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New Mexico Register

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

Volume XXXI - Issue 23 - December 15, 2020

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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.

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New Mexico Register

Volume XXXI, Issue 23

December 15, 2020

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Notices of Rulemaking and Proposed Rules

FINANCE, DEPARTMENT OF NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that pursuant to Subsection A of 1.24.25.9 and 1.24.25.11 NMAC, the State of New Mexico Department of Finance and Administration (hereinafter “DFA”) will hold a rulemaking hearing on Friday, January 15, 2021 at 10:00 AM. The meeting will be held virtually via Webex. Members of the public may attend the Webex meeting on a computer, mobile device, or telephone. The videoconference’s Meeting ID and Password, video link, and telephone numbers are as follows:

Webex meeting scheduled:
Department of Finance and
Administration Rulemaking Hearing
- Virtual
<https://protect-us.mimecast.com/s/YpjJCJ62pVTyMzxPHVZIIk?domain=nmdfa.webex.com>

Meeting number (access code): 146
809 4756
Meeting password: 3y7CVxs5rxD

Friday, January 15, 2021
10:00 am | (UTC-07:00) Mountain
Time (US & Canada) | 5 hrs

Start meeting

Tap to join from a mobile device
(attendees only)
+1-415-655-0001,,1468094756## US
Toll
Join by phone
+1-415-655-0001 US Toll
Global call-in numbers
Join from a video system or
application
Dial 1468094756@nmdfa.webex.com
You can also dial 173.243.2.68 and
enter your meeting number.

Join using Microsoft Lync or
Microsoft Skype for Business
Dial 1468094756.nmdfa@lync.
webex.com

If you are a host, click here to view
host information.

Need help? Go to <http://help.webex.com>

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Andrew Baranowski at (505) 670-2285 by January 1, 2020, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. A copy of the agenda is also available on the DFA website and at the office of the DFA located at 180 Bataan Memorial Building, 407 Galisteo Street, Santa Fe, NM 87501. The agenda is subject to change up to 72 hours prior to the meeting.

Synopsis:

DFA will hold a hearing to repeal and replace 2.20.2 NMAC, Execution of Contracts, Vouchers, Purchase Orders and Other Financial Commitments. Pursuant to Subsection E of 9-1-5 and 9-6-5 NMSA 1978, DFA promulgates these rules to administer the duties of the Department and its divisions. Further legal authority for this rulemaking can be found in the State Rules Act, Section 14-4-1 *et seq.* NMSA 1978. Due to the age of 2.20.2 NMAC, the entire rule must be repealed and replaced in order to amend it.

Due to the Governor’s declaration of a public health emergency, DFA issued an emergency amendment effective August 25, 2020 allowing for certain documents being submitted to DFA to be digitally, rather than just manually, signed. The emergency amendment also made associated changes to the form of submission of documents to DFA given the acceptance of digital signatures. The proposed amendment of 2.20.2.7 and 2.20.2.9 NMAC consists of continuing to accept digital signatures and the associated document submission requirements by eliminating the public health

emergency justification. Additionally, the amendment will update 2.20.2.10 NMAC to better reflect the current composition of state government and will clean up old formatting.

Interested individuals are encouraged to submit comments during the Public Comment Period, which runs from December 15, 2020 through January 14, 2021. Written comments may be submitted to Andrew Baranowski, General Counsel, DFA, via email at Andrew.Baranowski@state.nm.us. All written comments will be posted on DFA’s website within three days of receipt. Interested persons may also provide data, opinion, or arguments, orally at the virtual public rule hearing on Friday, January 15, 2021 at 10:00 AM, or in writing as provided above.

Copies of the proposed rule may be accessed on the Department’s website at <http://www.nmdfa.state.nm.us/> or obtained from Mr. Baranowski by emailing Andrew.Baranowski@state.nm.us or calling (505) 670-2285.

DFA will consider the following items of rulemaking at the hearing:

Repeal:

2.20.2 NMAC, New Mexico
Administrative Code

Replace:

2.20.2 NMAC, New Mexico
Administrative Code

Changes to the affected rule are
reflected as follows:

<p>TITLE 2 FINANCE CHAPTER 20 BY GOVERNMENTAL ENTITIES PART 2 OF CONTRACTS, VOUCHERS, PURCHASE ORDERS AND OTHER</p>	<p>PUBLIC ACCOUNTING EXECUTION FINANCIAL COMMITMENTS</p>
---	---

2.20.2.1 **ISSUING**
AGENCY: Department of Finance

and Administration.
[Recompiled 10/1/2001; N/E
8/25/2020]

2.20.2.2 SCOPE:
[RESERVED]
[Recompiled 10/1/2001; N/E
8/25/2020]

2.20.2.3 STATUTORY AUTHORITY: In order to ascertain the authority and legality of contracts, purchase orders, vouchers, travel vouchers and other financial commitments for departments and other state agencies, pursuant to Section 6-5-3 NMSA 1978, it is necessary to determine whether the person executing the contract has been properly delegated the authority to bind the department or state agency. In many instances there is no clear statutory power granted to an officer to sign on behalf of an agency. Generally the person who is ultimately responsible for the administration of the law has the implied power to execute legal documents for a state agency. Generally the power to execute may be delegated; however, some laws may require specific officers to execute contracts and vouchers on behalf of the agency. In such cases, no delegation is allowed by law.
[Recompiled 10/1/2001; N/E
8/25/2020]

2.20.2.4 DURATION:
Permanent.
[Recompiled 10/1/2001; N/E
8/25/2020]

2.20.2.5 EFFECTIVE DATE: February 9, 2021, unless a later date is cited at the end of a section. [Recompiled 10/1/2001; N/E
8/25/2020]

2.20.2.6 OBJECTIVE: The various acts creating departments pursuant to the Executive Reorganization Acts generally provide that the secretary of the department is responsible to the governor for the operation of the department and shall delegate authority to subordinates as the secretary deems necessary and

appropriate, clearly delineating such delegated authority and the limitations thereto. It is the purpose of this rule to set forth those individuals who may legally bind state agencies which must submit their contracts or vouchers to the department of finance and administration.
[Recompiled 10/1/2001; N/E
8/25/2020]

2.20.2.7 DEFINITIONS:
As used in this rule:
A. “authorized officer” means a public officer or employee who is required or permitted by law or by lawful delegation of authority pursuant to this rule to sign contracts, vouchers, purchase orders or other financial commitments on behalf of a state agency;
B. “contracts officer” means an employee of the department of finance and administration designated as contracts officer by the secretary of finance and administration;
C. “facsimile signature” means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of the authorized officer;
D. “signed” or “executed” means affixed with any of the following:

- (1) the manual signature of an individual; and
- (2) the facsimile signature of an individual;
- (3) the electronic signature of an individual procured through a third-party document-signing service; or
- (4) the name of an individual, typewritten on the signature line of a document using word processing software and accompanied with another writing confirming that individual’s approval of such document, including without limitation an e-mail to that effect.

E. “state agency” means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities, or institutions required to submit contracts or vouchers to the department of finance

and administration for approval.
[Recompiled 10/1/2001; N/E & A/E,
8/25/2020]

2.20.2.8 EXECUTION OF CONTRACTS, VOUCHERS AND PURCHASE ORDERS - AUTHORIZED SIGNATURES:

A. The department of finance and administration will not approve any contract, voucher, travel voucher, purchase order or other financial commitment of any state agency required pursuant to [~~DFA rule 78-6 Amendment No. 1,~~] 2.20.3 NMAC and [~~87-1 Amendment No. 1~~] 2.40.2 NMAC, to submit its voucher or contract to the department for approval unless the contract, voucher, travel voucher, purchase order or other financial commitment has been executed by an authorized officer of the agency.

B. The authority to execute contracts, vouchers, purchase orders, travel vouchers or other financial commitments may be delegated unless provided otherwise by law to any officer or employee of the state agency, but such delegation shall:

- (1) be in writing;
- (2) state whether the delegated power may be subdelegated to another officer or employee of the state agency;
- (3) automatically terminate on whichever date occurs earliest;
 - (a) the date the term of office of the delegating secretary or other chief financial officer ends; or
 - (b) annually on June 30; and
- (4) be on file with the contracts officer of the department of finance and administration (for contracts); and
- (5) be on file with the financial control division of the department of finance and administration.

C. A written delegation of authority to execute contracts, vouchers, travel vouchers, purchase orders or other financial commitments

may contain such limitations or conditions as the delegating authorized officer may deem appropriate.

D. No authorized officer shall delegate to any other person authority to sign the authorized officer's signature.

E. Nothing in this rule shall prevent the use of facsimile, printed or typed signature of the secretary or chief financial officer on a copy of a contract, voucher, travel voucher, purchase order or other financial commitment. [Recompiled 10/1/2001; N/E 8/25/2020]

2.20.2.9 ~~[ORIGINAL]~~-SIGNATURES REQUIRED ~~[FACSIMILE SIGNATURES]~~:

~~[A. The original and at least one copy]~~ The two copies of every contract, voucher, travel voucher, purchase order or other financial commitment required to be submitted to the department shall be signed by an authorized officer. The department will retain at least one signed copy of every contract, voucher, travel voucher, purchase order or other financial commitment. Alternatively, agencies may submit a single electronic version, in portable document format (PDF) or a comparable format and in such a manner as the department may direct, of an executed contract, voucher, travel voucher, purchase order or other financial commitment required to be submitted to the department.

~~[B. Except as provided in paragraph A of this section, all duplicate copies of contracts, vouchers, travel vouchers, purchase orders or other financial commitments required to be submitted to the department for approval may be executed with a facsimile signature in lieu of the original signature of the authorized officer.]~~

[Recompiled 10/1/2001; N/E & A/E 8/25/2020]

2.20.2.10 AUTHORIZED OFFICERS - DELEGATION:

A. The following public officers are authorized to execute contracts, vouchers, purchase orders and other financial commitments on behalf of the state agency under their control or supervision. Signatures must be on file at the financial control division of the department of finance and administration.

STATE AGENCY	OFFICER AUTHORIZED
office of the governor	governor
office of the lieutenant governor	lieutenant governor
office of the attorney general	attorney general
secretary of state	secretary of state
state auditor	state auditor
[state corporation commission]	
public regulation commission	commission
[insurance department]	superintendent of insurance]
state fire [marshall] <u>marshal</u>	state fire [marshall] <u>marshal</u>
transportation department	director
office of the superintendent of insurance	superintendent of insurance
state land office	land commissioner
state treasurer	state treasurer
department of agriculture	secretary of department
N.M. livestock board	executive director
[peanut commission]	commission]
corrections department	secretary of department
children, youth and families dept.	secretary of department
public defender department	director
juvenile parole board	board
adult parole board	board
economic development [& tourism] department	secretary of department
[research and development Institute]	director]
state fair commission	commission
state racing commission	commission
energy, minerals and natural resources dept.	secretary of department
state game commission	commission
department of game and fish	director
[public service commission]	commission]
department of finance and administration	secretary of department
[commission on higher education]	commission]
[office of cultural affairs]	cultural affairs officer]
[committee on concerns of the	director
Handicapped]	

general services department	secretary of department
state personnel board	director
<u>state personnel office</u>	<u>director</u>
[health & environment department]	secretary of department]
[health] department of health	secretary of department
[environment] department of environment	secretary of department
[state highway &] transportation department	secretary of department
human services department	secretary of department
commission on the status of women	commission
[state agency on aging]	director]
[office of Indian affairs]	commission on Indian affairs]
department of [labor] <u>workforce solutions</u>	secretary of department
department of public safety	secretary of department
taxation and revenue department	secretary of department
commission for the blind	commission
crime stoppers commission	commission
crime victims reparation commission	commission
[state department of] public education <u>department</u>	[superintendent] <u>secretary of department</u>
division of vocational rehabilitation	director
state investment council	state investment officer
department of military affairs	adjutant general
state commission of public records	state records administrator
regulation and licensing department	superintendent
interstate stream commission	commission
office of the state engineer	state engineer
[NM veteran service commission]	commission]
institutions of higher education	boards of regents or controllers
miners hospital	board
<u>department of cultural affairs</u>	<u>secretary of department</u>
<u>office of African American affairs</u>	<u>executive director</u>
<u>tourism department</u>	<u>secretary of department</u>
<u>Indian affairs department</u>	<u>secretary of department</u>
<u>veterans' services department</u>	<u>secretary of department</u>
<u>aging and long-term services department</u>	<u>secretary of department</u>
<u>public education commission</u>	<u>commission</u>
<u>higher education department</u>	<u>secretary of department</u>
<u>department of information technology</u>	<u>secretary of department</u>
<u>homeland security and emergency</u>	
<u>management department</u>	<u>secretary of department</u>
<u>state ethics commission</u>	<u>commission</u>
<u>early childhood education and care department</u>	<u>secretary of department</u>
<u>all executive departments not otherwise listed</u>	<u>secretary of department</u>
<u>all commissions</u>	<u>commission</u>
all boards	board
all other state agencies not otherwise listed	as provided by applicable law, regulation, or governance

documents

~~[youth authority children, youth and families dept.]~~ ~~secretary of department]~~

LEGISLATIVE BRANCH

legislative council service	director
legislative finance committee	committee
legislative school study committee	chairman of committee
all other vouchers	director

JUDICIAL BRANCH

supreme court	chief justice
compilation commission	secretary of commission
building commission	commission
director, administrative office of courts	supreme court
court of appeals	chief Judge

district courts
 magistrate courts
 district attorneys
 judicial standards commission
 judicial council

presiding judge
 director, administrative office of the courts
 district attorney
 executive director
 council

B. If the authorized officer set forth in Subsection A of this section is a board or commission, the power to execute contracts, vouchers, purchase orders or other financial commitments may be delegated by a majority of a quorum of the board or commission acting in accordance with the provisions of law.

[Recompiled 10/1/201; 8/25/2020]

HISTORY OF 2.20.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

DFA 78-5 Execution of Contracts, Vouchers, Purchase Orders and Other Financial Commitments, 6/30/1978.

DFA 78-5, Amendment No. 1, 12/20/1989.

History of Repealed Material: 2.20.2 NMAC, Execution of Contracts, Vouchers, Purchase Orders and Other Financial Commitments, repealed to amend as emergency Sections 7 and 9, effective August 25, 2020.

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the following New Mexico Administrative Code (NMAC) rules: *8.281.400 NMAC, Medicaid Eligibility-Institutional Care (categories 081, 083, 084), Recipient Policies, 8.290.400 NMAC, Medicaid Eligibility-Home and Community-Based Services Waiver (categories 090, 091, 092, 093, 094, 095 and 096), Recipient Policies.*

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

Notice Date: December 15, 2020
 Hearing Date: January 21, 2021
 Adoption Date: Proposed as May 1, 2021
 Technical Citations: 42 CFR 435 subpart B and C

Background

HSD is revising Institutional Care and Home and Community-Based

Services Waiver (HCBSW) Medicaid rules to eliminate the requirement for an interview at initial application, add language regarding the requirement for a match letter for Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) applicants to confirm the applicant or recipient meets the definition of an individual with a developmental disability, and to add new language and delete outdated language to HCBSW rules on what constitutes an intellectual disability and related condition. HSD is revising the definitions to be a functional versus a categorical definition of developmental disability which is a national best practice.

The Department is proposing to amend the rules as follows:

8.281.400 NMAC

Section 1 is amended to add the acronym HSD for the Human Services Department.

Section 8 is revised to include the Department's current mission statement.

Section 10 is revised to change "applicant/recipient" to "applicant or recipient." This change was implemented throughout this rule for consistency.

Section 11 is revised to remove the

requirement for an interview for Institutional Care Medicaid. An interview may be requested by an applicant or recipient.

Section 15 is amended to add language that to be eligible for ICF/IID applicants or recipients must obtain a match letter from the Department of Health (DOH) to confirm that he or she meets the definition of an individual with a developmental disability as determined by the DOH/ Developmental Disabilities Supports Division.

8.290.400 NMAC

Section 7 was revised to delete the word "specific."

Section 8 is revised to include the Department's current mission statement.

Section 10 pertaining to the Developmental Disabilities Waiver was revised to add language regarding what constitutes an "intellectual disability."

Specific language was added to intellectual disability to define general intellectual functioning as the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of

assessing intellectual functioning. Significantly sub-average is defined as an intelligence quotient (IQ) of 70 or below. Adaptive behavior is defined as the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for age and cultural group. The developmental period is defined as the period of time between birth and the 18th birthday.

Revisions were made to add language as to what constitutes a “related condition” and delete language that was no longer applicable.

Specific language was added to exclude mental illness as a related condition. Language was added to define related condition as attributable to a condition, other than mental illness, found to be closely related to an intellectual disability (ID) because this condition results in limitations in general intellectual functioning or adaptive behavior similar to that of persons with an intellectual disability and requires similar treatment or services.

A related condition is manifested before the person reaches age twenty-two (22) years; is likely to continue indefinitely and results in substantial functional limitations (Adaptive Behavior scores less than or equal to 70) in three or more of the following areas: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

Section 11 was amended to remove the interview requirement for home and community-based services waiver categories.

The register for these proposed amendments to this rule will be available December 15, 2021 on the HSD web site at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx>. If you do not have Internet access, a copy of the

proposed rules may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement these rules effective May 1, 2021. A public hearing to receive testimony on these proposed rule changes will be held via conference call on Thursday, January 21, 2021 at 10:00 a.m., Mountain Time (MT). **Conference Number: 1-800-747-5150. Access Code: 2284263.**

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

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on January 21, 2021. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

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

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available

on the MAD website or at a location within the county of the requestor.

NURSING, BOARD OF

NOTICE OF PUBLIC RULEMAKING HEARING

The New Mexico Board of Nursing (NMBON) will hold a Public Rulemaking Hearing on Thursday February 4, 2021. The Rulemaking Hearing will begin at 9:00 AM via Zoom through New Mexico Board of Nursing, at 6301 Indian School Rd NE, Albuquerque, NM 87110.

Statutory authority for this rulemaking can be found in Section 61-3-10 et seq. NMSA 1978. The purpose of the Rulemaking Hearing is to hear public testimony and comments regarding the proposed amendment to the rule:

Title 16 Occupational and Professional Licensing
Chapter 12 Nursing and Health Care Related Providers
Part 3 Nursing Educational Programs.

Pursuant to the Nursing Practice Act, 61-3-23.5 NMSA 1978, the NMBON is mandated to promulgate rules for pre-licensure nursing education programs. The proposed language outlines rules for clinical simulation during a public health emergency, and updates the criteria for the different approval status for pre-licensure programs.

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

Persons desiring to view the proposed rule to be repealed or the new rule may download them from <https://nmbon.sks.com/rule-changes.aspx>. If you do not have internet access, a copy of the proposed rules may be requested by contacting the NMBON at (505) 841-9094.

Written comments may be submitted via email to BON. Legal@state.nm.us. If submitting comments via email specify in the subject line the following: NMBON Public Comments. Written comments may also be filed by sending original, signed copies to: New Mexico Board of Nursing ATTN: NMBON Public Comments 6301 Indian School Road, NE, Suite 710 Albuquerque, NM 87110

Persons wishing to submit written comments regarding the proposed rules should submit them to the Board office no later than Thursday, January 21, 2021. Written comments will be given the same consideration as oral testimony made at the public hearing. All written comments will be posted on the NMBON website within three days of receipt. All written comments must be received no later than 5:00 p.m. MST, Thursday, January 21, 2021.

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

PAROLE BOARD

NOTICE OF POSTPONEMENT OF PUBLIC RULE HEARING

The New Mexico Parole Board hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and Rule 1.24.25.11 NMAC that it postpones its public rulemaking hearing from December 29, 2020, to January 20, 2021 regarding the repeal and adoption of the following rules Paragraph (8) of Subsection B of Section 31-21-25 NMSA 1978:

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
22.510.17 NMAC – PAROLE HEARINGS FOR YOUTH SENTENCED IN ADULT COURT

Technical information used in drafting these proposed rules is available on the Parole Board’s website, located at <https://cd.nm.gov/divisions/parole-board/>.

Purpose of proposed rules: 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.

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.

Notice of public rule hearing: The Parole Board is postponing the public rule hearing from 9 a.m. to 12 p.m. on December 29, 2020, to 9 a.m. to 12 p.m. on January 20, 2021, via Zoom (link: <https://zoom.us/j/96940735853?pwd=WWVvMlpHVXI3Y0YlMTI>)

odTRObGxWdz09) 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 January 20, 2021.

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.

Notice of acceptance of written 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 January 20, 2021. The Parole Board encourages the early submission of written comments. The public comment period is from

December 15, 2020, to 5 p.m. MDT on January 20, 2021.

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

PUBLIC EDUCATION DEPARTMENT

NOTICE OF EMERGENCY RULEMAKING

Public Notice. The New Mexico Public Education Department (PED) gives notice that on 12/3/2020 the department adopted 6.12.14 NMAC, COVID-19 School Reentry Requirements, as an emergency rule adoption. The new rule is in response to COVID-19 school reentry guidelines. The new rule is implemented as an emergency rule. The department finds that following the non-emergency rulemaking procedures in enacting regulation of school reentry requirements causes imminent peril to the public health, safety, and welfare, pursuant to Section 14-4-5.6 NMSA 1978, State Rules Act, Emergency rule.

Rule Information. The purpose of this rule is to establish the requirements for public school compliance with the department's COVID-19 school reentry guidance in order to protect and support the safe and healthy school attendance of New Mexico students, and safe and healthy working environment for teachers, faculty, staff, and administration.

The statutory authorizations include the following: Sections 9-24-8, 12-10-10, 22-2-1, and 22-2-2 NMSA 1978 grants the authority of the secretary to adopt, promulgate, and enforce rules.

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

A public comment period and a public hearing, pursuant to Section 14-4-5.3 NMSA 1978, State Rules Act, Public Participation, Comments, and Rule Hearings, will be held in order to adopt a permanent rule within 180 days of the effective date of December 3, 2020 for 6.12.14 NMAC, pursuant to Section 14-4-5.6 NMSA 1978, State Rules Act, Emergency rule.

Copies of the rule may be accessed through the New Mexico Public Education Department's website under the "Rule Notification" link at <https://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/> or may be obtained from John Sena by contacting him at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an alternative format are asked to contact John Sena at (505) 570-7816.

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 Tuesday, January 19, 2021 from 9 a.m. to 11 a.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501. The location of the public hearing may be subject to change due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-080, Declaration of a Public Health Emergency; and Executive Order 2020-059, Renewing the State of Public Health Emergency Initially Declared in Executive Order 2020-080, Other Powers Invoked in That Order, and All Other Orders and Directives Contained in Executive Orders Tied to the Ongoing Public

Health Emergency. Continuous updates on hearing changes and Zoom information will be provided on the PED website. The purpose of the public hearing is to receive public input on the proposed amendment to 6.65.3 NMAC, Educator Preparation Program Accountability. 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 **6.65.3 NMAC, Educator Preparation Program Accountability**, is to ensure educator preparation programs prepare educator candidates to address the needs of indigenous students, special education students, bilingual students, and English Language Learners from the first day the educator begins teaching.

Statutory Authorization(s):

Sections 22-2-1, 22-2-2, and 22-10A-19.2 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 Tuesday, January 19, 2021. The PED encourages the early submission of written comments. The public comment period is from December 15, 2020 to January 19, 2021 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. 19-00296-UT

The New Mexico Public Regulation Commission (the "commission") gives notice of its initiation of a proposed rulemaking to repeal and replace **17.9.572 NMAC**. 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 commission is considering repealing and replacing 17.9.572 NMAC to implement the 2019 amendments to the Renewable Energy Act Section 62-16-1, et seq. NMSA 1978 as set forth in the Energy Transition Act, 2019 Legislative Session, SB 243.

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. 19-00296-UT 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 initial comments shall be filed no later than **February 1, 2021**. Written response comments shall be filed no later than **February 15, 2021**. Comments shall refer to Case No. 19-00296-UT. 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 **March 15, 2021 at 1:30 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. Commenters are afforded the opportunity to submit written comments to the Commission, however, any individual who wants to provide oral comments shall be limited to three (3) minutes to express those comments, subject to the Commission's discretion. The Commission determines that a spokesperson shall 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 **March 22, 2021**.

Any person with a disability requiring special assistance in order to participate in the hearing should contact Mr. Bradford Borman at (505) 827-4048 at least 48 hours prior to the commencement of the hearing.

**VETERINARY MEDICINE,
BOARD OF**

NOTICE OF RULEMAKING

The New Mexico Board of Veterinary Medicine (NMBVM) will hold a Rules Hearing on January 18; January 19; and January 20, 2021. Following the Rules Hearing, the Board of Veterinary Medicine will convene a regular meeting to adopt the rules and take care of regular business. The Board of Veterinary Medicine Rules Hearing will begin at 9:00 a.m. and the regular meeting will convene following the Rules Hearing. The Rules Hearing and regular meeting will be held via Zoom Teleconferencing. See Meeting ID and Passcode below for individual hearing dates.

January 18, 2021: Meeting ID: 864 7956 9064; Passcode: 183072;
January 19, 2021: Meeting ID: 879 9486 9630; Passcode: 032874;
January 20, 2021: Meeting ID: 862 9614 3238; Passcode: 365723.

Copies of the proposed rules may be obtained in person from Frances R. Sowers, Executive Director, New Mexico Board of Veterinary Medicine, 7301 Jefferson Street, N.E., Suite H, Albuquerque, New Mexico 87109-4363, by calling (505) 553-7021 or by downloading from the Board's web site: www.NMBVM.org. Interested persons may submit their comments on the proposed rules in writing to Frances R. Sowers, Executive Director, New Mexico Board of Veterinary Medicine, 7301 Jefferson Street, N.E., Suite H, Albuquerque, New Mexico

87109-4363 or by email to director@NMBVM.org or by participating in the rules hearing.

The New Mexico Board of Veterinary Medicine, is adopting the following rules that are part of the New Mexico Administrative Code (NMAC): 16.24.7 – Minimum Standards – Animal Shelters.

Section 61-14-5. F. NMSA 1978, authorizes the Board to promulgate rules and regulations that may be necessary to carry out the duties of the Board.

Notice Date: December 15, 2020
Hearing Date: January 18; January 19; and January 20, 2021
Adoption Date: Proposed as May 1, 2021

Technical Citations: HB219

The Board is establishing rules as mandated by state legislation contained in House Bill (HB) 219. HB291 states, "The Board shall provide for inspections of animal shelters and euthanasia agencies and adopt, promulgate and revise rules necessary to carry out the provisions of the Animal Sheltering Act."

The Board through these rules promulgations is implementing minimum standards for animal shelters.

The Board is proposing to adopt the rules as follows:

16.24.7.8 SHELTERING CAPACITY STANDARDS:

- A.** The delivery of sheltering services shall be provided in a competent and humane matter.
- B.** Sheltering services shall be performed in a manner ensuring the health and well-being of animals while in the care of sheltering providers. The recommended standard of care is 15 minutes per animal per day.
- C.** Sheltering providers shall practice active population management within the balance of decisions and practices that support

the overall population of the shelter. [16.24.7.8 NMAC - N, 5/1/2021]

16.24.7.9 PREMISES

- **STRUCTURAL:** All exterior structures and fencing should:

- A.** be constructed of building materials that will ensure a sound physical structure;
- B.** be maintained in good repair;
- C.** protect animals from injury and ensure containment within shelter;
- D.** prevent the entry of outside animals and unauthorized persons;
- E.** include four solid walls for animal weather protection
- F.** include fencing sufficiently constructed to prevent animals from jumping, climbing or digging to escape. [16.24.7.9 NMAC - N, 5/1/2021]

16.24.7.10 FACILITY STANDARDS:

- A.** Animal housing areas should be physically apart from areas where food and drink for human consumption are prepared, served or stored.
- B.** Interior building surfaces should be constructed and maintained to be water resistant to moisture and easily cleaned.
- C.** Animal food storage and equipment cleaning areas should be physically apart from animal housing.
- D.** Reliable, adequate electric power or gas should be provided for lighting, air circulation, heating, and cooling.
- E.** Reliable and adequate potable water shall be provided. Back flow preventers may be installed on any threaded faucets with attached hoses for the purpose of cleaning the facility, or on the main water line serving the facility.
- F.** Noise control should be considered for the well-being of animals as well as visitors. Noise mitigation may include:
 - (1)** Housing cats away from the sound of dogs.

(2) Facility modifications to minimize or contain barking.

(3) Training staff to minimize slamming doors.

(4) Using music to reduce animal stress.

G. Readily accessible washrooms or sinks should be provided to maintain personal hygiene of animal caretakers.

(1) A two-compartment sink in good repair should be provided for washing and sanitizing equipment used for animal care and feeding.

(2) A tub or low-pressure hose should be available to wash any animal that becomes soiled to avoid the use of high-pressure hoses for cleaning animals.

H. Indoor housing for animals shall be sufficiently heated or cooled to protect animals from extreme temperatures. The ambient temperature shall be consistent with the requirements of the specific species.

I. Indoor housing for animals should be adequately ventilated with fresh air to minimize odors and moisture and to provide for the health of the animals.

J. Water supply should allow for hose hook up to readily reach all parts of animal housing. Water pressure shall be adequate for cleaning of animal housing areas.

K. A suitable method to rapidly eliminate excess water from animal housing areas should be provided. Drains shall be properly constructed and maintained in good repair. If closed drainage systems are used, wastewater shall be disposed of by connection to a sanitary sewer or approved sewage disposal system. [16.24.7.10 NMAC - N, 5/1/2021]

16.24.7.11 ANIMAL ENCLOSURE AND HOUSING STANDARDS:

A. General Indoor Enclosures.

(1) Primary enclosures shall provide sufficient space to allow each animal to make normal postural adjustments to:

(a) Turn freely.

(b) Easily stand.

(c) Sit.

(d) Stretch.

(e) Move their head without touching the top or sides of the enclosure.

(f) Lie in a comfortable position with limbs extended.

(g) Move about and assume a comfortable posture for feeding, drinking, urinating, and defecating.

(h) Dogs and cats shall be able to hold their tails erect when in a normal standing position.

(2) Primary enclosures may allow animals to be able to see out while avoiding visual contact.

(3) Animals housed shall be confined to a primary enclosure at all times unless under the direct supervision of shelter personnel or a designee.

(4) Primary enclosures shall be structurally sound and maintained in good repair and sanitary condition to protect the animals from injury and disease.

(a) Primary enclosures shall be constructed and maintained to enable the animals to remain dry and clean and to provide convenient access to food and clean water.

(b) Latches shall be secure and in good working order so that animals cannot escape.

(5) Floors of primary enclosures shall be constructed to prevent injury to animals, ensure adequate draining and prevent pooling of fluids. Wire mesh or slatted floors in cages shall not be used.

(6) Guillotine or doors separating two enclosure section shall be in working order.

(7) Animals shall not be able to escape from their primary enclosure.

(8) When housing aggressive, under quarantine or protective custody animals, condition of all enclosures shall be monitored daily with various types of locks considered.

(9) Primary enclosures may house one animal; if compatible, two altered animals per enclosure with the exceptions of litters housed with their dams or colony housing. Animals shall not be randomly housed in groups. Animals that fight shall not be grouped with other animals.

(10) Isolation areas shall be provided for animals with infectious diseases. Ten percent of the total housing may be designated for this purpose. The isolation housing should be double-sided to facilitate cleaning without removing the animal. Handwashing stations should be available at all isolation areas. Isolation areas should have separate cleaning tools personal protective equipment.

(11) Dogs shall not be tethered except in the short term to facilitate cleaning primary enclosure or in the event of a fire or flood emergency. In emergency situations, short term tethering of dogs shall be used only until transport to another facility can be made. The safety of the dog shall be ensured while tethered. Cats shall not be tethered.

(12) Animals placed in crates or carriers, even for a short time, shall have ample space to stand up, turn around and lie down. Crates and carriers shall be disinfected and dried after each use and before another animal is placed in the crate or carrier. Crates and carriers may not be used as primary enclosures.

B. Outdoor Primary Enclosures. It is not recommended that primary enclosures be exclusively outdoors and not for very young, old, sick, or injured animals.

(1) Structurally sound, weatherproof enclosures should be made accessible to animals housed exclusively outdoors. Water resistant and

windproof structure of suitable size shall be provided so animals stay warm and dry during cold weather; shaded and cool during hot weather. The structure may have a water-resistant door covering or offset doorway to minimize drafts, provide proper ventilation and made of durable materials with the floor raised off the ground to prevent water entry.

(2) A shaded area should be provided to all animals housed in an outdoor primary enclosure. An animal shall be able to rest in the shade, outside of the interior structure, but within the fencing or run.

(3) Sufficient clean, absorbent bedding material in addition to other means of protection from weather should be provided for the health and safety of the animals and may prevent strong odors from forming if replaced regularly.

(4) Floors of outdoor enclosures may be constructed of gravel, sand or soil; a solid material such as concrete is preferable. It is not possible to sanitize or disinfect gravel, sand or soil.

C. Enclosure Requirements for Cats

(1) Cats shall be able to assume normal postures in primary enclosures. Space should be large enough to accommodate bedding, food and water dishes and a litter box. When there is more than one cat occupying a cage, additional floor and vertical space should be provided.

(2) Primary enclosures should be made of stainless steel, fiberglass, or other impervious material that is water-resistant and can be cleaned and sanitized. Chicken wire, barbed wire and wood shall not be used.

(3) Feral cat boxes, which allow for hiding places within the cage, reduce stress for all cats.

(4) Cats should be housed in a separate building or in a separate room far removed from rooms containing dog runs.

D. Enclosure Requirements for Dogs. Dogs shall be able to assume normal postures and engage in normal behaviors playing and moving freely without encountering another dog. Space should be large enough to accommodate bedding, food and water bowls.

(1) Enclosure height should be a minimum of one and one-half times the height of the dog at the shoulder.

(2) Floors in dog runs may slope to drain liquid out of runs to prevent pooling or puddling in runs or walkways. Slope may be one-quarter to one-half inch per linear foot.

(3) To prevent water and waste material from flowing from run to run, there should be solid walls between dog runs. Height of walls should be sufficient to prevent nose-to-nose contact of dogs between runs.

(4) Fencing or other materials that allow for airflow should be used, horizontally and vertically, above the solid walls providing a protective barrier at least six feet high between runs to prevent dogs from jumping over.

(5) All solid surfaces of dog runs should be constructed of water-resistant concrete, stone, cement block, brick, metal, or non-porous synthetic material which can be cleaned and sanitized. Sealed floors can be cleaned and disinfected most effectively. Fencing materials may be water resistant which can be easily cleaned and sanitized. Fencing materials shall be gauged and spaced to avoid escape by or injury to dogs. Chicken wire, barbed wire and wood shall not be used.

(6) If more than one dog occupies the same primary enclosure, additional floor and vertical space should be provided.

E. Enclosure Requirements for Other Species. Species other than dogs and cats shall have special requirements for housing and care.

(1) Stray livestock. The New Mexico Livestock Board shall be contacted to help facilitate the identification and ownership.

(2) Exotic animals. A veterinarian or someone with expertise in handling and caring for the species may be contacted for guidance.

(3) Wild animals. The appropriate agency shall be contacted to take possession of the animal.

(a) Wild birds. The U.S. Fish and Wildlife Service shall be contacted.

(b) For any other wild animals, N.M. Department of Game and Fish shall be contacted.

F. Foster Housing Standards.

(1) Potential foster homes should go through an application process with background checks and home inspections.

(2) Guidelines addressing the following may be established:

(a) Vaccination and altered status of foster home animals.

(b) Maximum number of animals allowed.

(c) Housing and care standards.

(d) Maximum length of foster stay.

(3) Foster parents should be trained or educated on standards of care and potential health and wellness issues; emergency contact information may be provided.

(4) Care capacity within foster home should be considered before sending animals into the homes.

(5) Foster animals should be altered and have current vaccinations unless under the care of a veterinarian.

(6) Tag or microchip identification for foster animals should be provided to foster homes.

G. Colony/Group Housing Standards - Dogs. Dogs housed in the same primary enclosure may be maintained in compatible groups with the following restrictions:

(1) Primary enclosures may house one, or two, altered compatible dogs per enclosure. Litters should be housed with their dams.

(2) A female dog in season shall not be housed in the same primary enclosure with a male dog.

(3) An unaltered male dog shall not be housed in the same primary enclosure with an unaltered female other than under breeding age litter mates.

(4) An aggressive dog shall be housed individually in a primary enclosure; for protection of shelter personnel the enclosure shall be marked accordingly.

(5) Nursing mothers and their puppies should be removed from other animals. Removal will allow privacy, protection from unwanted intrusion and noise, alleviates fear/aggression, and to promote general well-being.

(6) Dogs shall not be housed in the same primary enclosure as cats.

(7) Dogs shall not be housed in the same primary enclosure with any other species of animals.

H. Colony/Group Housing Standards – Cats. When housing cats in colony rooms, the following guidelines should be followed:

(1) Cats should have at least 18 square feet of floor space per cat to maintain a distance of three to ten feet between cats; non-inclusive of perches or walkways. In temperate climates, can include outdoor access with 24-hour access to indoors.

(2) Cats with unknown vaccination history should be evaluated for health and behavior, vaccinated, isolated, and observed for at least 24 hours before being placed in cat colony rooms.

(3) Unsterilized males shall be separated from females. A female in season shall not be housed in the same primary enclosure as a male.

(4) Nursing mothers and their kittens should not be housed with other cats.

(5) One 12” x 8” cat litter pan for every three cats or five kittens should be provided.

(6) Water and dry food should be available at all times.

(7) Colony rooms may be equipped with shelves, resting boxes and hiding boxes.

(8) Stainless steel, fiberglass or other materials that are water resistant and can be cleaned and sanitized should be used. Wood shall not be used.

(9) Any cat exhibiting aggressive behavior shall be housed individually in its primary enclosure; for the protection of shelter personnel the enclosure should be marked accordingly.

