple programs. Transitional age programs must specify the age range of the target population. A MAD IOP agency will be provisionally approved for a specified timeframe to render IOP services to an eligible recipient. During this provisionally approved time, MAD or its designee will determine if the IOP meets MAD IOP requirements and if so, the agency will receive an approval letter for IOP full enrollment.

B. Coverage criteria:

(1) An IOP is based on research and evidence-based practice models (EBP) that target specific behaviors with individualized behavioral interventions. All EBP services must be culturally sensitive and incorporate recovery and resiliency values into all service interventions. EBPs must be approved by the IOP interdepartmental council. A list

of pre-approved EBPs is available through the council, as are the criteria for having another model approved. They are also listed in the BH policy and billing manual.

(2) Treatment services must address co-occurring mental health disorders, as well as substance use disorders, when indicated.

C. Covered services:

(1) IOP core services include:

(a) individual substance use disorder related therapy;

(b) group therapy (group membership may not exceed 15 in number); and

(c) psycho-education for the eligible recipient and his or her family.

(2) Co-occurring mental health and substance use disorders: The IOP agency must accommodate the needs of an eligible recipient with co-occurring substance use and mental health disorders.

Treatment services are provided through an integrated interdisciplinary team and through coordinated, concurrent services with MAD behavioral health providers.

(3) Medication management services are available either in the IOP agency or by referral to oversee the use of psychotropic medications and medication assisted treatment of substance use disorders.

(4) The duration of an eligible recipient's IOP intervention is typically three to six months. The amount of weekly services per eligible recipient is directly related to the goals specified in his or her IOP treatment plan and the IOP EBP in use.

(5) Other mental health therapies: outpatient therapies may be rendered in addition to the IOP therapies of individual and group when the eligible recipient's co-occurring disorder requires treatment services which are outside the scope of the IOP therapeutic services. The eligible recipient's file must document the medical necessity of receiving outpatient therapy services in addition

to IOP therapies, and a statement from the IOP agency that to postpone such therapy until the completion of the eligible recipient's IOP services is not in the best interest of the eligible recipient. Such documentation includes, but is not limited to: current assessment, a co-occurring diagnosis, and the inclusion in service plan for outpatient therapy services. An IOP agency may:

(a) render these services when it is enrolled as a provider covered under Subsection D of 8.321.2.9 NMAC with practitioners listed in Subsections C and E of 8.321.2.9 NMAC whose scope of practice specifically allows for mental health therapy services; or

(b) refer the eligible recipient to another provider if the IOP agency does not have such practitioners available; the IOP agency may continue the eligible recipient's IOP services coordinating with the new provider.

D. Identified

population:

(1) IOP services are provided to an eligible recipient 11 through 17 years of age diagnosed with substance abuse disorder or with co-occurring disorders (mental illness and substance abuse) or that meet the American society of addiction medicine (ASAM) patient placement criteria for level 2.1 - intensive outpatient treatment; or have been mandated by the local judicial system as an option of least restrictive level of care. Services are not covered if the recipient is in detention or incarceration. See eligibility rules 8.200.410.17 NMAC.

(2) IOP services are provided to an eligible recipient of a transitional age in a transitional age program of which the age range has been determined by the agency, and that have been diagnosed with substance abuse disorder or with co-occurring disorders (mental illness and substance abuse) or that meet the American society of addiction medicine's (ASAM) patient

placement criteria for level 2.1 - intensive outpatient treatment, or have been mandated by the local judicial system as an option of least restrictive level of care.

(3) IOP services are provided to an eligible adult recipient 18 years of age and older diagnosed with substance abuse disorders or co-occurring disorders (mental illness and substance abuse) that meet the American society of addiction medicine's (ASAM) patient placement criteria for level 2.1 - intensive outpatient treatment or have been mandated by the local judicial system as an option of least restrictive level of care.

(4) Prior to engaging in a MAD IOP program, the eligible recipient must have a treatment file containing:

(a) one diagnostic evaluation with a diagnosis of substance use disorder; and

(b) one individualized treatment service plan that includes IOP as an intervention.

E. Non-covered services: IOP services are subject to the limitations and coverage restrictions which exist for other MAD services see Subsection G of 8.321.2.9 NMAC for general non-covered MAD behavioral health services and 8.310.2 NMAC for MAD general non-covered services. MAD does not cover the following specific services billed in conjunction with IOP services:

- (1) acute inpatient;
- (2) residential treatment services (i.e., ARTC, RTC, group home, and transitional living services);
- (3) ACT;
- (4) partial hospitalization;
- (5) outpatient therapies which do not meet Subsection C of 8.321.2.9 NMAC;
- (6) multi-systemic therapy (MST);
- (7) activity therapy; or

(8) psychosocial rehabilitation (PSR) group services.

F. Reimbursement: See Subsection H of 8.321.2.9 NMAC for MAD behavioral health general reimbursement requirements.

(1) For IOP services, the agency must submit claims for reimbursement on the CMS-1500 claim form or its successor.

(2) Core IOP services are reimbursed through a bundled rate. Medication assisted treatment and other mental health therapies are billed and reimbursed separately from the bundled rate.

(3) IOP services furnished by an IOP team member are billed by and reimbursed to a MAD IOP agency whether the team member is under contract with or employed by the IOP agency.

(4) IOP services not provided in accordance with the conditions for coverage as specified in 8.321.2 NMAC are not MAD covered services and are subject to recoupment. [8.321.2.25 NMAC - Rp, 8.321.2.17 NMAC, 1/1/2020]

8.321.2.26 INTENSIVE OUTPATIENT PROGRAM FOR MENTAL HEALTH CONDITIONS (IOP):

MAD pays for IOP services which provide a time-limited, multi-faceted approach to treatment for an eligible recipient with a SMI or SED including an eating disorder or borderline personality disorder who requires structure and support to achieve and sustain recovery. IOP must utilize a research and evidence-based model approved by the IOP interdepartmental council, and target specific behaviors with individualized behavioral interventions. The effective date will be January 1, 2019, or as otherwise approved by the centers for medicare and medicaid services (CMS).

A. Eligible providers: Services may only be delivered through an interdepartmental council approved agency after demonstrating

that the agency meets all the requirements of IOP program services and supervision.

(1) The following types of agencies are eligible to be reimbursed for providing IOP services once gaining approval by HSD and CYFD:

- (a) a CMHC;
- (b) a FQHC;
- (c) an IHS facility;
- (d) a PL 93-638 tribal facility;
- (e) a MAD CSA;
- (f) a CLNM health home;

(g) a behavioral health agency with a BHSD supervisory certificate.

(2) IOP services are provided through an integrated interdisciplinary approach by staff with expertise in the mental health condition being addressed. This team may have services rendered by non-independent practitioners under the direction of the IOP supervisor including LMSW, LMHC, a master's level psych associates, RNs or registered dieticians.

(3) Each IOP program must have a clinical supervisor. Both clinical services and supervision by licensed practitioners must be conducted in accordance with respective licensing board regulations. An IOP clinical supervisor must meet all of the following requirements:

- (a) be licensed as a MAD approved independent practitioner; see Subsection C of 8.321.2.9 NMAC;
- (b) have two years relevant experience in providing the evidence-based model to be delivered; and
- (c) have one year demonstrated supervisory experience.

(4) The IOP agency is required to develop and implement a program outcome evaluation system.

(5) The agency must maintain the appropriate state facility licensure if offering medication treatment.

(6) The agency must hold an IOP interdepartmental council approval letter and be enrolled by MAD to render IOP services to an eligible recipient. In the application process each IOP must identify if it is a youth program, an adult program, a transitional age program, or multiple programs. Transitional age programs must specify the age range of the target population. A MAD IOP agency will be provisionally approved for a specified timeframe to render IOP services to an eligible recipient. During this provisionally approved time, MAD or its designee will determine if the IOP meets MAD IOP requirements and if so, the agency will receive an approval letter for IOP full enrollment.

B. Coverage criteria:

(1) An IOP is based on research and evidence-based practice (EBP) models that target specific behaviors with individualized behavioral interventions. All EBP services must be culturally sensitive and incorporate recovery and resiliency values into all service interventions. EBPs must be approved by the IOP interdepartmental council. A list of pre-approved EBPs is available through the council, as are the criteria for having another model approved. They are also listed in the BH policy and billing manual.

(2) Treatment services must address co-occurring disorders when indicated.

C. Covered services:

(1) IOP core services include:
 (a) individual therapy;
 (b) group therapy (group membership may not exceed 15 in number); and
 (c) psycho-education for the eligible recipient and his or her family.

(2) Medication management services are available either in the IOP agency or by referral

to oversee the use of psychotropic medications and medication assisted treatment of substance use disorders.

(3) The amount of weekly services per eligible recipient is directly related to the goals specified in his or her IOP treatment plan and the IOP EBP in use.

(4) Treatment services must address co-occurring disorders when indicated.

D. Identified population:

(1) IOP services are provided to an eligible recipient, 11 through 17 years of age diagnosed with a SED.

(2) IOP services are provided to an eligible adult recipient 18 years of age and older diagnosed with a SMI.

(3) Prior to engaging in a MAD IOP program, the eligible recipient must have a treatment file containing:

(a) one diagnostic evaluation with a diagnosis of serious mental illness or severe emotional disturbance; or diagnosis for which the IOP is approved; and

(b) one individualized service plan that includes IOP as an intervention.

E. Non-covered services: IOP services are subject to the limitations and coverage restrictions which exist for other MAD services see Subsection G of 8.321.2.9 NMAC for general non-covered MAD behavioral health services and 8.310.2 NMAC for MAD general non-covered services. MAD does not cover the following specific services billed in conjunction with IOP services:

(1) acute inpatient;
 (2) residential treatment services (i.e., ARTC, RTC, group home, and transitional living services);
 (3) ACT;
 (4) partial hospitalization;
 (5) outpatient therapies which do not meet

Subsection C of 8.321.2.9 NMAC;
 (6) multi-systemic therapy (MST);
 (7) activity therapy; or
 (8) psychosocial rehabilitation (PSR) group services.

F. Reimbursement:

See Subsection H of 8.321.2.9 NMAC for MAD behavioral health general reimbursement.

(1) For IOP services, the agency must submit claims for reimbursement on the CMS-1500 claim form or its successor.

(2) Core IOP services are reimbursed through a bundled rate. Medications and other mental health therapies are billed and reimbursed separately from the bundled rate.

(3) IOP services furnished by an IOP team member are billed by and reimbursed to a MAD IOP agency whether the team member is under contract with or employed by the IOP agency.

(4) IOP services not provided in accordance with the conditions for coverage as specified in the rule are not a MAD covered service and are subject to recoupment.

[8.321.2.26 NMAC - N, 1/1/2020]

8.321.2.27 MEDICATION ASSISTED TREATMENT (MAT): BUPRENORPHINE TREATMENT FOR OPIOID USE DISORDER:

MAD pays for coverage for medication assisted treatment (MAT) for opioid use disorder to an eligible recipient as defined in the Drug Addiction Treatment Act of 2000 (DATA 2000) and subsequent Comprehensive Addiction and Recovery Act (CARA) 114-198. Services include, but are not limited to, the administration of opioid replacement medication (excluding methadone) to an eligible recipient for detoxification from opioids or maintenance treatment.

A. Eligible providers and practitioners:

(1) Any clinic, office, or hospital staffed by required practitioners.

(2) Practitioners for diagnosing, assessment, and prescribing include:

(a) a physician or DO licensed in the state of New Mexico that has board certification in addiction medicine or addiction psychiatry or has completed special training and has the federal waiver to prescribe buprenorphine;

(b) a certified nurse practitioner that has completed 24 hours of required training and has a DATA 2000 waiver; or

(c) a physician assistant licensed in the state of New Mexico and has the federal DATA 2000 waiver to prescribe buprenorphine.

(3) Practitioners for administration and education:

(a) a registered nurse licensed in the state of New Mexico; or

(b) a physician assistant licensed in the state of New Mexico.

(4) Practitioners for counseling and education may include behavioral health practitioners licensed for counseling or therapy.

(5) Practitioners for skills and education include certified peer support workers or certified family peer support workers to provide skill-building, recovery and resiliency support.

B. Coverage criteria:

(1) an assessment and diagnosis by the prescribing practitioner as to whether the recipient has an opioid abuse diagnosis and their readiness for change must be conducted prior to starting treatment;

(2) an assessment for concurrent medical or behavioral health illnesses;

(3) an assessment for co-occurring substance abuse disorders;

(4) educating the recipient as to differing treatment options prior to starting treatment; and

(5) a service plan that prescribes either in house counseling or therapy, or referral to outside services, as indicated.

C. Eligible recipients: Individuals with an opioid use disorder diagnosis defined by DSM 5 or ICD 10.

D. Covered services:
(1) history and physical;

(2) comprehensive assessment and treatment plan;

(3) induction phase of opioid treatment;

(4) administration of medication and concurrent education;

(5) subsequent evaluation and management visits;

(6) development and maintenance of medical record log of opioid replacement medication prescriptions;

(7) development and maintenance of required records regarding inventory, storage and destruction of controlled medications if dispensing from office;

(8) initiation and tracking of controlled substance agreements with eligible recipients;

(9) regular monitoring and documentation of NM prescription monitoring program results;

(10) urine drug screens;

(11) recovery services (MCO members only);

(12) family support services (MCO members only).

E. Reimbursement: See Subsection H of 8.321.9 NMAC for MAD behavioral health general reimbursement requirements. See the BH policy and billing manual for reimbursement specific to MAT. [8.321.2.27 NMAC - Rp, 8.321.2.18 NMAC, 1/1/2020]

8.321.2.28 MULTI-SYSTEMIC THERAPY (MST): To help an eligible recipient 10 up to 18

years of age receive behavioral health services to either remain in or re-enter his or her home and community, MAD pays for MST services as part of EPSDT program (42 CFR 441.57). MAD covers medically necessary MST services required by the condition of the eligible recipient. MST provides intensive home, family and community-based treatment for an eligible recipient 10 to 18 years of age who is at risk of out-of-home placement or is returning home from an out-of-home placement. The need for MST services must be identified in the eligible recipient's tot to teen health check screen or another diagnostic evaluation.

A. Eligible providers:

In addition to the requirements of Subsections A and B of 8.321.2.9 NMAC, in order to be eligible to be reimbursed for providing MST services, an agency must hold a copy of MST Inc licensure, or any of its approved subsidiaries. MST Inc is a national organization located in Mt. Pleasant, South Carolina, and is deemed by MAD to be the primary authority on licensure of New Mexico MST programs.

(1) The MST program includes an assigned MST team for each eligible recipient. The MST team must include at minimum:

(a) master's level independently licensed behavioral health professional clinical supervision; see Subsection H of 8.321.2.9 NMAC;

(b) licensed master's and bachelor's level behavioral health staff able to provide 24-hour coverage, seven days a week; see Subsection E of 8.321.2.9 NMAC;

(c) a licensed master's level behavioral health practitioner that is required to perform all MST interventions; a bachelor's level behavioral health practitioner is limited to performing functions defined within the scope of his or her RLD practice board licensure or practice (see Subsection E of 8.321.2.9 NMAC;

(d) bachelor's level staff that has a degree in social work, counseling,

psychology or a related human services field and must have at least three years' experience working with the identified population of children, adolescents and their families; and

(e)

staffing for MST services is comprised of no more than one-third bachelor's level staff and, at minimum, two-thirds licensed master's level staff.

(2) Clinical

supervision must include at a minimum:

(a)

weekly supervision provided by an independently licensed master's level behavioral health practitioner (see Subsection C of 8.321.2.9 NMAC) who is MST trained; this supervision, following the MST supervisory protocol, is provided to team members on topics directly related to the needs of the eligible recipient and his or her family on an ongoing basis; and

(b)

one hour of local group supervision per week and one hour of telephone consultation per week with the MST systems supervisor, provided to team members on topics directly related to the needs of the eligible recipient and his or her family on an ongoing basis.

(3) All clinical

staff is required to participate in and complete a prescribed five-day MST introductory training and subsequent quarterly trainings.

B. Identified population:

(1)

MST is provided to an eligible recipient 10 to 18 years of age who meets the criteria of SED, involved in or at serious risk of involvement with the juvenile justice system; has antisocial, aggressive, violent, and substance-abusing behaviors; is at risk for an out-of-home placement; or is returning from an out-of-home placement where the above behaviors were the focus of his or her treatment and his or her family's involvement.

(2) A co-

occurring diagnosis of substance abuse shall not exclude an eligible recipient from the program.

C. Covered services

and service limitations: MST is a culturally sensitive service, rendered by a MST team, to provide intensive home, family and community-based treatment for the family of an eligible recipient who is at risk of an out-of-home placement or is returning home from an out-of-home placement.

MST services are primarily provided in the eligible recipient's home, but a MST worker may also intervene at the eligible recipient's school and other community settings. Specialized therapeutic and rehabilitative interventions are used to address specific areas of need, such as substance abuse, delinquency and violent behavior.

(1) The

following services must be furnished as part of the MST service to be eligible for reimbursement:

(a) an

initial assessment to identify the focus of the MST intervention;

(b)

therapeutic interventions with the eligible recipient and his or her family;

(c)

case management; and

(d)

crisis stabilization.

(2)

MST services are conducted by practitioners using the MST team approach. The MST team must have the ability to deliver services in various environments, such as homes, schools, homeless shelters, or street locations. MST services:

(a)

promote the recipient's family's capacity to monitor and manage his or her behavior;

(b)

involve the eligible recipient's family and other systems, such as the school, probation officers, extended families and community connections;

(c)

provide access to a variety of interventions 24-hours a day, seven days a week, by staff that maintain contact and intervene as one organizational unit; and

(d)

include structured face-to-face therapeutic interventions to provide support and guidance in all areas of the recipient's functional domains, such as adaptive, communication, psychosocial, problem solving, and behavior management.

(3) The

duration of MST intervention is typically three to six months. Weekly interventions may range from three to 20 hours a week; less as an eligible recipient nears discharge.

D. Non-covered

services: MST services are subject to the limitations and coverage restrictions that exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for general non-covered specialized behavioral health services.

E. Reimbursement:

MST agencies must submit claims for reimbursement on the CMS-1500 claim form or its successor. See Subsection E of 8.321.2.9 NMAC for MAD general reimbursement requirements and 8.302.2 NMAC. Once enrolled, the MST agency receives instructions on how to access documentation, billing, and claims processing information. [8.321.2.28 NMAC - Rp, 8.321.2.19 NMAC, 1/1/2020]

8.321.2.29 NON-ACCREDITED RESIDENTIAL TREATMENT CENTERS (RTC) AND GROUP HOMES: MAD pays for medically necessary services for an eligible recipient under 21 years of age which are designed to develop skills necessary for successful reintegration into his or her family or transition into his or her community. A determination must be made that the eligible recipient needs the level of care (LOC) for services furnished in a RTC or group home. Residential services must be rehabilitative and provide access to necessary treatment services in a therapeutic environment. MAD pays for services furnished in a RTC or group home as part of EPSDT program (42 CFR 441.57). The need for RTC and group home services must be identified in the eligible

recipient's tot to teen health check screen or other diagnostic evaluation furnished through a health check referral.

A. Eligible providers:

In addition to the requirements of Subsections A and B of 8.321.2.9 NMAC, in order to be eligible to be reimbursed for providing RTC or group home services to an eligible recipient, an agency must meet the following requirements:

(1) a RTC must be certified by the children, youth and families department (CYFD) see 7.20.12 NMAC;

(2) a group home must be certified and licensed by CYFD;

(3) if the RTC is operated by IHS or by a federally recognized tribal government, the facility must meet CYFD RTC licensing and certification requirements but is not required to be licensed or certified by CYFD. In lieu of receiving a license and certification, CYFD provides MAD copies of its facility findings and recommendations. MAD will work with the facility to address recommendations. The BH policy and billing manual provides guidance for addressing the facility findings and recommendations.

B. Covered services:

Residential treatment services are provided through a treatment team approach and the roles, responsibilities and leadership of the team are clearly defined. MAD covers accommodation and residential treatment services which are medically necessary for the diagnosis and treatment of an eligible recipient's condition. A RTC or group home must provide an interdisciplinary psychotherapeutic treatment program on a 24-hour basis to the eligible recipient through the provision of a 24-hour therapeutic group living environment to meet their developmental, psychological, social, and emotional needs. The following are covered services:

(1) performance of necessary evaluations, assessments and psychological

testing of the eligible recipient for the development of his or her treatment plan for each service, while ensuring that assessments already performed are not repeated;

(2) provide regularly scheduled counseling and therapy sessions in an individual, family or group setting following the eligible recipient's individualized treatment plan;

(3) facilitation of age-appropriate skills development in the areas of household management, nutrition, personal care, physical and emotional health, basic life skills, time management, school attendance and money management to the eligible recipient;

(4) assistance to the eligible recipient in his or her self-administration of medication in compliance with state statute, regulation and rules;

(5) provision of appropriate on-site staff based upon the acuity of recipient needs on a 24-hour basis to ensure adequate supervision of the recipients, and response in a proactive and timely manner. Response to crisis situations, determining the severity of the situation, stabilizing the eligible recipient by providing individualized treatment plan/safety plan interventions and support, and making referrals for emergency services or to other non-agency services, as necessary, and providing follow-up;

(6) development of an interdisciplinary service plan; see the BH policy and billing manual;

(7) non-medical transportation services needed to accomplish the treatment objective;

(8) therapeutic services to meet the physical, social, cultural, recreational, health maintenance and rehabilitation needs of the eligible recipient;

(9) for planning of discharge and aftercare services to facilitate timely and appropriate post discharge care regular assessments are conducted. These assessments support discharge

planning and effect successful discharge with clinically appropriate after care services. This discharge planning begins when the recipient is admitted to residential treatment services and is updated and documented in the recipient record at every treatment plan review, or more frequently as needed; and

(10) the RTC and group homes provide services, care and supervision at all times, including:

(a) the provision of, or access to, medical services on a 24-hour basis; and

(b) maintenance of a staff-to-recipient ratio appropriate to the level of care and needs of the recipients.

C. Non-covered

services: RTC and group home services are subject to the limitations and coverage restrictions that exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for general MAD behavioral health non-covered services or activities. MAD does not cover the following specific services billed in conjunction with RTC and group home services to an eligible recipient:

(1) Comprehensive community support services (CCSS) except by a CCSS agency when discharge planning with the eligible recipient from the RTC or group home facility;

(2) services not considered medically necessary for the condition of the eligible recipient, as determined by MAD or its UR contractor;

(3) room and board;

(4) services for which prior approval was not obtained; or

(5) services furnished after a MAD or UR contractor determination that the recipient no longer meets the LOC for RTC or group home care.

D. Treatment

plan: If the eligible recipient is solely receiving RTC or group home services, a service plan is not required. If the eligible recipient

is receiving other behavioral health services, then a service plan is required, see Subsection K of 8.321.2.9 NMAC and the BH policy and billing manual.

E. Prior

authorization: Before a RTC or group home service is furnished to an eligible recipient, prior authorization is required from MAD or its UR contractor or the respective centennial care MCO. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

F. Reimbursement:

A RTC or group home agency must submit claims for reimbursement on the UB-04 form or its successor. See Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements and see 8.302.2 NMAC. Once enrolled, the agency receives instructions on how to access documentation, billing, and claims processing information. For IHS and a tribal 638 facility, MAD considers RTC services to be outside the IHS all inclusive rate and RTC is therefore reimbursed at the MAD fee schedule utilizing the appropriate claim form designated by MAD.

(1) The fee schedule is established after considering cost data submitted by the RTC or group home agency. Cost data is grouped into various cost categories for purposes of analysis and rate setting. These include direct service, direct service supervision, therapy, admission and discharge planning, clinical support, non-personnel operating, administration and consultation.

(a) The MAD fee schedule reimbursement covers those services considered routine in the residential setting. Routine services include, but are not limited to: counseling, therapy, activities of daily living, medical management, crisis intervention, professional consultation, transportation, rehabilitative services and administration.

(b) Services which are not included in the RTC or group home rate include:

(i) direct services furnished by a psychiatrist or licensed Ph.D. psychologist; these services can be billed directly by the provider; see 8.310.3 NMAC; and

(ii) other MAD services that an eligible recipient might require that are not furnished by the facility, such as pharmacy services, primary care visits, laboratory or radiology services, are billed directly by the applicable providers and are governed by the applicable sections of NMAC rules.

(c) Services which are not covered in the routine rate and are not a MAD covered service include:

(i) room and board; and

(ii) services not related to medical necessity, clinical treatment, and patient care.

(2) A vacancy factor of 24 days annually for each eligible recipient is built into the rate to allow for therapeutic leave and trial community placement. Since the vacancy factor is built into the rate, a RTC and group home agency cannot bill or be reimbursed for days when the eligible recipient is absent from the facility.
[8.321.2.29 NMAC - Rp, 8.321.2.20 NMAC, 1/1/2020]

8.321.2.30 OPIOID TREATMENT PROGRAM

(OTP): MAD pays for coverage for medication assisted treatment for opioid addiction to an eligible recipient through an opioid treatment center as defined in (42 CFR Part 8), certification of opioid treatment programs (OTP). Services include, but are not limited to, the administration of methadone (opioid replacement medication) to an individual for detoxification from opioids and maintenance treatment. The administration/supervision must be delivered in conjunction with the overall treatment based upon a treatment plan, which must include counseling/therapy, case review, drug testing, and medication monitoring.

A. Eligible providers and practitioners:

(1) Provider requirements:

(a) Accreditation with a substance abuse and mental health services administration (SAMHSA)/CSAT approved nationally recognized accreditation body, (e.g., commission on accreditation of rehabilitation facilities (CARF), joint commission (JC) or council on accreditation of services for families and children (COA).

(b) Behavioral health services division (BHSD) approval. As a condition of approval to operate an OTP, the OTP must maintain above accreditation.

(i) In the event that such accreditation lapses, or approval of an application for accreditation becomes doubtful, or continued accreditation is subject to any formal or alleged finding of need for improvement, the OTP program will notify the BHSD within two business days of such event. The OTP program will furnish the BHSD with all information related to its accreditation status, or the status of its application for accreditation, upon request.

(c) The BHSD shall grant approval or provisional approval to operate pending accreditation, provided that all other requirements of these regulations are met.

(2) Staffing requirements:

(a) Both clinical services and supervision by licensed practitioners must be in accord with their respective licensing board regulations. Provider staff members must be culturally competent;

(b) Programs must be staffed by:

(i) medical director (MD licensed to practice in the state of New Mexico or a DO licensed to practice in the State of New Mexico);

(ii) clinical supervisor (must be one of the following: licensed psychologist,

or licensed independent social worker; or certified nurse practitioner in psychiatric nursing; or licensed professional clinical mental health counselor; or licensed marriage and family therapist;

(iii)

licensed behavioral health practitioner; registered nurse; or licensed practical nurse; and

(iv)

full time or part time pharmacist.

B. Coverage criteria:

(1) A

physician licensed to practice in New Mexico is designated to serve as medical director and to have authority over all medical aspects of opioid treatment.

(2) The OTP

shall formally designate a program sponsor who shall agree on behalf of the OTP to adhere to all federal and state requirements and regulations regarding the use of opioid agonist treatment medications in the treatment of opioid addiction which may be promulgated in the future.

(3) The OTP

shall be open for patients every day of the week with an option for closure for federal and state holidays, and Sundays, and be closed only as allowed in advance in writing by CSAT and the state opioid treatment authority. Clinic hours should be conducive to the number of patients served and the comprehensive range of services needed.

(4) Written

policies and procedures outlined in the BH policy and billing manual are developed, implemented, compiled, and maintained at the OTP.

(5) OTP

programs will not deny a reasonable request for transfer.

(6) The OTP

will maintain criteria for determining the amount and frequency of counseling that is provided to a patient.

(7) Referral

or transfer of recipients to a suitable alternative treatment program. Because of the risks of relapse following detoxification, patients must be offered a relapse prevention

program that includes counseling, naloxone and opioid replacement therapy.

(8) Provision

of unscheduled treatment or counseling to patients.

(9) Established

substance abuse counselor caseloads based on the intensity and duration of counseling required by each patient. Counseling can be provided in person or via telehealth. Counselor to patient ratios should be sufficient to ensure that patients have reasonable and prompt access to counselors and receive counseling services at the required levels of frequency and intensity.

(10)

Preparedness planning: the program has a list of all patients and the patients' dosage requirements available and accessible to program on call staff members.

(11) Patient

records: The OTP program shall establish and maintain a recordkeeping system that is adequate to document and monitor patient care. The system shall comply with all federal and state requirements relevant to OTPs and to confidentiality of patient records.

(12) Diversion

control: a written plan is developed, implemented, and complied with to prevent diversion of opioid treatment medication from its intended purpose to illicit purposes. This plan shall assign specific responsibility to licensed and administrative staff for carrying out the diversion control measures and functions described in the plan. The program shall develop and implement a policy and procedure providing for the reporting of theft or division of medication to the relevant regulatory agencies, and law enforcement authorities.

(13)

Prescription drug monitoring program (PDMP): a written plan is developed, implemented, and complied with to ensure that all OTP physicians and other health care providers, as permitted, are registered to use the New Mexico PDMP. The PDMP should be checked quarterly through the course of each patient's treatment.

(14) HIV/AIDS

and hepatitis testing and education are available to patients either at the provider or through referral, including treatment, peer group or support group and to social services either at the provider or through referral to a community group.

(15)

Requirements for health care providers who prescribe, distribute or dispense opioid analgesics:

(a) A

health care provider who prescribes, distributes or dispenses an opioid analgesic for the first time to a patient shall advise the patient on the risks of overdose and inform the patient of the availability of an opioid antagonist.

(b)

For a patient to whom an opioid analgesic has previously been prescribed, distributed or dispensed by the health care provider, the health care provider shall advise the patient on the risks of overdose and inform the patient of the availability of an opioid antagonist on the first occasion that the health care provider prescribes, distributes or dispenses an opioid analgesic each calendar year.

(c)

A health care provider who prescribes an opioid analgesic for a patient shall co-prescribe an opioid antagonist if the amount of opioid analgesic being prescribed is at least a five-day supply. The prescription for the opioid antagonist shall be accompanied by written information regarding the temporary effects of the opioid antagonist and techniques for administering the opioid antagonist. That written information shall contain a warning that a person administering the opioid antagonist should call 911 immediately after administering the opioid antagonist.

