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New Mexico Register

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

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The New Mexico Register

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Notices of Rulemaking and Proposed Rules

EDUCATIONAL RETIREMENT BOARD

NOTICE OF PUBLIC RULE HEARING

The New Mexico Educational Retirement Board (NMERB) will hold a public board meeting and rule hearing on June 19, 2020 at 9:00 a.m. The rule hearing will be conducted during NMERB's regular public board meeting and will be held at the NMERB office located at 8500 Menaul Blvd. NE, Suite A-319, Albuquerque, NM 87112. In the event that Governor Lujan Grisham's Public Health Emergency Order 04-06-2020 concerning the COVID-19 pandemic is still in effect on June 19, 2020, the public board meeting and rule hearing will be held via a virtual meeting. Instructions regarding how to join the virtual meeting will be posted on NMERB's website www.nmerb.org.

The purpose of the rule hearing is to consider proposed amendments as indicated below:

- 2.82.2.9 NMAC - Regular Members
- 2.82.2.11 NMAC - Employees Excluded from Coverage
- 2.82.2.12 NMAC - Retired Members
- 2.82.4.11 NMAC - Sick Leave Service Credit
- 2.82.5.8 NMAC - Eligibility
- 2.82.5.10 NMAC - Computation and Commencement of Retirement Benefits
- 2.82.5.12 NMAC - Approval of Retirement Application
- 2.82.5.15 NMAC - Return to Work Program
- 2.82.5.16 NMAC - Return to Work .25 FTE or Less
- 2.82.5.17 NMAC - Return to Work Less Than \$15,000 Per Year
- 2.82.5.17 [18] NMAC - Termination of Plan; Accrued Rights of Members
- 2.82.5.18 [19] NMAC - Internal Revenue Code Selection
- 2.82.5.19 [20] NMAC - Rollover Distributions for Non-Spouse Beneficiaries
- 2.82.5.20 [21] NMAC - Death

Benefits While Performing Military Service
2.82.7.9 NMAC - Employment

Details for Obtaining a Copy of Proposed Rule Changes and Submitting Oral or Written Comments

To obtain a copy of the proposed rule changes, please go to the NMERB website at www.nmerb.org or call Amanda Olsen, Paralegal, at (505) 476-6133. If the Governor has lifted COVID-19 restrictions and state agencies are open to the public, copies of the proposed rule changes will also be available at the NMERB office located at 701 Camino de los Marquez, Santa Fe, NM, during regular business hours.

Interested individuals may provide comments during the public hearing and/or submit written comments to Amanda Olsen, Paralegal, via email at rule.change@state.nm.us or by fax, attention Amanda Olsen, at (505) 827-1855, or by regular mail to Amanda Olsen – rule change, NMERB, P.O. Box 26129, Santa Fe, NM 87502. Written comments must be received no later than 3:00 pm June 18, 2020. All written public comments will be posted on the NMERB website at www.nmerb.org.

Statutory Authority: Legal authority for this rulemaking can be found in the Educational Retirement Act, NMSA 1978 Sections 22-11-1 through 22-11-55 (Act) which, among other provisions, specifically authorizes the Board of Trustees of the Educational Retirement Board to adopt regulations pursuant to the Act. Section 22-11-6(A)(5) NMSA 1978.

Purpose:

The purpose of the proposed rule amendments is to bring the rules into conformity with amendments to the Educational Retirement Act (Act) resulting from the passage of Senate Bill 111, as amended (SB 111) (54th Leg., 2nd Session (N.M. 2019)) and Senate Bill 157 (SB 157) (Laws 2019, ch. 31 § 1). Senate Bill

111 is effective on May 20, 2020. Senate Bill 157 is effective on July 1, 2020. Other proposed amendments are intended to correct typographical or grammar errors, to renumber or reletter, to make language gender neutral or as described under each rule section below.

Summary of Proposed Changes:

2.82.2.9 NMAC - Regular Members
Subsections A, B, C and D are amended to also list the new program for working after retirement known as Return to Work Less than \$15,000 Per Year, 2.82.5.17 NMAC.

2.82.2.11 NMAC - Employees Excluded from Coverage

Subsection B is amended to delete a provision which required that ERB members who returned to work at a level of .25 FTE or less, and their employers, pay contributions beginning July 1, 2020. This is because SB 111 repealed the provision in Subsection E of Section 22-11-25.1 of the Act which required retired ERB members who return to work at a level of .25 FTE or less, and their employers, to pay contributions to the fund beginning July 1, 2020.

Subsection C is deleted in its entirety and the subsequent subsections are re-lettered. This is because SB 111 took the current provisions of Subsection C almost verbatim and codified that language into Section 22-11-16.2 of the Act. SB 111 also repealed the current language of Section 22-11-16.2 of the Act, which would have required contributions from substitute teachers who work greater than .25 FTE beginning July 1, 2020.

Subsection F regarding certain PERA retired police officers is deleted in its entirety. This is because SB 111 repealed provisions of the Act which require that PERA retirees, except for certain retired police officers, who have not suspended their benefit and who work for ERB employers pay contributions to the fund, beginning July 1, 2019. See, Subsection A of

Section 22-11-25.2 NMSA 1978. SB 111 also repealed Subsection B of Section 22-11-25.2 of the Act which exempted certain retired PERA police officers from paying contributions to the ERB fund.

2.82.2.12 - Retired Members

Amended to list the new rule of 2.82.5.17, Return to Work Less than \$15,000 Per Year.

2.82.4.11 - Sick Leave Service Credit

Senate Bill 157 created a new section of the Act, codified as Section 22-11-34.1 NMSA 1978, which allows a member to convert unused sick leave into earned service credit. The member must pay the actuarial present value, as determined by the board, for the benefit attributable to the conversion. New rule 2.82.4.11 NMAC describes the procedure for purchasing sick leave service credit and acceptable methods of payment.

2.82.5.8 - Eligibility

Subsection B is amended to gender neutral language.

2.82.5.10 NMAC - Computation and Commencement of Retirement Benefits

Subsections B, C, D and F are amended to gender neutral language. Subsection D is also amended to add new rule 2.82.5.17 NMAC, known as Return to Work Less than \$15,000 Per Year, to the list of working after retirement programs.

2.82.5.12 NMAC – Approval of Retirement Applications

Amended to delete “of educational retirement” as this is redundant language. The word “director” is already defined in Subsection Q of Section 22-11-2 of the Act to mean the educational retirement director.

2.82.5.15 NMAC – Return to Work Program

Subsection D is amended to delete “and notarized” because the return to work application does not have to be notarized.

2.82.5.16 NMAC - Return to Work .25 FTE or Less

Subsection B is amended to correct a typographical error in the third line, because the “and” should be “or”.

2.82.5.17 Return to Work Less than \$15,000

This new rule implements Subsection H of Section 22-11-25.1 of the Act which was enacted pursuant to SB 111. Under SB 111, a retired member may to return to work and earn up to \$15,000 per year provided the retired member has completed a 90 day layout period after retirement. Also, prior to retiring, or within 90 days after retiring, the retired member cannot have entered into a formal or informal agreement with an ERB employer or any contractor providing services to an ERB employer to return to employment. A retired member who returns to work under this new pathway must limit their earnings to less than \$15,000 per year. Subsection A lists the requirements of the new program. Subsection B describes the sanctions that may be imposed if a member does not comply with the program requirements, which are that benefits will be suspended and the retiree must repay benefits received while ineligible.

2.82.5.17 [18] NMAC – Termination of Plan; Accrued Rights of Members

Renumbered as “2.82.5.18 NMAC”.

2.82.5.18 [19] NMAC – Internal Revenue Code Selection

Renumbered as “2.82.5.19 NMAC”.

2.82.5.19 [20] NMAC – Rollover Distributions for Non-Spouse Beneficiaries

Renumbered as “2.82.5.20 NMAC”.

2.82.5.20 [21] NMAC – Death Benefits While Performing Military Service

Renumbered as “2.82.5.21 NMAC” and amended to delete “participant” and insert “member”. This is because the rule pertains to the ERB defined benefit plan, which has “members”, not participants. § 22-11-2(A).

A “participant” is someone who participates in the alternative retirement plan. See, Subsection W of Section 22-11-2 NMSA 1978.

2.82.7.9 NMAC – Employment

Subsection D is amended for gender neutral language. A technical correction is made in Subsection E to re-letter the cross reference.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Amanda Olsen at (505) 476-6133 as soon as possible before the date set for the public hearing. ERB requires at least 10 calendar days advance notice to provide any special accommodations requested.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT ENERGY CONSERVATION AND MANAGEMENT DIVISION

NOTICE OF PROPOSED RULEMAKING

The New Mexico Energy, Minerals and Natural Resources Department (EMNRD) hereby gives notice of a proposed rulemaking and a public hearing on the proposed New Solar Market Development Income Tax Credit rules. The public hearing will be held on June 24, 2020, at 1:00 p.m. via online and telephone as described below. Written comments will be accepted until 5:00 p.m. June 30, 2020.

Summary of proposed rule. In 2020, the Legislature passed a New Solar Market Development Income Tax Credit. Laws 2020, Chapter 13. EMNRD is proposing a new rule, 3.3.14 NMAC, to implement the new tax credit, including the application contents, application review process, safety codes and standards, minimum system sizes, system applications and eligible components, certification of the system, calculating the solar

energy system cost, calculating the tax credit, and claiming the tax credit.

Purpose of proposed rule. The proposed rule implements the New Solar Market Development Income Tax Credit. Laws 2020, Chapter 13.

Legal Authority. The proposed rule is authorized by Laws 2020, Chapter 13, and Section 9-1-5(E) NMSA 1978.

Availability of proposed rule. The full text of the proposed rule is available at <http://www.cleanenergynm.org>; or by contacting Cherise Martinez at cherise.urioste@state.nm.us; telephone (505) 476-3251.

Written comments. Those wishing to comment on the proposed rule may submit written comments by June 30, 2020 at 5:00 p.m. by mail or e-mail to:

Cherise Martinez, EMNRD
Energy Conservation and
Management Division
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505
Cherise.urioste@state.nm.us

Public Hearing. A public hearing will be held on June 24, 2020, at 10:00 a.m. via online and telephone.

The hearing is being held via internet, email, and telephonic means due to the concerns surrounding COVID-19 and in accord with Executive Order 2020-004, Declaration of a Public Health Emergency, and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19.

Any interested member of the public may attend the Public Hearing online or by telephone and offer public comments on the proposed rule during the hearing.

A Public Hearing Agenda and Participant Information Guide will be posted to the EMNRD website <http://www.cleanenergynm.org> contemporaneously with this Notice.

If you wish to provide oral comments at the Public Hearing you will be required to provide your name and the name of any organization you represent during the comment portion of the Public Hearing.

Your oral comments will be recorded.

To access the Public Hearing via internet and for any updates on the Public Hearing please visit our website <http://www.cleanenergynm.org>. The information for accessing WebEx:

Meeting number (access code): 966 842 553

Meeting password: mH2AusDEM68

To join by phone dial 1-408-418-9388
You may request to speak via Chat during the Public Hearing.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Cherise Martinez at (505) 476-3251 or the New Mexico Relay Network at 1-800-659-1779 one week prior to the hearing. Public documents can be provided in various accessible formats. Please contact Cherise Martinez at (505) 476-3251, if a summary or other type of accessible format is needed.

Technical Information. There is no technical information that served as the basis of the proposed rule.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT FORESTRY DIVISION

NOTICE OF CHANGE OF PROPOSED RULEMAKING HEARING TO VIRTUAL FORMAT

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), Forestry

Division hereby gives notice of a change in the format of the public hearing scheduled for June 24, 2020, for the following proposed rulemaking from in person to virtual. EMNRD proposes to amend its rule, 19.21.2 NMAC, Endangered Plant Species List and Collection Permits, by removing *Mammillaria wrightii* var. *wilcoxii* (*Wilcox nipple cactus*) from the list of state endangered plants in 19.21.2.9 NMAC and adding *Townsendia gypsophila* (Gypsum Townsend's aster), *Sclerocactus cloverae* (Clover's cactus), *Agalinis calycina* (Leoncita false-foxglove), *Hexalectris colemanii* (Coleman's coral-root), *Scrophularia macrantha* (Mimbres figwort), *Castilleja ornata* (Swale paintbrush), *Castilleja tomentosa* (Tomentose paintbrush), *Penstemon metcalfei* (Metcalf's beardtongue), *Linum allredii* (Allred's flax), and *Cymopterus spellenbergii* (Spellenberg's springparsley).