[16.24.7.11 NMAC - N, 5/1/2021]

16.24.7.12 SANITATION STANDARDS:

A. Written sanitation protocols shall be developed to provide consistent and thorough sanitation of the facilities. Protocols may be reviewed periodically in consultation with a veterinarian. Protocols may be updated for best practices. During an outbreak, sanitation protocols should be revised as needed to address specific pathogens.

B. Animal housing units or kennels shall be cleaned once daily at minimum and shall be thoroughly cleaned and disinfected once an animal no longer occupies the unit or kennel.

C. Animal waste shall be removed from primary enclosures daily or more often to prevent contamination of animals and to reduce disease hazards and odors. Waste shall be disposed of in accordance with local ordinance.

D. Cages, kennels, containers, equipment, and other

items shall be cleaned at least once daily to maintain sanitary conditions.

E. Kennels and cages shall not be hosed down while animals are inside the kennels and cages.

F. To minimize stress for an animal remaining in an enclosure, spot cleaning may be used as appropriate. The enclosure shall be thoroughly cleaned and disinfected once an animal leaves an enclosure.

G. Cleaning may be carried out in the following order: from first to last to minimize the spread of disease.

(1) Healthy puppies and kittens; healthy, nursing bitches and queens.

(2) Healthy adult animals.

(3) Unhealthy animals.

H. To minimize the spread of disease, water and food containers and all other utensils shall be cleaned and sanitized using generally accepted methods such as the use of heat and chemical sanitizing solution. Containers shall be cleaned and sanitized as often as necessary to maintain sanitary conditions; food pans and bowls shall be cleaned between each use. If sinks are the method for cleaning, water and food pans or bowls shall be soaked and washed separately from litter pans with water and disinfectant changed between water and food pans or bowls and litter pans.

I. Product manufacturer instructions shall be followed precisely when cleaning, sanitizing and disinfecting. Chemicals shall not be mixed. Pine products and fumes are extremely toxic to cats and birds and shall not be used near them or to clean cat enclosures, pans, bowls etc.

J. Mopping should be avoided to reduce the spread of pathogens. If hosing is not possible and mopping must be used, disinfectant solution shall not be used from one housing area to another.

K. Water and food pans or bowls may be made of metal or be disposable. Plastic should not

be used because it may be chewed and ingested and may retain contaminants.

L. Litter boxes shall be provided for cats in their primary enclosures with soiled litter disposed of on an as needed basis, a minimum of once a day. Litter boxes may be disposable or reusable if they are cleaned daily and sanitized before used by another cat. The use of plastic litter boxes is not recommended because they cannot be sufficiently disinfected and may be a source of disease.

M. Animal and food waste, soiled bedding, debris, and other organic waste should be stored in closed containers and disposed of on an as needed basis to avoid vermin infestation, odors, disease, and nuisances. Waste should be removed at least weekly from the facility. All reusable trash containers should be regularly sanitized and disinfected. All clothing and bedding shall be laundered and thoroughly dried before reuse.

N. To maintain sanitary conditions, pens and runs with absorbent or loose flooring i.e., sand, gravel or soil soiled with urine and/or fecal matter shall have such materials replaced as necessary. These types of organic materials cannot be sanitized or disinfected when the surface is muddy, water puddled or when odors and vermin are present.

O. Buildings and grounds shall be kept clean, in good repair and free of trash.

P. Weeds may be mowed or cut down where animals are kept or exercised.

Q. An effective program shall be maintained for the control of insects, fleas, avian, and mammalian pests.

R. Opened food supplies should be stored separately in closed waterproof containers. Unopened supplies of food should be stored off of the floor and adequately protected against contamination or infestation by vermin.

S. Animal bedding should be stored off of the floor and adequately protected against contamination or infestation.

T. Dead animals shall be stored and disposed of in strict compliance with state laws and local ordinances to avoid disease hazard or nuisance.

[16.24.7.12 NMAC - N, 5/1/2021]

16.24.7.13 ANIMAL CARE AND HANDLING STANDARDS:

A. Food and Water

(1) Animals should be fed twice daily except in cases of veterinary treatment or malnutrition. The food shall be free of contamination, palatable and of sufficient quality and nutritive value to meet normal daily requirements for the condition, size and age of the animal. Refrigeration should be provided for perishable food.

(2) Uneaten food shall be discarded after 24 hours. Food offered to an animal remaining uneaten shall not be fed to other animals.

(3) Care shall be taken not to underfeed or overfeed animals.

(4) Special consideration regarding types of food and frequency of feeding shall be given to puppies, kittens, older animals, and nursing dams.

(5) Malnourished or emaciated animals may need an increased food intake; introduction of food shall be regulated and increased gradually preferably with veterinary guidance.

(6) Animals shall be provided potable water at all times.

(7) Food and water containers shall be accessible and located to minimize contamination by excrement or other material. Food and water containers shall be cleaned daily; disposable food containers may be used only if discarded after each use.

(8) Food and water containers should be of a size to ensure accessibility based on the size of the animal.

(9) Spoiled, moldy food or food contaminated with feces, droppings or insects shall never be used. Food left in food

bowls from the previous day shall be disposed of, disposable bowls discarded and non-disposable bowls cleaned.

B. Enrichment

(1) Enrichment means improving the environment and behavioral care for confined animals. Enrichment reduces stress and improves well-being by providing physical and mental stimulation and encouraging species-typical behaviors. Enrichment shall not be considered optional.

(2) If the recommended space requirements for dogs cannot be met due to shelter configuration, dogs may be exercised twice daily. For dogs requiring an opportunity to exercise, a written plan may be on file with each exercise session noted.

(3) Behavioral health and care of each animal as well as the conditions experienced by the entire population shall be a consideration of the shelter.

C. Quarantine and Isolation

(1) Animals that have bitten a human shall be quarantined pursuant to New Mexico State Law, local municipal or county ordinances.

(2) A veterinarian should be consulted.

(3) Animals under quarantine for observation of rabies symptoms after a bite incident shall be physically separated from all other animals and shall never be housed with animals under treatment for a communicable disease.

(4) Quarantine areas may have a separate ventilation system and should only be accessible to shelter personnel or owners accompanied by shelter personnel.

(5) Animals diagnosed and/or under treatment for a communicable disease should be isolated from healthy animals to minimize spread of disease. Areas may have a separate ventilation system. If isolation is impossible or inadequate to control the spread of pathogens, shelter shall weigh consequences of exposure to general

population and the alternative, euthanasia.

D. Other Care

Considerations

(1) Shelter animals shall always be handled safely and humanely to prevent injury, distress and spread of disease both to animals and personnel.

(2) Adequate animal handling equipment such as transfer cages, nets, catch poles, syringe poles shall be available, kept clean and in good repair to ensure the safety of personnel and animals.

(3) Shelter personnel should be trained in current humane and sanitary animal handling techniques.

(4) Long term confinement, including feral and aggressive animals, who cannot be provided with basic care, daily enrichment and exercise without inducing stress shall not be considered.

(5) The minimal amount of physical restraint needed without injury to people or animals shall be used.

(6) The use of catch poles for routine restraint of cats, including carrying or lifting, is inhumane and poses significant risk of injury to the animal and shall not be used. Humane traps, boxes or nets designed for restraint shall be used for handling fractious cats or cats who appear to be unaccustomed to handling.

(7) When cats are moved from one location to another, it is recommended to cover the carrier with a towel or sheet to reduce stress and susceptibility to disease.

(8) Cats should be provided with clean bedding in each cage. Bedding shall be replaced when soiled or wet and when a new animal is introduced to the enclosure.

(9) Bedding or platforms may be provided to dogs on an as needed basis. Clean bedding should be provided to old, young, ill, or injured dogs. Bedding shall be replaced when soiled or wet and when

a new animal is introduced to the enclosure. Only single layer bedding should be used for puppies and kittens to prevent accidental suffocation.

(10) Nursing dams may be provided with a whelping box. If a shelter is unable to provide a whelping box, the shelter shall ensure nursing dams have adequate bedding, warmth and cleanliness. Bedding shall be provided in the whelping box and replaced when soiled or wet.

(11) Nursing mothers and their babies should be removed from other animals to allow for privacy, protect them from unwanted intrusion and noise, to alleviate fear/aggression, and to promote their general well-being.

(12) Animals may be cleaned and groomed on an as needed basis.

(13) Medical issues should be treated; matted coats can cause pain, skin or eye irritation, or trap fecal matter. Bathing may be necessary to prevent or treat parasites and/or insects.

(14) No animal shall be allowed to suffer while in the care of the shelter.

(15) Care shall be taken to ensure that animals are not squirted or hosed with water, not put in contact with chemicals and not placed back in wet or damp enclosures.

[16.24.7.13 NMAC - N, 5/1/2021]

16.24.7.14 DISEASE CONTROL, HEALTH AND VETERINARY CARE STANDARDS:

A. No animal shall be allowed to suffer due to lack of veterinary care.

B. Shelters shall not fail to provide treatment for pain.

C. Shelters shall ensure compliance with all federal, state and local laws concerning reportable diseases.

D. Animals should be examined for injury and signs of disease at the time of impound under the guidance of a veterinarian, if possible, and treated immediately

if animal is in pain or distress. If injured or sick animals cannot be provided veterinary care in a timely manner to stop their pain and suffering, the animal shall be humanely euthanized.

E. Common signs of illness, injury or parasitic infestation in dogs and cats that warrant veterinary care:

(1) Eyes are watery, appear swollen or show discharge.

(2) Ears are red or inflamed, show discharge or have a foul odor.

(3) Nose shows mucous, blood or pus discharge, or is crusty, congested or blocked.

(4) Gums are swollen or inflamed, teeth are loose or brown, or mouth has a foul odor.

(5) Animal is sneezing, coughing or wheezing.

(6) Animal has fleas or ticks; skin shows swelling or lesions.

(7) Animal limps or does not place weight on a limb.

(8) Animal is thin or obese.

(9) Animal has wounds, abscesses, cuts, or abrasions.

(10) Body temperature is abnormal.

(11) Animal is vomiting or has diarrhea.

F. Shelter should have a trained and experienced staff member, a veterinary technician or a veterinarian available to check animals and to provide care. Symptoms of possible illness shall be noted, recorded and brought to a supervisor's attention immediately.

G. Animals should be observed daily for signs of disease or distress. An animal suspected of having an infectious disease may be physically separated from other susceptible animals until the animal is determined to be non-infectious.

H. A system should be in place to care for injured and sick animals brought to the shelter after normal working hours. Shelters may

enter into a written contract with a local veterinarian to be available on call for treatment after hours.

I. Animals with obvious signs of serious disease, injury or distress that cannot be addressed, as well as aggressive animals, shall be humanely euthanized.

J. For humane reasons, it may be necessary to euthanize an animal despite the holding time requirements not having been met. An animal shall not be allowed to suffer while in the shelter's care.

K. Dogs and cats may be dipped or sprayed, top spotted or given oral treatment for fleas, ticks or internal parasites, as necessary. Methods shall be used according to the season, region of state and according to manufacturer's instructions concerning treatment strengths depending on size, age or health of animal.
[16.24.7.14 NMAC - N, 5/1/2021]

16.24.7.15 VACCINATIONS STANDARDS:

A. All dogs and cats should be vaccinated upon initial impound. A veterinarian or trained staff member may administer the following core vaccines:

(1) Dogs:

(a) DA2PP or DHPP vaccine to provide protection against distemper, adenovirus-2, parvovirus, parainfluenza. Adult dogs may be vaccinated upon intake. Puppies may be vaccinated starting at 4-6 weeks of age and re-vaccinated every 2-4 weeks until 16-18 weeks of age.

(b)

Bordetella bronchiseptica vaccine to protect against kennel cough for puppies and adult dogs.

(2) Cats:

FVRCP vaccine to provide protection against feline herpesvirus, feline viral rhinotracheitis, feline calicivirus, and feline panleukopenia. Adult cats may be vaccinated once upon intake. Kittens may be vaccinated starting at 4-6 weeks of age and re-vaccinated every 2-4 weeks until 18 weeks

of age. A modified live vaccine is recommended.

B. All animals shall be considered unvaccinated unless a documented medical record exists. Special consideration shall be given to animals with medical conditions, pregnant animals and animals less than 4 weeks old.

C. Core vaccines should be administered at the time of intake for optimum disease control.

D. Rabies vaccinations may be given at the time of adoption or by the adopter's veterinarian depending on local municipal or county ordinance.

E. Rabies vaccinations shall be administered pursuant to Section 77-1-3 NMSA 1978.
[16.24.7.15 NMAC - N, 5/1/2021]

16.24.7.16 RECORD KEEPING STANDARDS:

A. Records shall be kept for each animal impounded, for each animal accepted as an owner-surrender, for each animal brought to the shelter by a member of the public as a stray, and for each animal that is otherwise acquired.

B. Records shall include:

(1) Date of acquisition and manner of acquisition: animal control officer, public intake, owner surrender etc.

(2) Description and identifying characteristics including: species, breed, color, age, weight, gender, and any background information.

(3) Tag and/or microchip information.

(4) Reason for impoundment or relinquishment.

(5) Veterinary care.

(6) Disposition of the animal.

(7) Date of redemption of adoption, transfer of ownership or euthanasia.

(8) Name, address and telephone number of receiving person or entity.

C. Statistics should include monthly intake and outcomes

by type for each species.

D. Collars, tags or other potential identification should be kept on the animal or in the animal's file during the impound time.

E. Each animal shall be identifiable by use of cage/run cards and/or identifying collars.

F. Photographs should be taken of each animal, maintained with the animal's records and posted on its cage to minimize the possibility of a mistaken euthanasia.

G. Shelters shall maintain records for a minimum of two years from the date of an animal's final disposition.

[16.24.7.16 NMAC - N, 5/1/2021]

16.24.7.17 COMMUNITY ACCESS AND SERVICE STANDARDS:

A. Shelters should be accessible to the public seeking to reclaim their animal or adopt an animal.

(1) Hours open to the public shall be clearly marked on the facility.

(2) The shelter's telephone number and address shall be listed in local telephone directories.

(3) The shelter should have internet presence with all pertinent information as well as listings of lost or found animals and animals available for adoption.

(4) Shelters should be open to the public at least one weekend day or two days until 6:00 p.m.

B. Shelters may have provisions for animals dropped off after hours. Care shall be taken so that animals are protected from injury, theft and the elements. Unattended drop boxes are not recommended. Provisions should be made for after hours entry, impoundment and treatment procedures for animal control officers to follow. Sick or injured animals shall be attended to by trained personnel immediately due to potential for unalleviated suffering of the animal as well as liability to the shelter.

C. When an animal has visible identification or a microchip upon impound, shelter personnel shall make every attempt to contact the owner. Each animal shall be scanned for a microchip and the number entered into the animal's record. If the owner surrenders a microchipped animal, the shelter shall determine if the surrendering owner matches the name on the microchip to ensure the animal is not stolen. In the case of stray animals, the shelter shall promptly attempt to contact the owner to whom the microchip is registered by telephone. In the event no contact can be made via telephone, then the shelter may send a letter to the address listed on the microchip registration. Attempts to trace microchip information and contact attempts with the registered owner shall be documented.

D. In addition to being scanned at intake, animals shall be re-scanned prior to final disposition. If the final disposition is by euthanasia, scanning shall be done pursuant to Board of Veterinary Medicine rule 16.24.3.8 B Duties of Licensee and Certificate Holders.

E. Shelters shall refer to local, municipal or county ordinance which address the minimum stray holding time. Stray animals without identification should be held long enough to give owner sufficient time to reclaim the animal. Stray animals with identification i.e. tag, tattoo, and/or microchip should be held long enough to allow the shelter sufficient time for notification and owner reclaim.

F. Animals in law enforcement protective custody shall be in locked areas with appropriate signage that meet standards and are inaccessible to the public. Depending on the case type, owner may be allowed to visit the animal or animals. [16.24.7.17 NMAC - N, 5/1/2021]

16.24.7.18 SHELTER PERSONNEL STANDARDS:

A. The shelter shall maintain compliance with federal and state occupational safety regulations for chemical, biological and physical hazards in the workplace.

B. All shelter personnel should be trained in all aspects of their responsibilities. Training topics may be, at minimum:

- (1) Animal health and disease control.
- (2) Humane care and treatment of animals.
- (3) Control of animals in an animal shelter.
- (4) Transportation of animals.
- (5) Disease recognition.
- (6) Animal breed identification and behavior.
- (7) Pre-adoption evaluation and temperament testing.
- (8) Adoption policies and procedures.
- (9) Handling, capture and restraint techniques.
- (10) Personnel safety and use of equipment.
- (11) Euthanasia.
- (12) Compassion fatigue and self-care.

C. Shelter personnel should be provided with a comprehensive standard operating procedures (SOP) manual. The SOP should outline all shelter policies and procedures and the duties for each position.

D. Shelter personnel shall adhere to New Mexico's anti-cruelty law at all times. See 30-18-1 *et seq.* NMSA 1978.

E. Protective gear and appropriate animal handling equipment shall be readily available to personnel.

F. Shelter personnel should wash their hands frequently to protect themselves and the animals. Hand sanitizers, first aid kits and eye wash stations may be made available to all employees, volunteers and visitors. [16.24.7.18 NMAC - N, 5/1/2021]

16.24.7.19 ADOPTION STANDARDS:

A. Shelters should establish adoption fees. An adoption program may be developed and implemented. If the shelter waives

specific adoption fees, the shelter guidelines shall not be waived.

B. Shelters should develop criteria for potential adopters and unsuitable adopters. Adopters may sign a contract under which they agree to provide a specified level of care.

C. Shelters should learn temperament testing procedures to ensure that animals are fit for adoption and to facilitate the best possible match between adopters and animals.

D. An adoption screening program may include discussion of suitability of adopter and animal.

E. When adopting out a sick animal or animal that is receiving medical treatment, full disclosure should be made to the person or organization receiving the animal.

F. In the event shelters offer animals for adoption that have not been sterilized, the shelter shall comply with New Mexico State law 77-1-20 A-F NMSA 1978.

G. Policies should be developed to avoid adopting out or releasing unaltered animals.

H. Shelters should consider a program to microchip all adopted animals.

I. Reasonable care shall be taken to adopt out or transfer only those animals free of disease and untreatable injury.

J. Animals believed to be dangerous, potentially dangerous or have caused a serious injury resulting in same species or human death shall not be re-homed. Chapter 77 Section 1A NMSA 1978.

K. Shelters, in their due diligence, shall make every effort to place animals with recognized rescue organizations and responsible sanctuaries. Shelters should thoroughly research rescue organizations and sanctuaries prior to placement to avoid possible hoarding situations. [16.24.7.19 NMAC - N, 5/1/2021]

16.24.7.20 SHELTER TRANSPORT STANDARD:

A. Transport vehicles and equipment shall be cleaned and sanitized prior to transport.

B. Animals shall not be transported unrestrained in open beds of trucks.

C. Temperature extremes, below 45 degrees and above 80 degrees, during transport shall be avoided.

D. Compliance with state and local laws shall be followed for source and destination shelters.

E. Health certificates shall accompany animals crossing state lines as required.

F. Unfamiliar animals shall not be transported together in same enclosure.

G. Animals should be vaccinated and treated for internal and external parasites prior to transport.

H. Transport space should be adequate to allow the animal to turn around and lie down.

I. Transports anticipated longer than eight hours in duration should accommodate safe animal exercise and relief.
[16.24.7.20 NMAC - N, 5/1/2021]

**HISTORY OF 16.24.7 NMAC:
[RESERVED]**

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact Board of Veterinary Medicine t 505-553-7021. The Board requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

**End of Notices of
Proposed Rulemaking**

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.

ENVIRONMENT DEPARTMENT

This is an emergency amendment to 11.5.1 NMAC, Section 16 effective 12/03/2020

Explanatory note: James C. Kenney, Secretary of the New Mexico Environment Department (NMED), has issued an emergency amendment to 11.5.1.16 NMAC. This temporary emergency amendment will take immediate effect and is in response to the current state of public health emergency regarding COVID-19. The emergency amendment is necessary to protect employees from the grave danger of COVID-19. This emergency amendment does not permanently amend or repeal the existing rule. The emergency amendment shall be effective for 120 days or until superseded by a final regulation promulgated under the normal rule making process.

11.5.1.16 RECORDKEEPING AND REPORTING OCCUPATIONAL INJURIES, ILLNESSES AND FATALITIES:

A. General: Except as otherwise provided in Subsection B of this section, the provisions of 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illnesses (internet: www.osha.gov), are hereby incorporated into this section.

B. Exception: Work-related injuries, illnesses and fatalities which are required to be reported by 29 CFR Part 1904.39 shall be reported, by email, telephone or facsimile machine, to the bureau in lieu of the location specified in 29 CFR Part 1904.39. The bureau's address, email and telephone/facsimile numbers are: occupational health and safety bureau, New Mexico

environment department, P.O. Box 5469, Santa Fe, NM 87502, email: nmenv-oshha@state.nm.us, Tel: (505) 476-8700, Fax: (505) 476-8734.

C. Reporting
COVID-19 cases: Within four (4) hours of learning that an employee tested positive for coronavirus disease 2019 (COVID-19), each employer shall report the positive test to the bureau at the email, telephone or facsimile number specified in Subsection B of this section.
[10/9/1975, 9/3/1978, 3/21/1979, 5/10/1981, 11/17/1983, 7/19/1994, 1/1/1996, 8/15/1998; 11.5.1.16 NMAC - Rn & A, 11 NMAC 5.1.16, 10/30/2008; A, 7/16/2015; A/E, 8/5/2020; A/E 12/3/2020]
[11.5.1.16 NMAC - N, 12/03/2020]
[The department has provided the Rapid Response Submission portal that may be used to satisfy the reporting requirements of Subsection (C). The Rapid Response Submission portal is available on the bureau's website at <https://nmgov.force.com/rapidresponse/s/>.]

HOME INSPECTOR BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 66 HOME INSPECTOR LICENSING PART 1 GENERAL PROVISIONS

16.66.1.1 ISSUING
AGENCY: New Mexico home inspectors board.
[16.66.1.1 NMAC – N, 1/15/2021]

16.66.1.2 SCOPE: All licensed home inspectors, license applicants, other agencies, professional associations, and any

member of the general public affected by or interested in home inspectors.
[16.66.1.2 NMAC – N, 1/15/2021]

16.66.1.3 STATUTORY
AUTHORITY: These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).
[16.66.1.3 NMAC – N, 1/15/2021]

16.66.1.4 DURATION:
Permanent.
[16.66.1.4 NMAC – N, 1/15/2021]

16.66.1.5 EFFECTIVE
DATE: January 15, 2021, unless a later date is cited at the end of a section.
[16.66.1.5 NMAC – N, 1/15/2021]

16.66.1.6 OBJECTIVE: The objective of Part 1 of Chapter 66 is to set forth the provisions which apply to all of Chapter 66 of Title 16 and to define the terms and terminology related to home inspectors used through Chapter 66 of Title 16.
[16.66.1.6 NMAC – N, 1/15/2021]

16.66.1.7 DEFINITIONS: These rules adopt, as if stated herein, all of the definitions contained in Section 61-24D-2 NMSA 1978.

A. Definitions
beginning with the letter "A":
(1) "Access panel" means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person. Its edges and fasteners are not painted in place. Access panels are limited to those panels within normal reach at human height or from a stepladder, and those which are not blocked by stored items, furniture, or building components;

(2) **“Activate”** means the act of turning on, supplying power, or otherwise enabling systems, equipment, or devices to become active by normal operating controls;

(3) **“Adverse condition”** means a condition which is producing, or which has the potential to produce, a detrimental effect on a system or component that either impairs the system or component’s normally intended function or operation or which is inconsistent with generally established practice(s) regarding the historically or conventionally applied and acknowledged methods of installation, assembly, and operation or use;

(4) **“Alarm”** means a warning device that is either permanently installed or freestanding, including but not limited to smoke detectors and alarms, carbon-monoxide detectors, flue gas and other spillage detectors, security equipment, ejector pumps, and smoke alarms;

(5) **“Appliance”** means a household device powered by electricity or gas, but not including central heating, central cooling, or plumbing components;

(6) **“Architectural service”** means any practice involving the art and science of building design for construction of any structure or grouping of structures, and the use of space within and surrounding the structures or the design, design development, preparation of construction contract documents, and administration of the construction contract;

(7) **“Automatic safety controls”** means devices designed and installed to protect systems and components;

B. Definitions beginning with the letter “B”:

“Board” means the New Mexico Home Inspectors Board;

C. Definitions beginning with the letter “C”:

(1) **“Central air conditioning”** means a system which uses ducts to distribute either

or both cooled or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room. This definition does not include systems or appliances that are plugged into an electrical convenience outlet;

(2) **“Component”** means a constituent element or part of a system;

(3) **“Concealed, latent, or intermittent condition”** means any condition affecting any system or component which occurs after the inspection or is intermittent or otherwise not reasonably detectable by a competent and professional home inspector for any reason during the inspection;

(4) **“Condition”** means the visible and conspicuous state of being of an object regarding its appearance, quality, or working order;

(5) **“Cosmetic imperfection”** means an irregularity or imperfection which does not affect a component’s normally intended function or operation, and which could but is not required to be repaired;

(6) **“Crawlspace” or “underfloor crawlspace”** means the area within the confines of the foundation and between the ground and the underside of the lowest floor’s structural components;

D. Definitions beginning with the letter “D”:

(1) **“Describe”** means to document in writing;

(2) **“Dismantle”** means the act of taking apart or removing any component, device, or piece of equipment that is bolted, screwed, or fastened by other means and which would not otherwise be taken apart or removed by a homeowner in the course of normal household maintenance;

E. Definitions beginning with the letter “E”:

(1) **“Engineering”** means the application of scientific knowledge for the design, control, or use of building structures, equipment, or apparatus;

(2) **“Engineering service”** means any professional service or creative work requiring engineering education, training and experience, and the application of special knowledge of the mathematical, physical and engineering sciences to such professional service or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with the specifications and design, in conjunction with structures, buildings, machines, equipment, works or processes;

F. Definitions beginning with the letter “F”:

(1) **“Foundation”** means the base upon which a structure or wall rests, typically constituted by masonry, concrete, or stone, and typically located at least partially underground;

(2) **“Function”** means the action for which an item, component, or system is specially fitted or used, or for which an item, component, or system exists;

(3) **“Functional”** means the ability of an item, component, or system to perform its function;

(4) **“Functional drainage”** means the act or ability of a drain to empty in a reasonable amount of time without overflowing when another fixture is drained simultaneously;

(5) **“Functional flow”** means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously;

(6) **“Further evaluation”** means examination and analysis by a qualified professional, tradesman, or service technician beyond that provided by a home inspection. Further evaluation may provide additional clarification, provide needed repairs, or discover additional adverse conditions that need modifications or repairs for the component or system to perform its normally intended function or operation provided by an

appropriately licensed or qualified individual;

G. Definitions beginning with the letter “G”:
“Generally established practice” means a practice of or pertaining to one or more of the following: the historically or conventionally applied and acknowledged methods of installation, assembly, and operation or use of residential systems and their related materials and components. Generally established practices may vary based on whether they were applicable at the time of construction or whether modifications to the property were made after the original construction;

H. Definitions beginning with the letter “H”:
(1) “Home inspection”, as defined by Subsection E of Section 61-24D-2 NMSA 1978, means a noninvasive, nondestructive examination by a person of the interior and exterior components of a residential real property, including the property’s structural components, foundation and roof, for the purposes of providing a professional written opinion regarding the site aspects and condition of the property and its carports, garages and reasonably accessible installed components. “Home inspection” includes the examination of the property’s heating, cooling, plumbing and electrical systems, including the operational condition of the systems’ controls that are normally operated by a property owner;

(2) “Home inspector”, as defined by Subsection E of Section 61-24D-2 NMSA 1978, means a person who performs home inspections for compensation;

I. Definitions beginning with the letter “I”:
(1) “Identify” means to describe a specific system or component by its type and to distinguish it by characteristics such as general or specific materials, energy sources, etc., which differentiate that system of components from other similar systems and components;

(2) “Inspected Property” means the readily accessible areas of the buildings, site, items, components and systems included in the Home Inspection;

J. Definitions beginning with the letter “J”:
[RESERVED]

K. Definitions beginning with the letter “K”:
[RESERVED]

L. Definitions beginning with the letter “L”:
(1) “Licensure by endorsement” means the process by which an individual applicant applies for a license as a home inspector in New Mexico on the basis of the applicant’s pre-existing license in another jurisdiction;

(2) “Licensure by training and examination” means the process by which an individual applicant applies for a license in New Mexico as a home inspector on the basis of the applicant’s education, training, and passage of the national home inspector examination (NHIE);

(3) “Licensure by experience and examination” means the process by which an individual applicant applies for a license in New Mexico as a home inspector on the basis of the applicant’s previous work in New Mexico as a home inspector in each of the 24 months immediately preceding January 1, 2020, the applicant’s performance of at least 100 home inspections for compensation in the 24 months immediately preceding January 1, 2020, and the applicant’s passage of a national home inspector examination, whether the NHIE or otherwise;

M. Definitions beginning with the letter “M”:
[RESERVED]

N. Definitions beginning with the letter “N”:
(1) “National home inspector examination” or “NHIE” means the examination offered, conducted, and proctored by the examination board of professional home inspectors (EBPHI);

(2) “Normal operating controls” means thermostats, switches, valves, and other devices intended by design and manufacture to be used by homeowners or occupants in the normal and regular day-to-day operation of systems or components;

(3) “Normally intended function or operation” means the customary or conventional purpose or use for which a system or component is installed and for which it is designed or intended by its manufacturer;

O. Definitions beginning with the letter “O”:
(1) “On-site water supply quality” means water quality based on the bacterial, chemical, mineral, and solids content of the water;

(2) “On-site water supply quantity” means the rate of flow of water;

P. Definitions beginning with the letter “P”:
(1) “Permanently installed” means an item, system, or component designed or intended to remain where originally placed, not easily moved, and which is attached, connected, or set in place for use so as to render moving or removing the item, system, or component impossible without the use of tools or equipment;

(2) “Proctored examination” means a test taken under the supervision of testing staff. The proctor’s function is to ensure procedural integrity and security of the examination in a secure environment. Examination passage must be in writing and written by the organization or entity that administered the examination;

(3) “Professional liability insurance” means general liability insurance;

Q. Definitions beginning with the letter “Q”:
“Qualified” means having the training, skills, knowledge, expertise, competence and any special tools or equipment necessary to address adverse conditions and routine maintenance conditions

and, where applicable, holding all required licenses and meeting all applicable industry standards and all governmental and statutory requirements;

R. Definitions beginning with the letter “R”:

(1) **“Reactivation”** means the process and board act of reactivating an inactive or expired license, thereby permitting the licensee to engage in the practice of home inspection;

(2) **“Readily accessible”** means visually observable and able to be examined without requiring destructive measures; without risk to the inspector or others; without risk of damage to any item of personal or real property; without requiring the inspector to move, remove, damage, or disturb any wall, floor, ceiling, or window coverings; or any interior or exterior claddings or finish treatments; to move, remove, damage, disturb, climb upon, climb over, or straddle any item of personal property; to move, remove, damage, or disturb any landscape elements; or to interrupt the business of occupants, and not requiring disassembly or the use of any special protective clothing or special tools or equipment;

(3) **“Readily openable access panel”** means a panel located within normal reach or from a four-foot stepladder, and which is not blocked by stored items, furniture, or building components, provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person, and its edges and fasteners are not painted in place, but not including electrical panelboard enclosure dead front covers;

(4) **“Residential recreational facilities”** means residential spas, saunas, steam baths, swimming pools, exercise, entertainment, athletic, playground and other similar equipment, and associated accessories that are installed at the inspected property;

(5) **“Reinstatement”** means the process

and board act of reinstating a suspended or revoked license, thereby permitting the licensee to engage in the practice of home inspection either with or without future conditions;

(6) **“Representative number”** means all readily accessible identical components such as windows, electric switches and electric receptacles that serve as a typical or characteristic example of the items or components inspected. When one or a number of components or systems has identified “adverse conditions,” the report should indicate further evaluation of all identical components by qualified personnel;

(7) **“Roof drainage systems”** means gutters, downspouts, leaders, splash blocks, and similar components used to carry water off of a roof and away from a building;

(8) **“Routine maintenance”** means typical, regular, ongoing, and expected maintenance which is part of an ongoing and prudent overall property and building systems upkeep program;

S. Definitions beginning with the letter “S”:

(1) **“Safety glazing”** means tempered glass, laminated glass, or rigid plastic;

(2) **“Shut down”** means a piece of equipment whose safety switch or circuit breaker is in the “off” position, or its fuse is missing or blown, or a system that cannot be operated by the device or control that a homeowner should normally use to operate it;

(3) **“Solid fuel heating device”** means any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces, whether masonry or factory built, fireplace inserts and stoves, woodstoves (room heaters), central furnaces, and combinations of these devices;

(4) **“Structural component”** means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads). For purposes of this definition, a dead

load is the fixed weight of a structure or piece of equipment, such as a roof structure on bearing walls, and a live load is a moving variable weight added to the dead load or intrinsic weight of a structure;

(5) **“System”** means a permanently-installed group of interacting, interrelated, or interdependent components historically and conventionally designed and intended to perform one or more specific functions;

T. Definitions beginning with the letter “T”:
“Technically exhaustive” means a comprehensive and detailed examination beyond the scope of a real estate home inspection that would involve or include, but would not be limited to: dismantling, specialized knowledge or training, special equipment, measurements, calculations, testing, research, analysis, or other means;

U. Definitions beginning with the letter “U”:
[RESERVED]

V. Definitions beginning with the letter “V”:
[RESERVED]

W. Definitions beginning with the letter “W”:
 (1) **“Wall cladding”** means a protective or insulating layer fixed to the outside of a building such as aluminum, brick, EIFS, stone, stucco, vinyl, or wood;

(2) **“Wiring method”** means the identification of electrical conductors or wires by their general type, such as nonmetallic sheathed cable, armored cable, and knob and tube.

[16.66.1.7 NMAC – N, 1/15/2021]

16.66.1.8 OFFICES: The office of the New Mexico home inspectors board will be located in Albuquerque, New Mexico.
 [16.66.1.8 NMAC – N, 1/15/2021]

16.66.1.9 TELEPHONIC MEETING ATTENDANCE: A board member may participate in a board meeting by means of a conference telephone or similar communications equipment only

when it is difficult or impossible for the board member to physically attend the meeting. A board member attending by means of conference telephone or similar communications equipment must attest in open session during the meeting that his or her in-person attendance was difficult or impossible.
[16.66.1.9 NMAC – N, 1/15/2021]

16.66.1.10 ADVISORY COMMITTEES: To assist and advise the board in its functions and mission, the board may, at its discretion, utilize advisory committees consisting of board members, volunteers, or both. Any committee serving the board shall have a purely advisory role and shall not have any policymaking authority of any kind. The board has absolute discretion with respect to the number of individuals who may serve on a committee, provided that in no case shall a quorum of the members of the board serve on a committee. The committees the board may create and utilize include, but are not necessarily limited to, the following:

A. Rules committee:
The board may utilize a rules committee to study the board’s rules and provide nonbinding recommendations as to future changes and improvements.

B. Complaint committee: The board may utilize a complaint committee to review disciplinary complaints against licensees and unlicensed practitioners and provide recommendations as to the final disposition of those complaints.

C. Application committee: The board may utilize an application committee to review applications for licensure and provide recommendations as to whether the board should grant or deny those applications;

D. Continuing education committee: The board may utilize a continuing education committee for the purpose of providing nonbinding recommendations as to whether to accept a proposed continuing

education course towards licensees’ continuing education requirements.
[16.66.1.10 NMAC – N, 1/15/2021]

16.66.1.11 LISTS AND STATEMENTS:

A. The board staff shall maintain a list of the names and addresses of all licensees.

B. The board staff shall maintain a list of all persons whose licenses have been suspended or revoked in that particular calendar year.

C. The board staff shall maintain a statement of all funds received and a statement of all disbursements.

[16.66.1.11 NMAC – N, 1/15/2021]

16.66.1.12 SIGNATURES: A record, contract, or other document requiring a signature from an authorized person on behalf of the board may be signed by the chair, vice-chair, or board administrator.
[16.66.1.12 NMAC – N, 1/15/2021]

16.66.1.13 RULE IMPLEMENTATION PERIOD:

A. Within six months of the effective date of these rules, any individual engaged in the practice of home inspection in New Mexico shall be required to obtain a license issued by the board as a condition of engaging in the future practice of home inspection in New Mexico.

(1) On the date falling six months after the effective date of these rules or on the date declared by the board in the event of a state of emergency as provided in Paragraph (2) of this rule, whichever is later, any individual engaged in the unlicensed practice of home inspection in New Mexico shall be subject to disciplinary action by the board. The board may also, as it deems appropriate, request the attorney general or district attorney of the judicial district in which the person resides or in which the violation is occurring or has occurred to maintain an action in the name of the state to prosecute the unlicensed practitioner or to enjoin the act or practice.

(2) Extension of implementation period due to state of emergency: In the event that the governor declares a state of emergency due to the spread of an infectious disease that extends beyond the six months provided for in this rule, the board may vote at an open meeting to extend the rule implementation period beyond those initial six months if, in the opinion of the board, the state of emergency hinders prospective applicants from completing the necessary prerequisites to licensure. Any extension of the rule implementation period shall last no longer than 30 days after the expiration of the state of emergency declared by the governor.