C. Identified

population:

(1) An

eligible recipient is treated for opioid dependency only after the agency's physician determines and documents that:

(a)

the recipient meets the definition of opioid use disorder using generally

accepted medical criteria, such as those contained in the current version of the DSM;

(b) the recipient has received an initial medical examination as required by 7.32.8.19 NMAC, *Opioid Treatment Program Admissions*;

(c) if the recipient is requesting maintenance treatment, he or she must have been addicted for at least 12 months prior to starting OTP services unless the recipient receives a waiver of this requirement from the agency's physician because the recipient:

(i) was released from a penal institution within the last six months;

(ii) is pregnant, as confirmed by the agency's physician;

(iii) was treated for opioid use disorder within the last 24 months;

(iv) is under the age of 18; has had two documented unsuccessful attempts at short-term opioid treatment withdrawal procedures of drug-free treatment within a 12 month period, and has informed consent for treatment provided by a parent, guardian, custodian or responsible adult designated by the relevant state authority; or

(v) meets any other requirements specified in 7.32.8 NMAC, *Opioid Treatment Program* regarding waivers, consent, and waiting periods.

D. Covered services:
(1)

Withdrawal treatment and medically supervised dose reduction.

(2) A biopsychosocial assessment will be conducted by a licensed behavioral health professional or a LADAC under the supervision of an independently licensed clinician, as defined by the NM RLD within 14 days of admission.

(3) A comprehensive, patient centered, individualized treatment plan shall be conducted within 30 days of admission and be documented in the patient record.

(4) Each OTP will ensure that adequate medical, psychosocial counseling, mental health, vocational, educational and other services identified in the initial and ongoing treatment plans are fully and reasonably available to patients, either by the program directly, or through formal, documented referral agreements with other providers.

(5) Drug screening: A recipient in comprehensive maintenance treatment receives one random urine drug detection test per month; short-term opioid treatment withdrawal procedure patients receive at least one initial drug abuse test; long-term opioid treatment withdrawal procedure patients receive an initial and monthly random tests; and other toxicological tests are performed according to written orders from the program medical director or medical practitioner designee. Samples that are sent out for confirmatory testing (by internal or external laboratories) are billed separately by the laboratory.

E. Non-covered services: Blood samples collected and sent to an outside laboratory.

F. Reimbursement:
(1) The bundled reimbursement rate for administration and dispensing includes the cost of methadone, administering and dispensing methadone, and urine dipstick testing conducted within the agency.

(2) Other services performed by the agency as listed below are reimbursed separately and are required by (42 CFR Part 8.12 (f)), or its successor.

(a) A narcotic replacement or agonist drug item other than methadone that is administered or dispensed;

(b) Outpatient therapy other than the substance abuse and HIV counseling required by (42 CFR Part 8.12 (f)) is reimbursable when rendered by a MAD approved independently licensed provider that meets Subsection H of 8.321.2.9 NMAC;

(c) An eligible recipient's initial medical

examination when rendered by a MAD approved medical provider who meets 8.310.2 and 8.310.3 NMAC requirements;

(d) Full medical examination, prenatal care and gender specific services for a pregnant recipient; if she is referred to a provider outside the agency, payment is made to the provider of the service;

(e) Medically necessary services provided beyond those required by (42 CFR Part 8.12 (f)), to address the medical issues of the eligible recipient; see 8.310.2. and 8.310.3 NMAC;

(f) The quantity of service billed in a single day can include, in addition to the drug items administered that day, the number of take-home medications dispensed that day; and

(g) Guest dosing can be reimbursed at medicaid-enrolled agencies per 7.32.8 NMAC. Arrangements must be confirmed prior to sending the patient to the receiving clinic.

(3) For an IHS or tribal 638 facility, MAD considers the bundled OTP services to be outside the IHS all-inclusive rate and is therefore reimbursed at the MAD fee schedule utilizing the appropriate claim form designated by MAD; see 8.310.12 NMAC. Non-bundled services may be billed at the office of management and budget (OMB) rate.

(4) For a FQHC, MAD considers the bundled OTP services to be outside the FQHC all-inclusive rate and is therefore reimbursed at the MAD fee schedule utilizing the appropriate claim form designated by MAD; see 8.310.12 NMAC. Non-bundled services may be billed at the FQHC rate. [8.321.2.30 NMAC - N, 1/1/2020]

8.321.2.31 PARTIAL HOSPITALIZATION SERVICES:

To help an eligible recipient receive the level of services needed, MAD pays for partial hospitalization services furnished by an acute care or freestanding psychiatric

hospital. Partial Hospitalization Programs (PHP) are structured to provide intensive psychiatric care through active treatment that utilizes a combination of clinical services. They are designed to stabilize deteriorating conditions or avert inpatient admissions, or can be a step-down strategy for individuals with SMI, SUD or SED who have required inpatient admission. The environment is highly structured, is time-limited and outcome oriented for recipients experiencing acute symptoms or exacerbating clinical conditions that impede their ability to function on a day-to-day basis. Program objectives focus on ensuring important community ties and closely resemble the real-life experiences of the recipients served.

A. Eligible providers and practitioners: In addition to the requirements found in Subsections A and B of 8.321.2.9 NMAC, an eligible provider includes a facility joint commission accredited, and licensed and certified by DOH or the comparable agency in another state.

- (1) The program team must include:
 - (a) registered nurse;
 - (b) a clinical supervisor that is an independently licensed behavioral health practitioner or psychiatric nurse practitioner or psychiatric nurse clinician; and
 - (c) licensed behavioral health practitioners.
- (2) The team may also include:
 - (a) physician assistants;
 - (b) certified peer support workers;
 - (c) certified family peer support workers;
 - (d) licensed practical nurses;
 - (e) mental health technicians.

B. Coverage criteria: MAD covers only those services which meet the following criteria:

(1) Services that are ordered by a psychiatrist or licensed Ph.D.

(2) Partial hospitalization is a voluntary, intensive, structured and medically staffed, psychiatrically supervised treatment program with an interdisciplinary team intended for stabilization of acute psychiatric or substance use symptoms and adjustment to community settings. The services are essentially of the same nature and intensity, including medical and nursing services, as would be provided in an inpatient setting, except that the recipient is in the program less than 24-hours a day, and it is a time-limited program.

(3) A history and physical (H&P) must be conducted within 24 hours of admission. If the eligible recipient is a direct admission from an acute or psychiatric hospital setting, the program may elect to obtain the H&P in lieu of completing a new H&P. In this instance, the program physician's signature indicates the review and acceptance of the document. The H&P may be conducted by a clinical nurse specialist, a clinical nurse practitioner, a physician assistant or a physician.

(4) An interdisciplinary biopsychosocial assessment within seven days of admission including alcohol and drug screening. A full substance abuse evaluation is required if alcohol and drug screening indicates the need. If the individual is a direct admission from an acute psychiatric hospital setting, the program may elect to obtain and review this assessment in lieu of completing a new assessment.

(5) Services are furnished under an individualized written treatment plan established within seven days of initiation of service by the psychiatrist, together with the program's team of professionals, and in consultation with recipients, parents, legal guardian(s) or others who participate in the recipient's care. The plan must state the type, amount, frequency and projected duration of the services

to be furnished, and indicate the diagnosis and anticipated goals. The treatment plan must be reviewed and updated by the interdisciplinary team every 15 days.

(6) Documentation must be sufficient to demonstrate that coverage criteria are met, including:

(a) Daily documentation of treatment interventions which are outcome focused and based on the comprehensive assessment, treatment goals, culture, expectations, and needs as identified by the recipient, family or other caregivers.

(b) Supervision and periodic evaluation of the recipient, either individually or in a group, by the psychiatrist or psychologist to assess the course of treatment. At a minimum, this periodic evaluation of services at intervals indicated by the condition of the recipient must be documented in the recipient's record.

(c) Medical justification for any activity therapies, recipient education programs and psychosocial programs.

(7) Treatment must be reasonably expected to improve the eligible recipient's condition or designed to reduce or control the eligible recipient's psychiatric symptoms to prevent relapse or hospitalization and to improve or maintain the eligible recipient's level of functions. Control of symptoms and maintenance of a functional level to avoid further deterioration or hospitalization are acceptable expectations of improvement.

(8) For recipients in elementary and secondary school, educational services must be coordinated with the recipient's school system.

C. Identified population:

(1) Recipients admitted to a PHP shall be under the care of a psychiatrist who certifies the need for partial hospitalization. The recipient requires comprehensive, structured, multimodal treatment

requiring medical supervision and coordination, provided under an individualized plan of care, because of a SMI, SED or moderate to severe SUD which severely interferes with multiple areas of daily life, including social, vocational or educational functioning. Such dysfunction generally is of an acute nature;

(2) Recipients must have an adequate support system to sustain/maintain his or herself outside the PHP;

(3) Recipients 19 and over with a serious mental illness including substance use who can be safely managed in the community with high intensity therapeutic intervention more intensive than outpatient services but are at risk of inpatient care without this treatment; or

(4) Recipients five to 18 with severe emotional disturbances including substance use disorders who can be safely managed in the community with high intensity therapeutic intervention more intensive than outpatient services but are at risk of inpatient care without this treatment.

D. Covered services and service limitations: A program of services must be furnished by a MAD enrolled provider delivering partial hospitalization to receive reimbursement from MAD.

Payment for performance of these services is included in the facility's reimbursement rate:

(1) regularly scheduled structured counseling and therapy sessions for an eligible recipient, his or her family, group or multifamily group based on individualized needs furnished by licensed behavioral health professionals, and, as specified in the treatment plan;

(2) educational and skills building groups furnished by the program team to promote recovery;

(3) age-appropriate skills development in the areas of household management, nutrition, personal care, physical and emotional health, basic life skills,

time management, school attendance and money management;

(4) drugs and biologicals that cannot be self-administered and are furnished for therapeutic management;

(5) assistance to the recipient in self-administration of medication in compliance with state policies and procedures;

(6) appropriate staff available on a 24-hour basis to respond to crisis situations, evaluate the severity of the situation, stabilize the recipient make referrals as necessary, and provide follow-up;

(7) consultation with other professionals or allied caregivers regarding a specific recipient;

(8) coordination of all non-medical services, including transportation needed to accomplish a treatment objective;

(9) therapeutic services to meet the physical, social, cultural, recreational, health maintenance, and rehabilitation needs of recipients; and

(10) discharge planning and referrals as necessary to community resources, supports, and providers in order to promote a recipient's return to a higher level of functioning in the least restrictive environment.

E. Non-covered services: Partial hospitalization services are subject to the limitations and coverage restrictions which exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for all general non-covered MAD behavioral health services or activities. MAD does not cover the following specific services with partial hospitalization:

(1) meals;

(2) transportation by the partial hospitalization provider;

(3) group activities or other services which are primarily recreational or diversional in nature;

(4) a program that only monitors the management

of medication for recipients whose psychiatric condition is otherwise stable, is not the combination, structure, and intensity of services which make up active treatment in a partial hospitalization program;

(5) actively homicidal or suicidal ideation that would not be safely managed in a PHP;

(6) formal educational and vocational services related to traditional academic subjects or vocational training; non-formal education services can be covered if they are part of an active treatment plan for the eligible recipient; see 42 CFR Section 441.13(b); or

(7) services to treat social maladjustments without manifest psychiatric disorders, including occupational maladjustment, marital maladjustment, and sexual dysfunction.

F. Prior authorization: Prior authorization is not required for this service unless the length of stay exceeds 45 days, at which time continued stay must be prior authorized (PA) from MAD or its UR contractor; or applicable centennial care MCO. Request for authorization for continued stay must state evidence of the need for the acute, intense, structured combination of services provided by a PHP, and must address the continuing serious nature of the recipient's psychiatric condition requiring active treatment in a PHP and include expectations for imminent improvement. Control of symptoms and maintenance of a functional level to avoid further deterioration or hospitalization are acceptable expectations of improvement. The request for authorization must also specify that a lower level of outpatient services would not be advised, and why, and that the recipient may otherwise require inpatient psychiatric care in the absence of continued stay in the PHP. The request describes:

(1) the recipient's response to the therapeutic interventions provided by the PHP;

(2) the recipient’s psychiatric symptoms that continue to place the recipient at risk of hospitalization; and
 (3) treatment goals for coordination of services to facilitate discharge from the PHP. See Subsection F of 8.321.2.9 NMAC for MAD general prior authorization requirements.

G. Reimbursement:

A provider of partial hospitalization services must submit claims for reimbursement on the UB claim form or its successor. See 8.302.2 NMAC and Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements. Specific to partial hospitalization services:

(1) Freestanding psychiatric hospitals are reimbursed at an interim percentage rate established by HSD to equal or closely approximate the final payment rates that apply under the cost settlement TEFRA principles using the Title XVIII (medicare) principles cost methodology, MAD reduces the medicare allowable costs by three percent. For partial hospitalization services that are not cost settled, such as general acute care hospitals, payments are made at the outpatient hospital prospective levels, when applicable, on the procedure codes (see Subsection E of 8.311.2.15 NMAC).

(2) The payment rate is at a per diem representing 8 hours, which is billed fractions of .25, .5, or .75 units to represent 2, 4, or 6 hours when applicable.

(3) Any professional services are billed and reimbursed to the provider under a separate professional component number, all costs for these services must be removed from the hospital cost report prior to cost settlement or rebasing.

(4) Services performed by a physician or Ph.D. psychologist are billed separately as a professional service. Other services performed by employees or contractors to the facility are included in the per diem rate which may be billed separately are:

(a) performance of necessary evaluations and psychological testing for the development of the treatment plan, while ensuring that evaluations already performed are not repeated;

(b) physical examination and any resultant medical treatments, while ensuring that a physical examination already performed is not repeated;

(c) any medically necessary occupational or physical therapy; and

(d) other professional services not rendered as part of the program. [8.321.2.31 NMAC - Rp & Rn, 8.321.2.21 NMAC, 1/1/2020]

8.321.2.32 PSYCHOSOCIAL REHABILITATION SERVICES:

To help an adult eligible recipient (18 years and older) who met the criteria of SMI, MAD pays for psychosocial rehabilitation services (PSR). PSR is an array of services offered in a group setting through a clubhouse or a classroom and is designed to help an individual to capitalize on personal strengths, to develop coping strategies and skills to deal with deficits, and to develop a supportive environment in which to function as independently as possible. Psychosocial rehabilitation intervention is intended to be a transitional level of care based on the individual’s recovery and resiliency goals.

A. Eligible providers and practitioners:

(1) The following agencies are eligible to be reimbursed for furnishing PSR to an eligible recipient:

(a) an IHS facility that meets the licensing requirement of a CMHC but elects not to seek such enrollment; and

(b) a CMHC licensed by DOH.

(2) Agency staff must possess the education, skills, abilities, and experience to perform the activities that comprise the full spectrum of PSR services. See Subsection A of 8.321.2.9 NMAC for MAD general provider requirements.

(3) Staffing requirements:

(a) Both clinical services and supervision by licensed practitioners must be in accord with their respective licensing board regulations.

(b) PSR services must meet a staff ratio sufficient to ensure that patients have reasonable and prompt access to services.

(c) In both clubhouse and classroom settings, the entire staff works as a team.

(d) The team must include a clinical supervisor/team lead and can include the following:

(i) certified peer support workers;

(ii) certified family support workers;

(iii) community support workers; and

(iv) other HIPAA trained individuals working under the direct supervision of the clinical supervisor.

(e) Minimum qualifications for the clinical supervisor/team lead:

(i) independently licensed behavioral health professional (i.e. psychiatrist, psychologist, LISW, LPCC, LMFT, psychiatrically certified (CNS) practicing under the scope of their NM license;

(ii) have one year of demonstrated supervisory experience;

(iii) demonstrated knowledge and competence in the field of psychosocial; rehabilitation; and

(iv) an attestation of training related to providing clinical supervision of non-clinical staff.

B. Coverage criteria:

(1) MAD covers only those PSR services which comply with DOH licensing standards and are medically necessary to meet the individual needs of the eligible recipient, as delineated in

his or her service plan and treatment plan. Medical necessity is based upon the eligible recipient's level of functioning as affected by his or her SMI. The PSR services are limited to goals which are individually designed to accommodate the level of the eligible recipient's functioning and which reduce the disability and restore the recipient to his or her best possible level of functioning.

(2) These services must be provided in a facility-based setting, either in a clubhouse model or a structured classroom.

(3) PSR services must be identified and justified in the individual's treatment or service plan. Recipients shall participate in PSR services for those activities that are identified in the treatment or service plan and are tied directly to the recipient's recovery and resiliency plan/goals.

(4) Specific service needs (e.g., household management, nutrition, hygiene, money management, parenting skills, etc.) must be identified in the individual's treatment or service plan.

C. Identified population:

(1) An eligible recipient 18 years or older meeting the criteria for SMI and for whom the medical necessity for PSR services was determined.

(2) Adults diagnosed with co-occurring SMI and substance use disorders and for whom the medical necessity for PSR services was determined.

(3) A resident in an institution for mental illness is not eligible for this service.

D. Covered services: The psychosocial intervention (PSI) program must include the following major components: basic living skills development; psychosocial skills training; therapeutic socialization; and individual empowerment.

(1) Basic living skills development activities address the following areas, including but not limited to:

- (a) basic household management;
 - (b) basic nutrition, health, and personal care including hygiene;
 - (c) personal safety;
 - (d) time management skills;
 - (e) money management skills;
 - (f) how to access and utilize transportation;
 - (g) awareness of community resources and support in their use;
 - (h) child care/parenting skills;
 - (i) work or employment skill-building; and
 - (j) how to access housing resources.
- (2) Psychosocial skills training activities address the following areas:
- (a) self-management;
 - (b) cognitive functioning;
 - (c) social/communication; and
 - (d) problem-solving skills.
- (3) Therapeutic socialization activities address the following areas:
- (a) understanding the importance of healthy leisure time;
 - (b) accessing community recreational facilities and resources;
 - (c) physical health and fitness needs;
 - (d) social and recreational skills and opportunities; and
 - (e) harm reduction and relapse prevention strategies (for individuals with co-occurring disorders).
- (4) Individual empowerment activities address the following areas:
- (a) choice;

- (b) self-advocacy;
- (c) self-management; and
- (d) community integration.

E. Non-covered services: PSR services are subject to the limitations and coverage restrictions which exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for all general non-covered MAD behavioral health services or activities. Specifically, PSR cannot be billed concurrently when the recipient is a resident of an institution for the mentally ill.

F. Prior authorization: For PSR, reviews are retrospective. To determine if the medical necessity for the service has been met, the following factors are considered:

- (1) recipient assessment;
- (2) recipient diagnostic formation;
- (3) recipient service and treatment plans; and
- (4) compliance with 8.321.2 NMAC.

G. Reimbursement: Claims for reimbursement are submitted on the CMS-1500 claim form or its successor. See Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements and see 8.302.2 NMAC. [8.321.2.32 NMAC - Rp, 8.321.2.23 NMAC, 1/1/2020]

8.321.2.33 RECOVERY SERVICES (MCOs only): Recovery services are peer-to-peer support for centennial care members to develop and enhance wellness and health care practices. Recovery services promote self-responsibility through recipients learning new health care practices from a peer who has had similar life challenges and who has developed self-efficacy in using needed skills.

A. Eligible providers and practitioners:

- (1) Provider types:

(a) core service agency;

(b) behavioral health agency;

(c) CLNM health homes; and

(d) opioid treatment program in a methadone clinic with supervisory certificate.

(2) Staff:

(a) all staff must possess a current and valid NM driver's license;

(b) clinical supervisor:

(i) licensed as an independent practitioner (i.e., psychiatrist, psychologist, LISW, LPCC, LMFT, CNP, CNS); and

(ii) two years relevant experience with the target population; and

(iii) one year demonstrated supervisory experience; and

(iv) expertise in both mental health and addiction treatment services; and

(v) supervision must be conducted in accord with respective licensing board regulations.

(c) certified peer support workers; and

(d) certified family specialists.

(3) Group ratios should be sufficient to ensure that patients have reasonable and prompt access to services at the required levels of frequency and intensity within the practitioner's scope of practices.

B. Coverage criteria:

Services occur individually or with consumers who support each other to optimize learning new skills. This skill enhancement then augments the effectiveness of other treatment and recovery support initiatives.

(1) Admissions criteria: Consumer has been unable to achieve functional use of natural and community support systems to effectively self-manage recovery and wellness.

(2) Continuation of services criteria: Consumer has made progress in achieving use of natural and community support systems to effectively self-manage recovery and wellness, but continues to need support in developing those competencies.

(3) Discharge criteria: Consumer has achieved maximum use of natural and community support systems to effectively self-manage recovery and wellness.

C. Identified population:

(1) Children experiencing serious emotional/neurobiological/behavioral disorders;

(2) Adults with serious mental illness (SMI); and

(3) Individuals with chronic substance abuse; or individuals with a co-occurring disorder (mental illness/substance abuse) or dually diagnosed with a primary diagnosis of mental illness.

D. Covered services:

(1) This service will particularly focus on the individual's wellness, ongoing recovery and resiliency, relapse prevention, and chronic disease management.

(2) Recovery services support specific recovery goals through:

(a) use of strategies for maintaining the eight dimensions of wellness;

(b) creation of relapse prevention plans;

(c) learning chronic disease management methods; and

(d) identification of linkages to ongoing community supports.

(3) Activities must support the individual's recovery goals. There must be documented evidence of the individual identifying desired recovery goals and outcomes and incorporating them into a recovery services treatment plan.

(4) Recovery services activities include, but are not limited to:

(a) screening, engaging, coaching, and educating.

(b) emotional support that demonstrates empathy, caring, or concern to bolster the person's self-esteem and confidence.

(c) sharing knowledge and information or providing life skills training.

(d) provision of concrete assistance to help others accomplish tasks.

(e) facilitation of contacts with other people to promote learning of social and recreational skills, create community and acquire a sense of belonging.

(5) Recovery services can be delivered in an individual or group setting.

E. Non-covered services: This service may not be billed in conjunction with:

(1) multi-systemic therapy (MST);

(2) assertive community treatment (ACT);

(3) partial hospitalization;

(4) transitional living services (TLS); or

(5) therapeutic foster care (TFC).

[8.321.2.33 NMAC - N, 1/1/2020]

8.321.2.34 SCREENING, BRIEF INTERVENTION & REFERRAL TO TREATMENT (SBIRT) TO BE EFFECTIVE FOLLOWING CMS WAIVER APPROVAL. SBIRT is a community-based practice designed to identify, reduce and prevent problematic substance use or misuse and co-occurring mental health disorders as an early intervention. Through early identification in a medical setting, SBIRT services expand and enhance the continuum of care and reduce costly health care utilization. The primary objective is the integration of behavioral health with medical care. SBIRT is delivered through a process consisting

of universal screening, scoring the screening tool and a warm hand-off to a SBIRT trained professional who conducts a face-to-face brief intervention for positive screening results. If the need is identified for additional treatment, the staff member will refer to behavioral health services.

A. Eligible providers and practitioners.

- (1) Providers:
 - (a) primary care offices including FQHCs, IHS and 638 tribal facilities;
 - (b) patient centered medical homes;
 - (c) urgent care centers;
 - (d) hospital outpatient facilities;
 - (e) emergency departments;
 - (f) rural health clinics;
 - (g) specialty physical health clinics; and
 - (h) school based health centers.
- (2) Practitioners may include:
 - (a) licensed nurse trained in SBIRT;
 - (b) licensed nurse practitioner or licensed nurse clinician trained in SBIRT;
 - (c) behavioral health practitioner trained in SBIRT;
 - (d) certified peer support worker trained in SBIRT;
 - (e) certified community health worker trained in SBIRT;
 - (f) licensed physician assistant trained in SBIRT;
 - (g) physician trained in SBIRT;
 - (h) home health agency trained in SBIRT
 - (i) nurse home visit EPSDT;
 - (j) medical assistant trained in SBIRT; and

(k) community health representative in tribal clinics trained in SBIRT.

B. Coverage Criteria:

- (1) screening shall be universal for recipients being seen in a medical setting;
- (2) referral relationships with mental health agencies and practices are in place;
- (3) utilization of approved screening tool specific to age described in the BH policy and billing manual;
- (4) all participating providers and practitioners are trained in SBIRT through state approved SBIRT training entities. See details in the BH policy and billing manual.

C. Identified population:

- (1) MAD recipient adolescents 11-13 years of age with parental consent;
- (2) MAD recipient adolescents 14-18 years of age;
- (3) MAD recipient adults 19 years and older.

D. Covered services:

- (1) SBIRT screening with negative results eligible for only screening component;
- (2) SBIRT screening with positive results for alcohol, or other drugs, and co-occurring with depression, or anxiety, or trauma are eligible for:
 - (a) screening; and
 - (b) brief intervention and referral to behavioral health treatment, if needed.

E. Reimbursement:

- (1) Screening services do not require a diagnosis; brief interventions can be billed with a provisional diagnosis.
- (2) See BH policy and billing manual for coding and billing instruction. [8.321.2.34 NMAC - N, 1/1/2020]

8.321.2.35 SMOKING CESSATION COUNSELING: See 8.310.2 NMAC for a detailed

description of tobacco cessation services and approved behavioral health providers. [8.321.2.35 NMAC - Rp, 8.321.2.24 NMAC, 1/1/2020]

8.321.2.36 SUPPORTIVE HOUSING PRE-TENANCY AND TENANCY SERVICES (PSH-TSS) (MCO only):

MAD pays for coverage for permanent supportive housing pre-tenancy and tenancy support services (PSH-TSS) to an eligible recipient enrolled in a managed care organization to facilitate community integration and contribute to a holistic focus on improved health outcomes, to reduce the negative health impact of precarious housing and homelessness, and to reduce costly inpatient health care utilization. Services include, but are not limited to, pre-tenancy services including individual housing support and crisis planning, tenancy orientation and landlord relationship services as well as tenancy support services to identify issues that undermine housing stability and coaching, education and assistance in resolving tenancy issues for an eligible recipient who has a serious mental illness and is enrolled in a medicaid managed care organization on, or after, July 1, 2019. The effective date will be July 1, 2019, or as otherwise approved by the centers for medicare and medicaid services (CMS).

A. Eligible providers and practitioners:

- (1) Any clinic, office or agency providing permanent supportive housing under the human services department's linkages program administered by the behavioral health services division.
- (2) Behavioral health practitioners employed or contracted with such facilities including:
 - (a) behavioral health professional licensed in the state of New Mexico; and
 - (b) certified peer support workers or certified family peer support workers.

B. Coverage criteria:
(1) Enrollment in the linkages permanent supportive housing program.
(2) An assessment documenting serious mental illness.

C. Eligible recipients:
 Individuals with serious mental illness.

D. Covered services:
(1) Pre-tenancy services, including:
(a) screening and identifying preferences and barriers related to successful tenancy;
(b) developing an individual housing support plan and housing crisis plan;
(c) ensuring that the living environment is safe and ready for move-in;
(d) tenancy orientation and move-in assistance;
(e) assistance in securing necessary household supplies; and
(f) landlord relationship building and communication.
(2) Tenancy support services, including:
(a) early identification of issues undermining housing stability, including member behaviors;
(b) coaching the member about relationships with neighbors, landlords and tenancy conditions;
(c) education about tenant responsibilities and rights;
(d) assistance and advocacy in resolving tenancy issues;
(e) regular review and updates to housing support plan and housing crisis plan; and
(f) linkages to other community resources for maintaining housing.

E. Duration: The PSH-TSS benefit is available to an eligible member for the duration of

the member’s enrollment in a linkages program, ceasing when the client leaves the program.

F. Reimbursement:
 See Subsection H of 8.321.9 NMAC for MAD behavioral health general reimbursement requirements. See the BH policy and billing manual for reimbursement specific to PSH-TSS. These services do not include tenancy assistance in the form of rent or subsidized housing.
 [8.321.2.136 NMAC - N, 1/1/2020]

8.321.2.37 TREATMENT FOSTER CARE I and II: MAD pays for medically necessary services furnished to an eligible recipient under 21 years of age who has an identified need for treatment foster care (TFC) and meets the TFC I or TFC II level of care (LOC) as part of the EPSDT program. MAD covers those services included in the eligible recipient’s individualized treatment plan which is designed to help him or her develop skills necessary for successful reintegration into his or her family or transition back into the community. TFC I agency provides therapeutic services to an eligible recipient who is experiencing emotional or psychological trauma and who would optimally benefit from the services and supervision provided in a TFC I setting. The TFC II agency provides therapeutic family living experiences as the core treatment service to which other individualized services can be added. The need for TFC I and II services must be identified in the tot to teen health check or other diagnostic evaluation furnished through the eligible recipient’s health check referral.

A. Eligible agencies:
 In addition to the requirements of Subsections A and B of 8.321.2.9 NMAC, in order to be eligible to be reimbursed for providing TFC services to an eligible recipient, the agency must be a CYFD certified TFC agency and be licensed as a child placement agency by CYFD protective services.

B. Coverage criteria:
(1) The treatment foster care agency

provides intensive support, technical assistance, and supervision of all treatment foster parents.

(2) A TFC I and II parent is either employed or contracted by the TFC agency and receives appropriate training and supervision by the TFC agency.

(3) Placement does not occur until after a comprehensive assessment of how the prospective treatment foster family can meet the recipient’s needs and preferences, and a documented determination by the agency that the prospective placement is a reasonable match for the recipient.

(4) An initial treatment plan must be developed within 72 hours of admission and a comprehensive treatment plan must be developed within 14 calendar days of the eligible recipient’s admission to a TFC I or II program. See the BH policy and billing manual for the specific requirements of a TFC treatment plan.

(5) The treatment team must review the treatment plan every 30 calendar days.

(6) TFC families must have one parent readily accessible at all times, cannot schedule work when the eligible recipient is normally at home, and is able to be physically present to meet the eligible recipient’s emotional and behavioral needs.

(7) In the event the treatment foster parents request a treatment foster recipient be removed from their home, a treatment team meeting must be held and an agreement made that a move is in the best interest of the involved recipient. Any treatment foster parent(s) who demands removal of a treatment foster recipient from his or her home without first discussing with and obtaining consensus of the treatment team, may have their license revoked.

