

NEW MEXICO 
Commission of Public Records
at the State Records Center and Archives
Your Access to Public Information

New Mexico Register

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

Volume XXXI - Issue 22 - November 22, 2020

COPYRIGHT © 2020
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

The New Mexico Register

Published by the Commission of Public Records,
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

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

Telephone: (505) 476-7941; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

The *New Mexico Register* is available free at <http://www.srca.nm.gov>

New Mexico Register

Volume XXXI, Issue 22

November 24, 2020

Table of Contents

Notices of Rulemaking and Proposed Rules

CHILDREN, YOUTH AND FAMILIES DEPARTMENT/ EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT	
Notice of Rulemaking and Public Rule Hearing.....	1047
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION	
Notice of Public Hearing for Proposed Rulemaking.....	1062
GAME AND FISH DEPARTMENT	
State Game Commission Meeting and Rule Making Notice.....	1064
State Game Commission Meeting and Rule Making Notice.....	1065
HEALTH, DEPARTMENT OF	
Notice of Public Hearing.....	1065
PAROLE BOARD	
Notice of Proposed Rulemaking.....	1066
PRIVATE INVESTIGATIONS ADVISORY BOARD	
Notice of Proposed Rulemaking.....	1068
PUBLIC EDUCATION DEPARTMENT	
Notice of Proposed Rulemaking.....	1069
PUBLIC REGULATION COMMISSION	
Notice of Proposed Rulemaking Case No. 20-00190-PRC.....	1069
SUPERINTENDENT OF INSURANCE, OFFICE OF	
Notice of Proposed Rulemaking.....	1070

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

HEALTH, DEPARTMENT OF			
16.11.2 NMAC	R	Certified Nurse - Midwives.....	1073
16.11.2 NMAC	N	Certified Nurse - Midwives.....	1073
HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION			
8.291.430 NMAC	A	Medicaid Eligibility, Affordable Care, Financial Responsibility Requirements.....	1083
PUBLIC RECORDS, COMMISSION OF			
1.24.10 NMAC	A	New Mexico Administrative Code	1085

Other Material Related to Administrative Law

GOVERNOR, OFFICE OF THE

Governor's Executive Order 2020-080.....	1087
--	------

HEALTH, DEPARTMENT OF

11/5/2020 Amended Public Health Order.....	1087
11/16/2020 Amended Public Health Order.....	1092
11/18/2020 Amended Public Health Order.....	1096

Notices of Rulemaking and Proposed Rules

CHILDREN, YOUTH AND FAMILIES DEPARTMENT/EARLY CHILDHOOD EDUCATION DEPARTMENT

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Children, Youth and Families Department (CYFD) and the Early Childhood Education and Care Department (ECECD) hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENTS AND CHILD CARE PROVIDERS as authorized by Section 9-2A-7 NMSA 1978:

- 8.15.2.7 NMAC - DEFINITIONS**
- 8.15.2.8 NMAC - TYPES OF CHILD CARE**
- 8.15.2.9 NMAC - PRIORITIES FOR ASSISTANCE**
- 8.15.2.10 NMAC - APPLICATION PROCESS**
- 8.15.2.11 NMAC - ELIGIBILITY REQUIREMENTS**
- 8.15.2.12 NMAC - RECERTIFICATION**
- 8.15.2.13 NMAC - CLIENT RESPONSIBILITIES**
- 8.15.2.14 NMAC - CASE SUSPENSIONS AND CLOSURES**
- 8.15.2.15 NMAC - PROVIDER REQUIREMENTS**
- 8.15.2.16 NMAC - DEPARTMENT RESPONSIBILITIES**
- 8.15.2.17 NMAC - PAYMENT FOR SERVICES**
- 8.15.2.18 NMAC – UNDER PAYMENTS**
- 8.15.2.19 NMAC - OVER PAYMENT AND RECOUPMENT**
- 8.15.2.20 NMAC - FRAUD**
- 8.15.2.21 NMAC - SANCTIONS**

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

Purpose of proposed rules: The purpose of the rulemaking is to promulgate amendments to 8.15.2 NMAC, which were initially published as emergency amendments effective September 18, 2020, along with additional necessary changes. Due to the COVID-19 health crisis and the resulting executive orders and declarations, there was an emergency need for amendments to 8.15.2 NMAC in order to protect the public from an imminent peril to public health, safety and welfare of children and families in New Mexico.

Copies of the proposed amended rules may be found at end of this notice and at ECECD's website at <https://www.newmexicokids.org/> 30 days prior to the Public Hearing.

Notice of public rule hearing: The public rule hearing will be held on January 6, 2021, at 1:00 p.m. The hearing will be held via internet, email, and telephonic means due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of Public Health Emergency and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. The public hearing will be conducted in a fair and equitable manner by a CYFD/ ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of acceptance of written public comment: Written public comment, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may be submitted via email to ECECD-ECS-PublicComment@state.nm.us with the subject line "8.15.2 NMAC Public Comment" or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Written comments may be delivered to the Old PERA building at 1120 Paseo De Peralta on January 6, 2021 from 1:00 pm to 3:00 pm. The comment period ends at the conclusion of the public hearing on January 6, 2021.

Any interested member of the public may attend the hearing via the internet or telephone and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: place call 1-346-248-7799, access code 974 3902 4249. You will be able to hear the full hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to <https://zoom.us/j/97439024249>, and follow the instructions indicated on the screen – Meeting ID (access code): 974 3902 4249#. This will be a live stream of the hearing. You may also provide comment via Chat during the live streaming.

AVISO DE PROMULGACION DE LEYES ADMINISTRATIVAS Y AUDIENCIA PÚBLICA

El Departamento de Niños, Jóvenes y Familias de Nuevo México (CYFD) y el Departamento de Educación y Cuidado de la Primera Infancia (ECECD) por este medio da aviso como se requiere bajo la Sección 14-4-5.2 de los Estatutos Anotados de Nuevo México (NMSA) 1978 y 1.24.25.11 del Código Administrativo de Nuevo México (NMAC), que propone adoptar enmiendas a las siguientes leyes administrativas con respecto a los REQUISITOS DE ASISTENCIA DE CUIDADO INFANTIL DE LOS SERVICIOS

SOCIALES PARA PROGRAMAS DE ASISTENCIA DE CUIDADO INFANTIL PARA CLIENTES Y PROVEEDORES DE CUIDADO INFANTIL según lo autorizado por la sección 9-2A-7 del NMSA 1978:

8.15.2.7 NMAC - DEFINICIONES

8.15.2.8 NMAC - TIPOS DE CUIDADO INFANTIL

8.15.2.9 NMAC - PRIORIDADES DE ASISTENCIA

8.15.2.10 NMAC - PROCESO DE SOLICITUD

8.15.2.11 NMAC - REQUISITOS DE ELEGIBILIDAD

8.15.2.12 NMAC - RECERTIFICACIÓN

8.15.2.13 NMAC - RESPONSABILIDADES DEL CLIENTE

8.15.2.14 NMAC - SUSPENSIÓN Y CIERRES DE CASOS

8.15.2.15 NMAC - REQUISITOS DE LOS PROVEEDORES

8.15.2.16 NMAC - RESPONSABILIDADES DEL DEPARTAMENTO

8.15.2.17 NMAC - PAGO DE LOS SERVICIOS

8.15.2.18 NMAC - PAGOS INSUFICIENTES

8.15.2.19 NMAC - PAGOS EXCESIVOS Y REEMBOLSOS

8.15.2.20 NMAC - FRAUDES

8.15.2.21 NMAC - MULTAS

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

Propósito de las leyes

administrativas propuestas: El propósito de las leyes administrativas es promulgar enmiendas a la sección 8.15.2 del NMAC, que se publicaron inicialmente como enmiendas de emergencia a partir del 18 de septiembre de 2020, junto con los cambios adicionales necesarios. Debido a la crisis de salud del COVID-19 y las órdenes ejecutivas y declaraciones resultantes, hubo una necesidad de emergencia de realizar enmiendas a la 8.15.2 del NMAC para proteger al público de un peligro inminente para la salud pública, la seguridad y el bienestar de los niños y las familias de Nuevo México.

Puede encontrar copias de las propuestas leyes administrativas al final de este aviso y en el sitio web del ECECD en <https://www.newmexicokids.org/> 30 días antes de la Audiencia Pública.

Aviso de Audiencia Pública de leyes administrativas:

La audiencia pública de leyes administrativas tendrá lugar el 6 de enero de 2021 a la 1:00 p.m. La audiencia se llevará a cabo a través de Internet, correo electrónico y medios telefónicos debido a las preocupaciones en torno al COVID-19 y de acuerdo con la Orden Ejecutiva 2020-004 de la Gobernadora Michelle Lujan Grisham, la Declaración de Emergencia de Salud Pública y la Orden de Emergencia de Salud Pública del 12 de marzo de 2020 para limitar las reuniones masivas debido al COVID-19. La audiencia pública se llevará a cabo de manera justa y equitativa por un representante de la agencia del CYFD o el ECECD o el funcionario de audiencias y será grabada. Cualquier miembro del público interesado puede asistir a la audiencia y se le brindará una oportunidad razonable para ofrecer comentarios al público, oralmente o por escrito, incluso una presentación de datos, puntos de vista s o argumentos, sobre las propuestas. Las personas con discapacidades que necesiten cualquier forma de ayuda auxiliar para asistir o participar en la audiencia pública deben comunicarse con el ECECD en ECECD-ECS-PublicComment@state.nm.us o llamar al (505) 231-5820. El ECECD hará todos los esfuerzos posibles para acomodar todas solicitudes razonables, pero no puede garantizar acomodar solicitudes que no sean recibas por lo menos diez días antes de la fecha programada para la audiencia.

Aviso de aceptación de comentarios públicos por escrito:

Los comentarios públicos por escrito, incluso las presentaciones de datos, puntos de vista o argumentos de cualquier miembro del público interesado, sobre las propuestas leyes

administrativas, pueden ser enviados s a través de correo electrónico aECECD-ECS-PublicComment@state.nm.us, especificando en la línea de Asunto: “8.15.2 NMAC Public Comment,” o por correo de primera clase a P.O. Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Los comentarios escritos se pueden entregar en el edificio Old PERA en 1120 Paseo De Peralta el 6 de enero de 2021 de 1:00 p.m. a 3:00 p.m. El período de comentarios termina a la conclusión de la audiencia pública el 6 de enero de 2021.

Cualquier miembro del público interesado puede asistir a la audiencia a través de Internet o por teléfono y ofrecer comentarios públicos sobre las leyes administrativas propuestas durante la audiencia. Para acceder a la audiencia por teléfono llame al 1-346-248-7799, código de acceso 974 3902 4249. Podrá escuchar la audiencia completa y se grabarán sus comentarios telefónicos. Para acceder a la audiencia a través de Internet vaya a <https://zoom.us/j/97439024249> y siga las instrucciones que se indican en la pantalla (ID de la reunión - código de acceso: 974 3902 4249 #). Esta será una transmisión en directo de la audiencia. También puede proporcionar comentarios a través del chat durante la transmisión en directo.

Proposed Rules/Leyes administrativas propuestas

Explanatory sentence for purposes of this Notice:

Frase explicativa para los propósitos de este Aviso:

8.15.2.7 DEFINITIONS:

A. “Attending a job training or educational program” means actively participating in [~~a~~ an in-person or online job training or educational program.

B. “At-risk child care” means a program for families at-risk [~~of child protective services involvement~~] as determined by the department.

C. “CACFP” means the child and adult care food program,

administered by the children, youth and families department.

D. “Child with a disability or special needs” means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, under an individualized education plan (IEP), or other specialized services and supports; or children without identified conditions, but requiring specialized services, supports, or monitoring.

E. “Child support enforcement division” means the child support enforcement program administered by New Mexico’s human services department, which collects child support from non-custodial parents.]

E. “Client” means the parent or legal guardian of the child that the department has determined is eligible for child care assistance benefits.

F. “Closure” means the client’s child care case is closed with the department.

G. “Co-payment” means the portion of the approved and agreed upon monthly child care cost for clients receiving child care assistance that the client is required to pay to the child care provider. The department’s payment to the provider is reduced by the co-payment amount.

H. “Demonstration of incapacity” means written documentation that an individual is unable to fulfill an eligibility requirement, such as work, school, or the ability to provide child care, and should otherwise be excluded, in whole or in part, from the determination of eligibility. Written documentation of incapacity includes, but is not limited to, the following: statements or letters on a physician’s/ medical professional’s/treatment provider’s letterhead stationary; statements, records or letters from a federal government agency that issues or provides disability benefits; statements, records or letters from a state vocational rehabilitation agency counselor; records or letters from a treatment facility/counselor;

certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits.

[H:] I. “Department” means the New Mexico children, youth and families department (CYFD).

[F:] J. “Earned income” means income received as gross wages from employment or [as-profit from] self-employment.

K. “Fluctuation of earnings” means a family with inconsistent or variable income throughout the year. To calculate fluctuation of earning the department may:

(1)

average family earnings over a period of time (e.g., 12 months); or

(2)

choose to discount temporary increases in income provided that a family demonstrates an isolated increase in pay (e.g., short-term overtime pay, temporary increase to pay, etc.) and is not indicative of a permanent increase in income.

[J:] L. “Homeless children and youth” means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

(1) Children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(2) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(4) migratory children who qualify as homeless

for the purposes of this subtitle because the children are living in circumstances described in Paragraphs (1) through (3) of this subsection.

M. “Household” means the household as defined below in Paragraph (1) of Subsection C. of 8.15.2.11 NMAC.

N. “Household income” means household income as defined below in Paragraph (3) of Subsection C. of 8.15.2.11 NMAC.

[K:] O. “Incidental money” means earnings of a minor child for occasional work performed such as baby-sitting, cutting lawns, and other similar activities.

[F:] P. “Infant, toddler, preschool, school age” means the age categories used for assigning child care provider reimbursement rates, defined as follows:

(1) infant:	
zero - 23 months;	
(2) toddler: 24	
-35 months;	
(3) preschool:	
three to five year olds; and	
(4) school age:	
six year olds and older.	

[M:] Q. “Job training and educational program” means participation in a short or long term educational or training program, including online programs [which provides] that provide specific job skills which allow the participant to enter the workforce and directly relates to enhancing job skills, including but not limited to the acquisition of a general equivalency diploma (GED), English as a second language, literacy training, vocational education training, secondary education including adult basic education and accredited high school programs, and post-secondary institutions.

[N:] R. “National accreditation status” means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. CYFD determines the program criteria and standards to evaluate and approve accrediting bodies.

(1) The following are the only national accrediting bodies that are approved by CYFD:

- (a) the association of Christian schools international (ACSI);
- (b) the council on accreditation (COA) for early childhood education and after school programs;
- (c) the international Christian accrediting association (ICAA);
- (d) the national accreditation commission for early care and education programs (NAC);
- (e) the national association for the education of young children (NAEYC) academy for early childhood program accreditation;
- (f) the national association of family child care (NAFCC); or
- (g) the national early childhood program accreditation (NECPA).

(2) Effective July 15, 2014 accrediting bodies that have been previously approved by CYFD that are not on the above list will no longer be CYFD approved national accrediting bodies.

[~~Q~~] **S.** “**Non-temporary change in activity**” means the family has experienced a change in activity that does not meet the definition of a “temporary change in activity” as defined in Section [~~EE~~] **HH** below.

[~~P~~] **T.** “**Non-traditional hours of care**” means care provided between the afterhours of 7:00 p.m. and 7:00 a.m. Monday through Friday or care provided during weekend hours between 12:00 a.m. Saturday morning and 12:00 a.m. Monday morning.

[~~Q~~] **U.** “**Open case**” means a case that has not been closed as a result of a failure to recertify, or that has not been closed due to becoming otherwise ineligible for child care assistance benefits.

[~~R~~] **V.** “**Overpayment**” means a payment of child care assistance benefits received by a

client or provider for which they are ineligible based on incomplete or inaccurate information provided by either the client or the provider, or agency error.

[~~S~~] **“Child Protective services (CPS) child care”** means child care services for children placed in the custody of the child protective services of the department.]

[~~T~~] **W.** “**Provider types**” means the characteristics of child care providers, which determine their approved reimbursement rate, capacity, staffing levels etc. as follows:

(1) “**In-home**” care means care provided in the child’s own home.

(2) “**Registered home**” means child care provided in the home of a provider who is registered with the department to care for up to four children. All registered homes receiving child care assistance subsidies must be enrolled and participate in the child and adult care food program (CACFP), unless they are exempt.

(3) “**Licensed family child care home**” means child care provided in the home of a provider who is licensed by the department to care for up to six children.

(4) “**Licensed group child care home**” means child care provided in the home of a provider who is licensed by the department to care for up to 12 children.

(5) “**Licensed center**” means child care provided in a non-residential setting, which is licensed by the department to provide such care.

(6) “**Out-of-school time care**” means child care provided to a kindergartner or school age child up to age 13 immediately before or immediately after a regularly scheduled school day or when regular school is not in session.

(7) “**Friend, family, or neighbor (FFN)**” means care to be provided temporarily in a home to be self-certified by the parent or legal guardian and registered by

the department, not to exceed six months. In the case of a public health emergency, the department may extend the temporary status.

[~~U~~] **X.** “**Recertification**” means the process by which a client’s eligibility to continue to receive child care assistance benefits are determined.

[~~V~~] **Y.** “**Registration/educational fee**” means a fee charged to private pay and families receiving child care assistance for materials and supplies.

Z. “**Sanctions**” means a measure imposed by the department for a violation or violations of applicable regulations.

[~~W~~] **AA.** “**SNAP**” means the supplemental nutrition assistance program administered by the U.S. department of agriculture, which helps low-income families purchase healthy food. SNAP was previously referred to as food stamps employment and training program.

BB. “**Special supervision**” means the special supervision for child(ren) as defined below in Subsection G of 8.15.2.11 NMAC.

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

[~~Y~~] **DD.** “**Suspension**” means [that the child care case remains eligible, but benefits are not paid to the provider] the voluntary cessation of child care benefits at the client’s request, during which the client remains eligible.

[~~Z~~] **EE.** “**TANF**” means the temporary assistance to needy families program administered by the U.S. department of health and human services. TANF is the successor to the aid to families with dependent children (AFDC) program and provides cash assistance to qualified low-income families with dependent children.

[~~AA~~] **FF.** “**Teen parent**” means a biological parent under the age of 20 who is attending high school, working towards a general equivalency diploma (GED)

or attending any other job skills training or educational programs directly related to enhancing employment opportunities.

[BB:] GG.

“**Termination**” means the client’s child care case will be closed due to cause.

[EE:] HH.

“**Temporary change of activity**” means one of the following events that does not exceed three months:

- (1) limited absence from work for employed parents or legal guardians for periods of family leave (including parental leave) or sick leave;
- (2) interruption in work for a seasonal worker who is not working between regular industry work seasons;
- (3) student holiday or break for a parent or legal guardian participating in training or education;
- (4) reduction in work, training or education hours, as long as the parent or legal guardian is still working or attending training or education; and
- (5) cessation of work or attendance at a training or education program less than [90 days] three months.

[DD:] II.

“**Underpayment**” means a payment made by the department for services provided which did not fully reimburse the client or provider.

[EE:] JJ.

“**Unearned income**” means income in the form of benefits such as TANF, workmen’s compensation, social security, supplemental security income; child support, pensions, contributions, gifts, loans, [and] grants and other income which does not meet the definition of earned income.

[FF:] KK.

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

[8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC 10/1/2016, A, 2/1/2017; A, 10/1/2019, A/E, 9/18/2020]

8.15.2.8 TYPES OF

CHILD CARE: These policies apply to child care assistance benefits provided to eligible children for the following types of child care to ensure that parents or legal guardians have a variety of child care services from which to choose:

- A. licensed child care programs administered by public schools and post-secondary institutions that provide on-site care for the children of students;
- B. licensed child care programs administered by tribal entities;
- C. licensed child care programs administered by church or religious organizations;
- D. in-home care;
- E. licensed child care centers;
- F. registered family childcare homes;
- G. licensed family and group childcare homes;
- H. licensed out of school time programs; [and]
- I. licensed programs operated by employers for their employees~~[-]; and~~
- J. FFN.