In addition, EMNRD proposes the following name changes: *Coryphantha robustispina* ssp. *scheeri* replaces *Coryphantha scheeri* var. *scheerii*; *Argemone pinnatisecta* replaces *Argemone pleiacantha* ssp. *pinnatisecta*; and *Hexalectris arizonica* replaces *Hexalectris spicata*. EMNRD also proposes to add definitions of "department" and "state forester" in 19.21.2.7 NMAC; revise 19.21.2.2 NMAC, Scope, 19.21.2.3 NMAC, Statutory Authority, 19.21.2.6 NMAC, Objective, and 19.21.2.15, Protection and Penalties, to reflect NMSA 1978, Section 75-6-1; and make style changes in 19.21.2.8 NMAC and 19.21.2.10 through 19.21.2.14 NMAC.

Public Hearing and Comment.

Instead of being held at Porter Hall in the Wendell Chino Building at 1220 S. St. Francis Drive, Santa Fe, NM 87505, the public hearing scheduled for June 24, 2020 from 9:00 am to 11:00 am will be held via Webex online and via telephone. Written comments will be accepted via email or mail through until 5:00 pm, June 24, 2020.

The hearing is being held via internet, email, and telephonic means due to the concerns surrounding COVID-19 and in accord with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of a Public Health Emergency, and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. Any interested member of the public may attend the Public Hearing and offer public comments on the proposed rule amendments during the hearing.

A Public Hearing Agenda and Participant Information Guide will be posted to the Forestry Division website contemporaneously with this Notice. If you wish to provide oral comments at the Public Hearing you will be required to provide your name during the comment portion of the Public Hearing. Your oral comments will be recorded.

When it's time, join your Webex meeting here.

Meeting number (access code): 965 541 091
Meeting password: Qk7GYSTmM94

Join meeting

Join by phone
Tap to call in from a mobile device (attendees only)
+1-408-418-9388 United States Toll
Global call-in numbers

Join from a video system or application
Dial 965541091@nmemnrd.webex.com

You can also dial 173.243.2.68 and enter your meeting number.

Join using Microsoft Lync or Microsoft Skype for Business
Dial 965541091.nmemnrd@lync.webex.com

All interested persons may participate in the hearing and will be given an opportunity to submit relevant evidence, data, views, and arguments, orally or in writing as explained in the following paragraph.

Those wishing to comment on the proposed rule amendment may make oral or written comments or submit information at the hearing or may submit written comments by June 24, 2020 by 5 pm by mail or email. Please mail written comments to Daniela Roth, EMNRD, Forestry Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or submit comments by email to Daniela.Roth@state.nm.us.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public video/telephonic rulemaking hearing on June 23, 2020. The hearing will begin at 9:00 a.m. and will be held via GoToMeeting. The purpose of the rulemaking hearing is to take public comment regarding proposed amendments to **5.7.20 NMAC, LEGISLATIVE LOTTERY SCHOLARSHIP PROGRAM.**

Join via video:
<https://global.gotomeeting.com/join/420581005>

Join via telephone:
+1 (646) 749-3122

Meeting ID: 420-581-005

Amendments:

5.7.20.7 NMAC, DEFINITIONS

Purpose:

The purpose of the proposed rule change is to remove language which prohibits students who leave the state and enroll in a non-qualifying institution or who enroll at a non-qualifying New Mexico institution from qualifying for the Legislative Lottery Scholarship Program.

The amendment will provide

that if a student first enrolls at a non-qualifying institution and subsequently enrolls at a qualifying institution within 16 months of graduation or receipt of a high school equivalency credential recognized by the State of New Mexico the student may still establish eligibility for the program.

Summary of proposed changes:

The amendment to Section 5.7.20.7 NMAC modifies the definition of "Qualified student". Language prohibiting previous enrollment at a non-qualifying institution prior to enrollment at a qualifying institution for scholarship eligibility is removed from the definition.

Details for Obtaining a Copy, Public Hearing and Comments:

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

A public hearing will be held on June 23, 2020 from 9:00 a.m. until 9:30 a.m. via GoToMeeting. Any person who is or may be affected by this proposed rule may participate. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@state.nm.us. Written comments must be received no later than 4:00 p.m. on June 19, 2020.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Sections 6-24-1 et seq. NMSA 1978 and Sections 21-21N-1 et seq. NMSA 1978.

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

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

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Adopted Rules

Effective Date and Validity of Rule Filings

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

GAME AND FISH DEPARTMENT

This is an amendment to 19.31.10 NMAC, Section 12, effective May 19, 2020.

19.31.10.12 BIG GAME AND TURKEY:

A. Legal hunting

hours: A person may only take or attempt to take any big game species or turkey during the period from one-half hour before sunrise to one-half hour after sunset. It is unlawful to take or attempt to take big game or turkey outside of legal hunting hours.

B. Killing out of

season: It is unlawful to take or attempt to take any big game species or turkey outside of the established hunting season.

C. Bag limit: It is unlawful for any person to take any big game species or turkey other than the legal bag limit as specified on their big game or turkey license or as indicated by the hunt code, or for any bear hunter to take a sow with cub(s), or any cub less than one year old, or for any cougar hunter to take a spotted cougar kitten or any female accompanied by spotted kitten(s).

D. Exceeding the bag limit on big game:

(1) It is unlawful for any person to hunt for or take more than one animal of any big game species per year unless otherwise allowed by state game commission rule.

(2) It is unlawful for any person to hunt for or take more than two cougars per year unless otherwise allowed by state game commission rule.

E. Exceeding the bag limit on turkey: It is unlawful for any person to hunt for or take more than two bearded turkeys during the

spring turkey season or more than one turkey during the fall turkey season unless otherwise specifically allowed by 19.31.16 NMAC.

F. Proof of sex or bag limit: It is unlawful for anyone to transport or possess the carcass of any big game species or turkey without proof of sex or bag limit (except donated parts when accompanied by a proper possession certificate). Proof of sex or bag limit shall be:

(1) Bear and cougar – External genitalia of any bear or cougar killed shall remain naturally attached to the pelt and be readily visible until the pelt has been inspected and pelt-tagged by a department official.

(2) Barbary sheep and oryx – The horns of any Barbary sheep or oryx taken shall remain naturally attached to the skull or skull plate until arriving at a residence, taxidermist, meat processing facility or place of final storage.

(3) Deer – The antlers of any buck deer taken shall remain naturally attached to the skull or skull plate until arriving at a residence, taxidermist, meat processing facility or place of final storage. The scalp and both ears of any antlerless deer or the naturally attached female genitalia shall accompany the carcass in the same manner.

(4) Elk – The antlers of any bull elk taken shall remain naturally attached to the skull or skull plate until arriving at a residence, taxidermist, meat processing facility or place of final storage. The scalp and both ears of any antlerless elk or the naturally attached female genitalia shall accompany the carcass in the same manner.

(5) Pronghorn – The horns, scalp and both ears of any pronghorn taken shall remain naturally attached to the skull or skull plate and must accompany the carcass until arriving at a residence, taxidermist, meat processing facility or place of final storage. If the horns of a female pronghorn are longer than its ears, and the bag limit is F/IM, the external genitalia must remain naturally attached to the hide/carcass, as appropriate, and be visible to provide proof of legal bag limit until arriving at a residence, taxidermist, meat processing facility or place of final storage.

(6) Bighorn sheep – The horns of any ram shall remain naturally attached to the skull or skull plate and the external genitalia of any ewe taken shall remain naturally attached to the hide/carcass, and be visible until arriving at a residence, taxidermist, meat processing facility or place of final storage.

(7) Persian ibex – The horns of any ibex shall remain naturally attached to the skull or skull plate. If the horns of any female ibex are 15 inches or longer the external genitalia shall remain naturally attached to the hide/carcass, and be visible until arriving at a residence, taxidermist, meat processing facility or place of final storage.

(8) Turkey – When the bag limit is a bearded turkey, the beard and a small patch of feathers surrounding the beard shall remain with the carcass, and be visible until arriving at a residence, taxidermist, meat processing facility or place of final storage.

(9) Javelina – The skull of each javelina shall be proof of bag limit and must be retained until arriving at a residence,

taxidermist, meat processing facility or place of final storage.

G. Tagging of

harvested game:

(1) Physical

Tagging of harvested game:

Licensed hunters of any big game species or turkey, who have chosen to receive a department issued tag at application or purchase, upon harvesting an animal, shall immediately and completely notch out the appropriate month and day on the carcass tag. Prior to moving any part of the carcass from the kill site, the licensed hunter shall remove the entire backing material from the carcass tag and adhere it to the appropriate location on the carcass leaving the entire face of the tag visible. If the species or sex harvested requires the use of an antler or horn tag the licensed hunter shall, prior to moving any part of the carcass from the kill site, remove the entire backing material from the antler/horn tag and adhere it to the appropriate location on the antler or horn leaving the entire face of the tag visible. All tags shall remain attached to the carcass, antlers or horns until it is delivered to a meat processing facility, taxidermist, placed in final cold storage or if required, is inspected and documented or pelt tagged by a department official. The antler/horn tag is not required to be attached or used on antlerless/hornless animals.

(2)

Electronic Tagging of harvested

game: Licensed hunters of any big game species or turkey, who have chosen to electronically tag their game at application or purchase, upon harvesting an animal, shall immediately access the department's electronic tagging (e-tag) application to receive an e-tag number specific to the license. The licensed hunter will legibly write the e-tag number, customer identification number, and the date of harvest on any durable material using permanent ink and shall attach one piece to the big game species or turkey on the appropriate location on the carcass and another piece to the antler or horns as required prior to moving any part of the

carcass from the kill site. All e-tag pieces shall remain attached to the carcass, antlers or horns until it is delivered to a meat processing facility, taxidermist, placed in final cold storage or if required, is inspected and documented or pelt tagged by a department official. An antler/horn e-tag is not required to be attached or used on antlerless/hornless animals.

(3) The

proper location to attach all carcass tags and e-tags:

(a)

The proper location to attach the carcass tag or e-tag on any game species is to attach it conspicuously on the hock tendon on either hind leg.

(b)

The proper location to attach the carcass tag or e-tag on javelina is to adhere it to the head/skull around the nose.

(c)

The proper location to attach the carcass tag or e-tag on a turkey is to adhere it around the leg above the foot and below the feathers on the thigh.

(d)

The proper location to attach the carcass tag or e-tag on a bear or cougar is to adhere it around the ankle area of the hide above the foot. Bear and cougar carcass tags authorize possession of those animals until pelt tagged in accordance with state game commission rule or for five days from date of kill, whichever comes first.

(i)

Any bear or cougar killed shall be tagged with a pelt tag furnished free of charge by the department.

(ii)

The hunter who kills the bear or cougar or the hunter's designee must present the unfrozen skull and pelt to a department official for tooth removal and pelt tagging within five calendar days from the date of harvest, before the pelt can be frozen, processed, tanned or salted by a taxidermist, or before taking the pelt out of New Mexico, whichever comes first.

(iii)

Any hunter who appoints a designee to present the skull and pelt for pelt tagging is required to contact a

conservation officer prior to having the pelt inspected and tagged.

(iv)

The pelt tag shall remain attached until the pelt is tanned.

(v)

Skulls with mouths closed may not be accepted until the mouth is opened by the hunter or designee.

(vi)

Licensed bear or cougar hunters or their designees who provide false or fraudulent information regarding the required information including, but not limited to, sex, date or location of harvest shall be assessed 20 revocation points pursuant to 19.31.2 NMAC.

(e)

The proper location to attach an antler tag or e-tag is to adhere the tag around the main beam of the antler between any of the points or tines as close to the base as possible to prevent the tag from coming off.

(f)

The proper location to attach a horn tag or e-tag is to adhere the tag around the horn as close to the base as possible to prevent the tag from coming off.

H. It is unlawful:

(1) for any

licensed hunter to fail to properly tag their big game species or turkey with the carcass and antler tag or e-tag as prescribed;

(2) to possess

any portion of a big game or turkey carcass that does not have a properly notched carcass tag attached to it or a completed e-tag attached to it, except lawfully taken game that is accompanied by a proper possession certificate or department invoice;

(3) to possess

any bear or cougar or parts thereof which has not been pelt tagged within five days of kill, has been taken out of state prior to pelt tagging or has not otherwise been pelt tagged in accordance with state game commission rule;

(4) for any

person to transport or possess the carcass of any big game species or turkey without proof of sex naturally attached or proof of legal bag limit until the carcass arrives at a residence, taxidermist, meat processing facility,

place of final storage or if required, is inspected and documented or pelt tagged by a department official, except lawfully taken game that is accompanied by a proper possession certificate or department invoice;

(5) to use a carcass or antler tag that is cut, torn, notched or mutilated. Cut, torn, notched or mutilated tags are no longer valid for the take of a big game species or turkey; or

(6) to use a previously issued carcass or antler tag once a duplicate has been obtained or to use the carcass, antler tag or e-tag of any other person. Any previous carcass or antler tag assigned to a license which is replaced by a duplicate is void and no longer valid for the take of a big game species or turkey.