(8) A recipient eligible for treatment foster care services, level I or II, may change treatment foster homes only under the following circumstances:

(a) an effort is being made to reunite siblings; or

(b) a change of treatment foster home is clinically indicated, as documented in the client's record by the treatment team.

C. Identified population:

(1) TFC I services are for an eligible recipient who meets the following criteria:

(a) is at risk for placement in a higher level of care or is returning from a higher level of care and is appropriate for a lower level of care; or

(b) has complex and difficult psychiatric, psychological, neurobiological, behavioral, psychosocial problems; and

(c) requires and would optimally benefit from the behavioral health services and supervision provided in a treatment foster home setting.

(2) TFC II services are for an eligible recipient who meets the criteria listed in Section 25 Subsection B of 8.321.2.9 NMAC and also meet one of the following criteria:

(a) has successfully completed treatment foster care services level I (TFC I), as indicated by the treatment team; or

(b) requires the initiation or continuity of treatment and support of the treatment foster family to secure or maintain therapeutic gains; or

(c) requires this treatment modality as an appropriate entry level service from which the client will optimally benefit.

(3) An eligible recipient has the right to receive services from any MAD TFC enrolled agency of his or her choice.

D. Covered services:
The family living experience is the core treatment service to which other individualized services can be added, as appropriate to meet the eligible recipient's needs.

(1) The TFC parental responsibilities include, but are not limited to:

(a) meeting the recipient's base needs, and providing daily care and supervision;

(b) participating in the development of treatment plans for the eligible recipient by providing input based on his or her observations;

(c) assuming the primary responsibility for implementing the in-home treatment strategies specified in the eligible recipient's treatment plan;

(d) recording the eligible recipient's information and documentation of activities, as required by the TFC agency and the standards under which it operates;

(e) assisting the eligible recipient with maintaining contact with his or her family and enhancing that relationship;

(f) supporting efforts specified by the treatment plan to meet the eligible recipient's permanency planning goals;

(g) reunification with the recipient's family. The treatment foster parents work in conjunction with the treatment team toward the accomplishment of the reunification objectives outlined in the treatment plan;

(h) assisting the eligible recipient obtain medical, educational, vocational and other services to reach goals identified in treatment plan;

(i) ensuring proper and adequate supervision is provided at all times. Treatment teams determine that all out-of-home activities are appropriate for the recipient's level of need, including the need for supervision; and

(j) working with all appropriate and available community-based resources to secure services for and to advocate for the eligible recipient.

(2) The treatment foster care agency provides intensive support, technical assistance, and supervision of all treatment foster parents. The following services must be furnished by both TFC I and II agencies unless specified for either I or II. Payment for performance of these services is included in the TFC agency's reimbursement rate:

(a) facilitation, monitoring and documenting of treatment of TFC parents initial and ongoing training;

(b) providing support, assistance and training to the TFC parents;

(c) providing assessments for pre placement and placement to determine the eligible recipient's placement is therapeutically appropriate;

(d) ongoing review of the eligible recipient's progress in TFC and assessment of family interactions and stress;

(e) ongoing treatment planning as defined in Subsection G of 8.321.2.9 NMAC and treatment team meetings;

(f) provision of individual, family or group psychotherapy to recipients as described in the treatment plan. The TFC therapist is an active treatment team member and participates fully in the treatment planning process;

(g) family therapy is required when client reunification with their family is the goal;

(h) ensuring facilitation of age-appropriate skill development in the areas of household management, nutrition, physical and emotional health, basic life skills, time management, school attendance, money management, independent living, relaxation techniques and self-care techniques for the eligible recipient;

(i) providing crisis intervention on call to treatment foster parents, recipients and their families on a 24-hour,

seven days a week basis including 24-hour availability of appropriate staff to respond to the home in crisis situations;

(j)

assessing the family’s strengths, needs and developing a family service plan when an eligible recipient’s return to his or her family is planned;

(k)

conducting a private face-to-face visit with the eligible recipient within the first two weeks of TFC I placement and at least twice monthly thereafter by the treatment coordinator;

(l)

conducting a face-to-face interview with the eligible recipient’s TFC parents within the first two weeks of TFC I placement and at least twice monthly thereafter by the treatment coordinator;

(m)

conducting at a minimum one phone contact with the TFC I parents weekly; phone contact is not necessary in the same week as the face-to-face contact by the treatment coordinator;

(n)

conducting a private face-to face interview with the eligible recipient’s TFC II parent within the first two weeks of TFC II placement and at least once monthly thereafter by the treatment coordinator;

(o)

conducting a face-to-face interview with the eligible recipient’s TFC II parent within the first two weeks of TFC II placement and at least once monthly thereafter by the treatment coordinator; and

(p)

conducting at a minimum one phone contact with the TFC II parents weekly; phone contact is not necessary in the same week as the face-to-face contact by the treatment coordinator.

E. Non-covered

service: TFC I and II services are subject to the limitations and coverage restrictions that exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for all non-covered MAD behavioral health services or activities. Specific to TFC I and II services MAD does not cover:

(1) room and

board;

(2) formal

educational or vocational services related to traditional academic subjects or vocational training;

(3) respite

care; and

(4) CCSS

except as part of the discharge planning from either the eligible recipient’s TFC I or II placement.

F. Prior

authorization: Before any TFC service is furnished to an eligible recipient, prior authorization is required from MAD or its UR contractor. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

G. A TFC agency must

submit claims for reimbursement on the CMS-1500 form or its successor. See Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements and see 8.302.2 NMAC. [8.321.2.37 NMAC - Rp, 8.321.2.25 NMAC, 1/1/2020]

HISTORY OF 8.321.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
 ISD 310.1700, EPSDT Services, filed 2/13/1980.
 ISD 310.1700, EPSDT Services, filed 6/25/1980.
 ISD Rule 310.1700, EPSDT Services, filed 10/22/1984.
 MAD Rule 310.17, EPSDT Services, filed 5/1/1992.
 MAD Rule 310.17, EPSDT Services, filed 7/14/1993.
 MAD Rule 310.17, EPSDT Services, filed 11/12/1993.
 MAD Rule 310.17, EPSDT Services, filed 12/17/1993.
 MAD Rule 310.17, EPSDT Services, filed 3/14/1994.
 MAD Rule 310.17, EPSDT Services, filed 6/15/1994.
 MAD Rule 310.17, EPSDT Services, filed 11/30/1994.

History of Repealed Material:

MAC Rule 310.17, EPSDT Services,

filed 11/30/1994 - Repealed effective 2/1/1995.

8.321.2 NMAC, Inpatient Psychiatric Care in Freestanding Psychiatric Hospitals, filed 10/8/2010 - Repealed effective 1/1/2014.

8.321.3 NMAC, Accredited Residential Treatment Center Services, filed 2/17/2012 - Repeal effective 1/1/2014.

8.321.4 NMAC, Non- Accredited Residential Treatment Center Services, filed 2/17/2012 - Repeal effective 1/1/2014

8.321.5 NMAC, Outpatients and Partial Hospitalization Services in Freestanding Psychiatric Hospitals, filed 1/5/2012 - Repealed effective 1/1/2014.

8.322.2 NMAC, Treatment Foster Care, filed 2/17/2012 - Repealed effective 1/1/2014.

8.322.3 NMAC, Behavioral Management Skills Development Services, filed 10/12/2005 - Repealed effective 1/1/2014.

8.322.4 NMAC, Day Treatment, filed 10/12/2005 - Repealed effective 1/1/2014.

8.322.5 NMAC, Treatment Foster Care II, filed 2/17/2012 - Repealed effective 1/1/2014.

8.322.6 NMAC, Multi-Systemic Therapy, filed 11/16/2007 - Repealed effective 1/1/2014.

8.321.2 NMAC, Specialized Behavioral Health Provider Enrollment and Reimbursement filed 12/17/2013, Repealed effective 1/1/2020.

Other History:

8.321.2 NMAC, Specialized Behavioral Health Provider Enrollment and Reimbursement filed 12/17/2013 was replaced by 8.321.2 NMAC, Specialized Behavioral Health Provider Enrollment and Reimbursement effective 1/1/2020.

PHARMACY, BOARD OF

This is an amendment to 16.19.18 NMAC, Sections 1, 3, 7, 9, and 10 effective 12/17/2019

16.19.18.1 ISSUING

AGENCY: Regulation and Licensing Department - Board of Pharmacy[-1650 University Blvd, NE--Ste-400B, Albuquerque, NM 87102, (505) 841-9102].
[2/15/1889...2/15/1996; 16.19.18.1 NMAC - Rn, 16 NMAC 19.18.1, 3/30/2002; A, 12/17/2019]

16.19.18.3 STATUTORY

AUTHORITY: [Section 61-11-6.A.(1) NMSA 1978] Paragraph (1) of Subsection (A) of Section 61-11-6 NMSA 1978 authorizes the Board of Pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act. [Section 61-11-6.A.(3)] Paragraph (3) of Subsection (A) of Section 61-11-6 NMSA 1978 directs the Board to provide for the registration and annual renewal of licenses of pharmacists. Pursuant to [61-11-6.A.(6)] Paragraph (6) of Subsection (A) of Section 61-11-6 NMSA 1978, the Board is authorized to provide for the licensing of retail pharmacies, nonresident pharmacies and wholesale drug distributors and to provide for the inspection of their facilities and activities.
[2/15/1996; A, 5/30/1998; 16.19.18.3 NMAC - Rn, 16 NMAC 19.18.3, 3/30/2002; A, 12/17/2019]

16.19.18.7 DEFINITIONS:

A. The “**Practice of Nuclear Pharmacy**” means a patient-oriented service that embodies the scientific knowledge and professional judgement required to improve and promote health through the assurance of the same and efficacious use of radiopharmaceuticals and other drugs.

B. “**Nuclear Pharmacy**” means a pharmacy which provides radiopharmaceutical services, and shall be licensed by the Board as a wholesaler [and/]or retail pharmacy.

C. “**Qualified Nuclear**

Pharmacist” means a pharmacist currently licensed by the Board who meets either of the following criteria:

- (1) Must be currently certified as a Nuclear Pharmacist by the Board of Pharmaceutical Specialties; or
- (2) Must have successfully completed the requirements of [Paragraph 7.C.2.a.] Subparagraphs (a) and (b) of this Paragraph. [and meet a minimum of 250 contact hours of didactic instruction in nuclear pharmacy and the safe handling and use of radioactive materials from a nationally-accredited college of pharmacy or other training program sponsored by an ACPE-accredited provider of continuing pharmaceutical education, with the minimum 250-contact hours apportioned according to 7.C.2.b. and 7.C.2.c.]

- (a) Must have attained a minimum of 500 contact hours of experiential training in nuclear pharmacy under the supervision of a qualified nuclear pharmacist in, but not limited to, the following areas:
 - (i) procurement of radioactive materials;
 - (ii) compounding of radiopharmaceuticals;
 - (iii) maintenance of a quality assurance program;
 - (iv) dispensing of radiopharmaceuticals;
 - (v) distribution of radiopharmaceuticals;
 - (vi) implementation of basic health and safety practices and procedures; and
 - (vii) provision of information and consultation related to the practice of nuclear pharmacy and the use of radiopharmaceuticals.
 - [~~(viii)~~] monitoring of outcomes in patients who receive radiopharmaceuticals and related ancillary medications;
 - [~~(ix)~~] research and development of radiopharmaceuticals].

- (b) 200 contact hours of didactic instruction in nuclear pharmacy and the safe handling and use of radioactive materials, from a nationally-accredited college of pharmacy or other training program sponsored by an ACPE-accredited provider of continuing pharmaceutical education, in the following five areas:
 - (i) radiation physics and instrumentation;
 - (ii) radiation protection;
 - (iii) mathematics pertaining to the use and measurement of radioactivity;
 - (iv) radiation biology; and
 - (v) radiopharmaceutical chemistry. [and ~~(e)~~ 50 hours in the clinical use of radiopharmaceuticals].
- (3) Any pharmacist who has been legally listed on a radioactive material license for a nuclear pharmacy in the State of New Mexico for at least six months prior to the 1994 effective date of these regulations, is exempt from Paragraphs (1) and (2) of Subsection C of 16.19.18.7 NMAC.

[~~(3)~~] **D.** “**Radiopharmaceutical Services**” means the procurement, storage, handling, compounding, labeling, quality control testing, dispensing, distribution, transfer, record keeping and disposal of radiochemicals, radiopharmaceuticals and ancillary drugs, and also includes quality assurance procedures, radiological health activities, any consulting activities associated with the use of radiopharmaceuticals, and any other activities required for provision of pharmaceutical care.

[~~(4)~~] **E.** “**Quality Control Testing**” means the performance of appropriate chemical, biological and physical tests on compounded radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals.

[~~(5)~~] **F.** “**Quality Assurance Procedures**” means

all activities necessary to assure the quality of the process used to provide radiopharmaceutical services, including authentication of product history and maintenance of all records as required by pertinent regulatory agencies.

(6) G. “Authentication of Product History” means identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical or other drug.

(7) H. “Radiopharmaceutical” means any drug which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or protons and includes any nonradioactive reagent kit or nuclide generator which is intended to be used in the preparation of any such substance but does not include drugs such as carbon-containing compounds or potassium-containing salts which contain trace quantities of naturally occurring radionuclides. The term ‘radiopharmaceutical’ also includes any biological product which is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

~~**D.** Any pharmacist who has been legally listed on a radioactive material license for a nuclear pharmacy in the State of New Mexico for at least six months prior to the effective date of these regulations, is exempt from Paragraphs 7.C.1 and 7.C.2;~~

[5/29/1994, 5/30/1998; 16.19.18.7 NMAC - Rn, 16 NMAC 19.18.7, 3/30/2002; A, 12/17/2019]

16.19.18.9 REQUIREMENTS FOR OPERATION OF A NUCLEAR PHARMACY:

A. A nuclear pharmacy shall meet the requirements of ~~[16-NMAC-19-6]~~ 16.19.6 NMAC of the Board, except as provided for in this section.

B. A qualified nuclear pharmacist shall be in personal attendance when the nuclear pharmacy is open for business.

C. A nuclear pharmacy shall meet minimum space

requirements established for all pharmacies in the state (see ~~[16-nmac-19-6-10]~~ 16.19.6.10 NMAC, with the exception that the space may be interrupted).

D. The nuclear pharmacy shall maintain records of procurement, inventory and disposition of all radioactive drugs and other radioactive materials.

E. A nuclear pharmacy shall have a current copy (paper or electronic) of city, state, and federal regulations governing the safe storage, handling, use, dispensing, transport and disposal of radiopharmaceuticals.

F. The following minimum equipment requirements ~~[for a nuclear pharmacy are in lieu of], as appropriate for the scope of nuclear pharmacy services provided, are in addition to~~ those contained in ~~[16.19.6.11.A NMAC Paragraphs 11.A.6-11.A.9; 11.A.12-11.A.14; 11.A.18; 11.A.20 and 11.1.21 (the remainder of Sub-Section 11.A remains in force)]~~ Subsection A of 16.19.6.11 NMAC:

- (1) Radionuclide Dose Calibrator;
- (2) Refrigerator;
- (3) Single or multiple channel scintillation counter with well-type NaI(Tl) or Ge(Li) detector;
- (4) Radiochemical fume hood and filter system;
- (5) Area rate meter;
- (6) At least two (2) GM survey meters;
- (7) Microscope and hemacytometer;
- (8) Laminar air flow hood and/or biologic safety cabinet;
- (9) Syringe and vial radiation shields;
- (10) Lead-shielded drawing station;
- (11) Decontamination supplies;
- (12) Other equipment as needed for radiation safety to workers and the public;

or for performance of quality control/quality assurance specified by standards of practice for the individual setting and the products involved.

G. A nuclear pharmacy shall operate in conformance with the United States Pharmacopeia General Chapters: <825> Radiopharmaceuticals – Preparation, Compounding, Dispensing, and Repackaging, and all other applicable chapters numbered 1000 or less. [5/20/1994; 16.19.18.9 NMAC - Rn, 16 NMAC 19.18.9, 3/30/2002; A, 12/17/2019]

16.19.18.10 REQUIREMENTS FOR PROVISION OF RADIOPHARMACEUTICAL SERVICES:

A. Medications shall be dispensed from a nuclear pharmacy in accordance with the requirements contained in ~~[16-NMAC-19-6]~~ 16.19.6 NMAC, except as provided for in this section.

B. A radiopharmaceutical shall be dispensed only to a licensed practitioner authorized by the Nuclear Regulatory Commission or an equivalent agreement state agency to possess, use and administer such drug. A radiopharmaceutical shall be dispensed only upon receipt of a prescription from such licensed practitioner. Otherwise, a radiopharmaceutical may be transferred to a person who is authorized to possess and use such drug for non-clinical applications.

C. In addition to other labeling requirements of the Board for nonradioactive drugs, the outer container shield of a radiopharmaceutical to be dispensed or transferred shall also be labeled with the following information:

- (1) the standard radiation symbol;
- (2) the words “Caution -- Radioactive Materials”;
- (3) the radionuclide;
- (4) the chemical form;
- (5) the amount of radioactivity and the calibration date and time;

(6) the expiration date and time;
 (7) if a liquid, the volume;
 (8) if a solid, the number of dosage units or weight;
 (9) if a gas, the number of ampules or vials;
 (10) the name of the patient (required only for radiolabeled blood components and all radiopharmaceuticals intended for therapeutic use).

D. The inner container (e.g., syringe, vial, etc.) used to dispense or transfer a radiopharmaceutical shall be labeled with the following information:

(1) the standard radiation symbol;
 (2) the prescription or lot number;
 (3) the name of the radiopharmaceutical;
 (4) the name of the patient (required only for radiolabeled blood components and all radiopharmaceuticals intended for therapeutic use).

E. A licensed nuclear pharmacy, upon receiving a verbal prescription for a radiopharmaceutical, shall immediately have the prescription reduced to writing or recorded in a data processing system. The writing [and/] or record shall contain at least the following information, in addition to other requirements of the Board:

(1) the name of the institution represented;
 (2) the date of the prescription;
 (3) the name and dose of the radiopharmaceutical;
 (4) the name of the procedure;
 (5) the requested date/time of calibration (tentative date/time of administration) of the prescribed radiopharmaceutical;
 (6) the name of the patient (required for radiolabeled blood components and all radiopharmaceuticals intended for therapeutic use.);
 (7) any specific instructions, if required.

F. Whenever a radiopharmaceutical is dispensed under the authority of an Investigational New Drug Application (INDA), the nuclear pharmacy records shall include an investigator's protocol for the preparation of the radiopharmaceutical, a copy of the Institutional Review Board approval form (or letter), and a letter from the manufacturer (sponsor) indicating that the physician requesting the radiopharmaceutical is a qualified investigator.

~~[G. — Pharmacists practicing at a facility licensed under 16 NMAC 19.18 are exempt from 16.19.4.22.5 NMAC through 16.19.4.22.7 NMAC.]~~
 [5/20/1994; 16.19.18.10 NMAC - Rn, 16 NMAC 19.18.10, 3/30/2002; A, 12/17/2019]

PHARMACY, BOARD OF

This is an amendment to 16.19.20 NMAC, Sections 9, 16, 20, 26, 36, 37, 38, 40, 41, 53, 65, 66, and 69, effective 12/17/2019.

Explanatory paragraph: In 16.19.20.65 NMAC, Subsections A through C and Subsections E through F were not published as there are no changes. In 16.19.20.66 NMAC, Subsections A through C and Subsections E through F were not published as there are no changes.

16.19.20.9 REGISTRATION AND EXPIRATION DATES:

A. Any person who is required to be registered and who is not registered may apply for registration at any time.
B. In December 1982 all registrant renewal dates will be assigned to one of 12 groups which shall correspond to the months of the year. Thereafter, any person who first registers will also be assigned to one of the 12 groups.
C. Expiration date of the registration of all individuals or businesses within any group will be the last day of the month designated

for that group. Renewal date will be within 30 days of the date shown on the registration permit and will expire on that date if not renewed by the registrant.

D. Renewal applications will be mailed to the physical, mailing, or electronic address indicated on the application on file or as amended by change of address supplied by the registrant to the board of pharmacy.
 [16.19.20.9 NMAC - Rp 16.19.20.9 NMAC, 6/26/2018; A, 12/17/2019]

16.19.20.16 PROCEDURE SUMMARY, RESEARCH:

A scientific investigator or research applicant shall submit a summary of procedures indicating the nature, extent and duration of such research. The summary shall also include the names of individuals engaged in the project (other than those exempt under the Controlled Substances Act) the name or names of the substances to be used in the research project, the adequacy of safeguards against diversion of the controlled substance(s) to be used, source of supply of controlled substance(s) if applicable, and evidence of FDA and DEA approval and registration if registered by the federal agencies.
 [16.19.20.16 NMAC - Rp 16.19.20.16 NMAC, 6/26/2018; A, 12/17/2019]

16.19.20.20 INVENTORY RECORDS:

A. All registrants are required to keep inventory and procurement records.
B. All registrants shall comply with the following inventory requirements: schedule I, II, III, IV and V initial, annual [inventory], newly controlled substances, change in pharmacist in charge, and transfer of pharmacy ownership.
C. All registrants shall conduct an initial inventory of all controlled substances on hand on the date they first engage in controlled substances activity. In the event a registrant commences business with no controlled substances on hand, he/she shall record this fact on the initial inventory.

~~[C] D.~~ The annual inventory date shall be May 1 [for the initial inventory by the registrant] or on the registrant’s regular general physical inventory date, provided that [date does not vary by more than six months before or after May 1] the registrant shall notify the board of pharmacy of the [date on which the annual inventory will be taken, if different from May 1] set alternate annual inventory date. The actual taking of the inventory should not vary more than four days [from] before or after the annual inventory date (May 1 or set alternate date). [The inventory shall document being taken either as of the opening or as of the close of business activity, the inventory date and time, and shall be entered on the inventory record.]

~~[D] E.~~ [Controlled substances added to the Controlled Substances Act after date of enactment] On the effective date that a substance is added to any schedule of controlled substances, which substance was, immediately prior to that date, not listed on any schedule, every registrant who possesses that substance shall take an inventory of all stock of the substance on hand and file this record with the other inventory records as required.

~~[E] F.~~ Upon the change of a pharmacist-in-charge, an inventory of all controlled substances shall be taken within 72 hours, by the new pharmacist-in-charge. [The inventory shall be taken either as of the opening or as of the close of business activity on the inventory date, and such time and date taken shall be entered on the inventory record.]

~~[F] G.~~ Upon transfer of ownership of a pharmacy, an inventory of all controlled substances shall be taken by the pharmacist-in-charge. [The inventory shall be taken either as of the opening or as of the close of business activity on the inventory date, and such time and date taken shall be entered on the inventory record.]

H. The inventory shall include:

- (1) the date;
- (2) time taken

(i.e., opening or close of business):

- (3) drug name;
- (4) the drug strength;
- (5) the drug form (e.g., tablet, capsule, etc.);
- (6) the number of units or volume;
- (7) the total quantity. A commercial container which has been opened shall be the exact count or measure of substances listed in schedule I or schedule II. If the substance is listed in schedule III, IV or V, he shall make an estimated count or measure of the contents, unless the container holds more than 1,000 tablets or capsules in which case the count must be exact;
- (8) expired or unusable controlled substances shall be documented as such, and inventoried.

(9) The name, address and DEA registration number of the registrant.

(10) The signature of the person or persons responsible for taking the inventory. [16.19.20.20 NMAC - Rp 16.19.20.20 NMAC, 6/26/2018; A, 12/17/2019]

16.19.20.26 PROCUREMENT RECORDS: “Order forms” refer to DEA form 222 or its electronic equivalent required for distribution or procurement of a schedule I or II controlled substance under the federal act. [Order forms are issued in books of six forms in triplicate to registrants by requisition from DEA registration branch, Department of Justice, P.O. Box 28083, Central Station, Washington, DC, 20005.] [16.19.20.26 NMAC - Rp 16.19.20.26 NMAC, 6/26/2018; A, 12/17/2019]

16.19.20.36 REPORT OF LOSS OR THEFT OF A CONTROLLED SUBSTANCE:

A. The registered supplier shall be responsible for reporting in-transit losses of controlled substances by a common carrier or contract carrier selected by the supplier upon discovery of such loss or theft. Registrant shall complete DEA form 106 as required

and furnish a copy to the board of pharmacy.

B. A significant loss or theft of a controlled substance shall be reported in writing to the board of pharmacy and DEA on form 106 as required by federal regulations. “Significant loss” includes suspected diversions, in-transit losses or any other unexplained loss and must be reported to the board of pharmacy within five days of becoming aware of that loss. [DEA form 106 may be obtained from the board of pharmacy or DEA.]

[16.19.20.36 NMAC - Rp 16.19.20.36 NMAC, 6/26/2018; A, 12/17/2019]

16.19.20.37 HOSPITALS, INSTITUTIONS AND CLINICS:

Disposal of excess or undesirable controlled substances resulting from extemporaneous amounts of residue or wasted controlled substances. A registrant who needs to dispose of excess or undesirable controlled substances resulting from injections from ampules or less than the full ampule or other such circumstances shall [keep a written memorandum report on the hospital narcotic records and periodically file a report on DEA form 41 with DEA pursuant to the requirements of the federal DEA Regulations 1307.21(e)] record in accordance with DEA regulations [e.g. 21 CFR 1304.22(c) or successor regulation], and two persons (at least one who is a licensed health care professional) shall witness and record disposal. The registrant will have implemented security controls and procedures that ensure pharmaceutical wastage is not diverted. The disposal method shall render the substance irretrievable.

[16.19.20.37 NMAC - Rp 16.19.20.37 NMAC, 6/26/2018; A, 12/17/2019]

16.19.20.38 DISPOSITION OF [DAMAGED] UNUSABLE, OUTDATED OR UNWANTED CONTROLLED SUBSTANCES:

[Any registrant in possession of any controlled substances and desiring or required to dispose of such substances(s) may contact the regional director of DEA for authority

and instructions to dispose of such substance.]

A. Disposition shall be in accordance with DEA regulation 21 CFR Part 1317 (or successor regulation).

B. A registrant, other than a manufacturer, distributor, reverse distributor, importer, exporter, or narcotic treatment program, in possession of any controlled substances and desiring or required to dispose of such substance(s) may contact the special agent in charge of the DEA in the area in which the registrant is located by submitting one copy of the DEA form 41 listing the controlled substance(s) which the registrant desires to dispose for authority and instructions to dispose of such substance (21 CFR 1317.05). The registrant shall keep a written memorandum report, and use DEA form 41 to record the destruction.

C. Any registrant in possession of any controlled substances and desiring or required to dispose of such substance(s) may:

(1) Promptly deliver that controlled substance to a reverse distributor's registered location by common or contract carrier pick-up or by reverse distributor pick-up at the registrant's registered location;

(2) For the purpose of return or recall, promptly deliver that controlled substance by common or contract carrier pick-up or pick-up by other registrants at the registrant's registered location to: the registered person from whom it was obtained, the registered manufacturer of the substance, or another registrant authorized by the manufacturer to accept returns or recalls on the manufacturer's behalf.

D. Records of disposition shall be maintained in proper form and available for inspection for at least three years. [16.19.20.38 NMAC -Rp 16.19.20.38 NMAC, 6/26/2018; A, 12/17/2019]

16.19.20.40 DISTRIBUTION UPON TRANSFER OR DISCONTINUANCE OF BUSINESS:

A. Upon transfer of a business from one owner to another, the registrant may dispose of the controlled substances in his possession as follows:

(1) On the date of transfer of controlled substances, a complete inventory of all controlled substances being transferred shall be taken in accordance with ~~[16.19.20.19]~~ 16.19.20.20 NMAC, ~~[board of pharmacy regulations to]~~ Title 21, Section 1304.11~~[-1304.14]~~ of the federal DEA regulations (or successor regulation). This inventory of the registrant-transferee and a copy of the inventory shall be included in the records of each person. It shall not be necessary to file a copy of the inventory with DEA or the board of pharmacy unless requested by either agency. Transfer of schedule I or II substances require the use of ~~[order-forms (Form DEA-222e)]~~ DEA Form 222, and transfer of Schedule III – V substances require the use of invoice.

(2) All records required to be kept by the registrant-transferor with reference to the controlled substances being transferred, shall be transferred to the registrant-transferee. Responsibility for the accuracy of records prior to the date of transfer remains with the transferor, but responsibility for custody and maintenance shall be upon the transferee.

(3) All schedule I or II substances must be transferred pursuant to order forms as required by the federal regulations. A copy of the inventory will constitute a record of receipt for the purchaser.

B. Upon discontinuance of business, if there are controlled substances which are not transferred to another registrant, these substances shall be handled as unwanted controlled substances under ~~[16.19.20.37]~~ 16.19.20.38 NMAC. ~~[16.19.20.40 NMAC - Rp 16.19.20.40 NMAC, 6/26/2018; A, 12/17/2019]~~

16.19.20.41 PRESCRIPTIONS:

A. A prescription for a controlled substance may be issued for a legitimate medical purpose by

an individual practitioner acting in the usual course of his professional practice, and who is registered under the Controlled Substances Act. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.

B. A prescription may not be issued in order for a practitioner to obtain controlled substances for supplying the practitioner for the purpose of general dispensing to patients.

C. A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule to a narcotic dependent person for the sole purpose of continuing his dependence upon such drugs, unless all the following conditions are met:

(1) the narcotic controlled drug is in Schedule III, IV, or V and is approved by the Food and Drug Administration specifically for use in maintenance or detoxification treatment; and

(2) the prescribing practitioner meets all state and federal requirements to prescribe the narcotic for maintenance or detoxification treatment (e.g. DATA waived practitioner; 21 CFR 1301.28 or successor regulation).