[8.15.2.8 NMAC - Rp, 8.15.2.8 NMAC, 10/1/2016]

8.15.2.9 PRIORITIES

FOR ASSISTANCE: Any funds received by the department under the child care development fund and other sources are expended for child care assistance pursuant to the following priorities:

- A. Priority one: Clients receiving temporary assistance to needy families (TANF) benefits to include TANF diversionary payment, are considered priority one clients.
- (1) Participation exemption: The human services department (HSD) grants participation exemptions to TANF clients who cannot locate child care. The children, youth and families department is responsible for the

verification of the TANF participant’s inability to locate child care. Reasons for a participation exemption due to lack of child care are as follows:

- (a) the unavailability of appropriate child care within a reasonable distance from the individual’s home or work site;
- (b) the unavailability or unsuitability of informal child care by a relative or under other arrangements; or
- (c) the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.
- (2) A person who applies for participation exemption for any or all of the above reasons is referred to the children, youth & families department child care resource and referral. The child care resource and referral assists the client with location of child care. The final validation/verification of a client’s inability to locate child care is determined by the child care services bureau supervisor in conjunction with his/her supervisor. A client who receives a participation exemption due to lack of child care is required to re-apply for the exemption every six months. If a person disagrees with the determination of their eligibility for a participation exemption, they may apply for a fair hearing with ~~[the human services department (HSD)]~~ HSD. HSD is responsible for providing notice of the approval or denial of a participation exemption.
- B. Priority one A: [RESERVED]
- C. Priority one B: Child care assistance for income eligible families whose income is at or below one hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. The department prioritizes child care services within priority one B for children with special needs, disabilities, homeless families, and for teen parents.
- D. Priority two: Families transitioning off TANF and clients who have received a TANF diversionary payment. Clients must have received TANF for at least one

month, or a diversionary payment, in the past 12 months in order to qualify for priority two. Only clients transitioning off TANF whose TANF cases are closed at least in part due to increased earnings or loss of earned income deductions or disregards are eligible for priority two. Priority two clients do not have to meet income eligibility requirements during their 12 consecutive month period of eligibility for priority two child care.

E. Priority three:

[RESERVED]

F. Priority four: Child care assistance for families whose income is above one hundred percent of the federal poverty level but at or below two hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time and will remain eligible at or below two hundred fifty percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.15.2.11 NMAC. The department prioritizes child care services within priority four for children with special needs, disabilities, homeless families, and for teen parents.

~~G. Child protective services (CPS) child care: The department pays for CPS child care as determined by the protective services of the department. Income requirements and copayments are waived for clients in this priority.]~~

~~H. G. [At-risk child care] Priority five: In addition to these priorities, the department pays for at-risk [protective services] child care as approved by the department. Child care benefits are provided for a minimum of six months to support the family. Income, work and education requirements and copayments are waived for clients in this priority. [8.15.2.9 NMAC - Rp, 8.15.2.9 NMAC, 10/1/2016; A; 10/1/2019, A/E, 9/18/2020]~~

8.15.2.10 APPLICATION PROCESS:

A. Clients apply for child care assistance benefits by

presenting the following documents to establish eligibility [~~in person at the local child care office. Upon a need or request by the client, the department may approve a client to submit their initial application by fax, email, or mail. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Under documented extenuating circumstances and with approval from the early childhood services director, clients may be given longer than 14 days but no more than 30 days to submit required documentation~~]:

- (1) a completed signed application form;
- (2) [~~current proof of earned income or participation in the temporary assistance to needy families (TANF) program; social security numbers or assigned TANF identification numbers may be used to verify TANF participation or receipt of child care support~~] documentation of current countable earned and unearned income as listed below and defined in Paragraph (5) of Subsection C of 8.15.2.11 NMAC:
 - (3) documentation of the applicant's TANF eligibility or participation, if applicable, and can include applicant's social security number or assigned TANF identification number;
 - (4) school schedule or verification of educational activity, if applicable;
 - (5) demonstration of incapacity for parent or legal guardian, if applicable;
 - (6) verification of birth for all applicant's household children;
 - (7) documentation of qualifying immigration status, as defined by the United States Department of Health and Human Services, Administration for Children & Families, Office of Child Care, for all children requesting child care assistance;
 - (8) proof of unearned income;
 - (9) proof of documentation of New Mexico [home address] residency; and

~~(7)~~ (9) [~~CYFD~~] department approved provider.

~~B.~~ The department may approve a client to submit their initial application by fax, email, electronic submission, or mail. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Upon approval from the child care regional manager, clients may be given longer than 14 calendar days, but no more than 30 calendar days, to submit required documentation.

~~B.~~ C. Assistance is provided effective the first day of the month of application if all of the following apply:

- (1) the client is utilizing child care services;
- (2) the client is employed, attending school or a training program. In the case of a public health emergency, the department secretary may waive the requirement for employment, attending school or a training program; and
- (3) the [~~eligible~~] provider is eligible to be paid [~~was providing care from the first day of the month forward~~]. [8.15.2.10 NMAC - Rp, 8.15.2.10 NMAC, 10/1/2016; A/E, 03/16/2020; A, 8/11/2020, A/E, 9/18/2020]

8.15.2.11 ELIGIBILITY REQUIREMENTS: Clients are eligible for child care assistance benefits upon meeting the requirements for eligibility as determined by the department and federal regulation.

A. Child care staff will initiate communication at the initial [~~eligibility~~] determination of their eligibility period to provide outreach and consumer education with a case management approach and coordination of services to support families.

B. Eligibility period: Based upon the client meeting all eligibility requirements, a 12-month certification period will be granted.

- (1) Eligibility may be granted for less than 12

months at the parent or legal guardian's request.

~~(2)~~ (2) [Eligibility for CPS and a at] At-risk child care may be granted for less than 12 months as determined by the department.

~~(3)~~ (3) Eligibility may be granted for up to three months for seeking employment. The eligibility may be closed if the client fails to obtain a qualifying activity within three months. The department has the discretion to extend the job search period.

~~(3)~~ (4) The client will remain eligible if a temporary change of activity occurs.

~~(4)~~ (5) If a client experiences a non-temporary change in activity, the client will no longer be eligible to receive assistance if another activity is not obtained within the three-month grace period.

C. Income eligibility determination:

~~(1)~~ (1) The household: The household includes biological parents, stepparents, [and] legal guardians of the child(ren) for whom child care assistance is sought, and any legal dependents of the aforementioned, living in the household, thereby constituting an economic unit[, and any dependents of the aforementioned who are under 18 years of age. Grandparents will be considered household members only if they are legal guardians of the children, are providing for the physical and emotional needs of the children, and are applying for child care benefits on behalf of the children]. Grandparents who are not legal guardians living in the household are counted as members of the household, but their earned and unearned income is excluded from the eligibility calculations.

~~(a)~~ (a) Periods of absences: A household member may be absent from the home and will be considered as living in the home and be counted in the household composition as long as the absent household member plans to return to the home. Any parent or legal guardian who remains in the home

must be working, attending school, or participating in a job training or educational program. Temporary absence may include, but are not limited to, attending school, working, training, medical or other treatment, or military service.

~~(2)~~ (2) [Allowed exclusions from the household for co-payment calculation only: Excluded from the household for co-payment calculation purposes only are grandparents or legal guardians who have taken custody/ guardianship of children due to circumstances such as but not limited to death of biological parents or other documented circumstances such as mental or physical incapacity of biological parents to care for the child or children. Grandparents or legal] Legal guardians who are not the parents of the child(ren) for child care assistance is sought, in this situation, are required to qualify for child care assistance as per Paragraph [(4)] (3) below and, upon qualification, have the required co-payment waived.

~~(3)~~ (3) Adult dependent children: 18 year-old dependent children must be attending school to be counted in the household. Incidental money earned by dependent children is not to be counted as household income.]

~~(4)~~ (3) Household income: [Income eligibility for benefits is determined by the number of members in the household and the total countable gross earned and unearned income. Eligibility determinations will take into account irregular fluctuations of earnings to income based on the client's individual circumstances:] The household's gross monthly or annual average countable earned and unearned income, taking into account any fluctuation(s) of earnings, and will always be calculated in favor of eligibility. Household income does not include any earned and unearned income received by grandparents who are not legal guardians, and any legal dependents of the biological parents, stepparents, or legal guardians of the child(ren) for whom child care assistance is sought, living in the household.

~~(5)~~ (4) Family assets: A family's assets may not exceed one million dollars.

~~(6)~~ (5) Countable earned and unearned income: The following sources of income are counted when computing a family's eligibility for assistance and for determining the co-payment (if applicable): income from employment by working for others or from self-employment; [child support payments;] alimony payments; veterans administration (VA) payments except VA payments [for educational purposes and disability] that are specifically exempted in Paragraph (6) of Subsection C of 8.15.2.11 NMAC; [union payments; unemployment or] workman's compensation; railroad retirement benefits; pensions; [TANF benefits, including diversion payments;] royalties; income from rental property; social security benefits (except social security payments that are specifically exempted in Paragraph (6) of Subsection C of 8.15.2.11 NMAC; [work study income;] overtime shall be counted at CYFD's discretion if CYFD determines that the applicant is paid overtime on a regular basis.

~~(7)~~ (6) Exempt income: The types of income not counted when computing eligibility or co-payments include but are not limited to: earnings of [a] household dependents [child who is under 18 and in school]; earnings of household grandparents who are not the legal guardians of the child(ren) for whom child care assistance is sought; SNAP; TANF benefits, including diversion payments; supplemental security income (SSI); social security disability insurance (SSDI); social security benefits received by household children; any VA payments made on behalf of the child(ren); VA benefits for educational purposes or for disability; unemployment benefits; work study income; child support payments; military food and housing allowances; an increase in military salary or allowances due to "temporary national emergency status beginning September 11,

2001"; third party payments; energy assistance benefits; foster care payments; adoption subsidies; [VA payments for educational purposes and disability;] loans; child or adult nutrition programs; income tax refunds; payments for educational purposes; compensation under the Domestic Volunteer Services Act and the volunteers in service to America (VISTA) program or [Americorp] AmeriCorps; Work Investment Act (WIA) payments made to dependent children; relocation payments; department of vocational rehabilitation (DVR) training payments; in-kind gifts; cash gifts; employer reimbursements; overtime, unless CYFD determines that the applicant is paid overtime on a regular basis; payments from special funds such as the agent orange settlement fund or radiation exposure compensation settlement fund; lump sum payments such as those resulting from insurance settlements and court judgments; or other resources such as savings, individual retirement accounts (IRAs), vehicles, certificates of deposits (CDs) or checking accounts. In the case of an emergency, or under extenuating circumstances, the department secretary may disregard certain temporary income, such as federal stimulus payments or hazard pay.

~~(8)~~ (7)

Verification of household countable earned and unearned income: Clients applying for child care assistance benefits are required to verify household countable earned and unearned income by providing current [proof] documentation of income for [all members of the household], biological parents, stepparents, and legal guardians of the child(ren) for whom child care assistance is sought, living in the household, who receive such income. [Self-employed clients must show proof of business expenses in order for the countable self-employment income to be determined.] A self-employed individual who does not show a profit that is equal to federal minimum wage times the amount of hours needed per week within 24 months from

the start date of receiving child care assistance will be evaluated by the child care assistance supervisor, at which point services may be reduced or discontinued.

D. Residency requirement: An applicant of child care assistance and a child care provider must be a resident of the state of New Mexico. Proof of residency is required.

E. Citizenship: Any child receiving child care assistance must be a citizen or legal resident of the United States; or a qualified [alien] immigrant as [determined by applicable federal laws] defined by the United States Department of Health and Human Services, Administration for Children & Families, Office of Child Care. [If a child is determined to be a citizen of the United States or a qualified alien, as approved by the New Mexico human services department, the child will be eligible provided all other eligibility requirements are met regardless of the citizenship or alien status of the child's parent or parents.]

F. Age requirement: Child care benefits are paid for children between the ages of six weeks up to the day in which the child turns 13 years old. Eligibility determinations made prior to a child turning 13 years old may be granted a 12-month eligibility period or a lesser period of time as determined by the department for [EPS or] at-risk child care.

G. Special supervision: Children between the ages of 13 and 18 who are under the supervision of a court of law, or who are determined by a medical or treatment professional to require supervision.

H. Children enrolled in head start, kindergarten, school or other programs: Child care benefits are not paid during the hours that children are attending head start, kindergarten, New Mexico pre-K, school or other programs.

[G. Failure to use authorized child care: If authorized child care has not been used for five consecutive scheduled days without a reason such as illness, sudden

death, or family medical emergency, payment may discontinue to the provider and the client will remain eligible for the remainder of their eligibility period. The provider or the client shall notify the department within three business days after the fifth day of non-attendance. Upon receiving notice from the provider or the client within the prescribed timeframe, the department shall issue a notice to the client stating when the client's placement will be closed and shall simultaneously issue a notice to the provider stating when the last date of payment will be made. Providers shall be paid through the 14th day following the first day of nonattendance provided that the department was notified within the timeframe prescribed above. If the department is not notified within the prescribed timeframe, the provider shall be paid through the last date of attendance.]

[H. Change in Provider:

If the parent or guardian changes providers, the provider shall be paid through the 14th day following the first day of nonattendance provided that the department was notified within the timeframe prescribed. If the department is not notified within the prescribed timeframe, the provider shall be paid through the last date of attendance.]

I. Work/education requirement: Child care benefits are paid only for families who are working, attending school or participating in a job training or educational program and who demonstrate a need for care during one or more of these activities. Clients who are receiving TANF are required to participate in a TANF-approved activity unless they are exempt by TANF. Clients and caseworkers shall negotiate a reasonable amount of study and travel time during the application or recertification process. [Child care will not be paid during the hours in which a parent or guardian is attending graduate or post-graduate courses. Child care benefits for clients who are preparing for the acquisition of a GED shall be limited

to one year.] The department may, in its discretion, exempt a client or applicant from any eligibility requirement upon submission of a demonstration of incapacity.

[J.] — Periods of absences: A household member may be absent from the home and will be considered as living in the home and be counted in the household composition as long as the absent household member plans to return to the home. Any parent or guardian who remains in the home must be working, attending school, or participating in a job training or educational program. Temporary absence may include, but are not limited to, attending school, working, training, or military service.]

[K.] — Special supervision: Child care benefits may be provided to children between the ages of 13 and 18 who are under the supervision of a court of law, or who are determined by a medical professional to require supervision because of a diagnosis of a physical, emotional, or neurobiological impairment, under an IEP or who are physically or mentally incapable of caring for themselves. Children with special needs are prioritized relative to budget availability.]

[L.] — Children enrolled in head start, kindergarten, school or other programs: Child care benefits are not paid during the hours that children are attending head start, kindergarten, New Mexico pre-K, school or other programs.]

[8.15.2.11 NMAC - Rp, 8.15.2.11 NMAC, 10/1/2016, A/E, 9/18/2020]

8.15.2.12

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

must provide [proof] documentation of income, or proof of school enrollment. Changes in income, household size, employment, training or educational status are noted in the client's record. Co-payment, if applicable, is re-determined at the time of recertification. A 12-month certification period will be granted in accordance with eligibility requirements outlined in Subsection B. of 8.15.2.11 NMAC.

[8.15.2.12 NMAC - Rp, 8.15.2.12 NMAC, 10/1/2016; A, 10/1/2019, A/E, 9/18/2020]

8.15.2.13 CLIENT

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

A. Co-payments:

Co-payments are paid by all clients receiving child care assistance benefits, except for [CPS child care;] at-risk child care[;] and qualified grandparents or legal guardians, [as defined in Paragraph (2) of Subsection C of 8.15.2.11 NMAC]. [In the case of a public health emergency, the department secretary may waive co-payments for families receiving child care. The department will pay providers the client's approved rate, to include required co-payments, during the time of the public health emergency.] Co-payments are determined by income and household size. The co-payment schedule is published yearly at [<https://cyfd.org/child-care-services>] <https://www.nmeccd.org/child-care-assistance/>. In the case of an emergency, or under extenuating circumstances, the department secretary may waive co-payments for families receiving child care, during which period, the department will pay providers the client's approved rate, including required co-payments.

B. Co-payments described in Subsection A of 8.15.2.13 NMAC, are used for determining the base co-payment for the first eligible child. The formula for [calculating]

determining the co-payment amount based on the co-payment schedule for the first full time child is (low end of the monthly income bracket on the co-payment schedule ÷ 200 percent of annual federal poverty level for household size) X (low end of the monthly income bracket on the co-payment schedule) X 1.1 = monthly copayment for first full time child. Base co-payments for each additional child are determined at one half of the co-payment for the previous child.

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

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

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

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

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

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

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

D. Clients pay co-payments directly to their child care provider and must remain current in their payments. A client who does not pay co-payments may be subject to sanctions.

E. The co-payment for a child shall not exceed the monthly provider reimbursement rate. If this situation arises, the co-payment may be reduced in the amount by which it exceeds the monthly provider reimbursement rate.

F. In-home providers: Parents or legal guardians who choose to use an in-home provider become the employer of the child care provider and must comply with all federal and state requirements related to employers, such as the payment

of all federal and state employment taxes and the provision of wage information. Any parent or legal guardian who chooses to employ an in-home provider releases and holds the department harmless from any and all actions resulting from their status as an employer. Payments for in-home provider care are made directly to the parent or legal guardian.

G. Notification of changes: [Clients must notify the department of changes that affect the need for care, which include but are not limited to any non-temporary change in activity, or household members moving in or out, within five business days of the change. Clients who do not comply with this requirement may be sanctioned.] Clients must provide notification of changes via fax, e-mail, or telephone that affect the need for care to their local child care assistance office.

(1) A client must notify the department of any non-temporary change in activity or changes to household composition. Notifications must be provided within 14 calendar days of the change.

(2) A client who changes a provider must notify the department and the current provider 14 calendar days prior to the expected last day of enrollment. If this requirement for notification is met by the client, the current provider will be paid through the 14th calendar day. If this notification requirement is not met, the current provider will be paid 14 calendar days from the last date of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases. The client will be responsible for payment to the new provider beginning on the start date at the new provider and until the final date of payment to the former provider.

(3) If the client has not used the authorized provider for 14 consecutive calendar days, the child will be disenrolled from that provider and the client will remain eligible for the remainder of their eligibility period.

(4) Clients who do not comply with this requirement may be sanctioned.

[H.] Required application with New Mexico human services department's child support enforcement division (CSED):

(1) When one or both of the child's parents are absent from the home, the client shall apply for child support through CSED within 12 months of initial application with the child care assistance program:

(2) The following exceptions include but are not limited to: the client is receiving TANF; the client is already receiving child support; the client is receiving financial support, including but not limited to housing, clothing, food, transportation and funds, from the non-resident parent; there is a joint custody agreement and neither parent is ordered to pay support; parental rights have been terminated; the parent is a foster parent to the child; the parent is an adoptive parent and provides proof of a single parent adoption; at-risk child care; a parent is temporarily out of the home and is still considered part of the household; the client is a teen parent; the client is a grandparent; guardian; parent is deceased or when good cause exists:

(3) Good cause for refusal to apply may be granted when such application is not in the best interest of the child or parent, including but not limited to the following circumstances:

(a) there is possible physical or emotional harm to the child, parent or guardian;

(b) the child was conceived as a result of incest or rape;

(c) legal proceedings for adoption of the child are pending before a court; or

(d) the client is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption:

(4) The applicant or recipient who makes a

claim for good cause shall supply written documentation to establish the claim. The caseworker shall not deny, delay, or discontinue subsidized child care benefits pending a determination of good cause if the applicant or recipient has complied with the requirements to furnish information.

(5) If the client is not exempted from applying with CSED and has not applied within the required timeframe, the client's case will be closed.]

[8.15.2.13 NMAC - Rp, 8.15.2.13 NMAC, 10/1/2016; A, 10/1/2019; A/E, 03/16/2020; A, 8/11/2020, A/E, 9/18/2020]

8.15.2.14 CASE SUSPENSIONS AND CLOSURES:

A. A case may be suspended by the client if child care benefits are not being utilized for a period not to exceed three months with payment being discontinued to the provider. The client will remain eligible for child care assistance through the remainder of their eligibility period.

B. If the client experiences a non-temporary change of activity including the loss of employment, no longer attending school, or no longer participating in a job training or education program, the client will be granted a three-month grace period in which the client will remain eligible. This three-month grace period is for the purpose of giving the client an opportunity to secure new employment or another approved activity. The three-month grace period will start on the date of required notification for the non-temporary change of activity pursuant to section 8.15.2.13 G NMAC.