I. Once-in-a lifetime hunts: It is unlawful for any person to apply for, receive or use any once-in-a lifetime license if they have ever held a once-in-a lifetime license for that species which has the same bag limit or eligibility requirements.

J. Youth only (YO), mobility impaired (MI), Iraq/Afghanistan veterans (I/A) and military only (MO) hunts or military discounted licenses: It is unlawful for anyone to apply for or receive or use any YO, MI, I/A or MO license or any military discounted license except as allowed by state game commission rule.

K. License sale: It is unlawful for anyone to sell or offer for sale any hunting, fishing or trapping license, permit or tag which has been issued by the department, or to sell or offer for sale any commercial collection permit or scientific collection permit.

L. Use of dogs in hunting:

(1) It is unlawful to use dogs to hunt or pursue big game species or turkey, except for bear and cougar.

(2) Dogs may be used only to hunt bear and cougar during open seasons unless otherwise restricted. It is unlawful to:

(a) hunt for or pursue bear or cougar with dog(s) on the Valle Vidal except

holders of bear entry permits for the hunting of bear only;

(b) hunt for or pursue bear or cougar with dog(s) during any September big game bow season statewide except as otherwise allowed by state game commission rule;

(c) release dog(s) to pursue or hold bear or cougar outside of legal hunting hours or during closed season or in a closed area or zone;

(d) to pursue bear or cougar with dog(s) without the licensed hunter, who intends to kill or who kills the bear or cougar, present continuously from the initial release of any dog(s).

(3) It is unlawful to use dog(s) to assist in the recovery of wounded or dead big game or turkey except as follows:

(a) Dog(s) may be used to assist in the recovery of wounded game provided that no more than two dogs may be used at any one time to locate a wounded or dead deer, elk, pronghorn, bighorn sheep, Barbary sheep, oryx, Persian ibex, javelina or turkey.

(b) Dog(s) used to assist in the recovery of deer, elk, pronghorn, bighorn sheep, Barbary sheep, oryx, Persian ibex, javelina or turkey shall be leashed and under the control of the handler at all times and cannot be used to pursue or harass wildlife. No person assisting in the recovery of a wounded animal may shoot or kill the animal being tracked unless they are a licensed hunter for that species, season and area and they intend to tag the animal as their own.

M. Use of bait: It is unlawful for any person to take or attempt to take any big game species or turkey by use of baiting or for any person to take or attempt to take big game or turkey from an area which has not been completely free of bait (including in feeders) for at least 10 days. Preexisting legitimate livestock salt and mineral and natural attractants such as cultivated fields, water, orchards, natural kills, carrion

or offal are not considered bait unless they have been moved or placed there from another location. It is unlawful to create, maintain or use any bait station in hunting bear or cougar. It is unlawful to use any scent attractant in hunting bears.

N. Live animals: It is unlawful to use live protected species as a decoy in taking or attempting to take any big game species or turkey.

O. Hunting captive big game species: It is unlawful to take or attempt to take any big game species within any fence or enclosure, or by use of any fence or enclosure, which significantly restricts or limits the free ingress or egress of that big game species except as allowed by permit from the department. Any fence which is 7.5 feet tall or taller shall be considered game proof and hunting within any such enclosure, even if there are open gate(s), is unlawful. Exception: Net wire fencing commonly used as sheep or goat fencing which is not taller than four feet is not considered to significantly restrict or limit the free ingress or egress of any protected species.

P. Use of calling devices: It is unlawful to use any electronically or mechanically recorded calling device in taking or attempting to take any big game species or turkey, except javelina, bear and cougar.

Q. Automatic firearms: It is unlawful to take or attempt to take any big game species or turkey with a fully automatic firearm.

R. Bullets: It is unlawful to take or attempt to take any big game species or turkey by the use of a prohibited bullet.

S. Drugs and explosives: It is unlawful to use any form of drug to capture, take or attempt to take any big game species or turkey unless specifically authorized by the department, or to use arrows driven by explosives, gunpowder or compressed air.

T. Legal sporting arm types:

(1) It is unlawful to use any sporting arm type for big game species other than those defined under big game sporting arms except for cougar and javelina which may be taken with those defined under any sporting arm. For cougar and javelina, compressed air guns must be .22 caliber or larger and shotguns must fire a single slug or #4 buckshot or larger.

(2) It is unlawful to use any sporting arm type for a big game species which does not correspond with the hunt code authorized sporting arm type.

(3) It is unlawful to use sporting arms for turkey other than a shotgun firing shot, bow or crossbow.

U. Hunting on the wrong ranch, in the wrong area or in the wrong GMU: It is unlawful for any person to hunt in any location, GMU or ranch other than that area specified on their license or permit unless otherwise allowed by state game commission rule.

(1) A landowner whose contiguous deeded property extends into an adjacent GMU(s) may enter into a written agreement with the department to hunt big game on the contiguous deeded property of the ranch. This permission shall be requested annually, at the local department office, in person or in writing by the landowner at least one week prior to the desired hunt dates. The landowner must show proof of ownership and property location. The season dates, bag limit and sporting arm type will be determined by the GMU where the majority of the deeded property lies. Landowners who enter into this agreement may not hunt the GMU where the minority of the contiguous property lies during that minority GMU's season dates if different from the majority dates. Unit-wide and ranch-wide properties are not eligible for this agreement for those species for which the unit-wide or ranch-wide agreement applies.

(2) A licensed big game hunter may hunt a landowner's contiguous private

property which extends into an adjoining GMU(s) only when a department agreement exists and must adhere to the department issued agreement unless otherwise restricted by state game commission rule.

V. Restricted areas on White Sands missile range:

(1) It is unlawful to drive or ride in a motor vehicle into an area signed "no hunting" or otherwise restricting hunting or as documented on a map or as presented during the hunt's briefing, except if the hunter or driver is escorted by official personnel;

(2) It is unlawful for a licensed hunter to enter an area signed "no hunting" or otherwise restricting hunting except if the hunter is escorted by official personnel; and

(3) It is unlawful for a licensed security badged hunter to hunt or take any oryx in an area other than their "to be assigned" area.

W. Validity of licenses and unitizations: All big game and turkey licenses shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit, and area specified by the hunt code printed on the license including those areas designated as public or private land per a current unitization agreement between the department and U. S. bureau of land management, state land office or other public land holding entity.

X. Hunting on public land with a private land only license: It is unlawful to hunt big game on any public land with a private land only license. Public land as used in this section shall mean any federally owned or managed property, any state owned or managed property, or any private property which is part of a unitization hunting agreement, ranch wide agreement or unit wide agreement for the species being hunted, any private property which the department has paid for public access for the species being hunted or any New Mexico state game commission owned or managed property.

Y. Collars or tracking devices: It is unlawful to attach any collar or electronic tracking device to any big game species or turkey except as specifically authorized by the department.

Z. License purchase: Bear or cougar hunters must purchase their bear or cougar license at least two calendar days prior to taking or attempting to take any bear or cougar. It is unlawful for any bear or cougar hunter to take or attempt to take a bear or cougar within two calendar days of purchasing their license.

AA. Zones: It is unlawful to pursue, take or attempt to take a bear or cougar in a closed zone. Zones will close pursuant to 19.31.11 NMAC.

BB. Valle Vidal: It is unlawful to hunt bear or cougar on the Valle Vidal except for properly licensed bear or cougar hunters that also possess a Valle Vidal elk hunting license (only during the dates and with the sporting arm type specified on their elk license) and holders of a Valle Vidal bear entry permit (only during their entry permit hunt dates).

CC. Cougar ID: It is unlawful for any person to hunt for cougar without having completed the department's cougar ID course and having the verification code printed on their license.

~~**DD. — Cougar trapping season:** It is unlawful to trap or foot snare cougar outside of the season established for furbearer trapping or to kill any cougar which has been trapped or foot snared in a cougar zone which is closed.~~

~~**EE. — Use of traps and foot snares for cougar:** Licensed trappers who also hold a valid cougar license may use traps or foot snares to harvest cougars on state trust land, or private land with written permission from the landowner or person authorized to grant permission. Neck snares are not permitted. Restrictions for cougar take using traps or foot snares shall follow the regulations on methods, trap specification, trap inspection, wildlife removal as defined in 19.32.2 NMAC. No trap with a jaw spread of larger than 6.5~~

inches or 7 inches if outside laminated shall be allowed.

~~(1) It is unlawful to set a foot snare for cougar in GMU 27 and those portions of GMU 26 designated by the United States fish and wildlife service as critical habitat for jaguar.~~

~~(2) It is unlawful to kill any cougar captured on BLM or US Forest Service land by the use of traps or foot snares unless authorized by the director.~~

~~(3) It is unlawful to take any cougar with a neck snare or prohibited trap.]~~

~~FF:] DD. Use of cellular, Wi-Fi or satellite cameras: It is unlawful for any person to use any cellular, Wi-Fi or satellite camera for the purpose of hunting or scouting for any big game animal. Exception: This section does not apply to cellular or satellite phones which are kept on one's person and not used remotely or department employees and their designees while performing their official duties.~~

~~[19.31.10.12 NMAC - Rp, 19.31.10.12 NMAC, 4/1/2019; A, 5/19/2020]~~

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, 6/3/2020]

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 that are required to be licensed by the state licensing authority. This rule applies

to all boarding homes facilities which receive lodging for compensation and are operated to provide assistance with one or more instrumental activities of daily living or with the coordination of community services to residents 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. This rule does not apply to boarding homes under the control of an institution of higher learning, any facility which is otherwise licensed and regulated by the department, any hotel, other landlord-tenant relationship or homeless shelter.

[7.8.4.2 NMAC - N, 6/3/2020]

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, 6/3/2020]

7.8.4.4 DURATION:
Permanent.
[7.8.4.4 NMAC - N, 6/3/2020]

7.8.4.5 EFFECTIVE DATE: June 3, 2020, unless a later date is specified at the end of a section.
[7.8.4.5 NMAC - N, 6/3/2020]

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 using supportive services in the surrounding community to meet the needs of residents.

E. Provide for boarding home 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, 6/3/2020]

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 abuse, or neglect resulting in harm of an individual resident.

B. "Amended license" means an amended license issued due to a change of manager name, location, capacity, or classification of any units.

C. "Activities of daily living (ADLs)" as per 42 CFR Section 441.505 2016 "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.

F. “Assisted living facility” as per 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.

G. “Bed” means 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.

H. “Boarding home” means any facility that is required to be licensed by the department of health, that provides assistance with one or more 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.

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

(1) Limited assistance with self-administered medication.

(2) Central storing or distribution of medications, as specified in 16.19.11 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 obtaining medical and dental care.

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

(5) Supervision of resident schedules and activities.

(6) Maintenance 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.

J. “Department” means the department of health.

K. “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.

L. “Instrumental activities of daily living (IADLs)” as per 42 CFR Section 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”.

M. “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.

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

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

P. “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. 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 Section 16.12.5.10 NMAC.

Q. “Manufactured home” means any home factory-built pursuant to the 24 CFR part 3280 manufactured home construction and safety standards (commonly known as ‘the HUD-code’) and built on a permanent chassis to ensure transportability.

R. “Medication administration” 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.

S. “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.

T. “Modular home” means any home factory-built pursuant to the New Mexico regulation and licensing department construction industries regulations, Section 14.12.1 through 14.12.11 NMAC.

U. “Mobile home” means a prefabricated residential 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 in accordance with Section 14.12.1 through 14.12.11 NMAC.

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

W. “Neglect” means the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness, 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.

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

Y. “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.

Z. “Personal care services” means assistance with instrumental activities of daily living.

AA. “Pharmacist” means a person licensed under the pharmacy act, Sections 61-11-1 to 61-11-29, NMSA 1978.

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

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

DD. “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.

EE. “Resident” means an individual receiving services and residing in the licensed boarding home.

FF. “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.

GG. “Restraint” means any physical or chemical restraints which restrict freedom of movement or is used for discipline or for the convenience of the boarding home. This includes 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. Mechanical supports shall not be considered physical restraints when used pursuant to the residents needs and supports care plan.

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

II. “Variance” means a decision that is made at the discretion of the licensing authority to allow a boarding home 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.

JJ. “Waive or waiver” means a decision that is made at the discretion of the licensing authority to allow a boarding home 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, 6/3/2020]

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, 6/3/2020]

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 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 assistance with 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, shall not be placed in a boarding home.

B. Licensure is required:

(1)

No boarding home as defined in Subsection H of 7.8.4.7 NMAC may operate in New Mexico unless it is licensed in accordance with the requirements of the department.