~~**D.** A prescription may not be issued for the dispensing of the narcotic drugs listed in any schedule to a narcotic drug-dependent person in the course of conducting an authorized clinical investigation in the development of a narcotic addict-rehabilitation program.]~~

~~[16.19.20.41 NMAC - Rp 16.19.20.41 NMAC, 6/26/2018; A 12/17/2019]~~

16.19.20.53 DISPENSING WITHOUT PRESCRIPTION:

A. A controlled substance listed in schedule V and a substance listed in schedules II, III, or IV *which is not a prescription drug* as determined by FDA and the Drug and Cosmetic Act, may be dispensed by a pharmacist without a prescription provided:

(1) such dispensing is made by a pharmacist or registered pharmacist intern and not by a non-pharmacist employee;

(2) not more than eight ounces of any controlled substance containing opium, nor more than 48-dosage units is dispensed at retail to the same person in any given 48-hour period;

(3) not more than four ounces of any other controlled substance or more than 24-dosage units may be dispensed at retail to the same person in any given 48-hour period;

(4) the purchaser is at least 18 years of age;

(5) the pharmacist requires every purchaser of such substance, not known to him to furnish suitable identification (including proof of age where appropriate);

(6) a bound record book for dispensing such substances is maintained requiring the signature and address of the purchaser, the name and quantity of the controlled substance purchased, the date of each purchase and the name or initials of the pharmacist who dispensed the substance; the book shall contain a statement on each page where purchaser is required to sign, stating no purpose of such substance has been made within the given 48-hour period at another pharmacy and the purchaser shall be made aware of such statement before signing the record.

B. Exempt pseudoephedrine product.

(1) Any pseudoephedrine containing product listed as a schedule V controlled substance in Paragraph (2) of Subsection B of 16.19.20.69 NMAC shall be dispensed, sold or distributed only by a licensed pharmacist, pharmacist intern, or a registered pharmacy technician.

(2) Unless pursuant to a valid prescription, a person purchasing, receiving or otherwise acquiring the compound, mixture or preparation shall:

(a) produce a driver's license or other government-issued photo identification showing the date of birth of the persons;

(b) sign a log after reading the purchaser statement for pseudoephedrine receipt or other program or mechanism indicating the date and time of the transaction, name of the person, address, driver's license number or government issued identification number, name of the pharmacist, pharmacist intern or pharmacy technician conducting the transaction, the product sold and the total quantity, in grams or milligrams, of pseudoephedrine purchased; this log will be only for exempt pseudoephedrine products and shall be kept separate from all other records; the log is to be produced in a way that a customer's personal information is not available to other purchasers;

(c) be limited to no more than three and six-tenths grams per day or more than a total of nine grams of a product, mixture or preparation containing pseudoephedrine within a [thirty] 30-day period.

(3) Pseudoephedrine purchaser statement must state in addition to any federal requirements: "I have not purchased more than three and six-tenths grams today or more than a total of nine grams of pseudoephedrine as a single entity or in a combination with other medications in the last 30 days. Entering false statements or misrepresentations in this logbook may subject me to criminal penalties."

(4) Prices charged for compounds, mixtures, and preparations that contain pseudoephedrine shall be monitored. The board may adopt rules to prevent unwarranted price increases as a result of compliance with this section.

(5) Pharmacies shall submit the information collected pursuant to Paragraph (2) of Subsection B of 16.19.20.53 NMAC electronically, in a board defined format, to the board or its agents.

Pharmacies will submit data every seven days beginning September 15, 2013. Pharmacies may petition the executive director of the board for an alternative method for the submission of the information collected pursuant to this section.

(6) Authority to contract: The board is authorized to contract with another agency of this state or with a private vendor, as necessary, for the collection of the information collected pursuant to Paragraph (2) of Subsection B of 16.19.20.53 NMAC. Any contract shall be bound to comply with the provisions regarding confidentiality of prescription or personal information in 16.19.20.53 NMAC of this regulation and shall be subject to the penalties specified in 16.19.20 NMAC and 16.19.27 NMAC.

[16.19.20.53 NMAC - Rp 16.19.20.53 NMAC, 6/26/2018; A, 12/17/2019]

**16.19.20.65 SCHEDULE I:

D. DEPRESSANTS:

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Mecloqualone;
- (2) Methaqualone;
- (3) Benzodiazepines;
 - (a) Bromazepam;
 - (b) Camazepam;
 - (c) Cloxazolam;
 - (d) Delorazepam;
 - (e) Ethylloflazepate;
 - (f) Fudiazepam;

Flunitrazepam;	(g)	unless listed in another schedule	than two and five-tenths milligrams
Haloxazolam;	(h)	any material, compound mixture	of diphenoxylate and not less than 25
Ketazolam;	(i)	or preparation which contains any	micrograms of atropine sulfate per
Loprazolam;	(j)	quantity of the substance having	dosage unit.
Lormetazepam;	(k)	a depressant effect on the central	(5) Not more
Medazepam;	(l)	nervous system, including its salts,	than 100 milligrams of opium per 100
Nimetazepam;	(m)	isomers and salts of isomers is	milliliters or per 100 grams.
Nitrazepam;	(n)	possible within the specific chemical	(6) Not
Nordiazepam;	(o)	designation.	more than five-tenths milligrams
Oxazolam;	(p)		of difenoxin and not less than 25
<u>Phenazepam</u>	(q)	Amobarbital;	micrograms of atropine sulfate per
Pinazepam;	(r)	Secobarbital;	dosage unit.
Tetraazepam;	(s)	Pentobarbital;	B. Stimulants. Unless
Flubromazepam;	(t)	Phencyclidine;	specifically exempted or excluded
Diclazepam	(u)	Glutethimide;	or unless listed in another schedule,
(4) Gamma		1-phenylcyclohexylamine;	any material, compound, mixture
hydroxybutyric acid and any chemical		1-piperidinocyclohexanecarbonitrile.	or preparation which contains any
compound that is metabolically		(7)	quantity of the following substances
converted to GHB;		(8) <u>Dronabinol</u>	having a stimulant effect on the
(5) Gamma		<u>in an oral solution in a drug product</u>	central nervous system, including its
butyrolactone and any chemical		<u>approved for marketing by the U.S.</u>	salts, isomers and salts of isomers.
compound that is metabolically		<u>food and drug administration.</u>	(1)
converted to GHB;		***	Pyrovalerone.
(6) 1-4 butane		[16.19.20.66 NMAC - Rp 16.19.20.66	(2)
diol and any chemical compound that		NMAC, 6/26/2018; A, 12/17/2019]	Pseudoephedrine as a drug
is metabolically converted to GHB		16.19.20.69 SCHEDULE V:	that includes any compound,
(7) GHV or		A. Narcotic drugs	mixture, or preparation that
4-methyl-GHB; γ-hydroxyvaleric		containing non-narcotic active	contains any detectable quantity
acid;		medicinal ingredients. Any	of pseudoephedrine, its salts or
(8) GVL;		compound, mixture, or preparation	its optical isomers, or salts of its
γ-valerolactone;		containing any of the following	optical isomers. Pursuant to 30-31-
(9) MMQ;		narcotic drugs, or their salts	10.C the following substances are
methylmethaqualone;		calculated as the free anhydrous base	excluded from schedule V controlled
(10) MBQ;		or alkaloid, in limited quantities as set	substances: pseudoephedrine
mebroqualone.		forth below, which shall include one	products in liquid form including
***		or more non-narcotic active medicinal	liquid filled gel caps and
[16.19.20.65 NMAC - Rp 16.19.20.65		ingredients in sufficient proportion to	pseudoephedrine products already
NMAC, 6/26/2018; A, 12/17/2019]		confer upon the compound, mixture,	classified as dangerous drugs.
		or preparation valuable medicinal	C. Depressants.
		qualities other than those possessed	Unless specifically exempted or
		by narcotic drugs alone.	excluded or unless listed in another
		(1) Not more	schedule, any material, compound,
		than 200 milligrams of codeine per	mixture, or preparation which
		100 milliliters or per 100 grams.	contains any quantity of the following
		(2) Not	substances having a depressant
		more than 100 milligrams of	effect on the central nervous system,
		dihydrocodeine per 100 milliliters or	including its salts:
		per 100 grams.	(1)
		(3) Not more	Lacosamide [(R)-2-acetoamido-N-
		than 100 milligrams of ethylmorphine	benzyl-3-methoxy-propionamide]
		per 100 milliliters or per 100 grams.	(2)
		(4) Not more	Pregabalin [(S)-3-(aminomethyl)-5-
			methylhexanoic acid]
			(3) Ezogabine
			[N-[2-amino-4-(4-fluorobenzylamino-
			phenyl]-carbamic acid ethyl ester]
			(4)
			<u>Brivaracetam</u>

(5) drug product approved for marketing by the U.S. food and drug administration and which contains cannabidiol derived from cannabis and no more than 0.1 percent tetrahydrocannabinols.
 [16.19.20.69 NMAC - Rp 16.19.20.69 NMAC, 6/26/2018; A, 12/17/2019]

PUBLIC REGULATION COMMISSION

The New Mexico Public Regulation Commission, approved at its 11/6/2019 open meeting, to repeal its rule 17.11.24 NMAC - Quality of Service Standards Applicable to Mid-Size Carriers (filed 4/1/2006) and replace it with 17.11.24 NMAC - Quality of Service Standards Applicable to Large Incumbent Local Exchange Carriers, effective 12/17/2019.

The New Mexico Public Regulation Commission, approved at its 11/6/2019 open meeting, to repeal its rule 17.11.25 NMAC - Consumer Protection Standards Applicable to Mid-Sized Carriers (filed 2/15/2006) and replace it with 17.11.25 NMAC - Consumer Protection Standards Applicable to Large Incumbent Local Exchange Carriers, effective 12/17/2019.

PUBLIC REGULATION COMMISSION

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES CHAPTER 11 TELECOMMUNICATIONS PART 24 QUALITY OF SERVICE STANDARDS APPLICABLE TO LARGE INCUMBENT LOCAL EXCHANGE CARRIERS

17.11.24.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
 [17.11.24.1 NMAC - Rp, 17.11.24.1 NMAC, 12/17/2019]

17.11.24.2 SCOPE: This rule applies to all large incumbent local exchange carriers (“LILECs”) authorized by the commission to provide retail telecommunications services in New Mexico.
 [17.11.24.2 NMAC - Rp, 17.11.24.2 NMAC, 12/17/2019]

17.11.24.3 STATUTORY AUTHORITY: Sections 8-8-4, 8-8-15, and 63-9A-5B NMSA 1978.
 [17.11.24.3 NMAC - Rp, 17.11.24.3 NMAC, 12/17/2019]

17.11.24.4 DURATION: Permanent.
 [17.11.24.4 NMAC - Rp, 17.11.24.4 NMAC, 12/17/2019]

17.11.24.5 EFFECTIVE DATE: December 17, 2019 unless a later date is cited at the end of a section.
 [17.11.24.5 NMAC - Rp, 17.11.24.5 NMAC, 12/17/2019]

17.11.24.6 OBJECTIVE: The purpose of this rule is to establish standards, procedures, and reporting requirements to ensure that large incumbent local exchange carriers (“LILECs”) provide telecommunications services to retail customers at an adequate quality of service level and in a manner consistent with the promotion of universal service.
 [17.11.24.6 NMAC - Rp, 17.11.24.6 NMAC, 12/17/2019]

17.11.24.7 DEFINITIONS: As used in this rule:
A. “Access line” means a dial tone line that provides local exchange service from a carrier’s switching equipment to a point of termination at the customer’s network interface.
B. “Basic services” means retail telecommunications services that provide residence or business customers with an individual primary line providing voice grade access to the public switched network.
C. “Circumstances beyond a LILEC’s control” means:
 (1) failure to

obtain necessary rights-of-way or permits despite the filing of timely applications;

(2) extraordinary weather and other acts of God or force majeure events; or

(3) supplier issues, vendor issues, and work stoppages;

D. “customer” means any person or business that has applied for or is currently receiving telecommunications services.

E. “Designed services” means the provisioning of regulated circuits requiring treatment, equipment, or engineering design purchased from a LILEC’s tariff or on an individual contract basis, including but not limited to analog private line services, DDS, DS-1 (including channelized), DS-3, ISDN-BRI, and special assemblies, where all facilities and equipment provided are physically located in the state of New Mexico.

F. “Designed services held order” means an order for designed services that is not fulfilled within the time frames specified in 17.11.24.13 NMAC.

G. “Discretionary services” means voice mail, caller ID, caller name ID, call waiting, 3-way calling, call forwarding, call return, call blocker, and auto redial, and any similar service sold as an add-on to a customer’s basic local exchange service.

H. “End office switch” means a switch to which a telephone subscriber is connected; frequently referred to as a class 5 office, it is the last central office before the subscriber’s phone equipment and is the switch that actually delivers dial tone to the subscriber.

I. held order means an order that is not completed within the time frames described in 17.11.24.12 NMAC.

J. “Incumbent local exchange carrier (ILEC)” means a person, or an affiliate of a person, that was authorized to provide local exchange service in New Mexico on February 8, 1996, or a successor or assignee of the person or affiliate.

K. “Incumbent rural telecommunication carrier (IRTC)” has the meaning given in Section 63-9H-3 NMSA 1978.

L. “Installation commitment” means a date pledged by a LILEC to provide basic local exchange service or designed services to a customer.

M. “Large incumbent local exchange carrier (LILEC)” means an ILEC with 50,000 or more access lines within the state regulated pursuant to Section 63-9A NMSA 1978 of the Telecommunications Act.

N. “Non-basic services” mean retail telecommunications services that are not a basic service, a local exchange service or a wholesale service governed by an interconnection agreement.

O. “Out-of-service trouble report” is a report from a customer of an inability to receive or place calls on an access line due to lack of dial tone or severe noise that prevents effective communication.

P. “Repeat trouble report” is a network trouble report on an access line within 30 days of a closed trouble report concerning the same problem on the same line.

Q. “Trouble report” means notification of trouble or perceived trouble by a customer, third party, or employee acting on behalf of a customer to a large incumbent local exchange carrier’s repair office, including trouble reported on the access lines of the large incumbent local exchange carrier’s retail customers, but not including troubles associated with a customer’s unfamiliarity with new features or customer premises equipment, or extraordinary or abnormal conditions of operation.

R. “Wire center” means a facility where local exchange access lines converge and are connected to a switching device which provides access to the public switched network, and includes remote switching units and host switching units.

[17.11.24.7 NMAC - Rp, 17.11.24.7 NMAC, 12/17/2019]

17.11.24.8 REPORTING REQUIREMENTS FOR LILECs:

Unless otherwise specified, a LILEC shall provide data both by wire center listed alphabetically by name, and on a statewide average basis. A LILEC shall submit all reports to the commission in printed and electronic spreadsheet format. A LILEC shall file separate reports for non-designed and designed services for the categories specified in subsections A through F. A LILEC shall file reports on an annual basis, but shall compile data on a monthly basis. Reports shall be filed with the commission within 30 days of the period covered by the report.

A. Trouble reports. A LILEC shall maintain an accurate and complete record of all trouble reports, categorized as out-of-service trouble reports or all other trouble reports, and shall note the wire center associated with each trouble report.

Trouble reports received after 4:00 p.m., Monday through Friday shall be deemed received at 8:00 a.m. the following business day. Each LILEC shall report the number of trouble reports in each category received at each wire center and the number of access lines in service at each wire center.

B. Trouble report rate. A LILEC shall report the trouble report rate for out-of-service and all other trouble reports for each wire center (number of trouble reports per hundred access lines per wire center) and, where applicable, the reason a wire center exceeded the trouble report rate.

C. Trouble reports cleared. A LILEC shall report the percentage of out-of-service and all other trouble reports cleared by each wire center within 24 hours.

D. Repeat trouble report rate. A LILEC shall report the repeat trouble report rate for out-of-service and all other trouble reports for each wire center (number of repeat trouble reports per hundred access lines per wire center) and, where applicable, the reason a wire center exceeded the applicable repeat trouble report rate.

E. Installation of primary local exchange lines within established time frames. A LILEC shall calculate and report by wire center the percentage of orders for primary local exchange lines installed within the time frames established in 17.11.24.12 NMAC, excluding installations not completed due to circumstances beyond the reasonable control of the LILEC or for which a waiver or variance has been granted.

F. Average repair interval. A LILEC shall report, by wire center, the average interval for repairing service.

G. Held orders.
(1) Non-designed services. A LILEC shall report, by wire center and on a statewide average basis, the number of held orders for non-designed services in each of the following categories, and shall, upon request of the commission, provide an explanation for the level of held orders in any particular category. For primary local exchange lines, a LILEC shall also report the number of held orders as a percentage of the total switched access lines in service each month:

- (a) total;
- (b) business customers;
- (c) residence customers;
- (d) primary local exchange lines;
- (e) additional lines;
- (f) orders for which waiver petitions are pending or have been granted; and
- (g) orders cancelled by the customer.

(2) Designed services. A LILEC shall report the number of held orders for designed services in each of the following categories and shall, upon request of the commission, provide an explanation for the level of held orders in any particular category:

- (a) wire center;

(b) orders for which waiver petitions are pending or have been granted; and
 (c) orders cancelled by the customer.

H. Business office and repair office answer time. A LILEC shall report separately for its business office and its repair office the percentage of calls answered within the time frames specified in 17.11.24.17 NMAC.

I. Carrier profile. No later than March 1 of each year, LILECs shall also report the following information to the commission, based on its operations as of December 31 of the previous year:

- (1) total number of switched access lines in service;
 - (2) total number of residence switched access lines in service;
 - (3) total number of business switched access lines in service; and
 - (4) total number of orders received.
- [17.11.24.8 NMAC - Rp, 17.11.24.8, 12/17/2019]

17.11.24.9 OUTAGES:

A LILEC shall provide to the commission’s consumer relations division all of the notifications and reports that it provides to the Federal Communications Commission (“FCC”) pursuant to 47 C.F.R. 4, Disruptions to Communications, for its operations in New Mexico as a “wireline communications provider” as defined in 47 C.F.R. 4.3, on the same timeframes as they are provided to the FCC. Carriers may redact from those notifications and reports to the commission any information concerning their operations outside of New Mexico.
 [17.11.24.9 NMAC - Rp, 17.11.24.9 NMAC, 12/17/2019]

17.11.24.10 PROVISION OF SERVICE DURING MAINTENANCE OR EMERGENCIES:

A. Emergency procedures. Each LILEC shall establish, and instruct its employees regarding procedures for preventing and mitigating interruption to or impairment of telecommunications service in emergencies, including but not limited to those resulting from power failures, sudden and prolonged increases in traffic, illness of operators, or force majeure.

LILECs shall file written plans detailing their emergency procedures with the telecommunications bureau of the commission. Any changes to the plan shall be filed with the telecommunications bureau of the commission within 30 days of the change.

B. Reserve power requirements. LILECs shall maintain in each local wire center, toll switching office, and tandem switching office a minimum of four hours of battery reserve rated for peak traffic load requirements and shall:

- (1) install a permanent auxiliary power unit in toll and tandem switching offices and in wire centers serving 10,000 or more access lines;
- (2) have available a mobile power unit which normally can be delivered and connected within four hours or the time limit of the available battery reserve for wire centers serving fewer than 10,000 lines.

C. Maintenance scheduling. LILECs shall schedule maintenance requiring extended service interruptions when it will cause minimal inconvenience to customers. To the extent possible, LILECs shall notify customers in advance of extended service interruptions. LILECs shall make emergency service available in any area that may experience service interruptions affecting 1,000 or more access lines and lasting more than four hours between the hours of 8:00 a.m. to 10:00 p.m. If a LILEC cannot provide emergency service, it shall file a report of the service interruption with the telecommunications bureau of the commission.

D. Loss of switch plan. Each LILEC shall develop a contingency plan to prevent and minimize service interruptions due to the loss of a wire center switch that serves more than 10,000 access lines or is the toll or tandem switching office for 10,000 access lines. The plan shall describe the actions and systems installed to prevent such occurrences as well as the actions and systems available to minimize the extent of any resulting service interruptions. Each LILEC shall file the plan with the telecommunications bureau of the commission. Any changes to the plan shall be filed with the telecommunications bureau within 30 days of the change.

[17.11.24.10 NMAC - Rp, 17.11.24.10 NMAC, 12/17/2019]

17.11.24.11 ACCESS TO AND AUDIT OF DATA: Unless otherwise authorized by the commission, a LILEC shall make all records required by this rule available to the commission, staff, or its authorized representatives at any time upon reasonable notice. A LILEC shall make customer proprietary network information available to the commission to the extent allowed by law. A LILEC shall retain records of reports, measurements, summaries, and backup information for at least two years. The commission or staff may periodically audit a LILEC’s quality of service data.

[17.11.24.11 NMAC - Rp, 17.11.24.11 NMAC, 12/17/2019]

17.11.24.12 INSTALLATION OF BASIC LOCAL EXCHANGE SERVICE:

A. Order tracking. At the time of each service order, a LILEC shall provide to each applicant for basic local exchange service a unique indicator that will permit an applicant to track and verify the order.

B. Premises within 1000 feet of distribution terminal.

(1) Whenever a LILEC receives an application for installation of a primary local exchange line for a premises that is within 1000 feet of a distribution

terminal, the LILEC shall provision service within five business days of receipt of the service request, or by such later date as the customer may request.

(2) When LILEC cannot fill an order for a primary local exchange line within ten business days of receipt of the order, it shall provide written notice to the customer noting the date of the service order and stating the expected installation date and the reason for the delay. This notice must be postmarked within ten business days of the date the service order is received by the LILEC. The LILEC shall promptly notify the customer of any changes in the expected installation date.

C. Premises 1000 feet or more from distribution terminal. Whenever a LILEC receives an application for installation of a primary local exchange line for a premises that is 1000 feet or more from a distribution terminal, the LILEC shall provision service within 30 business days of receipt of the service request, or by such later date as the customer may request, unless installation cannot be completed due to circumstances beyond the reasonable control of the LILEC.

D. Line extension policy. Each LILEC shall file its line extension policy for commission review and approval and shall file any subsequent material changes to the policy for commission review and approval in accordance with commission procedures for tariff changes.
[17.11.24.12 NMAC - N, 12/17/2019]

17.11.24.13 INSTALLATION OF DESIGNED SERVICES:

A. Confirmation of service order. Within three business days of receipt of a customer's order for designed services, a LILEC shall notify the customer of the proposed installation date and the customer's remedies for the LILEC's failure to meet the proposed installation date.

B. Held order standard. An LILEC shall complete eighty-five percent of installations for

designed services in accordance with the installation intervals set forth in Subsections C and D of this section.

C. Installation interval - facilities available. Where facilities exist, the installation interval shall be ten business days.

D. Installation interval - new facilities required. Where new facilities are needed to provide designed service, the LILEC shall install the service within 45 calendar days, unless the customer requests a later date.

(1) When the delay is caused by circumstances beyond the LILEC's reasonable control and the commission has granted an exemption or variance pursuant to 17.11.24.18 NMAC, the period of delay shall be added to the time period allowed for installation of the service.

(2) A LILEC shall report any case in which it claims the delay is caused by circumstances beyond the reasonable control of the LILEC to the affected customer who shall have the right to challenge the exception.
[17.11.24.13 NMAC - N, 12/17/2019]

17.11.24.14 DIRECTORY ASSISTANCE AND INTERCEPT:

A. A LILEC shall list basic local exchange service customers (except those customers requesting otherwise) in the directory assistance database within 24 hours of service connection, except during times of regular maintenance, in which case the listing shall occur within 48 hours of service connection.

B. If a LILEC makes an error in the listed number or name of any customer, then until a new directory is published, the LILEC shall make, at no charge to the customer, whatever special arrangements are necessary and reasonable to ensure that calling parties are able to reach the customer whose listed number or name is in error.

C. If a LILEC makes an error in the number, name or address of any listing of any customer, the LILEC shall place the customer's

correct name, address and telephone number in the files of the directory assistance and intercept operators within 72 hours of confirmation of the error.

D. When a customer's telephone number is changed at the request of the customer after a directory is published, the LILEC shall provide intercept service for all calls to the former number for the lesser of 60 days or until a new directory is issued. If the change is made at the initiative of the LILEC, the LILEC shall provide intercept service for the former number at no charge to the customer for the greater of 60 days or the remaining life of the current directory. The LILEC shall provide the correct number to its information operator within 24 hours of the number change (except during times of regular maintenance, in which case the listing shall occur within 48 hours of service connection) or send it to the carrier providing information operator service within 24 hours if the local exchange carrier does not provide its own service. The LILEC's intercept recording shall state how the caller can obtain the new number.
[17.11.24.14 NMAC - Rp, 17.11.24.14 NMAC, 12/17/2019]

17.11.24.15 NETWORK CALL COMPLETION REQUIREMENTS FOR DIRECT DIALED CALLS:

A. A LILEC shall maintain sufficient wire center and interoffice channel capacity and any other necessary facilities to meet the following minimum requirements during any normal busy hour:

(1) dial tone within three seconds for ninety-eight percent of call attempts on the switched network;

(2) correct termination of ninety-eight percent of properly dialed intraoffice or interoffice calls within an extended service area; and

(3) correct termination of ninety-eight percent of properly dialed intraLATA calls when the call is routed entirely over the network of the LILEC.

B. Unless otherwise authorized by the commission, a carrier providing toll service shall maintain sufficient switching and network channel capacity and any other necessary facilities so that ninety-eight percent of properly dialed intrastate toll calls are correctly terminated.

C. A LILEC shall terminate a properly dialed call in one of the following ways:

(1) the calling party shall receive an indication of ringing and a ringing signal shall be delivered to the station location of the called party; if the called party answers, a connection shall be established between the calling and called parties;

(2) if the called number is busy, the calling party shall receive a busy signal, unless the called party has subscribed to a voice messaging, call forwarding, or call waiting service;

(3) if the LILEC cannot establish a connection between the calling and called parties, the calling party shall receive an announcement or an appropriate overflow signal that is different than a called party busy signal; a call terminated in this way shall not be considered correctly terminated for purposes of calculating the percentage of correctly terminated calls required by Subsections A and B of this section;

(4) if a call is made to a non-working code or inoperative customer number, it shall be directed to the LILEC's intercept service.

[17.11.24.15 NMAC - N, 12/17/2019]

17.11.24.16 QUALITY OF SERVICE STANDARDS FOR NON-DESIGNED SERVICES:

A. Installation of primary local exchange lines. A LILEC shall complete at least ninety-six percent of all requests for installation of primary local exchange lines within the time frames established 17.11.24.12 NMAC.

B. Trouble reports.

(1) A LILEC's

trouble report rate shall not exceed five trouble reports per month per 100 access lines in service per wire center.

(2) A LILEC's repeat trouble report rate shall not exceed twelve percent of total monthly trouble reports, on a wire center basis.

C. Out-of-service clearances.

(1) A LILEC shall clear eighty-five percent of out-of-service trouble reports in each month within 24 hours, on a wire center basis.

(2) The monthly average repair interval in a wire center shall not exceed 20 hours. [17.11.24.16 NMAC - N, 12/17/2019]

17.11.24.17 TIMELY RESPONSE BY CUSTOMER SERVICE REPRESENTATIVES:

A. Standards. A LILEC's business and repair offices shall answer calls within an average of 35 seconds. If a carrier uses an automated response system, the system shall transfer calls to a customer service representative within an average of 35 seconds of the customer's selection to speak with a customer service representative or within 40 seconds if the customer does not make a selection. A LILEC shall ensure that no more than one percent of calls to its business offices reach a busy signal and that no more than one percent of calls to its repair offices reach a busy signal.

B. Reports. A LILEC shall file an exception report within 30 calendar days of the end of any month in which it failed to meet any of the standards set forth in Subsection A of this section. The report shall identify each offending business office and repair office, the percent of calls answered, the percent of calls reaching a busy signal, the reason for failure to meet the respective standard, the remedial action taken by the LILEC, and any known results of that remedial action.

[17.11.24.17 NMAC - Rp, 17.11.24.13 NMAC, 12/17/2019]

17.11.24.18 EXEMPTION OR VARIANCE:

A. General requirements.

(1) Any carrier may petition for an exemption or variance from any of the requirements of this rule.

(2) Such petition may include a motion that the commission stay the affected portion of this rule for the transaction specified in the motion.

(3) Petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by an officer of the carrier or other person with authority to bind the carrier.

(4) The commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

B. All other exceptions. A petition for an exemption or variance from any other requirement of this rule shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the carrier and its customers, and on its competitive affiliates and their customers, if the exemption or variance is not granted;

(4) state how the exemption or variance will achieve the purposes of this rule and the New Mexico Telecommunications Act;

(5) state why the proposed alternative is in the public interest and is better than the requirement in the rule; and

(6) state why the exemption or variance would have no anticompetitive effect.

[17.11.24.18 NMAC - N, 12/17/2019]

17.11.24.19 ENFORCEMENT: Enforcement of service quality standards under 17.11.24 NMAC is provided by the commission's fining

authority set forth in Section 63-7-23 NMSA 1978 and the authority to seek an injunction set forth in Section 63-9-9 NMSA 1978.
[17.11.24 NMAC - Rp, 17.11.24.19, 12/17/2019]

HISTORY OF 17.11.24 NMAC:

History of Repealed Material:

17.11.24 NMAC Quality of Service Standards Applicable to Mid-Size Carriers, filed 2/15/2006 - Repealed effective 12/17/2019.

NMAC History:

17.11.24 NMAC Quality of Service Standards Applicable to Mid-Size Carriers (filed 2/15/2006) was replaced by 17.11.24 NMAC Quality of Service Standards Applicable to Large Incumbent Local Exchange Carriers, effective 12/17/2019.

PUBLIC REGULATION COMMISSION

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES CHAPTER 11 TELECOMMUNICATIONS PART 25 CONSUMER PROTECTION STANDARDS APPLICABLE TO LARGE INCUMBENT LOCAL EXCHANGE CARRIERS

17.11.25.1 ISSUING

AGENCY: New Mexico Public Regulation Commission.

[17.11.25.1 NMAC - Rp, 17.11.25.1 NMAC, 12/17/2019]

17.11.25.2 SCOPE: This rule applies to all large incumbent local exchange carriers ("LILECs") authorized by the commission to provide retail telecommunications services in New Mexico.

[17.11.25.2 NMAC - Rp, 17.11.25.2 NMAC, 12/17/2019]

17.11.25.3 STATUTORY

AUTHORITY: Sections 8-8-4, 8-8-15, and 63-9A-5B NMSA 1978.

[17.11.25.3 NMAC - Rp, 17.11.25.3 NMAC, 12/17/2019]

17.11.25.4 DURATION:

Permanent.

[17.11.25.4 NMAC - Rp, 17.11.25.4 NMAC, 12/17/2019]

17.11.25.5 EFFECTIVE

DATE: December 17, 2019, unless a later date is cited at the end of a section.