B. Nothing in this rule permits any person engaged in the practice of home inspection, whether licensed or unlicensed, to violate the code of ethics or standards of conduct as adopted by the board, nor does it permit such a person to violate the Home Inspector Licensing Act. Any action in violation of these rules or the Home Inspector Licensing Act may be considered by the board as part of an individual’s application for licensure.
[16.66.1.13 NMAC – N, 1/15/2021]

HISTORY OF 16.66.1 NMAC

HOME INSPECTOR BOARD

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 66 HOME INSPECTOR LICENSING
PART 2 FEES**

16.66.2.1 ISSUING AGENCY: New Mexico home inspectors board.
[16.66.2.1 NMAC – N, 1/15/2021]

16.66.2.2 SCOPE: All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.
[16.66.2.2 NMAC – N, 1/15/2021]

16.66.2.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).
[16.66.2.3 NMAC – N, 1/15/2021]

16.66.2.4 DURATION: Permanent
[16.66.2.4 NMAC – N, 1/15/2021]

16.66.2.5 EFFECTIVE DATE: January 15, 2021, unless a later date is cited at the end of a section.
[16.66.2.5 NMAC – N, 1/15/2021]

16.66.2.6 OBJECTIVE: The objective of Part 2 of Chapter 66 is to establish fees to generate revenues necessary for the home inspector licensing board to carry out its administrative functions.
[16.66.2.6 NMAC – N, 1/15/2021]

16.66.2.7 DEFINITIONS: Refer to Definitions, 16.66.1.7 NMAC.
[16.66.2.7 NMAC – N, 1/15/2021]

16.66.2.8 FEES: The board shall establish, charge and collect:

A. For each initial application for a home inspector license, a fee of \$250;

B. For an initial three-year license, a fee of \$1,000. If a new licensee receives an initial one- or a two-year license pursuant to Part 3 of these rules, this fee shall be prorated as follows:

(1) For an initial one-year license, a fee of \$333;

(2) For an initial two-year license, a fee of \$666;

C. For renewal of a three-year license, a fee of \$1,000;

D. For reactivation of an inactive license, a fee of \$50;

E. For reactivation of an expired license, a fee of \$100;

F. For reinstatement of a suspended or revoked license, a fee of \$200;

G. For each duplicate license issued because a license is lost or destroyed, a fee of \$50,

provided that the licensee shall submit an affidavit attesting to the loss or destruction of the license before the board issues a duplicate license.
[16.66.2.8 NMAC – N, 1/15/2021]

16.66.2.9 FEES NON-REFUNDABLE: Fees paid to the board pursuant to 16.66.2.8 NMAC of the board rules are non-refundable. Requests for refunds or exceptions to this rule shall not be considered by the board.
[16.66.2.9 NMAC – N, 1/15/2021]

HISTORY OF 16.66.2 NMAC

HOME INSPECTOR BOARD

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 66 HOME INSPECTOR LICENSING
PART 3 APPLICATIONS AND LICENSES**

16.66.3.1 ISSUING AGENCY: New Mexico home inspectors board.
[16.66.3.1 NMAC – N, 1/15/2021]

16.66.3.2 SCOPE: All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.
[16.66.3.2 NMAC – N, 1/15/2021]

16.66.3.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).
[16.66.3.3 NMAC – N, 1/15/2021]

16.66.3.4 DURATION: Permanent.
[16.66.3.4 NMAC – N, 1/15/2021]

16.66.3.5 EFFECTIVE DATE: January 15, 2021, unless a later date is cited at the end of a section.
[16.66.3.5 NMAC – N, 1/15/2021]

16.66.3.6 OBJECTIVE: The objective of Part 3 of Chapter 66 is to set forth provisions governing applications for licensure as a home inspector and examinations.
[16.66.3.6 NMAC – N, 1/15/2021]

16.66.3.7 DEFINITIONS: Refer to Definitions, 16.66.1.7 NMAC.
[16.66.3.7 NMAC – N, 1/15/2021]

16.66.3.8 APPLICATION FOR LICENSURE BY TRAINING AND EXAMINATION:

A. The board shall issue a license to an applicant for licensure by training and examination if the applicant fulfills the following requirements and provides the following information and evidence:

- (1)** Completion of the board-issued application form;
- (2)** Payment of the non-refundable application fee in full as provided in Part 2;
- (3)** Provision to the board of the applicant's fingerprints and all information necessary for the board to complete a state and national criminal background check;
- (4)** Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age and a legal resident of the United States;
- (5)** Completion of at least 80 hours of classroom training:
 - (a)** The cumulative total of 80 hours of classroom training must include all of the following subjects:
 - (i)** Site characteristics and exterior;
 - (ii)** Structural components;
 - (iii)** Roofing;
 - (iv)** Plumbing;
 - (v)** Electrical;
 - (vi)** Heating, cooling, and air conditioning;

<p>(vii) Interiors, appliances, and garages;</p> <p>(viii) Insulation and ventilation;</p> <p>(ix) Fireplaces and fuel burning appliances;</p> <p>(x) New Mexico standards of practice and code of ethics;</p> <p>(xi) Business practices, including New Mexico rules and regulations, pre-inspection agreements, and report writing.</p> <p>(b) All 80 hours of classroom training must be obtained through an educational course that satisfies one of the following criteria:</p> <p>(i) The course is approved or accepted by another governmental state home inspector licensing authority;</p> <p>(ii) The course is approved by the United States department of education or the New Mexico department of education; or</p> <p>(iii) The course is designated as pre-licensing education and is certified or approved by any society, institute, council, or association of home inspectors;</p> <p>(c) All 80 hours of classroom training may be completed online;</p> <p>(6) Passage of the national home inspector examination (NHIE);</p> <p>(7) Completion of a total of at least 80 hours of field training spent conducting a minimum of 30 parallel home inspections, evidenced by documents including, but not necessarily limited to, a completed board-issued inspection log, pre-inspection agreements, notarized affidavits, and other similarly-reliable evidence;</p> <p>(8) Satisfactory evidence that the applicant has errors and omissions insurance coverage meeting the minimum terms and conditions required by 16.66.8 NMAC; and</p>	<p>(9) Satisfactory evidence that the applicant has professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.8 NMAC.</p> <p>B. For the purposes of this rule, parallel home inspections mean inspections that are either:</p> <p>(1) Conducted in New Mexico prior to the effective date of this rule; or</p> <p>(2) Those home inspections at which the applicant, for observational, experiential, and educational purposes, accompanied another home inspector who:</p> <p>(a) Is legally engaged in the practice and profession of home inspection in the jurisdiction in which the home inspection is conducted;</p> <p>(b) Has at least two years of experience in the profession of home inspection; and</p> <p>(c) Has previously completed at least 100 home inspections for compensation. [16.66.3.8 NMAC – N, 1/15/2021]</p> <p>16.66.3.9 APPLICATION FOR LICENSURE BY EXPERIENCE AND EXAMINATION:</p> <p>A. An individual is eligible for licensure by experience and examination if the individual satisfies both of the following criteria:</p> <p>(1) The applicant worked as a home inspector in each of the 24 months immediately preceding January 1, 2020; and</p> <p>(2) The applicant performed at least 100 home inspections for compensation in the 24 months immediately preceding January 1, 2020.</p> <p>B. The board shall issue a home inspector license to applicant for licensure by experience and examination if the applicant fulfills the following requirements and provides the following information and evidence:</p> <p>(1) Completion of the board-issued application form;</p>	<p>(2) Payment of the non-refundable application fee in full as provided in Part 2;</p> <p>(3) Provision to the board of the applicant's fingerprints and all information necessary for the board to complete a state and national criminal background check;</p> <p>(4) Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age and a legal resident of the United States;</p> <p>(5) Passage of a national home inspector examination. For the purposes of this rule, the applicant must either have passed the national home inspector examination (NHIE), or have passed prior to the date falling 6 months after the effective date of these rules InterNACHI's Home Inspector Exam subject to the following limitations:</p> <p>(a) Evidence of the applicant's examination passage must be in writing and written by the organization or entity that administered the examination; and</p> <p>(b) The examination must have been proctored and the applicant must provide evidence as to this requirement.</p> <p>(6) Satisfactory evidence that the applicant has errors and omissions insurance coverage and professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.8 NMAC; and</p> <p>(7) Provision to the board of sufficient documentation and evidence to establish the applicant's home inspector activities in the 24 months immediately preceding January 1, 2020. Such documentation may include, but is not limited to, tax records, notarized affidavits from persons other than the applicant, pre-inspection agreements, and other similarly-reliable evidence of the applicant's home inspection activities in the 24 months immediately preceding January 1, 2020.</p>
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C. For the purposes of this rule, the phrase “worked as a home inspector in each of the 24 months immediately preceding January 1, 2020” means having personally conducted any business activity directly associated with the profession of home inspection but is not limited to having conducted an actual home inspection. To qualify for licensure by experience and examination, an individual does not need to have personally conducted a home inspection in each of the 24 months immediately preceding January 1, 2020, if that individual conducted another business activity directly associated with the profession of home inspection during each of the 24 months.
[16.66.3.9 NMAC – N, 1/15/2021]

16.66.3.10 APPLICATION FOR LICENSURE BY CREDENTIALS:

A. An applicant who holds a license in good standing to practice as a home inspector in another state may be granted a license by virtue of the applicant’s credentials if the applicant’s resident state license requirements are the same as or similar to the requirements set forth in the Home Inspector Licensing Act as determined by the board.

B. An applicant applying for licensure on the basis of the applicant’s credentials as described in subsection A of this rule shall be required to provide to the board:

- (1) Completion of the board-issued application form;
- (2) Payment of the non-refundable application fee in full as provided in Part 2;
- (3) Provision to the board of the applicant’s fingerprints and all information necessary for the board to complete a state and national criminal background check;
- (4) Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age and a legal resident of the United States;

(5) A certificate, letter, or other documentation from the licensing authority in the applicant’s resident state attesting to the fact that the applicant holds a license in good standing to practice as a home inspector in that state;

(6) Satisfactory evidence that the applicant has errors and omissions insurance coverage meeting the minimum terms and conditions required by 16.66.8 NMAC; and

(7) Satisfactory evidence that the applicant has professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.8 NMAC.

C. Pursuant to the Home Inspector Licensing Act, the board may negotiate agreements with other states or licensing jurisdictions to allow for reciprocity regarding licensure. A license granted pursuant to a reciprocity agreement shall be issued upon:

- (1) Completion of the board-issued application form;
- (2) Payment of the non-refundable application fee in full as provided in Part 2;
- (3) Provision to the board of the applicant’s fingerprints and all information necessary for the board to complete a state and national criminal background check;
- (4) Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age and a legal resident of the United States;
- (5) The applicant’s provision to the board of a certificate, letter, or other documentation from the licensing authority in the applicant’s resident state attesting to the fact that the applicant holds a license in good standing to practice as a home inspector in that state.

(6) Satisfactory evidence that the applicant has errors and omissions

insurance coverage meeting the minimum terms and conditions required by 16.66.8 NMAC; and

(7) Satisfactory evidence that the applicant has professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.8 NMAC.
[16.66.3.10 NMAC – N, 1/15/2021]

16.66.3.11 EXAMINATIONS:

A. Licensure by training and examination: All applicants for licensure by training and examination must either pass the national home inspector examination (NHIE) following the date of application for licensure with the board or have previously passed the national home inspector examination (NHIE) prior to the date of the applicant’s application for licensure.

B. Licensure by experience and examination: All applicants for licensure by experience and examination must either:

- (1) Pass the national home inspector examination (NHIE); or
- (2) Have passed prior to the date falling six months after the effective date of these rules InterNACHI’s Home Inspector Exam, subject to the following limitations:

(a) Evidence of the applicant’s examination passage must be in writing and written by the organization or entity that administered the examination; and

(b)

The examination must have been proctored and the applicant must provide evidence as to this requirement.

C. Licensure by credentials: Applicants for licensure by licensure by credentials are not required to provide the board with evidence as to prior examination passage. However, the board will consider whether the applicant’s prior licensing jurisdiction requires the passage of a national examination in determining whether the prior licensing jurisdiction’s standards are

substantially equivalent to those in New Mexico.

D. It is the applicant's responsibility to make all arrangements with the examination board of professional home inspectors (EBPHI) to take the NHIE.

E. The applicant shall send the applicant's examination score to the board, provided that the examination score must be in a document originally written by the organization or entity that administered the examination.

F. Any applicant who fails the NHIE may retake the exam at the next available opportunity. [16.66.3.11 NMAC – N, 1/15/2021]

16.66.3.12 EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, CHILDREN, AND RECENT VETERANS:

A. Pursuant to Section 61-1-34 of the Uniform Licensing Act, any individual who is a military service member, spouse, or child, or who is a recent veteran having received an honorable discharge or separation from military service within the three years immediately preceding the date of the individual's application, is entitled to expedited licensure as provided herein.

B. Such an individual eligible for expedited licensure shall submit:

(1) An application for licensure on a form provided by the Regulation and licensing department;

(2) Satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States, whose licensure standards are substantially equivalent to those set forth in these rules and the Home Inspector Licensing Act;

(3) Proof of honorable discharge, military identification card, proof of marriage for spousal status, or proof of the individual's parentage so as to qualify for an expedited license pursuant

to Section 61-1-34 of the Uniform Licensing Act; and

(4) Satisfactory evidence that the applicant has errors and omissions insurance coverage and professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.8 NMAC.

C. An individual eligible for expedited licensure shall not be required to pay an application fee or an initial three-year license fee. [16.66.3.12 NMAC – N, 1/15/2021]

16.66.3.13 INITIAL LICENSE LENGTH (RULE IN EFFECT UNTIL DECEMBER 31, 2021):

A. A new license issued pursuant to these rules shall be valid for no more than three years. Until the close of business on December 31, 2021, initial license expiration dates shall be staggered and initial licenses shall be issued for durations of one, two, or three years for the purposes of ensuring an orderly expiration period and the continuity of professional home inspector services in New Mexico. The durations of licenses shall be determined at random by board staff. Each new license shall expire either after one, two, or three years.

B. Following the expiration of each initial license, the licensee shall be issued a license for a duration of three years.

C. This rule shall automatically, without further rulemaking action on the part of the board, expire as of the close of business on December 31, 2021. [16.66.3.13 NMAC – N, 1/15/2021]

16.66.3.14 LICENSURE PROCEDURE:

A. Upon receipt of a completed application, including all required documentation and fees, the board's application committee, should the board choose in its discretion to utilize such a committee, may provide a non-binding and purely advisory recommendation as to whether the board should grant or deny the application.

B. No license may be issued until the applicant has paid the non-refundable, but potentially prorated as provided in these rules, initial license fee in full.

[16.66.3.14 NMAC – N, 1/15/2021]

HISTORY OF 16.66.3 NMAC: [RESERVED]

HOME INSPECTOR BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 66 HOME INSPECTOR LICENSING PART 4 LICENSE RENEWALS AND REACTIVATIONS

16.66.4.1 ISSUING

AGENCY: New Mexico home inspectors board.

[16.66.4.1 NMAC – N, 1/15/2021]

16.66.4.2 SCOPE:

All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.

[16.66.4.2 NMAC – N, 1/15/2021]

16.66.4.3 STATUTORY

AUTHORITY: These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).

[16.66.4.3 NMAC – N, 1/15/2021]

16.66.4.4 DURATION:

Permanent.

[16.66.4.4 NMAC – N, 1/15/2021]

16.66.4.5 EFFECTIVE

DATE: January 15, 2021, unless a later date is cited at the end of a section.

[16.66.4.5 NMAC – N, 1/15/2021]

16.66.4.6 OBJECTIVE:

The objective of Part 4 of Chapter 66 is to set forth provisions governing renewals of home inspector licenses

and reactivation of expired and inactive licenses.
[16.66.4.6 NMAC – N, 1/15/2021]

16.66.4.7 DEFINITIONS:
Refer to Definitions, 16.66.1.7 NMAC.
[16.66.4.7 NMAC – N, 1/15/2021]

16.66.4.8 LICENSE RENEWAL:
A. A home inspector license shall be valid during the dates specified in the license itself and as provided in these rules. Once renewed, all licenses shall be for a duration of three years.

B. Renewal Date: A licensee may apply for renewal of the licensee’s license no later than the date specified as the expiration date on the applicant’s license.

C. A licensee seeking the renewal of the license shall provide to the board in accordance with the deadlines specified in this rule:

- (1) A completed renewal application;
- (2) Payment of the non-refundable renewal fee in full as provided in Part 2;
- (3) Proof of completion of required continuing education as provided in Part 5;
- (4) Provision to the board of all information necessary for the board to complete a state and national criminal background check; and

(5) Satisfactory evidence that the licensee has errors and omissions insurance coverage and professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.8 NMAC.

D. The board office will send, either through electronic means or through postal mail, a renewal notice to each licensee no later than 45 days prior to the expiration of the license at the licensee’s address on record. Timely renewal of a license is the full and complete responsibility of the licensee. If the licensee does not receive a renewal notification from

the board, it is the responsibility of the licensee to contact the board office.

E. The licensee’s failure to receive the board’s renewal notification will not exempt the licensee from licensure expiration or late penalty fees.

F. Each licensee is responsible for submitting the required renewal fee by the expiration date irrespective of whether a renewal notice is received by the licensee, and licensees shall not practice on expired licenses under any circumstances.
[16.66.4.8 NMAC – N, 1/15/2021]

16.66.4.9 INACTIVE STATUS:

A. A license in good standing may, upon written request to the board by the licensee, be placed on inactive status prior to its expiration.

B. A licensee possessing an inactive license may not engage in the practice of home inspection in the state of New Mexico.

C. A license may remain on inactive status indefinitely.

D. A licensee must renew an inactive license no later than the expiration date specified on the license. A licensee seeking to renew an inactive license must complete all continuing education as would a full licensee as provided in Part 5 of these rules.
[16.66.4.9 NMAC – N, 1/15/2021]

16.66.4.10 EXPIRED LICENSES:

A. Former licensees may reactivate an expired license within 90 days of expiration. A licensee who fails to reactivate an expired license within 90 days of expiration must, to obtain licensure, reapply as a new applicant for licensure.

B. For the purposes of this rule, expired licenses include those that have expired after being placed on inactive status by the former licensee.
[16.66.4.10 NMAC – N, 1/15/2021]

16.66.4.11 REACTIVATION OF EXPIRED OR INACTIVE LICENSES: Former licensees may reactivate an expired or inactive license within the deadlines provided in these rules. A former licensee seeking the reactivation of an expired or inactive license shall provide to the board in accordance with the deadlines specified in these rules:

- A.** A completed renewal application;
- B.** Payment of the non-refundable renewal fee in full as provided in Part 2;
- C.** Payment of the expired license reactivation fee in full as provided in Part 2;
- D.** Proof of completion of all required continuing education;
- E.** Provision to the board of all information necessary for the board to complete a state and national criminal background check.
[16.66.4.11 NMAC – N, 1/15/2021]

HISTORY OF 16.66.4 NMAC

HOME INSPECTOR BOARD

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 66 HOME INSPECTOR LICENSING
PART 5 CONTINUING EDUCATION**

16.66.5.1 ISSUING AGENCY: New Mexico home inspectors board.
[16.66.5.1 NMAC – N, 1/15/2021]

16.66.5.2 SCOPE: All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.
[16.66.5.2 NMAC – N, 1/15/2021]

16.66.5.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections

61-24D-1 through 16 NMSA 1978 (2019).
[16.66.5.3 NMAC – N, 1/15/2021]

16.66.5.4 DURATION:
Permanent.
[16.66.5.4 NMAC – N, 1/15/2021]

16.66.5.5 EFFECTIVE DATE: January 15, 2021, unless a later date is cited at the end of a section.
[16.66.5.5 NMAC – N, 1/15/2021]

16.66.5.6 OBJECTIVE:
The objective of Part 5 of Chapter 66 is to set forth provisions governing continuing education requirements.
[16.66.5.6 NMAC – N, 1/15/2021]

16.66.5.7 DEFINITIONS:
Refer to Definitions, 16.66.1.7 NMAC.
[16.66.5.7 NMAC – N, 1/15/2021]

16.66.5.8 CONTINUING EDUCATION: As provided by the Home Inspector Licensing Act, all home inspectors shall be required to satisfy continuing education requirements in the interest of ensuring the highest quality professional services.

A. As a condition of license renewal, a home inspector licensee shall complete at least 60 hours of board-approved continuing education instruction that is related to the practice of home inspection during each three-year license period as outlined in 16.66.4.8 NMAC. This includes licensees holding initial licenses.

B. At least six hours of continuing education instruction during each three-year license period must be in ethics.

C. A licensee may take continuing education instruction online.

D. Initial licenses of a duration of less than three years: Those licensees possessing initial licenses of a duration of one or two years shall complete a pro-rated amount of continuing education as follows:

(1) For licensees possessing an initial one year license, 20 hours of board-approved continuing education instruction that is related to the practice of home inspection, including at least two hours of ethics;

(2) For licensees possessing an initial two year license, 40 hours of board-approved continuing education instruction that is related to the practice of home inspection, including at least four hours of ethics.
[16.66.5.8 NMAC – N, 1/15/2021]

16.66.5.9 APPROVAL OF CONTINUING EDUCATION HOURS:

A. The board shall automatically accept any educational course towards a licensee’s continuing education requirements if the course satisfies one of the following criteria:

(1) The course is approved or accepted by another governmental state home inspector licensing authority;

(2) The course is approved by the United States department of education or the New Mexico department of education; or

(3) The course is certified or approved by any society, institute, council, or association of home inspectors.

B. A course that does not satisfy the criteria set forth in subsection A of this section may still be accepted by the board through the following process:

(1) A continuing education course may be submitted to the board for approval, by either the course instructor or the licensee, along with the following documentation:

(a) Course description, objectives, and goals;

(b) Course syllabus, including the number of educational hours, detailed timeline, provisions for make-up work, required text, and reading resources, instructional materials and handouts, requirements for successful completion and method of evaluation; and

(c) Documentation as to the course instructor’s qualifications, background, and expertise.

(2) Any continuing education course submitted to the board for approval shall be reviewed, along with its supporting documentation, by the board’s continuing education committee, which will make a non-binding recommendation to the board as to whether to approve or disapprove the course. The board shall vote on approval of the course, either as part of its consent agenda or otherwise, at its next regularly-scheduled meeting. In the event that the continuing education committee recommends the disapproval of a course, this information shall be conveyed to the course instructor, who may request in writing the opportunity to be heard at the next regularly-scheduled board meeting. Where the instructor has made a request to be heard and the board votes to deny the application, the board will issue a final written decision no later than 15 business days following the board’s meeting.

(3) The board, and its application committee, shall consider the following criteria in determining whether to approve a continuing education course:

(a) Whether the content of the course is related to the practice of home inspection;

(b) Whether the instructor is qualified to teach the course; and

(c) Whether the instructor has violated the Home Inspector Licensing Act, the board’s rules, or any criminal laws that are substantially related to the practice of home inspection or a failure to pay child support.
[16.66.5.9 NMAC – N, 1/15/2021]

16.66.5.10 CONTINUING EDUCATION AUDITS: The board shall audit ten percent of renewal applications each year, selected anonymously and at random, to verify completion of continuing education. If the licensee is audited, proof of

participation in or presentation of continuing education activity must be submitted along with a renewal form.

A. If a notice of audit is received with the license renewal notice, the licensee must submit evidence of continuing education hours earned during the current renewal cycle to the board as required in the Home Inspector Licensing Act and the board's rules.

B. If the licensee is not audited, the licensee must, as a condition of renewal, attest to the completion of the required hours of continuing education. The licensee shall, throughout the period of each license, retain all documentation of continuing education attendance for the previous cycle of licensure.

C. The board may audit any licensee's continuing education attendance upon notification to the licensee.
[16.66.5.10 NMAC – N, 1/15/2021]

HISTORY OF 16.66.5 NMAC

HOME INSPECTOR BOARD

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 66 HOME INSPECTOR LICENSING
PART 6 CODE OF ETHICS**

16.66.6.1 ISSUING AGENCY: New Mexico home inspectors board.
[16.66.6.1 NMAC – N, 1/15/2021]

16.66.6.2 SCOPE: All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.
[16.66.6.2 NMAC – N, 1/15/2021]

16.66.6.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections

61-24D-1 through 16 NMSA 1978 (2019).
[16.66.6.3 NMAC – N, 1/15/2021]

16.66.6.4 DURATION: Permanent.
[16.66.6.4 NMAC – N, 1/15/2021]

16.66.6.5 EFFECTIVE DATE: January 15, 2021, unless a later date is cited at the end of a section.
[16.66.6.5 NMAC – N, 1/15/2021]

16.66.6.6 OBJECTIVE: The objective of Part 6 of Chapter 66 is to set forth a code of ethics governing the professional obligations of all home inspector licensees.
[16.66.6.6 NMAC – N, 1/15/2021]

16.66.6.7 DEFINITIONS: Refer to Definitions, 16.66.1.7 NMAC.
[16.66.6.7 NMAC – N, 1/15/2021]

16.66.6.8 CODE OF ETHICS: All licensed home inspectors in New Mexico shall abide at all times by the Code of Ethics contained in this part.

A. This Code of Ethics rests on the fundamental principles of integrity, honesty, and objectivity. All provisions contained herein shall be interpreted at all times in the light of these principles which govern the New Mexico home inspection industry.

B. All licensees shall comply with this Code of Ethics, shall avoid association with any enterprise whose practices violate this Code of Ethics, and shall strive to uphold, maintain, and improve the integrity, reputation, and practice of home inspection.
[16.66.6.8 NMAC – N, 1/15/2021]

16.66.6.9 CONFLICTS OF INTEREST: A licensee shall avoid conflicts of interest or activities that compromise, or appear to compromise, professional independence, objectivity, or inspection integrity. To that end, a licensee shall not:

A. Inspect a property for compensation in which the licensee has, or expects to have, a financial interest;

B. Inspect a property under a contingent arrangement whereby any compensation or future referral is dependent on reported findings or on the sale of the property;

C. Directly or indirectly compensate realty agents, or other parties having a financial interest in closing or settlement of real estate transactions, for the referral of inspections or for inclusion on a list of recommended inspectors, preferred providers, or similar arrangements;

D. Receive compensation for an inspection from more than one party unless the client consents in writing to the compensation arrangement;

E. Accept compensation, directly or indirectly, for recommending contractors, services, or products to clients or other parties having an interest in an inspected property; or

F. Perform, or offer to perform, for an additional fee any repair to a structure on which the home inspector or the home inspector's company has prepared a report at any time during the twelve months immediately prior to the repair or offer to repair.

[16.66.6.9 NMAC – N, 1/15/2021]

16.66.6.10 GOOD FAITH: A licensee shall act in good faith toward each client and other interested parties.

A. A licensee shall perform services and express opinions based on genuine conviction and only within the licensee's areas of education, training, or experience.

B. A licensee shall be objective in reporting and not knowingly understating or overstating the significance of reported adverse conditions.

C. A licensee shall not release any information about an inspection or a client to a third party unless doing so is necessary to protect the safety of others, to comply with a law or statute, or unless the client has

provided intelligent, informed, and written consent to the home inspector for the release of the information.

D. A licensee shall be honest in all business dealings and professional conduct.
[16.66.6.10 NMAC – N, 1/15/2021]

16.66.6.11 CONFIDENCE IN THE PROFESSION: A licensee shall avoid activities that may harm the public, bring disrepute upon the licensee, or reduce public confidence in the profession of home inspection.

A. A licensee shall comply with all applicable federal, state, and local laws and regulations, including but not limited to the Home Inspector Licensing Act.

B. Advertising, marketing, and promotion of a licensee's services or qualifications shall not be fraudulent, false, deceptive, or misleading.

C. A licensee shall report a violation of this Code of Ethics to the Board.
[16.66.6.11 NMAC – N, 1/15/2021]

HISTORY OF 16.66.6 NMAC

HOME INSPECTOR BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 66 HOME INSPECTOR LICENSING PART 7 STANDARDS OF PRACTICE

16.66.7.1 ISSUING AGENCY: New Mexico home inspectors board.
[16.66.7.1 NMAC – N, 1/15/2021]

16.66.7.2 SCOPE: All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.
[16.66.7.2 NMAC – N, 1/15/2021]

16.66.7.3 STATUTORY AUTHORITY: These rules are

promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).
[16.66.7.3 NMAC – N, 1/15/2021]

16.66.7.4 DURATION: Permanent.
[16.66.7.4 NMAC – N, 1/15/2021]

16.66.7.5 EFFECTIVE DATE: January 15, 2021, unless a later date is cited at the end of a section.
[16.66.7.5 NMAC – N, 1/15/2021]

16.66.7.6 OBJECTIVE: The objective of Part 7 of Chapter 66 is to set forth minimum and uniform standards of practice governing all home inspector licensees.
[16.66.7.6 NMAC – N, 1/15/2021]

16.66.7.7 DEFINITIONS: Refer to Definitions, 16.66.1.7 NMAC.
[16.66.7.7 NMAC – N, 1/15/2021]

16.66.7.8 STANDARDS OF PRACTICE: This Part sets forth the minimum and uniform standards of practice applicable to all New Mexico home inspector licensees.
[16.66.7.8 NMAC – N, 1/15/2021]

16.66.7.9 HOME INSPECTIONS DO NOT DETERMINE CONFORMITY WITH STATE AND LOCAL BUILDING CODE REQUIREMENTS: A licensee shall not, as part of a home inspection, determine whether the home or components and/or systems of the home that have been inspected conform to local or state building code requirements. A home inspection report shall not contain a determination of whether the home or components and/or systems of the home that have been inspected conform to local or state building code requirements.
[16.66.7.9 NMAC – N, 1/15/2021]

16.66.7.10 PRE-INSPECTION AGREEMENTS: Prior to the commencement of any

home inspection, a licensee shall enter into a pre-inspection agreement with the client. Any pre-inspection agreement must contain, at a minimum, all of the following:

A. The date and time of the inspection;

B. The name and license number of the licensee home inspector who will be conducting the home inspection;

C. The compensation fee and terms of payment for services;

D. A statement that the inspection shall be performed in accordance with the Board's rules and standards of practice;

E. A statement summarizing the scope of work to be performed by the licensee, provided that this scope of work may be modified by subsequent written agreement executed by the licensee and client prior to commencement of the home inspection;

F. The date upon which the licensee shall deliver the home inspection report to the client;

G. The following statement, in its entirety and in all capital letters: "THE HOME INSPECTOR WILL NOT DETERMINE AND THE REPORT PROVIDED UPON COMPLETION OF THE HOME INSPECTION WILL NOT CONTAIN A DETERMINATION OF WHETHER THE HOME OR COMPONENTS AND/OR SYSTEMS OF THE HOME THAT HAVE BEEN INSPECTED CONFORM TO LOCAL OR STATE BUILDING CODE REQUIREMENTS."
[16.66.7.10 NMAC – N, 1/15/2021]

16.66.7.11 HOME INSPECTIONS: The licensee shall, as part of any home inspection, inspect all of the readily accessible and permanently installed systems and components listed in 16.66.7.12 NMAC, 16.66.7.13 NMAC, 16.66.7.14 NMAC, 16.66.7.15 NMAC, 16.66.7.16 NMAC, 16.66.7.17 NMAC, 16.66.7.18 NMAC, 16.66.7.19 NMAC, 16.66.7.20 NMAC, 16.66.7.21 NMAC, 16.66.7.22 NMAC, and 16.66.7.23 NMAC.

A. Home inspections must be conducted by a licensee. A trainee may conduct parallel inspections and write portions of a home inspection report alongside and under the supervision of a licensee, provided that the licensee shall be responsible for compliance with these rules and regulations in all circumstances. Only a licensee may sign a home inspection report. Office staff may conduct scheduling and bookkeeping functions without a license.

B. Recommendations: Any decision to seek repair, further evaluation, or cost estimates for repair of any reported adverse condition observed and described in a home inspection report is reserved to the parties to the contract for sale and purchase of the home. All such repairs, evaluations, and cost estimates must be provided by a qualified and, if required, licensed contractor and may include tests, measurements, and adjustments outside of the scope of a normal home inspection and may lead to the discovery of additional adverse conditions which may have additional repair costs that may not have been obvious to the home inspector. Any individual engaged in construction or a trade related to contracting or making code determinations in New Mexico must be licensed by the appropriate state agency, if required. [16.66.7.11 NMAC – N, 1/15/2021]

16.66.7.12 SITE CHARACTERISTICS AND EXTERIOR:

A. The licensee shall inspect:

- (1) Wall cladding materials, flashing, and trim;
- (2) Eaves, soffits, and fascia where accessible and observable from the ground level;
- (3) Exterior doors and windows;
- (4) Attached and adjacent decks, balconies, stairs, steps, stoops, stairways, and porches and the associated railings, guards, and handrails;

(5) Vegetation, grading, surface drainage, and retaining structures that, as determined by the licensee, adversely affect the building;

(6) Attached and adjacent walkways and exterior stoops, landings, and patios;

(7) Adjacent driveways and other paved, masonry, or hardscape areas;

(8) Attached portals and ramadas;

(9) Garages and carports.

B. In the home inspection report, the licensee shall describe at least the wall cladding.

C. The licensee is not required to inspect:

(1) Storm windows, storm doors, screening, shutters, awnings, and similar seasonal accessories;

(2) Items that are not visible or readily accessible from the ground, including window and door flashing;

(3) Fencing, privacy walls, and retaining walls;

(4) Erosion control and other earth stabilization measures;

(5) Soil or geological conditions, site engineering, property boundaries, encroachments, or easements;

(6) Adequacy of retaining walls, sea walls, waterfront bulkhead, docks, and piers;

(7) Ponds, fountains, or decorative water features;

(8) Safety glazing;

(9) Integrity of multiple-pane window glazing or thermal window seals;

(10) Recreational facilities;

(11) Outbuildings other than garages and carports;

(12) Swimming pools and spas.

[16.66.7.12 NMAC – N, 1/15/2021]

16.66.7.13 STRUCTURAL COMPONENTS:

A. The licensee shall inspect all structural components, including but not limited to foundation and framing.

B. In the home inspection report, the licensee shall describe at least the following:

(1) Methods used to inspect basements, underfloor crawlspaces and attics;

(2) Foundation;

(3) Floor structures;

(4) Wall structures;

(5) Ceiling structures; and

(6) Roof structures.

C. The licensee is not required to:

(1) Provide engineering or architectural services or analysis;

(2) Offer an opinion about the adequacy of structural systems and components;

(3) Enter underfloor crawlspace areas that have less than 24 inches of vertical clearance between components and the ground or that have an access opening smaller than 16 inches by 24 inches;

(4) Enter attics or crawlspaces when access is obstructed or when entry could damage the property;

(5) Enter attics or crawlspaces when the licensee suspects dangerous or adverse situations;

(6) Traverse attic load-bearing components that are concealed by insulation or by other materials;

(7) Move insulation.

[16.66.7.13 NMAC – N, 1/15/2021]

16.66.7.14 ROOFING:

A. The licensee shall inspect:

(1) Roofing materials;

(2) Roof drainage systems;

(3) Flashing;
(4) Skylights, chimneys, and roof penetrations.

B. In the home inspection report, the licensee shall describe at least the following:
(1) Roof materials; and
(2) Methods used to examine the roof as well as any general area of the roof that was not examined and the reason the area was not examined.

C. The licensee is not required to:

- (1) Perform a water test;
- (2) Warrant or certify the roof or predict the service life expectancy;
- (3) Remove snow, ice, debris, or other conditions that prohibit the observation of the roof surfaces;
- (4) Inspect antennae, satellite dishes, lightning arresters, de-icing equipment, or similar attachments;
- (5) Confirm proper fastening or installation of any roof-covering material.
[16.66.7.14 NMAC – N, 1/15/2021]

16.66.7.15 PLUMBING:

- A.** The licensee shall inspect:
- (1) Interior water supply and distribution systems, including fixtures and fixture trim components (faucets, valves, drain stops, shower arms and showerheads, flush handles, etc.);
 - (2) Interior drain, waste, and venting systems, including fixtures;
 - (3) Water heating equipment and hot water supply systems;
 - (4) Vent systems, flues, and chimneys;
 - (5) Fuel storage and fuel distribution systems; and
 - (6) Sewage ejectors, sump pumps, and related piping.

B. In the home inspection report, the licensee shall describe at least the following:

(1) Interior water supply, drain, waste, and vent piping materials;

- (2) Water heating equipment, including energy sources;
- (3) Location of main water supply shut-off valve; and
- (4) Location of main fuel supply shut-off valve.

C. The licensee is not required to inspect:

- (1) Interiors of vent systems, flues, and chimneys that are not readily accessible;
- (2) Sewage drain waste systems;
- (3) On-site (septic) waste disposal systems;
- (4) Wells, well pumps, and water storage related equipment;
- (5) On-site (well) water supply quantity and quality;
- (6) Water conditioning systems;
- (7) Solar, geothermal, and other renewable energy water heating systems;
- (8) Manual and automatic fire extinguishing and sprinkler systems;
- (9) Landscape irrigation systems;
- (10) Clothes-washing machine connections;
- (11) Refrigerator or ice maker water connections.

D. The licensee is not required to:

- (1) Light or ignite pilot flames;
- (2) Operate any shut-off or manual stop valves, except water closet flush valves and fixture valves;
- (3) Test shower pans, tub, and shower surrounds or enclosures for leakage or functional overflow protection;
- (4) Operate automatic safety controls;
- (5) Inspect or test for gas or fuel leaks or indications thereof.

E. The licensee is not required to determine:

- (1) Capacity, temperature, life expectancy, or adequacy of the water heater;
- (2) Adequacy of combustion air components;
- (3) Whether water supply and waste disposal systems are public or private;
- (4) Water supply with respect to flow rate, volume, pressure, temperature, quantity, and quality;
- (5) Effectiveness of anti-siphon devices.
[16.66.7.15 NMAC – N, 1/15/2021]

16.66.7.16 ELECTRICAL:

- A.** The licensee shall inspect:
- (1) Service drop (overhead) or the readily accessible components of the service lateral (underground);
 - (2) Service entrance conductors and cables;
 - (3) Service equipment and main disconnects;
 - (4) Service and system grounding;
 - (5) Interior Components of service distribution panelboards and secondary panelboards by removing the panelboards dead front cover.

(a) When, as determined by the licensee, primary electrical distribution panelboards or secondary panelboards and their related dead front covers and fasteners are readily accessible, the inspector will remove the dead front covers of such panelboards in order to examine readily accessible components installed on their interiors.

(b) Use of tools to remove dead front covers is specifically excluded when dead front covers or their fasteners are painted or otherwise sealed into place or when they cannot be removed with a standard, non-power-assisted slot head or Phillips head screwdriver or hex head nut driver.