(2) Any

boarding home 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.

(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 regulations contained in this rule shall not apply to any of the following:

(a)

Any other licensed health facility,

as defined by the public health act Subsection F of Section 24-1-2, NMSA 1978 licensed by the department.

(b)

Any clinic, as defined by the public health act Subsection F of Section 24-1-2 NMSA 1978 licensed by the department.

(c)

Any home operated by a home and community-based medicaid waiver service provider, under contract with the department 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 a public school as defined by Subsection L of Section 22-1-2 NMSA 1978 or a nonpublic school accredited by a generally accepted accreditation agency.

(ii)

The school and the school dormitory are on the same grounds.

(iii)

The program operates only during normal school terms unless the academic program runs year-around.

(iv)

The school's function is educational only.

(v)

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 family, 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 are 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.

D. Other operations

not affected: Boarding homes that also rent rooms solely on an owner-resident basis, to individuals who do not require assistance with one or more instrumental activities of daily living or assistance with the coordination of community services, are not required to comply with this rule in respect to those individuals only.

[7.8.4.9 NMAC - N, 6/3/2020]

7.8.4.10 GENERAL LICENSING REQUIREMENTS:

A. Application and requirements for licensure:

(1) All

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 or, 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.

(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 boarding home; and

(b)

the identities of all persons or business entities having five percent ownership interest whatsoever in the boarding home, 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, including familial or direct or indirect business relationship, 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 the applicant 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 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 boarding home for a period of six months. The evidence shall include a credit report from a recognized credit bureau, and with a minimum credit score of 650 or above for applicants that are individuals.

(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 will be provided by 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.

(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 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 boarding home and at a minimum, include the following:

- (1) the name of boarding home;
- (2) the name of the owner and licensee and the type of legal entity under which the boarding home shall be owned;
- (3) the name of the management company, if any;
- (4) the type of boarding home license requested;
- (5) the name and resume of the proposed manager;
- (6) the anticipated number of residents to be served;
- (7) the number of beds in the proposed boarding home;
- (8) the physical address of the boarding home

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 boarding home 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 submit a fully completed, printed or typed, dated, signed and notarized license application. The owner shall submit the application 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 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 compliance by the applicable zoning authority.

D. Program description: The applicant must submit with its license application a program outline 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 boarding home;

(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 boarding home'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 forth 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 boarding home to operate in the jurisdiction in which it is located, including but not limited to:

(a) written zoning approval or proof of zoning compliance;

(b) building permit final approval, or certificates of occupancy from the

appropriate authority (state, city, county, or municipality) for business occupancy; and

(c)

approvals from the fire safety authority having jurisdiction.

(2)

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.

(3) Custodial

pharmacy permit: Any boarding home 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, 6/3/2020]

7.8.4.11 ACTION BY THE DEPARTMENT:

A. After receiving a 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, 6/3/2020]

7.8.4.12 TYPES OF LICENSE:

A. Annual license: An annual license is issued for a one-year period to a boarding home 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

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.

(4) a

temporary license is not guaranteed under these regulations and shall be limited and restricted to:

(a) a

finding that the applicant is qualified and in full compliance with these requirements;

(b)

the boarding home being allowed to accept residents and provide care services, subject to any requirements and restrictions attached to the temporary license.

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 boarding home, 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, 6/3/2020]

7.8.4.13 SCOPE OF LICENSE:

A. The license 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, 6/3/2020]

7.8.4.14 SEPARATE LICENSES: Separate licenses shall be required for boarding homes 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 legal lot of record, multiple buildings on contiguous legal lots of record, or contiguous campus or condominium units within the same ownership.
[7.8.4.14 NMAC - N, 6/3/2020]

7.8.4.15 LICENSE RENEWAL:

A. 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 boarding home 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 by licensee with these regulations and all applicable state and federal statutes and regulations, as part of its license renewal application for the department to determine whether the applicant and the boarding home 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 boarding home 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 boarding home remains in full

compliance with these regulations. If the boarding home does not renew its license and continues to operate without paying civil monetary penalties and without being in full compliance with these regulations, the boarding home 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 boarding home of the renewal date or the expiration date of the boarding home's license.

E. After issuance of the initial license, if the boarding home is in substantial compliance with these regulations and provides an application and fee the boarding home may be issued a license renewal.
[7.8.4.15 NMAC - N, 6/3/2020]

7.8.4.16 POSTING: The license or a certified copy thereof shall be conspicuously posted in a location accessible to public view within the boarding home.
[7.8.4.16 NMAC - N, 6/3/2020]

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 10 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 boarding home shall require notification by letter to the department and shall result in the issuance of a corrected license.
[7.8.4.17 NMAC - N, 6/3/2020]

7.8.4.18 NON-TRANSFERABLE RESTRICTION ON LICENSE:

A. 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:

(1) any ownership interest of the boarding home changes;

(2) the boarding home changes location;

(3) the licensee of the boarding home changes;

(4) the boarding home discontinues operation; or.

B. A boarding home wishing to continue operation as a boarding home under the conditions described in Paragraphs (1) through (4) 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, 6/3/2020]

7.8.4.19 CHANGE OF OWNERSHIP:

An individual or entity wishing to purchase and continue operation of an already licensed boarding home 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 intended 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 shall 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, that must include the following:

- (a) process for the reassessment of residents;
- (b) process for hiring boarding home staff and staffing plan identifying staff that will cover all duties upon transition; and

(c) execution of transfer agreements between the buyer and seller.

(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 boarding home 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, 6/3/2020]

7.8.4.20 AUTOMATIC EXPIRATION OF LICENSE:

An 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 boarding home 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, 6/3/2020]

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 boarding home's license.
[7.8.4.21 NMAC - N, 6/3/2020]

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 boarding home'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 boarding home to deviate from a portion(s) or to modify a provision of this rule for an unspecified period of time, unless otherwise limited, and 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 boarding home 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 boarding home 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 boarding home 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 denial shall contain the reasons for denial.

(2) The terms of a requested variance may be modified upon agreement between the department and a boarding home.

(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 boarding home 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, 6/3/2020]

7.8.4.23 UNLICENSED FACILITIES: Any person or entity that opens or maintains a non-medical boarding home 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 actions 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 boarding home that is operating without a license.

D. Criminal penalties that 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 boarding home and will be required to obtain the required applicable boarding home licensure.
[7.8.4.23 NMAC - N, 6/3/2020]

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 boarding home 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 boarding homes to determine compliance with this rule.

C. The boarding home shall provide the licensing authority full access to all boarding home operations, buildings and information related to the operation of the boarding home. 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 boarding home.

E. Failure by the boarding home 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, 6/3/2020]

7.8.4.25 CORRECTIVE ACTION: If violations of this rule are cited, the boarding home 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 their representative shall be required to submit a plan of correction to the licensing authority within 10 working days stating how the boarding home 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 boarding home 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) the date and signature of 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 boarding home will be sent a second copy of the statement of deficiencies. The boarding home shall complete and return the second copy of the statement of deficiencies with an acceptable plan of correction within three business days. The department may at its option repeat the process 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 boarding home license.

(5) The licensing authority may accept, reject, or direct the plan of correction.

C. Informal dispute review (IDR). The boarding home 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 boarding home 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 boarding home.

(3) The boarding home 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, 6/3/2020]

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 boarding home and survey by authorized representatives of the licensing authority.

(3) Any person working at the boarding home 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.

(7) Abuse, neglect or exploitation of any resident by boarding home operator, staff, or relatives of operator/staff.

(8) Allowing any person, subject to all applicable statutes and regulations, to work at the boarding home 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 caregivers criminal history screening requirements, 7.1.9 NMAC, as amended, and related regulations as amended.

C 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, 6/3/2020]

7.8.4.27 HEARING PROCEDURES: Hearing

procedures for an administrative appeal of an adverse action taken by the department against a boarding home'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 boarding home's license by the licensing authority, if the regulations cannot be obtained from a public website.
[7.8.4.27 NMAC - N, 6/3/2020]

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 boarding home are in accordance with adjudicatory hearings for licensed facilities, 7.1.2 NMAC.

B. All notices, orders or decisions which the licensing authority issues to a boarding home 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, 6/3/2020]

7.8.4.29 POLICIES AND PROCEDURES:

The boarding home shall establish written policies and procedures that are reviewed and approved annually by the governing body. 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 boarding home's written policies and procedures shall include how the boarding home intends to comply with all requirements of these regulations and address:

- A.** incident management system;
- B.** the maintenance of the boarding home, 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 boarding home 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 boarding home safe, clean, and free of hazards and clutter;

L. If applicable, laundry services for the boarding home'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, 6/3/2020]

7.8.4.30 STAFFING REQUIREMENTS:

A. Operator or manager: A boarding home 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 boarding home;
- (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 boarding home) 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;

(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.

C. If a boarding home provides transportation for residents, the employees of the boarding home who drive vehicles and transport residents shall have copies of the following documents on file at the boarding home:

(1) a valid New Mexico driver's license with the appropriate classification for the vehicle that is used to transport residents;

(2) proof of insurance;

(3) documentation of a clean driving record; and

(4) shall comply with the requirements of the caregivers criminal history screening requirements, 7.1.9 NMAC. [7.8.4.30 NMAC - N, 6/3/2020]

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 resident's 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 boarding home.

[7.8.4.31 NMAC - N, 6/3/2020]

7.8.4.32 PERSONNEL

POLICIES: The boarding home 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, 6/3/2020]

7.8.4.33 PERSONNEL RECORDS:

A. The boarding home 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 boarding home 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, 6/3/2020]

7.8.4.34 STAFFING REQUIREMENTS AND RATIOS:

Minimum staffing requirements.

A. 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 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 boarding home.

B. During resident sleeping hours, boarding home facilities shall have at least one direct care staff person available on the premises or available to be on the

premises within 30 minutes in case of emergency.

C. 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 member 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, 6/3/2020]

7.8.4.35 RESIDENT ACCEPTANCE, ADMISSIONS AND DISCHARGE:

The boarding home shall complete an admission agreement for each resident. The manager of the boarding home or a designee responsible for admission decisions shall meet with the resident or the resident’s legally authorized person prior to admission. No resident shall be admitted who is below the age of 18 or for whom the boarding home is unable to provide appropriate care as set forth in this regulation.

A. The boarding home shall develop admission and discharge criteria and agreements.

B. Admission and discharge criteria must be available in writing to all residents and visitors to the boarding home.

C. Materials describing services offered, eligibility requirements, resident rights and responsibilities and fees charged 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 boarding home 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 services 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, 6/3/2020]

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.

(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.

(3) 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.

(4) Individuals who may have a primary diagnosis of developmental disability and receive home and community-based medicaid waiver services, may be accepted when the interdisciplinary team (IDT) and guardian and individual agree that the boarding home is an appropriate placement in the community.

B. Individuals who meet the following criteria shall not be admitted to or retained in boarding homes:

(1) Persons who require more care and

supervision than is provided by the boarding home.

(2) Persons who require nursing care, or who are not ambulatory.

(3) Persons with dementia or related disorders causing memory impairment.

(4) Persons whose physician has prescribed a therapeutic diet if those dietary requirements cannot be met.

(5) Persons who have needs that are in conflict with the needs of other residents or the program of services offered.

(6) Persons who currently require acute inpatient psychiatric care due to a mental disorder.

(7) Persons who require inpatient care in a health facility.

(8) Persons who are unable to care for themselves and would be at risk if left alone.

(9) Persons who require services that the boarding home does not provide or make available.

(10) Persons who are actively being destructive of property, self-destructive, disturbing or abusive to others, or suicidal or in need of acute inpatient psychiatric services.

C. Resident retention limitations: Residents whose behavior exceed their resident 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, 6/3/2020]

7.8.4.37 PROGRAM SERVICES:

A. The boarding home must be able to provide oversight to the residents, such as reminding them of meals, medications and appointments and monitoring activities while on the premises of the boarding home.

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 or dentist as needed.

C. Boarding homes shall provide assistance with certain 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 require a registered nurse or a certified medication assistant (CMA) under RN supervision who follows board of nursing regulations to perform. 16.12.5.10 NMAC. [7.8.4.37 NMAC - N, 6/3/2020]

7.8.4.38 NEEDS AND SERVICES PLAN: Prior to admission, the licensee shall determine whether the boarding home’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.

- B.** The following individuals shall be included in developing the plan:
- (1) the resident, and the resident’s legally authorized person or their authorized representative, if any;
 - (2) any relative participating in the placement;
 - (3) the boarding home manager or designee responsible for boarding home 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;
 - (7) any individual the resident believes would be beneficial to inform the needs and services plan.