[17.11.25.5 NMAC - Rp, 17.11.25.5 NMAC, 12/17/2019]

17.11.25.6 OBJECTIVE:

The purpose of this rule is for the establishment of consumer protection standards applicable to large incumbent local exchange carriers ("LILECs").

[17.11.25.6 NMAC - Rp, 17.11.25.6 NMAC, 12/17/2019]

17.11.25.7 DEFINITIONS:

As used in this rule:

A. "Access line"

means a dial tone line that provides local exchange service from a LEC's switching equipment to a point of termination at the customer's network interface.

B. "Basic local

exchange service" means the customer's voice grade access to the public switched network, dual tone multifrequency (DTMF) signaling or its functional equivalent, and access to emergency services (911 and E-911), operator services, toll services, directory assistance, and toll blocking services for qualifying low income customers, but does not include discretionary services.

C. "Billing agent"

means any person that submits bills for telecommunications services to a customer on behalf of a carrier.

D. "Carrier"

means any person that furnishes telecommunications service to the public subject to the jurisdiction of the commission, regardless of the facilities used and regardless of whether the person relies in part or entirely on another carrier's facilities, and includes wireless carriers.

E. "Chronically

delinquent" means the status of a residential customer who during the prior 12 months has been

disconnected by a carrier for non-payment or who on three or more occasions during the prior twelve months has not paid a bill by the date a subsequent bill is rendered.

F. "Competitive local exchange carrier (CLEC)" means a carrier that provides competitive local exchange service in its service area and is not an ILEC.

G. "Complaint"

means an oral or written expression of dissatisfaction with a carrier's charges or services (including a request for repair) made to a carrier by or on behalf of a customer.

H. "Customer"

means a person that has applied for or is currently receiving telecommunications services.

I. "Delinquent"

means the status of a bill rendered to a residential customer for telecommunications service which remains unpaid after the due date of the bill.

J. "Discontinuance of service" means the intentional cessation of basic local exchange service by a LEC not voluntarily requested by a customer.

K. "Discretionary service" means voice mail, caller ID, caller name ID, call waiting, three-way calling, call forwarding, call return, call blocker, and auto redial, and any similar service sold as an add-on to a customer's basic local exchange service.

L. "Incumbent local exchange carrier (ILEC)" means a person that was authorized to provide local exchange service in New Mexico on February 8, 1996, or a successor or assignee of the person; a carrier will also be treated as an ILEC if the federal communications commission determines that such provider (or class or category of carrier) shall be treated as an ILEC pursuant to 47 U.S.C. Section 251(h) (2).

M. "Large incumbent local exchange carrier (LILEC)" means an ILEC with more than 50,000 access lines regulated pursuant to Section 63-9A NMSA 1978 of the Telecommunications Act.

N. “Medical professional” means a licensed physician, physician’s assistant, osteopathic physician, osteopathic physician’s assistant or certified nurse practitioner.

O. “Network interface” means the point at which the network side of telecommunications service meets the customer side.

P. “Primary local exchange line” means the first exchange access line installed by any LEC to serve a customer at the customer’s premises, as distinct from additional lines that may be ordered at the same or a subsequent time at the same premises.

Q. “Telecommunications service” has the meaning given to the term “public telecommunications service” in Section 63-9A-3 NMSA 1978.

R. “Wire center” means a facility where local exchange access lines converge and are connected to a switching device which provides access to the public switched network, and includes remote switching units and host switching units;
[17.11.25.7 NMAC - Rp, 17.11.25.7 NMAC, 12/17/2019]

17.11.25.8 DISCONNECTION OF BASIC LOCAL EXCHANGE SERVICE AND ALLOCATION OF PARTIAL PAYMENTS:

A. A LILEC may not disconnect, or threaten to disconnect, either directly or through the use of ambiguous, deceptive, or misleading language, a customer’s basic local exchange service for failure to pay charges for toll or discretionary services.

B. A LILEC shall offer toll blocking upon a customer’s request.

C. A LILEC may impose involuntary toll blocking on a customer’s primary local exchange line for failure to pay charges for toll service. However, the toll blocking must be provided without charge and the LILEC must remove the toll blocking when the bill is paid.

D. A LILEC shall credit customer’s partial payments for current bills or past due amounts first to basic local exchange service, unless the customer instructs the LILEC to allocate the payment in a different manner. A LILEC shall provide to the customer or the consumer relations division of the commission upon request of either written verification of oral instructions given by a customer.

[17.11.25.8 NMAC - Rp, 17.11.25.8 NMAC, 12/17/2019]

17.11.25.9 ACCESS TO AND AUDIT OF DATA: Unless otherwise authorized by the commission, a carrier shall make all records required by this rule available to the commission, staff with the consent of the commission, or its authorized representatives at any time upon reasonable notice. A LILEC shall make customer proprietary network information available to the commission to the extent allowed by law. A carrier shall retain all records required by this rule for at least two years. The commission, or staff with the consent of the commission, may periodically audit the timeliness and accuracy of carriers’ customer service and repair records.

[17.11.25.9 NMAC - Rp, 17.11.25.9 NMAC, 12/17/2019]

17.11.25.10 CUSTOMER COMPLAINT TRACKING:

A. A LILEC shall maintain a record of all oral and written complaints, including informally resolved billing disputes, made by or on behalf of customers, which shall contain:

- (1) the date the complaint was lodged;
- (2) the class of customer (residential or business);
- (3) the category of the complaint (based on the consumer relations division’s list of complaint categories);
- (4) the region within the state (by wire center or exchange);
- (5) how the complaint was resolved; and

(6) the date of resolution.

B. A LILEC shall not retaliate against a customer for any complaint made by the customer to the commission or any other person.

C. Upon request of the commission or staff, and for a specified time period not to exceed two years, a LILEC shall compile and submit to the commission reports that state the total number of complaints recorded pursuant to Subsection A of this section and the number of such complaints categorized by the:

- (1) the category of the complaint;
- (2) region within the state (by wire center or exchange); and
- (3) class of customer (residential or business).

D. A LILEC shall cooperate with the commission, the consumer relations division, and staff in resolving complaints.

[17.11.25.10 NMAC - Rp, 17.11.25.10 NMAC, 12/17/2019]

17.11.25.11 ACCESS TO SERVICE AND RATE INFORMATION:

A. A LILEC shall maintain comprehensive, understandable, accurate, and up-to-date service and rate information. A LILEC:

- (1) shall provide a toll-free telephone number by which customers can access such information and shall, upon request, mail written information to a customer;
- (2) shall provide such information to disabled customers in a form accessible to them;
- (3) shall provide such information in English and Spanish as requested by the customer; and
- (4) may provide such information electronically (e.g., by email or text message) if a customer agrees in writing.

B. A LILEC shall provide:

(1) information regarding the rates for direct dialed calls;

(2) information regarding all relevant charges and rates for calls using a credit card or calling card;

(3) details on all advance payments or termination procedures and charges that may apply;

(4) information regarding where and how a customer may subscribe to the carrier's services;

(5) an explanation of charges on customers' bills;

(6) information regarding proposed changes in services and rates;

(7) information regarding the availability of service; and

(8) information describing the commission's procedures for resolving slamming and cramming disputes, as set forth in 17.13.8 NMAC - Slamming And Cramming Protection.

C. A LILEC shall also provide information regarding:

(1) the timing of installation of primary local exchange lines or additional lines; and

(2) rates for repair work done on the customer's side of the network interface.

D. A LILEC shall provide notice of a rate or fee increase or a new charge for an existing service prior to the implementation of the rate increase or new charge. The notice shall be provided in a bill, a bill insert, or by separate mailing, in a form and manner that clearly identifies every rate or fee increase or new charge as such. A carrier shall provide notice of a rate decrease by no later than the next bill following the billing cycle in which the rate decrease was implemented. This notice requirement shall not apply to increases or decreases in taxes or other government-related fees.

E. When a customer initially subscribes to basic local

exchange service, a LILEC shall inform the customer, in English or Spanish, as requested by the customer:

(1) that a low income telephone assistance program (LITAP) is available to qualifying residential customers and shall ask if the customer would like to receive further information about the program. If the customer answers affirmatively, the LEC shall inform the customer:

(a) that applications are available at its billing offices or that the LILEC will mail an application to the customer;

(b) that the customer must submit to the LILEC a completed application and proof that the customer meets the eligibility requirements for one or more need-based assistance programs administered by the human services department;

(c) if the customer does not have such proof, the LILEC shall advise the customer to contact his or her local human services department income support division office or call the HSD customer help desk at its toll free telephone number for information on how to obtain proof of eligibility; and

(d) the contact information for the Universal service administrative company, responsible for administering the FCC's lifeline program, including phone number, email contact, and website information; and

(e) that the customer may obtain additional assistance from the commission's consumer relations division and the LILEC shall provide the toll-free telephone number of the commission's consumer relations division.

F. The commission strongly encourages each carrier to make service and rate information accessible to customers on its website and at its business offices or customer service centers open to the public, where these exist.

[17.11.25.11 NMAC - N, 12/17/2019]

17.11.25.12 FAIR MARKETING PRACTICES:

A. Any LILEC subject to the commission's jurisdiction shall, in all oral or written contacts with customers:

(1) provide timely, courteous, and accurate information;

(2) explain services, and switching and discontinuance of service, accurately and unambiguously;

(3) not represent discretionary services as essential;

(4) not engage in any unfair or deceptive trade practice, including but not limited to the unfair or deceptive trade practices and unconscionable trade practices defined in Section 57-12-2 NMSA 1978;

(5) upon a customer-initiated inquiry about services, make a good-faith effort to identify the service that is the most economical for the customer, based on the customer's representation of his or her telecommunications requirements.

B. Upon request of the commission or staff, a LILEC shall provide its sales scripts, marketing materials, and sales and marketing practices and procedures to the commission for review. A LILEC may petition for a protective order pursuant to the commission's rules of procedure prior to providing the requested information.

[17.11.25.12 NMAC - N, 12/17/2019]

17.11.25.13 TARIFFS AND BOUNDARY MAPS:

A. Unless specifically exempted by the commission, a LILEC shall file with the commission tariffs containing rates, charges, terms, and conditions for all intrastate services that specifically set forth:

(1) the conditions and circumstances under which the LILEC, or entities under contract to the LILEC, will make line extensions or extensions of service to customers within the exchange area;

(2) minimum standards for discontinuance of

residential basic local exchange service;

(3) the LILEC's deposit policy; and
 (4) charges for service connections, extensions and line mileage.

B. Each LILEC shall post tariffs on its website and make copies available for inspection by the public during regular business hours at its business offices in New Mexico.

C. Each LILEC shall file with the commission an exchange area boundary map for each of its exchanges in New Mexico. Each map shall clearly show the boundary lines of the exchange area the LILEC holds itself out as serving. Where a portion of the boundary line is not located on section lines, waterways, railroads, etc, the exchange boundary lines shall be located by appropriate measurement to an identifiable location. Maps generally shall contain the detail shown on county highway maps. The map shall be to a scale and in sufficient detail to permit a person in the field to locate the exchange service area boundaries.

[17.11.25.13 NMAC - Rp, 17.11.25.12 NMAC, 12/17/2019]

17.11.25.14 BILLS: A LILEC shall provide easily readable, readily understandable bills.

A. Itemization. A LILEC's bills shall itemize services, usage, and charges, including quantities of units and per-unit charges.

B. Nonrecurring and recurring charges. A LILEC's bills shall separately identify nonrecurring and recurring charges.

C. Toll-free access to LILEC. A LILEC's bills shall include the name and toll-free number of the LILEC.

D. Right to dispute statement. A LILEC's bills shall include a statement, in English and Spanish, advising consumers that they have a right to dispute the bill.

E. Toll-free access to commission. A LILEC's bills shall include the toll-free number of the consumer relations division of the commission.

[17.11.25.14 NMAC - Rp, 17.11.25.13 NMAC, 12/17/2019]

17.11.25.15 INFORMATION REQUIRED SEMI-ANNUALLY:

Information provided in English and Spanish. A LILEC shall semi-annually provide information to consumers in English and Spanish. A LILEC need not provide all of the information at the same time and may choose to provide it in a prominent place on a consumer's bill or in a bill insert. The following information is required:

A. A statement that basic local exchange service will not be discontinued to any residence where a seriously ill or chronically ill person resides if the person responsible for the telephone service charges does not have the financial resources to pay the charges and if a licensed physician, physician's assistant, osteopathic physician, osteopathic physician's assistant or certified nurse practitioner certifies that discontinuance of service might endanger that person's health or life and the certificate is delivered to a manager or officer of the LILEC at least two days prior to the due date of a bill for telephone service.

B. A statement, using commonly understood descriptions and examples, that basic local exchange service will not be discontinued for failure to pay charges for toll or discretionary services.

C. A notification that service and rate information is available in telephone directories, on the LILEC's web site, by calling a toll-free telephone number, or in other written materials such as brochures which the LILEC shall provide upon request.

D. A brief description of LITAP and a toll-free number the consumer can call to obtain further information about LITAP.

[17.11.25.15 NMAC - Rp, 17.11.25.14 NMAC, 12/17/2019]

17.11.25.16 BILLING DISPUTES AND ERRORS, GENERAL REFUNDS AND BILL CREDITS:

A. In the event of a dispute between a customer and a LILEC concerning a bill for telecommunications services, the LILEC may require the customer to pay the undisputed portion of the bill to avoid discontinuance of service for non-payment. The LILEC shall make an investigation appropriate to the case, and report the results to the customer. In the event the dispute is not reconciled, the LILEC shall advise the customer that the customer may file a complaint with the commission for disposition of the matter.

B. Whenever the billing for service has not been determined accurately because of a LILEC's omission or negligence, the LILEC shall correct the error, and:

(1) notify customers that an adjustment has been made;

(2) explain the reasons for the adjustment;

(3) offer and enter into reasonable payment arrangements in accordance with the following criteria:

(a) whenever a LILEC has overbilled a customer for service and the customer has paid the overbilled amount, the LILEC shall credit the total overbilled amount for a maximum of twenty-four months prior to the discovery of the error within a reasonable time, but in no event later than the second bill after the carrier becomes aware of the error;

(b) whenever a LILEC has underbilled a customer for service, the LILEC may add the underbilled amount for a maximum of six months' underbilling to the customer's next regular bill, unless the amount exceeds the customer's average bill for the preceding six months, in which case the customer may elect to make payments, without interest, over a time period equal to the period over which the errors were accumulated.

(4) upon request, send the customer written verification of the payment arrangements agreed to by the customer and the carrier; a LILEC

may provide written verification electronically if the customer agrees. [17.11.25.16 NMAC - Rp, 17.11.25.15 NMAC, 12/17/2019]

17.11.25.17 DISCONTINUANCE OR INTERRUPTION OF SERVICE:

A. Discontinuance without prior notice. A LILEC may discontinue basic local exchange service to a customer without prior notice in the event of:

(1) a condition determined by the LILEC to be hazardous;

(2) a customer's use of equipment in such manner as to adversely affect the LILEC's service to others;

(3) a customer's tampering with, or negligently or intentionally damaging or destroying equipment furnished and owned by the LILEC; or

(4) unauthorized use of service provided by the LILEC.

B. Discontinuance with prior notice. Pursuant to 17.11.25.18 NMAC and 17.11.25.19 NMAC, a LILEC may discontinue basic local exchange service to a customer with prior notice:

(1) for non-payment of a delinquent account for basic local exchange service; or

(2) for failure to post a security deposit or guarantee.

C. Temporary interruption without notice. A LILEC may temporarily and without notice interrupt service for an operational emergency, necessary and unavoidable network maintenance, or reasons related to the public safety and welfare.

[17.11.25.17 NMAC - Rp, 17.11.25.16 NMAC, 12/17/2019]

17.11.25.18 PROHIBITIONS ON DISCONTINUANCE OF SERVICE: A LILEC shall not discontinue basic local exchange service:

A. to any residence where a seriously or chronically ill person resides, or will re-establish

service to such a residence, if, at least two days prior to the proposed service discontinuance date specified in the notice:

(1) the LILEC receives a medical certification, valid for 90 days, on the form prescribed by the commission in 17.11.16.33 NMAC or a substantially similar form, from a medical professional stating that discontinuance of service might endanger the customer's life or health;

(2) the LILEC receives a financial certification, valid for 90 days, on the form prescribed by the commission in 17.11.16.34 NMAC or a substantially similar form, from the customer stating that the customer does not have the financial resources to pay the charges for telecommunications services; and

(3) the residential customer enters into a payment plan with the LILEC.

B. for non-payment of any disputed portion of a bill; or

C. for delinquency in payment for service to a previous occupant of the same premises unless the previous occupant continues to reside at the premises or the new customer is legally liable for the debt of the previous occupant.

[17.11.25.18 NMAC - Rp, 17.11.25.17 NMAC, 12/17/2019]

17.11.25.19 REQUIREMENTS PRIOR TO DISCONTINUANCE OF SERVICE:

A. 15 day notice. If prior notice is required, at least 15 days before a LILEC discontinues basic local exchange service to a customer, the LILEC shall mail written notice to the customer stating its intent to discontinue service and setting forth the customer's rights regarding discontinuance of service. The notice shall be in English and Spanish, shall be dated, and shall be in simple, nontechnical language. The notice shall be sent by U.S. Mail, postage prepaid, to the last address for the customer known to the LILEC. A fifteen-day notice of discontinuance shall contain:

(1) the toll-free telephone number and working hours of LILEC personnel responsible for administering the procedures in this section;

(2) the amount owed and the specific date service will be discontinued unless the customer pays the amount due or makes other arrangements with the LILEC concerning payment of the charges; upon request, the LILEC shall provide information to the customer concerning the outstanding charges, including the dates of the service interval over which the outstanding charges were incurred and the date and amount of the last payment;

(3) a statement that basic local exchange service cannot be discontinued for failure to pay charges for toll or discretionary services;

(4) a statement that, if the customer pays the portion of the bill which the customer does not dispute, the LILEC shall review the portion of the bill which the customer does dispute;

(5) a statement that a customer may file a complaint with the consumer relations division of the commission if the customer disagrees with the LILEC's determination concerning discontinuance of service;

(6) a statement in capital letters of the cost of reconnection;

(7) for residential customers, a statement that:

(a) the LILEC will not discontinue basic local exchange service to a residence where a seriously or chronically ill person resides, or will re-establish service to such a residence, if, at least two days prior to the proposed service discontinuance date specified in the notice:

(i) the LILEC receives a medical certification, valid for 90 days, on the form prescribed by the commission in 17.11.16.33 NMAC or a substantially similar form, from

a medical professional stating that discontinuance of service might endanger the customer's life or health;

(ii)

the LILEC receives a financial certification, valid for 90 days, on the form prescribed by the commission in 17.11.16.34 NMAC or a substantially similar form, from the customer stating that the customer does not have the financial resources to pay the charges for telecommunications services; and

(iii)

the residential customer enters into a payment plan with the LILEC.

(b)

if service has been discontinued, the LILEC shall reestablish service within 12 hours after the residential customer has satisfied the requirements of Item (i) of Subparagraph (a) through item (iii) of Subparagraph (a) of Paragraph (7) of this Subsection;

(c)

the residential customer will not be relieved of the obligation to pay for services rendered if service is continued or reestablished under the provisions of this paragraph; and

(d)

timely delivery by a residential customer to the LILEC of duly executed medical certification and financial certification forms shall be adequate to delay discontinuance of service for at least 90 days and that the LILEC may, in its discretion, delay the discontinuance for a longer period.

(8) for

residential customers, blank copies or website addresses of the medical certification form prescribed by the commission in 17.11.16.33 NMAC and the financial certification form prescribed by the commission in 17.11.16.34 NMAC, or substantially similar forms; these forms include an agreement to enter into a payment plan with the LILEC;

(9) for

residential customers, the following statement in capital letters, "If you have difficulty paying this bill, and feel you may qualify for assistance from the low income telephone assistance program (LITAP), contact

a customer service representative at (insert toll-free telephone number of the carrier's customer service department). You may obtain an application for the low income telephone assistance program at our billing offices or we can mail an application to you. You should return the completed application and proof that you meet the eligibility requirements for one or more need-based assistance programs administered by the human services department to us at (insert name and mailing address of carrier's office). If you do not have such proof, you should contact your local human services department income support division office or call the HSD customer help desk at its toll free telephone number for information on how to obtain proof of eligibility."

B. Hours when

service may be discontinued. A LILEC may discontinue service to a residential customer Monday through Thursday during the hours from 8:00 a.m. to two hours before the LILEC's business office regularly closes. A LILEC may not discontinue service less than 24 hours prior to a holiday or weekend unless the LILEC's business office is open for receipt of payment of past due charges and LILEC personnel are available to restore service during the holiday or weekend once payment is received. [17.11.25.19 NMAC - Rp, 17.11.25.18 NMAC, 12/17/2019]

17.11.25.20 PAYMENT PLANS:

A. A LILEC shall attempt to arrange a plan for the payment of past due carrier charges when a residential consumer who has not been chronically delinquent indicates an inability to pay the charges. The LILEC shall not discontinue service to the residential consumer while a payment plan is being negotiated. The LILEC shall also maintain a list of organizations in the area that may provide assistance to consumers in paying telecommunications bills and shall make application forms for LITAP available upon request.

B. Each LILEC shall provide a procedure for reviewing residential consumer allegations that a proposed payment plan is unreasonable, that a LILEC charge is not due and owing, or that it has not violated an existing payment plan. A LILEC shall not discontinue service until the review is completed.

[17.11.25.20 NMAC - N, 12/17/2019]

17.11.25.21 RESTORATION OF SERVICE:

A. Restoration after payment of charges. A LILEC shall promptly restore service within one business day after payment of all past-due charges, including in part any required deposit and a charge for restoration of service, if any.

B. Restoration for persons who are ill. A LILEC shall restore service to a residential consumer within 12 hours of receipt of a medical certification form and a financial certification form pursuant to Public Utilities and Utility Services, 17.11.16.33 NMAC.

[17.11.25.21 NMAC - Rp, 17.11.25.19 NMAC, 12/17/2019]

17.11.25.22 INFORMAL COMPLAINTS:

A. A LILEC shall fully and promptly investigate and respond to all complaints made directly to the LILEC by customers. The LILEC shall make a good faith attempt to resolve the complaint and shall notify the customer promptly of its proposed disposition of the complaint. Upon request, the LILEC shall send written confirmation of its proposed disposition of the complaint to the customer.

B. If a LILEC's customer representatives cannot resolve a complaint to a customer's satisfaction, the LILEC shall provide the complainant with the name, address and current local or toll-free telephone number of the consumer relations division of the commission.

C. Upon receipt of a complaint forwarded by the commission on behalf of a customer, a LILEC shall make a suitable investigation. A LILEC shall

provide an initial response to the commission within ten business days after the LILEC receives the complaint. When the LILEC has concluded its investigation of a complaint, the LILEC shall provide a written response to the commission detailing the results of the LILEC's investigation and its proposed resolution. A complaint forwarded by the commission on behalf of a customer shall not be considered resolved until the consumer relations division closes the complaint.

[17.11.25.22 NMAC - Rp, 17.11.25.20 NMAC, 12/17/2019]

17.11.25.23 PRIVACY: The commission hereby adopts by reference the federal communications commission's rules on customer proprietary network information codified at 47 CFR 64.2001-64.2009. [17.11.25.23 NMAC - N, 12/17/2019]

17.11.25.24 MEDICAL CERTIFICATION FORM: MEDICAL CERTIFICATION FORM (VALID FOR 90 DAYS)

NOTE: You must complete both parts of this medical certification form and a financial certification form to continue receiving telecommunications service.

I, [insert printed name of residential customer], hereby certify that I am the person responsible for the charges for telecommunications service at [insert service address], that a seriously or chronically ill person, [insert name of seriously or chronically ill person] resides there, and that I am financially unable to pay my bill at this time. I understand that this certification does not relieve me of the responsibility to pay my bill, and that I must reapply for financial certification every 90 days. In addition, I understand that I must make arrangements for a payment plan with [insert name of LILEC] in order to continue receiving telecommunications service.

[date] [customer's telephone number] [customer's signature]

I, [insert name of medical professional] certify that I am a licensed physician, physician's assistant, osteopathic physician, osteopathic physician's assistant or certified nurse practitioner who holds license number [insert license number] and that on [insert date] I examined [insert name of seriously or chronically ill person] who I am informed resides at [insert service address]. Said person is seriously or chronically ill with [describe condition]. Discontinuance of telecommunications service to this residence might endanger this person's health or life during the recovery period. This certification is valid for 90 days.

[signature of medical professional] [office address and telephone number of medical professional] [17.11.25.24 NMAC - N, 12/17/2019]

17.11.25.25 FINANCIAL CERTIFICATION FORM: FINANCIAL CERTIFICATION FORM (VALID FOR 90 DAYS)

NOTE: You must complete this financial certification form and a medical certification form to continue receiving telecommunications service.

FINANCIAL SELF-CERTIFICATION (VALID FOR 90 DAYS)

I, [insert printed name] hereby certify that I am the person responsible for the charges for telecommunications service at [insert service address], that a seriously or chronically ill person, [insert name of seriously or chronically ill person], resides there, and that I do not have the financial resources to pay the charges for telecommunications service.

I understand that this certificate does not relieve me of the responsibility to pay my bill, and that I must submit another Financial Certification Form every 90 days.

I understand that if I provide false information, I could be

denied medical emergency telecommunications services.

[customer's signature] [date]

[customer's social security number] [customer's telephone number] [service address]

[city] [state] [zip code] [17.11.25.25 NMAC - N, 12/17/2019]

HISTORY OF 17.11.25 NMAC:

History of Repealed Material: 17.11.25 NMAC - Consumer Protection Standards Applicable to Mid-Size Carriers, filed 2/15/2006 - Repealed effective 12/17/2019.

NMAC History: 17.11.25 NMAC - Consumer Protection Standards Applicable to Mid-Size Carriers (filed 2/15/2006) was replaced by 17.11.25 NMAC - Consumer Protection Standards Applicable to Large Incumbent Local Exchange Carriers, effective 12/17/2019.

PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL PUBLIC SCHOOL FACILITY AUTHORITY

This is an amendment to 6.27.30 NMAC, Sections 2, 5 through 8, 10 through 20, and Section 22, effective December 17, 2019.

6.27.30.2 SCOPE: The purpose of this rule is to provide statewide adequacy standards for public school buildings and grounds. The application of these standards shall be limited to space and attributes needed to support educational [and technology] programs and curricula, defined and justified as required by public education department standards and benchmarks, and that is sustainable within the operational budget for staffing, maintenance, and full utilizations of the facilities. The New Mexico public school statewide adequacy standards are dynamic and the council plans to review

them [at least annually, and change] periodically, and amend them as time and circumstances require. These standards are intended for use in the evaluation of baseline requirements for existing public school facilities and are not intended to limit the flexibility of design solutions for new construction and renovation projects. [A companion document is the] The New Mexico public school adequacy planning guide is a companion document provided by the state for use in the programming and design of school projects [to meet adequacy]. The New Mexico public school adequacy planning guide is incorporated by reference into these standards, and may be amended by the council with adequate notice and input from the public.
[6.27.30.2 NMAC - N, 9/1/2002; A, 8/31/2005; A, 12/14/2007; A, 7/15/2010; A, 9/14/2012; A, 12/17/2019]

6.27.30.5 EFFECTIVE DATE: September 1, 2002, unless a later date is cited at the end of a section.

[6.27.30.5 NMAC - N, 9/1/2002; A, 8/31/2005; A, 12/17/2019]

6.27.30.6 OBJECTIVES: The New Mexico public school statewide adequacy standards establish the acceptable levels for the physical condition and capacity of school buildings, the educational suitability of those facilities and the need for technological infrastructure at those facilities. The standards are not intended to restrict a facility's maximum size.

[6.27.30.6 NMAC - N, 9/1/2002; A, 8/31/2005; A, 12/17/2019]

6.27.30.7 DEFINITIONS: Unless otherwise specified, the following definitions apply:

A. "ancillary space" means any subordinate space necessary to support an activity or function of main programmatic space(s);

B. "art education program" includes visual and performing arts programs;

C. "average enrollment" means the average number of students enrolled at an existing school over a period consisting of the past 5 years;

[~~C~~]: **D. "combination school"** means a school that contains the elementary school, middle school/junior high school and high school or any combination thereof;

[~~D~~]: **E. "council"** means the public school capital outlay council;

F. "d-level" means class d programs in which department certified individuals provide services to children whose individualized education programs require a maximum amount of special education;

[~~E~~]: **G. "equipment"** means a specified item not affixed to the real property of a school facility;

[~~F~~]: **H. "exterior envelope"** means the exterior walls, [~~floor and roof~~] roof, doors, windows, and structural system of a building;

[~~G~~]: **I. "fixture"** means a specified item that is affixed to the real property of a school facility;

[~~H~~]: **J. "general use classroom"** means a classroom space that is or can be appropriately configured for instruction in at least the areas of language arts (including bi-lingual), mathematics and social studies;

[~~I~~]: **"gross sf"** means a measurement from exterior wall to exterior wall and calculated to obtain the gross square footage of a space;]

[~~J~~]: **K. "infrastructure"** means the on-site physical support systems needed for the operation of the school, including internal roads, [~~and~~] utilities, [~~and~~] drainage systems, and building subsystems such as structure, mechanical, electrical, data, [~~and~~] telecommunications, and technology;

[~~K~~]: **L. "interior finish"** means an aesthetic or protective final coating or fabric applied to an exposed surface inside the building;

[~~L~~]: **M. "interior surface"** means any exposed area of the interior enclosure for an interior

space, finished or unfinished;

N. "kitchenette" means a small food storage and warming area, which usually has a refrigerator, sink, and a microwave, but may have other appliances;

[~~M~~]: **O. "net sf"** means a measurement from interior face of wall to interior face of wall and calculated to obtain the net square footage of a space;

P. "network distribution space" means space dedicated to securely house all devices and cabling necessary to cross-connect any outside line(s) with the school internal distribution frame up to, but not including, end-user devices;

Q. "occupiable space" means enclosed space within the school facility and serving a classroom, administrative, or support purpose and is occupied by staff, students, or public on a regular or flexibly assigned basis; this shall not include space exclusively used for storage or to house mechanical, electrical, or other equipment;

[~~N~~]: **R. "planned school program capacity"** means the planned number of students [to] in a new or replacement facility, or in an existing school facility to be modified in capacity, and shall be accommodated in the entire facility when all phases of construction are fully completed; these shall include students in regular education classes in combination with special education students requiring special education classrooms in compliance with public education department requirements;

[~~O~~]: **S. "school facility"** means a building or group of buildings and outdoor area that are administered together to comprise a school;

[~~P~~]: **T. "school site or school campus"** means one or more parcels of land where a school facility is located; more than one school facility may be located on a school site or school campus;

[~~Q~~]: **U. "space"** means the net square footage located within the interior of a building;

[~~R~~]: **V. "specialty**

classroom” means a classroom space that is or can be appropriately configured for instruction in a specific subject such as science, physical education, special education, career education, or art;

[S:] W. “specialty program capacity” means the planned number of students or the five-year average to be accommodated in a specialty program area in compliance with public education department requirements;

[F:] X. “student” means “qualified student or MEM” as defined in Section 22-8-2 NMSA [1987] 1978; [and]

[E:] Y. “teacherage” means a residence that houses a teacher or administrator on site;

Z. “technology infrastructure” means facilities including network, hardware, software, maintenance and other activities required to support information technology services; and

AA. “technology support space” means spaces dedicated to diagnose and repair hardware and software necessary for instructional delivery process (computers, tablets, projectors, displays etc.).