(c) Exception for home inspector

safety: The home inspector is not required to remove the covers of the service and distribution panels when hazardous conditions are present. The home inspector should use caution whenever removing the covers of service and distribution panels. Before touching the fasteners and cover, the home inspector should use available voltage test tools to verify if the panel assembly, panel dead front, and fasteners have live voltage conditions. Example tools include voltage sniffers, neon bulb testers, three light testers or voltmeters.

(6) Conductors (wiring methods);

(7) Overcurrent protection devices;

(8) Presence of labeling of overcurrent protection devices;

(9) Ground fault circuit interrupter (“GFCI”) protection devices;

(10) Arc fault circuit interrupter (“AFCI”) protection devices;

(11) A representative number of installed lighting fixtures, switches, and receptacles; and

(12) The polarity and grounding of all readily accessible receptacles within six feet of interior plumbing fixtures, in the garage or carport, and on the exterior of inspected structures.

B. In the home inspection report, the licensee shall describe at least the following:

(1) Service location type: overhead service drop or underground service lateral;

(2) Amperage and voltage rating of the service;

(3) Service and system grounding and bonding (i.e. concrete encased, ground rod, equipotential cold-water metal pipe);

(4) Location of main service entry and distribution panelboards and the associated disconnects;

(5) Predominant branch circuit wiring methods;

(6) Presence

or absence of smoke detectors and alarms;

(7) Presence or absence of carbon monoxide detectors and alarms;

(8) Presence or absence of ground fault circuit interrupter (“GFCI”) protection devices;

(9) Presence or absence of arc fault circuit interrupter (“AFCI”) protection devices;

(10) Any unused circuit-breaker panel opening that was not filled;

(11) The presence of solid conductor aluminum branch-circuit wiring;

(12) Any tested receptacle in which power was not present, polarity was incorrect, the cover was not in place, the GFCI devices were not properly installed or did not operate properly, there was evidence of arcing or excessive heat, or where the receptacle was not grounded or was not secured to the wall;

(13) Wiring methods which are not consistent with generally established practices (terminations, multiple tapping of hot and neutral conductors, insulation, over-stripping, securing and protection of conductors, bonding of components, etc.);

(14) Condition of visible conductors and insulation (damaged, scorched, burned, or melted insulation; nicked conductors; cut off strands of multiple strand conductors, anti-oxidant compound on aluminum conductors, etc.);

(15) Corrosion on components; and

(16) The presence a utility interactive system (i.e. solar, wind turbine, and electric vehicle charging systems).

C. The licensee is not required to inspect:

(1) Remote control devices;

(2) Low voltage wiring systems and components;

(3) Ancillary wiring systems and components not

a part of the primary electrical power distribution system;

(4) Private or emergency electrical supply systems;

(5) Spark or lightning arrestors.

D. The licensee is not required to:

(1) Operate electrical systems that are shut down;

(2) Test or operate overcurrent protection devices except ground fault and arc fault circuit interrupters;

(3) Test or operate any overcurrent device or safety device in the electrical service panel or elsewhere that may adversely affect the personal property or activity of the resident;

(4) Determine the accuracy of the labeling of all overcurrent protection devices;

(5) Calculate or measure amperage, voltage, and impedance;

(6) Determine (present or future) service capacity amperage, voltage, or the capacity, when not readily accessible, of the electrical system or main service equipment;

(7) Determine the age and type of smoke alarms and carbon monoxide alarms;

(8) Test or determine the interconnectivity or effectiveness of smoke alarms and carbon monoxide alarms;

(9) Verify that smoke or carbon monoxide alarms are interconnected or suitable for the hearing-impaired;

(10) Insert any tool, probe, or testing device inside panels or dismantle any electrical device or control other than to remove the primary electrical distribution panelboards or secondary panelboards and their related dead front covers and fasteners when no hazard conditions exist and when readily accessible;

(11) Remove the covers of junction, fixture, receptacle, or switch boxes unless specifically required by this standard; and

(12) The home inspector is not required to remove electrical device covers when removal would damage or mar any painted surface or covering materials. [16.66.7.16 NMAC – N, 1/15/2021]

16.66.7.17 HEATING:

A. The licensee shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.

B. The licensee shall inspect:

(1) Permanently installed heating equipment and distribution systems, using normal operating controls; and

(2) Vent systems, flues, and chimneys.

C. In the home inspection report, the licensee shall describe at least the following:

(1) Energy sources; and

(2) Heating systems.

D. The licensee is not required to inspect:

(1) Interior of vent systems, flues, and chimneys that are not readily accessible;

(2) Heat exchangers;

(3) Humidifiers and dehumidifiers;

(4) Electric air cleaning and sanitizing devices;

(5) Portable heating equipment;

(6) Heating systems using ground-source, water-source, solar, and renewable energy technologies;

(7) Heat-recovery and similar whole-house mechanical ventilation systems;

(8) Fuel tanks or underground or concealed fuel supply systems.

E. The licensee is not required to:

(1) Light or ignite pilot flames and burners;

(2) Operate automatic safety controls.

F. The licensee is not required to determine:

(1) Uniformity, temperature, flow, balance, distribution, size, capacity, British thermal unit (“BTU”), or supply adequacy of the heating system;

(2) Adequacy of combustion air components. [16.66.7.17 NMAC – N, 1/15/2021]

16.66.7.18 COOLING AND AIR CONDITIONING:

A. The licensee shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.

B. The licensee shall inspect central and permanently installed cooling equipment and distribution systems, using normal operating controls.

C. In the home inspection report, the licensee shall describe at least the following:

(1) Energy sources; and

(2) Cooling systems.

D. The licensee is not required to:

(1) Operate cooling systems when weather conditions or other circumstances may cause equipment damage;

(2) Operate automatic safety controls;

(3) Inspect electric air cleaning and sanitizing devices;

(4) Inspect cooling units that are not permanently installed or that are installed in windows;

(5) Inspect cooling systems using ground-source, water-source, solar, and renewable energy technologies;

(6) Determine the uniformity, temperature, flow, balance, distribution, size, capacity, BTU, or supply adequacy of the cooling system. [16.66.7.18 NMAC – N, 1/15/2021]

16.66.7.19 INTERIORS:

A. The licensee shall inspect:

(1) Walls, ceilings, and floors;

(2) Steps, stairways, balconies, and the associated railings, guards, and handrails;

(3) Countertops and a representative number of permanently installed cabinets; and

(4) A representative number of doors and windows.

B. In the home inspection report, the licensee shall describe at least the following:

(1) Absence of performing emergency escape and rescue openings in all sleeping rooms;

(2) Observed indications of active water penetration on building components; and

(3) Observed indications of active or abnormal condensation on building components.

C. The licensee is not required to inspect:

(1) Safety glazing;

(2) Coatings on and the hermetic seals between panes of window glass;

(3) Security bar release and opening mechanisms;

(4) Paint, wallpaper and other finish treatments on the interior walls, ceilings, and floors;

(5) Floor coverings or carpeting;

(6) Draperies, blinds, or other window treatments; and

(7) Recreational equipment or facilities.

D. The licensee is not required to move personal items, furniture, equipment, or plant life that obstructs access or visibility.

[16.66.7.19 NMAC – N, 1/15/2021]

16.66.7.20 GARAGES:

A. The licensee shall inspect:

(1) Walls and ceilings adjoining living space;

(2) Doors entering living space from the garage;

(3) Presence of burners, burner ignition devices, or heating elements permanently installed in the garage;

(4) Presence of vehicle barrier when heating or water heating units are in the path of the vehicle;

(5) Scuttle access to attics, including pull-down stairs inside the garage;

(6) Garage vehicle door;

(7) Vehicle door automatic operator and safety features present.

B. In the home inspection report, the licensee shall describe at least the following:

(1) Damage, unsealed penetrations, and openings to walls and ceilings adjoining living spaces;

(2) Presence of heating or cooling supply or return ductwork inside the garage space;

(3) Burners, burner ignition devices, and other heating elements, switches, and thermostats that may generate a glow, spark, or flame capable of igniting flammable vapors that are installed less than 18 inches above the floor above the garage floor, unless the unit is listed for garage floor installation; and

(4) Vehicle door operation.

C. The licensee is not required to:

(1) Verify or certify automatic operator remote control operation;

(2) Verify or certify the proper operation of any pressure-activated auto-reverse or related safety feature of a garage door;

(3) Inspect or operate equipment housed in the garage, except as otherwise noted;

(4) Move personal items, furniture, or equipment which obstructs access or visibility; and

(5) Burners, burner ignition devices, or heating elements, switches, and thermostats

that are not a minimum of eighteen (18) inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation. [16.66.7.20 NMAC – N, 1/15/2021]

16.66.7.21 INSULATION AND VENTILATION:

A. The licensee shall inspect:

(1) Insulation and vapor retarders in unfinished spaces;

(2) Ventilation of unfinished spaces, including attics, enclosed rafter spaces, crawlspaces, and foundation areas; and

(3) Kitchen, bathroom, laundry, and similar exhaust systems.

B. In the home inspection report, the licensee shall describe at least the following:

(1) Insulation and vapor retarder in unfinished spaces;

(2) Ventilation of unfinished spaces; and

(3) Absence of insulation in unfinished spaces at conditioned surfaces.

C. The licensee is not required to:

(1) Disturb insulation;

(2) Determine the adequacy of ventilation;

(3) Report on concealed insulation, vapor retarders, or venting equipment which is integral with household appliances. [16.66.7.21 NMAC – N, 1/15/2021]

16.66.7.22 FIREPLACES AND FUEL BURNING APPLIANCES:

A. The licensee shall inspect:

(1) Fuel-burning fireplaces, stoves, and fireplace inserts;

(2) Fuel-burning accessories installed in fireplaces; and

(3) Chimneys and vent systems.

B. In the home inspection report, the licensee shall

describe at least the following:

(1) Fuel-burning fireplaces, stoves, and fireplace inserts;

(2) Fuel-burning accessories installed in fireplaces;

(3) Presence or lack of a smoke detector in same room of fuel-burning fireplaces, stoves, or fireplace inserts; and

(4) Presence or lack of a carbon monoxide detector in same room of fuel-burning fireplaces, stoves, and fireplace inserts.

C. The licensee is not required to inspect:

(1) Interiors of vent systems, flues, and chimneys that are not readily accessible;

(2) Fire screens and doors;

(3) Seals and gaskets;

(4) Mantles and fireplace surrounds;

(5) Combustion air components;

(6) Heat distribution assists (gravity feeds and fan assisted);

(7) Automatic fuel feed devices;

(8) Fuel-burning fireplaces and appliances located outside the inspected structures.

D. The licensee is not required to:

(1) Ignite pilot flames;

(2) Ignite or extinguish fires;

(3) Determine the adequacy of drafts or draft characteristics;

(4) Move fireplace inserts, stoves, or firebox contents. [16.66.7.22 NMAC – N, 1/15/2021]

16.66.7.23 BUILT-IN APPLIANCES:

A. The licensee shall inspect:

(1) Kitchen, using normal operating controls:

(a) Dishwashers through a cycle of the licensee's choosing;

(b) Ovens, ranges, and surface cooking appliances;

(c) Trash compactors;

(d) Food waste grinders;

(e) Permanently installed kitchen ventilation equipment; and

(f) Permanently installed microwave oven.

(2) Laundry:

(a) Dryer hookup energy sources; and

(b) Dryer ventilation or exhaust system.

B. In the home inspection report, the licensee shall describe at least the permanently installed appliances that the licensee did not operate and the reason why the appliance was not operated.

C. The licensee is not required to inspect:

(1) Installed and free-standing kitchen and laundry appliances that are not listed in Subsection (A) of this rule;

(2) Appliances in use or appliances on which personal items are located;

(3) Appliance thermostats, including their calibration, adequacy of heating elements, self-cleaning oven cycles, indicator lights, door seals, timers, clocks, timed features, and other specialized features of the appliance;

(4) Microwave oven heating function or microwave leakage;

(5) Refrigerators, ice makers, or freezers;

(6) Laundry washers with respect to operation or performance;

(7) Laundry dryers with respect to operation or performance;

(8) Central vacuum systems;

(9) Clocks, timers, self-cleaning oven functions,

or thermostats for calibration or automatic characteristics of operation;

(10) Any system, component, or appliance that does not respond to normal user controls;

(11) Any system, component, or appliance that requires use of special codes, keys, combinations, or devices;

(12) Elevators or stairlifts.

D. The licensee is not required to:

(1) Remove personal items in or on the appliance;

(2) Operate or confirm the operation of every control and feature of an inspected appliance. [16.66.7.23 NMAC – N, 1/15/2021]

16.66.7.24 LIMITATIONS AND EXCLUSIONS:

A. General limitations:

(1) The requirements, obligations, and standards in this Part apply to residential buildings with four or fewer dwelling units and their attached and detached garages and carports.

(2) As part of a particular home inspection, licensees are not required to perform actions or make determinations or recommendations beyond those identified in this Part.

(3) Home inspections performed by licensees are not expected to be technically exhaustive.

(4) Home inspections performed by licensees are not required to identify or report on concealed, latent, or intermittent conditions.

B. In general, the licensee is not required to inspect:

(1) Underground items including, but not limited to, lawn irrigation systems or underground storage tanks and other underground indications of their presence, whether abandoned or active;

(2) Items that are not permanently installed;

(3) Permanently installed decorative items;

(4) Items in areas that the licensee does not enter, as provided in this Part;

(5) Detached structures other than garages and carports;

(6) Common elements and common areas in multi-unit housing, such as condominium properties and cooperative housing;

(7) All occurrence of multiple similar components, provided that the licensee may be required to inspect one such component;

(8) Outdoor cooking appliances.

C. In general, the licensee is not required to:

(1) Ignite or extinguish fires, pilot lights, burners, and other open flames that require manual ignition;

(2) Dismantle systems and components, except as required by this Part;

(3) Operate any system or component which is shut down or otherwise inoperable;

(4) Operate any system or component which does not respond to normal operating controls;

(5) Operate shut-off valves and manual stop valves;

(6) Reset, reprogram, or otherwise adjust devices, systems, and components affected by the home inspection required by this Part;

(7) Probe surfaces that would be damaged or where no deterioration is visible or presumed to exist;

(8) Use specialized tools;

(9) Disturb insulation, move personal items, furniture, equipment, plant life, soil, snow, ice, or debris which obstructs access or visibility;

(10) Enter areas that will, as determined by the licensee, likely be dangerous to the

licensee or to other persons or likely to damage the property or its systems and components;

(11) Enter any area or perform any procedure which may damage the property or its components or be dangerous to the licensee or other persons;

(12) Enter under-floor crawlspaces and attics that are not readily accessible;

(13) Identify and report cosmetic imperfections that do not affect a component's normally intended function or operation;

(14) Describe or report on systems or components that are not included in this Part and that were not inspected;

(15) Offer warranties or guarantees of any kind;

(16) Offer or perform any engineering services;

(17) Offer or perform any trade or professional service other than home inspection.

D. In general, the licensee is not required to determine:

(1) Compliance with local codes, ordinances or regulations, the legality of property and its present use, conditions of title, boundaries and easements, and location in earthquake, flood, mining, or any other hazard zones;

(2) Whether any permits were required or obtained for any work performed on the subject property;

(3) Whether grandfathering applies to any condition in a system or component;

(4) Condition of systems and components not readily accessible;

(5) Strength, adequacy, effectiveness, and efficiency of systems and components;

(6) Causes of adverse conditions observed and reported;

(7) Methods, materials, and costs of corrections;

(8) Future conditions, including but not limited to failure of systems and components;

(9) The age of installation of any system, structure, or component of a building;

(10) The remaining life expectancy of systems and components;

(11) Whether items, materials, conditions, and components are subject to recall, controversy, litigation, product liability, and other adverse claims and conditions;

(12) Operating costs of systems and components;

(13) Acoustical properties of systems and components;

(14) Presence of plants, animals, and other life forms and substances that may be hazardous or harmful to humans including, but not limited to, wood destroying organisms, molds, and mold-like substances;

(15) Presence of environmental hazards including, but not limited to, allergens, toxins, carcinogens, electromagnetic radiation, noise, radioactive substances, and contaminants in building materials, soil, water, and air;

(16) Effectiveness of permanently installed systems and methods used to control or remove suspected hazardous plants, animals, and environmental hazards;

(17) Soil conditions relating to geotechnical or hydrologic specialties;

(18) Advisability of purchasing of the property being inspected;

(19) Insurability of the property;

(20) Marketability or market value of the property;

(21) Suitability of the property for specialized uses. [16.66.7.24 NMAC – N, 1/15/2021]

16.66.7.25 INSPECTION REPORTS: Following any home inspection, the licensee shall provide the client with a written inspection report.

A. Inspection reports must state, at a minimum, the following:

(1) The systems and components of the home that, as determined by the licensee, are not performing their normally intended function or operation or are not consistent with generally established practices regarding the historically or conventionally applied and acknowledged methods of installation, assembly, operation or use;

(2) Recommendations as to the need to correct, observe, or check for further correction the adverse conditions reported pursuant to subsection (A) of this rule or any other items requiring further evaluation;

(3) Such reasoning and explanation as necessary to identify and clarify the nature of the adverse conditions reported pursuant to subsection (A) of this rule;

(4) The systems and components of the home designated for inspection under the Board's rules which were present at the time of the home inspection but not inspected, along with the reasons for the lack of inspection;

(5) The following statement, in its entirety and in all capital letters: "THE HOME INSPECTOR DID NOT DETERMINE AND THIS REPORT DOES NOT CONTAIN A DETERMINATION OF WHETHER THE HOME OR COMPONENTS AND/OR SYSTEMS OF THE HOME THAT HAVE BEEN INSPECTED CONFORM TO LOCAL OR STATE BUILDING CODE REQUIREMENTS."

B. Although all pre-inspection agreements must state the date upon which the licensee shall deliver the home inspection report to the client, if the pre-inspection agreement does not set forth such a date, the home inspector shall provide the report to the client no later than five days after the home inspection was performed.

[16.66.7.25 NMAC – N, 1/15/2021]

HISTORY OF 16.66.7 NMAC

HOME INSPECTOR BOARD

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 66 HOME INSPECTOR LICENSING
PART 8 DISCIPLINARY PROCEEDINGS**

16.66.8.1 ISSUING AGENCY: New Mexico home inspectors board.
[16.66.8.1 NMAC – N, 1/15/2021]

16.66.8.2 SCOPE: All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.
[16.66.8.2 NMAC – N, 1/15/2021]

16.66.8.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).
[16.66.8.3 NMAC – N, 1/15/2021]

16.66.8.4 DURATION: Permanent.
[16.66.8.4 NMAC – N, 1/15/2021]

16.66.8.5 EFFECTIVE DATE: January 15, 2021, unless a later date is cited at the end of a section.
[16.66.8.5 NMAC – N, 1/15/2021]

16.66.8.6 OBJECTIVE: The objective of Part 8 of Chapter 66 is to establish the procedures for denying applications for licensure, processing complaints against licensees and applicants, reinstatement of suspended or revoked licenses, and taking disciplinary action against licensees.
[16.66.8.6 NMAC – N, 1/15/2021]

16.66.8.7 DEFINITIONS: Refer to Definitions, 16.66.1.7 NMAC.
[16.66.8.7 NMAC – N, 1/15/2021]

16.66.8.8 GROUNDS FOR DISCIPLINARY ACTION:

The following are grounds for taking disciplinary action against licensees and unlicensed practitioners, and for denying licenses to applicants:

- A.** Substantial misrepresentation;
 - B.** Violations of the Home Inspector Licensing Act or any rule of the board, including but not limited to the code of ethics and standards of practice as outlined in Parts 5 and 6 of these rules;
 - C.** Offered or delivered compensation, inducement, or reward to the owner of an inspected property or to the broker or the agent for the referral of any business to the home inspector or the home inspector’s company;
 - D.** A license to perform home inspections revoked, suspended, denied, stipulated or otherwise limited in any state, jurisdiction, territory or possession of the United States or another country for actions of the licensee similar to acts proscribed in Section 61-24D-11 of the Home Inspector Licensing Act;
 - E.** Failure to furnish the board, its investigators or its representatives with information requested by the board in the course of an official investigation;
 - F.** Performance or offer to perform for an additional fee any repair to a structure on which the home inspector or the home inspector’s company has prepared a report at any time during the twelve months immediately prior to the repair or offer to repair, except that a home inspection company that is affiliated with or that retains a home inspector does not violate this paragraph if the home inspection company performs repairs pursuant to a claim made pursuant to the terms of a home inspection contract; or
 - G.** Failure to maintain errors and omissions insurance and professional liability insurance as required by the Home Inspector Licensing Act and the rules of the board.
- [16.66.8.8 NMAC – N, 1/15/2021]

16.66.8.9 COMPLAINTS AND RESPONSES:

A. A complaint against a licensee or applicant may be filed with the board by any person, office, or organization. In order to be considered by the board, a complaint must be sworn and notarized. The complaint must also contain specific factual allegations of violations of either the Home Inspector Licensing Act or the board’s rules.

B. Upon receipt of any complaint alleging that a licensee has violated the Home Inspector Licensing Act or the board’s rules, board staff shall forward the complaint to the respective licensee and request a response within ten business days of receipt. The licensee (“respondent”) must provide a response to the board within ten business days of receipt. A respondent’s failure to respond to the complaint within this specified time frame shall be grounds for disciplinary action, up to and including revocation of the license at the discretion of the board.

C. The board administrator may authorize the issuance of an investigative subpoena to obtain documents or other evidence relevant to a disciplinary complaint.

D. Subject to applicable exceptions to confidentiality established by law, all complaints, responses, and other disciplinary and investigatory records are public records available for inspection and copying, pursuant to state law, irrespective of the final disposition of the underlying disciplinary complaint.
[16.66.8.9 NMAC – N, 1/15/2021]

16.66.8.10 REVIEW OF COMPLAINT: All complaints will, where practicable, be reviewed by the board’s complaint committee.

A. Should the board, in its discretion, choose to utilize a complaint committee, the complaint committee shall be responsible for reviewing disciplinary complaints against licensees and applicants and making informal, non-binding recommendations to the board as

to their disposition. The complaint committee shall not have any policymaking authority of any kind.

B. The board’s complaint committee shall consist of no more than two board members and no more than two other volunteer members who are not members of the board, for a total of no more than four members at any given time.

C. After completing its review of a complaint, the complaint committee shall either recommend that the board take disciplinary action or that it close the case. As part of any recommendation of disciplinary action, the complaint committee may also make recommendations as to the proper amount of discipline (i.e. letter of reprimand, fine, suspension, revocation, etc.), including discipline that might be obtained through a negotiated settlement agreement with the licensee, applicant, or unlicensed practitioner.
[16.66.8.10 NMAC – N, 1/15/2021]

16.66.8.11 HEARINGS AND DISCIPLINARY PROCEEDINGS:

A. All disciplinary proceedings conducted by the board shall fully conform to the provisions of the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to -34 (1957, as amended through 2019).

B. In the event that the board seeks to proceed with formal disciplinary action and issue a notice of contemplated action pursuant to the Uniform Licensing Act, the board shall send a request to the litigation division of the New Mexico Office of the Attorney General, which shall, if it elects to do so, serve as the administrative prosecutor on behalf of the board.

C. If a respondent requests an evidentiary hearing in response to a notice of contemplated action, the board chair shall designate a hearing officer to preside over the hearing. Alternatively, at the discretion of the board chair or upon vote of the board, the entire board may preside over the hearing.

D. Any continuance of an evidentiary hearing requested or stipulated by a respondent shall

only be considered by the hearing officer, or board chair if the hearing is conducted by the full board, if the respondent has knowingly, voluntarily, and intelligently signed a waiver of the applicable time limits set forth by the Uniform Licensing Act.

[16.66.8.11 NMAC – N, 1/15/2021]

16.66.8.12 SETTLEMENT AGREEMENTS: As a means of resolving disciplinary complaints against licensees, applicants, and unlicensed practitioners without the time and expense of formal hearings, settlement agreements are encouraged at any stage in the disciplinary process prior to the adjournment of the evidentiary hearing.

A. Prior to the board voting on a disciplinary complaint or the matter being referred to the Office of the Attorney General for administrative prosecution, the board staff may negotiate a settlement agreement with the respondent. However, the board itself must vote to approve the settlement agreement at an open meeting, and no settlement agreement is valid under any circumstances until the board so votes.

B. Prior to the issuance of a notice of contemplated action or the adjournment of an evidentiary hearing, the board’s administrative prosecutor may negotiate a settlement agreement with the respondent. However, the board itself must vote to approve the settlement agreement at an open meeting, and no settlement agreement is valid under any circumstances until the board so votes.

C. Following the conclusion of an evidentiary hearing, no settlement agreement shall be considered by the board.

[16.66.8.12 NMAC – N, 1/15/2021]

16.66.8.13 REINSTATEMENT OF SUSPENDED OR REVOKED LICENSES:

A. Reinstatement of suspended licenses: Licensees whose licenses have been suspended by the board may apply to reinstate those

licenses in accordance with the terms of the suspension. Any licensee seeking reinstatement of a suspended license shall be required to provide to the board:

- (1) A completed board-issued application form;
- (2) Payment of the non-refundable renewal fee in full as provided in Part 2;
- (3) Payment of the non-refundable reinstatement fee in full as provided in Part 2;
- (4) Any evidence necessary to demonstrate that the licensee has satisfactorily completed any terms of the licensee’s suspension.

B. Reinstatement of revoked licenses: Former licensees whose licenses were revoked by the board may apply to reinstate those licenses no sooner than five years following the date of the order of revocation, unless the former licensee’s license was revoked pursuant to the Parental Responsibility Act, in which case the former licensee may apply for reinstatement immediately upon the name of the former licensee’s removal from the certified list issued by the New Mexico department of human services. Any former licensee seeking reinstatement of a revoked license shall, pursuant to the terms of the Uniform Licensing Act, carry the burden of demonstrating to the board the former licensee’s qualifications for licensure. The former licensee shall be required to provide to the board:

- (1) A completed board-issued application form;
- (2) Payment of the non-refundable renewal fee in full as provided in Part 2;
- (3) Payment of the non-refundable reinstatement fee in full as provided in Part 2;
- (4) A letter, affidavit, or other evidence necessary to demonstrate that the former licensee will, in the future, comply with all of the provisions of the Home Inspector Licensing Act and the board’s rules.

[16.66.8.13 NMAC – N, 1/15/2021]

16.66.8.14 PARENTAL RESPONSIBILITY ACT: The authority of the board to issue a notice of contemplated action against any licensee or applicant for licensure whose name appears on the certified list issued by the New Mexico department of human services, as provided in Sections 40-5A-1et seq NMSA 1978,, as deficient in child support payments, and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the board. This section shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.
[16.66.8.14 NMAC – N, 1/15/2021]

HISTORY OF 16.66.8 NMAC

HOME INSPECTOR BOARD

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 66 HOME INSPECTOR LICENSING
PART 9 INSURANCE**

16.66.9.1 ISSUING AGENCY: New Mexico home inspectors board.
[16.66.9.1 NMAC – N, 1/15/2021]

16.66.9.2 SCOPE: All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.
[16.66.9.2 NMAC – N, 1/15/2021]

16.66.9.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).
[16.66.9.3 NMAC – N, 1/15/2021]

16.66.9.4 DURATION: Permanent.
[16.66.9.4 NMAC – N, 1/15/2021]

16.66.9.5 EFFECTIVE DATE: January 15, 2021, unless a later date is cited at the end of a section.
[16.66.9.5 NMAC – N, 1/15/2021]

16.66.9.6 OBJECTIVE: The objective of Part 9 of Chapter 66 is to establish the minimum terms and conditions of insurance coverage required of all home inspector licensees.
[16.66.9.6 NMAC – N, 1/15/2021]

16.66.9.7 DEFINITIONS: Refer to Definitions, 16.66.1.7 NMAC.
[16.66.9.7 NMAC – N, 1/15/2021]

16.66.9.8 INSURANCE REQUIRED:
A. Pursuant to Section 61-24D-12 NMSA 1978 of the Home Inspector Licensing Act, all licensees and their employers shall carry at all times errors and omissions insurance and professional liability insurance to cover all activities contemplated pursuant to the provisions of the Home Inspector Licensing Act.

B. Every applicant for a license and every licensee who applies for renewal of a license must, as a condition prerequisite to the issuance or renewal of the license, provide the board with satisfactory evidence (proof) that the applicant or licensee has errors and omissions insurance coverage and professional liability insurance coverage that meet the minimum terms and conditions required by this Part.
[16.66.9.8 NMAC – N, 1/15/2021]

16.66.9.9 ERRORS AND OMISSIONS INSURANCE:
A. A licensee’s or applicant’s errors and omissions insurance policy shall be, at a minimum, in the amount of \$250,000 in the aggregate.

B. Every proof of an errors and omissions insurance policy shall stipulate that cancellation or

nonrenewal of the policy shall not be effective until at least ten days’ notice of intention to cancel or not renew has been received in writing by the board.
[16.66.9.9 NMAC – N, 1/15/2021]

16.66.9.10 PROFESSIONAL LIABILITY INSURANCE:

A. A licensee’s or applicant’s professional liability insurance policy shall be, at a minimum, in the amount of \$250,000.

B. The professional liability insurance policy must include coverage for the licensee’s activities performed during the course of a home inspection on the premises of the home inspection.

C. The professional liability insurance policy must include coverage for both property damage and bodily injury.

D. Every proof of a professional liability insurance policy shall stipulate that cancellation or nonrenewal of the policy shall not be effective until at least ten days’ notice of intention to cancel or not renew has been received in writing by the board.
[16.66.9.10 NMAC – N, 1/15/2021]

16.66.9.11 GROUP INSURANCE POLICIES ESTABLISHED BY THE BOARD:

A. The board may, at its discretion, solicit sealed, competitive proposals from insurance carriers to provide a group errors and omissions insurance policy that complies with the terms and conditions established by this Part. The board may approve one or more policies that comply with the board rules.

B. The board may, at its discretion, solicit sealed, competitive proposals from insurance carriers to provide a professional liability insurance policy that complies with the terms and conditions established by this part. The board may approve one or more policies that comply with the board rules.

C. In the event that the board approves a group insurance policy, licensees are required to neither purchase the group policy nor contract with the group policy

provider.
[16.66.9.11 NMAC – N, 1/15/2021]

HISTORY OF 16.66.9 NMAC

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.200.510 NMAC, Sections 11, 12, 13, 14 and 15 effective 12/15/2020.

8.200.510.11 COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA):

The CSRA standard varies based on when the applicant or recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal MAP application. If institutionalization began:

- A.** Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000 and the federal maximum CSRA is \$60,000.
- B.** On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.
- C.** On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.
- D.** On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.
- E.** On or after January 1, 1993, the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.
- F.** On or after January 1, 1994, the state minimum is \$31,290 and the federal maximum CSRA is \$72,660.
- G.** On or after January 1, 1995, the state minimum is \$31,290 and the federal maximum CSRA is \$74,820.
- H.** On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.

- I.** On or after January 1, 1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.
- J.** On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.
- K.** On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.
- L.** On or after January 1, 2000, the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.
- M.** On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.
- N.** On or after January 1, 2002, the state minimum is \$31,290 and the federal maximum CSRA is \$89,280.
- O.** On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.
- P.** On or after January 1, 2004, the state minimum is \$31,290 and the federal maximum CSRA is \$92,760.
- Q.** On or after January 1, 2005, the state minimum is \$31,290 and the federal maximum CSRA is \$95,100.
- R.** On or after January 1, 2006, the state minimum is \$31,290 and the federal maximum CSRA is \$99,540.
- S.** On or after January 1, 2007, the state minimum is \$31,290 and the federal maximum CSRA is \$101,640.
- T.** On or after January 1, 2008, the state minimum is \$31,290 and the federal maximum CSRA is \$104,400.
- U.** On or after January 1, 2009, the state minimum is \$31,290 and the federal maximum CSRA is \$109,560.
- V.** On or after January 1, 2010, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.
- W.** On or after January 1, 2011, the state minimum is \$31,290

and the federal maximum CSRA remains \$109,560.

- X.** On or after January 1, 2012, the state minimum is \$31,290 and the federal maximum CSRA is \$113,640.
- Y.** On or after January 1, 2013, the state minimum is \$31,290 and the federal maximum CSRA is \$115,920.
- Z.** On or after January 1, 2014, the state minimum is \$31,290 and the federal maximum CSRA is \$117,240.
- AA.** On or after January 1, 2015, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.
- BB.** On or after January 1, 2016, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.
- CC.** On or after January 1, 2017, the state minimum is \$31,290 and the federal maximum CSRA is \$120,900.
- DD.** On or after January 1, 2018, the state minimum is \$31,290 and the federal maximum CSRA is \$123,600.
- EE.** On or after January 1, 2019, the state minimum is \$31,290 and the federal maximum CSRA is \$126,420.
- FF.** On or after January 1, 2020, the state minimum is \$31,290 and the federal maximum CSRA is \$128,640.

[8.200.510.11 NMAC - Rp, 8.200.510.11 NMAC, 7/1/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020]

8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT):

Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

DEDUCTION AMOUNT

- A.** Personal needs allowance for institutionalized spouse:
July 1, 2019 \$74
- B.** Minimum monthly maintenance needs allowance

(MMMNA):
 July 1, 2019 \$2,114
C. The community spouse monthly income allowance (CSMIA) is calculated by subtracting the community spouse's gross income from the MMMNA:
(1) If allowable shelter expenses of the community spouse exceeds the minimum allowance then deduct an excess shelter allowance from community spouse's income that includes: expenses for rent; mortgage (including interest and principal); taxes and insurance; any maintenance charge for a condominium or cooperative; and an amount for utilities (if not part of maintenance charge above); use the standard utility allowance (SUA) deduction used in the food stamp program for the utility allowance.
 July 1, 2019 \$635
(2) Excess shelter allowance may not exceed the maximum:

(a)	
Jan. 1, 2020	\$1,103
	(a) (b)
July 1, 2019	\$1,047
	(b) (c)
[July 1, 2018] Jan. 1, 2019	[\$1,032] \$1,103
	(c) (d)
[Jan. 1, 2018] July 1, 2018	[\$1,060] \$1,032
	(d)
July 1, 2017	\$993]

D. Any extra maintenance allowance ordered by a court of jurisdiction or a state administrative hearing officer.
E. Dependent family member income allowance (if applicable) calculated as follows: 1/3 X MMMNA - dependent member's income).
F. Non-covered medical expenses.
G. The maximum total of the community spouse monthly income allowance and excess shelter deduction may not exceed ~~[\$3,161]~~ \$3,217.
 [8.200.510.12 NMAC - Rp, 8.200.510.12 NMAC, 7/1/2015; A/E, 3/1/2017; A/E, 8/30/2018;

A/E, 4/11/2019; A, 7/30/2019; A/E, 1/16/2020; A/E, 8/11/2020; A, 12/15/2020]
8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS: Costs of care are based on the date of application registration.
DATE
AVERAGE COST PER MONTH
A. July 1, 1988 - Dec. 31, 1989
 \$1,726 per month
B. Jan. 1, 1990 - Dec. 31, 1991
 \$2,004 per month
C. Jan. 1, 1992 - Dec. 31, 1992
 \$2,217 per month
D. Effective July 1, 1993, for application register on or after Jan. 1, 1993
E. Jan. 1, 1994 - Dec. 31, 1994
 \$2,513 per month
F. Jan. 1, 1995 - Dec. 31, 1995
 \$2,592 per month
G. Jan. 1, 1996 - Dec. 31, 1996
 \$2,738 per month
H. Jan. 1, 1997 - Dec. 31, 1997
 \$2,889 per month
I. Jan. 1, 1998 - Dec. 31, 1998
 \$3,119 per month
J. Jan. 1, 1999 - Dec. 31, 1999
 \$3,429 per month
K. Jan. 1, 2000 - Dec. 31, 2000
 \$3,494 per month
L. Jan. 1, 2001 - Dec. 31, 2001
 \$3,550 per month
M. Jan. 1, 2002 - Dec. 31, 2002
 \$3,643 per month
N. Jan. 1, 2003 - Dec. 31, 2003
 \$4,188 per month

O. Jan. 1, 2004 - Dec. 31, 2004
 \$3,899 per month
P. Jan. 1, 2005 - Dec. 31, 2005
 \$4,277 per month
Q. Jan. 1, 2006 - Dec. 31, 2006
 \$4,541 per month
R. Jan. 1, 2007 - Dec. 31, 2007
 \$4,551 per month
S. Jan. 1, 2008 - Dec. 31, 2008
 \$4,821 per month
T. Jan. 1, 2009 - Dec. 31, 2009
 \$5,037 per month
U. Jan. 1, 2010 - Dec. 31, 2010
 \$5,269 per month
V. Jan. 1, 2011 - Dec. 31, 2011
 \$5,774 per month
W. Jan. 1, 2012 - Dec. 31, 2012
 \$6,015 per month
X. Jan. 1, 2013 - Dec. 31, 2013
 \$6,291 per month
Y. Jan. 1, 2014 - Dec. 31, 2014
 \$6,229 per month
Z. Jan. 1, 2015 - Dec. 31, 2015
 \$6,659 per month
AA. Jan. 1, 2016 - Dec. 31, 2016
 \$7,786 per month
BB. Jan. 1, 2017 - Dec. 31, 2017
 \$7,485 per month
CC. Jan. 1, 2018 - Dec. 31, 2018
 \$7,025 per month
DD. Jan. 1, 2019 - Dec. 31, 2019
 \$7,285 per month
EE. Jan. 1, 2020
\$7,480 per month
 [8.200.510.13 NMAC - Rp, 8.200.510.13 NMAC, 7/1/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020]

8.200.510.14 RESOURCE AMOUNTS FOR SUPPLEMENTAL SECURITY INCOME (SSI) RELATED MEDICARE SAVINGS PROGRAMS (QMB, SLIMB/QII AND QD):

The following resource standards are inclusive of the \$1,500 per person burial exclusion.