- C.** The needs and services plan shall include:
- (1) The resident’s desires and background, obtained from the resident, the resident’s family or their 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) Boarding home plans for providing services to meet the individual needs identified above.
 - (a) Objectives, within a time frame, that

relate to the resident’s problems 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.

D. 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 or social functioning. If modifications to the plan identify an individual resident service need which is not being met by the general program of boarding home services, the following requirements shall be met:

- (1) 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 boarding home within the boarding home’s program of services.
- (2) If it is determined that the resident’s needs cannot be met, the licensee shall inform the resident and their authorized representative, if any, or responsible person, if there is no authorized representative, of this fact and shall request that the resident relocate.

- (3) 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, 6/3/2020]

7.8.4.39 RESIDENT RECORDS: The licensee shall ensure that a separate, complete, and current record is maintained in the boarding home 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.

<p>(2) Birthdate.</p> <p>(3) Gender.</p> <p>(4) Date of admission.</p> <p>(5) The source of referral and relevant referral information.</p> <p>(6) Names, addresses, and telephone numbers of the authorized representative and emergency contact.</p> <p>(7) A signed and dated copy of the admission agreement and resident's rights document.</p> <p>(8) Name, address, and telephone number of the resident's physician and dentist, and any other medical and mental health providers.</p> <p>(9) Medical assessments and diagnosis, if applicable.</p> <p>(10) Record of any illness or injury requiring treatment by a physician or dentist and for which the boarding home will provide assistance to the resident in meeting their necessary medical and dental needs.</p> <p>(11) An original or original copy of all physician medication and treatment orders signed by the physician.</p> <p>(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.</p> <p>(13) A record of all contacts with medical and other services.</p> <p>(14) Needs and services plan.</p> <p>(15) Modified diet requirements.</p> <p>(16) Advanced directives, or any preference for life saving measures if appropriate.</p> <p>(17) Signed consent for the release of information, if information is released.</p> <p>(18) Documentation of guardianship, agent or other legal decision maker other than resident.</p>	<p>(19) 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.</p> <p>B. Resident records should also include but are not limited to the following:</p> <p>(1) Medical and dental appointments.</p> <p>(2) Accidents or injuries.</p> <p>(3) Any problems or improvements observed in the resident.</p> <p>(4) Any change in the resident's condition which would indicate a need for higher level of care.</p> <p>(5) Date, time, and services provided by a visiting nurse service.</p> <p>C. All information and records obtained from or regarding residents shall be confidential.</p> <p>(1) The licensee shall be responsible for safeguarding the confidentiality of record contents.</p> <p>(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.</p> <p>(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.</p> <p>(b) Removal of records shall be subject to the following requirements:</p> <p>(i) Licensing representatives shall not remove current records for current residents unless the same information is otherwise readily available in another document or format.</p> <p>(ii) Original resident records or digital reproductions shall be retained for at least three years following termination of service to the resident. [7.8.4.39 NMAC - N, 6/3/2020]</p>	<p>7.8.4.40 RESIDENT RIGHTS:</p> <p>A. All licensed facilities shall understand, protect and respect the rights of all residents. Prior to admission to a boarding home, 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 ensure the resident's understanding.</p> <p>B. A written copy of the resident's legal rights shall be provided to the resident and to the resident's legal guardian or agent, if applicable, and to the most significant responsible party in the following order:</p> <p>(1) the resident;</p> <p>(2) the resident's spouse or significant other;</p> <p>(3) any of the resident's adult children;</p> <p>(4) the resident's parents;</p> <p>(5) the resident's advocate.</p> <p>C. The resident rights shall be posted in a conspicuous public place in the boarding home 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.</p> <p>D. To protect resident rights, the boarding home shall:</p> <p>(1) treat all residents with courtesy, respect, dignity and compassion;</p> <p>(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;</p> <p>(3) provide residents written information about all services provided by the boarding home and their costs and give advance written notice of any changes;</p> <p>(4) provide residents with a clean, safe and sanitary living environment;</p>
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(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;

(9) protect the resident's right to receive visits from their attorney, physician, psychologist, clergyman, social worker, long term care ombudsman or representatives of the department in private;

(10) provide residents the ability to send and receive unopened mail;

(11) provide 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 their 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 abuse 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 their own clothes;

(e) possess and use their own personal items, including their own toilet articles;

(f) have access to individual storage space for their private use;

(g) have the right to voice grievances to the boarding home 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 boarding home, to participate in community groups and organizations, and to leave the boarding home 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; and

(n) move from the boarding home in accordance with the terms of the admission agreement.

[7.8.4.40 NMAC - N, 6/3/2020]

7.8.4.41 NUTRITION: Boarding homes 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 boarding home 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, and 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; and

(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.

C. Each facility shall have a policy establishing dining times and hours that accommodate all residents' needs.

[7.8.4.41 NMAC - N, 6/3/2020]

7.8.4.42 FOOD SERVICE: Requirements for boarding homes:

A. The boarding home shall have either contracted food preparation or prepare food on site.

B. A boarding home that provides onsite food preparation shall comply with the New Mexico environment department (NMED) food preparation regulations.

C. The boarding home shall have the equipment and staff necessary to receive and serve the food.

D. The boarding home 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 boarding home 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. Food handling techniques include:

(1) 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 maximum 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, 6/3/2020]

7.8.4.43 PHARMACEUTICAL SERVICES:

A. Any boarding home 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 boarding home.

(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 boarding home

if the boarding home has a written procedure for giving such medications reviewed and approved by a licensed physician or advanced practice registered nurse.

(5) 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 boarding home.

(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 boarding home 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 boarding home's custodial drug permit issued by the state board of pharmacy must be displayed, if any medications are kept by the boarding home on behalf of any residents.

[7.8.4.43 NMAC - N, 6/3/2020]

7.8.4.44 INFECTION CONTROL:

A. The boarding home 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 boarding home shall have policies and procedures for the handling, processing, storing and transporting of clean and dirty laundry.
[7.8.4.44. NMAC - N, 6/3/2020]

7.8.4.45 RESIDENT

SAFETY: The boarding home 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 boarding home has no medical unit on the grounds, first aid supplies shall be maintained and be readily available in a central location in the boarding home.

(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, boarding home staff should immediately contact emergency services. 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 or request regarding resuscitative measures.

(2) For residents with an advance directive or request regarding resuscitative measures, during a medical emergency, the boarding home staff shall present the advance directive 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 their mental or physical health or safety, or to the health and safety of others in the boarding home, the boarding home staff must immediately contact emergency services.

D. The boarding home 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 boarding home.

(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 their 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 boarding home 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, a separate locked box within a refrigerator or a refrigerator in a locked room. shall be provided by the boarding home 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

boarding home shall not require the residents to purchase medications from any particular pharmacy.

[7.8.4.45 NMAC - N, 6/3/2020]

7.8.4.46 COMPLAINTS:

The boarding home 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 boarding home's investigation of a complaint(s) must be initiated within three working days of receipt of the complaint.

[7.8.4.46 NMAC - N, 6/3/2020]

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, including any incident or occurrence which has threatened, or could have threatened the health, safety and welfare of the residents or staff;

(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 boarding home 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's 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 boarding home 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 boarding home's investigation, and

(4) the boarding home action, if any.
[7.8.4.47 NMAC - N, 6/3/2020]

7.8.4.48 PHYSICAL ENVIRONMENT AND GENERAL BUILDING PLAN REQUIREMENTS:

A. Building plans: Boarding homes licensed for four or more residents must submit building plans. The building plans must be of professional quality, prepared and stamped by an architect registered pursuant to NMSA 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 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, and

(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 boarding home 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 boarding homes proposed for licensure in existing buildings must comply with all building requirements as if they 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 boarding home's building plans and local building officials have issued a construction permit, construction may begin.

D. 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.

E. 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.

F. 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, 6/3/2020]

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 boarding home and must meet all requirements of these regulations. Where a part of the boarding home services is contained in another facility, separation and access shall be maintained as described in current building and fire codes.

C. A boarding home 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,

mobile homes and recreational vehicles:

(1) Use of a manufactured home, modular home or mobile 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, mobile homes shall not be allowed.

(3) The use of recreational vehicles, travel or camper trailers which are designed to drive or be towed behind a vehicle is 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 boarding home 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, 6/3/2020]

7.8.4.50 MAINTENANCE OF BUILDING AND GROUNDS:

The boarding home's 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 boarding home must be maintained in a safe and sanitary condition at all times.

[7.8.4.50 NMAC - N, 6/3/2020]

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 in which fuel-fired equipment is located or in which tools, paints, solvents or construction materials are stored, 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 (IBC), current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

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.

[7.8.4.51NMAC - N, 6/3/2020]

7.8.4.52 EXITS:

A. Each floor of a boarding home shall have exits as required by as required by New Mexico building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

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, if required by the authority having jurisdiction, 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, 6/3/2020]

7.8.4.53 HALLWAYS AND CORRIDORS:

For facilities contained within existing commercial or residential buildings, corridor widths must conform with the New Mexico building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division, as applied by the authority having jurisdiction.

[7.8.4.53 NMAC - N, 6/3/2020]

7.8.4.54 HOUSEKEEPING:

A. The boarding home 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, 6/3/2020]

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 boarding home.

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, 6/3/2020]

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, 6/3/2020]

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 be provided with noncombustible metal ash urns.

[7.8.4.57 NMAC - N, 6/3/2020]

7.8.4.58 KITCHEN AND DINING:

A. The boarding home shall prepare food on site or have contracted food preparation. A boarding home that provides onsite food preparation shall comply with the current standards and regulations of the New Mexico environment department (NMED), and other local government authorities.

B. A boarding home 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 NMED or local authority;

(4) the kitchen, prep areas, and dining area shall be kept clean, and sanitary, and

(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, 6/3/2020]

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 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 or common room shall have a minimum net glazed area (window) not less than eight percent of the floor area of the room served. Boarding homes in existence as of the date of adoption of this section must have at least one activity area that complies with this requirement, but are not required to make structural changes to all activity areas.

D. Total Area: The combined floor space of common rooms 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, 6/3/2020]

7.8.4.60 RESIDENT

ROOMS: Resident bedrooms must meet, at a minimum, the following requirements:

A. A boarding home shall not exceed the resident (bed) capacity approved by the licensing authority. Any beds or bedrooms 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 area of the boarding home.

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 70 square feet or as otherwise required by the authority having jurisdiction.

(2) Semi-private rooms may not house more than two residents and shall provide 60 square feet per resident or as otherwise required by the authority having jurisdiction.

(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 or as otherwise required by the authority having jurisdiction.

E. Resident rooms shall not be less than seven feet in any horizontal direction or as otherwise required by the authority having jurisdiction.

F. Each resident room shall have operable window(s) with screens. The area of the outdoor windows 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 the New Mexico building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

G. Each resident room shall be furnished with well-constructed, comfortable furniture in good repair, unless the resident chooses to bring their own furniture:

(1) An individual bedframe with a clean, fire-retardant mattress and pillow, with firm support.

(2) Cots and bunk beds are not allowed. The bed must be at a minimum a standard size "twin" or larger bed.

(3) In addition to the bed, each resident shall be furnished with a chair, a night stand, and light(s) 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; pillowcases; 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, 6/3/2020]

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 New Mexico commercial building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

(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, a mechanical blower or individual hand towel hooks or bars for each resident's hand towel.

(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 boarding home has live-in staff, a separate toilet, hand washing, and bathing facility 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 commercial building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

(7) Toilets and bathrooms shall be located near resident bedrooms.

(8) Individual privacy shall be provided in all toilet, bath and shower areas.

(9) Lavatories and bathing units shall have hot and cold water available. Hot water shall

not exceed 110 degrees. [7.8.4.61 NMAC - N, 6/3/2020]

7.8.4.62 LAUNDRY SERVICES:

A. General requirements: A boarding home shall provide laundry services, either on the premises or through a laundromat or 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) Boarding home 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, 6/3/2020]

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 code, international building code (IBC), New Mexico plumbing code, New

Mexico mechanical code current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction and local building codes.

A. Water: A boarding home 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 boarding home 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 waste generated by the boarding home 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, 6/3/2020]

7.8.4.64 ELECTRICAL POWER & LIGHTING STANDARDS:

A. All electrical equipment and installation shall comply with the New Mexico commercial building code, international building code (IBC), New Mexico electrical code, current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

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.

F. The use of multiple receptacle adapters (gang plugs) in electrical receptacles is strictly prohibited.

[7.8.4.64 NMAC - N, 6/3/2020]

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 of the New Mexico commercial building code, international building code (IBC), New Mexico plumbing, mechanical and electrical codes, current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

(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 One hundred percent automatic cutoff control valve in event of pilot failure.

B. A boarding home 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. All building code requirements must be met regarding emergency egress for an outside window or door. A window unit air conditioner or fan shall not be installed in the required emergency egress window.