C. A case will be closed if the following conditions apply:

(1) any non-temporary change in activity and failure to obtain an activity after the three-month grace period;

(2) income in excess of two hundred and fifty percent federal poverty level [or eighty-five percent state median income, whichever is greater];

of state;
 (3) moving out
 to recertify at the end of approved
 eligibility period;
 (4) failing
 option of the client;
 (5) at the
 (6) being
 disqualified from participation in the
 program; or
 (7) failure to
 use authorized child care.
 [8.15.2.14 NMAC - Rp, 8.15.2.14
 NMAC, 10/1/2016]

8.15.2.15 PROVIDER REQUIREMENTS: Child care providers must abide by all department regulations. Child care provided for recreational or other purposes, or at times other than those outlined in the child care placement agreement, are paid for by the client.

A. All child care providers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. Beginning July 1, 2012, child care programs holding a 1-star license are not eligible for child care assistance subsidies. The department honors properly issued military child care licenses to providers located on military bases and tribal child care licenses properly issued to providers located on tribal lands.

B. Signed child care placement agreements (including electronically signed child care placement agreements) must be returned by hand delivery, mail, email, fax, or electronic submission to the local child care office within 30 calendar days of issuance. Failure to comply may affect payment for services and the child care placement agreement will be closed. The department will provide reasonable accommodations to allow a client or provider to meet this requirement.

~~[B.]~~ **C.** Child care providers collect required co-payments from clients and provide child care

according to the terms outlined in the child care placement agreement.

~~[C.]~~ **D.** Child care providers must notify the department within three business days after the fifth day of non-attendance if the child is disenrolled or is absent for five consecutive scheduled days. Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided by Subsection G of 8.15.2.11 NMAC
Notification of changes: Child care providers must notify the department if a child is disenrolled or child care has not been used for 14 consecutive calendar days without notice from the client.

(1) If the above notification was met, the provider will be paid through the 14th calendar day following the first date of nonattendance.

(2) If a provider does not notify the department of disenrollment or of non-use for 14 consecutive calendar days, the provider will be paid through the last date of attendance.

(3) If a child was withdrawn from a provider because the health, safety, or welfare of the child was at risk, as determined by a substantiated complaint against the child care provider, payment to the former provider will be made through the last day that care was provided.

(4) Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided in 8.15.2.21 NMAC.

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

(1) Providers are not allowed to charge clients a registration/educational fee for any

child who is receiving child care assistance benefits as listed under 8.15.2 NMAC. The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care.

(2) In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families.

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

~~[E.]~~ **F.** Under emergency circumstances, when CYFD has reason to believe that the health, safety or welfare of a child is at risk, the department may immediately suspend or terminate assistance payments to a licensed or registered provider. The child care resource and referral will assist clients with choosing another CYFD approved provider.

~~[F.]~~ **G.** Providers who are found to have engaged in fraud relating to any state or federal programs, or who have pending charges for or convictions of any criminal charge related to financial practices will not be eligible to participate in the subsidy program. [8.15.2.15 NMAC - Rp, 8.15.2.15 NMAC, 10/1/2016; A, 10/1/2019]

8.15.2.16 DEPARTMENT RESPONSIBILITIES:

~~[A.]~~ The department will initiate mid-certification communication with the client to provide outreach and consumer education with a case management approach and coordination of services to support families.]

~~[B.]~~ **A.** The department pays child care providers who provide child care services to department clients in a timely manner.

~~[C.]~~ **B.** Child care assistance workers perform all casework functions in a timely manner, including the processing of payments and notifications of case actions.

~~[D.]~~ **C.** Child care assistance workers will perform all eligibility and recertification determinations within 10 working days upon receipt of all required documentation from the client.

~~[E.]~~ **D.** Child care assistance workers notify clients and providers in writing of all actions, which affect services, benefits, or provider payments or status, citing the applicable policy.

~~[F.]~~ **E.** Child care assistance workers determine eligibility for all child care assistance programs except for TANF. Eligibility for TANF is determined by the New Mexico human services department.

~~[G.]~~ **F.** Child care assistance workers must inform parents or legal guardians of their right to choose their child care providers and provide information on how to look for quality child care in a provider.

~~[H.]~~ **G.** The department and other organizations approved by the department provide information and orientation programs regarding child care assistance benefits, quality child care issues, and the impact of child care on the child's physical, mental, social and emotional development to parents or legal guardians and providers.

~~[I.]~~ **H.** The department and other organizations approved by the department offers provider education programs consisting of training on program participation requirements, parent or legal guardian and provider responsibilities, licensing and registration requirements, payment issuance and background check processing, the competency areas for child care providers as outlined by the office of child development,

or the department, the importance of providing quality child care, and other topics of interest to parents or legal guardians and providers. These education programs count toward the continuing education hours required of providers by registration and licensing regulations.

[8.15.2.16 NMAC - Rp, 8.15.2.16 NMAC, 10/1/2016, A/E, 9/18/2020]

8.15.2.17 PAYMENT FOR SERVICES:

The department pays child care providers on a monthly basis, according to standard practice for the child care industry. Payment is based upon the child's enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. A signed child care placement agreement must be returned to the department for payment to be issued to the provider. The following [describes] circumstances under which the department may close placements or discontinue payment [when placements may be closed and payment discontinued] at a time other than the end of the month:

A. When the child care placement agreement expires during the month, or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. ~~[Upon a change of provider the client and former provider have three days after the fifth day of nonattendance to notify the department. If this requirement for notification was met, the provider will be paid through the 14th day following the first date of nonattendance. If notification requirement is not met, the provider will be paid through the last date of attendance. The agreement with the new provider shall become effective when payment to the previous provider ceases. If the client notifies~~

~~the department of the change in providers fewer than 14 days before the change will take place or after the change has taken place, the client is responsible for payment to the new provider beginning on the start date at the new provider and continuing up until the final date of payment to the former provider, as described above. Payment to the former provider will be made through the last day that care is provided if the child is withdrawn from the provider because the health, safety or welfare of the child is at risk, as determined by a substantiated complaint against the child care facility.]~~ Payment for notification of changes:

(1) If a client fails to notify the department within 14 calendar days of their expected last day of enrollment, the department will pay the provider 14 calendar days from the last day of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases.

(2) If the provider notifies the department of a child who is disenrolled or child care has not been used for 14 consecutive calendar days, the provider will be paid through the 14th calendar day following the last day of attendance.

(3) If a provider does not notify the department of disenrollment or of nonattendance for 14 consecutive calendar days, the provider will be paid through the last date of attendance.

(4) If a child was withdrawn from a provider because the health, safety, or welfare of the child was at risk, as determined by a substantiated complaint against the child care provider, payment to the former provider will be made through the last day that care was provided.

C. The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf

of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care. The registration/educational fee will discontinue when a placement closes as a result of a client changing providers, a provider discontinuing services, a child care placement agreement expiring, or a provider’s license being suspended or expiring.

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

E. The department pays for care based upon the following units of service:

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

F. Hours of care shall be rounded to the nearest whole number.

G. Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age
\$720.64	\$589.55	\$490.61	\$436.27
Licensed group homes (capacity: 7-12)			
Infant	Toddler	Pre-school	School-age
\$586.07	\$487.11	\$427.13	\$422.74
Licensed family homes (capacity: 6 or less)			
Infant	Toddler	Pre-school	School-age
\$566.98	\$463.50	\$411.62	\$406.83
Registered homes, [and] in-home child care, and FFN			
Infant	Toddler	Pre-school	School-age
\$289.89	\$274.56	\$251.68	\$251.68

H. The department pays a differential rate according to the license or registration status of the provider, national accreditation status of the provider if applicable, and star level status of the provider if applicable. In the case of a public health emergency, the department secretary may approve a differential rate be paid to licensed providers.

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

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

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

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

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

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

2+ Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$88.00	\$88.00	\$88.00	\$88.00
3 Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$100.00	\$100.00	\$100.00	\$100.00
4 Star FOCUS Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$180.00	\$180.00	\$180.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$250.00	\$250.00	\$250.00	\$250.00
4 Star FOCUS Child Care Centers			
Infant	Toddler	Pre-school	School-age
\$280.00	\$280.00	\$250.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Child Care Centers			
Infant	Toddler	Pre-school	School-age
\$550.00	\$550.00	\$350.00	\$250.00

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

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

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

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

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

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

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

P. Payments are made to the provider for the period covered in the child care placement agreement or based on the availability of funds. [8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 10/1/2016; A, 10/1/2019, A/E, 03/16/2020; A, 8/11/2020]

8.15.2.18 UNDER PAYMENTS: If a client or provider is underpaid for child care services, the department may issue a one-time payment within 15 calendar days of the department’s knowledge or receipt of notification. Notification of the department by the client or provider must occur within ~~[90 calendar days]~~ three months of the occurrence of alleged underpayment. [8.15.2.18 NMAC - Rp, 8.15.2.18 NMAC, 10/1/2016]

8.15.2.19 OVER PAYMENT AND RECOUPMENT: If a provider receives payment for services for which he/she is not entitled, or a client receives benefits on behalf of their child for which he/she is not entitled, and this results in an overpayment, the child care worker will initiate recoupment procedures unless the early childhood services director deems otherwise in exceptional circumstances. Recoupments will only be sought from providers. The department will not seek a recoupment from a client unless substantiated fraud by that client

has been determined. The client or provider must repay the amount of the overpayment to the department within 30 calendar days of notification, unless the department determines that the amount is so large that it cannot be paid in one lump sum. In this case, the department may allow the client or provider to repay the amount over a payment period, negotiated between the client and the department, usually not to exceed four months. Failure to pay the overpayment within 30 days of the notice or failure to make regular payments under an agreed upon payment schedule may result in sanctions including termination of benefits or referral of the account to a collection agency or legal action. [8.15.2.19 NMAC - Rp, 8.15.2.19 NMAC, 10/1/2016, A/E, 9/18/2020]

8.15.2.20 FRAUD: The purposeful misrepresentation of facts relating to eligibility for benefits, or knowingly omitting information that affects eligibility is fraud and appropriate sanctions, including recoupment, termination of benefits, and referral to law enforcement, are initiated by the department. Fraudulent cases are reported to the department, which will take such action as is deemed necessary. The case remains open at the same rate of benefits until the investigation is concluded and disposition is determined. In cases where substantiated fraud has been determined, the department may disqualify a client or provider until their debt has been paid in full. [8.15.2.20 NMAC - Rp, 8.15.2.20 NMAC, 10/1/2016]

8.15.2.21 SANCTIONS: ~~[If a client or provider fails to meet programmatic requirements that affect benefits and result in an overpayment, sanctions]~~ Sanctions may be imposed according to the severity of the infraction as determined by the department ~~[and]~~ as detailed below.

A. Providers or clients who fail to make timely payments in the case of recoupment of overpayments may be referred to a collection agency.

B. ~~[Providers]~~ The department may initiate the recoupment process against any provider who fail to report in a timely manner that a child ~~[is not]~~ has not been in attendance for ~~[five]~~ 14 consecutive calendar days ~~[- scheduled days will have the payment recoupment process initiated].~~

C. Providers who allow their registration or license to lapse without renewal will not be paid during the periods for which the license or registration is not current. Providers who lose national accreditation status or lose eligibility for payment at any level of reimbursement for failure to maintain the standards required to be paid at that level of reimbursement, will not be paid at that level of reimbursement beginning with the first day of the month during which the loss of accreditation or eligibility occurred. Payment recoupment will be sought for any period for which excessive benefits have been paid.

D. Clients who fail to notify the department of any non-temporary change of activity may be placed on conditional eligibility status up to one year on the following eligibility period. Any further violations within the conditional eligibility period may result in termination.

E. Clients who fail to pay co-payments may be disqualified until the co-payment is paid or until an agreement is made between the client and the provider to bring the co-payment current. ~~[The department assists the provider in collecting the co-payment only if the co-payment has been in arrears 30 calendar days or less.]~~ [8.15.2.21 NMAC - Rp, 8.15.2.21 NMAC, 10/01/2016]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION DIVISION**

**NOTICE OF PUBLIC HEARING
FOR PROPOSED RULEMAKING**

The State of New Mexico through the Oil Conservation Commission (OCC) hereby gives notice that the OCC will hold a public hearing to consider proposed rules to regulate the venting and flaring of natural gas from oil and natural gas production and gathering facilities. The public hearing will be held on-line and by telephone on January 4, 2021, at 9:00 a.m., and will be continued to the following day(s) if not completed.

Purpose of Proposed Rules. The proposed rules regulate the venting and flaring of natural gas from oil and natural gas production and gathering facilities.

Summary of Proposed Rules. The Oil Conservation Division (OCD) proposes to adopt two new rules and to amend three existing rules. The new rules are 19.15.27 NMAC, which establishes requirements for operators of oil and gas production facilities to report and reduce the venting and flaring of natural gas; and 19.15.28 NMAC, which establishes requirements for operators of natural gas gathering systems, including gathering pipelines, to report and reduce the venting and flaring of natural gas. The amended rules are 19.15.7 NMAC, to change the name of a form, add new forms, and provide instructions; 19.15.18 NMAC, to remove a provision requiring operators of production facilities an application to file an application to flare natural gas; and 19.15.19 NMAC, to remove two provisions regarding the venting of natural gas at production facilities.

Legal Authority. The proposed rules are authorized by the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, including Section 70-2-6 (authorizing the OCC to exercise

jurisdiction, authority, and control of and over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing the OCC to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), and Section 70-2-12 (enumerating the powers of the OCC and OCD). The public hearing is governed by the OCC's rule on rulemaking proceedings, 19.15.3 NMAC.

Availability of Proposed Rules.

The full text of the proposed rules is available on the OCD's website, <http://www.emnrd.state.nm.us/ocd>, or by contacting the OCC Clerk, Florene Davidson at florene.davidson@state.nm.us.

Written Comments. Any person may submit written comments on the proposed rules no later than January 8, 2021, at 5:00 p.m. by mail, email, or delivery to the OCC Clerk, Florene Davidson, 2nd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or florene.davidson@state.nm.us. To deliver written comments to the OCC Clerk, upon arrival at the building, call (505) 476-3200 ext. 1, and an OCC representative will come to the front door.

Scheduling Order. The OCC has adopted a procedural order, which can be viewed at <http://www.emnrd.state.nm.us/OCD/outreach.html>.

Public Hearing. The public hearing will be held online and by telephone on January 4, 2021, at 9:00 a.m., and will be continued to the following day(s) if not completed. The public hearing will be transcribed and recorded. To access the public hearing on-line via the Webex platform and by telephone, see the event address for the relevant day of the hearing at <http://www.emnrd.state.nm.us/OCD/outreach.html>.

Public comment will be accepted on January 4, 8:30 a.m. to 5:00 p.m., and

on each subsequent day of the hearing from 8:30-9:00 a.m. and 4:30-5:00 p.m. The procedure for persons who wish to present public comment can be viewed at <http://www.emnrd.state.nm.us/OCD/outreach.html>.

Proposed Modifications, Technical Testimony, and Cross Examination.

A person who intends to propose a modification to the proposed rules, to present technical testimony at the public hearing, or to cross-examine witnesses at the public hearing must file six copies of a Pre-Hearing Statement conforming to the requirements of 19.15.3.11(B) NMAC, no later than December 17, 2021, at 5:00 p.m. The Pre-Hearing Statement must be filed by mail, email, or delivery to the OCC Clerk, Florene Davidson, 2nd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, florene.davidson@state.nm.us. To deliver a Pre-Hearing Statement to the OCC Clerk, upon arrival at the building, call (505) 476-3200 ext. 1, and an OCC representative will come to the front door. A person filing a Pre-Hearing Statement who intends to use projection equipment must contact the OCC Clerk no later than seven business days prior to the public hearing. A person who presents technical testimony at the public hearing will be subject to cross-examination by the members of the OCC, the OCC's counsel, and other persons who filed Pre-Hearing Statements. Pre-Hearing Statements, including the exhibits that a party plans to offer as evidence at the hearing, can be viewed at <http://www.emnrd.state.nm.us/OCD/outreach.html>.

Oral Comments. A person who did not file a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement at the public hearing. A person who wants to present non-technical testimony or make an unsworn statement at the public hearing must inform the hearing examiner. A person who presents non-technical testimony will be subject to cross-examination by

the members of the OCC, the OCC's counsel, and other persons who filed Pre-Hearing Statements. A person may offer exhibits at the public hearing if the exhibits are relevant to the proposed rules and the person files the original exhibit and five copies conforming to the requirements of 19.15.3.12(C) NMAC prior the end of the public hearing. A person may file exhibits by mail, email, or delivery to the OCC Clerk, Florene Davidson, 2nd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, florene.davidson@state.nm.us. To deliver exhibits to the OCC Clerk, call (505) 476-3200 ext. 1, and an OCC representative will come to the front door.

Persons with Disabilities. A person with a disability who needs a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service, such as a summary or other accessible form of document, in order to attend or participate in the public hearing, must contact the OCC Clerk, Florene Davidson, at (505) 476-3458 or florene.davidson@state.nm.us, or through the New Mexico Relay Network at 1-800-659-1779, no later than January 5, 2021.

Technical Information. OCD consulted the following technical information for the proposed rules, which is available on OCD's website: New Mexico Energy, Minerals & Natural Resources Department and New Mexico Environment Department, *Report of the Methane Advisory Panel*, Fall 2019.

Bureau of Business and Economic Research, *Estimating Revenue Potential for Gas Venting and Flaring on New Mexico State Lands*, April 2020.

U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, *Oil and Natural Gas Sector: Hydraulically Fractured Oil Well Completions and Associated Gas During Ongoing Production*, April 2014.

U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, *Oil and Natural Gas Sector: Liquids Unloading Processes*, April 2014.

U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, 40 C.F.R. 98, *Subpart W – Petroleum and Natural Gas Systems*, 98.233 – *Calculating GHG Emissions*, October 2015.

U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, 40 CFR Part 60, *Subpart OOOOa, Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources*, June 2016.

U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, *Methane Challenge and Natural Gas STAR Programs, Improving Flash Gas Emission Calculations from Storage Tanks*, February 2014.

U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, *Methane Challenge and Natural Gas STAR Programs, Partner Reported Opportunity (PRO), Fact Sheet 505, Recover Gas from Pipeline Pigging Operations*, Undated.

U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, *Methane Challenge and Natural Gas STAR Programs, Lessons Learned, Using Pipeline Pump-down Techniques to Lower Gas Line Pressure Before Maintenance*, 2006.

U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, *Methane Challenge and Natural Gas STAR Programs, PRO Fact Sheet 403, Use Inert Gas and Pigs to Perform Pipeline Purging*, 2011.

U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, *Oil and Natural Gas Sector Hydraulically Fractured Oil Well Completions and Associated Gas*

during Ongoing Production, April 2014.

U. S. Environmental Protection Agency, Office of Air Quality Planning and Standards, *Chapter 7 – Flares*, December 1995.

Bureau of Land Management, 43 C.F.R. 3170 – *Onshore Oil and Gas Production*. October 2019.

U.S. Department of Energy, Office of Oil and Natural Gas, Natural Gas Flaring and Venting, *State and Federal Regulatory Overview, Trends and Impacts*, June 2019.

U.S. Energy Information Administration, *Natural Gas Gross Withdrawals and Production Database*, March 2020.

U.S. Energy Information Administration, *Today in Energy: "North Dakota aims to reduce natural gas flaring"*, October 2014.

U.S. Energy Information Administration, *Natural Gas Weekly Update: "North Dakota provides regulatory guidance to reduce natural gas flaring"*, February 2020.

Colorado Oil and Gas Commission, *Aesthetic and Noise Control Regulations*, 800 Series, September 2014.

Colorado Oil and Gas Commission, *Safety Regulations*, 600 Series, January 2020.

Colorado Oil and Gas Commission, *E&P Waste Management*, 900 Series, January 2020.

Colorado Oil and Gas Commission, *Draft Amendments to E&P Waste Management*, 900 Series, June 2020.

Colorado Oil and Gas Conservation Commission, *Draft Statement of Basis, Specific Statutory Authority, and Purpose, Cause No. 1R Docket No. 200600115 800/900/1200*, June 2020.

Colorado Oil and Gas Conservation Commission, *Draft Amendments to Environmental Impact Prevention*, 900 Series, May 2020.

Colorado Oil and Gas Conservation Commission, *Draft Amendments to Environmental Impact*

Prevention, 900 Series, October 2020.