- A.** Individual: [Jan. 1, 2019] Jan. 1, 2020
[~~\$9,230~~] \$9,360
- B.** Couple: [Jan. 1, 2019] Jan. 1, 2020
[~~\$14,600~~] \$14,800
[8.200.510.14 NMAC - Rp, 8.200.510.14 NMAC, 7/1/2015; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020]

8.200.510.15 EXCESS HOME EQUITY AMOUNT FOR LONG-TERM CARE SERVICES:

- A.** Jan. 2020
\$595,000
- [~~A.~~] **B.** Jan. 2019
\$585,000
- [~~B.~~] **C.** Jan. 2018
\$572,000
- [~~C.~~] **D.** Oct. 2017
\$560,000
- [~~D.~~] **E.** Jan. 2017
\$840,000
- [~~E.~~] **F.** Jan. 2016
\$828,000
- [~~F.~~] **G.** Jan. 2015
\$828,000
- [~~G.~~] **H.** Jan. 2014
\$814,000
- [~~H.~~] **I.** Jan. 2013
\$802,000
- [~~I.~~] **J.** Jan. 2012
\$786,000
- [~~J.~~] **K.** Jan. 2011
\$758,000
- [~~K.~~] **L.** Jan. 2010
\$750,000

[8.200.510.15 NMAC - Rp, 8.200.510.15 NMAC, 7/1/2015; A/E, 1/1/2016; A/E, 3/1/2017; A, 3/1/18; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.520 NMAC, Sections 8, 11-13, 15, 16 and 20 effective 12/15/2020.

8.200.520.8 MISSION STATEMENT: [RESERVED]

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.

[8.200.520.8 NMAC - Rp, 8.200.520.8 NMAC, 8/28/2015; Repealed/E, 4/1/2016; A/E, 8/11/2020; A, 12/15/2020]

8.200.520.11 FEDERAL POVERTY INCOME GUIDELINES:

- A.** One hundred percent federal poverty limits (FPL):
- | group month | Size of budget FPL per |
|----------------|-----------------------------|
| | 1
[\$1,041] |
| <u>\$1,064</u> | |
| | 2
[\$1,410] |
| <u>\$1,437</u> | |
| | 3
[\$1,778] |
| <u>\$1,810</u> | |
| | 4
[\$2,146] |
| <u>\$2,184</u> | |
| | 5
[\$2,515] |
| <u>\$2,557</u> | |
| | 6
[\$2,883] |
| <u>\$2,930</u> | |
| | 7
[\$3,251] |
| <u>\$3,304</u> | |
| | 8
[\$3,620] |
| <u>\$3,677</u> | |

Add [~~\$369~~] \$373 for each additional person in the budget group.

*Use

only these two standards for the qualified medicare beneficiary (QMB) program.

B. One hundred twenty percent FPL: This income level is used only in the determination of the maximum income limit for specified low income medicare beneficiaries (SLIMB) applicants or eligible recipients.

Applicant or eligible recipient	Amount
1	
Individual	At least [\$1,041] <u>\$1,064</u> per month but no more than [\$1,249] <u>\$1,276</u> per month.
2	
Couple	At least [\$1,410] <u>\$1,437</u> per month but no more than [\$1,691] <u>\$1,724</u> per month.

For purposes of this eligibility calculation, "couple" means an applicant couple or an applicant with an ineligible spouse when income is deemed.

C. One hundred thirty-three percent FPL:

group month	Size of budget FPL per
	1 [\$1,385]
<u>\$1,415</u>	
	2 [\$1,875]
<u>\$1,911</u>	
	3 [\$2,365]
<u>\$2,408</u>	
	4 [\$2,854]
<u>\$2,904</u>	
	5 [\$3,344]
<u>\$3,401</u>	
	6 [\$3,834]
<u>\$3,897</u>	
	7 [\$4,324]
<u>\$4,394</u>	
	8 [\$4,814]
<u>\$4,890</u>	

Add [~~\$490~~] \$496 for each additional person in the budget group.

D. One hundred thirty-five percent FPL: This income level is used only in the determination of the maximum income limit for a qualified individual 1 (Q11) applicant or eligible recipient. For purposes of this eligibility calculation, “couple” means an applicant couple or an applicant with an ineligible spouse when income is deemed. The following income levels apply:

Applicant or eligible recipient	Amount
Individual	At least <u>\$1,249</u> <u>\$1,276</u> per month but no more than <u>\$1,406</u> <u>\$1,436</u> per month.
Couple	At least <u>\$1,691</u> <u>\$1,724</u> per month but no more than <u>\$1,903</u> <u>\$1,940</u> per month.

E. One hundred eighty-five percent FPL:

group month	Size of budget FPL per
	1
<u>\$1,968</u>	[<u>\$1,926</u>]
	2
<u>\$2,658</u>	[<u>\$2,607</u>]
	3
<u>\$3,349</u>	[<u>\$3,289</u>]
	4
<u>\$4,040</u>	[<u>\$3,970</u>]
	5
<u>\$4,730</u>	[<u>\$4,652</u>]
	6
<u>\$5,421</u>	[<u>\$5,333</u>]
	7
<u>\$6,112</u>	[<u>\$6,015</u>]
	8
<u>\$6,802</u>	[<u>\$6,696</u>]

Add [\$681] \$690 for each additional person in the budget group.

F. Two hundred percent FPL:

group month	Size of budget FPL per
-------------	------------------------

	1	[<u>\$2,082</u>]
	2	[<u>\$2,819</u>]
	3	[<u>\$3,555</u>]
	4	[<u>\$4,292</u>]
	5	[<u>\$5,029</u>]
	6	[<u>\$5,765</u>]
	7	[<u>\$6,502</u>]
	8	[<u>\$7,239</u>]
		Add [<u>\$737</u>] <u>\$747</u>
		for each additional person in the budget group.
		G. Two hundred thirty-five percent FPL:
		Size of budget
		FPL per
	1	[<u>\$2,446</u>]
	2	[<u>\$3,312</u>]
	3	[<u>\$4,178</u>]
	4	[<u>\$5,043</u>]
	5	[<u>\$5,909</u>]
	6	[<u>\$6,774</u>]
	7	[<u>\$7,640</u>]
	8	[<u>\$8,506</u>]
		Add [<u>\$866</u>] <u>\$878</u>
		for each additional person in the

group month	Size of budget FPL per
	1
<u>\$2,659</u>	[<u>\$2,603</u>]
	2
<u>\$3,592</u>	[<u>\$3,523</u>]
	3
<u>\$4,525</u>	[<u>\$4,444</u>]
	4
<u>\$5,459</u>	[<u>\$5,365</u>]
	5
<u>\$6,392</u>	[<u>\$6,286</u>]
	6
<u>\$7,325</u>	[<u>\$7,207</u>]
	7
<u>\$8,259</u>	[<u>\$8,128</u>]
	8
<u>\$9,192</u>	[<u>\$9,048</u>]

Add [\$920] \$933 for each additional person in the budget group.
 [8.200.520.11 NMAC - Rp, 8.200.520.11 NMAC, 8/28/2015; 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/E, 8/11/2020; A, 12/15/2020]

8.200.520.12 COST OF LIVING ADJUSTMENT (COLA) DISREGARD COMPUTATION:

The countable social security benefit without the COLA is calculated using the COLA increase table as follows:

A. divide the current gross social security benefit by the COLA increase in the most current year; the result is the social security benefit before the COLA increase;

B. divide the result from Subsection A above by the COLA increase from the previous period or year; the result is the social security benefit before the increase for that period or year; and

C. repeat Subsection B above for each year, through the year that the applicant or eligible recipient received both social security benefits and supplemental security income (SSI); the final result is the countable security benefit.

COLA Increase and disregard table			
	Period and year	COLA increase	= benefit before
<u>1</u>	2020 Jan - Dec	1.6	Jan 20
[1] <u>2</u>	2019 Jan - Dec	2.8	Jan 19
[2] <u>3</u>	2018 Jan - Dec	2.0	Jan 18
[3] <u>4</u>	2017 Jan - Dec	0.3	Jan 17
[4] <u>5</u>	2016 Jan - Dec	0	Jan 16
[5] <u>6</u>	2015 Jan - Dec	1.017	Jan 15
[6] <u>7</u>	2014 Jan - Dec	1.015	Jan 14
[7] <u>8</u>	2013 Jan - Dec	1.017	Jan 13
[8] <u>9</u>	2012 Jan - Dec	1.037	Jan 12
[9] <u>10</u>	2011 Jan - Dec	0	Jan 11
[10] <u>11</u>	2010 Jan - Dec	1	Jan 10
[11] <u>12</u>	2009 Jan - Dec	1	Jan 09
[12] <u>13</u>	2008 Jan - Dec	1.058	Jan 08
[13] <u>14</u>	2007 Jan - Dec	1.023	Jan 07
[14] <u>15</u>	2006 Jan - Dec	1.033	Jan 06
[15] <u>16</u>	2005 Jan - Dec	1.041	Jan 05
[16] <u>17</u>	2004 Jan - Dec	1.027	Jan 04
[17] <u>18</u>	2003 Jan - Dec	1.021	Jan 03
[18] <u>19</u>	2002 Jan - Dec	1.014	Jan 02
[19] <u>20</u>	2001 Jan - Dec	1.026	Jan 01
[20] <u>21</u>	2000 Jan - Dec	1.035	Jan 00
[21] <u>22</u>	1999 Jan - Dec	1.025	Jan 99
[22] <u>23</u>	1998 Jan - Dec	1.013	Jan 98
[23] <u>24</u>	1997 Jan - Dec	1.021	Jan 97
[24] <u>25</u>	1996 Jan - Dec	1.029	Jan 96
[25] <u>26</u>	1995 Jan - Dec	1.026	Jan 95
[26] <u>27</u>	1994 Jan - Dec	1.028	Jan 94
[27] <u>28</u>	1993 Jan - Dec	1.026	Jan 93
[28] <u>29</u>	1992 Jan - Dec	1.03	Jan 92
[29] <u>30</u>	1991 Jan - Dec	1.037	Jan 91
[30] <u>31</u>	1990 Jan - Dec	1.054	Jan 90
[31] <u>32</u>	1989 Jan - Dec	1.047	Jan 89
[32] <u>33</u>	1988 Jan - Dec	1.04	Jan 88
[33] <u>34</u>	1987 Jan - Dec	1.042	Jan 87
[34] <u>35</u>	1986 Jan - Dec	1.013	Jan 86
[35] <u>36</u>	1985 Jan - Dec	1.031	Jan 85
[36] <u>37</u>	1984 Jan - Dec	1.035	Jan 84
[37] <u>38</u>	1982 Jul - 1983 Dec	1.035	Jul 82
[38] <u>39</u>	1981 Jul - 1982 Jun	1.074	Jul 81
[39] <u>40</u>	1980 Jul - 1981 Jun	1.112	Jul 80
[40] <u>41</u>	1979 Jul - 1980 Jun	1.143	Jul 79
[41] <u>42</u>	1978 Jul - 1979 Jun	1.099	Jul 78
[42] <u>43</u>	1977 Jul - 1978 Jun	1.065	Jul 77

[43] 44	1977 Apr - 1977 Jun	1.059	Apr 77
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[8.200.520.12 NMAC - Rp, 8.200.520.12 NMAC, 8/28/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020]

8.200.520.13 FEDERAL BENEFIT RATES (FBR) AND VALUE OF ONE-THIRD REDUCTION (VTR):

Year	Individual FBR	Institution FBR	Individual VTR	Couple FBR	Institution FBR	Couple VTR
1/89 to 1/90	\$368	\$30	\$122.66	\$553	\$60	\$184.33
1/90 to 1/91	\$386	\$30	\$128.66	\$579	\$60	\$193.00
1/91 to 1/92	\$407	\$30	\$135.66	\$610	\$60	\$203.33
1/92 to 1/93	\$422	\$30	\$140.66	\$633	\$60	\$211.00
1/93 to 1/94	\$434	\$30	\$144.66	\$652	\$60	\$217.33
1/94 to 1/95	\$446	\$30	\$148.66	\$669	\$60	\$223.00
1/95 to 1/96	\$458	\$30	\$152.66	\$687	\$60	\$229.00
1/96 to 1/97	\$470	\$30	\$156.66	\$705	\$60	\$235.00
1/97 to 1/98	\$484	\$30	\$161.33	\$726	\$60	\$242.00
1/98 to 1/99	\$494	\$30	\$164.66	\$741	\$60	\$247.00
1/99 to 1/00	\$500	\$30	\$166.66	\$751	\$60	\$250.33
1/00 to 1/01	\$512	\$30	\$170.66	\$769	\$60	\$256.33
1/01 to 1/02	\$530	\$30	\$176.66	\$796	\$60	\$265.33
1/02 to 1/03	\$545	\$30	\$181.66	\$817	\$60	\$272.33
1/03 to 1/04	\$552	\$30	\$184.00	\$829	\$60	\$276.33
1/04 to 1/05	\$564	\$30	\$188	\$846	\$60	\$282.00
1/05 to 1/06	\$579	\$30	\$193	\$869	\$60	\$289.66
1/06 to 1/07	\$603	\$30	\$201	\$904	\$60	\$301.33
1/07 to 1/08	\$623	\$30	\$207.66	\$934	\$60	\$311.33
1/08 to 1/09	\$637	\$30	\$212.33	\$956	\$60	\$318.66
1/09 to 1/10	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/10 to 1/11	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/11 to 1/12	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/12 to 1/13	\$698	\$30	\$232.66	\$1,048	\$60	\$349.33
1/13 to 1/14	\$710	\$30	\$237	\$1,066	\$60	\$355
1/14 to 1/15	\$721	\$30	\$240	\$1,082	\$60	\$361
1/15 to 12/15	\$733	\$30	\$244	\$1,100	\$60	\$367
1/16 to 12/16	\$733	\$30	\$244	\$1,100	\$60	\$367
1/17 to 12/17	\$735	\$30	\$245	\$1,103	\$60	\$368
1/18 to 12/18	\$750	\$30	\$250	\$1,125	\$60	\$375
1/19 to 12/19	\$771	\$30	\$257	\$1,157	\$60	\$386
<u>1/20 to 12/20</u>	<u>\$783</u>	<u>\$30</u>	<u>\$261</u>	<u>\$1,175</u>	<u>\$60</u>	<u>\$392</u>

Continued Next Page

A. Ineligible child deeming allocation is $[\$386] \392 .

B. Part B premium is $[\$135.50] \144.60 per month.

C. VTR (value of one third reduction) is used when an individual or a couple lives in the household of another and receives food and shelter from the household or when the individual or the couple is living on his or her own household but receiving support and maintenance from others.

D. The SSI resource standard is \$2000 for an individual and \$3000 for a couple.
 [8.200.520.13 NMAC - Rp, 8.200.520.13 NMAC, 8/28/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020]

8.200.520.15 SUPPLEMENTAL SECURITY INCOME (SSI) LIVING ARRANGEMENTS:

A. Individual living in his or her own household who own or rent:

Payment amount: $[\$77+] \783
 Individual

$[\$1,157] \$1,175$ Couple

B. Individual receiving support and maintenance payments: For an individual or couple living in his or her own household, but receiving support and maintenance from others (such as food, shelter or clothing), subtract the value of one third reduction (VTR).

Payment amount: $[\$77+] \$783 - [\$257] \$261 = [\$514] \522
 Individual

$[\$1,157] \$1,175 - [\$386] \$392 = [\$77+] \783 Couple

C. Individual or couple living household of another: For an individual or couple living in another person's household and not contributing his or her pro-rata share of household expenses, subtract the VTR.

Payment amount: $[\$77+] \$783 -$

$[\$257] \$261 = [\$514] \522

Individual

$[\$1,157] \$1,175 - [\$386] \$392 = [\$77+] \783 Couple

D. Child living in home with his or her parent:

Payment amount: $[\$77+] \783

E. Individual in institution:

Payment amount: \$30.00

[8.200.520.15 NMAC - Rp, 8.200.520.15 NMAC, 8/28/2015; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020]

8.200.520.16 MAXIMUM COUNTABLE INCOME FOR INSTITUTIONAL CARE MEDICAID AND HOME AND COMMUNITY BASED WAIVER SERVICES (HCBS) CATEGORIES:

Effective January 1, ~~2019~~ 2020, the maximum countable monthly income standard for institutional care medicaid and the home and community based waiver categories is $[\$2,313] \$2,349$.

[8.200.520.16 NMAC - Rp, 8.200.520.16 NMAC, 8/28/2015; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020]

8.200.520.20 COVERED QUARTER INCOME STANDARD:

Amount	Date	Calendar Quarter
<u>\$1,410 per calendar quarter</u>	Jan. 2020 - Dec. 2020	
\$1,360 per calendar quarter	Jan. 2019 - Dec. 2019	
\$1,320 per calendar quarter	Jan. 2018 - Dec. 2018	
\$1,300 per calendar quarter	Jan. 2017 - Dec. 2017	
	Jan. 2016 - Dec. 2016	

\$1,260 per calendar quarter

Jan. 2015 - Dec. 2015
 \$1,220 per calendar quarter

Jan. 2014 - Dec. 2014
 \$1,200 per calendar quarter

Jan. 2013 - Dec. 2013
 \$1,160 per calendar quarter

Jan. 2012 - Dec. 2012
 \$1,130 per calendar quarter

Jan. 2011 - Dec. 2011
 \$1,120 per calendar quarter

Jan. 2010 - Dec. 2010
 \$1,120 per calendar quarter

Jan. 2009 - Dec. 2009
 \$1,090 per calendar quarter

Jan. 2008 - Dec. 2008
 \$1,050 per calendar quarter

Jan. 2007 - Dec. 2007
 \$1,000 per calendar quarter

Jan. 2006 - Dec. 2006
 \$970 per calendar quarter

Jan. 2005 - Dec. 2005
 \$920 per calendar quarter

Jan. 2004 - Dec. 2004
 \$900 per calendar quarter

Jan. 2003 - Dec. 2003
 \$890 per calendar quarter

Jan. 2002 - Dec. 2002
 \$870 per calendar quarter

[8.200.520.20 NMAC - Rp, 8.200.520.20 NMAC, 8/28/2015; A/E, 1/1/2016; A/E, 03/01/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.290.400 NMAC, Sections 8, 10 and 11 effective 12/15/2020.

8.290.400.8 [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.

[8.290.400.8 NMAC - A/E, 12/15/2020]

8.290.400.10 BASIS FOR DEFINING THE GROUP:

Eligibility for applicants/recipients who apply for waiver services is determined as if he or she were actually institutionalized, although this requirement has been waived. Entry into some of the waiver programs may be based upon the number of UDRs (i.e., slots) available. The individual waiver program manager notifies the income support division (ISD) when a UDR is available.

A. Elderly, blind, and disabled individuals (categories 091, 093, and 094): For applicants/recipients who are under age 65 to qualify as disabled or blind, disability or blindness must have been determined to exist by the social security administration or the DDU. To qualify as an elderly person, the applicant/recipient must be 65 years of age or older. Applicants/recipients must also meet both the financial and non-financial eligibility requirements and meet the medical level of care for nursing facility services.

B. Developmental disabilities (DD) waiver: The DD waiver identified as category 096 was approved effective July 1984, subject to renewal. DD waiver services are intended for eligible recipients who have developmental disabilities limited to intellectual

disability (IID) or a [specific] related condition as determined by the DOH/DDSD. The developmental disability must reflect the person's need for a combination and sequence of special interdisciplinary or generic treatment or other supports and services that are lifelong or of extended duration and are individually planned and coordinated. The eligible recipient must also require the level of care provided in an intermediate care facility for individuals with developmental disabilities (ICF/IID), in accordance with Section 8.313.2 NMAC, and meet all other applicable financial and non-financial eligibility requirements.

(1)

Intellectual disability: An individual is considered to have an intellectual disability if she/he has significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(a)

General intellectual functioning is defined as the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning.

(b)

Significantly sub-average is defined as an intelligence quotient (IQ) of 70 or below.

(c)

Adaptive behavior is defined as the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for age and cultural group.

(d)

The developmental period is defined as the period of time between birth and the 18th birthday.

(2) [Specific-related]

Related condition: An individual is considered to have a [specific] related condition if she/he has a severe chronic disability, other than mental illness, that meets all of the following-[conditions]:

(a) is

attributable to:

(i) cerebral palsy or seizure disorder; or

(ii) is attributable to autistic disorder (as described in the fourth edition of the diagnostic and statistical manual of mental disorders); or

(iii) is attributable to chromosomal disorders (e.g. down), syndrome disorders, inborn errors of metabolism, or developmental disorders of the brain formation limited to the list in Paragraph (3) of Subsection B of 8.290.400.10 NMAC;

(b) results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with intellectual disability and requires treatment or services similar to individuals with ID;

(c) is manifested before the person reaches age 22 years;

(d) is likely to continue indefinitely; and

(e) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency.

(3) List of chromosomal disorders (e.g., down) syndrome disorders, inborn errors of metabolism or developmental disorders of the brain formation:

(a) **chromosomal disorders:** autosomes: 4p-, trisomy 4p, trisomy 8, 5p-, 9p-, trisomy 9p, trisomy 9p mosaic, partial trisomy 10q, 13q-, ring 13, trisomy 13 (Patau), 18p-, 18q-, trisomy 18 (Edwards), Trisomy 20p, G (21,22) monosomy/deletion, trisomy 21 (down), translocation 21 (down), "cat-eye" syndrome; Prader-Willi syndrome (15);

(i) x-linked intellectual disability: Allan syndrome; Atkin syndrome; Davis syndrome; Fitzsimmons syndrome; fragile x syndrome; fragile x phenotype (no fragile site); Gareis syndrome; glycerol kinase deficiency; Golabi syndrome; Homes syndrome;

Juberg syndrome; Lujan syndrome; Renpenning syndrome; Schimke syndrome; Vasquez syndrome; nonspecific x-linked intellectual disability;

(ii)

other x chromosome disorders: xo syndrome (Turner); xyy syndrome; xxy syndrome (Klinefelter); xxxy syndrome; xxxx syndrome; xxxxy syndrome; xxxxx syndrome (penta-x);

(b)

syndrome disorders:

(i)

neurocutaneous disorders: ataxia-telangiectasia (Louis-Bar); basal cell nevus syndrome; dyskeratosis congenital; ectodermal dysplasia (hyperhidrotic type); ectromelia-ichthyosis syndrome; focal dermal hypoplasia (Goltz); ichthyosis-hypogonadism syndrome; incontinentia pigmenti (Bloch-Sulzberger); Ito syndrome; Klippel-Trenauney syndrome; linear sebaceous nevus syndrome; multiple lentiginos syndrome; neurofibromatosis (Type 1); poikiloderma (Rothmund-Thomsen); Pollitt syndrome; Sjogren-Larsen syndrome; Sturge-Weber syndrome; tuberous sclerosis; xeroderma pigmentosum;

(ii)

muscular disorders:

Becker muscular dystrophy; chondrodystrophic myotonia (Schwartz-Jampel); congenital muscular dystrophy; Duchenne muscular dystrophy; myotonic muscular dystrophy;

(iii)

ocular disorders: Aniridia-Wilm's-tumor syndrome; anophthalmia syndrome (x-linked); Leber amaurosis syndrome; Lowe syndrome; microphthalmia-corneal opacity-spasticity syndrome; Norrie syndrome; oculocerebral syndrome with hypopigmentation; retinal degeneration-trichomegaly syndrome; septo-optic dysplasia;

(iv)

craniofacial disorders: acrocephaly-cleft lip-radial aplasia syndrome; acrocephalosyndactyly; type 1 (Apert); type 2 (Apert); type 3 (Saethre-

Chotzen); type 6 (Pfeiffer); Carpenter syndrome with absent digits and cranial defects; Baller-Gerold syndrome; cephalopolysyndactyly (Greig) "cloverleaf-skull" syndrome; craniofacial dysostosis (Crouzon); craniotelencephalic dysplasia; multiple synostosis syndrome;

(v)

skeletal disorders: acrodysostosis; CHLD syndrome; chondrodysplasia punctata (Conradi-Hunerman type); chondroectodermal dysplasia; Dyggve-Melchior-Clausen syndrome; frontometaphyseal dysplasia; hereditary osteodystrophy (Albright); hyperostosis (Lenz-Majewski); hypochondroplasia; Klippel-Feil syndrome; Nail-patella syndrome; osteopetrosis (Albers-Schonberg); pyknodysostosis; radial aplasia-thrombocytopenia syndrome; radial hypoplasia pancytopenia syndrome (Fanconi); Roberts-SC phocomelia syndrome;

(c)

inborn errors of metabolism:

(i)

amino acid disorders:

phenylketonuria: phenylalanine hydroxylase (classical, Type 1); dihydropteridine reductase (type 4); dihydrobiopterin synthetase (type 5); histidinemia; gamma-glutamylcysteine synthetase deficiency; hyperlysinemia; lysinuric protein intolerance; hyperprolinemia; hydroxyprolinemia; sulfite oxidase deficiency; iminoglycinuria; branched-chain amino acid disorders: hypervalinemia; hyperleucine-isoleucinemia; maple-syrup urine disease; isovaleric acidemia, glutaric acidemia (type 2); 3-hydroxy-3-methylglutaryl CoA lyase deficiency; 3-ketothiolase deficiency; biotin-dependent disorders: holocarboxylase deficiency; biotinidase deficiency; propionic acidemia: type A; Type BC; methylmalonic acidemia: mutase type (mut+); cofactor affinity type (mut-); adenosylcobalamin synthetase type (cbl A); ATP: cobalamin adenosyltransferase type (cbl B), with homocystinuria, type 1 (cbl C), with homocystinuria, type 2 (cbl D); folate-dependent disorders:

congenital defect of folate absorption; dihydrofolate reductase deficiency; methylene tetrahydrofolate reductase deficiency; homocystinuria; hypersarcosinemia; non-ketotic hyperglycinemia; hyper-beta-alaninemia; carnosinase deficiency; homocarnosinase deficiency; Hartnup disease; methionine malabsorption (oasthouse urine disease);

(ii)

carbohydrate disorders: glycogen storage disorders: type 1, with hypoglycemia (von Gierke); type 2 (Pompe); galactosemia; fructose-1, 6-diphosphatase deficiency; pyruvic acid disorders: pyruvate dehydrogenase complex (Leigh); pyruvate carboxylase deficiency; mannosidosis; fucosidosis; aspartylglucosaminuria;

(iii)

mucopolysaccharide disorders:

alpha-L-iduronidase deficiency: Hurler type; Scheie type, Hurler-Scheie type; iduronate sulfatase deficiency (Hunter type); Heparan N-sulfatase deficiency (Sanfilippo 3A type); N-acetyl-alpha-D-glucosaminidase deficiency (Sanfilippo 3B type); Acetyl CoA: glucosaminide N-acetyltransferase deficiency (Sanfilippo 3C type); N-acetyl-alpha D-glucosaminide 6-sulfatase deficiency (Sanfilippo 3D type); beta-glucuronidase deficiency (Sly type);

(iv)

mucolipid disorders: alpha-neuraminidase deficiency (type 1); N-acetylglucosaminyl-phosphotransferase deficiency: I-cell disease (Type 2); Pseudo-Hurler syndrome (type 3); mucolipidosis type 4;

(v)

urea cycle disorders: carbamyl-phosphate synthetase deficiency; ornithine transcarbamylase deficiency; argininosuccinic acid synthetase deficiency (citrullinemia); argininosuccinic acid (ASA) lyase deficiency; arginase deficiency (argininemia);

(vi)

nucleic acid disorders: Lesch-Nyhan syndrome (HGPRTase deficiency); orotic aciduria;

xeroderma pigmentosum (group A);
DeSanctis-Cacchione syndrome;

(vii)

copper metabolism disorders:

Wilson disease; Menkes disease;

(viii)

mitochondrial disorders: Kearns-Sayre syndrome; MELAS syndrome; MERRF syndrome; cytochrome c oxidase deficiency; other mitochondrial disorders;

(ix)

peroxisomal disorders: Zellweger syndrome; adrenoleukodystrophy; neonatal (autosomal recessive); childhood (x-linked); infantile Refsum disease; hyperpipecolic acidemia; chondrodysplasia punctata (rhizomelic type);

(d)

developmental disorders of brain formation:

(i)

neural tube closure defects: anencephaly; spina bifida; encephalocele;

(ii)

brain formation defects: Dandy-Walker malformation; holoprosencephaly; hydrocephalus; aqueductal stenosis; congenital x-linked type; Lissencephaly; pachygyria; polymicrogyria; schizencephaly;

(iii)

cellular migration defects: abnormal layering of cortex; colpocephaly; heterotopias of gray matter; cortical microdysgenesis

(iv)

intraneuronal defects: dendritic spine abnormalities; microtubule abnormalities;

(v)

acquired brain defects: hydranencephaly; porencephaly; and

(vi)

primary (idiopathic) microcephaly.]

(a) is

attributable to a condition, other than mental illness, found to be closely related to ID because this condition results in limitations in general intellectual functioning or adaptive behavior similar to that of persons with ID and requires similar treatment or services;

(b) is manifested before the person reaches age twenty-two (22) years, is likely to continue indefinitely; and

(c) results in substantial functional limitations (adaptive behavior scores ≤ 70) in three or more of the following areas:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

C. Medically fragile

(MF) waiver: The medically fragile (MF) waiver identified as category 095 was established effective August, 1984 subject to renewal. Medically fragile is characterized by one or more of the following: a life threatening condition characterized by reasonable frequent periods of acute exacerbation which require frequent medical supervision, or physician consultation and which in the absence of such supervision or consultation would require hospitalization; a condition requiring frequent, time consuming administration of specialized treatments which are medically necessary; or dependence on medical technology such that without the technology a reasonable level of health could not be maintained; examples include but are not limited to ventilators, dialysis machines, enteral or parenteral nutrition support and supplemental oxygen. The eligible recipient must require the level of care provided in an ICF/ IID, in accordance with 8.313.2 NMAC, and meet all other applicable financial and non-financial eligibility requirements and must have:

(1) a developmental disability, developmental delay, or be at risk for developmental delay as determined by

the DDU, and

(2) a diagnosed medically fragile condition prior to the age of 22, defined as a chronic physical condition, which results in a prolonged dependency on medical care for which daily skilled (nursing) intervention is medically necessary, and which is characterized by one or more of the following:

(a) a life threatening condition characterized by reasonably frequent periods of acute exacerbation, which require frequent medical supervision or physician consultation and which, in the absence of such supervision or consultation, would require hospitalization;

(b) frequent, time-consuming administration of specialized treatments, which are medically necessary;

(c) dependency on medical technology such that without the technology a reasonable level of health could not be maintained; examples include, but are not limited to, ventilators, dialysis machines, enteral or parenteral nutrition support and continuous oxygen; and

(d) periods of acute exacerbation of a life-threatening condition, the need for extraordinary supervision or observation, frequent or time-consuming administration of specialized treatments, dependency on mechanical (life) support devices, and developmental delay or disability.

D. Acquired immunodeficiency syndrome (AIDS) and AIDS related condition (ARC) waiver:

The acquired immunodeficiency syndrome (AIDS) and AIDS related condition waiver designated as category 090, was established effective July 1987, subject to renewal. The AIDS and AIDS related condition waiver stopped covering new individuals effective January 01, 2014 as the waiver was sunset and not renewed. Individuals already on the AIDS and AIDS related condition waiver are grandfathered and remain eligible as

long as eligibility requirements are met.

E. Brain injury (BI):

The brain injury category 092 stopped covering new individuals effective January 01, 2014. Individuals already on the brain injury category are grandfathered and remain eligible as long as eligibility requirements are met.

[8.290.400.10 NMAC - Rp, 8.290.400.10 NMAC, 1/1/2019; A/E, 12/15/2020]

8.290.400.11 GENERAL RECIPIENT REQUIREMENTS:

Eligibility for the waiver programs is always prospective per 8.290.600.11 NMAC. Applicants/recipients must meet, or expect to meet, all non-financial eligibility criteria in the month for which determination of eligibility is made including any mandatory income or resources deemed to a minor child per 8.290.500.17 and 8.290.500.21 NMAC.

A. Enumeration:

An applicant/recipient must furnish his social security number in accordance with 8.200.410.10 NMAC.

B. Citizenship:

Refer to 8.200.410.11 NMAC for citizenship requirements.

C. Residence:

To be eligible for medicaid, an applicant/recipient must be physically present in New Mexico on the date of application or final determination of eligibility and must have declared an intent to remain in the state. If the applicant/recipient does not have the present mental capacity to declare intent, the applicant's/recipient's representative may assume responsibility for the declaration of intent. If the applicant/recipient does not have the mental capacity to declare intent and there is no representative to assume this responsibility, the state where the applicant/recipient is living will be recognized as the state of residence. If waiver services are suspended because the recipient is temporarily absent from the state but is expected to return within 90 consecutive days at which time waiver services

will resume, the medicaid case remains open. If waiver services are suspended for any other reason for 90 consecutive days, the medicaid case is closed after appropriate notice is provided to the recipient.

D. Non-concurrent

receipt of assistance: HCBS waiver services furnish medicaid benefits to an applicant/recipient who qualifies both financially and medically for institutional care but who, with provision of waiver services, can receive the care he needs in the community at less cost to the medicaid program than the appropriate level of institutional care. Individuals receiving services under a HCBS waiver may not receive concurrent services under nursing facility (NF), ICF/IID, personal care or any other HCBS waiver.

(1) SSI

recipients: Applicants receiving supplemental security income (SSI) benefits are categorically eligible for waiver services. No further verification of income, resources, citizenship, age, disability, or blindness is required. The applicant must, however, meet the level of care requirement. (An SSI recipient must meet the assignment of rights and TPL requirements and not be ineligible because of a trust).

(2) Married

SSI couples: All married SSI couples where neither member is institutionalized in a medicaid-certified facility are treated as separate individuals for purposes of determining eligibility and benefit amounts beginning the month after the month they began living apart. See Section 8012 of the Omnibus Budget Reconciliation Act of 1989. In the case of an initial application, or reinstatement following a period of ineligibility, when members of a married couple are not living together on the date of application or date of request for reinstatement, each member of the couple is considered separately as of the date of application or request, regardless of how recently the separation occurred.

E. INTERVIEW

REQUIREMENTS: [An interview

is required at initial application for all home and community-based waiver medical assistance programs in accordance with all of the requirements set forth at 8.281.400.11 NMAC.] An interview is not required in accordance with 8.281.400.11 NMAC.

[8.290.400.11 NMAC - Rp, 8.290.400.11 NMAC, 1/1/2019; A/E, 12/15/2020]

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY PART 14 COVID-19 SCHOOL REENTRY REQUIREMENTS

6.12.14.1 ISSUING

AGENCY: Public Education Department hereinafter referred to as the department.

[6.12.14.1 NMAC – N/E, 12/3/2020]

6.12.14.2 SCOPE:

The provisions of this regulation apply to all public schools in New Mexico.

[6.12.14.2 NMAC - N/E, 12/3/2020]

6.12.14.3 STATUTORY

AUTHORITY: Sections 9-24-8, 12-10-10, 22-2-1, and 22-2-2 NMSA 1978.

[6.12.14.3 NMAC - N/E, 12/3/2020]

6.12.14.4 DURATION:

Permanent.

[6.12.14.4 NMAC - N/E, 12/3/2020]

6.12.14.5 EFFECTIVE

DATE: December 3, 2020, unless a later date is cited at the end of a section.

[6.12.14.5 NMAC - N/E, 12/3/2020]

6.12.14.6 OBJECTIVE:

This rule establishes the requirements for public school compliance with the department's COVID-19 school reentry guidance in order to protect and support the safe and healthy

school attendance of New Mexico students, and safe and healthy working environment for teachers, faculty, staff, and administration. [6.12.14.6 NMAC – N/E, 12/3/2020]

6.12.14.7 DEFINITIONS:

A. “At-risk students” means students who are English learners, economically disadvantaged, Native American, highly mobile, or who have a disability.

B. “Formative assessment” means measures of academic achievement during the learning process.

C. “Full reentry operating category” means the instructional model that permits all students to return to in-person learning for the full school week, with continued use of preventative measures including mask-wearing, temperature-screening, and minimizing of group activities.

D. “High-risk staff” means adult persons employed by a school or school district with certain underlying conditions that make them more at risk for severe illness from the virus that causes COVID-19, including but not limited to:

- (1) cancer;
- (2) chronic kidney disease;
- (3) chronic obstructive pulmonary disease;
- (4) heart conditions such as heart failure,
- (5) coronary artery disease or cardiomyopathy;
- (6) body mass index greater than or equal to 30kg/m²;
- (7) pregnancy;
- (8) sickle cell disease;
- (9) smoking;
- (10) type 1 diabetes mellitus
- (11) type 2 diabetes mellitus;
- (12) moderate-to-severe asthma;
- (13) cerebrovascular disease;
- (14) cystic fibrosis;

- (15) hypertension or high blood pressure;
- (16) immunocompromised state from blood or bone marrow transplant;
- (17) immune deficiencies;
- (18) HIV;
- (19) use of corticosteroids or other immune-weakening medications;
- (20) neurologic conditions such as dementia;
- (21) liver disease;
- (22) pulmonary fibrosis; and
- (23) thalassemia.

E. “High-risk students” means students with certain underlying health conditions that may make them more at risk for severe illness from the virus that causes COVID-19, including but not limited to:

- (1) obesity;
- (2) medical complexity;
- (3) severe genetic disorders;
- (4) severe neurologic disorders;
- (5) inherited metabolic disorders;
- (6) sickle cell disease;
- (7) congenital heart disease;
- (8) diabetes;
- (9) chronic kidney disease;
- (10) asthma and other chronic lung disease; and
- (11) immunosuppression due to malignancy or immune-weakening medications.

F. “Hybrid operating category” means the instructional model wherein schools assign a combination of some in-person learning days and some remote learning days, while limiting the number of students who may be in the school building at any given time by the number that can be accommodated while adhering to at least six feet

of social distancing, or fifty percent classroom capacity.

G. “Interim assessment” means an assessment conducted three to four times a year to assess specific skills and to identify those at risk academically.