[6.27.30.7 NMAC - N, 9/1/2002; A, 8/31/2005; A, 12/14/2007; A, 7/15/2010; A, 9/14/2012; A, 12/17/2019]

6.27.30.8 GENERAL REQUIREMENTS: These standards are not intended to supersede or omit, compliance with applicable building and fire code or any other code, regulation, law or standard that has been adopted by state agencies.

A. Building condition. A school facility must be safe and capable of being maintained.

(1) Structural. A school facility must be structurally sound. A school facility shall be considered structurally sound and safe if the building presents no imminent danger or major visible signs of decay or distress.

(2) Exterior envelope. An exterior envelope is safe and capable of being maintained if:

(a) walls and roof are weather tight under normal conditions with routine upkeep; and

(b) doors and windows are weather tight under normal conditions with routine [upkeep, and the building structural systems support the loads imposed on them.] upkeep; and

(c) the building structural systems support the loads imposed on them.

(3) Interior surfaces. An interior surface is safe and capable of being maintained if it is:

(a) structurally sound;

(b) capable of supporting a finish; and

(c) capable of continuing in its intended use, with normal maintenance and repair.

(4) Interior finishes. An interior finish is safe and capable of being maintained if it is:

(a) free of exposed lead paint;

(b) free of friable asbestos; and

(c) capable of continuing in its intended use, with normal maintenance and repair.

B. Building systems. Building systems in a school facility must be in working order and capable of being properly maintained. Building systems include roof, plumbing, telephone, electrical, [and] heating and cooling, [systems as well as] fire alarm, 2-way internal communication, external communication, appropriate technological infrastructure, and security systems.

(1) General. A building system shall be considered to be in working order and capable of being maintained if all of the following apply:

(a) The system is capable of being operated as intended and maintained.

(b) Newly manufactured or refurbished replacement parts are available.

(c) The system is capable of supporting the adequacy standards established in this rule.

(d) Components of the system present no imminent danger of personal injury.

(2) Plumbing fixtures. A school facility shall be equipped with sanitary facilities in accordance with the New Mexico building code. Fixtures shall include, but are not limited to, water closets, urinals, lavatories and drinking fountains. [~~In all new construction, restrooms~~] Restrooms shall be reasonably available so students will not have to exit the building. [~~In existing facilities, restrooms shall be available for classrooms for grades 5 and below, and special needs classrooms, without having to exit the building, wherever possible within reasonable cost constraints.~~]

(3) Fire alarm and emergency notification system. A school facility shall have a fire alarm and emergency notification system as required by applicable state fire codes and emergency procedures.

(4) 2-way communication [system] and exterior site communication systems. A school facility shall have a 2-way [~~internal~~] building interior communication system between a central location and each classroom, isolated office space, library, physical education space, cafeteria, and other regularly-used spaces. An exterior communication system allowing emergency instructions to be clearly broadcast from a central location to all outdoor site areas adjacent to the school building(s) shall be provided. Exterior communications systems shall be capable of remote administrator control.

(5) Technological infrastructure. A school facility shall have built-in technology infrastructure as appropriate to support all aspects of the educational, operational and administrative processes, with functional access to wired and wireless connectivity throughout all occupiable spaces. Wireless coverage

and density shall be appropriate to serve all users' devices at all locations within the facility and at exterior seating areas adjacent to the building(s).

C. Building access control. Building attributes supporting controlled access to the building(s) and interior spaces, shall be integrated with all layers of school security.

(1) Security systems. Built-in security systems which support building access control and emergency operations shall be in working order.

(2) Classroom doors. All interior and exterior classroom doors accessible from indoor and outdoor traffic areas shall have hardware which is lockable from the inside of the classroom.

[6.27.30.8 NMAC - N, 9/1/2002; A, 8/31/2005; A, 12/14/2007; A, 12/17/2019]

6.27.30.10 SCHOOL SITE: A school site shall be of sufficient size to accommodate safe access, parking, drainage and security. Additionally, the site shall be provided with an adequate source of water and appropriate means of effluent disposal.

A. Safe access and circulation. [A school site shall be configured for safe and controlled access that separates pedestrian from vehicular traffic.] A school site shall be configured for safe, controlled access and on-site circulation. It shall have clearly identified and visually-observable pedestrian and vehicular pathways extending from the site perimeter to the main building entrance. Pedestrian and vehicular traffic, including service vehicle traffic shall be safely separated on site. If buses are used to transport students then separate bus loading/unloading areas shall be provided wherever possible. Dedicated student drop-off and pickup areas shall be provided for safe use by student passengers arriving or departing by automobile.

B. [Parking] Staff, student and visitor parking. A school

site shall include a maintainable surfaced area that is stable, firm and slip resistant and is large enough to accommodate 1.5 parking spaces / staff FTE and 1 student space /4 high school students. If this standard is not met, alternative parking may be approved after the sufficiency of parking at the site is reviewed by the council using the following criteria:

- (1) availability of street parking around the school;
- (2) availability of any nearby parking lots;
- (3) availability of public transit;
- (4) number of staff who drive to work on a daily basis; and
- (5) average number of visitors on a daily basis.

C. Drainage. A school site shall be configured such that runoff does not undermine the structural integrity of the school buildings located on the site or create flooding, ponding or erosion resulting in a threat to health, safety or welfare.

D. [Security] Site Security. Site security features shall be integrated with all layers of school security.

(1) [All schools] A school site shall have safe and secure site fencing or other barriers with accommodations for safe passage through openings to protect students from the hazards of traffic, railroad tracks, steep slopes, animal nuisance, and to discourage unauthorized access to the campus. This standard is met if the entire school is fenced or walled. If this standard is not met, alternative security may be approved after the sufficiency of security at the site is reviewed by the council using the following criteria:

- (a) amount of vehicular traffic near the school site;
- (b) existence of hazardous or natural barriers on or near the school site;
- (c) amount of animal nuisance or unique conditions near the school site;

(d) visibility of the play/physical education area; and

(e) site lighting, as required to meet safe, normal access conditions.

(2) For schools which include students below grade 6, a fenced or walled play/physical education area shall be provided. [6.27.30.10 NMAC - N, 9/1/2002; A, 12/14/2007; A, 12/17/2019]

6.27.30.11 SITE RECREATION AND OUTDOOR PHYSICAL EDUCATION: A school facility shall have area, space and fixtures, in accordance with the standard equipment necessary to meet the educational requirements of the public education department, for physical education activity.

A. Elementary school. Safe play area(s) and playground(s) including hard surfaced court(s) or unpaved recreation area(s) shall be conveniently accessible to the students. Play area(s) and appropriate equipment for physical education and school recreational purposes shall be provided based on the planned school program capacity. Pre-kindergarten and kindergarten students will require a fenced or walled playground area convenient to the pre-kindergarten and kindergarten classroom(s), with age-appropriate playground equipment.

B. Middle school/ junior high school. Hard surfaced court(s) and playing field(s) for physical education activities shall be provided. Playing field(s) and equipment shall be based on the planned school program capacity or average enrollment.

C. High school. A paved multipurpose play surface and a playing field for physical education activities shall be provided. Playing fields and equipment shall be based on the planned school program capacity or average enrollment.

D. Combination school. A combination school shall provide the elements of the grades served by Subsections A, B and C above without duplication, but shall

meet the highest standard.
[6.27.30.11 NMAC - N, 9/1/2002; A, 12/14/2007; A, 12/17/2019]

6.27.30.12 ~~[ACADEMIC CLASSROOM]~~ **OCCUPIABLE SPACE:** All ~~[classroom]~~ occupiable space within the building(s) shall meet or exceed the general requirements listed below:

A. Classroom space. Classroom space shall be sufficient for appropriate educational programs for the class level needs.

B. ~~[Classroom fixtures]~~ Fixtures and equipment.

(1) Each general and specialty classroom shall contain a work surface and seat for each student in the classroom. The work surface and seat shall be appropriate for the normal activity of the class conducted in the room.

(2) Each general and specialty classroom shall have an erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction, and a display surface. A single surface may meet one or more of these purposes.

(3) Each general and specialty classroom shall have storage for classroom materials or access to conveniently located storage.

(4) Each general and specialty classroom shall have a work surface and seat for the teacher and for the aide assigned to the classroom, and it shall have secure storage for student records that is located in the classroom or is convenient to access from the classroom.

(5) Occupiable administrative and facility support spaces shall meet or exceed requirements for the minimum fixtures and equipment necessary for functions performed within.

C. ~~[Classroom lighting]~~ Lighting.

(1) ~~[Each general and specialty classroom]~~ All occupiable space within the building(s) shall have a light system capable of maintaining at least 50

foot-candles of well-distributed light. Provide appropriate task lighting in specialty classrooms and other occupiable spaces where enhanced visibility is required.

(2) The light level shall be measured at a work surface located in the approximate center of the classroom, between clean light fixtures.

D. ~~[Classroom-temperature]~~ Temperature.

(1) Each general and specialty classroom shall have a heating, ventilation and air conditioning (HVAC) system capable of maintaining a temperature between sixty-eight and seventy-five degrees fahrenheit with full occupancy.

(2) The temperature shall be measured at a work surface in the approximate center of the classroom.

E. ~~[Classroom-acoustics]~~ Acoustics.

(1) ~~[Each general and specialty classroom]~~ All occupiable space within the building(s) shall be maintainable at a sustained background sound level of less than 55 decibels.

(2) The sound level shall be measured at a work surface in the approximate center of the classroom.

(3) All occupiable space within the building(s) shall be acoustically-separated from adjoining spaces when necessary to meet privacy or confidentiality requirements.

F. ~~[Classroom-air]~~ Air quality.

(1) ~~[Each general, science and arts classroom]~~ All occupiable space within the building(s) shall have an HVAC system that continually moves air and is capable of maintaining a CO₂ level of not more than ~~[1,200]~~ 1,000 parts per million.

(2) The air quality shall be measured at a work surface in the approximate center of the classroom.

G. Technology. All occupiable spaces within the building(s) shall have technology and

connectivity that will appropriately support educational activities conducted in the room. Safe and adequate access to power to recharge and operate technology devices by all students and staff simultaneously shall be provided.

H. Security. All occupiable spaces within the building(s) shall have the ability to control access to the extent required for confidentiality and security.

[6.27.30.12 NMAC - N, 9/1/2002; A, 8/31/2005; A, 12/14/2007; A, 12/17/2019]

6.27.30.13 GENERAL USE CLASSROOMS (LANGUAGE ARTS, MATHEMATICS AND SOCIAL STUDIES):

A. Cumulative classroom net ~~[square foot (sf)]~~ sf requirements, excluding in-classroom storage space, shall be at least:

(1) <u>Pre-Kindergarten - Kindergarten</u>	50 net sf/student
(2) Grades 1 - 5	32 net sf/student
(3) Grades 6 - 8	28 net sf/student
(4) Grades 9 - 12	25 net sf/student

B. ~~[At]~~ In addition, at least 2 net sf/student shall be available for dedicated classroom storage.

C. All pre-kindergarten classrooms shall have a sink.

~~[C.]~~ **D.** Sufficient number of classrooms shall be provided to meet statutory student/staff ratio requirements.

[6.27.30.13 NMAC - N, 9/1/2002; A, 8/31/2005; A, 12/14/2007; A, 12/17/2019]

6.27.30.14 SPECIALTY CLASSROOMS:

A. Science:

(1) For grades ~~[K]~~ Pre-Kindergarten through 6, no additional space is required beyond the classroom requirement.

(2) For grades 7 through 12, 4 net sf/student of the

[specialty] planned school program capacity or average enrollment for science is required. The space shall not be smaller than the [average] average-sized general use classroom at the facility. This space is included in the academic classroom requirement and may be used for other instruction. The space shall have science fixtures and equipment, in accordance with the standard equipment and technology necessary to meet the educational requirements of the public education department. If an alternate science learning method is used by a school district, the district shall verify the appropriate alternate fixtures and equipment to the council. Provide at least [80] 96 net sf for securable, well-ventilated storage/prep space for each science room having science fixtures and equipment. Storage/prep room(s) may be combined and shared between more than one classroom.

B. Special education classroom. If a special education space is provided and the space is required to support educational programs, services, and curricula, the space shall not be smaller than 450 net sf. [~~When the need is demonstrated in type II (d-level) classrooms, additional space in the classroom shall be provided with, or students shall have an accessible route to, an accessible unisex restroom with one toilet, sink, washer/dryer and shower stall/tub, and at least 15 net sf of storage]~~ In d-level classrooms serving students requiring a high degree of personal care and assistance, 100 net sf/student shall be provided (or no larger than the average-sized general education classroom), along with additional space in the classroom for an accessible unisex restroom. When the need is demonstrated [~~in 7th grade classrooms and above~~], a kitchenette with at least 15 net sf of storage shall be provided.

C. Art education programs. A school facility shall have classroom space to deliver art education programs, including dance, music, theatre/drama, and visual arts programs, or have access to an alternate learning method. Classroom

space(s) for art education shall not be smaller than the [average] average-sized general use classroom at the facility. Art education classroom space(s) may be included in the academic classroom requirement and may be used for other instruction.

(1) Elementary school. Art education programs may be accommodated within a general use or dedicated art classroom. Provide additional dedicated art program storage of at least 60 net sf per facility. Dedicated art classrooms, excluding performing arts, shall have a sink.

(2) Middle school/junior high school. Classroom space(s) for art education programs shall have no less than 4 net sf/student of the specialty program capacity for art. Provide additional ancillary space for group music practice, individual music practice room(s), specialized storage/library rooms, and office(s). Dedicated art classrooms, excluding performing arts, shall have a sink.

(3) High school. Classroom space(s) for art education programs shall have no less than 5 net sf/student of the specialty program capacity for art. Provide additional ancillary space for group music practice, individual music practice room(s), specialized storage/library rooms, and office(s). Dedicated art classrooms, excluding performing arts, shall have a sink.

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication.

D. Career education.
(1) Elementary school. No requirement.

(2) Middle school/junior high school. Career education programs shall be provided with no less than 3 net sf/student of the specialty program capacity of the school for career education. Provide additional adequate space for specialized curriculum, equipment and technology requirements, and safety zones. Each program lab or classroom space shall not be smaller than [650 net sf] the average-sized general use classroom at the facility.

(3) High school. Career education programs space shall be provided with no less than 4 net sf/student of the specialty program capacity of the school for career education. Provide additional adequate space for specialized curriculum, equipment and technology requirements, and safety zones. Each program lab or classroom space shall not be smaller than [650 net sf] the average-sized general use classroom at the facility.

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

E. [~~Technology-aided]~~ Technology and computer skills instruction. A school facility shall have space to deliver educational [~~technology-aided instructional]~~ programs in technology and computer skills or have access to an alternate learning method. This requirement may be distributed throughout other program spaces within the facility.

(1) Elementary school. Provide space that meets 3 net sf/student of the planned school program capacity or average enrollment, with no less than 700 net sf.

(2) Middle school/junior high school. Provide space that meets at least 3 net sf/student of the planned school program capacity or average enrollment, with no less than 800 net sf.

(3) High school. Provide space that meets 3 net sf/student of the planned school program capacity or average enrollment, with no less than 900 net sf.

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.

F. Alternate delivery method. If an alternate delivery method is used by a school district for instruction, the space used for the alternate method may be approved

following review by the council.
[6.27.30.14 NMAC - N, 9/1/2002;
A, 8/31/2005; A, 12/14/2007;
A, 7/15/2010; A, 9/14/2012; A,
12/17/2019]

6.27.30.15 PHYSICAL EDUCATION:

A. General requirements. A school facility shall have an area, space and fixtures for indoor physical education activity. This space may have more than one function and may fulfill more than one standard requirement.

(1) Elementary school. Provide an indoor physical education teaching facility with at least 2,400 net sf. This space may have multi-purpose use in accommodating other educational program activities such as art program performances.

(2) Middle school/junior high school. For a middle school/junior high school facility, an indoor physical education teaching facility that shall have a minimum of 5,200 net sf plus bleachers for 1.5 design capacity.

(3) High school. A physical education complex shall have a minimum of 6,500 net sf plus bleachers for 1.5 design capacity.

(4) Combination school. Provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher net sf standards with bleacher capacity for at least 2.0-planned school program capacity or average enrollment. A single high school gymnasium shall fulfill the minimum requirements of both high school and middle school/junior high school classes. If the school includes an elementary, then it shall provide in addition the separate space required for an elementary school. This space may have more than one function and may fulfill more than one standard requirement.

(5) Physical education space and seating shall support access to and use of appropriate technology devices and have access to power and functional wireless connectivity.

B. Additional physical education requirements. In addition to space requirements in Subsection A:

(1) Elementary school. One office shall be provided, with separate physical education equipment storage with a combined minimum of 200 net sf. [~~This space may have more than one function and may fulfill more than one standard requirement.~~]

(2) Middle school/junior high school. Two dressing rooms shall be provided, with lockers, [~~showers and restroom fixtures~~ Two offices shall be provided, each with a minimum of 150 net sf. Each shall be provided with a telephone. Separate physical education equipment storage space shall be provided] restroom fixtures, and at least one shower per dressing room. Two offices shall be provided, along with separate physical education equipment storage space, with a combined minimum of 300 net sf. Each shall be provided with a telephone.

(3) High school. Two dressing rooms shall be provided, with lockers, [~~showers and restroom fixtures~~ Two offices shall be provided, each with a minimum of 150 net sf. Each shall be provided with a telephone. Separate physical education equipment storage space shall be provided] restroom fixtures, and at least one shower per dressing room. Two offices shall be provided, along with separate physical education equipment storage space, with a combined minimum of 300 net sf. Each shall be provided with a telephone.

(4) Combination school. A combination school shall provide the elements of the grades served by Paragraphs (1), (2) and (3) above without duplication, but meeting the higher standards.
[6.27.30.15 NMAC - N, 9/1/2002;
A, 8/31/2005; A, 12/14/2007;
A, 7/15/2010; A, 9/14/2012; A,
12/17/2019]

6.27.30.16 [~~LIBRARIES AND MEDIA CENTERS/ RESEARCH AREA - GENERAL REQUIREMENTS~~] LIBRARIES, MEDIA, AND RESEARCH CENTERS:

A. A school facility shall have space for students to access research materials, computer workstations, literature, non-text reading materials, books and technology, including digital devices. This shall include [~~space for reading, listening and viewing materials~~] flexible space and comfortable seating with wired and wireless connectivity.

(1) Elementary school. The area for stacks and seating space shall be at least [3] 2.5 net sf/student of the planned school program capacity or average enrollment, but no less than 1,000 net sf. In addition, office/workroom space and secure storage shall be provided, with a cumulative minimum of 200 net sf.

(2) Middle school/junior high school or high school. The area for stacks and seating shall be at least [3] 2.5 net sf/student of the planned school program capacity or average enrollment but no less than 1,000 net sf. In addition, office/workroom space and secure storage shall be provided, with a cumulative minimum of 200 net sf.

(3) Combination school. Provide the elements of the grades set out in Paragraphs (1) and (2) above without duplication, but meeting the higher standards.

B. A school facility shall have library fixtures, equipment, technology, and resources in accordance with the standard equipment necessary to meet the educational requirements of the public education department.
[6.27.30.16 NMAC - N, 9/1/2002;
A, 8/31/2005; A, 12/14/2007; A,
7/15/2010; A, 12/17/2019]

6.27.30.17 FOOD SERVICE STANDARDS:

A. Cafeterias - general requirements. A school facility shall have adequate space and equipment

necessary to provide regular meals to students during the school day.

(1) Serving and dining. A school facility shall have a covered area or space, or combination, to permit students to eat within the school site, outside of general classrooms. This space may ~~[have more than one function]~~ be multi-purpose and may fulfill more than one adequacy standards requirement not in conflict with the regular serving and dining function. Dining area shall be sized for the planned school program capacity or average enrollment to allow for a meal period requiring no more than ~~[3 servings]~~ three serving periods. The dining area shall have no less than 15 net sf/seated student.

(2) Serving ~~[area]~~ area(s) accommodating efficient flow of traffic shall be provided in addition to net sf areas assigned to dining and food preparation area.

(3) Fixtures ~~[and equipment]~~ equipment, and storage. A school facility shall have space, fixtures and equipment accessible to the serving area, in accordance with the standard equipment required, for the preparation, receipt, storage or service of food to students.

(a) The space, fixtures and equipment shall be appropriate for the food service program of the school facility and shall be provided in consideration of the size and location of the facility and frequency of food service supply deliveries. Food service facilities and equipment shall comply with the food service and food processing regulations of the New Mexico department of environment.

(b) Fixtures and equipment should include: food prep area items, including sink, oven, range, serving area equipment (or buffet equipment), dishwasher, and cold storage, dry storage and other appropriate fixture and equipment items.

B. Kitchen. Kitchen and equipment shall comply with either the food preparation kitchen or

the serving kitchen standards defined as follows:

(1) Food preparation kitchen - 2 net sf/meal served minimum based upon the single largest serving period:

(a) Elementary school: 1,000 net sf minimum.

(b) Middle school/junior high school: 1,600 net sf minimum.

(c) High school: 1,700 net sf minimum.

(d) Combination school: shall provide the elements of the grades served by Subparagraphs (a), (b) and (c) above without duplication, but meeting the higher standards.

(2) Serving kitchen. Where food is not prepared on the school site but is delivered prepared, there shall be a minimum of 200 net sf with a hand wash sink and a phone.

[6.27.30.17 NMAC - N, 9/1/2002; A, 8/31/2005; A, 12/14/2007; A, 7/15/2010; A, 9/14/2012]

6.27.30.18 OTHER FACILITY AREAS:

A. Parent ~~[workspace]~~ organization storage. A school facility shall include ~~[a workspace]~~ secure storage for use by ~~[parents]~~ the school parent organization(s). ~~[If this space is provided, it shall consist of at least .5 net sf/student of the planned school program capacity but no less than 150 net sf]~~ Space provided shall consist of no less than 150 net sf. The space may consist of more than one room and may have more than one function.

B. Administrative space. A school facility shall have ~~[space to be used for the administration of the school]~~ administrative space. The space shall consist of a minimum of 150 net sf, plus 1.5 net sf/student of the planned school program capacity or average enrollment.

C. Student health, counseling and ancillary space. ~~[A school facility shall have space to isolate a sick student from the other students and may include space~~

~~for the delivery of other health, counseling, testing and ancillary programs. This space shall be a designated space that is accessible to a restroom, and shall consist of at least 1 net sf/student of the planned school program capacity with a minimum of 150 net sf. The space may consist of more than one room and may have more than one function. This space shall include a telephone.] A school facility shall have spaces for the delivery of student health, counseling, testing and ancillary programs. The student health or nurse's suite shall have space to isolate any sick student(s) from the other students. It shall include secure storage for records, medications, supplies, and it shall have a telephone. This space shall be a designated space consisting of at least 1 net sf/student of the planned school program capacity or average enrollment with a minimum of 150 net sf. The student health or nurse's suite shall have a connected accessible restroom, not included in the minimum.~~

D. Faculty workspace or teacher lounge. A school facility shall have workspace available to the faculty. This space is in addition to any workspace available to a teacher, in or near a classroom. The space shall consist of at least 1 net sf/ student of the planned school program capacity or average enrollment with no less than 150 net sf. The space may consist of more than one room and may have more than one function. This space shall include a break area with a ~~[sink]~~ kitchenette.

E. Network distribution space. A school shall have at least 120 net sf of appropriately distributed, securable, well-ventilated, temperature-controlled space to accommodate routers, switches, servers and other devices to support school technology operational needs.

F. Technology support space(s). A school shall have 0.5 net sf/student with a minimum of 300 sf to store and/or service user devices. This space may be provided in a centralized location off-site.

[6.27.30.18 NMAC - N, 9/1/2002; A, 8/31/2005; A, 12/14/2007; A, 12/17/2019]

6.27.30.19 GENERAL STORAGE (EXCLUDES LOCKERS, JANITORIAL, KITCHEN, GENERAL CLASSROOM, SPECIALTY CLASSROOMS, AND ADMINISTRATIVE STORAGE):

For storage, at least 1 net sf/student of the planned school program capacity or average enrollment may be distributed in or throughout any type of room or space, but may not count toward required room square footages. General storage must be securable and include textbook storage.

[6.27.30.19 NMAC - N, 9/1/2002; A, 8/31/2005; A, 12/14/2007; A, 12/17/2019]

6.27.30.20 MAINTENANCE OR JANITORIAL SPACE: Each school shall designate ~~[-5]~~ 1 net sf/student of the planned school program capacity or average enrollment for maintenance or janitorial space. Janitorial space shall include a janitorial sink.

[6.27.30.20 NMAC - N, 9/1/2002; A, 8/31/2005; A, 12/14/2007; A, 12/17/2019]

6.27.30.22 STANDARDS VARIANCE:

A. The council may grant a variance from any of the adequacy standards. The council shall grant a variance if it determines that the intent of the standard can be met by the school ~~[district]~~ in an alternate manner, or if a variance is required for appropriate programmatic needs as demonstrated by the district. If the council grants the variance, the school ~~[district]~~ shall be deemed to have met the standard.

B. The council may, with adequate justification, also grant a variance from any of the provisions of the New Mexico public school adequacy planning guide provided by the state for use in the programming and design of school projects ~~[to meet adequacy]~~. Such variance shall

be considered through an appeal to the council by the school district following a final administrative interpretation of the planning guide. Procedures for achieving final administrative interpretation and filing an appeal to the council for a variance are as provided for in the planning guide document.

[6.27.30.22 NMAC - N, 9/1/2002; A, 12/14/2007; A, 12/17/2019]

HISTORY OF 6.27.30 NMAC: [RESERVED]

RACING COMMISSION

This is an amendment to 15.2.1 NMAC, Section 6 and 7, effective December 19, 2019.

Explanatory Paragraph: In 15.2.1.7 NMAC, Subsection A, and Subsections C through Z were not published as there were no changes.

15.2.1.6 OBJECTIVE:
~~[The objective of Part 1 of Chapter 2 is]~~ To establish the authority of the racing commission for regulating the horse racing industry; establish procedures for issuance, renewal, suspension, or revocation of licenses for violations of the rules or act; and, achieve the objectives that participants and patrons be protected against all wrongful, unlawful, or unfair conduct and practices on the racetrack.

[15.2.1.6 NMAC - Rp, 15 NMAC 2.1.6, 3/15/2001; A, 12/17/2019]

15.2.1.7 DEFINITIONS: ***

B. Definitions beginning with the letter “b”:
(1)

“Beneficial interest” is profit, benefit, or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control. When considered as designation of character of an estate, is such an interest as a devisee, legatee, or donee takes solely for his own use or benefit, and not as holder of title for use and benefit of another.

(2) “Betting interest” refers to one or more contestants in a pari-mutuel contest, which are identified by a single program number for wagering purposes.

(3) “Bleeder” is any horse, which exhibits symptoms of epistaxis and/or respiratory tract hemorrhage.

(4) “Bleeder list” is a tabulation of all bleeders to be maintained by the commission.

(5) “Board” means the gaming control board.

(6) “Breakage” means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of ten.

(7) “Breeder” is the ~~[owner of the horse’s dam at the time of foaling.]~~ person or entity recorded by the national registry organization for the particular breed of the horse.

 [15.2.1.7 NMAC - Rp, 15 NMAC 2.1.7, 3/15/2001; A, 2/14/2002; A, 8/30/2007; A, 12/01/2010; A, 1/1/2013; A, 5/1/2013; 8/15/2014; A, 7/1/2017; A, 3/14/2018; A, 9/26/2018; A, 12/19/2019]

RACING COMMISSION

This is an amendment to 15.2.3 NMAC, Sections 6 and 8, effective December 19, 2019.

Explanatory Paragraph: In 15.2.3.8 NMAC Subsections A and B, Paragraph (1) and Paragraphs (3) through (9) in Subsection C, Subsections D and E, Subsections G through N, Paragraphs (1) through (3) and Paragraphs (5) through (7) of Subsection O, and Subsection P were not published as there were no changes.

15.2.3.6 OBJECTIVE:
~~[The objective of Part 3 of Chapter 2 is]~~ To establish the qualifications of persons to receive licenses for engaging in horse racing in New Mexico as deemed in the public interest.

[15.2.3.6 NMAC - Rp, 15 NMAC 2.3.6, 04/13/2001]

15.2.3.8 FLAT RACING OFFICIALS GENERAL PROVISIONS:

C. Racing secretary:

(2) Foal,

health and other eligibility certificates:

(a)

The racing secretary or their designee shall be responsible for receiving, inspecting and safeguarding the digital or paper foal and health certificates and other documents of eligibility for all horses competing at the track or stabled on the grounds.

(b)

The racing secretary shall ensure that the foal certificates for all thoroughbred horses entered to race that were foaled in 2018, or thereafter, have a digital tattoo. This digital tattoo shall indicate that the thoroughbred racing protective bureau has confirmed the identity of the horse and uploaded updated digital photographs to the breed registry database.