D. Fireplaces and wood burning stoves must be properly vented, have exterior combustion air, and be securely screened or have tempered glass doors. Fireplaces or wood burning stoves are not allowed in resident rooms.

[7.8.4.65 NMAC - N, 6/3/2020]

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 boarding home must request from the state fire marshal, or local fire authority having jurisdiction, an annual fire inspection. Records of inspection shall be kept on file in the boarding home.

(1) Copies of the fire inspection records must be kept on file at the boarding home 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 boarding home, the boarding home 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 boarding home.

B. Staff fire and safety training: All staff of the boarding home must know the location of, and be instructed in proper use of fire extinguishers, fire safety systems, and other procedures to be observed in case of fire or other emergencies.

(1) Boarding home 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 boarding home should request the fire authority having jurisdiction to give periodic instruction in fire prevention and techniques of evacuation.

C. Evacuation plan: Each boarding home 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 boarding home and readily available. 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 boarding home. Fire drill records shall show:

- (1) the date and time of the drill;
- (2) the number of staff participating in the drill;
- (3) any problem noted during the drill;
- (4) the evacuation time in total minutes, and
- (5) 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 state fire marshal, or local fire authority having jurisdiction.

(1) Facilities shall have an automatic fire alarm system, if required by the authority having jurisdiction. The fire alarm system(s) shall be inspected and approved in writing by the fire authority with jurisdiction.

(2) Approved smoke detectors that when activated provides an alarm which is audible in all sleeping areas shall be installed on each floor. Areas of assembly, such as the dining, living or activity room(s) must also be provided with smoke detectors.

(3) Approved carbon monoxide detectors that when activated provides an alarm which is audible in all sleeping areas shall be installed on each floor.

F. Fire extinguishers: Fire extinguisher(s) shall be installed in the boarding home, 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 boarding home.

(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 New Mexico commercial building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes as applied by the state fire marshal, or local fire authority having jurisdiction.

(1) Exception: Boarding homes designated as “R-3” in the New Mexico commercial 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 (as referenced in section 310.5 Residential Group R-3).

(2) Exception: Boarding homes designated as “R-3” in the New Mexico commercial building code, 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 (as referenced in section 310.5 Residential Group R-3). [7.8.4.66 NMAC - N, 6/3/2020]

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, 6/3/2020]

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 5/26/1972.

HSSD 76-6, Adult residential shelter care homes, regulations and

standards, filed 9/24/1976.

HED 80-2A (HSD), Regulations for community residential facilities for developmentally disabled individuals, filed 9/26/1980.

HED 86-3 (HSD), Regulations governing residential shelter care and boarding home facilities for adults, filed 7/11/1986.

HED 90-1 (PHD), Regulations governing residential shelter care and boarding home facilities for adults, filed 1/11/1990.

**HISTORY of 7.8.2 NMAC:
[RESERVED]**

HISTORY OF REPEALED MATERIAL:

OTHER HISTORY:

**PUBLIC DEFENDER
DEPARTMENT**

This is an amendment to 10.12.6 NMAC, Sections 3, 10, 11 and 15, effective 5/19/2020.

10.12.6.3 STATUTORY

AUTHORITY: [~~Section 31-15-2.4(B)(6) NMSA 1978 and Section 31-15-7 Section 12-5-2 NMSA 1978, Sections 24-2B-1 to 24-2B-9, 5 U.S.C. Sections 1501 to 1508.~~] Paragraph (6) of Subsection B of Section 31-15-2.4 NMSA 1978, Section 31-15-7 NMSA 1978, Section 12-5-2 NMSA 1978 and Sections 24-2B-1 to 24-2B-9 NMSA 1978, 5 U.S.C. Sections 1501 to 1508. [10.12.6.3 NMAC - N, 7/1/2015; A, 5/19/2020]

10.12.6.10 PROHIBITED POLITICAL ACTIVITIES:

Employees are prohibited from:

A. allowing political or personal considerations to conflict with the interests of a department client’s case;

[A.] B. using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office or for any other political purpose;

~~[B:]~~ C. directly or indirectly coercing, attempting to coerce, commanding, soliciting or advising a client, state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for a political purpose;

~~[C:]~~ D. threatening to deny promotions or pay increases to any employee who does not vote for certain candidates, requiring employees to contribute a percentage of their pay to a political fund, influencing subordinate employees to buy tickets to political fund-raising dinners and similar events, advising employees to take part in political activity, and matters of a similar nature;

E. using any state, department or client equipment, facilities, property or time resources for political purposes;

~~[D:]~~ F. engaging in [a] political activity while on duty; or

~~[E:]~~ G. being an officer of a political organization.
[10.12.6.10 NMAC - N, 7/1/2015; A, 5/19/2020]

**10.12.6.11 PUBLIC/
POLITICAL OFFICE:**

A. Employees covered by the provisions of the Hatch Act [5 U.S.C. Sections 1501 to 1508] may not be candidates for partisan political office elections.

B. Employees not covered by the provisions of the Hatch Act [5 U.S.C. Sections 1501 to 1508] may be candidates for any partisan political office [~~if, upon filing or accepting the nomination and during the entire campaign, they are authorized full-time continuous leave without pay.~~] but the employee shall use annual leave or leave without pay, subject to approval pursuant to department policy, if campaigning requires that the employee be absent from assigned duties.

C. Employees may be candidates for nonpartisan political office, subject to the restriction set forth in 10.12.6.11 NMAC, [~~without taking a leave of absence without pay~~] but the employee shall use annual

leave or leave without pay, subject to approval pursuant to department policy, if campaigning requires that the employee be absent from assigned duties.

D. Employees may hold only a nonpartisan county or municipal political office during employment in the department. If elected to a partisan political office, the employee shall resign from the department prior to taking the oath of office.

E. Being a local school board member or an elected member of any post-secondary educational institution shall not be construed as holding political office.

F. Employees running for or holding public office shall not use state equipment, facilities, property or time dedicated to employment duties to conduct campaign or public office related business. Violation of this Rule is punishable by disciplinary action pursuant to 10.12.11 NMAC and [~~or~~] the criminal penalties set forth in Section 10-9-23 NMSA 1978.

G. At a minimum of 30 days prior to any entry as a candidate into a political contest, employees shall notify the department's human resource division so the department can monitor compliance with the Hatch Act and any other law.
[10.12.6.11 NMAC - N, 7/1/2015; A, 5/19/2020]

**10.12.6.15 DUTY TO
COOPERATE**

WITH INVESTIGATIONS: Allegations of violations of policies and procedures set forth by the department [~~and/or~~] and state or federal law may require employees to participate as witnesses or potential witnesses in a variety of investigations.

A. Employees have a duty to cooperate in an investigation and are required to do so in good faith.

B. During the investigative process, witnesses or potential witnesses who are interviewed are responsible to maintain confidentiality about the

content of their interviews.

C. Employees cannot be subjected to retaliation for cooperating with the department in investigations. Any employee who feels subjected to retaliation because of cooperating in an investigation should contact the human resource director immediately.
[10.12.6.15 NMAC - N, 7/1/2015; A, 5/19/2020]

**PUBLIC RECORDS,
COMMISSION OF**

This is an emergency amendment to 1.24.10 NMAC, Section 15, effective 4/29/2020.

**1.24.10.15 NMAC
TRANSMITTAL FORM:**

A. Each rule filing delivered to the records center shall be accompanied by a completed NMAC transmittal form in hard copy with an original signature in black ink or with a valid digital signature.

B. The administrative law division shall provide agencies with blank NMAC transmittal forms in electronic format.

C. The filing agency shall complete the NMAC transmittal form and submit to the administrative law division for review and approval prior to adoption of any rulemaking.

D. The NMAC transmittal form shall not be handwritten and shall be suitable for reproduction.

E. The following shall appear on the NMAC transmittal form:

- (1) issuing agency name and address;
- (2) three digit DFA account code for the agency (if applicable);
- (3) volume, issue, publication date in register for rule filing;
- (4) contact person's name, phone number, and e-mail address;
- (5) type of filing - i.e., new, amendment, renumber, repeal, repeal/replace or emergency filing;

(6) total number of pages;

(7) date(s) of any public hearing(s) on the proposed rule or amendment;

(8) effective date of the rule filing;

(9) NMAC title, chapter and part name and number;

(10) description of amendment (for amendment filing only, i.e. "amending two sections");

(11) amendment's NMAC citation (i.e. 1.24.10.15 and 16 NMAC);

(12) sequence number and most recent filing date of the part (if applicable and designated for administrative law division use only);

(13) declaration of incorporated material;

(14) if reference materials are attached and are protected by copyright:

(a) indication if copyright permission was obtained;

(b) the proof of permission; or

(c) material is within the definition of public domain;

(15) specific statutory or other authority authorizing the rulemaking by the issuing agency to promulgate rules;

(16) any findings required by a provision of law for adoption of the rule;

(17) rule adoption date; and

(18) rule effective date.

F. Each rule filing shall bear the original signature of the issuing authority or authorized designee in black ink on the paper copy of the NMAC transmittal form. If authority is delegated, the box shall be checked. For the duration of state of public health emergency declared by governor under the Public Health Emergency Response Act, any rule filing may be accepted, with a valid digital signature, and will be filed by administrative law

division on appropriate New Mexico register submittal deadline; unless agency needs rule to be filed on a different date, pursuant to Subsection D of Section 14-4-5 or Section 14-4-5.6 NMSA 1978, then alternate arrangements will be made on a case by case basis.

G. Those portions of the transmittal form that are completed by the issuing agency under the concise explanatory statement heading shall be considered sufficient compliance with State Rules Act and shall be provided to the public at the time the issuing agency adopts any rule making.

[1.24.10.15 NMAC - Rp, 1 NMAC 3.3.10.11, 2/29/2000; A, 6/30/2004; A, 9/15/2014; A, 11/30/2015; A, 7/1/2017; A/E, 4/29/2020]

**REGULATION AND
LICENSING DEPARTMENT
NUTRITION AND DIETETICS,
BOARD OF**

This is an amendment to 16.14.1 NMAC, Section 7, effective 6/6/2020.

16.14.1.7 DEFINITIONS:

A. "Act" means the Nutrition and Dietetics Practice Act.

B. "CDR" means the commission on dietetic registration.

C. "American board of nutrition" referred to in the act is now known as American clinical board of nutrition.

D. "American institute of nutrition" referred to in the act is now known as American society for nutrition.

E. "Reciprocity" means the ability of a qualified licensed applicant from another state to obtain a license in the state of New Mexico, if the qualified licensed applicant meets the requirements for licensure in the state.

[16.14.1.7 NMAC - Rp, 16 NMAC 14.1.7, 8/1/2011; A, 6/6/2020]

**REGULATION AND
LICENSING DEPARTMENT
NUTRITION AND DIETETICS,
BOARD OF**

This is an amendment to 16.14.5 NMAC, Section 9, effective 6/6/2020.

16.14.5.9 TEST

ADMINISTRATION: Examinations are offered by CDR in a computerized format on dates and locations determined by the applicant. Individuals applying for licensure as a nutritionist or nutrition associate must make application through the board to be eligible to take the CDR exam. Dietitians who require a provisional permit to practice in New Mexico prior to passing the CDR exam must apply for the exam through the board. The names of applicants who are deemed eligible by the board to take the examination will be forwarded to CDR and their testing agency, [ACT]. The application to take the examination will then be sent directly to the applicant. Payment for the examination is sent directly to [ACT] the testing agency in accordance with the procedures outlined in the candidate handbook.

[16.14.5.9 NMAC - Rp, 16 NMAC 14.5.9, 8/1/2011; A, 6/6/2020]

**REGULATION AND
LICENSING DEPARTMENT
NUTRITION AND DIETETICS,
BOARD OF**

This is an amendment to 16.14.6 NMAC, Section 8, effective 6/6/2020.

16.14.6.8 ANNUAL

RENEWAL REQUIRED: Every person licensed under the Nutrition and Dietetics Practice Act shall renew [his] their license annually on or before the expiration date by submitting a renewal application, the renewal fee, proof of compliance with continuing education requirements and any other documentation required by the board.

[16.14.6.8 NMAC - Rp, 16 NMAC 14.6.8, 08/01/2011; A, 6/6/2020]

**REGULATION AND LICENSING DEPARTMENT
NUTRITION AND DIETETICS,
BOARD OF**

This is an amendment to 16.14.7 NMAC, Section 8, effective 6/6/2020.