Colorado Oil and Gas Conservation Commission, *Flowline Regulations, 1100 Series*, January 2020.

North Dakota Industrial Commission, *Order No. 24665*, July 2014.

North Dakota Industrial Commission, *Required Hearing Exhibit – Gas Capture Plan*, September 2014.

North Dakota Industrial Commission, *APD Gas Capture Plan Required*, October 2014.

North Dakota Department of Natural Resources, *Oil and Gas Update*, October 2018.

North Dakota Industrial Commission, *Frequently Asked Questions Version 1121018*, Undated.

North Dakota Industrial Commission, *NDIC Order 24665 Policy / Guidance Version 112018*.

North Dakota Industrial Commission, *Graph: North Dakota Monthly Gas Captured, 2005-2017*.

Texas Railroad Commission, *Gas to be Measured and Surface Commingling of Gas, Chapter 3, Rule 3.27*, February 2019.

Texas Railroad Commission, *Pipeline Permits Required, Chapter 3, Rule 3.70*, January 2020.

Texas Railroad Commission, *Form T-4, Application for Permit to Operate a Pipeline in Texas (Natural Gas Pipelines)*, February 2016.

Alberta Energy Regulator, *Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting*, May 2020.

Alberta Energy Regulator, *Directive 017: Measurement Requirements for Oil and Gas Operations*, May 2020.

British Columbia Oil and Gas Commission, *Flaring and Venting Reduction Guideline, Version 5.1*, May 2018.

International Energy Agency, *Methane Emissions from Oil and Gas*, June 2020.

International Energy Agency, *Methane Tracker Report*, July 2019.

United Nations, Climate and Clean Air Coalition, Oil and

Gas Methane Partnership, *Technical Guidance Document Number 9 – Casinghead Gas Venting*, 2015.

United Nations, Climate and Clean Air Coalition, Oil and Gas Methane Partnership, *Technical Guidance Document Number 8 – Well Venting/Flaring During Well Completion For Hydraulically Fractured Gas Wells*, 2015.

United Nations, Climate and Clean Air Coalition, Oil and Gas Methane Partnership, *Technical Guidance Document Number 7 – Well Venting for Liquids Unloading*, 2015.

United Nations, Climate and Clean Air Coalition, Oil and Gas Methane Partnership, *Technical Guidance Document Number 6 – Unstabilized Hydrocarbon Liquid Storage Tanks*, 2015.

GaffneyCline, *Tackling Flaring: Learnings from Leading Permian Operators*, June 2020.

Shell Global Solutions, *Draft Flare Gas Rate Flow Rate and Composition Measurement Methodologies Evaluation Document*, 2003.

4C Environmental Conference, *Upstream Oil and Gas Emissions Calculations: Storage Tanks*, 2017.

Clearstone Engineering Ltd, *Technical Report: Guidelines on Vent and Flare Measurement*, 2008.

Methane Guiding Principles, *Policy Framework for Reducing Oil and Gas Methane Emissions*, Undated.

Methane Guiding Principles, *Synopses – Reducing Methane Emissions: Best Practice Guide*, 2020.

Methane Guiding Principles, *Reducing Methane Emissions: Best Practice Guide – Flaring*, Undated.

Methane Guiding Principles, *Reducing Methane Emissions: Best Practice Guide – Venting*, Undated.

ICF International, *Economic Analysis of Methane Reduction Potential from Natural Gas Systems*, 2016.

Energy and Environmental Research Center, *End-Use Technology Study – An Assessment of Alternative*

Uses for Associated Gas, November 2012.

Emerson, *The Engineer's Guide to Tank Gauging*, 2017 Edition.

GAME AND FISH DEPARTMENT

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission (“Commission”) will be hosting a virtual meeting and rule hearing on Friday, January 15, 2021 beginning at 9:00 a.m. For instructions on how to virtually attend this meeting, visit the Department’s website at <http://www.wildlife.state.nm.us/commission/webcast/>. The purpose of this meeting is to hear and consider action as appropriate on the following: presentation of proposed changes to the Importation Rule.

Synopsis:

The proposal is to amend the Importation rule, 19.35.7 NMAC, which will become effective February 9, 2021.

The proposed amendments will provide consistency in the level of review of importation applications for all taxa, including carnivores, remove the requirement for fish hatchery renovation and depopulation if a facility tests positive for *Renibacterium salmoninarum*, the causative agent of bacterial kidney disease, clarify testing requirements for the whirling disease pathogen in hatcheries, and minor formatting and clerical changes.

A full text of changes is available on the Department’s website at: www.wildlife.state.nm.us.

Interested persons may submit comments on the proposed changes to the Importation rule at dgf-importation.rule@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 5:00 p.m. on January 14, 2021. The final

proposed rule will be voted on by the Commission during a virtual public meeting on January 15, 2021. Interested persons may also provide data, views or arguments, orally or in writing, at the virtual public rule hearing to be held on January 15, 2021.

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

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

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

GAME AND FISH DEPARTMENT

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission ("Commission") will be hosting a virtual meeting and rule hearing on Friday, January 15, 2021, beginning at 9:00 a.m. For instructions on how to virtually attend this meeting, visit the Department's website at <http://www.wildlife.state.nm.us/commission/webcast/>. The purpose of this meeting is to hear and consider action as appropriate on the following: presentation of proposed changes to the Public Land User Stamp (Sikes Act) rule.

Synopsis:

The proposal is to repeal and replace the Public Land User Stamp (Sikes Act) rule, 19.34.6 NMAC, which will become effective April 1, 2021. The current Public Land User Stamp (Sikes Act) rule will expire on March 31, 2021.

The proposed new rule will include a renewal of the rule for an additional ten years, an update to interagency planning effort language in the rule, a requirement that 50% of the funds over a 5-year period be spent on projects that benefit fish, a reduction in the number of Citizen Advisory Committees, and an increase in the public land management stamp fee. A full text of changes will be available on the Department's website at: www.wildlife.state.nm.us.

Interested persons may submit comments on the proposed changes to the Public Land User Stamp (Sikes Act) rule at dgf-habitat-stamp-rule@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 8:00 a.m. on January 13, 2021. The final proposed rule will be voted on by the Commission during a virtual public meeting on January 15, 2021. Interested persons may also

provide data, views or arguments, orally or in writing, at the virtual public rule hearing to be held on January 15, 2021.

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

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

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

HEALTH, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed adoption of rule, 7.1.31 NMAC, "Statewide Health

Care Claims Database.” The public hearing will be held on January 6, 2021 at 9:30 am via Cisco Webex online, via telephone, and, comments will be received via email through the day of the hearing until 5:00 pm. The hearing is being held via internet, email and telephonic means due to the concerns surrounding Coronavirus and in accord with Governor Michelle Lujan Grisham’s Executive Order 2020-004, Declaration of a Public Health Emergency, and any subsequent executive orders, and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. This hearing will be conducted to receive public comment regarding the adoption of the proposed rule, 7.1.31 NMAC, concerning the creation and maintenance of a repository of healthcare claims data to be used to increase the quality and effectiveness of health care delivered in New Mexico. The adoption of the proposed rule will assist in making health care costs more transparent to the public; fulfilling the DOH’s legislative obligations in 24-14A-3, NMSA 1978, as part of the overall “Health Information System”, “created for the purpose of assisting the department, legislature and other agencies and organizations in the state’s efforts in collecting, analyzing and disseminating health information to assist: in the performance of health planning and policymaking functions, including identifying personnel, facility, education and other resource needs and allocating financial, personnel and other resources where appropriate; consumers in making informed decisions regarding health care; and in administering, monitoring and evaluating a statewide health plan.

By adopting this rule the Department proposes to establish a statewide all-payer claims database (“APCD”) to support transparent public reporting of health care information. An APCD is a repository of healthcare claims data that combines data from multiple payers, including Medicare, Medicaid, private insurers, dental

insurers, children’s health insurance, self-insured employer plans, and pharmacy plans. An APCD for New Mexico would provide the opportunity to aggregate health care data including outpatient visit, pharmacy, cost, and other data, for dissemination to the public, researchers, and others for the purposes of improving health care planning, quality, and consumer choice. The database should improve transparency to: assist patients, providers, and hospitals to make informed choices about care; enable providers, hospitals, and communities to improve by benchmarking their performance against that of others by focusing on best practices, enable purchasers to identify value, build expectations into their purchasing strategy, and reward improvements over time; and promote competition based on quality and cost. The database will systematically collect all medical claims for covered medical services, pharmacy claims, dental claims, member eligibility and enrollment data, and provider data with necessary identifiers from private and public payers, with data from all settings of care that permit the systematic analysis of health care delivery.

The legal authority authorizing the proposed amendment of the rule by the Department is at Subsection E of Section 9-7-6, NMSA 1978 and the Health Information System Act, 24-14A-1 et seq. NMSA 1978. A free copy of the full text of the proposed rule can be obtained from the Department’s website at <https://nmhealth.org/publication/regulation/>.

Any interested member of the public may attend the hearing and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: please call 1-408-418-9388. Your telephone comments will be recorded. To access the hearing via internet: please go to [Webex.com](https://webex.com); click the “Join” button; click the “Join a meeting” button; enter the following meeting number and password where indicated

on screen—Meeting number (access code): 146 647 3114# Meeting password: aJNBXEPt674; click the “OK” button. You may also provide comment via Chat during the live streaming.

Written public comments may also be submitted to the mailing address shown below. Please submit any written comments regarding the proposed rule to the attention of:

Kenneth Geter, Bureau Chief
Community & Health Systems
Epidemiology Bureau
Epidemiology and Response Division
New Mexico Department of Health
1190 S St. Francis Dr., Ste N1320
Santa Fe, NM 87505
Kenneth.Geter@state.nm.us
(505) 827-2694

Mailed written comments must be received by 5 pm MST on January 6, 2021. Written comments may also be submitted to the email address shown above through 5:00 pm MST on the date of the hearing. All written comments will be published on the agency website at <https://nmhealth.org/publication/regulation/> within 3 days of receipt, and will be available at the New Mexico Department of Health Office of General Counsel for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Sheila Apodaca by telephone at (505) 827-2997. The Department requests at least ten (10) days advance notice to provide requested special accommodations

PAROLE BOARD

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Parole Board gives notice that it will conduct a public rule hearing from 9 a.m. to 12 p.m. on Tuesday, December 29, 2020 via Zoom (link:

<https://zoom.us/j/96940735853?pwd=WVovMlpHVXI3Y0Y1MTlo dTRObGxWdz09>) due to concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan-Grisham's Executive Order 2020-004, Declaration of a Public Health Emergency, and the Public Health Emergency Order to Limit Mass Gatherings due to COVID-19. Continuous updates on hearing changes and Zoom information will be provided on the Parole Board's website. The purpose of the public hearing is to receive public input on the proposed new rules, 22.510.3 NMAC - Policy Statement Pertaining to the Granting of Parole, Denial of Parole, Revocation or Rescission of Parole, and to the Discharge of Parolee, and 22.510.17 NMAC, Parole Hearings for Youth Sentenced in Adult Court. At the hearing, the Parole Board will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will be accepted via mail, email or fax until 5 p.m. MDT on December 29, 2020.

Explanation of Purpose and Summary of Text

The purpose of repealing and replacing Subsection B of **22.510.3.8 NMAC, Policy Statement Pertaining to the Granting of Parole, Denial of Parole, Revocation or Rescission of Parole, and to the Discharge of Parolee**, is to qualify the application of Paragraph II and to explain that it excludes persons serving indeterminate life sentences who were under the age of eighteen (18) at the time their crime was committed. Further, the rule introduces the proposed new rule, 22.510.17, Parole Hearings for Youth Sentenced in Adult Court. The purpose of repealing and replacing the remainder of 22.510.3 NMAC is to update formatting of the rule to conform to current Commission of Public Records requirements.

The purpose of the proposed new rule **22.510.17, Parole Hearings for Youth Sentenced in Adult Court**, is to establish the procedures and processes the Parole Board must follow regarding parole determinations involving persons serving indeterminate life sentences who were under the age of eighteen (18) at the time their crime was committed. The rule is designed to ensure compliance with federal and state law while maintaining the Parole Board's continuing commitment to public safety and crime victim input in all proceedings. Under recent Supreme Court precedent, state parole boards must modify their proceedings for those serving adult sentences for crimes committed when they were under eighteen (18) to ensure that such persons have a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." In accordance with this precedent, the rule outlines specific considerations the Parole Board must make regarding a person's youth at the time of the offense, as well as rehabilitative efforts the inmate has made during their incarceration. In furtherance of this precedent, the rule expands procedural safeguards to this limited class of offenders, including access to counsel and adequate notice. The rule does not change the timing of eligibility for parole from an indeterminate life sentence, which remains at thirty (30) years (*see* NMSA 1978, Section 31-21-10). The rule provides a definitions list for both unique and frequently used terms throughout the rule, such as "aggravating factor," "mitigating factor," and "experts." Additionally, pursuant to NMSA 1978, Section 31-21-25, the rule protects the rights of crime victims to be present and participate in all parole hearings. The rule will impact a narrow class of offenders within the New Mexico Corrections Department. At the time of the initiation of this rulemaking process, twenty-seven (27) people are serving indeterminate life sentences for crimes committed when they were under the age of eighteen (18). Of

those, two (2) are currently eligible for parole.

Statutory Authorization(s): Paragraph (8) of Subsection B of Section 31-21-25 NMSA 1978.

Technical information used as a basis for the proposed rule(s) may be found on the Parole Board's website at <https://cd.nm.gov/divisions/parole-board/>.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to Cisco McSorley, New Mexico Parole Board, 45 Penitentiary Road, Santa Fe, N.M., 87508, by email to cisco.mcsorley@state.nm.us, or by fax to (505) 827-8380. All written comments must be received no later than 5 p.m. (MDT) on Tuesday, December 29, 2020. The Parole Board encourages the early submission of written comments. The public comment period is from November 24, 2020, to 5 p.m. MDT on December 29, 2020.

The Parole Board will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Copies of the repealed rule and proposed new rule may be accessed on the Parole Board's website at <https://cd.nm.gov/divisions/parole-board/>, or may be obtained from Cisco McSorley at (505) 827-8825 during regular business hours.

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 Cisco McSorley at (505) 827-8825 as soon as possible before the date set for the public hearing. The Parole Board requires at least ten (10) days' advance notice to provide any special accommodations requested.

**PRIVATE
INVESTIGATIONS
ADVISORY BOARD**

**NOTICE OF PROPOSED
RULEMAKING**

The Regulation and Licensing Department (Department) Private Investigations Advisory Board will hold a rule hearing on 30, December, 2020 at 9:00 a.m. The rule hearing will be held via Cisco WebEx, please use the following link:

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e96e3fc2463ed163d46f1fb9b10f11bb8>

To join the meeting by phone: 1-415-655-0002 United States Toll

Access Code: 146 155 0413

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

- 16.48.1 NMAC – General Provisions
- 16.48.2 NMAC – Requirements for Licensure
- 16.48.3 NMAC – Standards of Practice
- 16.48.4 NMAC – Mandatory Firearms Training
- 16.48.5 NMAC – Fees
- 16.48.6 NMAC – Continuing Education
- 16.48.7 NMAC – License Renewal, Inactive Status and Reinstatement
- 16.48.8 NMAC – Licensure for Military Service Members, Spouses and Veterans

On November 24, 2020 you may obtain and review copies of the proposed changes and public comments, by going to the Board’s website at: http://www.rld.state.nm.us/boards/Private_Investigations_Forms_and_Applications.aspx or contact the Boards and Commissions Division at (505) 690-5032

The Department will begin accepting public comments on the proposed amendments beginning November 24, 2020. Please submit written comments on the proposed changes to

Austin Basham, Board Administrator, via electronic mail at: pipolygraph@state.nm.us, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504 no later than 28, December, 2020. Comments received prior to the rule hearing will be posted to the RLD website at: http://www.rld.state.nm.us/boards/Private_Investigations_Members_and_Meetings.aspx. Persons will also be given the opportunity to present their comments at the rule hearing.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Austin Basham, Board Administrator (505) 690-5032.

Statutory Authority: Legal authority for this rulemaking may be found in the Private Investigations Act, Sections 61-27B-1 through 62-27B-36 NMSA 1978, which among other provisions, specifically authorizes the Department to “adopt and enforce rules necessary to carry out the provision of the Private Investigations Act, including establishing professional ethical standards.” Section 61-27B-5(C) NMSA 1978.

Summary of Proposed Changes:

16.48.1 NMAC – General Provisions

Added and clarified definitions, made corrections to definitions section to conform to the requirements of the State Rules Act, Section 14-4-5.7 NMSA 1978.

16.48.2 NMAC – Requirements for Licensure

Amends the title of the rule, Part 2, to include that the rule applies to licensure and registrations, changes required documentation for proof of age; removes private investigators and private patrol operators from surety bond requirements; revised sections related to fingerprinting for background investigations to comply with 61-27B-34 NMSA 1978, effective on July 1, 2020; revised

the rule to require a Department approved curriculum for security guard level one, level two, and level three training; revises requirements for psychological evaluations for level three applicants; revised instructor certification requirements; requires update of instructor certifications every four years; requires instructors to complete four hours of continuing education specific to instructor development; removes the special event permit requirements as they are duplicative to Section 61-27B-19 NMSA 1978; and revised the rule to conform to the requirements in Section 61-1-35 NMSA 1978, effective May 20, 2020.

16.48.3 NMAC – Standards of Practice

Clarifies that alcoholic beverages shall not be consumed by any licensee or registrant while on duty; makes grammatical corrections.

16.48.4 NMAC – Mandatory Firearms Training

Clarifies requirements for mandatory firearms training and requires use of a form issued by the Department to show compliance.

16.48.5 NMAC – Fees

Makes corrections to the entity where fees are payable.

16.48.6 NMAC – Continuing Education

Clarifies the definition of “renewal period” and adds private patrol operators to the requirement to complete four hours of continuing education.

16.48.7 NMAC – License Renewal, Inactive Status and Reinstatement

Amends the title of the rule, Part 7 to reference that the rule applies to renewal of licenses and registrations; requires all applications for licensure or registration to have instructions for completion of the renewal process; revises the rule to remind licensees and registrants that they will receive a courtesy notice via electronic mail, ultimately they will be responsible for timely renewal; revises requirements

for reinstatement, inactive licensure or registration.

16.48.8 NMAC – Licensure for Military Service Members, Spouses and Veterans

Amends Part 8 to comply with the requirements set out in 61-1-34 NMSA 1978, effective July 1, 2020.

**PUBLIC EDUCATION
DEPARTMENT**

**NOTICE OF PROPOSED
RULEMAKING**

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing on Wednesday, December 30, 2020 from 10 a.m. to 12 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501. The purpose of the public hearing is to receive public input on the proposed amendment to 6.20.2 NMAC, Governing Budgeting and Accounting for New Mexico Public Schools and School Districts. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text

The purpose of the proposed amendment of **6.20.2 NMAC, Governing Budgeting and Accounting for New Mexico Public Schools and School Districts**, is to establish the requirements for calculating funding of program units under the save harmless provision for a school district or charter school with fewer than 200 students.

Statutory Authorization(s):

Sections 9-24-8, 22-2-1, 22-2-2, and 22-8-5 NMSA 1978.

No technical information served as a basis for this proposed rule change.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to John Sena, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 121 Santa Fe, New Mexico 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520. All written comments must be received no later than 5 p.m. (MDT) on Wednesday, December 30, 2020. The PED encourages the early submission of written comments. The public comment period is from November 24, 2020 to December 30, 2020 at 5:00 p.m. (MDT).

The PED will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Copies of the proposed rules may be accessed through the page titled, "Rule Notification," on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from John Sena at (505) 570-7816 during regular business hours.

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 John Sena at (505) 570-7816 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

**PUBLIC REGULATION
COMMISSION**

**NOTICE OF PROPOSED
RULEMAKING
CASE NO. 20-00190-PRC**

The New Mexico Public Regulation Commission (NMPRC or Commission) gives notice of its proposed adoption of rulemaking to promulgate permanent amendments to the Commission's procedural rules 1.2.2 NMAC, including 1.2.2.7, 1.2.2.8, 1.2.2.9, 1.2.2.10, 1.2.2.11, 1.2.2.34 and 1.2.2.35 NMAC to provide for electronic filing, amend the rule on transcripts, prepared testimony and other amendments if necessary. The rules which may be adopted as the final rules in this proceeding may include all, part, or none of the language in the proposed rules issued by the commission. The commission may also consider alternative proposals for amending or replacing the current rules.