F. Horse identifier:

(1) General

authority: The horse identifier shall: when required, ensure the safekeeping of digital or paper registration certificates and racing permits for horses stabled or racing on association grounds; inspect documents of ownership, eligibility, registration or breeding necessary to ensure the proper identification of each horse scheduled to compete at a race meeting; examine every starter in the paddock for sex, color, markings [and] lip tattoo or microchip (ISO11784), freeze brand or other approved method of positive identification, for comparison with its registration certificate to verify the horse's identity; supervise the tattooing, micro chipping, freeze branding or other approved method of positive identification, for identification of any horse located on association grounds. Positive

identification may include verification that the breed registration certificate has been submitted for correction or verification that the tattooing process has been initiated.

(2) Report

violations: The horse identifier shall report to the stewards any horse not properly identified or whose registration certificate is not in conformity with these rules.

O. Racing

veterinarian:

(4) [The-

~~racing veterinarian shall place horses on the veterinarian's list, when necessary, and may remove from the list those horses which are, in the racing veterinarian's opinion, able to satisfactorily compete in a race.]~~ The official veterinarian or racing veterinarian shall maintain the veterinarian's list of all horses which are determined to be unfit to compete in a race due to illness, unsoundness, injury, infirmity, voluntary administration of a medication invoking a mandatory stand down time, administration of shock-wave therapy or any other assessment or determination by the official or racing veterinarian that the horse is unfit to race.

(a)

Horses so listed are ineligible to enter in a race in any jurisdiction until released by the official veterinarian or racing veterinarian except when there is an administrative issue in releasing the horse from a veterinarian's list of another racing jurisdiction.

(b)

A horse placed on the veterinarian's list due to illness, injury or infirmity unrelated to the racing soundness of the horse may be released from the list when a minimum of seven calendar days has passed from the time the horse was placed on the list.

(c)

A horse placed on the veterinarian's list for unsoundness or lameness shall be released from the list only after the following has been met:

(i)

A minimum of seven calendar days has elapsed;

(ii)

the horse demonstrates to the satisfaction of the official veterinarian or racing veterinarian that the horse is serviceably sound and in fit physical condition to exert its best effort in a race;

(iii)

the horse completes a published work after the seven calendar days has elapsed of four furlongs at 0:52 for thoroughbreds or better; or 220 yards at 13.3 seconds for quarter horses or better while being observed by the official veterinarian or racing veterinarian, and;

(iv)

the horse submits to a post work official sample collection for laboratory confirmation for compliance with 15.2.6.9 NMAC at the expense of the current owner. Samples shall be subjected to the same testing as conducted for post race official samples. The presence of a prohibited substance in the post work sample shall result in the horse remaining on the veterinarian's list.

(d)

A horse placed on the veterinarian's list for voluntary administration of a medication invoking a mandatory stand down time shall be released from the list subject to the provisions and restrictions set forth in Subsection C of 15.2.6.9 NMAC.

(e)

A horse placed on the veterinarian's list for the administration of shock-wave therapy shall be released from the list subject to the provisions and restrictions set forth in Subsection C of 15.2.6.8 NMAC.

[15.2.3.8 NMAC - Rp, 15 NMAC 2.3.8, 4/13/2001; A, 11/15/2001; A, 8/30/2007; A, 6/15/2009; A, 6/30/2009; A, 12/1/2010; A, 5/1/2015; A/E, 6/28/2016; A, 9/15/2016; A, 12/16/2016; A, 7/1/2017; A, 9/26/2018; A, 5/1/2019; A, 12/19/2019]

RACING COMMISSION

This is an amendment to 15.2.5 NMAC, Sections 11, 12 and 13, effective December 19, 2019.

Explanatory Paragraph: In 15.2.5.13 NMAC, Subsections A and B, Paragraphs (1) through (11) of Subsection C, and Subsections D and E were not published as there were no changes.

15.2.5.11 WORKOUTS:**A. Requirements:**

(1) A non-starter must have had within 60 days prior to time of entry one approved official schooling race or at least two workouts recorded at a pari mutuel or commission recognized facility and posted with the racing secretary prior to time of entry, one of the two workouts shall be from the starting gate, and be gate approved. It shall be the trainer's responsibility to establish validity as to workouts and gate approvals.

(2) Any horse which has started, but not within six months, must have one official workout from the starting gate or must have proof of standing the horse at least one time within a 60 day period. Any horse which has started, but not within 60 days, must have at least one workout within 60 days prior to time of entry. Horses that have not started within six months of entry must have at least two approved workouts within the 60 days.

(3) Horses that have never raced around the turn will be required to have within 30 days prior to time of entry, at least one workout at 660 yards or farther.

(4) Gate approvals at a licensed facility must be made by a licensed starter on a commission approved form.

B. Identification:

(1) Each horse must be properly identified prior to its participation in an official timed workout.

(2) The trainer or exercise rider shall bring each horse scheduled for an

official workout to be identified by the clocker or clocker's assistant immediately prior to the workout.

(3) A horse may be properly identified by its lip tattoo or its digital tattoo immediately prior to participating in an official timed workout. A horse may also be properly identified by other approved methods of positive identification as described in Subsection F of 15.2.3.8 NMAC.

(4) The owner, trainer or rider shall be required to identify the distance the horse is to be worked and the point on the track where the workout will start.

C. Information

dissemination: Information regarding a horse's approved timed workout(s) shall be furnished to the public prior to the start of the race for which the horse has been entered.

D. Restrictions:

A horse shall not be taken onto the track for training or a workout except during hours designated by the association.

[15.2.5.11 NMAC - Rp, 15 NMAC 2.5.11, 3/15/2001; A, 3/30/2007; A, 6/15/2009; A, 7/5/2010; A, 1/1/2013; A, 3/15/2016; A, 12/16/16; A, 8/26/2017; A, 3/14/2018; A, 12/19/2019]

15.2.5.12 HORSES

INELIGIBLE: [~~A horse shall be ineligible to start in a race when:~~]

A. A horse shall be ineligible to start in a race when:

(1) it is not stabled on the grounds of the association or present by the time established by the commission;

~~[B:]~~ (2) its breed registration certificate is not on file with the racing secretary or horse identifier; unless the racing secretary has submitted the certificate to the appropriate breed registry for correction or in the case of thoroughbred horses foaled in 2018 or thereafter, the horse doesn't have a

digital tattoo; the stewards may waive this requirement if the information contained on the registration certificate is otherwise available; and the horse is otherwise correctly

identified to the stewards' satisfaction; ~~[C:]~~ (3) if a quarter horse or a thoroughbred foaled before

2018, [it]is not fully identified and tattooed on the inside of the upper lip, freeze brand or identified by any other method approved by the breed registry and commission; however, there may be extenuating circumstances where a horse will be eligible to start in a race without the tattoo as referenced above, as long as the horse [~~identifer~~] identifier has written verification that the tattooing process has been initiated; if a thoroughbred foaled in 2018 or thereafter, is not micro chipped with a unique microchip (ISO11784), freeze brand or identified by any other method approved by the breed registry and commission.

~~[D:]~~ (4) it has been fraudulently entered or raced in any jurisdiction under a different name, with an altered registration certificate, [~~or~~] altered lip tattoo, altered or manipulated microchip (ISO11784), or freeze brand;

~~[E:]~~ (5) it is wholly or partially owned by a disqualified person or a horse is under the direct or indirect training or management of a disqualified person;

~~[F:]~~ (6) it is wholly or partially owned by the spouse of a disqualified person or a horse is under the direct or indirect management of the spouse of a disqualified person, in such cases, it being presumed that the disqualified person and spouse constitute a single financial entity with respect to the horse, which presumption may be rebutted;

~~[G:]~~ (7) the stakes or entrance money for the horse has not been paid, in accordance with the conditions of the race;

~~[H:]~~ (8) the losing jockey mount fee is not on deposit with the horsemen's bookkeeper;

~~[I:]~~ (9) its name appears on the starter's list, stewards' list or veterinarian's list;

~~[J:]~~ (10) it is a first time starter and has not been approved to start by the starter;

~~[K:]~~ (11) it is owned in whole or in part by an undisclosed person or interest;

[~~L~~.] (12) it lacks sufficient official published workouts or race past performance(s);

[~~M~~.] (13) it has been entered in a stakes race and has subsequently been transferred with its engagements, unless the racing secretary has been notified of such prior to the start;

[~~N~~.] (14) it is subject to a lien which has not been approved by the stewards and filed with the horsemen’s bookkeeper;

[~~O~~.] (15) it is subject to a lease not filed with the stewards;

[~~P~~.] (16) it is not in sound racing condition;

[~~Q~~.] (17) it has had a surgical neurectomy performed on a heel nerve, which has not been approved by the official veterinarian;

[~~R~~.] (18) it has been trachea tubed to artificially assist breathing;

[~~S~~.] (19) it has been blocked with alcohol or otherwise drugged or surgically denerved to desensitize the nerves above the ankle;

[~~T~~.] (20) it has impaired eyesight in both eyes;

[~~U~~.] (21) it is barred or suspended in any recognized jurisdiction;

[~~V~~.] (22) it does not meet the eligibility conditions of the race;

[~~W~~.] (23) its owner or lessor is in arrears for any stakes fees, except with approval of the racing secretary;

[~~X~~.] (24) its owner(s), lessor(s) and/or trainer have not completed the licensing procedures required by the commission;

[~~Y~~.] (25) it is by an unknown sire or out of an unknown mare; or

[~~Z~~.] (26) there is no current negative test certificate for equine infectious anemia on file with the racing office, as required by the commission.

B. A horse shall be ineligible to be entered when:

(1) it is the subject of a positive test for a

prohibited substance in an official sample based on a final certificate of analysis received from the official laboratory during the period in which the adjudication process involving the violation is ongoing.

(a) In the event the horse is claimed in the race in which the horse allegedly ran with the prohibited substance, the new owner may enter the horse, unless the horse is ordered to go on the stewards’ list pursuant to Subsection C of 15.2.6.9 (8)(a-e) NMAC.

(b) Should the horse be claimed thereafter by the owner of the horse in the race in which there was a positive test for a prohibited substance, the horse shall not be allowed to enter unless the adjudication process involving the prior violation is complete.

[15.2.5.12 NMAC - Rp, 15 NMAC 2.5.12, 3/15/2001; A, 7/15/2002; A; 8/30/2007; A, 6/15/2009; A, 1/1/2014; A, 9/15/2016; A, 12/19/2019]

15.2.5.13 RUNNING OF THE RACE:

C. Jockey requirements:

(12) [Seven] Five pounds is the limit of overweight any horse is permitted to carry.

(13) Once jockeys have fulfilled their riding engagements for the day and have left the jockeys’ quarters, they shall not be re-admitted to the jockeys’ quarters until after the entire racing program for that day has been completed, except with permission of the stewards.

 [15.2.5.13 NMAC - Rp, 15 NMAC 2.5.13, 3/15/2001; A, 8/30/2007; A, 12/1/2008; A, 6/30/2009; A, 9/15/2009; A, 8/16/2010; A, 9/01/2010; A, 10/15/2014; A, 6/1/2016; A, 12/16/2016; A, 12/19/2019]

RACING COMMISSION

This is an amendment to 15.2.6 NMAC, Sections 6, 9 and 12, effective date of December 19, 2019.

Explanatory Paragraph: In 15.2.6.9 NMAC, Paragraphs (1) through (12) of Subsection A, Subsection B, Paragraphs (1) through (7) and Paragraphs (9) through 12 of Subsection C, and Subsections D through K, Paragraphs (1) and (2) of Subsection L, Subsection M and N were not published as there were no changes. Throughout 15.2.6 NMAC, number and rule citations have been changed to conform to correct legislative style.

15.2.6.6 OBJECTIVE:
 [The objective of Part 6 of Chapter 2 is] To describe requirements and procedures used to protect the integrity of horse racing, to ensure the health and welfare of race horses and to safeguard the interests of the public and the participants in racing.
 [15.2.6.6 NMAC - Rp, 15 NMAC 2.6.6, 4/13/2001; A, 7/31/2012; A, 12/19/2019]

15.2.6.9 MEDICATIONS AND PROHIBITED

SUBSTANCES: The classification guidelines contained within the “uniform classification guidelines for foreign substances and recommended penalties and model rule”, January 2019 version 14.0 and “association of racing commissioners international inc. controlled therapeutic medication schedule for horses”, version 4.0, revised April 20, 2017 by the association of racing commissioners international, are incorporated by reference. Any threshold herein incorporated by reference by inclusion in one of the documents above shall not supersede any threshold or restriction adopted by the commission as specified by this section.

A. Penalties:

(13)
Aggravating and Mitigating Factors:
 (a)
In reaching a decision on a penalty

for a violation for the New Mexico horse racing act or New Mexico racing commission rules and regulations, the commission, the board of stewards, the hearing officer or the administrative law judge shall consider the penalties set forth in paragraph (2) of this subsection and any aggravating and mitigating circumstances. Deviation from these penalties is appropriate where the facts of the particular case warrant such a deviation, for example: there may be mitigating circumstances for which a lesser or no penalty is appropriate, and aggravating factors for which a greater penalty is appropriate.

(b)

Mitigating circumstances and aggravating factors, which must be considered, include but are not limited to:

(1) The past record of the licensee regarding violations of the New Mexico horse racing act or New Mexico racing commission rules;

(2) the potential of the drug(s) to influence a horse's racing performance and the amount of the drug present;

(3) the legal availability of the drug and whether the drug was prescribed to the horse by a New Mexico racing commission licensed veterinarian;

(4) whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug;

(5) the steps taken by the trainer to safeguard the horse;

(6) the steps taken by an owner to safeguard against subsequent medication violations including, but not limited to, the transfer of the horse(s) to an unaffiliated trainer.

An "unaffiliated trainer" means a trainer or an assistant trainer who is not related by blood, marriage or domestic partnership, or who is not or was never employed to the trainer from whose case such horse(s) were transferred.;

(7) the probability of environmental contamination or inadvertent exposure due to human drug use or other facts;

(8) the purse of the race;

(9) whether the drug found to be present in the official test sample was one for which the horse was receiving treatment as determined and documented by an New Mexico racing commission licensed veterinarian;

(10) whether there was any suspicious wagering pattern on the race; or

(11) whether the licensed trainer was acting under the advice of an New Mexico racing commission veterinarian.

(c)

The stewards shall consider the classification of a drug substance and the "uniform classification guidelines for foreign substances" if a determination is made that an official test sample from a horse contained:

(1) Any drug substance, medication, metabolites or analogues thereof foreign to the horse, whose use is not expressly authorized in this section, or

(2) any drug substance, medication or chemical authorized by this section in excess of the authorized level or other restrictions as set forth in this section.

(d)

Penalties for violation of each classification level are listed in Subsection B of 15.2.6.9 NMAC. ***

C. Medication

restrictions: ***

(8) Any horse that is the subject of a positive test report from the official laboratory for a drug in one of the following categories shall be placed immediately on the steward's list:

(a)

any drug categorized by the association of racing commissioner's international "uniform classification guidelines for foreign substance and recommended penalties and model rule" incorporated by reference under

15.2.6.9 NMAC as a penalty class A substance;

(b)

any prohibited anabolic androgenic steroid or any anabolic androgenic steroid in excess of the permitted concentrations listed in Subsection G of 15.2.6.9 NMAC;

(c)

clenbuterol, albuterol, or other beta-agonist drugs with significant anabolic effects that are not currently penalty class A drugs (specifically Quarter Horses or Thoroughbreds);

(d)

other drugs designed to promote growth or muscle including, but not limited to, growth hormones, somatotropins, insulin growth factors and gene modifying agents;

(e)

cobalt in excess of the allowable concentration specified pursuant to Subsection [M] L of 15.2.6.9 NMAC. ***

L. Environmental contaminants and substances of human use: ***

(3)

If the preponderance of evidence presented in the hearing shows that a positive test is the result of environmental contamination, including inadvertent exposure due to human drug use, or dietary intake, or is endogenous to the horse, those factors should be consider in mitigation of any disciplinary action taken against the affected trainer. Disciplinary action shall only be taken if test sample results exceed the regulatory thresholds listed below:

(a)

Arsenic - 0.3 micrograms per milliliter total arsenic in urine;

(b)

Benzoylcgonine - 150 nanograms per milliliter in urine;

(c)

Caffeine - 100 nanograms per milliliter of plasma or serum;

(d)

Cathinone - 10 nanograms per milliliter in urine;

(e)

Cobalt - 25 ppb in blood plasma or serum (penalties for cobalt vary

depending on the concentration; see uniform classification guidelines for foreign substances for recommended penalty for concentrations of 25 parts per billion or greater of blood plasma or serum). [~~and for concentrations of 50 parts per billion of blood plasma or serum~~];

(f)

Estranediol - 0.045 micrograms per milliliter, free + conjugated 5 α -estrane-3 β , 17 α -diol, in the urine of male horses other than geldings;

(g)

Gamma Aminobutyric Acid - 110 nanograms per milliliter of plasma or serum;

(h)

Hydrocortisone - 1 microgram per milliliter of urine;

(i)

Methoxytyramine - 4 micrograms per milliliter, free + conjugated in urine;

(j)

Morphine/morphine glucuronides - 100 nanograms per milliliter in urine;

(k)

Salicylate/Salicylic Acid - 750

micrograms per milliliter of urine or 6.5 micrograms per milliliter of serum or plasma;

(l)

Scopolamine - 75 nanograms per milliliter of urine;

(m)

Strychnine - 100 nanograms per milliliter of urine;

(n)

Theobromine - 2 micrograms per milliliter of urine or 0.3 micrograms per milliliter of serum or plasma; and

(o)

Theophylline - 400 nanograms per milliliter of urine.

O. Multiple

Medication Violations (MMV):

(1) A

trainer who receives a penalty for a medication violation based upon a horse testing positive for a class 1-5 medication with penalty class A-C, as provided in the version of the ARCI “uniform classification guidelines for foreign substances” listed in 15.2.6.9 NMAC, or similar state regulatory guidelines, shall be assigned points as follows;

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<u>Penalty Class</u>	<u>Points If Controlled Therapeutic Substance</u>	<u>Points if Non-Controlled Substance</u>
<u>Class A</u>	<u>N/A</u>	<u>6</u>
<u>Class B</u>	<u>2</u>	<u>4</u>
<u>Class C</u>	<u>1/2 point for first violation with an additional 1/2 for each additional violation within 365 days</u>	<u>1 for first violation with an additional 1/2 point for each additional violation with 365 days</u>
<u>Class D</u>	<u>0</u>	<u>0</u>

Points for NSAID violations only apply when the primary threshold of the NSAID is exceeded. Points are not to be separately assigned for a stacking violation. If the stewards or the commission determine that the violation is due to environmental contamination, they may assign lesser or no points against the trainer based upon the specific facts of the case.

(2) The points assigned to a medication violation by the stewards or commission shall be included in the ARCI official database. The ARCI shall record points consistent with Paragraph (1) of this Subsection including when appropriate, a designation that points have been suspended for the medication violation. Points assigned by such commission ruling shall reflect, in the case of multiple positive tests as described in Paragraph (4), whether they constitute a single violation. The stewards or commission ruling shall be posted on the official website of the commission and within the official database of the ARCI. If an appeal is pending, that fact shall be noted in such ruling. No points shall be applied until a final adjudication of the enforcement of any such violation.

(3) A trainer’s cumulative points for violations in all racing jurisdictions shall be maintained by the ARCI. Once all appeals are waived or exhausted, the points shall immediately become part of the trainer’s official ARCI record and shall be considered by the commission in its determination to subject the trainer to the mandatory enhanced penalties by the stewards or commission as provided in this rule.

(4) Multiple positive tests for the same medication incurred by a trainer prior to delivery of official notice by the commission may be treated as a single violation. In the case of a positive test indicating multiple

substances found in a single post-race sample, the stewards may treat each substance found as an individual violation for which points will be assigned, depending upon the facts and circumstances of the case.

(5) The official ARCI record shall be used to advise the stewards or commission of a trainer’s past record of violations and cumulative points. Nothing in this administrative regulation shall be construed to confer upon a licensed trainer the right to appeal a violation for which all remedies have been exhausted or for which the appeal time has expired as provided by applicable law.

(6) The stewards or commission shall consider all points for violations in all racing jurisdictions as contained in the trainer’s official ARCI record when determining whether the mandatory enhancements provided in this regulation shall be imposed.

(7) In addition to the penalty for the underlying offense, the following enhancements shall be imposed upon a licensed trainer based upon the cumulative points contained in their official ARCI record:

<u>POINTS</u>	<u>SUSPENSION IN DAYS</u>
<u>5 - 5.5</u>	<u>15 to 30</u>
<u>6 - 8.5</u>	<u>30 to 60</u>
<u>9 - 10.5</u>	<u>90 to 180</u>
<u>11 or more</u>	<u>180 to 360</u>

MMV penalties are not a substitute for the current penalty system and are intended to be an additional uniform penalty when the licensee:

(a) Has more than one medication violation for the relevant time period, and

(b) exceeds the permissible number of points. The stewards and commission shall consider aggravating and mitigating circumstances, including the trainer’s prior record for medication violations, when determining the appropriate penalty for the underlying offense. The multiple medication penalty is intended to be a separate and additional penalty for a pattern of violations.

(8) The suspension periods as provided in this subsection shall run consecutive to any suspension imposed for the underlying offense.

(9) The stewards or commission ruling shall distinguish between the penalty for the underlying offense and any enhancement based upon a stewards or commission review of the trainer’s cumulative points and regulatory record, which may be considered an aggravating factor in a case.

(10) Points shall expire as follows:

<u>Penalty Classification</u>	<u>Time to Expire</u>
<u>A</u>	<u>3 years</u>
<u>B</u>	<u>2 years</u>
<u>C</u>	<u>1 year</u>

In the case of a medication violation that results in a suspension, any points assessed expire on the anniversary date of the date the suspension is completed.

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 4/13/2001; A, 8/30/2001; A, 7/15/2002; A, 8/15/2002; A, 9/29/2006; A, 10/31/2006; A, 8/30/2007; A, 1/31/2008; A, 3/01/2009; A, 6/15/2009; A, 6/30/2009; A, 9/15/2009; A, 12/15/2009; A, 3/16/2010; A, 7/05/2010; A, 9/1/2010; A, 12/1/2010; A, 11/1/2011; A, 2/15/2012; A, 4/30/2012; A, 7/31/2012; A, 12/14/2012; A, 5/1/2013; A/E, 5/2/2013; A, 9/30/2013; A, 4/01/2014; A, 5/16/2014; A, 8/15/2014; A, 9/15/2014; A, 3/16/2015; A, 9/16/15; A, 3/15/2016; A,

6/15/2016; A/E, 6/28/2016; A, 9/15/2016; A, 12/16/2016; A, 7/1/2017; A, 10/31/17; A, 03/14/2018; A; 9/26/2018; A, 5/1/2019; A, 12/19/2019]

15.2.6.12 PHYSICAL INSPECTION OF HORSES:

B. Veterinarian’s list:

(1) The official veterinarian or racing veterinarian shall maintain [a] the veterinarian list of all horses which are determined to be unfit to compete in a race due to [~~physical distress, unsoundness, infirmity or medical condition.~~] illness, unsoundness, injury, infirmity, voluntary administration of a medication invoking a mandatory stand down time, administration of shock-wave therapy or any other assessment or determination by the official veterinarian or racing veterinarian that the horse is unfit to race.

(2) Horses so listed are ineligible to enter to race in any jurisdiction until released by the official veterinarian or racing veterinarian except when there is an administrative issue in releasing the horse from a veterinarian’s list of another racing jurisdiction. [~~A horse may be removed from the veterinarian’s list when, in the opinion of the racing veterinarian, the horse has satisfactorily recovered the capability of competing in a race.~~]

(3) A horse placed on the veterinarian’s list due to illness, injury or infirmity unrelated to the racing soundness of the horse maybe released from the list when a minimum of seven calendar days has passed from the time the horse was placed on the list.

(4) A horse placed on the veterinarian’s list for unsoundness or lameness shall be released from the list only after the following has been met:

(a) A minimum of seven calendar days has elapsed;

(b) the horse demonstrates to the satisfaction of the official veterinarian

or racing veterinarian that the horse is serviceably sound and in fit physical condition to exert its best effort in a race:

(c) the horse completes a published work after the seven calendar days has elapsed of four furlongs at 0:52 seconds or better for thoroughbreds; or 220 yards at 13.3 seconds or better for quarter horses while being observed the official veterinarian or racing veterinarian, and;

(d) the horse submits to a post work official sample collection for laboratory confirmation for compliance with 15.2.6.9 NMAC at the expense of the current owner. Samples shall be subjected to the same testing as conducted for post race official samples. The presence of a prohibited substance in the post work sample shall result in the horse remaining on the veterinarian's list.

(5) A horse placed on the veterinarian's list for voluntary administration of a medication invoking a mandatory stand down time shall be released from the list subject to the provisions and restrictions set forth in Paragraph (1) of C of 15.2.6.9 NMAC.

(6) A horse placed on the veterinarian's list for administration of shock-wave therapy shall be released from the list subject to the provisions and restrictions set forth in Subsection C. of 15.2.6.8.

[15.2.6.12 NMAC - Rp, 15 NMAC 2.6.12, 4/13/2001; A, 9/1/2010; A, 12/1/2010; A, 11/1/2011; A, 2/15/2012; A, 7/31/2012; A, 12/19/2019]

RACING COMMISSION

This is an amendment to 15.2.7 NMAC Sections 6 and 12, effective December 19, 2019.

Explanatory Paragraph: In 15.2.7.12 NMAC Subsections A through O, Paragraphs (1) through (7) of Subsection P, and Subsections Q through X were not published as there were no changes. Throughout 15.2.7 NMAC, number and rule citations have been changed to conform to correct legislative style.

15.2.7.6 OBJECTIVE:
[The objective of Part 7 of Chapter 2 is] To achieve the objectives that all pari mutuel wagering is lawful and licensed; establish procedures for interstate/intrastate simulcasting and interstate common-pool wagering. [15.2.7.6 NMAC - Rp, 15 NMAC 2.7.6, 3/15/2001; A, 12/19/2019]

15.2.7.12 CALCULATION OF PAYOUTS AND DISTRIBUTION OF POOLS:

P. Pentafecta (Super Hi-5):

(8) Unique winning wager option:

(a)
Unique winning wager, as used in this subsection shall be defined as having occurred when there is one and only one winning wager whose combination finished in correct sequence as the first five betting interests based upon the official order of finish and is equal to the minimum allowable wager. In the event that there is more than one winning wager whose combination finished in correct sequence as the first five betting interests, a unique winning wager shall be deemed to not have occurred.

(b)
If an association elects to offer the unique winning wager option, the net pentafecta (super hi-5) pool shall be distributed to winning wagers in the following order of precedence, based on the official order of finish:

(1) as a single

price pool, including any applicable carryover, to the holder of a unique winning wager whose combination finished in correct sequences as the first five betting interests, but if there is no such unique winning wager, then,

(2) the net pool shall be divided into two separate pools. The major pool of the net pool shall be paid as a carryover into the next regularly scheduled pentafecta (super hi-5). The remaining minor pool shall be paid as a pentafecta (super hi-5) consolation pool, which shall be equally divided among those wager holders who correctly select the first five interests in order, but if there are no such wagers, then

(3) the entire net pool shall be carried over into the next regularly scheduled pentafecta (super hi-5) pool.

(c)
The association shall specify the minimum monetary amount of a unique winning wager with prior approval of the Commission.

(d)
Prior to the start of the race meet, the association shall specify the percentages for a major and minor pool with prior approval of the commission.

(e)
A written request to distribute the pentafecta (super hi-5) pool plus any carryover on a specific date and performance may be submitted by the association to the executive director for approval. The request must be for a specified date no greater than one year from the date the request is submitted. Should the pentafecta (super hi-5) net pool and any applicable carryover be designated for distribution on a specified date and performance in where there is no unique winning wager, the entire pool shall be distributed using the method described in this subsection.

~~(8)~~ (9)
The minimum number of betting interests required to start in a contest in which pentafecta (super hi-5) wagering is offered shall be seven.

~~(9)~~ (10)
Associations electing to offer the

net carryover pentafecta or unique payout (super hi-5) pool may, prior to offering the wager designate the jackpot carryover amount at any given percentage of the net pool; the remaining percentages will be the minor pool portion, if any. This elected percentage may not be changed during the performance on which the pentafecta (super hi-5) is conducted in the carryover method.

~~(10)~~ **(11)**

At the association's discretion, the pentafecta (super hi-5) wager may be discontinued and there will be a final distribution of any jackpot carryover combined with the final net pool of the final pentafecta (super hi-5) race and priced as a single price pool as described in Paragraph (3) of this subsection.

~~(11)~~ **(12)**

Each association conducting the pentafecta (super hi-5) pool of any type, must notify the wagering public via a statement in the official program [~~or by prominently displaying on each level of the facility;~~] a declaration of whether the standard version or the carryover version of the pool is being conducted.

~~(12)~~ **(13)**

Different methods of conduct of this pool may not be combined for the pentafecta (super hi-5) between intertrack or simulcast wagering hosts and guests.

[15.2.7.12 NMAC - Rp, 15 NMAC 2.7.12, 3/15/2001; A, 3/31/2003; A, 9/15/2003; A, 4/14/2005; A, 7/15/2005; A, 11/30/2005; A, 3/30/2007; A, 6/15/2009; A, 12/1/2010; A, 11/1/2011; A, 1/1/2013; A, 9/15/2014; A, 12/16/2016; A, 5/1/2019; A. 12/19/2019]

REGULATION AND LICENSING DEPARTMENT ACUPUNCTURE, BOARD OF

This is an amendment to 16.2.3 NMAC, Sections 10, 11 and 14, effective 1/4/2020.