16.14.7.8 REINSTATEMENT OF A LAPSED LICENSE: Any person who allows his license to lapse by failing to renew [his] their license within thirty days of expiration may be reinstated by the board and issued a renewal license upon submission of a renewal application with proof satisfactory to the board of compliance with the continuing education and other requirements of 16.14.3 NMAC and payment of the annual renewal fee and the reinstatement fee. A license which has been allowed to lapse for more than three years must reapply as a new applicant, pay all initial licensing fees and meet all the requirements of 16.14.3 NMAC. [16.14.7.8 NMAC - Rp, 16 NMAC 14.7.8, 08/01/2011; A, 6/6/2020]

**REGULATION AND LICENSING DEPARTMENT
NUTRITION AND DIETETICS,
BOARD OF**

This is an amendment to 16.14.10 NMAC, Section 8, effective 6/6/2020.

16.14.10.8 STANDARDS OF PRACTICE:

A. Non-discrimination: The licensee shall provide nutrition care service with objectivity and with respect for the unique needs and values of an individual.

(1) The licensee shall avoid discrimination on the basis of factors that are irrelevant to the provision of nutrition care services, including, but not limited to race, ethnicity, sexual orientation,

religion, gender, age, physical disabilities.

(2) The licensee shall provide sufficient information to enable a client to make an informed decision.

B. Credentials:

(1) The licensee shall accurately represent his or her professional qualifications and credentials.

(2) The licensee shall permit use of that licensee's name for the purpose of certifying that nutrition care services have been rendered only if the licensee has provided or supervised those services.

C. Product promotion: The licensee shall promote or endorse products only in a manner that is true and not misleading.

D. Competence: The licensee shall assume responsibility and accountability for personal competence in practice.

(1) The licensee shall generate, interpret, and use research to enhance nutrition and dietetic practice.

(2) The licensee shall identify, monitor, analyze and justify the use of resources.

(3) The licensee shall maintain knowledge and skills required for continued professional competence. The licensee shall engage in life-long self-development to improve knowledge and skills.

(4) The licensee shall recognize the limits of that licensee's qualifications and seek counsel or make referrals as appropriate. The licensee shall utilize unique knowledge of nutrition, collaborate with other professionals, personnel and consumers, in integrating, interpreting and communicating nutrition care principles.

(5) The licensee shall adhere to acceptable standards for the licensee's area of practice.

(6) When providing supervision of another, a

licensee shall assume responsibility for the supervision in a manner which protects the public.

(7) When a licensee approves a general program of weight control, the licensee assumes responsibility for the general program of weight control including the diet and the guidelines for instruction of customers.

E. Compliance with law: The licensee shall comply with all laws and regulations concerning the profession.

F. Professional conduct:

(1) The licensee shall present substantiated information and interpret controversial information without personal bias, recognizing that a legitimate difference of opinion may exist.

(2) The licensee shall maintain the confidentiality of information consistent with legal obligations.

(3) The licensee shall conduct all practices with honesty, integrity, and fairness.

(4) The licensee shall inform the public and colleagues of services by use of factual information. The licensee shall not advertise in a misleading manner.

G. Licensed dietitians may seek privileging through their hospital/institution's medical staff.

H. Licenced dietitians may provide nutrition care that is within their scope of practice as outlined by the academy of nutrition and dietetics.

[16.14.10.8 NMAC - Rp, 16 NMAC 14.10.8, 08/01/2011; A, 6/6/2020]

WORKFORCE SOLUTIONS DEPARTMENT

This is an emergency amendment to 11.3.300 NMAC, Section 320, effective 4/24/2020.

Explanatory paragraph:

Subsections A through F were not published as no changes were made.

Explanatory note: NMDWS will be issuing a temporary emergency rule which is implemented and effective during the current state of health emergency and until the governor's directive regarding DOVID-19 is lifted. The rule is being amended to avoid causing an imminent peril to the public health, safety or welfare. This temporary emergency process does not permanently amend or repeal the existing rule. The emergency rule will only remain in effect for 180 days following the effective date unless a permanent rule takes effect under the normal rule making process.

11.3.300.320 WORK SEARCH REQUIREMENT:

G. In the event of a federal or state declaration of emergency, the department may waive the work search requirements at the discretion of the secretary until the emergency declaration is lifted.

[11.3.300.320 NMAC – Rp, 11.3.300.320 NMAC, 11/1/2018; A/E, 4/24/2020]

WORKFORCE SOLUTIONS DEPARTMENT

This is an emergency amendment to 11.3.400 NMAC, Section 404, effective 4/24/2020.

Explanatory paragraph:

Subsections B through F were not published as no changes were made.

Explanatory note: NMDWS will be issuing a temporary emergency rule which is implemented and effective during the current state of health emergency and until the governor's

directive regarding DOVID-19 is lifted. The rule is being amended to avoid causing an imminent peril to the public health, safety or welfare. This temporary emergency process does not permanently amend or repeal the existing rule. The emergency rule will only remain in effect for 180 days following the effective date unless a permanent rule takes effect under the normal rule making process.

11.3.400.404 WAGE AND CONTRIBUTION REPORTS BY EMPLOYING UNITS:

A. QUARTERLY EMPLOYMENT & WAGE DETAIL REPORT:

(1) An employer's wage and contribution report must be filed electronically on the department's web page on or before the last day of the month immediately following the end of the calendar quarter. If the due date falls on a Saturday, Sunday or legal holiday, the report is due on the next department business day. A wage and contribution report must be filed even though no wages were paid or no contribution or tax is due for the quarter unless the employer's liability has been terminated or suspended pursuant to Section 51-1-18 NMSA 1978. Each wage and contribution report must include only wages, as the term is defined in Subsection T of Section 51-1-42 NMSA 1978, paid during the quarter being reported. Corrections of errors made on previously submitted reports must be electronically submitted as an adjustment through the employer's on-line account.

(2) In the event of a federal or state declaration of emergency, the department may extend the deadline for submission of the quarterly wage report and corresponding contributions due for up to one month after the deadlines stated in this Subsection.

[11.3.400.404 NMAC - Rp, 11.3.400.404 NMAC, 11/30/2016; A, 10/29/2019; A/E, 4/24/2020]

End of Adopted Rules

Other Material Related to Administrative Law

**GOVERNOR,
OFFICE OF THE**
EXECUTIVE ORDER 2020-026
**RENEWING THE STATE OF
PUBLIC HEALTH EMERGENCY
INITIALLY DECLARED IN
EXECUTIVE ORDER 2020-004,
OTHER POWERS INVOKED IN
THAT ORDER, AND ALL OTHER
ORDERS AND DIRECTIVES
CONTAINED IN EXECUTIVE
ORDERS TIED TO THE PUBLIC
HEALTH EMERGENCY**

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China, and reported to the World Health Organization (“WHO”). The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease which has been referred to “COVID-19.”

By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1,000 cases in the United States, spread out over 39 states. The President of the United States declared a national state of emergency for COVID-19 on March 13, 2020.

On March 11, 2020, I issued Executive Order 2020-004, which declared a state of public health emergency under the Public Health Emergency Response Act and invoked powers provided by the All Hazards Emergency Management Act and the Emergency Licensing Act. That public health emergency was declared for a period of 30 days. The President approved a Major Disaster Declaration for the State of New Mexico on April 5, 2020. On

April 6, 2020, I renewed and extended the public health emergency through April 30, 2020.

Cases of COVID-19 and deaths related to COVID-19 continue to proliferate at an alarming pace. The WHO reports more than 3 million worldwide infections and more than 200,000 related deaths. According to the United States Centers for Disease Control and Prevention (“CDC”), more than 1,000,000 people have been infected in the United States, including confirmed cases in every state, with more than 57,000 related deaths. The numbers of reported cases and deaths are continuing to increase exponentially throughout many parts of the world and in many parts of the United States. It is also highly likely that there are many unreported cases and deaths. The numbers have also risen dramatically in our State since I declared a public health emergency. As of April 29, 2020, the New Mexico Department of Health reported at least 3,213 confirmed cases of COVID-19 in New Mexico and at least 112 related deaths. There are confirmed cases of COVID-19 in 30 of New Mexico’s 33 counties. Despite proactive measures taken by the State and our citizens, these numbers are increasing at a significant rate and COVID-19 is expected to continue its spread in New Mexico.

Public health organizations have implemented emergency measures intended to slow the spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly thereafter. Nearly all of our sister states have declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19. New Mexico has taken aggressive measures to reduce the spread of COVID-19 and

to mitigate its potentially devastating effects. I have been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19.

Various state agencies have been at the forefront of our State’s response to COVID-19, particularly the New Mexico Department of Health. Due to the continued spread of the COVID-19, it is necessary for all branches of State government to continue taking actions to minimize the spread of COVID-19 and to reduce its attendant physical and economic harms.

Therefore, for the reasons above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and the laws of the State of New Mexico, hereby ORDER and DIRECT:

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Order 2020-022, shall be renewed and extended through May 15, 2020.

2. All other powers invoked, directives, and orders contained in Executive Order 2020-004 remain in effect.

3. All other Executive Orders with a duration that was tied to the COVID-19 public health emergency shall continue with the same effect.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect immediately and shall remain in effect until May 16, 2020 unless renewed or until the Governor rescinds it.

**DONE AT THE EXECUTIVE
OFFICE THIS 30TH DAY OF
APRIL 2020**

ATTEST:
/S/ **MAGGIE TOULOUSE**
OLIVER
SECRETARY OF STATE

**WITNESS MY HAND AND THE
GREAT SEAL OF THE STATE OF
NEW MEXICO**

/S/ **MICHELLE LUJAN**
GRISHAM
GOVERNOR

**HEALTH,
DEPARTMENT OF**

PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH CABINET
SECRETARY KATHYLEEN M.
KUNKEL

APRIL 30, 2020

Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, and April 11 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19

PREFACE

The purpose of this amended Public Health Emergency Order is to further restrict business operations and public gatherings to mitigate the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). We have reached a crucial juncture at which stricter adherence to social distancing and self-isolation measures will be necessary to protect the integrity of our health care system against the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. The bottom line is that all New Mexicans should be staying in their homes for all but the most essential activities and services. When New Mexicans are not in their

homes, they should strictly adhere to social distancing protocols to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. March 13, 2020 Public Health Emergency Order to Temporarily Limit Nursing Home Visitation Due to COVID-19;

B. April 30, 2020 Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries; and

C. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19.

3. The April 11, 2020 Public Health Emergency Order Amending the March 23, 2020 and April 6, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19 is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State

of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, on April 6, 2020, Governor Michelle Lujan Grisham renewed the declaration of a Public Health Emergency until April 30, 2020 due to the continued spread of COVID-19 in New Mexico and on April 30, 2020, she again renewed her declaration of a Public Health Emergency;

WHEREAS, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, confirmed COVID-19 infections in New Mexico have risen to more than 3,000 and confirmed cases in the United States have risen to more than 1,000,000;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act,

NMSA 1978, Sections 12-10A-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE,
I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act as invoked through Executive Order 2020-004, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) “Retail space” means an “essential business” that sells good or services directly to consumers or end-users inside its place of business, such as a grocery store or a hardware stores and includes the “essential businesses” listed in the categories below: 2(d), 2(k), 2(m), 2(n), 2(s), 2(u), and 2(v).

(2) “Essential business” means any business or non-profit entity falling within one or more of the following categories:

a. Health care operations including hospitals, walk-in-care health facilities, veterinary and livestock services, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, and medical supplies and equipment manufacturers and providers;

b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;

c. Childcare facilities necessary to provide services to those workers employed by essential businesses, essential non-profit entities;

d. Grocery stores, supermarkets, food banks, farmers’ markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;

e. Farms, ranches, and other food cultivation, processing, or packaging operations;

f. All facilities routinely used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators;

g. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies,

water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;

h. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;

i. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

j. Facilities providing pet adoption, grooming, daycare, or boarding services;

k. Media services including television, radio, and newspaper operations;

l. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products;

m. New and used automobile dealers may sell cars through internet or other audiovisual means but they may not allow customers in showrooms;

n. Hardware stores;

o. Laundromats and dry cleaner services;

p. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and

transmission, water and wastewater supply;

q. Funeral homes, crematoriums and cemeteries;

r. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;

s. Real estate services including brokers, title companies, and related services;

t. Businesses providing mailing and shipping services, including post office boxes;

u. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

v. Restaurants, but only for delivery or carry out and local breweries or distillers but only for carry out;

w. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

x. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods or services directly to residences, retailers, government institutions, or essential businesses.

(4) "Individuals" means natural persons. (5) "Gathering" means any grouping together of individuals in a single connected location. (6) "Mass gathering" means any public or private gathering that brings together five (5) or more individuals in a single room or connected space, confined outdoor space or an open outdoor space where individuals are within six (6) feet of each other, but does not include the presence of five (5) or more individuals where those individuals regularly reside. "Mass gathering" does not include individuals who are public officials or public employees in the course and scope of their employment.