Concise statement of proposed rules:

The proposed amendments to 1.2.2.7 NMAC: 1) amend the definition of the term file, filed, or filing to mean filing by electronic mail, by regular postal service mail of hard copies, or by in-person delivery; 2) amend the definition of date and time of filing to address electronic filings; and 3) add a definition of electronic signature. The proposed amendments to 1.2.2.8 NMAC modify the rules for filing fees to add a procedure for payment of fees for electronically filed documents. The proposed amendments to 1.2.2.9 NMAC permit water and sewer regulated utilities to be represented by a general manager if an LLC. The proposed amendments to 1.2.2.10 NMAC would require that all regulated entities and participants in open dockets keep a current email on file with the commission where they can receive service of process and communications from the commission and delineate the procedures for electronic filing and electronic service of documents filed with the commission. The proposed amendments to 1.2.2.34 NMAC modify the rule on transcripts to allow for hearings to be audio recorded instead of transcribed by a certified court reporter at the discretion of the commission or the presiding officer and clarifies that hard copies of transcripts received

by the commission shall be filed in e-docket. The proposed amendments to 1.2.2.35 NMAC change the rules on prefilled testimony to require that it be supported by an affidavit, provides for unsworn testimony as allowed by New Mexico rule of civil procedure, 1-011(B) NMRA and addresses what evidence can be admitted into evidence on direct testimony. Other changes to 1.2.2.7, 1.2.2.8, 1.2.2.9, 1.2.2.10, 1.2.2.11, 1.2.2.34 and 1.2.2.35 NMAC, other logical outgrowth changes to other subsections of 1.2.2 NMAC, and a full repeal/replace of 1.2.2 NMAC to bring into NMAC2 formatting standards will also be considered as needed.

Constitutional and statutory authority: New Mexico Constitution, Article XI, Section 2; the New Mexico Public Utility Act, Sections 62-3-1 et seq., NMSA 1978; and the Public Regulation Commission Act, Section 8-8-1 through 8-8-21 NMSA 1978, Paragraph (10) of Subsection B of Section 8-8-4 NMSA 1978.

A copy of the full text of the proposed rules may be obtained from the Rulemaking Proceedings section of the Commission's website at <http://www.nmprc.state.nm.us> under Case No. 20-00190-PRC or by calling Isaac Sullivan-Leshin in the Office of General Counsel at (505) 670-4830.

Written initial comments and written response comments shall be filed by the deadlines below. Written comments shall be filed with the Commission's Records Management Bureau my may to P.O. Box 1269, Santa Fe, NM 87504-1269 or electronically by email to PRC.Records@state.nm.us in accordance with the commission's emergency rules on electronic filing. For more information as to how to file please contact Melanie Sandoval, the commission's records bureau chief at melanie.sandoval@state.nm.us or (505) 827-6968. Written initial comments shall be filed no later than **January 12, 2021** and written response comments shall be filed

no later than **January 26, 2021**. Comments shall refer to Case No. 20-00190-PRC. All written comments will be posted on the commission's website within three days of their receipt by the records bureau.

A public hearing will be held on **February 9, 2021 at 1:00 p.m.** which shall be accomplished through Zoom. Instructions on how to connect will be posted on the NMPRC home webpage at <http://www.nmprc.state.nm.us> prior to the hearing. The purpose of the hearing is to receive oral comments. Because commenters are afforded the opportunity to submit written comments to the Commission, any individual who wants to provide oral comments shall be limited to five minutes to express those comments, subject to the Commission's discretion. The Commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding.

The record of this case will close on **February 16, 2021**.

Interested persons should contact the Commission to confirm the date, time, and place of this public hearing because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the hearing should contact Mr. Bradford Borman at (505) 412-3502 at least 48 hours prior to the commencement of the hearing.

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN
that the Superintendent of Insurance

("Superintendent"), pursuant to the New Mexico Insurance Code, Sections 59A-1-1 et seq. NMSA 1978 ("Insurance Code") and 13.1.4 NMAC, proposes to adopt new rules: 13.10.33 NMAC - SURPRISE BILLING.

PURPOSE OF THE PROPOSED RULES: To implement consumer protection, reimbursement, refund, reporting and appeal requirements for the Surprise Billing Protection Act.

STATUTORY AUTHORITY: Section 59A-2-9 NMSA 1978, Sections 59A-57A-1 through 59A-57A-13 NMSA 1978 and Section 59A-16-21.3 NMSA 1978.

Copies of the Notice of Proposed Rulemaking and proposed rules are available by electronic download from the OSI website (<https://www.osi.state.nm.us/index.php/idms/>) or the New Mexico Sunshine portal.

OSI will hold a public video/ telephonic hearing on the proposed rules on December 28, 2020 at 1:00 p.m.

Join via Video: <https://us02web.zoom.us/j/2916274744>

Join via telephone: 1-346-248-7799
Meeting ID: 291 627 4744

The Superintendent designates R. Alfred Walker to act as the hearing officer for this rulemaking. Oral comments will be accepted at the video/telephonic hearing from members of the public and any interested parties.

Written comments and proposals will be accepted through 4:00 pm on December 28, 2020. Responses to written comments or oral comments will be accepted through 4:00 pm on January 7, 2021. Comments may be submitted via email to OSI-docketfiling@state.nm.us or may be filed by sending original copies to:

OSI Records and Docketing, NM
Office of Superintendent of Insurance
1120 Paseo de Peralta, P.O. Box 1689,
Santa Fe, NM 87504-1689

Docket No.: 20-00061-RULE-LH
IN THE MATTER OF ADOPTION
OF SURPRISE BILLING RULES
PURSUANT TO CHAPTER 59A,
ARTICLE 57A NMSA 1978

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

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

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

ISSUED this 24th day of November
2020
/S/RUSSELL TOAL

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

This Page Intentionally Left Blank

Adopted Rules

Effective Date and Validity of Rule Filings

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

HEALTH, DEPARTMENT OF

The New Mexico Department of Health approved the repeal of its rule 16.11.2 NMAC - Certified Nurse- Midwives (filed 6/25/2019) and replaced it with 16.11.2 NMAC - Certified Nurse-Midwives (adopted on 11/13/2020), and effective 11/24/2020.

HEALTH, DEPARTMENT OF

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 11 MIDWIVES
PART 2 CERTIFIED
NURSE - MIDWIVES**

16.11.2.1 ISSUING
AGENCY: New Mexico Department of Health.

[16.11.2.1 NMAC - Rp, 16.11.2.1 NMAC, 11/24/2020]

16.11.2.2 SCOPE: This rule applies to any person seeking to practice or currently practicing as a certified nurse-midwife in the state of New Mexico.

[16.11.2.2 NMAC - Rp, 16.11.2.2 NMAC, 11/24/2020]

16.11.2.3 STATUTORY
AUTHORITY: This rule is authorized by Subsection E of Section 9-7-6 NMSA 1978, Subsection S and Subsection V of Section 24-1-3 NMSA 1978 and Section 24-1-4.1 NMSA 1978.

[16.11.2.3 NMAC - Rp, 16.11.2.3 NMAC, 11/24/2020]

16.11.2.4 DURATION:
Permanent.

[16.11.2.4 NMAC - Rp, 16.11.2.4 NMAC, 11/24/2020]

16.11.2.5 EFFECTIVE DATE: November 24, 2020 unless a later date is cited at the end of a section.

[16.11.2.5 NMAC - Rp, 16.11.2.5 NMAC, 11/24/2020]

16.11.2.6 OBJECTIVE:
This rule governs the licensure and practice of certified nurse-midwives (CNMs) in New Mexico.

[16.11.2.6 NMAC - Rp, 16.11.2.6 NMAC, 11/24/2020]

16.11.2.7 DEFINITIONS:
A. Definitions
beginning with “A”:

(1) “ACNM”
means the American college of nurse-midwives.

(2) “AMCB”
means American midwifery certification board.

(3)
“Addiction” is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving. Physical dependence and tolerance are normal physiological consequences of extended opiate or opioid therapy for pain and should not by themselves be considered addiction.

B. Definitions
beginning with “B”: **“Board”**
means the certified nurse-midwifery advisory board established under these rules.

C. Definitions
beginning with “C”:

(1) “Certified nurse-midwife (CNM)” means an individual educated in the two disciplines of nursing and midwifery, who is certified by the AMCB or its designee and who is licensed under this rule.

(2) “Chronic pain” means pain that persists after reasonable efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months. For purposes of this rule, chronic pain does not include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

(3) “CNM license” means a document issued by the department identifying a legal privilege and authorization to practice within the scope of this rule.

(4) “Contact hour” means 50-60 minutes of an organized learning experience relevant to CNM practice, approved by one of the following:

- (a)** accreditation council for continuing medical education (ACCME);
- (b)** ACNM;
- (c)** American college of obstetricians and gynecologists (ACOG);
- (d)** American academy of physician assistants (AAPA);
- (e)** American academy of nurse practitioners (AANP);
- (f)** nurse practitioners in women’s health (NPWH); or
- (g)** other clinician-level continuing

education accrediting agencies approved by the division.

(5)

“**Continuance**” means the adjournment or postponement of a trial or other proceeding to a future date.

(6)

“**Controlled substance**” means any drug or therapeutic agent listed in Schedules I through V of Sections 30-31-6 to 30-3-10 NMSA 1978, Controlled Substances Act, or rules adopted thereto, which is commonly understood to include narcotics.

D. Definitions

beginning with “D”:

(1)

“**Dangerous drug**” means a prescription drug other than a controlled substance that has been determined by law to be unsafe for self-administration and is included in Sections 26-1-1 to 26-1-26 NMSA 1978, New Mexico Drug, Device and Cosmetic Act, and in Sections 30-31-6 NMSA, Controlled Substances Act.

(2)

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

(3) “**Division**”

means the public health division.

E. Definitions

beginning with “E”: “**Electronic professional licensing management system**” means the system by which licensees apply and submit an application for midwifery license and keep up to date their online profile.

F. Definitions

beginning with “F”: [RESERVED]

G. Definitions

beginning with “G”: [RESERVED]

H. Definitions

beginning with “H”: [RESERVED]

I. Definitions

beginning with “I”: [RESERVED]

J. Definitions

beginning with “J”: [RESERVED]

K. Definitions

beginning with “K”: [RESERVED]

L. Definitions

beginning with “L”: “**Lapsed license**” means a license that a person has voluntarily lapsed, has failed to renew as required, or the license of a person who failed to meet stated obligations for renewal within a stated time.

M. Definitions

beginning with “M”:

[RESERVED]

N. Definitions

beginning with “N”: “**National practitioner data bank (NPDB)**” means the web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers.

O. Definitions

beginning with “O”: “**Opioid antagonist**” means a drug approved by the federal food and drug administration that when administered negates or neutralizes in whole or in part the pharmacological effects of an opioid analgesic in the body; this includes naloxone and such other medications approved by the board of pharmacy for the reversal of opioid analgesic overdoses.

P. Definitions

beginning with “P”:

(1) “**Pain**”

means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage or described in terms of such inflammation and damage, which could include acute, persistent, or chronic pain.

(2) “**Peer**

review” means the assessment and evaluation of CNM practice by other CNMs and other health care providers to measure compliance with established institutional or legal standards. In the peer review process, a CNM’s practice undergoes scrutiny for the purpose of professional self-regulation.

(3) “**Physical**

dependence” means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

(4)

“**Prescription monitoring program (PMP)**” means a centralized electronic system within the New Mexico board of pharmacy that

collects, monitors, and analyzes data submitted by dispensing practitioners and pharmacies related to the prescribing and dispensing of controlled substances. The data are used to support efforts in education, research, enforcement, and abuse prevention.

(5) “**Primary**

care” means the provision of integrated, accessible health care services by clinicians who are accountable for addressing the large majority of presenting health care needs, developing sustained partnerships with clients, and practicing within the context of family and community.

Q. Definitions

beginning with “Q”:

(1) “**Quality**

assurance” means monitoring structural, procedural, and outcome indicators as they relate to accepted standards.

(2) “**Quality**

improvement” means modifying the process for providing care in order to improve outcomes. Modifications are based upon the measurement of parameters such as evidence-based best practices, patient satisfaction, clinical outcomes, population-specific care, culturally appropriate care, appropriate use of technology and resources, and access to care.

R. Definitions

beginning with “R”:

(1)

“**Reactivation**” means the process of making current a license which has been in abeyance as a result of failure to comply with the necessary renewal requirements; this process does not involve disciplinary action at any juncture.

(2)

“**Reinstatement**” means the process whereby a license which has been subject to revocation or suspension, is returned to active status; this process always involves disciplinary action.

S. Definitions

beginning with “S”: [RESERVED]

T. Definitions

beginning with “T”:

(1)

“**Therapeutic purpose**” means

the use of pharmaceutical and non-pharmaceutical treatments and the spectrum of available modalities that conforms substantially to accepted guidelines.

(2)

“**Tolerance**” means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug’s effects over time.

U. Definitions

beginning with “U”: [RESERVED]

V. Definitions

beginning with “V”: “**Valid CNM-client relationship**” means a professional relationship between the CNM and the client for the purpose of maintaining the client’s well-being. At minimum, this relationship is an interactive encounter between the CNM and client involving an appropriate history and physical or mental examination; ordering labs or diagnostic tests sufficient to make a diagnosis; and providing, prescribing, or recommending treatment, or referring to other health care providers. A patient record must be generated by the encounter. The relationship includes:

(1) the CNM

has sufficient information to ensure that a dangerous drug or controlled substance is indicated and necessary for treatment of a condition when the CNM prescribes a dangerous drug or controlled substance;

(2) the CNM

has sufficient information to ensure that a dangerous drug or controlled substance is not contraindicated for the individual;

(3) the CNM

provides a client with appropriate information on the proper dosage, route, frequency, and duration of a drug treatment;

(4) the

CNM informs the client of possible untoward effects and side effects of a proposed treatment;

(5) the CNM

provides care for a client in the event of an untoward effect or a side effect that requires care;

(6) the

CNM provides for client education

regarding a condition and the condition’s treatment to enhance client compliance with plan of care;

(7) the

CNM provides for appropriate follow-up care, including further testing, treatment and education, as appropriate; and

(8) the

CNM documents, at minimum, the indication, drug, and dosage of any prescribed drugs in a health record for the individual

W. Definitions

beginning with “W”:

[RESERVED]

X. Definitions

beginning with “X”: [RESERVED]

Y. Definitions

beginning with “Y”: [RESERVED]

Z. Definitions

beginning with “Z”: [RESERVED]

[16.11.2.7 NMAC - Rp, 16.11.2.7 NMAC, 11/24/2020]

16.11.2.8 DOCUMENTS INCORPORATED BY REFERENCE ARE THE LATEST EDITIONS OF:

A. ACNM “core competencies for basic midwifery practice”.

B. ACNM “standards for the practice of midwifery”.

C. ACNM handbook: “the home birth practice manual”. [16.11.2.8 NMAC - Rp, 16.11.2.8 NMAC, 11/24/2020]

16.11.2.9 LICENSURE:

A. Licensure

requirements: A CNM practicing in New Mexico shall hold a license that meets the New Mexico board of nursing’s requirement to practice as a registered nurse in New Mexico and shall hold current certification by AMCB or its designee. The department may deny licensure, including renewal, reinstatement, or reactivation of licensure, to a CNM whose midwifery or nursing license has been subject to disciplinary action in any jurisdiction. If denied due to disciplinary action, re-application will only be considered after a minimum of one year from date of initial denial, and the re-application must be

accompanied by full disclosure and complete record of previous actions. A CNM license is not transferable.

B. Initial licensure:

(1) An

applicant for licensure to practice as a CNM in New Mexico shall submit to the department via the electronic professional licensing management system:

(a) a

completed application;

(b)

proof of holding a valid license that meets the New Mexico board of nursing’s requirement to practice as a registered nurse in New Mexico;

(c)

proof of current certification by AMCB or its designee;

(d)

the fee designated in Subsection E of 16.11.2.9 NMAC.

(2) An initial

CNM license may be issued at any time upon submission and verification of the materials required in Paragraph (1) of this subsection and shall expire on the expiration date of the registered nurse license recognized by the New Mexico board of nursing. A CNM license shall be valid for a maximum of two years.

(3) If a license

is denied due to disciplinary action on initial application, the applicant may reapply after one year and upon meeting all the requirements under Subsection B of 16.11.2.9 NMAC.

(4) Any

final action denying a license to an applicant is an event reportable to the NPDB.

C. Licensure renewal:

(1) A CNM’s

renewed license shall expire on the expiration date of the registered nurse license recognized by the New Mexico board of nursing.

(2) An

applicant for licensure renewal shall submit to the department via the electronic professional licensing management system:

(a)

a completed application electronically submitted by the fifth day of the month of the expiration of the CNM license;

(b) proof of holding a valid license that meets the requirement of the New Mexico board of nursing to practice as a registered nurse in New Mexico for the period the renewed CNM license will cover;

(c) proof of current certification by AMCB or its designee;

(d) proof of having met the continuing education and quality management requirements in Paragraphs (3) and (4) of this subsection; and

(e) the fee designated in Subsection E of this section;

(f) an additional fee designated in Subsection E of this section for applications electronically submitted after the fifth day of the month after the license is expiring.

(3) Continuing education: CNMs must complete a minimum of 30 contact hours during the two years preceding license renewal.

(a) 15 of the contact hours shall be pharmacology-related. As part of the pharmacology-related contact hours, a CNM who holds a CNM license shall submit with the first license renewal application proof of completing a minimum of five contact hours on any of the following topics:

(i) the CNM rule as it applies to management of chronic pain,

(ii) the pharmacology and risks of controlled substances,

(iii) the problems of abuse and addiction, or

(iv) state and federal regulations for the prescription of controlled substances.

(b) With each subsequent license renewal application, a CNM shall submit proof of completing a minimum of two contact hours on the above topics.

(c) The following options, subject to audit and approval by the department,

may be accepted in place of continuing education contact hours, except for the pharmacology-related contact hours requirement:

(i) preparation and presentation of a nurse-midwifery topic that has received contact hour approval by any of the organizations listed in Subsection H of 16.11.2.7 NMAC, will count for twice the number of contact hours for which the presentation is approved; the same presentation cannot be credited more than once;

(ii) sole or primary authorship of one nurse-midwifery related article published in a department-approved professional medical or midwifery journal may be accepted in place of 10 contact hours per licensure period;

(iii) completion of a formal university or college course directly related to nurse-midwifery practice; each university or college unit shall be credited as 15 hours of continuing education; and

(iv) acting as primary preceptor for a nurse-midwifery or certified midwifery student; each 10 hours of precepting shall be credited as one continuing education hour; verification shall be provided by an accreditation commission for midwifery education (ACME) accredited nurse-midwifery education program; acting as primary preceptor for a licensed midwifery student upon verification of out of hospital setting practice by the CNM, prior to preceptor relationship This option shall not be accepted in place of pharmacology-related contact hours.

(4) Quality management: documentation of participation during the preceding two years in a system of quality management meeting the approval of the department is required for license renewal. Quality management includes peer review, quality assurance and quality improvement as defined in Subsection S of 16.11.2.7 NMAC, Subsection W of 16.11.2.7 NMAC, and Subsection X of 16.11.2.7 NMAC.

(5) If license renewal is denied, the applicant may request an administrative hearing under the terms set forth by Paragraph (5) of Subsection C of 16.11.2.11 NMAC.

D. Reactivation of a CNM license:

(1) A lapsed license occurs on the first day of the following month following the expiration date of the current license if license not renewed on time, and a CNM must apply for reactivation of the license, paying all added fees before being allowed to practice. A CNM may not work with a lapsed license or disciplinary action will be taken.

(2) The requirements for reactivation of a CNM license that has voluntarily lapsed in status or for an applicant that is returning to New Mexico are the same as those for license renewal, listed in Paragraph (2) of Subsection C of 16.11.2.9 NMAC, except the applicant must pay the additional fee for reactivation pursuant to Subsection F of 16.12.2.9 NMAC.

(3) The license will be reactivated with the original license number.

E. Reinstatement of a CNM license:

(1) The requirements for reinstatement of a revoked or suspended CNM license are the same as those for license renewal, listed in Paragraph (2) of Subsection C of 16.11.2.9 NMAC, except that the fee is higher than a renewal, as designated in Subsection F of 16.11.2.9 NMAC.