H. “Remote operating category” means the instructional model that requires all students to engage in online learning, with limited possible exceptions for small groups of students to engage in in-person learning, such as students receiving special education services; schools should ensure each student has a digital device and support for in-home connectivity. [6.12.14.7 NMAC – N/E, 12/3/2020]

6.12.14.8 GENERAL REQUIREMENTS AND CONSIDERATIONS FOR SCHOOLS IN ALL OPERATING CATEGORIES:

A. All public schools and local school districts shall:

- (1) follow guidelines appropriate to the school or school district’s safe reentry category, as determined by the New Mexico department of health medical advisory team assessment;
- (2) participate in a surveillance and rapid response testing program for all staff;
- (3) adhere to social distancing requirements according to their safe reentry category;
- (4) avoid large group gatherings;
- (5) require all staff and students to wear face masks, except while eating, drinking, or exercising, unless the student or staff has a medical reason for not being able to wear a mask or face shield;
- (6) administer daily temperature checks and review of potential symptoms, as well as working with state and local health officials to have a plan for contract-tracing;
- (7) when providing transportation:
 - (a) require all staff and students to wear face masks;

(b) limit the number of students permitted on one bus seat to two; and

(c) limit the number of students permitted on one bus seat to one for those schools in the hybrid category;

(8) provide meals to students during both in-person instruction and remote learning; and

(9) consider practices to promote social emotional learning, support high quality teaching and learning, and effectively communicate with tribal communities and families.

B. COVID-19 safe practices. All local school districts and public schools shall maintain communication with local and state department of health officials, and participate in contact-tracing efforts and specimen collection efforts as directed by state and local health officials, and shall:

- (1) work with school administrators, school nurses, and other healthcare providers to identify an isolation room or area to separate anyone who exhibits COVID-like symptoms;
- (2) require school nurses and other healthcare providers to use centers for disease control and prevention (CDC) recommended standard precautions when caring for sick people, including:
 - (a) engaging in frequent hand hygiene;
 - (b) using personal protective equipment when there is an expectation of possible exposure to infectious material;
 - (c) following respiratory hygiene and coughing etiquette;
 - (d) ensuring appropriate patient placement in quarantine or isolation;
 - (e) proper handling and disinfection of patient care equipment and instruments;
 - (f) careful handling of textiles and laundry;

- (g) following safe injection practices; and
 - (h) ensuring healthcare provider safety, including proper handling and disposal of needles and other sharps.
 - (3) require school nurses and other healthcare providers to use CDC recommended transmission-based precautions when caring for sick people, including:
 - (a) establish procedures for safely transporting anyone who is sick home or to a healthcare facility;
 - (b) notify local health officials, staff, and families immediately of a possible case while maintaining confidentiality consistent with the Americans with Disabilities Act and other applicable federal and state privacy laws;
 - (c) close off school building if used by a COVID-19-positive sick person and do not use again before cleaning and disinfection;
 - (d) wait 24 hours before cleaning and disinfecting, unless it is impossible to wait 24 hours, in which case wait as long as possible;
 - (e) advise sick staff members and children not to return until they have met New Mexico department of health criteria to discontinue home isolation;
 - (f) inform those who have had close contact with a person diagnosed with COVID-19 to stay home and follow New Mexico department of health guidance if symptoms develop or if a person does not have symptoms, follow appropriate New Mexico department of health guidance for home quarantine; and
 - (g) contact New Mexico department of health to activate contact tracing.
- C. Staffing.** All school personnel and contractors shall follow guidelines in current statewide public health orders. All local school districts and public schools shall:
- (1) train staff in local and state rules regarding

health and safety procedures, such as appropriate use of personal protective equipment and procedures for when school personnel or students exhibit symptoms of COVID-19;

(2) establish processes, aligned with school district or charter school human resource departments to:

- (a) identify personnel considered to be in a COVID-19 high risk staff, and to consider formal requests from such high-risk staff to continue working remotely;
 - (b) address the circumstances of school personnel who live with someone who is in a COVID-19 high risk group; and
 - (c) require, with appropriate licensing waivers, high-risk teachers to remotely teach upper grades, in order to prioritize necessary in-person instruction for younger students.
- [6.12.14.8 NMAC – N/E, 12/3/2020]

6.12.14.9 LOCAL SCHOOL DISTRICTS AND PUBLIC SCHOOLS OPERATING UNDER THE REMOTE OPERATING CATEGORY:

- A. COVID-19 safe practices.**
- (1) Local school districts and public schools shall consider implementing requirements for COVID-19 safety, including:
 - (a) closing off and limiting access to areas potentially affected by COVID-19 exposure and, if possible, wait 24 hours before cleaning and disinfecting;
 - (b) encouraging COVID-19 testing;
 - (c) refraining from blanket reporting requirements for school personnel;
 - (d) leveraging virtual tools and platforms whenever possible to conduct essential business, and keep in-person reporting to a minimum;
 - (e) using social media and other methods

of communication to inform parents, students, and staff about COVID-19 symptoms, preventative measures, good hygiene, and school district- and school-specific protocols; and

(f) support for students, families, and school personnel in their protection of high-risk students and staff.

(2) During periods of school closure, local school districts and schools shall require in-person reporting only of staff performing essential services such as food preparation and delivery, cleaning, and sanitation. Provided they wear face masks and practice social distancing, teachers may reenter school premises to conduct remote learning.

(3) If feasible, local school districts and public schools may permit school buildings to remain open for limited numbers of students and staff to continue in-person instruction and services for students in prekindergarten to third grade and for students with special needs, at a maximum ratio of five students to one teacher.

B. Transportation of Students. If feasible, local school districts and public schools shall transport students with special needs and students in prekindergarten through third grade who still may be physically attending school on a limited basis.

C. Meal service.

(1) Local school districts and public schools in the remote operating category shall:

(a) establish food distribution sites both at district buildings and at particular bus stops or routes to the greatest extent practicable;

(b) practice social distancing protocols; and

(c) provide personal protective equipment to all participating staff.

(2) Local school districts and public schools in the remote category shall also consider additional practices to promote COVID-19 safety for meal service, including:

(a) delivering a week’s worth of meals during a designated time; and

(b) distributing supplemental instructional materials and printed school and school district communications along with meals.

(3) During periods of school closure, school buses may be used to deliver meals to students and families.

D. Student movement and gathering. If small groups of prekindergarten to third grade students or students with disabilities are meeting, public schools shall keep cohorts together and minimize all transitions, including those between classrooms, to lunch or recess, and to school buses. Local school districts and public schools shall abide by the maximum number of people allowed to congregate as defined in current statewide public health orders. [6.12.14.9 NMAC – N/E, 12/3/2020]

6.12.14.10 LOCAL SCHOOL DISTRICTS AND PUBLIC SCHOOLS OPERATING UNDER THE HYBRD OPERATING CATEGORY:

A. COVID-19 safe practices. Local school districts and public schools in the hybrid operating category shall consider implementing requirements for COVID-19 safety, including requirements to:

(1) afford adequate space for all staff and students to maintain at least six feet of social distance at all times;

(2) post signs in classrooms, hallways, and entrances to communicate how to stop the spread of COVID-19;

(3) screen all students for COVID-19 symptoms to the greatest extent feasible, such as temperature screenings and daily health check questionnaires for all students and staff;

(4) inform and educate parents and families to be alert for signs of illness in their children and to keep their children home from school when they are sick;

(5) establish a protocol for students and staff who feel ill or experience symptoms when they are at school;

(6) isolate and deep-clean COVID-19-impacted classrooms and other areas of school premises;

(7) teach and reinforce good hygiene measures, such as handwashing, covering coughs, and appropriate use of face masks;

(8) provide hand soap, hand sanitizer with at least fifty percent alcohol, paper towels, and no-touch trashcans in all bathrooms, classrooms, and other frequently trafficked areas;

(9) clean and disinfect frequently touched surfaces at least daily, and frequently shared objects after each use;

(10) provide face masks and other appropriate personal protective equipment to staff;

(11) require students and staff to wear face masks unless a valid medical reason is provided;

(12) allow student and staff to bring hand sanitizer and face masks and shields from home;

(13) to the extent possible, turn off water fountains and provide bottled water or allow students and staff to bring bottled water from home;

(14) take steps to ensure all water systems and features, including water fountains that cannot be shut off, are safe;

(15) ensure ventilation systems operate properly and increase the circulation of outdoor air as much as possible without posing a safety or health risk to students or staff; and

(16) conduct deep cleaning of schools prior to students and staff returning, and schedule additional cleanings during weekends and school holidays and breaks.

B. Entering School Buildings. Local school districts and public schools in the hybrid operating

category shall consider practices for safely entering school buildings, including:

- (1) mandating face masks for all students and staff, except while eating or drinking or exercising, including exercise during recess, with limited exceptions for students or staff that have medical reasons for not being able to wear a mask;
- (2) screening all staff daily before being permitted to enter school buildings, including temperature checks and reviews of potential symptoms, while maintaining confidentiality;
- (3) isolating and sending home those who register temperatures of greater than 100.4 degrees fahrenheit or 38 degrees celsius;
- (4) working with state and local health officials to have a plan for contact-tracing;
- (5) to the extent practicable and while maintaining confidentiality, screening all students for temperature before they enter school buildings, and isolating and sending home those who register a temperature of greater than 100.4 degrees fahrenheit or 38 degrees celcius;
- (6) restricting non-essential school visitors and volunteers;
- (7) establishing a protocol for essential visitors, including calling the front office before entering school premises and requiring the use of face masks;
- (8) avoiding large group gatherings;
- (9) marking spaced lines to enter school buildings and designating entrance and exit flow paths;
- (10) establishing a protocol for student drop-off and pick-up, such as staggered entry and release by grade, class, or bus number, with marked spacing for pick-up;
- (11) posting signs in classrooms, hallways, and entrances to communicate how to stop the spread of COVID-19; and

(12)

establishing a protocol for students and staff who feel ill or experience symptoms when they come to school.

C. Protecting high-risk students and staff.

Local school districts and public schools in the hybrid operating category shall:

- (1) when possible, employ additional nurses, healthcare aides, and fulltime substitute employees;
 - (2) survey high-risk staff members to gauge their intentions to return to work while maintaining confidentiality consistent with the Americans with Disabilities Act and other applicable state and federal privacy laws;
 - (3) survey families with high-risk students to gauge their intentions in returning to a traditional school setting, when available, while maintaining confidentiality consistent with the Americans with Disabilities Act and other applicable federal and state privacy laws;
 - (4) in consultation with parents and public health officials, provide remote learning opportunities for high-risk student and staff populations;
 - (5) consult with local schoolboard attorneys and school district human resources officials to offer special accommodations to personnel who are members of high-risk populations, such as alternative teaching assignments;
 - (6) adhere to the requirements of the federal Family Educational Rights and Privacy Act and the federal Health Insurance Portability and Accountability Act; and
 - (7) adhere to state and federal employment law and extended leave allowances.
- D. Transportation of students.** Local school districts and public schools in the hybrid operating category shall consider practices for the safe transportation of students, including:
- (1) limiting students to one per bus seat to the best

of their ability, including encouraging parents to drive their children to school when possible, staggering bus routes, and expanding the minimum radius of eligibility for bus service;

- (2) requiring students to sit in spaced and assigned seating of no more than two per bus seat when not possible to limit students to one per bus seat;
 - (3) assigning bus attendants or other additional staff to help with safety and screening of students, to the extent possible;
 - (4) providing hand sanitizer for students, bus drivers, and bus attendants;
 - (5) providing face masks for bus drivers and attendants;
 - (6) requiring students, bus drivers, and bus attendants to wear face masks;
 - (7) screening students, bus drivers, and bus attendants for symptoms of illness;
 - (8) eliminating field trips and other non-essential travel, except for travel conducted under New Mexico activities association guidelines for sports and extracurricular activities;
 - (9) cleaning and disinfecting frequently touched surfaces on school uses at least daily;
 - (10) establishing protocols for bus stops and the loading and unloading of students to minimize congregation of students from different households;
 - (11) airing out buses not in use; and
 - (12) restricting group transportation, including carpooling.
- E. Meal service.** Local school districts and public schools in the hybrid operating category shall provide meals to students participating in remote learning on a given day per remote guidelines, according to Subsection C of Section 6.12.14.9 NMAC. Local school districts and public schools in the hybrid category shall consider additional practices to promote COVID-19 safety for meal service, including:

(1) using disposable plates and utensils;

(2) if serving meals in the school cafeteria:

(a) marking spaced lines to enter the cafeteria and serving lines, and designating entrance and exit flow paths;

(b) scheduling longer meal periods to accommodate more staggered meal delivery;

(c) maximizing social distancing to space seating and utilizing outdoor seating as practicable and appropriate; and

(d) conducting cleaning of cafeterias and high-touch surfaces throughout the day;

(3) if serving meals in classrooms:

(a) serving pre-packaged boxed or bagged lunches for each student instead of traditional serving lines; and

(b) avoid sharing of food and utensils.

F. Student movement and gathering. Local school districts and public schools in the hybrid operating category shall consider practices to keep student and student groups' movements and gatherings safe, including:

(1) limiting mixing among different student groups to the greatest extent practicable;

(2) for class changes and other transitions throughout the day:

(a) providing additional time to reach destinations;

(b) designating flow paths in hallways to keep students separated and minimize the congregation of students;

(c) planning staggered class changes to decrease the number of students in the hallways at one time;

(d) having the same group of students stay with the same staff – all day for

children in prekindergarten through third grade, and as much as feasible for other children; and

(e) when self-contained classrooms are not feasible, having teachers rotate, rather than students;

(3) for student gatherings:

(a) avoiding large group gatherings, and abiding by the maximum number of people allowed to congregate as defined by current statewide public health orders;

(b) discouraging the congregation of students in parking lots and common areas;

(c) staggering the schedules for group gatherings such as recess or meals;

(d) identifying and utilizing large spaces, such as gymnasiums, auditoriums, and outdoor spaces as weather permits for social distancing;

(e) working with local officials and partners to identify other community spaces, such as libraries, churches, recreational centers, and unused municipal offices or conference rooms, in which classes can be convened with maximum social distancing;

(f) following the New Mexico activities association's guidelines for extracurricular activities and similar congregate events to the greatest extent possible;

(g) having all coaches and student athletes tested for COVID-19 before the competitive season, to the extent possible; and

(h) when possible, holding professional development sessions and staff meetings virtually or in small groups with maximum social distancing.

[6.12.14.10 NMAC – N/E, 12/3/2020]

6.12.14.11 LOCAL SCHOOL DISTRICTS AND PUBLIC SCHOOLS OPERATING UNDER THE FULL REENTRY OPERATING CATEGORY:

A. COVID-19 safe practices. Local school districts and public schools in the hybrid operating category shall consider implementing requirements for COVID-19 safety, including requirements to:

(1) mandate that all persons on school premises practice social distancing to the greatest extent possible at all times;

(2) post signs in classrooms, hallways, and entrances to communicate how to stop the spread of COVID-19;

(3) establish a protocol for students and staff who feel ill or experience symptoms when they are at school;

(4) teach and reinforce good hygiene measures, such as handwashing, covering coughs, and appropriate use of face coverings;

(5) provide hand soap, hand sanitizer with at least sixty percent alcohol, paper towels, and no-touch trashcans in all bathrooms, classrooms, and other frequently trafficked areas;

(6) require students and staff to wear face coverings unless they have a valid medical reason why they cannot;

(7) post signs in classrooms, hallways, and entrances, to communicate how to stop the spread of COVID-19;

(8) clean and disinfect frequently touched surfaces at least daily, and frequently shared objects after each use;

(9) provide face masks and other appropriate personal protective equipment to staff;

(10) require students and staff to wear face masks unless a valid medical reason is provided;

(11) allow student and staff to bring hand sanitizer and face masks and shields from home;

(12) to the extent possible, turn off water fountains and provide bottled water or allow students and staff to bring bottled water from home;

(13) take steps to ensure all water systems and

features, including water fountains that cannot be shut off, are safe;
 (14) ensure ventilation systems operate properly and increase the circulation of outdoor air as much as possible without posing a safety or health risk to students or staff; and
 (15) conduct deep cleaning of schools prior to students and staff returning, and schedule additional cleanings during weekends and school holidays and breaks.

B. Entering school buildings. Local school districts and public schools in the full reentry operating category shall consider practices for safely entering school buildings, including:

(1) mandating face masks for all students and staff, except while eating or drinking or exercising, including exercise during recess, with limited exceptions for students or staff that have medical reasons for not being able to wear a mask;

(2) while maintaining confidentiality, screening all staff daily before being permitted to enter school buildings, including temperature checks and reviews of potential symptoms;

(3) isolating and sending home those who register temperatures of greater than 100.4 degrees fahrenheit or 38 degrees celsius;

(4) working with state and local health officials to have a plan for contact-tracing;

(5) to the extent practicable, and while maintaining confidentiality, screening all students for temperature before they enter school buildings, and isolating and sending home those who register a temperature of greater than 100.4 fahrenheit or 38 degrees celsius;

(6) restricting non-essential school visitors and volunteers;

(7) establishing a protocol for essential visitors, including calling the front office before entering school premises

and requiring the use of face masks;
 (8) avoiding large group gatherings;
 (9) marking spaced lines to enter school buildings and designating entrance and exit flow paths;

(10) establishing a protocol for student drop-off and pick-up, such as staggered entry and release by grade, class, or bus number, with marked spacing for pick-up;
 (11) posting signs in classrooms, hallways, and entrances to communicate how to stop the spread of COVID-19; and

(12) establishing a protocol for students and staff who feel ill or experience symptoms when they come to school.

C. Protecting high-risk students and staff. Local school districts and public schools in the full reentry operating category shall:

(1) establish a point of contact with the local health department;

(2) identify local COVID-19 testing sites;

(3) provide hand sanitizer of at least sixty percent alcohol content to students and staff;

(4) allow high-risk students to complete coursework virtually;

(5) establish a process for regular check-ins with high risk staff and students;

(6) allow an early transition period for high-risk students to go to classes; and

(7) avoid large group gatherings and interactions

D. Transportation of students. Local school districts and public schools in the hybrid operating category shall consider practices for the safe transportation of students, including:

(1) limiting students to one per bus seat to the best of their ability, including encouraging parents to drive their children to school when possible, staggering bus routes, and expanding the minimum radius of eligibility for bus service;

(2) when not possible to limit students to one per bus seat, requiring students to sit in spaced and assigned seating of no more than two per bus seat;

(3) assigning bus attendants or other additional staff to help with safety and screening of students, to the extent possible;

(4) providing hand sanitizer for students, bus drivers, and bus attendants;

(5) providing face masks for bus drivers and attendants;

(6) requiring students, bus drivers, and bus attendants to wear face masks;

(7) screening students, bus drivers, and bus attendants for symptoms of illness;

(8) eliminating field trips and other non-essential travel, except for travel conducted under New Mexico activities association guidelines for sports and extracurricular activities;

(9) cleaning and disinfecting frequently touched surfaces on school uses at least daily;

(10) establishing protocols for bus stops and the loading and unloading of students to minimize congregation of students from different households;

(11) airing out buses not in use; and

(12) restricting group transportation, including carpooling.

E. Meal service. Local school districts and public schools in the full reentry operating category shall provide meals to high-risk students participating in remote learning on a given day per remote guidelines, according to Subsection C of Section 6.12.14.9 NMAC. Local school districts and public schools in the full reentry operating category shall also consider additional practices to promote COVID-19 safety for meal service, including:

(1) using disposable plates and utensils;

(2) if serving meals in the school cafeteria:

(a) marking spaced lines to enter the

cafeteria and serving lines, and designating entrance and exit flow paths;

(b) scheduling longer meal periods to accommodate more staggered meal delivery;

(c) maximizing social distancing to space seating and utilizing outdoor seating as practicable and appropriate; and

(d) conducting cleaning of cafeterias and high-touch surfaces throughout the day;

(3) if serving meals in classrooms:

(a) serving pre-packaged boxed or bagged lunches for each student instead of traditional serving lines; and

(b) avoiding sharing of food and utensils.

F. Student movement and gathering. Local school districts and public schools in the full reentry operating category shall consider practices to keep student and student groups' movements and gatherings safe, including:

(1) limiting mixing among different student groups to the greatest extent practicable;

(2) for class changes and other transitions throughout the day:

(a) providing additional time to reach destinations;

(b) designating flow paths in hallways to keep students separated and minimize the congregation of students;

(c) planning staggered class changes to decrease the number of students in the hallways at one time;

(d) having the same group of students stay with the same staff all day for children in prekindergarten through third grade, and as much as feasible for other children; and

(e) when self-contained classrooms are not feasible, having teachers rotate, rather than students;

(3) for student gatherings:

(a) avoiding large group gatherings, and abiding by the maximum number of people allowed to congregate as defined by current statewide public health orders;

(b) discouraging the congregation of students in parking lots and common areas;

(c) staggering the schedules for group gatherings such as recess or meals;

(d) identifying and utilizing large spaces, such as gymnasiums, auditoriums, and outdoor spaces – as weather permits – for social distancing;

(e) working with local officials and partners to identify other community spaces, such as libraries, churches, recreational centers, and unused municipal offices or conference rooms, in which classes can be convened with maximum social distancing;

(f) following the New Mexico activities association's guidelines for extracurricular activities and similar congregate events to the greatest extent possible;

(g) having all coaches and student athletes tested for COVID-19 before the competitive season, to the extent possible; and

(h) when possible, holding professional development sessions and staff meetings virtually or in small groups with maximum social distancing.

[6.12.14.11 NMAC – N/E, 12/3/2020]

6.12.14.12 SUPPORTS AND SERVICES FOR AT-RISK STUDENTS: All local school districts and public schools shall develop learning opportunities for students that are culturally and linguistically relevant, and maintain maintenance of effort for special education students.

A. Remote operating category. All local school districts

and public schools in the remote operating category shall consider additional support for at-risk students, including:

(1) recording online instruction for students to re-watch;

(2) implementing small group instruction in order to meet students' individual learning needs;

(3) identifying and implementing relevant formative assessments that may be specific to at-risk student groups to accelerate student learning;

(4) ensuring synchronous remote learning that includes explicit language practice for English language learners;

(5) providing support at the word, sentence and discourse levels;

(6) ensuring English language development instruction continues to be appropriate to the grade level and the English language proficiency level of the students;

(7) considering bringing Special Education students to school for services that cannot be provided remotely or implemented during distance learning; and

(8) providing communication in a language families can understand, at no charge to families.

B. Hybrid operating category. All local school districts and public schools in the hybrid operating category shall consider additional support for at-risk students, including:

(1) prioritizing scheduling for English language learners, Native American students and students with disabilities;

(2) considering Native American tribes, pueblos, nations, and urban Native American organizations' reopening plans, which may differ from state and department guidance;

(3) considering the length of commute time required of rural students, as full days maybe better than half days when distance is an issue;

(4) having extra PPE available for students who lack or forget them; and

(5) consider allowing small groups of special education students to continue in-person instruction.

C. Full reentry operating category. All local school districts and public schools in the full reentry operating category shall consider additional supports for at-risk student, including:

(1) considering all the regular aspects of schooling, such as designated English language development time for special education students;

(2) identifying and implementing relevant formative assessments that may be specific to at-risk students groups to accelerate student learning;

(3) implementing small group instruction in order to meet students' individual learning needs; and

(4) providing high-quality academic language instruction throughout the day, during which English language development instruction should continue to be appropriate to the grade level and the English language proficiency level of the students.

[6.12.14.12 NMAC – N/E, 12/3/2020]

**HISTORY OF 6.12.14 NMAC:
[RESERVED]**

**PUBLIC EDUCATION
DEPARTMENT**

This is an amendment to 6.29.1 NMAC, Sections 3, 6, 7, 8, 9, and 11, effective 12/15/2020.

**6.29.1.3 STATUTORY
AUTHORITY:**

[A.—Section 22-2-2 NMSA 1978 grants the authority and responsibility for the assessment and evaluation of public schools, state-supported educational institutions and educational programs conducted in state institutions other than New Mexico military institute.

~~B.—Section 22-2-2 NMSA 1978 directs the department to set graduation expectations and hold schools accountable. Section 22-2C-3 NMSA 1978 requires the department to adopt academic content and performance standards and to measure the performance of public schools in New Mexico.~~

~~C.—Subsection E of Section 22-13-1.1 NMSA 1978 authorizes the department to establish a policy for administrative interpretations to clarify curricular and testing provisions of the Public School Code.~~

~~D.—Section 22-5-13 NMSA 1978 grants authority to the department to develop mandatory training of local school board members.~~

~~E.—Section 22-13-14 NMSA 1978 requires the department to establish penalties for non-compliance with this section prescribing the frequency with which public schools and private schools shall hold emergency drills.~~

~~F.—Subsection D of Section 9-24-8 NMSA 1978 authorizes the secretary to adopt rules necessary to carry out the duties of the department.]~~

This rule is being promulgated pursuant to Sections 9-24-8, 22-2-2, 22-2C-3, 22-2C-4, 22-5-13, 22-13-1.1, and 22-13-14 NMSA 1978.
[6.29.1.3 NMAC - Rp, 6.30.2.3 NMAC, 6/30/2009; A, 12/15/2020]

6.29.1.6 OBJECTIVE:

[A.—This rule provides for the implementation for educational standards and expectations for all students who attend schools defined in the scope of this regulation.

~~B.—The New Mexico content standards with benchmarks and performance standards specify the goals for instruction.~~

~~(1) Part 1.—Standards for Excellence. General Provisions specifies general requirements for procedures and programs. Parts two through 11 outline content standards with benchmarks and performance standards for subjects as follows:~~

- ~~(2) Part 2.—Arts Education~~
- ~~(3) Part 3.—Career and Technical Education~~
- ~~(4) Part 4.—English Language Arts~~
- ~~(5) Part 5.—English Language Development~~
- ~~(6) Part 6.—Health Education~~
- ~~(7) Part 7.—Mathematics~~
- ~~(8) Part 8.—Modern, Classical and Native Languages (content standards only)~~
- ~~(9) Part 9.—Physical Education~~
- ~~(10) Part 10.—Science~~
- ~~(11) Part 11.—Social Studies]~~

This rule provides for the implementation of educational standards and expectations for all students who attend public schools in the state. The New Mexico content standards with benchmarks and performance standards specify the goals for instruction.

[6.29.1.6 NMAC - Rp, 6.30.2.6 NMAC, 6/30/2009; A, 12/15/2020]

**6.29.1.7 DEFINITIONS:
A. “Ability program of study”**

means an alternative graduation option for students with disabilities. This option is based [upon] on the student’s meeting or exceeding IEP goals and objectives, with or without reasonable accommodations of delivery and assessment methods, referencing skill attainment at a student’s ability level, which provides a clear and coordinated transition to meaningful employment or other appropriate day habilitation or community membership and independent living, as appropriate to meet anticipated functional needs.

~~[B.—“Academic achievement” means the relative success of students in learning and mastering the school subjects that they study as measured by tests of the knowledge and skills that were taught.~~

~~C.—“Academic choices” means required courses,~~

elective courses, co-curricular activities and extra-curricular activities available to students.

D. “Accountability” means that individuals or organizations should be held responsible for improving student achievement and should be either rewarded for their success or sanctioned for their lack of success. In education, accountability requires measurable proof that teachers, schools, districts and states are teaching students efficiently and well.]

[E.] B. “Accreditation” means the official recognition that a school or school district meets required standards. Schools are accredited [in two ways:] by voluntary regional accrediting associations or by state government. Accreditation also refers to the process of certifying that institutions of higher education meet certain standards in relation to such matters as the qualifications of their faculty, the condition of their facilities, and the appropriateness of their curriculum.

[F.] “Achievement” means demonstrated accomplishment and the mastery of a clearly identified essential skill or of knowledge as a consequence of the individual’s effort, learning and practice.

G. “Achievement gap” means the persistent differences in achievement among different groups of students as indicated by scores on standardized tests, grades, levels of educational attainment, graduation rates and other data.

H. “Adequate yearly progress (AYP)” means the state’s measure of yearly progress toward achieving state academic standards, as described in the No Child Left Behind Act of 2001 (NCLB). Adequate yearly progress is the minimum level of improvement that states, school districts and schools shall achieve each year. This progress is determined by a collection of performance measures that a state, its school districts and sub-populations of students within its schools are expected to meet if the state receives Title I, Part A federal funding.]

[I.] C. “Advanced placement (AP)” means a course taught by high school teachers trained in advanced placement course delivery provided through the college board. These courses are more difficult and involve more work than a standard class. AP courses are considered college-level courses and may allow a student to earn college credit, depending [upon] on college [and] or university policies [at an institution the student may later attend].

[J.] “Advisor” means a student’s guidance counselor or other designated school official, which may include teachers assisting students and their parents with course work planning.

K. “Aligned professional development” means professional development that is aligned to the instructional or organizational needs of the school or district, and to the district’s EPSS. Professional development is tied directly to the student achievement data of the school and district.

L. “Annual measurable objective (AMO)” means the target used to determine student performance for NCLB. This law requires states to develop target annual measurable objectives that will determine whether a school, a district or the state as a whole is making adequate yearly progress toward the goals of having all students performing academically at an acceptable rate by the year 2014.

M. “Applied technology education” means using technology in a course.

N. “Articulation” means planning a comprehensive and logical sequence of a program of studies.

O. “Assessment” means measurement. An assessment may be part of a system for testing and evaluating individual students, groups of students, schools or districts. Different types of assessment instruments include: achievement tests, minimum-competency tests, developmental-screening tests, aptitude tests,

observation instruments, performance tasks, portfolio and authentic assessments. Assessments may contain questions in any of a number of formats. Common formats for standardized tests include: multiple-choice, short response and open-ended response.

P. “Benchmark” means a specific, measurable goal or objective for students to meet at various points during the school year. Benchmarks describe what all students shall know and be able to do in a content area by the end of designated grades or levels.]

[Q.] D. “Bilingual multicultural education” means [an instructional program that uses two languages (English and the home language of students) as mediums of instruction in the teaching-learning process:] a program of instruction using two languages, including English and the home or heritage language, as a medium of instruction in the teaching and learning process.

[R.] E. “Career and technical education” means organized programs offering a sequence of courses, including technical education and applied technology education, which are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring an industry-recognized credential, certificate, or degree. This phrase is also referred to as “vocational education” at Section 22-14-1 NMSA 1978.

[S.] “Career and technical education course” means a course with content that provides technical knowledge, skills and competency-based applied learning, and that aligns with the regulations for educational standards and expectations for all New Mexico students who attend schools as defined in the scope of 6.29.1.2 NMAC.]

[T.] E. “Career cluster” means a grouping of occupations in industry sectors based on recognized commonalities. Career clusters provide an organizing tool for developing instruction within the educational system.

[~~U~~.] **G.** “**Career pathways**” means a sub-grouping used as an organizing tool for curriculum design and instruction of occupations or career specialties that share a set of common knowledge and skills for career success.

[~~V~~.] **H.** “**Career readiness program of study**” means an alternative graduation option for students with disabilities. This option is based upon on meeting the department’s employability and career education standards with benchmarks and performance standards as identified in the student’s IEP.

[~~W~~.] **L.** “**Caseload**” means the total number of students receiving special education and speech-only services as special education, for whom a special education teacher or speech language pathologist has responsibility for developing and monitoring the students’ IEPs. “Caseload” may also mean the number of students for which individual support services staff members are responsible.

[~~X~~.] — “**Charter school**” means a school authorized by a chartering authority to operate as a public school. Sections 22-2-1, 22-8-1 through 22-8-47, and 22-8B-1 through 22-8B-17, NMSA, 1978.]

[~~Y~~.] **J.** [“**Chartering agency**”] “**Chartering authority**” means a local school board [district] or [agency] the commission that approves and oversees a charter school.

[~~Z~~.] **K.** “**Commission**” means the public education commission.

[~~AA~~.] — “**Competency-based applied learning**” means ensuring that applied learning courses are aligned with the appropriate content standards, benchmarks and performance standards.]

[~~AB~~.] **L.** “**Class load**” means the number of students for whom a teacher structures activities at a given time.

[~~AC~~.] **M.** “**Content standard**” [is] means a statement about performance that describes what students should know and be able to do in content areas at each grade level.

[~~AD~~.] — “**Core academics**” are the required subjects in middle- and high schools.

————— **AE.** — “**Core curriculum**” means the body of knowledge that all students are expected to learn .]

[~~AF~~.] **N.** “**Correspondence course**” means a form of distance learning [that is] conducted via traditional mail. A correspondence course is used to teach non-resident students by mailing them lessons and exercises, which upon completion, are returned to the correspondence school for grading.

[~~AG~~.] — “**Culturally and linguistically different**” means a student who is of a different cultural background than “mainstream United States culture,” and whose home or heritage language, inherited from the student’s family, tribe or country of origin, is a language other than English.

————— **AH.** — “**Data-based decision making**” means the process of making decisions about curriculum and instruction on the basis of statistical analysis of student performance data and schoolwide performance data.

————— **AI.** — “**Department**” means the New Mexico public education department (PED), which is the state educational agency (SEA) for New Mexico.

————— **AJ.** — “**Diagnostic tools**” means the category of measurement tools informing the effectiveness of instruction, materials or techniques that address the academic needs of students in their performance of expected levels of achievement of learning targets.

————— **AK.** — “**Distance learning**” means the technology and the educational process used to provide instruction for credit or for a grade when the course provider and the distance-learning student are not necessarily physically present at the same time or place. Distance learning does not include educational software that utilizes only on-site teaching.

————— **AL.** — “**District**” means the geographic boundary in which a K-12 set of public schools resides, under the supervision of a locally-

elected board of education (22-4-1 and 22-4-2, NMSA 1978).]

[~~AM~~.] **O.** “**Dual credit program**” means a program that allows high school students to enroll in college-level courses offered by a [public] post-secondary [educational institutions] educational institution that may be academic or career-technical [in nature,] but [may] not be remedial or developmental, and [through which students can] simultaneously to earn credit toward high school graduation and a post-secondary degree or certificate. [(Refer to 6.30.7.6 NMAC.)]

[~~AN~~.] **P.** “**Educational plan for student success (EPSS)**” is the strategic plan written by all school districts and schools to improve student performance.

[~~AO~~.] — “**Elective unit**” means a unit (“credit”) that is not specified as a graduation requirement, but that can be taken to complete the number of units required for graduation.

————— **AP.** — “**Emergency drills**” means the requirement that a total of twelve drills be conducted in each public and private school. These emergency drills shall consist of nine fire drills, two shelter-in-place drills and one evacuation drill at the intervals set forth in Paragraph (1) of Subsection N of 6.29.1.9 NMAC.]

[~~AQ~~.] **Q.** “**English language learner**” means a student whose first or heritage language is not English and who is unable to read, write, speak or understand English at a level comparable to grade-level English proficient peers and native English speakers.

[~~AR~~.] — “**Formative assessment**” means measures of academic achievement during the learning process.]

[~~AS~~.] **R.** “**Free appropriate public education (FAPE)**” means special education and related services that are provided at public expense, under public supervision and direction without charge, which meet the standards of the department in providing appropriate preschool, elementary or secondary education in New Mexico; and which are provided

in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR Sections 300.320 through 300.324.

[AF:] S. “Family Educational Rights and Privacy Act (FERPA)” means rights, pursuant to 20 U.S. Code 1232(g) and 34 CFR Part 99, afforded to parents and students over 18 years of age with respect to the student’s education records, that include: the right to inspect and review the student’s education records within 45 days, the right to request amendment to the student’s education records for various reasons, the right to consent or refuse to consent to disclosures of personally identifiable information in the student’s records (except for those records that FERPA authorizes for disclosure without consent) and the right to file a complaint with the U.S. department of education concerning non-compliance with FERPA.

[AU.] — “Fidelity” means the implementation of a program, strategy, or intervention exactly as it was developed by the vendor, researcher or author. The commitment to fidelity is essential to determine if the change in instruction is based on a program, strategy, or intervention.

AV. — “Final next-step plan” means a next-step plan that shows that the student has committed or intends to commit in the near future to a four-year college or university, a two-year college, a trade or vocational program, an internship or apprenticeship, military service or a job, as stated at 22-13-1.1(M)(1)-NMSA 1978.;

[AW:] T. “Gifted child” means a school-age person as defined in Subsection D of Section 22-13-6 [(D)]-NMSA 1978 whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking meets the eligibility criteria in 6.31.2.12 NMAC and for whom a properly constituted IEP team determines [that special education] services are required to meet the child’s educational needs.

[AX.] — “Grade

configuration” means the grade-band(s) in which schools are organized in a district, such as: K-5, K-6, K-8, 6-8, 7-8.;

[AY:] U. “Heritage language” means a language other than English that is inherited from a family, tribe, community, or country of origin.

[AZ:] V. “Home language” means a language other than English that is the primary or heritage language spoken at home or in the community.

[BA.] — “Honors course” means a course developed locally to meet the needs of accelerated students. Honors courses offer the same curriculum that standard courses offer, but are more challenging. Honors courses are generally faster-paced and cover topics in more depth; however, these courses are not generally considered equivalent to college-level work.;

[BB:] W. “Individuals with Disabilities Education Improvement Act of 2004 (IDEA)” [addresses special needs of individual students with disabilities. Means] means the federal Individuals with Disabilities Education Improvement Act of 2004, 20 U.S. Code Secs. 1401 et seq., including future amendments .

[BC:] X. “Individualized education program (IEP)” means a written statement for a [student] child with a disability that is developed, reviewed, and revised in accordance with 34 CFR [Sections] Secs. 300.320 through 300.324.

[BD.] — “Interim next-step plan” means an annual next-step plan in which the student specifies post-high-school goals and sets forth the course work that will allow the student to achieve those goals, as stated at 22-13-1.1(M)(2) NMSA 1978. The “interim next step plan” includes all next-step plans in grades 9 through 11.;

[BE:] Y. “Laboratory component” means an experience in the laboratory, classroom or the field that provides students with opportunities to interact directly with natural phenomena or with data collected by others using tools,

materials, data collection techniques and models. Throughout the process, students should have opportunities to design investigations, engage in scientific reasoning, manipulate equipment, record data, analyze results, and discuss their findings.