I HEREBY DIRECT AS FOLLOWS:

(1) All Mass Gatherings

are hereby prohibited under the powers and authority set forth in the New Mexico Public Health Act, and all regulations promulgated pursuant thereto. This prohibition does not apply to necessary operations of essential businesses. Churches, synagogues, mosques, and all other houses of worship shall adhere to this restriction, but nothing in this order is intended to preclude these faith-based institutions from holding services through audiovisual means.

(2) All businesses, except those entities identified as "essential businesses", are hereby directed to reduce the in-person workforce at each business or business location by 100%, except as provided herein. Retail businesses that are not "essential businesses" may operate to the minimum extent necessary to provide curbside pickup and/or delivery services to customers but only if they are legally permitted to provide their services through pickup and/or delivery.

(3) "Essential businesses" may remain open provided they minimize their operations and staff to the greatest extent possible. Further, all essential businesses shall adhere to social distancing protocol and maintain at least six-foot social distancing from other individuals, avoid person-to-person contact, and direct employees to wash their hands frequently. All essential businesses shall ensure that all surfaces are cleaned routinely.

(4) This Order requires the closure of physical office spaces, retail spaces, or other public spaces of a business and does not otherwise restrict the conduct of business operations through telecommuting or otherwise working from home in which an employee only interacts with clients or customers remotely.

(5) The maximum number of customers allowed in a "retail space" at any given time shall be equal to 20% of the maximum occupancy of the retail space, as determined by the relevant fire marshal or fire department. If customers are waiting outside of a "retail space", they must do so in

compliance with social distancing protocols including the requirement that they maintain a distance of at least six-feet from other individuals, avoid person-to-person contact.

(6) All casinos shall close during the pendency of this Order. This directive excludes those casinos operating on Tribal lands. Horse racing facilities may operate without spectators.

(7) Hotels, motels, RV parks, and other places of lodging shall not operate at more than twenty-five percent of maximum occupancy. Health care workers who are engaged in the provision of care to New Mexico residents or individuals utilizing lodging facilities for extended stays, as temporary housing, or for purposes of a quarantine or isolation period shall not be counted for purposes of determining maximum occupancy. Shortterm vacation rentals, apartments, and houses are not permitted to operate except to provide housing to health care workers who reside out of state but are engaged in the provision of care to New Mexico residents.

(8) All call centers situated in New Mexico are directed to reduce their in-person workforce by 100%. This includes any call center that is part of or supports an essential business.

(9) Self-storage facilities should reduce operations to the minimum number of employees necessary to ensure public access to storage units and adequate security for storage units, including a 100% reduction in permanent on-site workforce whenever possible.

(10) This Order does not limit animal shelters, zoos, and other facilities with animal care operations from performing tasks that ensure the health and welfare of animals. Those tasks should be performed with the minimum number of employees necessary, for the minimum amount of time necessary, and with strict adherence to all social distancing protocols.

(11) Federally licensed firearm dealers may operate to the extent necessary to conduct

background checks and to allow individuals to take possession of firearms that were ordered online or through other remote means. They shall provide these services by appointment only.

(12) Golf courses may open on a modified basis. They may be open for golf only and shall not provide any dine-in or retail services. They shall minimize staff and operations to the greatest extent possible and follow all sanitation and social distancing protocols.

(13) The New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(14) All public and private employers are required to comply with this Order and any instructions provided by State departments or agencies regarding COVID-19.

(15) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-10A-6 (2012).

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions

than those required by the Order.

(4) This Order shall take effect immediately and remain in effect through May 15, 2020. This Order shall be effective in all counties of New Mexico except for Cibola County, McKinley County, and San Juan County. This Order may be renewed consistent with any direction from the Governor.

(5) Cibola County, McKinley County, and San Juan County remain subject to the terms of the April 11, 2020 Public Health Emergency Order through May 15, 2020.

I FURTHER ADVISE the public to take the following preventive precautions:

-- New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.

-- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.

-- Avoid crowds.

-- Avoid all non-essential travel including plane trips and cruise ships.

-- Self-quarantine or self-isolate for at least fourteen days after all out-of-state travel.

DONE AT THE EXECUTIVE OFFICE THIS 30TH DAY OF APRIL 2020

ATTEST:

**/S/ MAGGIE TOULOUSE
OLIVER
SECRETARY OF STATE**

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

**/S/ KATHLEEN M. KUNKEL
SECRETARY OF THE STATE OF
NEW MEXICO DEPARTMENT
OF HEALTH**

HEALTH, DEPARTMENT OF

PUBLIC HEALTH ORDER NEW MEXICO DEPARTMENT OF HEALTH CABINET SECRETARY KATHYLEEN M. KUNKEL

MAY 5, 2020

Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, April 11, 2020 and April 30, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19

PREFACE

The purpose of this amended Public Health Emergency Order is to further restrict business operations and public gatherings to mitigate the spread of the Novel Coronavirus Disease 2019 ("COVID-19"). We have reached a crucial juncture at which stricter adherence to social distancing and self-isolation measures will be necessary to protect the integrity of our health care system against the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. **The bottom line is that all New Mexicans should be staying in their homes for all but the most essential activities and services.**

When New Mexicans are not in their homes, they should strictly adhere to social distancing protocols to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. March 13, 2020 Public Health Emergency Order to Temporarily Limit Nursing Home Visitation Due to COVID-19;

B. April 30, 2020 Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries; and

C. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19.

3. The April 11, 2020 Public Health Emergency Order Amending the March 23, 2020 and April 6, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19 is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, on April 6, 2020, Governor Michelle Lujan Grisham renewed the declaration of a Public Health Emergency until April 30, 2020 due to the continued spread

of COVID-19 in New Mexico and on April 30, 2020, she again renewed her declaration of a Public Health Emergency;

WHEREAS, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, confirmed COVID-19 infections in New Mexico have risen to more than 3,000 and confirmed cases in the United States have risen to more than 1,000,000;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE,

I, Kathylen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act as invoked through Executive Order 2020-004, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) “Retail space” means an “essential business” that sells good or services directly to consumers or end-users inside its place of business, such as a grocery store or a hardware stores and includes the “essential businesses” listed in the categories below: 2(d), 2(k), 2(m), 2(n), 2(s), 2(u), and 2(v).

(2) “Essential business” means any business or non-profit entity falling within one or more of the following categories:

a. Health care operations including hospitals, walk-in-care health facilities, veterinary and livestock services, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research

facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, and medical supplies and equipment manufacturers and providers;

b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;

c. Childcare facilities necessary to provide services to those workers employed by essential businesses, essential non-profit entities;

d. Grocery stores, supermarkets, food banks, farmers' markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;

e. Farms, ranches, and other food cultivation, processing, or packaging operations;

f. All facilities routinely used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators;

g. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;

h. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;

i. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

j. Facilities providing pet adoption, grooming, daycare, or boarding services;

k. Media services including television, radio, and newspaper operations;

l. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products;

m. New and used automobile dealers may sell cars through internet or other audiovisual means but they may not allow customers in showrooms;

n. Hardware stores;

o. Laundromats and dry cleaner services;

p. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

q. Funeral homes, crematoriums and cemeteries;

r. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;

s. Real estate services including brokers, title companies, and related services;

t. Businesses providing mailing and shipping services, including post office boxes;

u. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

v. Restaurants, but only for delivery or carry out and local breweries or distillers but only for carry out;

w. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

x. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods or services directly to residences, retailers, government institutions, or essential businesses.

(4) "Individuals" means natural persons.

(5) "Gathering" means any grouping together of individuals in a single connected location.

(6) "Mass gathering" means any public or private gathering that brings together five (5) or more individuals in a single room or connected space, confined outdoor space or an open outdoor space where individuals are within six (6) feet of each other, but does not include the presence of five (5) or more individuals where those individuals regularly reside. "Mass gathering" does not include individuals who are public officials or public employees in the course and scope of their employment.

I HEREBY DIRECT AS FOLLOWS:

(1) All Mass Gatherings are hereby prohibited under the powers and authority set forth in the New Mexico Public Health Act, and all regulations promulgated pursuant thereto. This prohibition does not apply to necessary operations of essential businesses. Churches, synagogues, mosques, and all other houses of worship shall adhere to this restriction, but nothing in this order is intended to preclude these faith-based institutions from holding services through audiovisual means.

(2) All businesses, except those entities identified as “essential businesses”, are hereby directed to reduce the in-person workforce at each business or business location by 100%, except as provided herein. Retail businesses that are not “essential businesses” may operate to the minimum extent necessary to provide curbside pickup and/or delivery services to customers but only if they are legally permitted to provide their services through pickup and/or delivery.

(3) “Essential businesses” may remain open provided they minimize their operations and staff to the greatest extent possible. Further, all essential businesses shall adhere to social distancing protocol and maintain at least six-foot social distancing from other individuals, avoid person-to-person contact, and direct employees to wash their hands frequently. All essential businesses shall ensure that all surfaces are cleaned routinely.

(4) Beginning May 6, 2020, all “essential businesses” operating as a “retail space” and having a building footprint greater than 50,000 square feet and/or operating as a restaurant shall ensure that all employees are wearing face coverings or medical grade masks. Beginning May 11, 2020, all “essential businesses” operating a “retail space” shall require their employees to wear face coverings or medical grade masks. This provision applies to all businesses in all New Mexico counties including Cibola County, McKinley County, and San Juan County.

(5) This Order requires the closure of physical office spaces, retail spaces, or other public spaces of a business and does not otherwise restrict the conduct of business operations through telecommuting or otherwise working from home in which an employee only interacts with clients or customers remotely.

(6) The maximum number of customers allowed in a “retail space” at any given time shall be equal to 20% of the maximum occupancy of the retail

space, as determined by the relevant fire marshal or fire department. If customers are waiting outside of a “retail space”, they must do so in compliance with social distancing protocols including the requirement that they maintain a distance of at least six-feet from other individuals, avoid person-to-person contact.

(7) All casinos shall close during the pendency of this Order. This directive excludes those casinos operating on Tribal lands. Horse racing facilities may operate without spectators.

(8) Hotels, motels, RV parks, and other places of lodging shall not operate at more than twenty-five percent of maximum occupancy. Health care workers who are engaged in the provision of care to New Mexico residents or individuals utilizing lodging facilities for extended stays, as temporary housing, or for purposes of a quarantine or isolation period shall not be counted for purposes of determining maximum occupancy. Short-term vacation rentals, apartments, and houses are not permitted to operate except to provide housing to health care workers who reside out of state but are engaged in the provision of care to New Mexico residents.

(9) All call centers situated in New Mexico are directed to reduce their in-person workforce by 100%. This includes any call center that is part of or supports an essential business.

(10) Self-storage facilities should reduce operations to the minimum number of employees necessary to ensure public access to storage units and adequate security for storage units, including a 100% reduction in permanent on-site workforce whenever possible.

(11) This Order does not limit animal shelters, zoos, and other facilities with animal care operations from performing tasks that ensure the health and welfare of animals. Those tasks should be performed with the minimum number of employees necessary, for the minimum amount of time necessary, and with strict adherence to all social distancing protocols.

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(5) Unless otherwise specified, Cibola County, McKinley County, and San Juan County remain subject to the terms of the April 11, 2020 Public Health Emergency Order through May 15, 2020.

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-- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.

-- Avoid crowds.

-- Avoid all non-essential travel including plane trips and cruise ships. Self-quarantine or self-isolate for at least fourteen days after all out-of-state travel.

DONE AT THE EXECUTIVE OFFICE THIS 5TH DAY OF MAY 2020

**ATTEST:
/S/ MAGGIE TOULOUSE
OLIVER
SECRETARY OF STATE**

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

**/S/ KATHLEEN M. KUNKEL
SECRETARY OF THE STATE OF NEW MEXICO DEPARTMENT OF HEALTH**

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

2020 New Mexico Register

Submittal Deadlines and Publication Dates

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Issue	Submittal Deadline	Publication Date
Issue 1	January 6	January 14
Issue 2	January 16	January 28
Issue 3	January 30	February 11
Issue 4	February 13	February 25
Issue 5	February 27	March 10
Issue 6	March 12	March 24
Issue 7	March 26	April 7
Issue 8	April 9	April 21
Issue 9	April 23	May 5
Issue 10	May 7	May 19
Issue 11	May 28	June 9
Issue 12	June 11	June 23
Issue 13	July 6	July 14
Issue 14	July 16	July 28
Issue 15	July 30	August 11
Issue 16	August 13	August 25
Issue 17	August 27	September 15
Issue 18	September 17	September 29
Issue 19	October 1	October 13
Issue 20	October 15	October 27
Issue 21	October 29	November 10
Issue 22	November 13	November 24
Issue 23	December 3	December 15
Issue 24	December 17	December 29

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