(2) The license will be reinstated with the original license number.

F. Fees: the department shall charge applicants the following fees for licensure services:

(1) two hundred dollars (\$200) for initial licensure;

(2) one hundred dollars (\$100) for license renewal;

(3) one hundred and fifty dollars (\$150.00)

late fee for renewing a license when the complete application is not electronically submitted by the fifth calendar day of the month of the current license's expiration date or for voluntary lapse of a license; this fee is in addition to the renewal fee;

(4) one hundred and fifty dollars (\$150.00) for reinstatement of a revoked or suspended license, or reactivation of a lapsed license; this fee is in addition to the renewal fee;

(5) twenty-five dollars (\$25.00) for verifying licenses by FAX or letter;

(6) thirty dollars (\$30.00) for a hard copy of a license certificate (8 1/2" x 11" size).

G. Change of address or other contact information: a CNM shall submit a change of any contact information to the department's electronic professional licensing management system within 30 days of the change. [16.11.2.9 NMAC - Rp, 16.11.2.9 NMAC, 11/24/2020]

16.11.2.10 PRACTICE OF THE CERTIFIED NURSE-MIDWIFE:

A. Scope of practice: Practice by CNMs encompasses independently providing a full range of primary health care services for women from adolescence to beyond menopause. These services include primary care; gynecologic and family planning services; pre-conception care; care during pregnancy, childbirth, and the postpartum period; care of the normal newborn; and treatment of clients for sexually transmitted infections. Midwives provide initial and ongoing comprehensive assessment, diagnosis, and treatment. They conduct physical examinations; independently prescribe, distribute, and administer dangerous drugs, devices, and contraceptive methods, and controlled substances in Schedules II through V of Sections 30-31-1 NMSA 1978, Controlled Substances Act; admit, manage, and discharge clients; order and interpret laboratory and diagnostic tests; and

order the use of medical devices. Midwifery care also includes health promotion, disease prevention, and individualized wellness education and counseling. These services are provided in partnership with clients/patients in diverse settings such as ambulatory care clinics, private offices, community and public health systems, homes, hospitals, and birth centers. A CNM practices within a health care system that provides for consultation, collaborative management, or referral as indicated by the health status of the client. A CNM practices in accordance with the ACNM "standards for the practice of midwifery". A CNM who expands beyond the ACNM "core competencies" to incorporate new procedures that improve care for their clients/patients shall comply with the guidelines set out in the ACNM "standards for the practice of midwifery", standard VIII. Practice guidelines for home births should be informed by the most recent edition of the "ACNM home birth practice manual."

B. Prescriptive authority:

(1) Dangerous drugs: A CNM who prescribes, distributes, or administers a dangerous drug or device shall do so in accordance with Section 26-1 NMSA 1978, New Mexico Drug, Device and Cosmetic Act.

(2) Controlled substances:

(a) A CNM shall not prescribe nor distribute controlled substances in Schedule I of Section 26-1 1978 NMSA, Controlled Substances Act.

(b) A CNM shall not prescribe, distribute, or administer controlled substances in Schedules II-V of the Controlled Substances Act unless the CNM is registered with the New Mexico board of pharmacy and the United States drug enforcement administration (DEA) to prescribe, distribute, and administer controlled substances.

(c) A CNM who prescribes, distributes, or administers a controlled substance

in Schedules II-V of Section 26-1 NMSA 1978, Controlled Substances Act, shall do so in accordance with the Controlled Substances Act.

(d) An individual employed as a CNM by the United States military, the United States veterans administration, or the United States public health service, and operating in the official capacity of that employment, who is prescribing, distributing or administering controlled substances under that facility's United States drug enforcement administration registration is exempt from the Subparagraphs (a), (b) and (c) of Paragraph (2) of this subsection.

(e) A CNM may prescribe, provide samples of, and dispense any dangerous drug to a patient if, at the time of the prescription, the CNM has a valid CNM-client relationship with the patient, as defined in 16.12.2.7 NMAC.

(3) Prescriptions: A CNM may prescribe by telephone, by written prescription, by e-mail, or through an electronic health record (EHR) system.

Controlled substances may only be prescribed by written or electronic prescription. A CNM prescription shall have the CNM's name, office address, and telephone number printed on it. In the event that a CNM is writing a prescription printed with the names of more than one CNM, the name of the CNM writing the individual prescription shall be indicated. The name and address of the client, the date of the prescription, the name and quantity of the drug prescribed, and directions for use shall be included on a prescription.

(4) Labeling: When distributing a drug, a CNM shall label it with the client's name and date of birth; the date; instructions for use; and the CNM's name, address, and telephone number.

C. Guidelines for management of chronic pain or other conditions with controlled substances: The treatment of chronic pain or other conditions with various modalities, including controlled

substances such as opiates and opioids, is a legitimate practice when done in the usual course of CNM practice. The goal when treating chronic pain is to reduce or eliminate pain and also to avoid development of or contribution to addiction, drug abuse, and overdosing. Effective dosages should be prescribed, with both under- and over-prescribing to be avoided, using patient protection as a guiding principle. The CNM should provide control of the patient's pain for its duration, while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors. A CNM may treat clients/patients with addiction, physical dependence, or tolerance who have legitimate pain, however such clients/patients require very close monitoring and precise documentation.

(1) If, in a CNM's professional opinion, a patient is seeking pain medication for reasons that are not medically justified, the CNM is not required to prescribe controlled substances for the patient.

(2) When prescribing, dispensing, or administering controlled substances for management of chronic pain, a CNM shall:

- (a) obtain a PMP report for the patient covering the preceding 12 months from the New Mexico board of pharmacy and any other state's report that is applicable and available;
- (b) complete a history and physical examination and include an evaluation of the patient's psychological and pain status, any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of medical indications or contra-indications related to controlled substances;
- (c) be familiar with and employ screening tools, as well as the spectrum of available modalities for therapeutic purposes, in the evaluation and

management of pain, and consider an integrative approach to pain management in collaboration with other care providers, including but not limited to acupuncturists, chiropractors, doctors of oriental medicine, exercise physiologists, massage therapists, pharmacists, physical therapists, psychiatrists, or psychologists;

(d) develop a written individual treatment plan taking age, gender, and culture into consideration, with stated objectives by which treatment can be evaluated, such as degree of pain relief, improved physical and psychological function, or other accepted measures, and include any need for further testing, consultation, referral, or use of other treatment modalities as appropriate;

(e) discuss the risks and benefits of using controlled substances with the patient or legal guardian and document this discussion in the medical record;

(f) make a written agreement with the patient or legal guardian outlining patient responsibilities, including a provision stating that the chronic pain patient will receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible;

(g) maintain complete and accurate records of care provided and drugs prescribed, including the indications for use, the name of the drug, quantity, prescribed dosage, and number of refills authorized;

(h) when indicated by the patient's condition, consult with health care professionals who are experienced in the area of the chronic pain or other conditions, though not necessarily specialists in pain control, both early in the course of long-term treatment and at least every six months;

(i) when treating clients/patients with drug addiction or physical dependence, use drug screening prior to and during the course of treatment to identify the drugs the patient is

consuming and compare the screening results with clients'/patients' self-reports (this should be included in the written agreement, see Subparagraph (f) above);

(j) note possible indications of drug abuse by a patient and take appropriate steps to further investigate and to avoid contributing to drug abuse; such steps may include termination of treatment. Information about some of the indications may be available only through PMP reports. The following list of possible indications of drug abuse is non-exhaustive:

- (i) receiving controlled substances from multiple prescribers;
- (ii) receiving controlled substances for more than 12 consecutive weeks;
- (iii) receiving more than one controlled substance analgesic;
- (iv) receiving a new prescription for any long-acting controlled substance analgesic formulation, including oral or transdermal dosage forms or methadone;
- (v) overutilization, including but not limited to early refills;
- (vi) appearing overly sedated or intoxicated upon presentation; or
- (vii) an unfamiliar patient requesting a controlled substance by specific name, street name, color, or identifying marks.

(k) comply with the opioid antagonist prescribing practices as set forth in the Pain Relief Act Section 24-2D-1, et.al NMSA1978.

D. Prescription Monitoring Program (PMP)

Requirements: The department requires participation in the PMP to assist practitioners in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals. Any practitioner who holds a federal drug enforcement

administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting. A practitioner may authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While a practitioner's delegate may obtain a report from the state's prescription monitoring program, the practitioner is solely responsible for reviewing the prescription monitoring report and documenting the receipt and review of a report in the patient's medical record. Before a practitioner prescribes or dispenses for the first time, a controlled substance in Schedule II, III, IV or V to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the practitioner shall review a prescription monitoring report for the patient for the preceding 12 months. When available, the practitioner shall review similar reports from adjacent states. The practitioner shall document the receipt and review of such reports in the patient's medical record. A prescription monitoring report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in Schedule II, III, IV or V for each patient. The practitioner shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a practitioner from reviewing prescription monitoring reports with greater frequency than that required by this section.

(1) A practitioner does not have to obtain and review a prescription monitoring report before prescribing, ordering, or dispensing a controlled substance in Schedule II, III, IV or V:

- (a) for a period of four days or less; or
- (b) to a patient in a nursing facility; or
- (c) to a patient in hospice care.

(d) or when prescribing, dispensing, or administering of: testosterone, pregabalin, lacosamide, ezogabine or stimulant therapy for pediatric clients/patients less than age 14.

(2) Upon review of a prescription monitoring report for a patient, the practitioner shall identify, be aware, and document if a patient is currently:

- (a) receiving opioids from multiple prescribers;
 - (b) receiving opioids and benzodiazepines concurrently;
 - (c) receiving opioids for more than 12 consecutive weeks;
 - (d) receiving more than one controlled substance analgesic;
 - (e) receiving opioids totaling more than 90 morphine milligram equivalents per day;
 - (f) exhibiting potential for abuse or misuse of opioids and other controlled substances, such as any of the following indicators:
 - (g) over-utilization;
 - (h) requests to fill early;
 - (i) requests for a controlled substance or specific opioid by specific name, street name; color, or identifying marks;
 - (j) requests to pay cash when insurance is available;
 - (k) receiving opioids from multiple pharmacies; or
 - (l) appearing overly sedated or intoxicated upon presentation.
 - (m) receiving a new prescription for any long-acting controlled substance analgesic formulation, including oral or transdermal dosage forms or methadone.
- (3) Upon recognizing any of the above

conditions described in Subparagraph (j) of Paragraph (2) of Subsection C of 16.11.2.10 NMAC, the practitioner, using professional judgement based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse, abuse, or overdose. These steps may involve counseling the patient on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, or offering or arranging treatment for opioid or substance use disorder. The practitioner shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

(4) Practitioners licensed to practice in an opioid treatment program, as defined in 7.32.8 NMAC, shall review a prescription monitoring report upon a patient's initial enrollment into the Opioid Treatment Program and every three months thereafter while prescribing, ordering, administering, or dispensing opioid treatment medications in Schedule II-V for the purpose of treating opioid use disorder. The practitioner shall document the receipt and review of a report in the patient's medical record.

E. Immediate reporting: A CNM must report within 48 hours to the division any neonatal or maternal mortality in clients/patients for whom the provider has cared in the perinatal period in a setting other than a licensed health facility; this includes stillbirths. These will be reviewed by the division on a case by case basis for compliance with these CNM regulations.

F. Other rules: a CNM shall fulfill the requirements of all relevant department rules including:

- (1) "bureau of vital records and health statistics," 7.2.2 NMAC;
- (2) "control of disease and conditions of public health significance," 7.4.3 NMAC;
- (3) "newborn genetic screening," 7.30.6 NMAC;

(4) “prevention of infant blindness,” 7.30.7 NMAC;

(5) “requirement for freestanding birth centers,” 7.10.2 NMAC; and

(6) “birthing workforce retention fund,” 7.30.9 NMAC.
[16.11.2.10 NMAC - Rp, 16.11.2.10 NMAC, 11/24/2020]

16.11.2.11 LICENSE DENIAL, SUSPENSION, OR REVOCATION; DISCIPLINARY ACTION:

The department may deny, revoke, or suspend any license held or applied for or reprimand or place a license on probation on the grounds of incompetence, unprofessional conduct, or other grounds listed in this section, pursuant to Subsection R of Section 24-1-3, NMSA 1978.

A. Grounds for action.

(1) Incompetence. A CNM who fails to possess and apply the knowledge, skill, or care that is ordinarily possessed and exercised by CNMs or as defined by the ACNM “core competencies for basic midwifery practice” is considered incompetent. Charges of incompetence may be based upon a single act of incompetence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence. Conduct of such a character that could result in harm to the client or to the public from the act or omission or series of acts or omissions constitutes incompetence, whether or not actual harm resulted.

(2) Unprofessional conduct. For purposes of this rule “unprofessional conduct” includes, but is not limited to, the following:

- (a) verbally or physically abusing a client;
- (b) engaging in sexual contact with or toward a client;

- (c) abandonment of a client;
- (d) engaging in the practice of midwifery when judgment or physical ability is impaired by alcohol or drugs or controlled substances;
- (e) practice that is beyond the scope of CNM licensure;
- (f) dissemination of a client’s health information or treatment plan to individuals not entitled to such information and where such information is protected by law from disclosure;
- (g) falsifying or altering client records or personnel records for the purpose of reflecting incorrect or incomplete information;
- (h) obtaining or attempting to obtain any fee for client services for one’s self or for another through fraud, misrepresentation, or deceit;
- (i) aiding, abetting, assisting, or hiring an individual to violate any rule of the department;
- (j) failure to follow established procedure regarding controlled substances;
- (k) failure to make or to keep accurate, intelligible entries in records as required by the ACNM “standards for the practice of midwifery”;
- (l) obtaining or attempting to obtain a license to practice certified nurse-midwifery for one’s self or for another through fraud, deceit, misrepresentation, or any other act of dishonesty in any phase of the licensure or relicensure process;
- (m) practicing midwifery in New Mexico without a valid New Mexico license or permit or aiding, abetting or assisting another to practice midwifery without a valid New Mexico license;
- (n) delegation of midwifery assessment, evaluation, judgment, or medication administration to a non-licensed person; or

- (o) failure to provide information requested by the department pursuant to this rule within 20 business days of receiving the request.
 - (3) Failure to comply with the New Mexico Parental Responsibility Act, Section 40-5A-1 through 40-5A-13, NMSA 1978.
 - (4) Dereliction of any duty imposed by law.
 - (5) Conviction or having been found guilty, or entered into an agreed disposition, of a felony offense under applicable state or federal criminal law.
 - (6) Conviction or having been found guilty, or entered into an agreed disposition, of a misdemeanor offense related to the practice of midwifery as determined on a case-by-case basis.
 - (7) Failure to report in writing to the division any complaint or claim made against the CNM’s practice as a registered, certified, or licensed health care provider in any jurisdiction, including as a registered nurse. Such notification shall include the credentialing jurisdiction and the location, time, and content of the complaint or claim. It shall be made within 20 business days of the CNM becoming aware of the complaint or claim.
 - (8) Conduct resulting in the suspension or revocation of a registration, license, or certification to perform as a health care provider.
 - (9) Failure to report a CNM who appears to have violated the rule for the practice of certified nurse-midwifery. Anyone reporting an alleged violation of this rule shall be immune from liability under this rule unless the person acted in bad faith or with malicious purpose.
 - (10) Violation of any of the provisions of this rule.
- B. Non-disciplinary proceedings:** For non-disciplinary actions involving denial of renewal of a license the applicant will be provided a notice of contemplated

action and the right to the hearing procedures set forth in Paragraphs (4) and (5) of Subsection (C) of 16.11.2.11 NMAC.

C. Disciplinary proceedings: Disciplinary proceedings shall be conducted in accordance with Sections 61-1-1 through 61-1-31 NMSA 1978 of the Uniform Licensing Act (ULA). Disciplinary proceedings related to a CNM's treatment of a patient, for chronic pain or other conditions, with a controlled substance shall be conducted in accordance with Sections 24-2D-1 through 24-2D-6 NMSA 1978 of the Pain Relief Act, in addition to this rule.

(1) Filing of a complaint:

(a) A written complaint must be filed with the division before a disciplinary proceeding may be initiated.

(i) A complaint is an allegation of a wrongful act(s) or omission(s).

(ii) An allegation of a wrongful act may include knowledge of a judgment or settlement against a licensee.

(b) A written complaint may be filed by any person, including a member of the board.

(2) Investigation of a complaint.

(a) All complaints alleging a violation of the rules adopted by the department shall be investigated to determine whether a violation of applicable law or rule has occurred.

(b) The investigation may result in a notice of contemplated action (NCA), as defined in the ULA, being issued by the department if a violation occurred or it may result in a dismissal of the complaint if no actionable violation can be substantiated. Once dismissal of a complaint is made following an investigation, the licensee will be notified of the dismissal.

(3) Notice of contemplated action.

(a) The NCA shall be drafted by the department.

(b) The director of the division, or her/his designee shall sign all NCAs.

(c) The NCAs shall contain written information in accordance with the requirements of the ULA and shall be served on the licensee in accordance with the ULA.

(4) Request for a hearing, notice of hearing and request for continuance.

(a) Every licensee shall be afforded notice and an opportunity to be heard.

(b) Within 20 days of receiving the NCA, a licensee may request a hearing in writing by certified mail. The department shall notify the licensee of the time and place of hearing within 20 days of receipt of the request. The hearing shall be held no more than 60 nor less than 15 days from the date of service of the notice of hearing. However, if the ULA designates time requirements different from the above stated time requirements, the ULA time requirements shall prevail. The department shall notify the licensee of these prevailing time requirements when it sends the NCA.

(c) The licensee may request to explore a settlement by negotiating a stipulation and agreement with the administrative attorney of the department at any time prior to the hearing;

if a settlement is negotiated, the proposed stipulation and agreement shall be presented to the department for final approval; the proposed stipulation and agreement does not divest the department of its authority to require a formal hearing or final approval, amendment, or rejection; if a settlement is not reached, a hearing shall be held.

(d) Once a hearing has been scheduled, if a request for a continuance is made it shall be presented to the department's hearing officer, in writing, at least 10 days prior to the scheduled hearing.

The hearing officer may approve or deny the request.

(e) If a person fails to appear after requesting a hearing, the department may proceed to consider the matter and make a decision.

(f) If no request for a hearing is made within the time and manner stated in the NCA, the department may take the action contemplated in the NCA. Such action shall be final and reportable to NPDB.

(g) The department shall keep a record of the number of complaints received and the disposition of said complaints as either substantiated or unsubstantiated.

(5) Administrative hearing.

(a) All hearings shall be conducted by a hearing officer designated by the secretary or authorized representative of the department. The hearing officer shall have authority to rule on all non-dispositive motions.

(b) All hearings before the department shall be conducted in the same manner as a hearing in a court of law with the exception that the rules of evidence may be relaxed in the hearing pursuant to the ULA.

(i) Hearsay evidence is admissible if it is of a kind commonly relied upon by reasonable prudent people in the conduct of serious affairs.

(ii) Disciplinary action against a CNM license must not be based solely on hearsay evidence.

(c) The hearing officer may take testimony, examine witnesses and direct a continuance of any case.

(d) The hearing officer shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books, documents or records pertinent to the matter of a case before the department.

(e) The hearing officer shall issue a report and recommended finding to the department secretary.

(f) Decision of the department: the secretary of the department shall render a final administrative determination after reviewing the report and recommended findings issued by the hearing officer. Copies of the written decision shall be mailed via certified mail to the licensee in accordance with the ULA and placed in the CNM's licensure file. The department shall mail a copy of the written decision to the authority(ies) that license(s) the CNM as a registered nurse and shall report the decision to the NPDB if the decision is to uphold the disciplinary action.

D. Reinstatement of a suspended or revoked license.

(1) Individuals who request reinstatement of their license or who request that their probation be lifted or altered shall provide the department with substantial evidence to support their request. This evidence must be in the form of notarized written reports or sworn written testimony from individuals who have personal knowledge of the individual's activities and progress during the period of probation, suspension, or revocation.