[BF:] Z. “Local educational agency (LEA)” means a local educational agency as defined in 34 CFR Sec. 300.28. The LEA may be a public school district, a state-chartered charter school, or a state educational institution.

[BG.] — “Locally chartered charter school” means a charter school authorized by a local school board.;

[BH:] AA. “Multi-Layered System of Supports (MLSS)” means a coordinated and comprehensive framework that uses increasingly intensive evidence-based academic and behavioral supports that address student needs as evidenced by student data. It is a model for holistic school improvement that provides progress measures for additional supports such as school-based team structures, professional development, health and wellness, and family and community engagement. MLSS satisfies the definition of “multi-tiered system of supports” contained within the ESSA.

[BI.] — “National standards” means an agreement at the national level about what students are supposed to learn in a given subject area at each grade level.

BJ. — “Next-step plan” means an annual personal written plan of studies developed by a student in a public school or other state-supported school or institution, in consultation with the student’s parent and school counselor or other school official charged with course work planning for the student (22-13-1.1(M)(3)-NMSA 1978);

BK. — “New Mexico school boards association (NMSBA)” means the organization made up of the local public school boards and the governing bodies of charter schools in New Mexico.

BL. — “New Mexico standards-based assessment (SBA)” means the collection of

instruments that assess student academic performance annually and the students' progress toward meeting the New Mexico content standards with benchmarks and performance standards:

———— **BM.** ———— **“No Child Left Behind Act (NCLB)”** refers to the reauthorization of the federal Elementary and Secondary Education Act, which was originally passed in 1965. NCLB was passed in fall 2001 and signed into law in early 2002.

———— **BN.** ———— **“Occupational safety and health administration (OSHA)”** means a division of the U.S. department of labor.

———— **BO.** ———— **“Online”** means utilizing the internet.

———— **BP.** ———— **“Pathway”** means the academic plan of study for a student to achieve graduation, including courses to take in Grades 9-12.]

[**BQ.**] **AB.** **“Performance standard”** means the statement of a standard that describes the specific level of mastery expected in achieving the New Mexico content standards with benchmarks [and performance standards].

[**BR.** ———— **“Positive behavior support (PBS)”** means implementing individualized, classroom and school-wide behavior interventions and strategies to decrease inappropriate and disruptive behaviors:

———— **BS.** ———— **“Primary language”** means the first language a child learns, also called the “native language.”]

[**BF.**] **AC.** **“Prior written notice (PWN)”** means the written notice that goes to parents from the school district, informing them [that] the district proposes or refuses to initiate or change the identification, evaluation or educational placement of their child, or the provision of FAPE to the child, and which meets the requirements of 34 CFR Sections 300.503 and 300.504.

[**BU.** ———— **“Professional development”** means the continuing education process for teachers and administrators to provide them with the knowledge and skills needed to perform their jobs well.

———— **BV.** ———— **“Proficiency”** means the mastery of skills and knowledge for a specific grade or subject.

———— **BW.** ———— **“Proficient”** means one of four classifications of achievement levels of districts, schools and students based on the SBA and schools on the *national assessment of educational progress* (NAEP).

———— **BX.** ———— **“Program of study”** is a progressive continuum of courses that may be offered across grades 9-14. A program of study is a means to provide technical training, training to prepare for employment and training to prepare for entry into post-secondary education.

———— **BY.** ———— **“Response to intervention (RtI)”** means a multi-tiered organizational framework that uses a set of increasingly intensive academic or behavioral supports, matched to student need, as a system for making educational programming and eligibility decisions. It is a continuum of school-wide support that contributes to overall comprehensive school improvement efforts. In New Mexico, the RtI framework is called the “the three-tier model of student intervention.”

———— **AE.** ———— **“SAT”** means the student assistance team, which is a school-based group of people whose purpose is to provide additional educational support to students experiencing difficulties preventing them from benefitting from general education.]

[**BY.**] **AD.** **“School improvement framework”** means a document written by the department that is used by public schools and districts to develop and monitor their school improvement plans. The school improvement framework shall align with the district's EPSS.

[**BZ.** ———— **“Schoolwide”** means a Title I program model implemented at a school where all students could potentially benefit from Title I funding.

———— **CA.** ———— **“Scientifically-based research”** means research that involves the application of rigorous, systematic and objective procedures

to obtain reliable and valid knowledge relevant to educational activities and programs:

———— **CB.** ———— **“Secretary”** means the secretary of the New Mexico public education department.]

[**CE.**] **AE.** **“Short-cycle assessment”** is a formative [measure] assessment that is regularly used to assess student performance over a short time period.

[**CD.** ———— **“Skills”** are competencies or abilities, mental or physical, which may be improved by practice.]

[**CE.**] **AF.** **“Socioeconomic status”** means the stratification of groups of people by status ascribed through social constructs such as race, gender, ethnicity, educational attainment, economic resources, language, and national origin.

[**CF.**] **AG.** **“Standard program of study”** means a program of study that is based [upon] on the student's meeting or exceeding all requirements for graduation as specified in Section 22-13-1.1 NMSA 1978.

[**CG.** ———— **“Standardized grading system”** means that all schools and districts are required by SY 2009-2010 to implement a standardized grading system for grades 5 through 12 (Section 22-2-8.13, NMSA 1978).

———— **CH.** ———— **“State-chartered charter school”** means a charter school authorized by the public education commission.

———— **CI.** ———— **“State education agency (SEA)”** is the agency primarily responsible for supervising a state's public schools.]

[**CJ.**] **AH.** **“State educational institution”** means a school that is under the direction of a state agency other than the department or a separate board of regents.

AI. **“Student assistance team (SAT)”** means a school-based group of people whose purpose is to provide additional educational support to students experiencing difficulties preventing them from benefitting from general education.

AJ. “System of assessments” means the collection of instruments that assess student academic performance annually and the students’ progress toward meeting the New Mexico content standards with benchmarks and performance standards.

CK. “Strategy” means a plan or tactic to solve a problem or carry out a decision. In education, a strategy refers to almost every action that a teacher or a student does in a classroom, such as asking a question, reading a story, figuring out the meaning of a word, planning the next day’s lesson.

CL. “Student and teacher accountability reporting system (STARS)” means the data reporting system directed by the department.

CM. “Student assistance team (SAT)” is a school-based group of people whose purpose is to provide additional tier II support (consistent with requirements of the three-tier model of student intervention provided in Subsection D of 6.29.1.9 NMAC) to students who are experiencing academic or behavioral difficulties that are preventing them from benefiting from general education, because they are either performing below or above expectations. (Public agencies may have similar names used for this team, such as “student success team” or “student support team.”)

CN. “Targeted assistance” means a Title I program model where Title I services are provided to a small number or a particular group of students.

CO. “Technical assistance” means support and guidance provided to states, districts, schools and classrooms.

CP. “Transition” means the goal of creating a seamless transition from one part of the educational system to the next.]

EQ.] AK. “Transition plan” means a coordinated set of activities for a student with a disability, which specifies special education and related services designed to meet a student’s unique

needs and to prepare the student for future education, employment, and independent living. The use of individualized educational program (IEP) transition planning, graduation planning and post-secondary transitions is described in Subparagraph (a) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. [6.29.1.7 NMAC - Rp, 6.30.2.7 NMAC, 6/30/2009; A, 10/31/2011; A, 12/15/2020]

6.29.1.8 IMPLEMENTATION:

This regulation shall assist in the implementation of standards for excellence through the use of the *educational plan for student success (EPSS)*, content standards with benchmarks and performance standards, and additional program and procedural requirements specified in this regulation. The primary mechanism for planning and implementation is the *educational plan for student success (EPSS)*.

A. District responsibilities for the EPSS. The EPSS is a strategic improvement plan that is written or revised based on trend data and the academic achievement of the school and district. Each district is required to develop, implement, monitor and evaluate the plan on an annual basis. Additionally, the district shall ensure that a site-level EPSS is developed by each school within the district and by each charter school for which the district is the chartering agency. State-chartered charter schools shall develop a site-level EPSS. Districts with fewer than 600 students may write only one EPSS for the entire district; however, a district with a school in or receiving a school improvement status classification is not eligible for this option. The EPSS shall be guided by the following four questions:

(1) What is the current level of performance compared with the annual measurable objectives (AMOs)? This requires a review of student performance data using [SBA] system of assessments trends, available short-cycle assessments and other assessments used at local sites.

(2) Where does the district or charter school need to be, compared with the AMOs? This requires a review of overall goals/target areas (performance indicators).

(3) How will the district or charter school achieve its stated goals/target areas? This requires development of strategies and activities for improvement.

(4) How does the district or charter school know it is meeting short-term and annual goals? This requires a review of available short-cycle and [SBA] system of assessments data.

B. *The school improvement framework. The school improvement framework is the document that is used by public schools and districts to develop, implement, monitor and evaluate schools in the school improvement process. The department shall develop the framework in alignment with applicable state and federal laws. It shall be revised annually or as necessary, and approved by the secretary.*

[6.29.1.8 NMAC - Rp, 6.30.2.9 NMAC, 6/30/2009; A, 10/31/2011; A, 12/15/2020]

6.29.1.9 PROCEDURAL REQUIREMENTS:

A. Duties and powers of the local board of education. In addition to the powers and duties set out in Section 22-5-4 NMSA 1978 and Section 22-1-1 et seq. NMSA 1978 of the Public School Code, the local board of education shall:

(1) review, approve, and support the district’s department approved improvement plan and each school site-level department approved improvement plan, or the charter school’s department approved improvement plan;

(2) employ and evaluate the local superintendent or charter school administrator;

(3) develop a planned program of training annually, in which each member of the board participates, to assist in the

performance of specified duties; this planned program shall align with the district's EPSS; training shall include the following requirements and procedures.

(a)

All local school board members shall receive a total of five hours of annual training provided by the New Mexico school boards association (NMSBA) and shall include a minimum of one hour of training during each term in office on equity and culturally and linguistically responsive practices.

(b)

Newly elected or appointed local school board members, who are in office for less than a year, shall receive three of the five hours from attending a training course developed by the department and sponsored by the [~~New Mexico school boards association (NMSBA)~~] NMSBA. The additional two hours of annual training for new board members shall consist of sessions sponsored by the NMSBA and approved by the department.

(c)

All local school board members who have been in office for one or more years shall attend five hours of annual training sponsored by the NMSBA and approved by the department.

(d) In

order to be credited with attendance at these courses, each attendee shall comply with written attendance procedures established by the department. Prior to September 1 of each year, the NMSBA shall provide each local superintendent with a list of training hours earned annually by each local school board member. The school district's accountability report shall include the names of those local school board members who failed to attend annual mandatory training (see Subsection G of Section 22-2C-11 NMSA 1978);

(4) delegate

administrative and supervisory functions to the local superintendent or charter school administrator;

(5) refrain

from involvement in delegated administrative functions;

(6) review

district or charter school policies on an annual basis and revise as needed;

(7) award

high school graduation diplomas to students who have successfully completed graduation requirements;

(8) ensure the

alignment of district or charter school curricula with New Mexico content standards with benchmarks and performance standards;

(9) ensure that

district or charter school funds are appropriately managed and disbursed in accordance with laws, regulations and terms of grants;

(10) approve

the annual district or charter school budget;

(11) be

responsible for oversight of revenue and expenditures within the district or charter school budget; and

(12) coordinate

with the district's superintendent to establish the procedures for discharging and terminating school employees pursuant to Section 22-5-4 NMSA 1978 and the School Personnel Act (Chapter 22, Article 10-A NMSA 1978).

B. Duties and powers

of the governing body of a charter school. In addition to the powers and duties set out in Section 22-5-4 NMSA 1978 and Section 22-1-1 et seq. NMSA 1978 of the Public School Code, the governing body of a charter school shall:

(1) review,

approve and support the district's department approved improvement plan and each school site-level department approved improvement plan, or the charter school's department approved improvement plan;

(2) employ

and evaluate the local superintendent or charter school administrator;

(3) develop a

planned program of training annually, in which each member of the governing body participates, to assist in the performance of specified duties; this planned program shall align with all requirements of statute and any

other department regulations;

(4) delegate

administrative and supervisory functions to the local superintendent or charter school administrator;

(5) refrain

from involvement in delegated administrative functions;

(6) review

district or charter school policies on an annual basis and revise as needed;

(7) award

high school graduation diplomas to students who have successfully completed graduation requirements;

(8) ensure the

alignment of district or charter school curricula with New Mexico content standards with benchmarks and performance standards;

(9) ensure that

district or charter school funds are appropriately managed and disbursed in accordance with laws, regulations and terms of grants;

(10) approve

the annual district or charter school budget;

(11) be

responsible for oversight of revenue and expenditures within the district or charter school budget; and

(12) coordinate

with the district's superintendent to establish the procedures for discharging and terminating school employees pursuant to Section 22-5-4 NMSA 1978 and the School Personnel Act (Chapter 22, Article 10-A NMSA 1978).

C. Duties and powers

of the district superintendent or the administrator of a charter school. In addition to the powers and duties set out in Section 22-5-14 NMSA 1978 of the Public School Code, the local superintendent (or charter school administrator, where relevant) shall:

(1) administer

local board's (or governing body of a charter school's) policies, state and federal requirements and applicable laws, including the Public School Code;

(2) be

accountable for student achievement; budget management; expenditure of funds; dissemination of

information; district or charter school communications; development, implementation and evaluation of the EPSS and all other district or charter school business;

(3) review, approve and support the district EPSS and each school site-level EPSS or the charter school's EPSS;

(4) attend all local board or governing body of a charter school's meetings or, when necessary, designate a licensed administrator to attend;

(5) ensure that school patrons and the public are informed and involved in the acquisition, planning and development of school facilities and that students are provided with adequate facilities which conform to state and federal mandates;

(6) be accountable for student safety (see 6.12.6 NMAC - *School District Wellness Policy*);

(a) ensure that all students are supervised while on school property and while attending or traveling to school events or activities on school-provided transportation;

(b) ensure that all buildings, grounds and facilities provide a safe and orderly environment for public use (see Subsection P of 6.29.1.9 NMAC - *School Facilities and Grounds*; Paragraph (8) of Subsection D of 6.12.6.8 NMAC - *School District Wellness Policy* and 6.19.3 NMAC - *Unsafe School Choice Option*);

(7) administer and implement the district's or charter school's approved staff accountability plan and procedures;

(8) ensure that a process is in place to identify, train, assign and support the use of unlicensed content-area experts as resources in classrooms, team teaching, online instruction, curriculum development and other purposes as determined by the superintendent, which shall include, but not be limited to, the following:

(a) establish the specific expertise of the person;

(b) obtain a background check and fingerprint records;

(c) provide the person with a three-hour training, prior to entering a classroom, about how the school operates, appropriate teaching methods and expectations of principal and assigned teacher;

(d) establish a start date and ending date for the person;

(e) ensure that the person is under the direct supervision of the teacher assigned when students are present; and

(f) provide for an evaluation of services upon completion of the assignment;

(9) shall issue the following notifications in accordance with Section 22-10A-16 NMSA 1978, in addition to any other parental notification requirements contained in the [~~No Child Left Behind Act of 2001 (PL 107-110, 20 US Code Section 6301 et seq.)~~] federal Elementary and Secondary Education Act of 1965, as amended; a school district or charter school shall issue these notifications in English and, to the extent possible, in the language of the parent or guardian (if it is known that the parent or guardian's [primary home or heritage language is not English]); the district or charter school shall retain a copy of all notifications and shall ensure that information required under this paragraph is available to the public upon request.

(a) Within 60 calendar days from the beginning of each school year, a school district or charter school shall issue a notice to parents informing them that they may obtain written information regarding:

(i) the professional qualifications of their child's teachers, instructional support providers and school principals or charter school administrators;

(ii) other descriptive information, such as whether their teacher has met all

qualifications for licensure for the grade level and subjects being taught; (iii)

whether their child's teacher is teaching under a teaching or assignment waiver; (iv)

the teacher's degree major and any other license or graduate degree held by the teacher; (v)

the qualifications of any instructional support providers that serve their child.

(b) When, by the end of a consecutive four-week period, a child is still being taught by a substitute teacher or a teacher not holding the requisite licensure or licensure endorsement, the school district or charter school shall provide written notice to the parent or guardian that the child is being taught by a substitute teacher or a teacher not holding the requisite licensure or licensure endorsement.

(c) No class may be taught by a substitute teacher, in lieu of a licensed teacher under contract, for more than 45 school days during a school year.

(d) The secretary shall consider deviations from the requirements of Subparagraph (c) of Paragraph (9) of Subsection C of 6.29.1.9 NMAC when a written request by a local superintendent or charter school administrator is submitted. The request shall include:

(i) the size of the school district;

(ii) the geographic location of the district;

(iii) demonstrated efforts to employ an appropriately-licensed person in the area(s) of need;

(iv) the historical use of substitutes in the district; and

(v) an estimation of the number of days that a substitute will be utilized that exceed the 45 day limit.

D. Licensed staff and administrators.

(1) The licensed staff shall exercise duties

specified in law and those assigned by the local district or charter school.

(2) As required by state and federal law, all licensed staff and administrators shall be evaluated on an annual basis.

(3) The detection and reporting of child abuse or neglect is required by both the Children’s Code (32A-4-3 NMSA 1978) and the Public School Code (22-5-4.2 NMSA 1978). Abuse of a child under the Children’s Code refers to the physical, sexual, emotional or psychological abuse of a child by a parent, guardian or custodian. According to the Children’s Code, failure to report abuse or neglect of a child is a misdemeanor. The terms “abuse” and “neglect” are defined in detail in Section 32A-4-2 NMSA 1978 of the Children’s Code. There is also the crime of child abuse, which consists of anyone who knowingly, intentionally, negligently or without cause, causes or permits a child to be placed in a situation of endangerment to the child’s life or health, torturing or cruelly confining a child, or exposing a child to the inclemency of weather. To address the detection and reporting of child abuse or neglect in public schools:

(a) school districts and charter schools shall adopt written policies that establish a process for the coordination and internal tracking of child abuse or neglect reports made by district personnel;

(b) school districts and charter schools shall include in their policies a requirement that all personnel shall immediately report suspected child abuse or neglect to either a law enforcement agency, the New Mexico children, youth and families department, or a tribal law enforcement or social services agency for any Indian child residing on tribal land;

(c) school districts and charter schools shall not require their personnel to first report to or notify designated school personnel or go through their chain of command before making

the mandatory report described in Subparagraph (a) of Paragraph (3) of Subsection D of 6.29.1.9 NMAC;

(d) no school district or charter school shall adopt a policy that relieves any personnel of their duty to report suspected child abuse or neglect;

(e) school personnel detecting suspected child abuse or neglect, including the suspected crime of child abuse, shall immediately - i.e., the same day - report their observations to one of the offices designated in Subparagraph (b) of Paragraph (3) of Subsection D of 6.29.1.9 NMAC;

(f) all licensed school personnel, including substitute teachers, educational assistants, school nurses, school counselors, school psychologists and other instructional service providers shall complete training provided by the department in the detection and reporting of child abuse or neglect, within their first year of employment by, or providing services to, a school district or charter school;

(g) all persons who have never received training required under Subparagraph (f) of Paragraph (3) of Subsection D of 6.29.1.9 NMAC shall make arrangements to receive training before the end of their current school year;

(h) the department shall develop a training program to detect child abuse or neglect, in coordination with the New Mexico human services department and the New Mexico department of health. This program shall be made available to all colleges, school districts and charter schools in the state offering teacher preparation courses;

(i) nothing in Paragraph (3) of Subsection D of 6.29.1.9 NMAC shall be interpreted as preventing a school district or charter school from developing and providing its own training for all staff to detect and report suspected child abuse or neglect, in addition to the training offered by the department.

[E. — Student intervention system. The school and district shall follow a three-tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning or behavior.

(1) In tier 1, the school and district shall ensure that adequate universal screening in the areas of general health and well-being, language proficiency status and academic levels of proficiency has been completed for each student enrolled. If data from universal screening, a referral from a parent, a school staff member or other information available to a school or district suggests that a particular student needs educational support for learning or behavior, then the student shall be referred to the SAT for consideration of interventions at the tier 2 level.

(2) In tier 2, a properly constituted SAT at each school, which includes the student’s parents and the student (as appropriate), shall conduct the student study process and consider, implement and document the effectiveness of appropriate research-based interventions utilizing curriculum-based measures. As part of the child study process, the SAT shall address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and learning styles and instructional delivery mechanisms in order to rule out other possible causes of the student’s educational difficulties. The SAT shall create no undue delay for full initial evaluation to determine eligibility for special education for a student who is identified as homeless or in foster care under the state’s foster care system or based on criteria to assess housing stability status under the federal McKinney-Vento Act and the 2015-ESSA Title IV, Part B, due to the high mobility of this specific population group. When it is determined that a student has an obvious disability or a serious and urgent problem, the SAT shall address the student’s

needs promptly on an individualized basis, which may include a referral for a full, initial evaluation to determine possible eligibility for special education and related services consistent with the requirements of Subsections D-F of 6.31.2.10 NMAC and federal regulations at 34 CFR Sec. 300.300.

(3) In tier 3, a student has been identified as a student with disability or gifted under the state criteria for giftedness deemed eligible for special education and related services, and an IEP is developed by a properly constituted IEP team, pursuant to Subsection B of 6.31.2.11 NMAC and federal regulations at 34 CFR Sec. 300.321.

(4) The department's manual, *the student assistance team and the three-tier model of student intervention*, shall be the guiding document for schools and districts to use in implementing the student intervention system.]

E. Student intervention system. The school and school district shall follow the multi-layered system of supports (MLSS), which is a three-layer model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning or behavior. All students shall have access to layer 1, 2, and 3 interventions without a need to convene a SAT team or a referral to special education or related services. At any layer, a referral from a parent, a school staff member, or if other information available to a school or district suggests that a particular student needs educational support for learning or behavior, then the student shall be referred to the SAT. Likewise, at any layer, a parent may request initial evaluation to determine whether a student is a child with a disability requiring special education and related service, in accordance with 6.31.2.10 NMAC. There are no additional documentation requirements under the MLSS outside of what is already required for education professionals.

(1) In layer 1, the school and school district

shall ensure that adequate universal screening in the areas of general health and well-being, language proficiency status, and academic levels of proficiency has been completed for each student enrolled. If data from universal screening and progress monitoring suggests that a particular student is in need of additional behavioral and academic supports, then teacher teams shall make a determination on whether or not the student would benefit from layer 2 interventions. Teacher teams, when making a determination for moving a student up or down a layer may consult with non-teacher staff such as counselors, paraprofessionals, administrators, and ancillary personnel to inform the teacher team on how to plan and implement relevant learner interventions in the general education environment.

(2) In layer 2, a properly-constituted teacher team shall conduct the student study process and consider, implement, and document the effectiveness of appropriate evidence-based interventions utilizing curriculum-based measures. As part of this process, the teacher team shall address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and learning styles and instructional delivery mechanisms in order to rule out other possible causes of the student's educational difficulties.

(3) In layer 3, students are provided with intensive academic and behavioral supports that are progress monitored on a bi-weekly basis. At the end of each progress monitoring cycle, the teacher team shall evaluate the efficacy of the supports provided using all available data. At that time, the teacher team may decide whether to continue with the current support, change the intensity, or nature of support. If progress monitoring data suggests that the learner has benefited from provided layer 3 supports and does not show concern for recidivism, then the teacher team may decide to move the student out of receiving layer 3 supports.

(4) All students shall have access to the MLSS layers of screening and support without a referral to SAT or an evaluation to determine eligibility for special education and related services. Nothing in this section prevents a school district from evaluating a student during the provision of any layer of MLSS to determine whether the student is a child with a disability requiring special education and related services. A parent may request an initial special education at any time during the public agency's implementation of MLSS, and a school or school district may determine a referral to special education is necessary at any time during the implementation of MLSS if the student is suspected of having a disability. If a school district rejects a request for initial special education evaluation, the parent may use the IDEA procedural safeguards in 34 CFR Secs. 300.506 through 5007 to dispute the rejection of the request to evaluate.

(5) The department's manual, *Multi-Layered System of Supports*, shall be the guiding document for schools and districts to use in implementing the student intervention system.

F. Records and reports.

(1) Each district and charter school shall maintain and treat all personally identifiable educational records in accordance with the Family Educational Rights and Privacy Act (FERPA), the implementing regulations set forth at 34 Code of Federal Regulations, Part 99 and Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978.

(2) All records shall be safe from fire and theft and stored in a retrievable manner. All student records, including disciplinary and grading records, shall be retained and disposed of pursuant to 1.20.2 NMAC.

(3) Transcripts and copies of pertinent records of students transferring from one school

to another, including disciplinary records with respect to suspension and expulsion, shall be forwarded promptly upon written request by the receiving school.

(4) Local school boards and governing bodies of charter schools shall establish policies providing for inspection of education records by students and parents.

(5) Effective July 1, 2009, after the administration of the [eleventh grade] high school [SBA] system of assessments, school districts and charter schools are required to record test results on each student's official transcript. The information recorded shall include the following:

(a) district and high school administering the examination;

(b) date of examination administration;

(c) results of the examination for each subject area tested; and

(d) reports of the results in a format and language that is understandable to parents.

G. Organization of grade levels and establishing/closing schools. Any change in a school district or charter school's organizational pattern, including the establishment or closing of a school, shall have the secretary's approval prior to implementation. Requests for change shall be submitted using the department's *organization of grade levels and establishing/closing school waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request. The waiver request shall outline the expected educational benefits.

H. Class loads. Class loads shall be in compliance with the

most current class load requirements in Section 22-10A-20 NMSA 1978 and Section 22-5-15 NMSA 1978.

(1) The individual class load for elementary school teachers shall not exceed 20 students for kindergarten, provided that any teacher in kindergarten with a class load of 15 to 20 students shall be entitled to the assistance of an educational assistant.

(2) The average class load for elementary school teachers at an individual school shall not exceed 22 students when averaged among grades one, two and three, provided that any teacher in grade one with a class load of 21 or more shall be entitled to the full-time assistance of an educational assistant.

(3) The average class load for an elementary school teacher at an individual school shall not exceed 24 students when averaged among grades four, five and six.

(4) The daily teaching load per teacher for grades seven through 12 shall not exceed 160 students, except the daily teaching load for teachers of required English courses in grades seven and eight shall not exceed 135, with a maximum of 27 students per class; and the daily teaching load for teachers of required English courses in grades nine through 12 shall not exceed 150 students, with a maximum of 30 students per class. The teaching load for teachers assigned to laboratories and shops shall adhere to the current workplace safety codes of the industry.

(5) Students receiving special education services integrated into a regular classroom for any part of the day shall be counted in the calculation of class load averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class load averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in determining average class loads. In elementary schools

offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the school district.

(6) The secretary may waive the individual school class load requirements established in this section. Waivers shall be applied for annually, and a waiver shall not be granted for more than two consecutive years. Requests for class load waivers shall be submitted using the department's *class size waiver request form*.

This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request. Waivers may only be granted if a school district or charter school demonstrates:

(a) no portable classrooms are available;

(b) no other available sources of funding exist to meet the need for additional classrooms;

(c) the district or charter school is planning alternatives to increase building capacity for implementation within one year; and

(d) the parents of all children affected by the waiver have been notified in writing of the statutory class load requirements; that the school district or charter school has made a decision to deviate from these class load requirements; and of the school district's or charter school's plan to achieve compliance with the class load requirements.

(7) If a waiver is granted pursuant to Paragraph (6) of Subsection H of 6.29.1.9 NMAC to an individual school, the average class load for elementary school teachers at that school shall not exceed 20 students in kindergarten and grade one, and shall not exceed 25 students when averaged among grades two, three, four, five and six.

(8) Each school district or charter school shall report to the department the size and composition of classes subsequent to the 40th day report and the December 1 count. Failure to meet class load requirements within two years shall be justification for the disapproval of the school district's or charter school's budget by the secretary.

(9) The department shall report to the legislative education study committee by November 30 of each year regarding each school district's or charter school's ability to meet class load requirements imposed by law.

(10) Notwithstanding the provisions of Paragraph (6) of Subsection H of 6.29.1.9 NMAC, the secretary may waive the individual class load and teaching load requirements established in this section upon demonstration of a viable alternative curricular plan and a finding by the department that the plan is in the best interest of the school district or charter school; and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff. The department shall evaluate the impact of each alternative curricular plan annually. Annual reports shall be made to the legislative education study committee. Requests for alternative curricular plans shall be submitted using the department's *collaborative school improvement programs waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request.

I. Student/staff caseloads in gifted and special education.

(1) The student/staff caseload shall not exceed 35:1 for a special education teacher and 60:1 for a speech-language

pathologist for special education services or speech-only services, in which properly licensed special education teachers or speech-language pathologists travel from class to class or school to school, providing services to students with disabilities whose individualized education programs (IEPs) require a minimal amount of special education. (A minimal amount of special education services shall not exceed 10 percent of the school day/week.)

(2) The student/staff caseload shall not exceed 24:1 for a special education teacher and 35:1 for a speech-language pathologist for special education services or speech-only services which properly-licensed special education teachers or speech-language pathologists provide to students with disabilities whose IEPs require a moderate amount of special education. (A moderate amount of special education services shall be less than 50 percent of the school day.)

(3) The student/staff caseload shall not exceed 15:1 for special education services in which properly licensed special education teachers provide services to students with disabilities whose IEPs require an extensive amount of special education for a portion of the school day as appropriate to implement the plan. (An extensive amount of special education services shall be provided 50 percent or more of the school day.)

(4) The student/staff caseload shall not exceed 8:1 for special education services in which a properly licensed professional provides services to students with disabilities whose IEPs require a maximum amount of special education. (A maximum amount of special education services shall be provided in an amount approaching a full school day.)

(5) The student/adult caseload shall not exceed 4:1 for center-based special education services in which one of the adults in the program is a properly licensed professional providing three- and four-year old children with the

amount of special education needed to implement each child's IEP.

(6) The student/adult caseload shall not exceed 2:1 for center-based special education services in which three- and four-year old children have profound educational needs.

(7) Adequate student/staff caseloads shall be provided to appropriately address needs identified in the IEPs. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to students with disabilities under Part B of IDEA.

(8) If the student/staff caseload ratio exceeds the standards provided above, a request for waiver shall be submitted to the department for review and approval by the secretary.

J. Length of school day and year.

(1) The district or charter school shall be in compliance with length of school day and year requirements as defined in Section 22-2-8.1 NMSA 1978. Within statutory requirements, the local board or governing body of a charter school determines the length of the school year, which includes equivalent hours. The local board or governing body of a charter school may delegate this authority to the superintendent or charter school administrator who, in turn, may delegate to others.

(2) Time for home visits/parent-teacher conferences. The local board or governing body of a charter school may designate a prescribed number of hours within the school year for home visits, to develop next-step plans for students or parent-teacher conferences up to the following maximum hours: kindergarten: 33 hours; grades 1 through 6: 22 hours; and grades 7 through 12: 12 hours.

(3) All students shall be in school-directed

programs, exclusive of lunch, for a minimum of the following:

(a) kindergarten, for half-day programs: two and one-half (2 and 1/2) hours per day or 450 hours per year; or, for full-day programs: five and one-half (5 and 1/2) hours per day or 990 hours per year;

(b) grades one through six: five and one-half (5 and 1/2) hours per day or 990 hours per year; and

(c) grades seven through twelve: six hours per day or 1,080 hours per year.

(4) Testing and assessments are considered part of instructional hours. One group of students cannot be dismissed while another group of students is testing, unless the students being dismissed already have approved extended-day plans in place for participating in the minimum instructional hours required.

(5) Dismissing students or closing school for staff development and participation in other non-instructional activities does not count toward the minimum instructional hours required. This time is to be built into a district and school schedule as an add-on. Early-release days may be built into a district or charter school calendar when the minimum instructional hours' requirement is otherwise being met.

(6) The student lunch period each day shall be at least 30 minutes. Lunch recess shall not be counted as part of the instructional day.

(7) Districts or charter schools may request a waiver from the secretary if the minimum length of school day requirement creates an undue hardship. Such requests shall be submitted using the department's *instructional hours waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy

requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request.

Requests shall provide documentation that the following conditions exist:

(a) the educational, societal or fiscal consequences of operating the minimum length of a school day/ year significantly impede the district's ability to provide a quality educational program; and

(b) the district or charter school has thoroughly investigated alternatives other than shortening the length of a school day/year in order to address the identified concerns.

(8) When an emergency arises and the emergency affects the required hours, the local superintendent or charter school administrator shall request in writing approval from the secretary regarding the manner in which the lost instructional hours will be made up, or requesting an exemption from the required instructional hours.

K. Graduation requirements.

(1) The New Mexico ~~[eleventh-grade]~~ high school [SBA] system of assessments. The district or charter school shall be in compliance with requirements as specified in Section 22-13-1.1 NMSA 1978 and Subsection L of Section 66-7-506 NMSA 1978 (offering driver education, service learning and financial literacy as electives). The department specifies that students shall meet all graduation requirements in order to be eligible to receive a diploma. This includes the requirement of passing the ~~[eleventh-grade]~~ high school [SBA] system of assessments.

(2) The next step plan. Each student shall complete a next step plan for each high school year. For students with individualized education programs (IEPs), the transition plan substitutes for the next step plan. The next step plan requires that:

(a) each grade-level next step plan shall

be completed within the last 60 school days of the preceding school year (for example, the 9th grade interim next step plan shall be made before the end of the 8th grade year);

(b) only one grade-level next step plan shall be completed for a student each year;

(c) the development of the next step plan shall include the student, the student's parent or guardian and the advisor, but may include additional relevant parties;

(d) to write the next step plan, the advisor shall consult with the student and the student's parent or guardian on academic choices that target the student's interests and meet graduation requirements;

(e) the next step plan shall address career clusters in career and technical education, academic support and study skills, extracurricular experiences and out-of-school activities, exposure to post-secondary education and career options, family and social supports, assessments, credentials and any other relevant information; as part of the next step plan, the advisor shall disseminate and share information concerning advanced placement, honors, dual-credit and distance learning programs;

(f) the next step plan determines whether or not the student is on track with graduation requirements; the plan ensures that gaps in courses and test-taking are filled;

(g) the next step plan may be made in large-group, small-group or individual student settings;

(h) the advisor has the responsibility to see that the student is reasonably informed about curricular and course options, opportunities available that lead to broader post-high school options, and alternative opportunities available if the student does not finish a planned curriculum;

(i) the next step plan shall be signed by

the student, the student’s parent or guardian and the advisor;

(j)

the completed next step plan shall be filed with the school principal or charter school administrator and only the final next step plan shall be filed in the student’s cumulative file upon graduation;

(k)

during the development of the student’s next step plan for the eleventh grade [~~and no later than the spring of the tenth grade~~], a plan allowing the student to complete a fourth mathematics course other than algebra 2 may be developed using data from the student’s high school short-cycle assessments, the student’s most recent [SBA] system of assessments score in mathematics, other relevant assessment scores and coursework grades and educational career plans recorded in the student’s next step plan;

(l)

for the student to take four mathematics courses that contain a lesser content than that recommended for inclusion in algebra 2 or its equivalent, the student’s parent shall provide written, signed permission on the student’s next step plan; parental signature on the next step plan for the eleventh grade indicating the mathematics courses the student will take shall serve as the required signed permission.

(3) Transfer

of credits. For students enrolling or re-enrolling in public schools, local school boards or governing bodies of charter schools will establish policies as follows.

(a)

Credits shall be transferable with no loss of value between schools that are accredited by a state board of education in the United States, United States territories, Puerto Rico, the freely-associated states and outlying areas of the United States, department of defense schools or other authorized body.

(b)

Policies of the local school board or the governing body of a charter school, for students transferring from

home schools, private schools or foreign schools to the public schools, will be in accordance with Subsection D of Section 22-1-4 NMSA 1978.

(c)

Acceptance of credits earned through correspondence extension study, foreign study, home study courses or non-department accredited, non-public schools is determined by the policy of the local school board or the governing body of a charter school.

(4)

Correspondence courses. For students currently enrolled in public schools, local school boards or governing bodies of charter schools will establish policies addressing the use of correspondence courses to meet graduation requirements.

(a)

Policies should be based on the following circumstances:

(i)

when road conditions or distance from access to school transportation prohibit regular daily attendance;

(ii)

when a student cannot attend school due to prolonged illness or recovery from injury, as part of the individual plan to address the student’s educational needs developed in accordance with applicable state and federal regulations governing the education of students with disabilities;

(iii)

when the occupation of the parent or student requires prolonged periods of time away from the school district;

(iv)

when a student is housed in a long-term residential facility; or

(v)

to enhance or supplement graduation requirements based on a student’s individual need(s).

(b)

Schools counting credit for correspondence courses for enrolled students shall ensure that such courses are part of the student’s individual plan for graduation. If applicable, such courses are part of the IEP developed in accordance with applicable state and federal regulations governing the education of students with disabilities, and

schools shall ensure that assistance is available to students as needed to complete the correspondence courses.

(c)

Correspondence courses used to provide graduation credit to currently enrolled students shall be provided by:

(i)

a school accredited by the state board of education of the state in which the school is located, or

(ii)

a college or university with regional accreditation to perform such function.

(5) Dual credit

program. “Dual credit program” means a program that allows high school students to enroll in college-level courses offered by public post-secondary educational institutions that may be academic or career-technical in nature, but may not be remedial or developmental, and through which students can simultaneously earn credit toward high school graduation and a post-secondary degree or certificate. (Refer to 6.30.7.6 NMAC.)

(6) Distance

learning courses. “Distance learning” means the technology and the educational process used to provide instruction for credit or for a grade, when the course provider and the distance-learning student are not necessarily physically present at the same time or place. Distance learning does not include educational software that utilizes only on-site teaching. Any program involving distance learning shall be governed by the department’s distance learning rule, found at 6.30.8 NMAC.