16.2.3.10 INITIAL LICENSURE APPLICATION:

Upon approval of an application for licensure that fulfills the requirements listed below, the board shall issue a license that will be valid until July 31 following the initial licensure, except that licenses initially issued after May 1 will not expire until July 31 of the next renewal period as defined in 16.2.8.9 NMAC; the application requirements for a license shall be receipt of the following by the board:

A. the fee for application for licensure specified in 16.2.10 NMAC;

B. an application for licensure that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number, if available;

C. two passport-type photographs of the applicant taken not more than six months prior to the submission of the application;

D. an affidavit as provided on the "initial licensure application" as to whether the applicant:

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings;

(2) has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other

profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice;

(3) has been convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred;

(4) is in arrears on a court-ordered child support payment; or

(5) has violated any provision of the act or the rules;

E. an official license history, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice any profession, including health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act;

F. an affidavit as provided on the "initial licensure application" stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.3.10 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq.; and

(2) an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions

of the act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.;

G. an affidavit as provided on the “initial licensure application” stating that the applicant understands that:

(1) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine;

(2) the license must be renewed annually by July 31; and

(3) the applicant must notify the board within ten days if the applicant’s address changes;

H. a copy of the applicant’s certificate or diploma from an educational program evidencing completion of the required program; this copy shall include on it an affidavit certifying that it is a true copy of the original;

I. an official copy of the applicant’s transcript that shall be sent directly to the board in a sealed envelope by the educational program from which the applicant received the certificate or diploma, and that shall verify the applicant’s satisfactory completion of the required academic and clinical education and that shall designate the completed subjects and the hours of study completed in each subject; or this copy of the transcript shall remain in the closed envelope secured with the official seal of the educational program and shall be sent by the applicant to the board along with the applicant’s application for licensure; and

J. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated

document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant.

K. proof of current basic life support, BLS, and CPR with proof of having completed an American heart association or American red cross approved course; hands-on supervised practice of clinical skills is required; the didactic portion may be completed on-line; a current copy of this card shall be submitted to the board at the time of application.

[11/3/1981...7/1/1996; 8/31/1998; 5/15/1999, 12/1/1999; 16.2.3.13 NMAC - Rn & A, 16 NMAC 2.3.13, 5/20/2000; 16.2.3.10 NMAC - Rn, 16.2.3.13 NMAC, 7/27/2001; A, 7/27/2001; A, 3/2/2003; A, 2/15/2005; A, 11/28/2009; A, 2/8/2013; A, 6/16/2015; A, 1/4/2020]

16.2.3.11 EXAMINATION REQUIREMENTS:

The examination requirements specified in 16.2.4 NMAC shall be received at the board office within [~~twelve-(12)~~] 24 months of the receipt of the initial application at the board office [~~with the exception of the national certification commission for acupuncture and oriental medicine (NCCAOM) score requirements which need to be submitted to the board office within twenty four (24) months of the initial application.~~]

[11/3/1981...7/1/1996; 8/31/1998; 5/15/1999, 12/1/1999; 16.2.3.13 NMAC - Rn & A, 16 NMAC 2.3.13, 5/20/2000; 16.2.3.11 NMAC - Rn, 16.2.3.13 NMAC, 7/27/2001; A, 7/27/2001; A, 2/15/2005; A, 11/28/2009; A, 2/8/2013; A, 1/4/2020]

16.2.3.14 DEADLINE FOR COMPLETING ALL REQUIREMENTS FOR LICENSURE:

Documentation required for licensure shall be received at the board office no later than [~~twelve-(12)~~] 24 months after the

initial application is received at the board office [~~with the exception of the national certification commission for acupuncture and oriental medicine (NCCAOM) score requirements which need to be submitted to the board office within twenty four (24) months of the initial application.~~]

[11/3/1981...7/1/1996; 4/1/1997, 5/15/1999; 16.2.3.16 NMAC - Rn & A, 16 NMAC 2.3.16, 5/20/2000; 16.2.3.14 NMAC - Rn, 16.2.3.16 NMAC, 7/27/2001; A, 7/27/2001; A, 11/28/2009; A, 2/8/2013; A, 1/4/2020]

REGULATION AND LICENSING DEPARTMENT ACUPUNCTURE, BOARD OF

This is an amendment to 16.2.4 NMAC, Sections 8, 10, 11, 12, 13, 17 and 19, effective 1/4/2020.

16.2.4.8 APPROVED EXAMINATIONS:

The board approved examinations shall consist of a written examination portion and a practical examination portion. All required NCCAOM examinations must be completed prior to taking the clinical skills examination.

A. The written examinations approved by the board shall be:

(1) the national certification commission for acupuncture and oriental medicine foundations of oriental medicine module;

(2) the national certification commission for acupuncture and oriental medicine acupuncture module;

(3) the national certification commission for acupuncture and oriental medicine Chinese herbology module;

(4) the national certification commission for acupuncture and oriental medicine biomedicine module;

(5) the national certification commission for acupuncture and oriental medicine approved clean needle technique course; and

(6) the board approved and board administered jurisprudence examination covering the act and the rules.

B. The practical examinations approved by the board shall be:

(1) the national certification commission for acupuncture and oriental medicine point location module; and

(2) the clinical skills examination; the clinical skills examination includes examination in acupuncture, herbal medicine and biomedicine competencies.

C. The board may adopt such other examinations as may be necessary for psychometric evaluation of its approved examinations.

[11/3/1981...7/1/1996; 4/1/1997, 8/31/1998, 5/15/1999, 7/3/1999; 16.2.4.8 NMAC - Rn & A, 16 NMAC 2.4.8, 5/20/2000; A, 7/26/2001; A, 2/15/2005; A, 11/28/2009; A, 1/4/2020]

16.2.4.10 EXAMINATION REQUIREMENTS FOR

LICENSURE: The following shall be the examination requirements for licensure. All fees for nationally recognized examinations shall be paid by the applicant and are not included in fees charged by the board.

A. Achievement of a passing score as determined by the national certification commission for acupuncture and oriental medicine (NCCAOM) on each of the following prior to taking the clinical skills exam:

(1) the NCCAOM foundations of oriental medicine module;

(2) the NCCAOM acupuncture module;

(3) the NCCAOM Chinese herbology module;

(4) the NCCAOM biomedicine module; and

(5) the NCCAOM point location module

B. Achievement of a passing score of at least seventy five percent on the clinical skills

examination. To determine a passing score when the applicant is examined by more than one examiner, if the applicant is examined by two examiners, the applicant must receive a score of at least 75 percent after both scores are averaged and if the applicant is examined by three examiners, the applicant must receive a score of at least 75 percent from a majority of the examiners.

C. Successful completion of the national certification commission for acupuncture and oriental medicine approved clean needle technique course.

D. Achievement of a passing score of not less than 90 percent on the board approved and board administered jurisprudence examination covering the act and the rules.

E. Applicants who completed the national certification commission for acupuncture and oriental medicine (NCCAOM) examinations in acupuncture and Chinese herbology prior to June 2004 are not required to pass the NCCAOM foundations of oriental medicine module.

[11/3/1981...7/1/1996; 4/1/1997, 8/31/1998, 5/15/1999; 16.2.4.10 NMAC - Rn, 16 NMAC 2.4.10, 5/20/2000; A, 7/26/2001; A, 2/15/2005; A, 11/28/2009; A, 1/4/2020]

16.2.4.11 CLINICAL SKILLS EXAMINATION FREQUENCY AND DEADLINES:

The board shall hold a clinical skills examination at least once each year provided that applications for licensure are pending. The initial application specified in Section 11 of 16.2.3 NMAC shall be received at the board office at least 60 calendar days before the next scheduled clinical skills examination date. The board shall send a written response to the applicant informing the applicant of the application's completeness or needed documentation postmarked at least 45 calendar days before the next scheduled clinical skills examination date. All documentation required

to complete the initial application for licensure shall be received at the board office at least 35 calendar days before the next scheduled clinical skills examination date. If the application requirements are received at the board office after a deadline, the application will be held and not processed until the deadline schedule for the next subsequent clinical skills examination. The applicant shall be notified of approval or denial of his or her completed initial application for licensure specified in Section 11 of 16.2.3 NMAC, by mail [postmarked] or electronic means at least 25 calendar days prior to the next scheduled clinical skills examination date.

[11/3/1981...7/1/1996; 16.2.4.11 NMAC - Rn, 16 NMAC 2.4.11, 5/20/2000; A, 7/26/2001; A, 03/02/2003; A, 11/28/2009; A, 1/4/2020]

16.2.4.12 CLINICAL SKILLS EXAMINATION CONFIRMATION:

The board approved confirmation card, provided to the applicant, shall be [mailed] sent to the applicant [upon] within fifteen days of receipt of the clinical skills examination fee specified in 16.2.10 NMAC. Confirmation of clinical exam passage will be valid for 24 months from the date of initial application. After 24 months [has] have passed, the applicant will have to retake the clinical exam and reapply as a new applicant and pay required fees specified in 16.2.10 NMAC.

[16.4.2.12 NMAC - N, 7/26/2001; A, 03/02/2003; A, 11/28/2009; A, 1/4/2020]

16.2.4.13 PAYMENT OF CLINICAL SKILLS EXAMINATION FEE:

The non-refundable clinical skills examination fee specified in 16.2.10 NMAC shall be paid by check or money order in U.S. funds and received in the board's office at least [~~forty five (45)~~] 31 calendar days prior to the next scheduled clinical skills examination. [11/3/1981...7/1/1996; 4/1/1997; N, 8/31/1998, 5/15/1999, 2/17/2000; 16.2.4.12 NMAC - Rn & A, 16

NMAC 2.4.12, 5/20/2000; 16.2.4.13 NMAC - Rn, 16.2.4.12 NMAC, 7/26/2001; A, 7/26/2001; A, 03/02/2003; A, 11/28/2009; A, 2/8/2013; A, 6/16/2015; A, 1/4/2020]

16.2.4.17 RE-EXAMINATION:

Applicants who have failed the clinical skills examination may apply to take the next subsequent clinical skills examination. The applicant shall notify the board of his commitment to take the next subsequent clinical skills examination with a written and signed letter received at the board office at least 60 days before the next clinical skills examination date. The applicant shall then be notified by the board of his acceptance to take the next clinical skills examination by mail [postmarked] or electronic means at least 45 days prior to the next scheduled clinical skills examination date. The applicant shall pay the clinical skills examination fee in accordance with the provisions of Section 13 of 16.2.4 NMAC. If the applicant does not pass the next scheduled clinical skills examination, the applicant shall file a new application on the current form provided by the board, pay all the required fees, and satisfy all current requirements in effect at the time the application is made. If the applicant passes the exam, but does not complete license application within 24 months, the applicant will have to reapply as an initial applicant. [7/1/1996; 4/1/1997; Rn, 16 NMAC 2.4.13, 8/31/1998, 5/15/1999, 2/17/2000; 16.2.4.16 NMAC - Rn, 16 NMAC 2.4.16, 5/20/2000; A, 10/22/2000; 16.2.4.17 NMAC - Rn, 16.2.4.16 NMAC, 7/26/2001; A, 7/26/2001; A, 11/28/2009; A, 1/4/2020]

16.2.4.19 REVIEW OF CLINICAL SKILLS EXAMINATION SCORE:

Applicants may request review of their clinical skills examination results by the board or its examination committee for significant procedural or computational error if such review request is received in writing at the

board office within [30] 25 calendar days of notification to the applicant of the clinical skills examination results. [Rn, 16 NMAC 2.4.17, 8/31/1998, 5/15/1999; 16.2.4.20 NMAC - Rn & A, 16 NMAC 2.4.20, 5/20/2000; 16.2.4.19 NMAC - Rn, 16.2.4.20 NMAC, 7/26/2001; A, 7/26/2001; A, 2/15/2005; A, 11/28/2009; A, 1/4/2020]

REGULATION AND LICENSING DEPARTMENT ACUPUNCTURE, BOARD OF

This is an amendment to 16.2.8 NMAC, Section 10, effective 1/4/2020.

16.2.8.10 ANNUAL LICENSE RENEWAL

APPLICATION The board will renew a doctor of oriental medicine’s license upon receipt of a renewal application with the following supporting documentation, at the board office:

- A.** the license renewal fee specified in 16.2.10 NMAC paid by check or money order in U.S. funds, or by credit card in U.S. funds if using the board’s online renewal process;
- B.** a license renewal application that is complete and in English on a form provided by the board that shall include the applicant’s name, address, date of birth and social security number;
- C.** an affidavit as provided on the “annual license renewal form” as to whether the applicant since receiving or last renewing (whichever is more recent) his license with the board:

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration

during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings;

(2) has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice;

(3) has been convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred; or as provided on the “annual license renewal form”;

(4) is in arrears on a court-ordered child support payment; or

(5) has violated any provision of the act or the rules; and

D. an affidavit as provided on the “annual license renewal form” regarding the applicant’s license history since last renewing his license with the board stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice acupuncture or oriental medicine or any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act;

E. an affidavit as provided on the “annual license renewal form” stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection C of 16.2.8.10 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17, NMSA 1978; and

subject to the Uniform Licensing Act, Section 61-1-1, et seq., NMSA 1978, and subject to the Criminal Offender Employment Act, Section 28-2-1, et seq., NMSA 1978; and

(2) an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17, NMSA 1978, and the Uniform Licensing Act, Section 61-1-1, et seq., NMSA 1978;

F. an affidavit as provided on the “annual license renewal form” stating that the applicant understands that:

(1) each licensed doctor of oriental medicine is responsible for the timely submission of the annual renewal application and fees;

(2) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine;

(3) the license must be renewed annually by July 31; and

(4) the applicant must notify the board within ten days if the applicant’s address changes;

G. if the applicant renews using the board’s online application process, the applicant shall check all appropriate affidavit check boxes in the online application and the applicant’s agreement to pay by credit card shall be equivalent to the applicant’s witnessed signature and notary’s stamp and signature normally required by the above affidavits;

H. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he is competent in both the language of the document and the English language and that the translation is a true and

faithful translation of the foreign language original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant; and

I. satisfactory proof as determined by the board of completion of any continuing education requirements established by the board in 16.2.9.8 NMAC; doctors of oriental medicine certified for the expanded practice shall submit satisfactory proof, as determined by the board, of completion of any expanded practice continuing education requirements established by the board in 16.2.9.9 NMAC

J. proof of current basic life support, BLS, and CPR with proof of having completed an American heart association or American red cross approved course; hands-on supervised practice of clinical skills is required; the didactic portion may be completed on-line; a current copy of this card shall be submitted to the board at the time of each annual license renewal.

[16.2.8.10 NMAC - Rp, 16.2.8.10 NMAC, 2/15/2005; A, 11/28/2009; A, 6/16/2005; A, 1/4/2020]

REGULATION AND LICENSING DEPARTMENT ACUPUNCTURE, BOARD OF

**This is an amendment to 16.2.9
NMAC, Sections 8 and 9, effective
1/4/2020.**

16.2.9.8 CONTINUING EDUCATION:

A. A doctor of oriental medicine shall complete continuing education in oriental medicine equivalent to that required by the national certification commission for acupuncture and oriental medicine (NCCAOM). A doctor of oriental medicine shall submit to the board at

the time of license renewal either of the following:

(1) ~~[proof of]~~ continuing NCCAOM recertification in oriental medicine, ~~or in both acupuncture~~of~~ and Chinese herbology, or in acupuncture only if licensed prior to 1997, or;~~

(2) ~~[proof of]~~ completion of 15 hours annually, ~~[or sixty (60) hours every four (4) years;]~~ of NCCAOM approved continuing education courses or of courses approved by other acupuncture or oriental medicine licensing authorities.

(3) a course taken for initial certification in expanded practice may not also be used for continuing education required for annual license renewal.

B. proof of current basic life support, BLS, and CPR with proof of having completed an American heart association or American red cross approved course; hands-on supervised practice of clinical skills is required; the didactic portion may be completed on-line; a current copy of this card shall be submitted to the board at the time of each annual license renewal.

~~[B:]~~ C. A doctor of oriental medicine who is a board approved examiner, examiner supervisor, or examiner trainer, for the clinical skills examination, shall be granted continuing education credit for time spent functioning as an examiner or training to be an examiner. This also applies to an observing board member who has completed the training. The continuing education credit is limited to six hours per year.

~~[C:]~~ D. The board shall annually audit a random ten percent of continuing education documentation to determine the validity of the documentation.

~~[D:]~~ E. A doctor of oriental medicine who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1, et seq., NMSA 1978.

~~E.~~ **E.** A doctor of oriental medicine shall maintain an understanding of the current act and rules.

[16.2.9.8 NMAC - Rp 16 NMAC 2.9.8, 12/1/2001; A, 10/1/2003; A, 2/15/2005; A, 9/25/2006; A, 11/28/2009; A/E, 6/15/2010; A/E, 6/15/2010; Re-pr, 11/28/2010; A, 2/8/2013; A, 3/2/2014; A, 6/16/2015; A, 1/4/2020]

16.2.9.9 CONTINUING EDUCATION FOR LICENSEES CERTIFIED FOR EXPANDED PRACTICE:

In addition to the continuing education requirements listed in 16.2.9.8 NMAC, doctors of oriental medicine previously certified in expanded practice are subject to the following requirements beginning August 1, 2013:

A. a doctor of oriental medicine certified for expanded practice in one or more areas as defined in 16.2.19 NMAC shall complete continuing education hours as follows:

(1) three hours every three years for recertification in basic injection therapy;

(2) seven hours every three years for recertification in injection therapy;

(3) seven hours every three years for recertification in intravenous therapies; and

(4) seven hours every three years for recertification in bioidentical hormone therapy;

(5) except that a doctor of oriental medicine recertifying in injection therapy or intravenous therapy need not complete an additional three hours in basic injection therapy;

~~(6) — a doctor of oriental medicine certified in basic injection therapy, injection therapy or intravenous therapy must complete an American society of health systems pharmacists (ASHP) accredited course relative to USP 797 prior to July 31, 2016; and every six (6) years thereafter; and]~~

~~(7)~~ **(6)** doctors of oriental medicine previously certified as Rx1 shall need seven hours, every three years, for recertification in prolotherapy as specified in Section 16 of 16.2.19 NMAC.

B. license holders who are newly certified for expanded practice shall complete continuing education hours on a prorated basis during the first year(s) of certification, and then shall comply with recertification requirements every three years thereafter;

C. courses approved for recertification taken within 120 days prior to a renewal cycle may be carried over and applied to the next renewal cycle, but may not be used for both renewal cycles.

D. the continuing education shall be about substances in the board approved appropriate expanded practice formulary or formularies defined in 16.2.20 NMAC or updated information in improving current techniques or ~~new and advanced~~ other techniques that are part of the expanded practice certification as defined in 16.2.19 NMAC;

E. continuing education courses, including teachers, shall be approved by the board:

(1) course providers requesting approval for Rx continuing education certification shall be required to submit the following materials to the board for approval no less than 45 days prior to the date of the course offering and the materials shall include:

(a) an application fee as defined in Subsection C of 16.2.10.9 NMAC;

(b) course description, including objectives, subject matter, number of hours, date time and location; and

(c) curriculum vitae of the instructor(s) including previous experience of at least five years in subjects they are engaged to teach;

(2) courses approved by national providers of continuing medical education(CME) are recognized by the board as

approved providers for expanded practice continuing education units (CEU) including but not limited to A4M, ACAM, AMA, IFM;

(3) individual practitioners requesting approval for a specific course that has not already been approved as defined in Paragraph (2) of Subsection D of 16.2.9.9 NMAC, for their own personal continuing education shall submit a copy of the course brochure including a course description, subject matter, contact hours, and curriculum vitae of the instructor 45 days prior to the course offering;

(4) the continuing education committee shall meet each month on or before the 15th to review course materials if applications have been submitted; electronic review is acceptable;

(5) a doctor of oriental medicine certified for expanded practice in basic injection, injection or intravenous therapies must remain current in basic life support, BLS, and CPR with proof of having completed an American heart association approved course; hands-on supervised practice of clinical skills is required; the didactic portion may be completed on-line; a current copy of this card shall be submitted to the board at the time of each triennial expanded practice certification renewal; and

F. teaching an approved continuing education course shall be equivalent to taking the approved course; the first time that the course is offered, continuing education that is appropriate for regularly licensed doctors of oriental medicine shall not be considered as fulfilling the above requirements for expanded practice continuing education, the board may determine specific mandatory courses that must be completed; specific mandatory courses shall be noticed at least six months prior to the date of the course; exceptions to being required to complete a specific mandatory course may be made for good cause.

[16.2.9.9 NMAC - N, 10/1/2003; A, 2/15/2005; A, 11/28/2009; A, 2/8/2013; A3/2/2014; A, 6/16/2015; A, 9/15/2015; A, 1/4/2020]

**REGULATION AND LICENSING DEPARTMENT
ACUPUNCTURE, BOARD OF**

This is an amendment to 16.2.17 NMAC, Section 10, effective 1/4/2020.

16.2.17.10 INITIAL LICENSURE BY ENDORSEMENT APPLICATION:

Upon approval of a licensure by endorsement application that fulfills the requirements listed below, the board shall issue a license that will be valid until July 31 following the initial licensure. The application requirements for licensure by endorsement shall be receipt of the following by the board:

- A.** the fee for application for licensure by endorsement specified in 16.2.10 NMAC;
- B.** a licensure by endorsement application that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number, if available;
- C.** two passport-type photographs of the applicant taken not more than six months prior to the submission of the application;
- D.** an affidavit as provided on the initial licensure by endorsement application form as to whether the applicant:
 - (1)** has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture or oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings;
 - (2)** has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental

medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice;

(3) has been convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred;

(4) is in arrears on a court-ordered child support payment; or

(5) has violated any provision of the act or the rules; and

E. an official license history, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act; and

F. an affidavit as provided on the initial licensure by endorsement application form stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.17.10 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17, NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1, et seq., NMSA 1978, and subject to the Criminal Offender Employment Act, Section 28-2-1, et seq., NMSA 1978; and

(2) an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of

licensure, pursuant to the provisions of the act, Section 61-14A-17, NMSA 1978, and the Uniform Licensing Act, Section 61-1-1, et seq., NMSA 1978; and

G. an affidavit as provided on the initial licensure by endorsement application form stating that the applicant understands that:

(1) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine;

(2) the license must be renewed annually by July 31; and

(3) the applicant must notify the board within 10 days if the applicant's address changes; and

H. a copy of the applicant's certificate or diploma from an educational program evidencing completion of the educational program in acupuncture as defined above in 16.2.17.9 NMAC; this copy shall include on it an affidavit certifying that it is a true copy of the original;

I. a copy of the applicant's transcript from the educational program in acupuncture or oriental medicine evidencing completion of the educational program in acupuncture as defined above in 16.2.17.9 NMAC; this copy shall include on it an affidavit certifying that it is a true copy of the original;

J. a copy of the applicant's license, certificate, registration or legal authority to practice acupuncture or oriental medicine in another state or jurisdiction of the United States;

K. proof of clinical experience as required in Subsection A of 16.2.17.8 NMAC;

L. proof of successful completion of the examinations required below in 16.2.17.11 NMAC; and

M. an accurate translation in English of all documents submitted in a foreign

language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant.

N. proof of current basic life support, BLS, and CPR with proof of having completed an American heart association or American red cross approved course; hands-on supervised practice of clinical skills is required; the didactic portion may be completed on-line; a current copy of this card shall be submitted to the board at the time of application.

[16.2.17.10 NMAC - N, 2/15/2005; A, 11/28/2009; A, 1/4/2020]

REGULATION AND LICENSING DEPARTMENT ACUPUNCTURE, BOARD OF

This is an amendment to 16.2.18 NMAC, Sections 13 and 25, effective 1/4/2020.

16.2.18.13 BASIC INJECTION THERAPY EDUCATIONAL COURSE

HOURS: The education offered shall consist of a minimum total of 58 contact hours with at least the minimum number of hours of education in the areas listed below:

A. eight hours in pharmacology and biomedical differential diagnosis relative to the prescription, administration, compounding and dispensing of the authorized substances in the basic injection therapy formulary including homeopathic medicines;

B. two hours in the drawing and compounding of the

authorized substances intended for injection in compliance with USP 797, utilizing approved aseptic technique and proper record keeping [and] for storage and dispensing of substances; at least half of the required hours shall be clinical practice;

C. 14 hours in orthopedic and neurological evaluation; at least half of these required hours shall be clinical practice;

D. two hours in the theory and practice of vapocoolant spray and stretch techniques using the authorized vapocoolants; at least half of these required hours shall be clinical practice;

E. 28 hours in the theory and practice of injection therapy including: 11 hours of trigger point therapy and injection of acupuncture points; 11 hours of basic mesotherapy; six hours of basic neural therapy, and therapeutic injections (vitamins), using the authorized substances in the basic injection therapy formulary; at least half of these required hours shall be clinical practice;

F. one hour in pharmaceutical law as provided by the New Mexico board of pharmacy;

G. one in oriental medicine scope of practice relative to the authorized substances and techniques; and

H. a minimum of two hours in the use of inhaled oxygen O₂ and IM epinephrine for emergency use.

[16.2.18.13 NMAC - Rp, 16.2.18.12 NMAC, 6/16/2015; A, 1/4/2020]

16.2.18.25 BIOIDENTICAL HORMONE THERAPY EDUCATIONAL COURSE

HOURS: The bioidentical hormone educational course shall consist of a minimum total of 80 hours of education, with at least [twenty four (24)] 27 hours of practical experience defined in [~~Subsections B, C, D, E, and F of 16.2.18.26 NMAC in the areas listed~~] Subsections B, C, D, E, and F below:

A. eight hours in the pharmacology of bioidentical hormones;

B. 18 hours in an overview of the endocrine system, including the anatomy and interactive physiology of the hypothalamic-pituitary-adrenal-thyroid (HPAT) and gonadal axis, the stress response and normal adrenal and thyroid function; also to include normal male and female sex hormone physiology; at least half of these hours shall be in practice or review of case studies;

C. 20 hours in theory and practice of endocrinology including evaluation and treatment of the patient with hormonal dysfunction and imbalances including but not limited to; adrenal fatigue, auto-immune endocrine disorders, hypothyroid, hyperthyroid, men's hormone imbalances and women's hormonal imbalances pre, peri and post menopause and consideration and assessment for treatment with bio-identical hormone replacement therapy, BHRT; at least half of these hours will be in practice or review of case studies;

D. 14 hours in blood chemistry analysis including but not limited to; CBC, CMP, LFT, lipids, ferritin, homocysteine, vitamin D, iodine, hs CRP, fibrinogen, ANA, ESR, HgBAIC, insulin antibodies;

E. two hours in urine analysis;

F. 16 hours in the assessment and treatment of hormone and neurotransmitter imbalances through blood, urine and saliva hormone testing and evaluation; appropriate treatment options for the biomedical differential diagnoses including, but not limited to; adrenal fatigue, thyroid imbalances, andropause, menopausal syndrome, and other male and female hormone imbalances; at least half of these hours shall be in practice or case study review;

G. one hour in pharmaceutical law as provided by the New Mexico board of pharmacy; and

H. one hour in oriental medicine scope of practice relative to the prescription or administration of

the authorized substances.
[16.2.18.25 NMAC - Rp, 16.2.18.20
NMAC, 6/16/2015; A, 1/4/2020]

**REGULATION AND
LICENSING DEPARTMENT
ACUPUNCTURE, BOARD OF**

**This is an amendment to 16.2.19
NMAC, Sections 17 and 19,
effective 1/4/2020.**

**16.2.19.17 TRANSITION
PROVISIONS:**

A. A doctor of oriental medicine, previously certified for extended prescriptive authority including prolotherapy, (Rx1) as of the effective date of this section, shall be automatically certified for basic injection therapy and prolotherapy using previously taught and appropriate injection routes and only substances listed in Paragraph (1) of Subsection F of 16.2.20.8 NMAC under the provisions of [~~16.2.19.10~~] 16.2.19.11 NMAC.

B. A doctor of oriental medicine, previously certified for the expanded prescriptive authority (Rx2) as of the effective date of this section, shall be automatically certified for:

(1) injection therapy under the provisions of [~~16.2.19.11~~] 16.2.19.12 NMAC basic injection therapy certification is automatically superseded by injection therapy certification;

(2) intravenous therapy under the provisions of [~~16.2.19.12~~] 16.2.19.13 NMAC; and

(3) bioidentical hormone therapy under the provisions of [~~16.2.19.13~~] 16.2.19.15 NMAC.

[16.2.19.17 NMAC - Rp, 16.2.19.16
NMAC, 6/16/2015; A, 1/4/2020]

**16.2.19.19 ULTRASOUND
CREDENTIALING:** A licensed doctor of oriental medicine may utilize musculoskeletal diagnostic ultrasound and ultrasound guidance of procedures with the RMSK credential from [~~ARDMS, the American registry of diagnostic medical~~

~~sonography] the alliance for physician certification & advancement or apca, or the registered musculoskeletal sonographer credential from ARDMS, the American registry of diagnostic sonography.~~ A licensed doctor of oriental medicine (DOM) who wishes to practice diagnostic musculoskeletal ultrasound and ultrasound guidance of procedures shall register with the board of acupuncture and oriental medicine (BAOM) to be provisionally credentialed to practice diagnostic musculoskeletal ultrasound and ultrasound guided procedures upon completion of a minimum of 30 hours in BAOM approved courses. Within 36 months of provisional credentialing, the doctor of oriental medicine shall submit to the BAOM proof of scheduling for RMSK testing with [~~ARDMS~~] APCA or registered musculoskeletal sonographer testing with ARDMS. If the provisional credentialing period is continued to 36 months without ARDMS RMSK or APCA RMSK credentialing, the provisionally credentialed DOM shall submit proof of 30 hours of continuing education in courses approved by the BAOM. Provisional credentialing shall lapse within 48 months of initial provisional credentialing. Ultrasound credentialing does not require certification in expanded practice.
[16.2.19.19 NMAC - Rp, 16.2.19.18
NMAC, 6/16/2015; A, 1/4/2020]

End of Adopted Rules

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Other Material Related to Administrative Law

**PUBLIC EDUCATION
DEPARTMENT****NOTICE OF RULE EXPIRATION**

The New Mexico Public Education Department (PED) gives notice that, pursuant to Paragraph E of Section 14-4-5.6 NMSA 1978 of the State Rules Act, the emergency rule **6.30.12 NMAC - K-5 Plus Program**, filed and effective as of June 14, 2019, shall expire by operation of law on December 11, 2019.

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

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

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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
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Issue 20	October 17	October 29
Issue 21	October 31	November 12
Issue 22	November 14	November 26
Issue 23	December 5	December 17
Issue 24	December 19	December 31

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

The New Mexico Register is available free online at: <http://www.nmcpr.state.nm.us>. For further information, call 505-476-7941.