(2) For reinstatement of licenses for reasons other than noncompliance with Section 40-5A-1 to -13 NMSA 1978, Parental Responsibility Act, requests for reinstatement of a revoked license shall not be considered by the department prior to the expiration of one year from the date of the order of revocation. The date of the order of revocation is the controlling date, unless otherwise specified in the order. Reinstatement of a revoked license requires proof of meeting the renewal requirements set forth in this rule and payment of the reinstatement of revoked license fee of Paragraph (4) of Subsection F of 16.11.2.9 NMAC.

(3) Requests for reinstatement of a suspended license shall be considered at such

time as provided by the department in the order of suspension. Reinstatement of a suspended license requires proof of meeting the renewal requirements as set forth in this rule, any remedial education, supervised practice or other condition specified in the order for suspension required by the department and payment of the reinstatement of current or suspended license fee of Paragraph (4) of Subsection F of 16.11.2.9 NMAC.

(4) When a license is revoked solely because the licensee is not in compliance with the Parental Responsibility Act, Section 40-5A-1 to 13 NMSA 1978, the license shall be reinstated upon presentation of a subsequent statement of compliance. [16.11.2.11 NMAC - Rp, 16.11.2.11 NMAC, 11/24/2020]

16.11.2.12 ADVISORY BOARD: The department shall appoint a CNM advisory board to make recommendations to the department regarding the regulation of CNMs.

A. The board shall be comprised of:

(1) three New Mexico licensed CNMs, at least one of whom is actively practicing midwifery;

(2) one New Mexico licensed midwife (LM) who is actively practicing midwifery;

(3) two members of the general public, who shall not have any significant financial interest, direct or indirect, in the profession regulated;

(4) one actively practicing board-certified obstetrician-gynecologist physician; and

(5) one employee of the division.

B. Board members other than the department representative shall be appointed for staggered terms up to three years in length. Board members shall serve on a voluntary basis without compensation. They shall not serve for more than two consecutive terms. The department representative shall not be subject to term limits.

C. The board shall meet a minimum of two times a year when a meeting of the board is called by the director of the division.

D. Board members may submit requests for reimbursement of in-state travel and per diem for attending board meetings in accordance with the Per Diem and Mileage Act, Section 10-8-1 to -8 NMSA 1978 and the department of finance administration rules, Section 2.42.2 NMAC.

E. Any member failing to attend two consecutive board meetings without good cause and an absence excused prior to the meetings shall be deemed to have resigned from the board.

[16.11.2.12 NMAC - Rp, 16.11.2.12 NMAC, 11/24/2020]

16.11.2.13 SEVERABILITY:

If any part or application of these rules is determined to be illegal, the remainder of these rules shall not be affected.

[16.11.2.13 NMAC - Rp, 16.11.2.13 NMAC, 11/24/2020]

HISTORY OF 16.11.2 NMAC:

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

DPHW 67-24, Nurse Midwife Regulations For New Mexico, filed 12/12/1967.

HSSD 76-2, Nurse Midwife Regulations For New Mexico, filed 1/20/1976.

HED-80-6 (HSD), Regulations Governing the Practice of Certified Nurse Midwives, filed 10/17/1980. DOH 91-06 (PHD), Regulations Governing the Practice of Certified Nurse Midwives, filed 11/04/1991.

History of Repealed Material:

16 NMAC 11.2, Certified Nurse Midwives (filed 10/18/1996) repealed 10/15/2009.

16.11.2 NMAC, Certified Nurse Midwives (filed 9/28/2009) repealed 8/30/2013.

16.11.2 NMAC, Certified Nurse Midwives (filed 6/6/2019) repealed 11/24/2020.

Other History:

DOH 91-06 (PHD), Regulations Governing the Practice of Certified Nurse Midwives (filed 11/04/1991) was renumbered into first version of the New Mexico Administrative Code as 16 NMAC 11.2, Certified Nurse Midwives, effective 10/31/1996.

16 NMAC 11.2, Certified Nurse Midwives (filed 10/18/1996) was replaced by 16.11.2 NMAC Certified Nurse Midwives, effective 10/15/2009.

16.11.2 NMAC, Certified Nurse Midwives (filed 9/28/2009) was replaced by 16.11.2 NMAC, Certified Nurse Midwives, effective 8/30/2013.

16.11.2 NMAC, Certified Nurse Midwives (filed 8/15/2013) was replaced by 16.11.2 NMAC, Certified Nurse Midwives, effective 6/25/2019.

16.11.2 NMAC, Certified Nurse Midwives (filed 6/6/2019) replaced by 16.11.2 NMAC, Certified Nurse Midwives effective 11/24/2020.

**HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.291.430 NMAC, Sections 8, 10 and 15 effective 12/1/2020.

8.291.430.8 ~~[RESERVED]~~ **MISSION STATEMENT:** To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.291.430.8 NMAC - Rp, 8.291.430.8 NMAC, 11/16/2015; A/E, 4/1/2016; A, 12/1/2020]

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

HOUSEHOLD SIZE	100%	133%	138%	190%	240%	250%	300%
1	[\$1,041] \$1,064	[\$1,385] \$1,415	[\$1,437] \$1,468	[\$1,978] \$2,021	[\$2,498] \$2,552	[\$2,603] \$2,659	[\$3,123] \$3,190
2	[\$1,410] \$1,437	[\$1,875] \$1,911	[\$1,945] \$1,983	[\$2,678] \$2,730	[\$3,382] \$3,449	[\$3,523] \$3,592	[\$4,228] \$4,311
3	[\$1,778] \$1,810	[\$2,365] \$2,408	[\$2,453] \$2,498	[\$3,378] \$3,439	[\$4,266] \$4,344	[\$4,444] \$4,525	[\$5,333] \$5,430
4	[\$2,146] \$2,184	[\$2,854] \$2,904	[\$2,962] \$3,013	[\$4,078] \$4,149	[\$5,150] \$5,240	[\$5,365] \$5,459	[\$6,438] \$6,550
5	[\$2,515] \$2,557	[\$3,344] \$3,401	[\$3,470] \$3,529	[\$4,777] \$4,858	[\$6,034] \$6,137	[\$6,286] \$6,392	[\$7,543] \$7,671
6	[\$2,883] \$2,930	[\$3,834] \$3,897	[\$3,978] \$4,044	[\$5,477] \$5,567	[\$6,918] \$7,032	[\$7,207] \$7,325	[\$8,648] \$8,790
7	[\$3,251] \$3,304	[\$4,324] \$4,394	[\$4,487] \$4,559	[\$6,177] \$6,277	[\$7,802] \$7,928	[\$8,128] \$8,259	[\$9,753] \$9,910
8	[\$3,620] \$3,677	[\$4,814] \$4,890	[\$4,995] \$5,074	[\$6,877] \$6,986	[\$8,686] \$8,825	[\$9,048] \$9,192	[\$10,858] \$11,031
+1	[\$369] \$373	[\$490] \$496	[\$508] \$515	[\$700] \$709	[\$884] \$897	[\$920] \$933	[\$1,105] \$1,121

[8.291.430.10 NMAC - Rp, 8.291.430.10 NMAC, 11/16/2015; A/E, 4/1/2016; A/E, 9/14/2017; A, 2/1/2018; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A, 12/1/2020]

8.291.430.15 **INCOME STANDARDS:** Verification of income, both earned and unearned, is mandatory for all MAP categories of ACA related eligibility. Verification methods can be found at 8.291.410 NMAC.

A. All income will be calculated as defined by Section 36B of the Federal Tax Code to produce a MAGI. This amount is compared to the FPL for the appropriate MAP category of eligibility and household size.

B. MAGI is calculated using the methodologies defined in Section 36B(d)(2)(B) of the Federal Tax Code, with the following exceptions:

(1) an amount received as a lump sum is counted as income only in the month received except for qualified lottery and gambling winnings per Subsection D of 8.291.430.15 NMAC;

(2) scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income;

(3) the following American Indian or Alaska native exceptions are excluded from income:

(a) distributions from Alaska native corporations and settlement trusts;

(b) distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation, or otherwise under the supervision of the secretary of the interior;

(c) distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from;

(i) rights of ownership or possession in any lands described in Subsection B of 8.291.430.15 NMAC; or

(ii) federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;

(d) distributions resulting from real property ownership interests related to natural resources and improvements;

(i) located on or near a reservation or within the most recent boundaries of a prior federal reservation; or

(ii) resulting from the exercise of federally-protected rights relating to such real property ownership interests.

(e) payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance

or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom; and

(f) student financial assistance provided under the bureau of Indian affairs education programs.

C. Certain income of children and tax dependents: The following are not included in household income:

(1) The MAGI-based income of an applicant or recipient who is included in the household of his or her natural, adopted, or step parent and who is not expected to be required to file a tax return under Section 6012(a)(1) of the Internal Revenue Code for the taxable year in which a MAP category of eligibility is being determined, is not included in household income whether or not the applicant or recipient files a tax return.

(2) The MAGI-based income of an applicant's or recipient's dependent who is not expected to be required to file a tax return under Section 6012(a)(1) of the Internal Revenue Code for the taxable year in which a MAP category of eligibility is being determined is not included in the household income of the taxpayer whether or not such dependent files a tax return.

D. Qualified lottery and gambling winnings are included in MAGI-based income based on the following:

(1) Qualified lottery winnings are defined as winnings from sweepstakes, lottery, or pool described in section 4402 of the internal revenue code (which generally requires that these particular activities be conducted by a state agency or under the authority of state law), or winnings from a lottery operated by a multistate or multijurisdictional lottery association or tribe. Multijurisdictional lotteries include those that include multiple entities of government. Qualified lottery winnings apply to the single payout option. Lottery winnings paid out in installments are not considered qualified lottery winnings and are treated as recurring income that can

be prorated over a twelve-month period to determine an average current monthly income for medicaid.

(2) Income that is received as a lump sum from monetary winnings from gambling is included in MAGI-based income. Gambling winnings include betting pools, wagers placed through bookmakers, slot machines, roulette wheels, dice tables, lotteries, bolita or number games, or the selling of chances therein including tribal winnings.

(3) Non-cash prizes, like a car or boat, are not counted as qualified lottery winnings or monetary winnings from gambling and are counted as lump sum income in the month received.

(4) Formula for counting qualified lottery or gambling winnings: For qualified winnings from lotteries or gambling occurring on or after January 1, 2018, the following formula applies for counting income:

(a) winnings less than \$80,000 are counted in the month received;

(b) winnings of \$80,000 but less than \$90,000 are counted as income over two months with an equal amount counted in each month;

(c) for every additional \$10,000 one month is added to the period over which total winnings are divided, in equal installments, and counted as income;

(d) the maximum period of time over which winnings may be counted is 120 months, which would apply for winnings of \$1,260,000 and above. HSD in the notice of case action (NOCA) notifies individuals of the date on which the lottery or gambling winnings no longer will be counted for the purposes of medicaid eligibility; and

(e) the formula for counting winnings is applied separately to each instance of winnings.

(5) Lottery or gambling winnings count as MAGI-

based income over multiple months only for the individual receiving the winnings in the household. For other individuals in the household, the winnings count only in the month received in determining their MAGI-based income eligibility.

(6)

Verification of lottery winnings: HSD requires verification of lottery winnings, but will first access electronic data sources, if available, before requesting documentation.

(7) Hardship

exemption: HSD allows for an exemption of the counting of lottery winnings if the applicant or recipient with the lottery winnings can demonstrate an undue medical hardship such that the applicant or recipient's health or life would be endangered. An applicant or recipient must submit a written request along with supporting documentation. A decision regarding a medical hardship exemption will be made within 30 calendar days of receipt of the written request. Notice of the exemption decision will be mailed to the applicant or recipient. If an exemption is approved, then an eligibility determination will be made without counting lottery winnings. If an exemption is denied, then the applicant or recipient can request an HSD administrative hearing pursuant to 8.352.2 NMAC. Hardship exemption request information is contained in the NOCA.

E. Parent mentor

compensation: A parent mentor is a parent or guardian of a medicaid eligible child who is trained to assist families with children who have no health insurance coverage with respect to improving the social determinants of the health of such children. Section 3004 of the HEALTHY KIDS Act excludes certain parent mentor compensation from the MAGI calculation. The disregard of parent mentor income applies only in the case of parent mentors working with a grantee organization under section 2113 of the Social Security Act. Nominal amounts paid as a stipend, wages, or other compensation for participation

as a parent mentor in a grant-funded program under section 2113 of the Act are excluded from income. A nominal amount is defined as \$1,600 per month. Parent mentor income above \$1,600 per month is counted in the MAGI calculation.

F. Discharged student

loan debt: Student loan debt that is discharged, forgiven or cancelled is taxable income to the borrower, and the amount of discharged debt is included in the MAGI-based income. Discharged student loan debt is not included in income (and not counted in the MAGI-based income) of a borrower for tax years 2018 through 2025 if the debt is discharged on account of the death or the permanent and total disability of the student. The borrower and the student may or may not be the same person. Student loan debt discharged under these circumstances is not counted as income in determining household income for other members of the borrower's household.

G. Alimony received:

Alimony payments under separation or divorce agreements finalized after December 31, 2018, or pre-existing agreements modified after December 31, 2018, are not included in the income of the recipient. For individuals with alimony agreements finalized on or before December 31, 2018, alimony continues to be included in the income of the recipient for the duration of the agreement unless or until the agreement is modified. Self-attestation is accepted for the verification of the date of execution of separation or divorce agreements that include the provision for alimony.

H. Alimony paid:

Alimony payments under separation or divorce agreements finalized after December 31, 2018, or pre-existing agreements modified after December 31, 2018, are not deductible by the payer. For individuals with alimony agreements finalized on or before December 31, 2018, alimony payments continue to be deductible. Self-attestation is accepted for the verification of the date of execution of separation or divorce agreements that

include the provision for alimony.

I. Moving expenses,

including expenses incurred by the individual as well as reimbursements from an employer, are not deductible in calculating MAGI for tax years 2018 through 2025. Moving expenses are deductible for active duty members of the military who are ordered to move or change duty station.

J. Tuition and fees

deduction: Effective January 1, 2018 the payment of tuition and fees for qualified education expenses for postsecondary education is not an allowable deduction in calculating MAGI.

[8.291.430.15 NMAC - Rp, 8.291.430.15 NMAC, 11/16/2015; A, 12/1/2020]

**PUBLIC RECORDS,
COMMISSION OF**

This is an amendment to 1.24.10 NMAC, Section 15, effective 11/24/2020.

**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, as defined in Paragraph (1) of Subsection D of 1.12.7.7 NMAC.

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 or with a digital signature. If authority is delegated, the box shall be checked. Any rule filing will be accepted, with a digital signature, and will be filed by the administrative law division.

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; A, 11/24/2020]

End of Adopted Rules

Other Material Related to Administrative Law

**GOVERNOR,
OFFICE OF THE**
EXECUTIVE ORDER 2020-080
**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 ONGOING 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 as “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. As of November 12, 2020 the Centers for Disease Control and Prevention (“CDC”) reported over 10 million people have been infected in the United States, with over 241,000 related deaths, and the New Mexico Department of Health has reported over 60,776 positive COVID-19 cases and 1,176 related deaths 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. 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 impacts. 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. The hard work of a variety of state employees has made a difference in our fight against COVID-19. Due to the continued spread of COVID-19, it is necessary for all branches of State government to continue taking actions to minimize transmission 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 Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-55, 2020-059, 2020- 064, and 2020-073 shall be renewed and extended through December 11, 2020.

2. All other powers, directives, and orders invoked 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 or that was not explicitly stated shall continue with the same effect, including any orders appropriating emergency funding and the following orders: Executive Order 2020-012; Executive Order 2020-016; Executive Order 2020-020; Executive Order 2020-021; Executive Order 2020-025; Executive Order 2020-037; Executive Order 2020-039; Executive Order 2020-056; Executive Order 2020-063; Executive Order 2020-072; and Executive Order 2020-075.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect November 13, 2020 and shall remain in effect until December 11, 2020 unless renewed, modified, or until the Governor rescinds it.

**DONE AT THE EXECUTIVE
OFFICE THIS 13TH DAY OF
NOVEMBER 2020**

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

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

**MICHELLE LUJAN GRISHAM
GOVERNOR**

**HEALTH,
DEPARTMENT OF**

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH
ACTING SECRETARY BILLY J.
JIMENEZ**

NOVEMBER 5, 2020

**Public Health Emergency Order
Clarifying that Current Guidance**

**Documents, Advisories, and
Emergency Public Health Orders
Remain in Effect; and Amending
Prior Public Health Emergency
Orders Limiting Businesses and
Non-Profit Entities' Operations
and
Providing Additional Restrictions
on Mass Gatherings Due to
COVID-19**

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). Continued social distancing and self-isolation measures are necessary to protect public health given the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. While this Order continues some loosened restrictions on mass gatherings and business operations, the core directive underlying all prior public health initiatives remains intact; 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 must strictly adhere to social distancing protocols and wear face coverings 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;
 - 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; and
 - D. September 3, 2020 Public Health Emergency Order Clarifying that Polling Places Shall be Open as required in the Election Code and Imposing Certain Social Distancing Restrictions on Polling Places.
3. The October 22, 2020 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders Limiting Businesses and Non-Profit Entities' Operations 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, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through November 13, 2020;

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 over 34,000 and confirmed cases in the United States have risen to more than 7.8 million, with significant recent spikes in cases in some of our neighboring states;

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 and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate 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 -19, 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, Billy J. Jimenez, Acting
 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, 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) “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, 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,
 drug and alcohol recovery support
 services, 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;

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.
 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;

g.
 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;

h. 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;

i. Veterinary
 and livestock services, animal
 shelters and facilities providing pet
 adoption, grooming, daycare, or
 boarding services;

j. Media
 services;

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

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

m. Hardware
 stores;

n.
 Laundromats and dry cleaner
 services;

o.
 Funeral homes, crematoriums and
 cemeteries;

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

q. Businesses
 providing mailing and shipping
 services;

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

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

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

(2) “Close-contact
 businesses” include barbershops,
 hair salons, gyms, group fitness

classes, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, bowling alleys, ice skating rinks, and personal training services.

(3) “Food and drink establishments” include restaurants, breweries, wineries, distillers, cafes, coffee shops, or other similar establishments that offer food or drink. For purposes of this section, “breweries” are those businesses licensed pursuant to NMSA 1978, Section 60-6A-26.1; “distillers” are those businesses licensed pursuant to NMSA 1978, Section 60-6A-1; and “wineries” are those businesses licensed pursuant to NMSA 1978, Section 60-A-11.

(4) “Houses of worship” means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs.

(5) “Close-contact recreational facilities” include indoor movie theaters, indoor museums with interactive displays or exhibits and other similar venues, miniature golf, arcades, amusement parks, aquariums, casinos, concert venues, professional sports venues, event venues, bars, dance clubs, performance venues, go-kart courses, automobile racetracks, adult entertainment venues, and other places of recreation or entertainment. For purposes of this section, a “bar” is defined as any business that generated more than half of its revenue from the sale of alcohol during the preceding fiscal year.

(6) “Outdoor recreational facilities” include outdoor golf courses, public swimming pools, outdoor tennis courts, youth programs, youth livestock shows, u-pick produce operations and corn mazes, horseracing tracks, botanical gardens, outdoor zoos, and New Mexico state parks.

(7) “Places of lodging” means all hotels, motels, RV parks, and short-term vacation rentals.

(8) “Retail space” means any business that sells goods or services directly to consumers or end-users and includes the following “essential businesses” identified in the categories above: l(d), (l)k, (l)m, and (l)n.

(9) “Mass gathering” means any public gathering, private gathering, organized event, ceremony, parade, funeral, organized amateur contact sport, or other grouping that brings together more than five (5) individuals in a single room or connected space, confined outdoor space or an open outdoor space. “Mass gathering” does not include the presence more than five (5) 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.

(10) “COVID-Safe Practices” (“CSPs”) are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled “All Together New Mexico: COVID-Safe Practices for Individuals and Employers.” This document may be obtained at the following link <https://cv.nmhealth.org/covid-safe-practices/>.

I HEREBY DIRECT AS FOLLOWS:

(1) Except as provided elsewhere in this Order, all “mass gatherings” are hereby prohibited under the powers and authority set forth in the Public Health Act. An indoor or outdoor parade of any sort is a mass gathering; parades are therefore prohibited under this Order.

(2) “Essential businesses” may open but must comply with the pertinent “COVID-Safe Practices (CSPs)” section(s) of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers” and any identified occupancy restrictions. “Essential businesses” identified as a “retail space” must close by 10:00 p.m. and must remain closed until at

least 4:00 a.m. A “retail space” may not exceed 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department. Further, an “essential business” identified as a “retail space” may not allow a person who is without a mask or multilayer cloth face covering to enter the premises except where that person is in possession of a written exemption from a healthcare provider.

(3) “Close-contact businesses” may operate at up to 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department. Bowling alleys may open for league play only and must adhere to occupancy restrictions and all applicable CSP’s including wearing masks. Ice skating rinks may operate for athletic training and practice by reservation only.

(4) “Close-contact recreational facilities” must remain closed.

(5) “Food and drink establishments” may provide dine-in service, but they may not exceed more than 25% occupancy of the maximum occupancy in any enclosed space on the premises, as determined by the relevant fire marshal or fire department. “Food and drink establishments” choosing to provide indoor dining must ensure that there is at least six feet of distance between tables. No more than six patrons may be seated at any single table. No bar or counter seating is permitted. Dine-in services shall be provided only to patrons who are seated at table, and patrons may not consume food or beverage while standing. In order to provide any indoor dining after October 30, 2020, “food and drink establishments” must complete the NM Safe Certified training offered at <https://mnsafecertified.org>, as well as comply with all NM Safe Certified requirements, including, but not limited to: screening customers and staff for

symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks. All “food and drink establishments,” regardless of noncompliance with the NM Safe Certified requirements, may provide service in outdoor seating areas up to 75% occupancy, where applicable. In all instances, tables in outdoor seating areas must be spaced at least six feet apart. No more than six patrons may be seated at any single table. Patrons must be seated in order to be served food or drink unless ordering food for carryout. No bar or counter seating is permitted. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law. Any “food and drink establishment” that is permitted to serve alcohol must close for in-person service by 10:00 p.m. and must remain closed until at least 4:00 a.m. “Food and drink establishments” may provide delivery service after 10:00 p.m. but no customers are permitted on the premises.

(6) “Houses of worship” may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not be used as a venue for non-religious events. “Houses of worship” may not exceed 40% of the maximum occupancy of any enclosed building, as determined by the relevant fire marshal or fire department.

(7) “Outdoor recreational facilities” may operate provided they comply with the pertinent “All Together New Mexico: COVID-Safe Practices for Individuals and Businesses.” Further, state parks shall only be open to New Mexico residents. Visitor centers and any other large enclosed indoor spaces at state parks shall remain closed. As a condition of entering a state park,

all visitors must demonstrate proof of residency through one of the following means: a New Mexico license plate on their vehicle; a New Mexico driver’s license or ID card; a valid New Mexico vehicle registration; a federal document attesting to residency; or a military identification. The State Parks Division is directed to extend the use of annual camping passes that were purchased after March 2019 for a period determined by the State Parks Division related to the original expiration date due to the closure of State Parks to camping. In addition, public swimming pools are limited to the concurrent use of not more than ten (10) persons. Play and splash areas shall be closed. Horseracing tracks may not allow spectators.

(8) “Places of lodging” which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 60% of maximum occupancy. All other “places of lodging” shall not operate at more than 25% of maximum occupancy. Healthcare providers who are engaged in the provision of care to New Mexico residents or individuals utilizing “places of lodging” for extended stays, as temporary housing, or for purposes of quarantining shall not be counted for purposes of determining maximum occupancy.

(9) Any business that is not identified as an “essential business,” “close-contact business,” “food and drink establishment,” “house of worship,” “close-contact recreational facility,” “outdoor recreational facility,” or “place of lodging” may open provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department.

(10) Any entity, including businesses and houses of worship, operating pursuant to this public health order must comply with the pertinent “COVID-Safe

Practices (CSPs)” section(s) of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers” and also any identified occupancy restrictions.

(11) Private educational institutions serving children and young adults from pre Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in person instruction described in the document “Reentry Guidance” published by New Mexico’s Public Education Department on June 20, 2020 and as updated from time to time thereafter, and shall operate with a maximum occupancy of 25% of any individual enclosed indoor space, such as any classroom, as determined by the relevant fire marshal or fire department, with the occupancy restriction herein to govern in the event of any discrepancy with the “Reentry Guidance.”

(12) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating or drinking. Masks with vents shall not satisfy this requirement.

(13) The New Mexico Department of Health, 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) 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.

(15) Any “food and drink establishment,” “close-contact business,” “place of lodging,” “retail space,” or other business that poses a significant public health risk, as determined by the Department of Health, must close for a period of two weeks following the occurrence of four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Notwithstanding this provision, a “retail space” may be permitted to continue operating if the Department of Health, after consultation with the Environment Department, determines that the business is a necessary provider of goods or services within the community in light of geographic considerations.

(16) All state-run museums must close.

I FURTHER DIRECT as follows:

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

(2) This Public Health 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 Public Health Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Public Health Order shall take effect on November 5, 2020 and remain in effect through November 13, 2020.

(5) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under Section 12-10A-19.

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.**

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

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

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

**/S/ BILLY J. JIMENEZ, ACTING CABINET SECRETARY OF THE STATE OF NEW MEXICO
DEPARTMENT OF HEALTH**

**HEALTH,
DEPARTMENT OF
PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH
ACTING SECRETARY BILLY J.
JIMENEZ**

NOVEMBER 16, 2020

Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Provide Additional Temporary Restrictions Due to COVID-19

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). Continued social distancing and self-isolation measures are necessary to protect public health given the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. It remains the core purpose of this Order to emphasize that all New Mexicans should be staying in their homes for all but the most essential activities and services. This is especially true now, when this State is experiencing an unprecedented surge in new cases and hospitals are approaching or exceeding their capacity. ‘When New Mexicans are not in their homes, they must strictly adhere to social distancing protocols and wear face coverings 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;

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; and

3. The November 5, 2020 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders Limiting Businesses and Non-Profit Entities' Operations 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, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through December 11, 2020;

WHEREAS, confirmed cases in the United States have risen to more than 10.3 million and confirmed COVID-19 infections in New Mexico have risen to over 60,000 with significant recent spikes in New Mexico threatening to overwhelm our hospitals;

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 and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate 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 -19, 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, Billy J. Jimenez, Acting 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, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in 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.

DEFINITIONS

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

(1) "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, 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, drug and alcohol recovery support services, 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;

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, animal feed or supplies, fresh meats, fish, and poultry, and any other consumable household products;

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

f. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and

maintenance, self-storage facilities, 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;

g. 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;

h. 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;

i. Veterinary and livestock services, animal shelters and facilities providing pet adoption, daycare, or boarding services;

j. Media services;

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

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

m. Hardware stores, "big box" stores, and other large retailers;

n. Laundromats and dry cleaner services;

o. Crematoriums, funeral homes, and cemeteries;

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

q. Businesses providing mailing and shipping services;

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

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

t. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods or services directly to residences, retailers, government institutions, or essential businesses.
 (2) "Close-contact businesses" include barbershops, hair salons, gyms, group fitness classes, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, bowling alleys, ice skating rinks, and personal training services.

(3) "Food and drink establishments" include restaurants, breweries, wineries, distillers, cafes, coffee shops, or other similar establishments that offer food or drink. For purposes of this section, "breweries" are those businesses licensed pursuant to NMSA 1978, Section 60-6A-26.1; "distillers" are those businesses licensed pursuant to NMSA 1978, Section 60-6A-1; and "wineries" are those businesses licensed pursuant to NMSA 1978, Section 60-A-11.

(4) "Houses of worship" means any church, synagogue, mosque, or other

gathering space where persons congregate to exercise their religious beliefs.

(5) "Close-contact recreational facilities" include indoor movie theaters, indoor museums with interactive displays or exhibits and other similar venues, miniature golf, arcades, amusement parks, aquariums, casinos, concert venues, professional sports venues, event venues, bars, dance clubs, performance venues, go-kart courses, automobile racetracks, adult entertainment venues, and other places of recreation or entertainment. For purposes of this section, a "bar" is defined as any business that generated more than half of its revenue from the sale of alcohol during the preceding fiscal year.

(6) "Outdoor recreational facilities" include outdoor golf courses, public swimming pools, outdoor tennis courts, ski basins, youth programs, youth livestock shows, u-pick produce operations and corn mazes, horseracing tracks, botanical gardens, outdoor zoos, and New Mexico state parks.

(7) "Places of lodging" means all hotels, motels, RV parks, and short-term vacation rentals.

(8) "Retail space" means any business identified in the categories above: l(d), (l)k, (l)m, and (l)n.

(9) "Mass gathering" means any public gathering, private gathering, organized event, ceremony, parade, funeral, or any other grouping that brings together more than five (5) individuals in a single room or connected space, confined outdoor space or an open outdoor space. "Mass gathering" also includes coordinated events in which individuals gather in ten (10) or more vehicles. "Mass gathering" does not include the presence more than five (5) 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.

(10) “COVID-Safe Practices” (“CSPs”) are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled “All Together New Mexico: COVID-Safe Practices for Individuals and Employers.” This document may be obtained at the following link <https://cv.nmhealth.org/covid-safe-practices/>.

DIRECTIONS:

Beginning November 16, 2020, I **DIRECT** as follows:

(1) Except as provided elsewhere in this Order, all “mass gatherings” are prohibited.

(2) “Houses of worship” may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not be used as a venue for non-religious events. “Houses of worship” may not exceed the lesser of 25% of the maximum occupancy of any enclosed building, as determined by the relevant fire marshal or fire department, or 75 individuals at any given time.

(3) All businesses and non-profit entities, except those entities defined as “essential businesses,” must reduce the in-person workforce at each business or business location by 100%. “Essential businesses” may remain open, provided they minimize their operation and staff to the greatest extent possible. Further, all “essential businesses” shall comply with the pertinent “COVID-Safe Practices (CSPs)” section(s) of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers” and any identified occupancy restrictions. “Essential businesses” identified as a “retail space” must close by 10:00 p.m. and must remain closed until at least 4:00 a.m. Further, “essential businesses” identified as a “retail space” may not exceed the lesser of either 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire

marshal or fire department, or 75 customers in the business space at any given time. Further, “essential businesses” identified as a “retail space” may not allow a person who is without a mask or multilayer cloth face covering to enter the premises except where that person is in possession of a written exemption from a healthcare provider.

(4) “Food and drink establishments” may not provide any indoor or outdoor dine-in service but may provide carryout service or delivery service, if otherwise permitted by law.

(5) Notwithstanding paragraph (3), all businesses may conduct business operations through telecommuting or otherwise working from home in which an employee only interacts with clients or customers remotely. Further, businesses that are not identified as “essential businesses” may operate to the minimum extent necessary to provide curbside pickup and/or delivery services to customers but only if not otherwise prohibited by law to do so.

(6) “Places of lodging” which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 25% of maximum occupancy. All other “places of lodging” must close to the extent not being utilized for the purposes of housing healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, or individuals who are quarantining. The foregoing groups of individuals shall not be counted for purposes of determining maximum occupancy for “places of lodging.”

(7) 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.

(8) All outdoor recreational facilities must close.

(9) All state-run museums must remain closed.

(10) Any indoor malls must close, except that individual “essential businesses” with separate outdoor entrances may continue to operate to the extent otherwise permitted by this Order.

(11) Private educational institutions serving children and young adults from pre Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in person instruction described in the document “Reentry Guidance” published by New Mexico’s Public Education Department on June 20, 2020 and as updated from time to time thereafter, and shall operate with a maximum occupancy of 25% of any individual enclosed indoor space, such as any classroom, as determined by the relevant fire marshal or fire department, with the occupancy restriction herein to govern in the event of any discrepancy with the “Reentry Guidance.”

(12) Any “food and drink establishment,” “place of lodging,” “retail space,” or “essential business” (other than those which meet the definition of a healthcare operation, utility, or media service) in which members of the public regularly visit, must immediately close for a period of fourteen (14) days following the occurrence of four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Notwithstanding this provision, an “essential business” may be permitted to continue operating if the Department of Health, after consultation with the Environment Department, determines that the business is a necessary provider of goods or services within the community in light of geographic considerations.

(13) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating or drinking. Masks with vents shall not satisfy this requirement.

(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, "retail spaces" shall limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual.

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 on November 16, 2020 and remain in effect through November 30, 2020.

(5) The New Mexico Department of Health, 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.

(6) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under Section 12-10A-19.

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.

DONE AT THE EXECUTIVE OFFICE THIS 16TH DAY OF NOVEMBER 2020

ATTEST:
/S/ MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

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

/S/ BILLY J. JIMENEZ, ACTING CABINET SECRETARY OF THE STATE OF NEW MEXICO DEPARTMENT OF HEALTH

**HEALTH,
DEPARTMENT OF
PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH
ACTING SECRETARY BILLY J.
JIMENEZ**

NOVEMBER 18, 2020

Public Health Emergency Order

Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Provide Additional Temporary Restrictions Due to COVID-19

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 ("COVID-19"). Continued social distancing and self-isolation measures are necessary to protect public health given the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. It remains the core purpose of this Order to emphasize that all New Mexicans should be staying in their homes for all but the most essential activities and services. This is especially true now, when this State is experiencing an unprecedented surge in new cases and hospitals are approaching or exceeding their capacity. "When New Mexicans are not in their homes, they must strictly adhere to social distancing protocols and wear face coverings 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;

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; and

3. The November 16, 2020 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders Limiting Businesses and Non-Profit Entities' Operations 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, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through December 11, 2020;

WHEREAS, confirmed

cases in the United States have risen to more than 10.3 million and confirmed COVID-19 infections in New Mexico have risen to over 60,000 with significant recent spikes in New Mexico threatening to overwhelm our hospitals;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 220,000 Americans and over 1,100 New Mexicans;

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 and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate 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 -19, 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, Billy J. Jimenez, Acting 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, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in 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.

DEFINITIONS

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

(1) “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, 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, drug and alcohol recovery support services, 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;

d. Grocery stores, supermarkets, food banks, farmers’ markets and vendors who sell food, convenience stores, and

other businesses that generate more than one-third of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, animal feed or supplies, fresh meats, fish, and poultry, and any other consumable household products;

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

f. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, self-storage facilities, 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;

g. 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;

h. 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;

i. Veterinary and livestock services, animal shelters and facilities providing pet adoption, daycare, or boarding services;

j. Media services;

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

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

m. Hardware stores;

n. Laundromats and dry cleaner services;

o. Crematoriums, funeral homes, and cemeteries;

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

q. Businesses providing mailing and shipping services;

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

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

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

(2) "Close-contact businesses" include barbershops, hair salons, gyms, group fitness classes, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, bowling alleys, ice skating rinks, and personal training services.

(3) "Food and drink

establishments" include restaurants, breweries, wineries, distillers, cafes, coffee shops, or other similar establishments that offer food or drink. For purposes of this section, "breweries" are those businesses licensed pursuant to NMSA 1978, Section 60-6A-26.1; "distillers" are those businesses licensed pursuant to NMSA 1978, Section 60-6A-1; and "wineries" are those businesses licensed pursuant to NMSA 1978, Section 60-A-11.

(4) "Houses of worship" means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs.

(5) "Close-contact recreational facilities" include indoor movie theaters, indoor museums with interactive displays or exhibits and other similar venues, miniature golf, arcades, amusement parks, aquariums, casinos, concert venues, professional sports venues, event venues, bars, dance clubs, performance venues, go-kart courses, automobile racetracks, adult entertainment venues, and other places of recreation or entertainment. For purposes of this section, a "bar" is defined as any business that generated more than half of its revenue from the sale of alcohol during the preceding fiscal year.

(6) "Outdoor recreational facilities" include outdoor golf courses, public swimming pools, outdoor tennis courts, ski basins, youth programs, youth livestock shows, u-pick produce operations and corn mazes, horseracing tracks, botanical gardens, outdoor zoos, and New Mexico state parks.

(7) "Places of lodging" means all hotels, motels, RV parks, and short-term vacation rentals.

(8) "Retail space" means any business identified in the categories above: l(d), (l)k, (l)m, and (l)n.

(9) "Mass gathering" means any public gathering, private gathering, organized event,

ceremony, parade, funeral, or any other grouping that brings together more than five (5) individuals in a single room or connected space, confined outdoor space or an open outdoor space. "Mass gathering" also includes coordinated events in which individuals gather in ten (10) or more vehicles. "Mass gathering" does not include the presence more than five (5) 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.

(10) "COVID-Safe Practices" ("CSPs") are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled "All Together New Mexico: COVID-Safe Practices for Individuals and Employers." This document may be obtained at the following link <https://cv.nmhealth.org/covid-safe-practices/>.

DIRECTIONS:

Beginning November 19, 2020, I **DIRECT** as follows:

(1) Except as provided elsewhere in this Order, all "mass gatherings" are prohibited.

(2) "Houses of worship" may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not be used as a venue for non-religious events. "Houses of worship" may not exceed the lesser of 25% of the maximum occupancy of any enclosed building, as determined by the relevant fire marshal or fire department, or 75 individuals at any given time.

(3) All businesses and non-profit entities, except those entities defined as "essential businesses," must reduce the in-person workforce at each business or business location by 100%. "Essential businesses" may remain open, provided they minimize their operation and staff to the greatest extent possible.

Further, all "essential businesses" shall comply with the pertinent "COVID-Safe Practices (CSPs)" section(s) of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers" and any identified occupancy restrictions. "Essential businesses" identified as a "retail space" must close by 10:00 p.m. and must remain closed until at least 4:00 a.m. Further, "essential businesses" identified as a "retail space" may not exceed the lesser of either 25% of the maximum occupancy of any enclosed space on the business's premises, as determined by the relevant fire marshal or fire department, or 75 customers in the business space at any given time. Further, "essential businesses" identified as a "retail space" may not allow a person who is without a mask or multilayer cloth face covering to enter the premises except where that person is in possession of a written exemption from a healthcare provider.

(4) "Food and drink establishments" may not provide any indoor or outdoor dine-in service but may provide carryout service or delivery service, if otherwise permitted by law.

(5) Notwithstanding paragraph (3), all businesses may conduct business operations through telecommuting or otherwise working remotely if employees do not interact with clients or customers in person. Further, businesses that are not identified as "essential businesses" may operate to the minimum extent necessary to provide curbside pickup and/or delivery services to customers but only if not otherwise prohibited by law to do so.

(6) "Places of lodging" which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 25% of maximum occupancy. All other "places of lodging" must close to the extent not being utilized for the purposes of housing healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, or

individuals who are quarantining. The foregoing groups of individuals shall not be counted for purposes of determining maximum occupancy for "places of lodging."

(7) 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.

(8) All outdoor recreational facilities must close.

(9) All state-run museums must remain closed.

(10) All indoor malls must close, except that individual "essential businesses" with separate outdoor entrances may continue to operate to the extent otherwise permitted by this Order.

(11) Private educational institutions serving children and young adults from pre Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in person instruction described in the document "Reentry Guidance" published by New Mexico's Public Education Department on June 20, 2020 and as updated from time to time thereafter, and shall operate with a maximum occupancy of 25% of any individual enclosed indoor space, such as any classroom, as determined by the relevant fire marshal or fire department, with the occupancy restriction herein to govern in the event of any discrepancy with the "Reentry Guidance."

(12) Any "food and drink establishment," "place of lodging," "retail space," or "essential business" (other than those which meet the definition of a healthcare operation, utility, or media service) in which members of the public regularly visit, must

immediately close for a period of fourteen (14) days following the occurrence of four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Notwithstanding this provision, an "essential business" may be permitted to continue operating if the Department of Health, after consultation with the Environment Department, determines that the business is a necessary provider of goods or services within the community in light of geographic considerations.

(13) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating or drinking. Masks with vents shall not satisfy this requirement.

(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, "retail spaces" shall limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual.

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 on November 19, 2020 and remain in effect through November 30, 2020.

(5) The New Mexico Department of Health, 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.

(6) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under Section 12-10A-19.

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.

DONE AT THE EXECUTIVE OFFICE THIS 18TH DAY OF NOVEMBER 2020

ATTEST:
/S/ MAGGIE TOULOUSE
OLIVER
SECRETARY OF STATE

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

**/S/ BILLY J. JIMENEZ, ACTING
CABINET 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

Volume XXXI, Issues 1-24

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

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

The New Mexico Register is available free online at: <http://www.srca.nm.gov>. For further information, call 505-476-7941.

2021 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXII, Issues 1-24

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

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

The New Mexico Register is available free online at: <http://www.srca.nm.gov/new-mexico-register/>. For further information, call 505-476-7941