(7)

Standardized grading system. A standardized grading system is required to be implemented by each district and charter school. The system shall include the following components:

(a) a

written report to parents regarding the performance of their children tested with the New Mexico standards-based assessments;

(b) for grades 3-12, a standardized alphabetic grading system, based on the 4.0 scale (i.e., a minimum of 4.0 or higher=A, 3.0=B, 2.0=C, 1.0=D); certain courses may be assigned a weighted score according to local policy;

(c) alignment of all district and school curriculum to the New Mexico content standards with benchmarks and performance standards; and

(d) all school report cards shall include the results of standards-based assessments and may augment the standardized grading system with a narrative or other method that measures a student’s academic, social, behavioral or other skills.

(8) Final examination. A final examination shall be administered to all students in all courses offered for credit.

(9) Credit. Credit cannot be earned twice for the same course.

(10) Other elective credit. Elective credit courses shall meet all New Mexico content standards with benchmarks and performance standards, and shall:

(a) include a written, sequential curriculum;

(b) be taught by an instructor who is appropriately licensed and endorsed to teach the course;

(c) include a final examination; and

(d) be reviewed and approved by the local board of education or governing body of a charter school.

(11) Alternative credit. Local districts, charter schools or state educational institutions may design elective courses, known as alternative credit courses, to satisfy any of the specified credits required for graduation.

(a) The process includes:

(i) review of the licensure and endorsements of affected staff;

(ii) review of required course content standards with benchmarks and performance standards with the proposed elective course, and summary of alignment between the two courses;

(iii) determination of the amount of credit that will be generated;

(iv) publication of information regarding what course is available for alternative credit and identification of [STARS] course number;

(v) inclusion of the availability of alternative credit in all next-step plans;

(vi) note on the student transcript that the graduation requirement course was completed using the named alternative credit course;

(vii) review and preliminary approval by the local board of education or governing body of a charter school.

(b) Once the process has been completed, the district superintendent or administrator of a charter school or state educational institution shall submit a written request, with appropriate documentation, to the secretary for approval.

(12) Excuses from physical education. The physical education graduation requirement may be waived by the secretary, based upon a request by the local superintendent or charter school administrator with documentation from a licensed medical doctor, osteopath, certified nurse practitioner with prescriptive authority or chiropractor, that the student has a permanent or chronic condition that does not permit physical activity. Such requests shall be submitted using the department’s *physical education waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission;

(ii) local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and, for each student for whom the waiver is requested: name, school and year of student graduation, district affirmation that it possesses required medical documentation, name and email address of school principal and rationale for the request. A student receiving special education supports and services pursuant to the IDEA or Section 504 of the federal Rehabilitation Act may also be eligible to request this waiver, when appropriate medical documentation is provided in the IEP.

(13) Graduation requirements for issuance of a conditional certificate of transition for students with an IEP. The development of a program of study and the granting of a diploma, or use of a conditional certificate of transition in the form of a continuing or transition individualized educational program (IEP) for students receiving special education services, includes the following governing principles:

(a) The IEP team is responsible for determining whether the student has completed a planned program of study based on the student’s strengths, interests, preferences, identified educational and functional needs and long-term educational or occupational goals, making the student eligible to receive either a diploma or a conditional certificate of transition. A conditional certificate of transition allows the student to participate in graduation activities. If a student receives a conditional certificate of transition, the student shall then return to the program specified in the IEP to complete the student’s secondary program and meet the requirements for a diploma. In addition, all IEPs shall provide a description of how the student’s progress toward meeting annual goals and graduation requirements will be measured, and at what intervals progress will be reported to parents or guardians. A student shall be awarded a diploma

upon completion of a planned program of study that meets the requirements of Paragraph (b).

(b)

A student may be awarded a diploma (Section 22-13-1.1 NMSA 1978) using any of the following programs of study described in (i) through (iii). All IEP team discussion points and decisions identified herein, including the identification of the student's program of study and any student or parent proposals accepted or rejected by the IEP team (if the student has not reached the age of majority), shall be documented on the student's IEP and in the prior written notice (PWN) of proposed action.

(i)

A standard program of study is based upon meeting or exceeding all requirements for graduation based on the New Mexico standards for excellence (Subsection K of 6.29.1.9 NMAC) with or without reasonable accommodations of delivery and assessment methods. In addition, a student shall pass all sections of the current state graduation examination(s) administered pursuant to Subsection I of Section 22-13-1.1 NMSA 1978 under standard administration or with state-approved accommodations, and shall meet all other standard graduation requirements of the district.

(ii)

A career readiness alternative program of study is developed to provide relevance and is based on a student's career interest as it relates to one of the career clusters, with or without reasonable accommodations of delivery and assessment methods. In addition, a student shall take the current state graduation examination(s) administered pursuant to Subsection K of Section 22-13-1.1 NMSA 1978, under standard administration or with state-approved accommodations as determined by the SEA. Once the student has attempted the state graduation examination and is unable to meet the minimum requirements on all sections of the assessments and achieve a level of competency, the IEP team can set the minimum passing scores.

The student shall earn at least the minimum number of credits required by the district or charter school for graduation through standard or alternative courses that address the employability and career development standards with benchmarks and performance standards, as determined by the IEP team. Course work shall include a minimum of four units of career development opportunities and learning experiences that may include any of the following: career readiness and vocational course work, work experience, community-based instruction, student service learning, job shadowing, mentoring or entrepreneurship related to the student's occupational choices.

Credits for work experience shall be related to the program of study that the school offers and specific to the district's ability to offer work experience or community-based instruction credits. The student shall achieve competency in all areas of the employability and career development standards with benchmarks and performance standards, as determined by the IEP team and the student's interest as it relates to the career clusters. The program of study shall address the New Mexico content standards with benchmarks and performance standards in other subject areas as appropriate.

(iii)

An ability program of study was developed for students who have a significant cognitive disability or severe mental health issues. The IEP goals and functional curriculum course work shall be based on the New Mexico standards with benchmarks and performance standards and employability and career development standards with benchmarks and performance standards. Students in this program of study shall earn the minimum number of credits or be provided equivalent educational opportunities required by the district or charter school, with course work individualized to meet the unique needs of the student through support of the IEP. In addition, a student shall take either the current state graduation

examination(s) administered pursuant to Subsection K of Section 22-13-1.1 NMSA 1978, under standard administration or with state-approved accommodations, or the state-approved alternate assessment. The student shall achieve a level of competency pre-determined by the student's IEP team on the current graduation examination or the state-approved alternate assessment, and meet all other graduation requirements established by the IEP team.

(c)

The new requirements for the career readiness and ability pathways become effective beginning with students graduating in 2009.

(d)

By the end of the eighth grade, each student's IEP shall contain a proposed individual program of study for grades nine through 12. The program of study shall identify by name all course options the student may take and shall align with the student's long-range measurable post-secondary goals and transition services to facilitate a smooth transition to high school and beyond. This program of study shall be reviewed on an annual basis and adjusted to address the student's strengths, interests, preferences and areas of identified educational and functional needs. The IEP team shall document on the IEP the student's progress toward earning required graduation credits and passing the current graduation examination.

(e)

A district or charter school shall provide each student, who has an IEP and who graduates or reaches the maximum age for special education services, a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting post-secondary goals.

(f)

Students graduating on the standard program of study shall meet the state's minimum requirements on all sections of the graduation examination. IEP teams shall document a plan of action

on the IEP and the PWN to be carried out by both the student and the district or charter school, to ensure that the student will pass all sections of the graduation examination.

(g)

To establish a level of proficiency on the current graduation examination or the state-approved alternate assessment for students on a career readiness program of study or ability program of study, IEP teams shall review the student's performance on the first attempt, and establish a targeted proficiency on all sections that are below the state's minimum requirement. For those students who meet participation criteria for the New Mexico alternate assessment, IEP teams shall set targeted levels of proficiency based upon previous performance on the test. If the student has previously been administered the New Mexico alternate assessment and has achieved an advanced level of overall performance, the IEP team shall arrange for the student to participate in the general graduation examination, and shall identify appropriate accommodations that the student may require. IEP teams shall document the targeted levels of proficiency on the IEP and the PWN, outlining the plan of action to be taken by both the student and the district or charter school to ensure that the student will meet the targeted levels of proficiency. Districts or charter schools may submit a written request for a waiver to the secretary in cases where a student has medical or mental health issues that may result in regression or that negatively influence the student's ability to achieve targeted levels of proficiency. The written request shall be signed by the superintendent or charter school administrator and shall include documentation of the medical or mental health issues.

(h)

Changes in programs of study.

(i)

Departures from the standard program of study for students receiving special education services and supports shall be considered in the order of the options listed in Subparagraph (b)

of Paragraph (13) of Subsection K of 6.29.1.9 NMAC. Any modified program of study may depart from a standard program of study only so far as is necessary to meet an individual student's educational needs as determined by the IEP team. Districts and charter schools are obligated to meet the requirements of IDEA to provide students with IEPs on any one of the three programs of study, and access to the general curriculum in the least restrictive environment.

When an alternative program of study is developed, a building administrator or designee who has knowledge about the student shall be a member of the IEP team

(ii)

Districts and charter schools shall document changes from the standard program of study on the PWN. IEP teams shall identify the reasons for changing the student's program of study, shall provide parents with clear concise explanations of the career readiness or ability programs of study, shall notify parents and students of the potential consequences that may limit the student's post-secondary options, and shall make required changes to the IEP and course of study, to ensure that the student meets the requirements of that program of study.

(iii)

The IEP team shall not change the program of study for a student entering the final year of high school (not the cohort with which the student entered high school) from the standard program of study to the career readiness program of study, nor from the career readiness program of study to the ability program of study, after the 20th school day of the final year of high school. IEP teams may change a student's program of study from the ability program of study to the career readiness program of study, or from the career readiness program of study to the standard program of study, if the student meets the graduation requirements of that program of study and if the change is made and documented appropriately in a revised IEP and PWN by a properly constituted IEP team in a properly convened meeting.

(i)

A student who receives special education services may be granted a conditional certificate of transition in the form of a continuing or transition IEP when:

(i)

the IEP team provides sufficient documentation and justification that the issuance of a conditional certificate of transition for an individual student is warranted;

(ii)

prior to the student's projected graduation date, the IEP team provides a PWN stating that the student will receive a conditional certificate of transition;

(iii)

the district or charter school ensures that a conditional certificate of transition is not a program of study and does not end the student's right to a FAPE;

(iv)

the district or charter school ensures that a conditional certificate of transition entitles a student who has attended four years or more of high school to participate in graduation activities, and requires that the student continue receiving special education supports and services needed to obtain the high school diploma;

(v)

the district or charter school ensures that, prior to receiving a conditional certificate of transition, the student has a continuing or transition IEP;

(vi)

the student's continuing or transition IEP outlines measures, resources and specific responsibilities for both the student and the district or charter school to ensure that the student receives a diploma.

(j)

A student who does not return to complete the program of study as outlined in the continuing or transition IEP will be considered as a dropout.

(k)

A student who receives a conditional certificate of transition is eligible to continue receiving special education services until receipt of a diploma or until the end of the academic year in which the student becomes 22 years of age.

(l)
Graduation plans shall be a part of all IEPs:

(i)
by the end of eighth grade, or by the time the student turns 14 years of age, and concurrent with the development of the student's transition plan in accordance with federal regulations at 34 CFR 300.320;

(ii)
when a student returns to a school after an extended absence, and if an IEP program of study may have been developed but needs to be reviewed; or

(iii)
when evaluations warrant the need for a modified program of study at any time after development of an initial graduation plan.

(m)
Graduation plans shall be a part of all of all IEPs and annual reviews, and shall follow the student in all educational settings. Receiving institutions that fall under the department's jurisdiction will recognize these graduation plans, subject to revision by new IEP teams, if appropriate to meet a student's changing needs.

(n)
At the exit IEP meeting, the team shall review the student's transition plan, and shall confirm and document that all state and district requirements for graduation under the final IEP have been satisfied. A building administrator who has knowledge about the student shall be a member of this team, and shall sign specifically to verify and accept completed graduation plans, goals and objectives pursuant to (i) - (iii) of Subparagraph (b) of Paragraph (13) of Subsection K of 6.29.1.9 NMAC, or plans for a conditional certificate of transition with a continuing or transition IEP, pursuant to Subparagraph (i) of Paragraph (13) of Subsection K of 6.29.1.9 NMAC. The IEP team shall ensure that the student has current and relevant evaluations, reports or other documentation necessary to support a smooth and effective transition to post-secondary services for a student who will graduate on one

of the three programs of study. The school shall arrange for any necessary information to be provided at no cost to the students or parents. The school shall submit a list of students who will receive the diploma through a career readiness or ability program of study to the local superintendent or charter school administrator, using the students' identification numbers.

This list shall be totaled and submitted to the local school board or governing body of a charter school. This information shall be treated as confidential in accordance with the FERPA.

(o)
Students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, the student shall be allowed to complete the school year. If a student becomes 22 prior to the first day of the school year, the student is no longer eligible to receive special education services.

(p)
The receipt of a diploma terminates the service eligibility of students with special education needs.

(q)
All diplomas awarded by a school district or charter school shall be identical in appearance, content and effect, except that symbols or notations may be added to individual students' diplomas to reflect official school honors or awards earned by students.

(14) Future changes in graduation requirements. Refer to 6.29.1.13 NMAC.

L. Statewide accountability program.

(1)
Educational accountability. The local board of education or charter school governing body and the district superintendent or charter school administrator are responsible for providing educational services that support student learning. Educational accountability has two mechanisms and three indicators which impact the approval of the district's budget and accreditation status. The accountability mechanisms are accreditation and the program/

budget review process. These two mechanisms shall align directly with the district or charter school's EPSS. The indicators are community representation, local accountability indicators and statewide accountability indicators.

(2)
Accountability mechanisms.

(a)
Accreditation. Accreditation will be conducted in accordance with Subsection F of Section 22-2-2 NMSA 1978. Verification of the district or charter school's EPSS and student progress will occur on a regular basis. State and federal regulations which fall within the scope of accreditation will also be monitored.

(b)
Program/budget review and approval. The program/budget review and approval process, including assessment and evaluation, occurs annually. Its purpose is to link the district or charter school's program needs directly with budgetary resources. In order for a district or charter school to obtain an approved budget, the district shall:

(i)
document the local board or charter school governing body's determination of needs as defined in its EPSS (Section 22-8-18 NMSA 1978);

(ii)
document minimum budget requirements (Section 22-8-9 NMSA 1978);

(iii)
document parent involvement in budget preparation (Section 22-8-11 NMSA 1978);

(iv)
complete the annual program/budget questionnaire; and

(v)
comply with requirements specified in Section 22-8-5 NMSA 1978.

(3)
Accountability indicators.

(a)
Community representation. Community representatives shall be involved in the budget preparation process, the EPSS process, the

EPSS evaluation (including the establishment of local student performance indicators) and the accreditation process. Community representatives include parents, students and other community members who reflect the composition of the student population. Evidence shall be provided to verify different forms of representation.

(b)

Local student performance indicators. Local student performance indicators shall:

(i)

be identified by the local school district or charter school in conjunction with students, parents, community members and businesses;

(ii)

be part of the local EPSS evaluation;

(iii)

measure and demonstrate student progress toward the New Mexico content standards with benchmarks and performance standards;

(iv)

demonstrate student progress toward identified EPSS goals/focus areas (performance indicators);

(v)

be included as an integral part of the accreditation and program/budget review processes; and

(vi)

use any other indicators the district or charter school shall choose for its students.

(c)

Statewide student performance indicators. Statewide student performance indicators shall:

(i)

be included as an integral part of the accreditation and program/budget review processes;

(ii)

be part of the local EPSS evaluation;

(iii)

measure and demonstrate student progress toward the New Mexico content standards with benchmarks and performance standards;

(iv)

communicate clearly to parents and the general public the students' progress toward meeting the goals established by the district and school, or charter school; and

(v)

describe performance levels across the grade levels and across the curriculum.

M. Statewide student assessment system. As stated in 22-2-8.13 NMSA 1978, students' knowledge and skills are assessed and evaluated through the New Mexico content standards with benchmarks and performance standards, the [New Mexico standards-based assessments (SBA)] system of assessments, and local measures.

(1)

The statewide student assessment system. All public school students, with the exceptions indicated below, shall participate in the [SBA] system of assessments, which includes standards-based assessments in grades 3 through 8 and [grade 11] high school [and other tests, including short-cycle assessments in grades 9 and 10].

(2)

Exceptions. Exceptions include special provisions and requirements for the assessment of English language learners and students with IEPs.

(a)

English language learners. Students who have limited English language skills (i.e., students who are "English language learners") [as determined by the department's language assessment instrument (the New Mexico English language proficiency assessment - NMELPA)] as determined by the department-approved English language proficiency assessment shall participate in the statewide [testing] assessment program. The following considerations specify how assessment shall be conducted.

(i)

Length of enrollment in U.S. schools. The options for participation of English language learners in the New Mexico standards-based assessment program depend on the length of time that the student has been enrolled in U.S. public schools. For students who are new to U.S. schools, the following applies: [If the student has not been in the school for a full academic year at the time of testing, the student's

test results will not be included in the performance data used to determine the AYP of the school.] Students who are enrolled for the first year in a U.S. school may receive [a language] an exemption from the [SBA] system of assessments for [the reading subtest only] English language arts, including all subtests therein. [In this situation, the student's score on the NMELPA, if available, will be substituted for the reading subtest and will count toward the district or school's required 95-percent participation rate. If this option is chosen for a student, the language exemption for reading only indicator shall be completed on the SBA's student biogrid sheet]. In all other content areas of the [SBA] system of assessments, the student shall participate in the Spanish-language version of the assessment (if available and appropriate) or in the English-language version with accommodations provided, if they are determined to be appropriate by the local school's team, as described in (iii) of Subparagraph (a) of Paragraph (2) of Subsection M of 6.29.1.9 NMAC. For the subtests other than reading, the test completion status shall be student tested all sessions, and the types of accommodations that are provided, if any, shall be indicated [on] in the student [biogrid sheet] information system. Students who have been in U.S. schools for at least 12 months and less than three consecutive years shall participate in the statewide assessment program in one of three ways: the student may participate in the standard administration of the English-language version of the assessment without accommodations; the student may participate in the English-language version of the assessment with appropriate accommodations; or the student may participate in the standard administration of the Spanish-language version of the assessment, where available and appropriate. [Locally developed portfolio assessments are not permitted, under the terms of federal law.]

(ii)

Waivers for home language

assessment. Students who have been in U.S. schools for three or more consecutive years shall participate in the English-language version of the assessment with or without allowable accommodations, unless ~~[a waiver request]~~ a request based on the determination of the local education agency to continue the testing of the student in the home language of Spanish and the request is approved by the secretary. If, after three consecutive years in U.S. schools, the district or charter school determines (on a case-by-case basis) that academic assessments in the student's home language of Spanish would yield more accurate and reliable information about the student's knowledge of a subject, the district or charter school may request a waiver from the secretary to continue to assess the student in the home language of Spanish. Approved waivers are effective for the current year only; annual waiver requests may be approved for a maximum of two years. The waiver request shall be submitted to the secretary for approval at least three months before the assessment, by the district's superintendent or the charter school administrator. The request shall include: [take the form of a memorandum that includes:] student name, student state identification number, school in which the student is currently enrolled, student's grade level, student's most recent department-approved English language proficiency ~~[scores (from the NMELPA and date(s) of most recent NMELPA administration],~~ assessment date and overall composite score, length of enrollment in U.S. schools, an indication of whether this is the first or second waiver request for the student, the reason or justification for the waiver request, and names of the school team members involved in the decision to request the waiver.

(iii)

Accommodations. Districts and charter schools shall provide accommodations to English language learners after consideration of their appropriateness for the individual student. To determine

the appropriateness of allowing accommodations, the district or charter school shall consider the student's level of proficiency in all domains of language (listening, speaking, reading, writing and comprehension) and the nature of the school's instructional program. The district or charter school shall ensure that students do not receive accommodations without current justification supported by data. District and school staff may obtain the technical assistance on procedures for accommodations from the department's district test coordinator's manual or from the department. Each school shall utilize a team to review individual student progress in order to determine accommodations. For students being served on an individualized education program (IEP) or Section 504 Plan, those teams (IEP or Section 504) will respectively determine appropriate test accommodations. For all other students, the school may use its student assistance team (SAT) or form another school-based team for this purpose, but the team shall be comprised of at least three school staff, including staff who are familiar with the student's abilities and language needs, standardized test procedures and valid ELL test accommodations. Team members may include: the student's bilingual multicultural education- or TESOL-endorsed teacher, the bilingual multicultural education program coordinator, the student's other teacher(s), administrators or school test coordinators, or the school counselor. The student's parent or guardian, the student and other staff members may be also included, as appropriate. The team shall base its decisions about appropriate accommodations on the following: annual review of the student's progress in attaining English language proficiency, student's current English language proficiency, including the student's experience and time in U. S. schools, student's expected date for exiting English language learner accommodations, student's familiarity with the accommodation

under consideration, the primary language of instruction used in the content area to be assessed and the length of time that the student has received instruction in that language, and the student's grade level. Written documentation of accommodation decisions made by the team shall be stored in the student's cumulative file and shall be reported to the department's bureau of assessment and evaluation.

(b)

Students with IEPs. Students with IEPs who receive special education and related services shall participate in all statewide and district-wide assessments of student achievement or in state-approved alternate assessments. Pursuant to Subsection E of 6.31.2.11 NMAC, 34 CFR 300.320 (a)(2)(ii) and 34 CFR 300.320(a)(6), the IEPs for such students shall specify which assessments each student will participate in and what, if any, accommodations or modifications in administration are needed to enable the student to participate. The IEPs for students who will not participate in a particular statewide or district-wide assessment shall meet state-approved criteria, methods and instruments.

(c)

Waiver of the ~~[eleventh grade]~~ high school [SBA] system of assessments (graduation requirement assessment).

(i)

With the approval of the local board of education or charter school governing body, the local superintendent or charter school administrator may request written approval from the secretary to award a diploma to a student who has not passed the ~~[eleventh grade]~~ high school [SBA] system of assessments. The district or charter school shall document student attainment of required competencies through an alternative assessment procedure and shall submit such a request using the department's ~~[eleventh grade]~~ high school [SBA] system of assessments waiver request form. This form shall include: name of superintendent; district/school; mailing address;

phone; fax; email address; name of a secondary contact person including the same information; date of submission; statement of applicable district or charter school policy, list of students for whom the waiver request is being made including: student name, school, date of board approval, and statement of whether or not competencies are documented through an alternative assessment; and rationale for request.

(ii)

With appropriate documentation, a passing score on another state's graduation requirement assessment shall substitute for the ~~[eleventh-grade]~~ high school [SBA] department-approved student achievement assessment.

N. Indigent

identification and guidelines.

(1) A student

who has been deemed eligible for free or reduced-price school meals, or a student who has been identified by the children, youth and families department as being in the custody of the state, shall be deemed indigent for the purposes of remediation programs and damage of instructional materials, as discussed in Sections 22-2C-6 and 22-15-10 NMSA 1978.

(2) A parent

or guardian of a student who has not applied for free or reduced-price school meals shall be notified in writing by the local school board or governing body of a charter school of the availability of remediation at no charge upon an eligibility determination for free or reduced-price school meals.

O. Emergency drills and practiced evacuations.

(1) Emergency

drills shall be conducted in each public school and private school in the state, as follows:

(a)

at least once per week during the first four weeks of the school year ~~[, and at least once per month during the remainder of the school year];~~

~~(b)~~ (i)

[two] one of these drills shall be a shelter-in-place [drills] drill, which includes preparation to respond to an active shooter;

~~(e)~~ (ii)

one of these drills shall be an evacuation drill;

~~(d)~~ (iii)

two of these drills shall be fire drills;

(b)

~~[nine of these drills shall be fire drills, with one fire drill required each week during the first four weeks of school;] during the rest of the school year.~~ each school shall conduct at least four more emergency drills, at least two of which shall be fire drills;

~~(e)~~ (c)

in locations where a fire department is maintained, a member of the fire department shall be requested to be in attendance during the emergency drills for the purpose of giving instruction and constructive criticism;

~~(f)~~ (d)

it shall be the responsibility of the person in charge of a school to carry out the provisions related to emergency drills.

(2)

Requirements to comply and penalties for non-compliance:

(a)

It shall be the responsibility of the superintendent of a school district, a charter school administrator or private school counterpart(s) to ensure that each school under the person's authority follows the requirements set forth in Subsection O of 6.29.1.9 NMAC.

(b) In

the event that the person responsible for complying with Subsection O of 6.29.1.9 NMAC fails or refuses to comply with this subsection, the department may, in the case of a public school, take any action designed to ensure prompt corrective action or future compliance, including reporting the non-compliance to either the state fire marshal or to a local fire department. In the case of a private school, the department will report the non-compliance to either the state fire marshal or to a local fire department and may consider adverse licensure action.

(c)

Failure or refusal to comply with the requirements in Subsection O of 6.29.1.9 NMAC for holding

emergency drills shall constitute grounds to suspend or revoke the license of the person responsible for compliance. The due process procedures under the Uniform Licensing Act (Sections 61-1-1 through 61-1-31 NMSA 1978) shall apply.

P. School facilities

and grounds. Pursuant to Subsection C of 6.29.1.9 NMAC (*Duties of the Superintendent*); Subsection D of 6.12.6.8 NMAC (*School District Wellness Policy*); and 6.19.3 NMAC (*Unsafe School Choice Option*), each school district or charter school shall ensure that all buildings, facilities and grounds provide a safe and orderly environment for public use; i.e., that they shall be:

(1) safe,

healthy, orderly, clean and in good repair;

(2) in

compliance with the Americans with Disabilities Act-Part III and state fire marshal regulations, Sections 59A-52-1 through 59A-52-25 NMSA 1978;

(3) safe for

conducting experiments and school projects in all school laboratories and shops, as established in written school safety procedures which are reviewed annually; these procedures include, but are not limited to:

(a)

personal protective equipment;

(b)

adequate ventilation and electrical circuitry;

(c)

material safety data sheets;

(d)

body and eye washes; and

(e)

training appropriate for each teaching situation;

(4) the

maximum number of occupants in a laboratory or shop teaching space shall be based on the following:

(a)

the number of work stations;

(b)

the building and fire safety codes;

(c)

the design of the laboratory or shop teaching facility;

(d) appropriate supervision and the special needs of students; and
 (e) all applicable OSHA regulations;
 (5) appropriate procedures for the storing, handling and removal of toxic or dangerous substances shall be established and implemented; all school programs (including those areas noted above and custodial areas, art room, library and cafeteria) shall comply with standard safety practices and all applicable state and federal regulations;

(6) use of pesticides by districts and charter schools will be governed by the following standards:

(a) Definitions as used in this section:
 (i) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

(ii) "Pest" means any living organism injurious to other living organisms, except humans, viruses, bacteria or other microorganisms in or on other living organisms other than plants, which is declared to be a pest pursuant to the Pesticide Control Act, Sections 76-4-1 through 76-4-39 NMSA 1978.

(b) Districts and charter schools will develop procedures for the implementation of pest management with consideration for reducing the possible impact of pesticide use on human health and the environment, including people with special sensitivities to pesticides. Procedures will include, but are not limited to, the following:

(i) No pesticide may be applied to public school property and no pest control device, as defined in the New Mexico Pesticide Control Act, may be used on public school property except those pesticides and devices currently registered for legal use in the state by the New Mexico department of agriculture.

(ii) No pesticide may be applied to public school property except by those persons certified in the applicable category and currently licensed by the New Mexico department of agriculture or by employees under their direct supervision.

(iii) Pesticides will only be applied in or on the outside of school buildings when a pest is present, and will not be applied on a regular or calendar basis unless it is to treat an infestation and is a part of a pest management system being implemented to address a particular target pest. A pest is considered to be present when it is observed directly or can reasonably be expected to be present based on finding evidence, such as droppings, body parts, or damage that is typically done by the pest. This section of the regulation does not apply to pre-construction termite treatments or the use of outdoor herbicides.

(iv) Pesticides that are applied in a liquid, aerosolized or gaseous form through spraying, aerosol cans, bombs, fumigation or injections into the ground, foundation or plants will not be applied on public school property when students, staff or visitors are present, or may reasonably be expected to be present within 6 hours of the application. In emergency cases, where a pest infestation threatens the health or safety of the occupants of public school property, and which requires the immediate application of a pesticide to remediate, students, staff and other school occupants will be removed from the treatment area prior to the application. Small amounts of gel or liquid pesticides applied to cracks and crevices or baits used to treat pest infestation are exempt from this section.

(v) At the beginning of each year, and when new students register, schools will develop a list of parents and guardians who wish to be notified prior to pesticide application during the school year. These parents/ guardians will be notified in writing

prior to pesticide application. General notification of anticipated pesticide applications will occur by posting or dissemination of notices, by oral communication or other means of communication. In emergency cases where a pest infestation threatens the health or safety of the occupants of public school property, no pre-notification is required. Immediately following the application of a pesticide in emergency cases, signs will be posted indicating an application was made.

(vi) Written records of pesticide applications will be kept for three years at each school site and be available upon request to parents, guardians, students, teachers and staff.

(vii) If any part of Paragraph (6) of Subsection P of 6.29.1.9 NMAC is found to be in conflict with the provisions of the Pesticide Control Act, the remainder of the regulation will remain in full force and effect.

Q. School district budgeting. Section 22-8-4 NMSA 1978 requires the department to prescribe forms for, supervise and control the preparation of all budgets of all public schools and school districts, and to compile accurate information concerning public school finance and administration. Sections 22-8-5 through 22-8-12.1 NMSA 1978 set out specific budget preparation and submission requirements for the department, public schools and public school districts. Regulations governing budgeting and accounting for New Mexico public schools and school districts are set out in 6.20.2 NMAC.

R. Final course and other student grade changes. Any changes to students' course or other grades shall be governed by the state rule, "Final Course and Other Student Grade Changes" (6.30.10 NMAC).

[6.29.1.9 NMAC - Rp, 6.30.2.10 NMAC, 6/30/2009; A, 02-12-2010; A, 10/31/2011; A, 2/28/2017; A, 07/25/2017; A, 12/15/2020]

6.29.1.11 PROGRAM

REQUIREMENTS:

A. Curriculum.

(1) Local

curricula shall be aligned with the applicable New Mexico content standards with benchmarks and performance standards. In accordance with Section 22-13-1.6 NMSA 1978, each school district shall align its curricula to meet the state standards for each grade level and subject area so that students who transfer between public schools within the school district receive the same educational opportunity within the same grade or subject area. Each school district's aligned grade level and subject area curricula shall be in place for mathematics by the 2009-2009 school year.

(2) Adopted

instructional materials shall support the aligned local curricula. The state standards revision cycle, the local curriculum cycle and the instructional materials cycle shall be aligned and sequenced to provide standards-based curricula that are supported by aligned instructional materials. At the completion of each standards revision cycle, the standards-based state assessment program shall be reviewed to determine the need for realignment.

(3) All courses

offered for credit shall have written, delivered, assessed and sequential curriculum.

(4) Written

and delivered curricula shall be congruent, state what students should know and be able to do, and include an assessment process.

(5) The

curricula shall be assessed as part of the EPSS process.

(6) The

curricula shall support the EPSS.

B. Subject areas.

The district or charter school shall be in compliance with subject area requirements as specified in Section 22-13-1 NMSA 1978.

(1) The

department shall require instruction in specific subject areas as provided in Paragraphs (2) through (7) of Subsection B of 6.29.1.11 NMAC.

Any public school or school district failing to meet these minimum requirements shall not be accredited by the department.

(2) All

kindergarten through third grade classes shall provide daily instruction in reading and language arts skills, including phonemic awareness, phonics and comprehension; and in mathematics. Students in kindergarten and first grades shall be screened and monitored for progress in reading and language arts skills, and students in second grade shall take diagnostic tests on reading and language arts skills.

(3) All first,

second and third grade classes shall provide instruction in art, music and a language other than English, and instruction that meets content standards, benchmarks and performance standards shall be provided in science, social studies, physical education and health education.

(4) In fourth

through eighth grades, instruction that meets academic content and performance standards shall be provided in the following subject areas:

(a)

reading and language arts skills, with an emphasis on writing and editing for at least one year and an emphasis on grammar and writing for at least one year;

(b)

mathematics;

(c)

language other than English;

(d)

communication skills;

(e)

science;

(f)

art;

(g)

music;

(h)

social studies;

(i)

New Mexico history;

(j)

United States history;

(k)

geography;

(l)

physical education; and

(m)

health education.

(5) In eighth

grade, algebra I shall be offered in regular classroom settings, through online courses or agreements with high schools.

(6) In fourth

through eighth grades, school districts and charter schools shall offer electives that contribute to academic growth and skill development, and provide career and technical education.

(7) In ninth

through twelfth grades, instruction that meets academic content and performance standards shall be provided in health education, including:

(a)

age appropriate sexual abuse and assault awareness and prevention training that meets department standards developed in consultation with the federal centers for disease control and prevention that are based on evidence-based methods that have proved to be effective;

(b)

lifesaving skills training that follows nationally recognized guidelines for hands-on, compression only, psychomotor skills (skills that use hands-on practice to support cognitive learning) cardiopulmonary resuscitation training including:

(i)

use of a course curriculum, which allows for demonstration of competency in performing cardiopulmonary resuscitation and associated skills;

(ii)

training that conforms to the most recent, national, evidence-based guidelines established by the American heart association, the American red cross, or another nationally recognized, NM public education department-approved non-profit organization;

(iii)

training to recognize the signs of a heart attack;

(iv) training on use of an automated external defibrillator; and

(v) training on how to perform the Heimlich maneuver for choking victims;

(c) lifesaving skills training that may use the following instructors if qualified to teach hands-on psychomotor skills cardiopulmonary resuscitation training:

(i) school nurses;

(ii) health teachers;

(iii) athletic department personnel as instructors; and

(iv) any qualified volunteers, as defined by 6.50.18.8 NMAC, providing training at no cost to the school district that the school district determines to be eligible to offer instruction as prescribed in Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC including, but not limited to, emergency medical technicians, paramedics, police officers, firefighters, representatives of the American heart association or the American red cross, or other similarly qualified individuals;

(d) training and instructional materials related to Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC in both English and Spanish to include:

(i) materials, equipment and services that are needed as part of the instruction obtained on loan from state-recognized organizations, such as the New Mexico heart institute; and

(ii) materials, equipment and services received by schools as in-kind donations; and

(e) combined instruction, whereby school districts and charter schools may work with other school districts and charter schools to provide the training or with a regional education cooperative to provide or facilitate the training.

(8) The requirements as prescribed in Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC for health education shall not be required for students in grades nine through 12 who are enrolled in a virtual charter school.

(9) A school district or charter school may submit a waiver request to the department for the requirement as prescribed in Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC for health education for a student receiving special education supports and services pursuant to the IDEA or Section 504 of the federal Rehabilitation Act in grades nine through 12 with a disability as documented through an individualized education program (IEP) if the requirement as prescribed in Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC cannot be reasonably met with accommodations for a given student.

(10) In every grade, inquiry-based laboratory components are at the core of the science program, and shall be woven into every lesson and concept strand. For required science units in grades nine through twelve, “laboratory component” means an experience in the laboratory, classroom or the field that provides students with opportunities to interact directly with natural phenomena or with data collected by others using tools, materials, data collection techniques and models. Throughout the process, students shall have opportunities to design investigations, engage in scientific reasoning, manipulate equipment, record data, analyze results and discuss their findings. The laboratory component comprises at least 40 per cent of the unit’s instructional time. All science classes that include dissection activities as part of the curriculum shall provide virtual dissection techniques as alternative activities for any student who is opposed to real dissections for ethical, moral, cultural or religious reasons. Alternative techniques shall approximate the experience of

real dissection activities as closely and appropriately as possible. A virtual dissection technique means carrying out dissection activities using computer two-dimensional or three-dimensional simulations, videotape or videodisk simulations, take-apart anatomical models, photographs or anatomical atlases.

C. Bilingual multicultural education. Bilingual multicultural education programs shall be provided to meet the identified educational and linguistic needs of linguistically and culturally different students, including Native American children, and other students who may wish to participate, in grades K-12, with priority to be given to programs in grades K-3. These programs shall:

(1) provide services in accordance with the Bilingual Multicultural Education Act (Sections 22-23-1 through 6 NMSA 1978) and the Bilingual Multicultural Education Program Regulation (Sections 6.32.2.7 through 6.32.2.11 NMAC);

(2) be implemented in accordance with the identified needs of qualifying culturally and linguistically different students and ensure equal educational opportunities;

(3) be assessed as part of the EPSS process; and

(4) support the local curriculum and EPSS.

D. Career and technical education (CTE). Career and technical education programs for both elementary and secondary levels shall:

(1) be in accordance with Section 22-14-1 through 22-14-30 NMSA 1978 and the Carl Perkins Act;

(2) provide exploratory and skill development program offerings;

(3) ensure students’ mastery of the New Mexico career and technical education content standards with benchmarks and performance standards;

(4) include competency-based applied learning;

(5) be assessed as part of the EPSS process; and
 (6) support the local curriculum and the EPSS.

E. School health.
 School health programs provide opportunities for all students to develop healthy behaviors. Districts and charter schools shall provide or make provisions for school health programs that address the health needs of students and staff. Districts and charter schools shall provide the following programs: health education, physical education, health services and school counseling. Additional programs may include: nutrition, staff wellness, family-school-community partnerships, healthy environment and psychological services. These programs shall:

(1) be in accordance with Section 22-10A-34 and Section 24-5-1 through 24-5-6 NMSA 1978;

(2) provide education and skill development program offerings;

(3) provide community partnerships which help to achieve the goal of healthy students and staff;

(4) be assessed as part of the EPSS process; and

(5) support the local curriculum and EPSS.

F. Special education.
 Special education is specially-designed instruction that is provided at no cost to parents to meet the unique needs of a student with a disability, as defined in the IDEA regulations (34 CFR Part 300 and state special education regulations (6.31.2 NMAC). Special education programs shall:

(1) provide specially-designed instruction in career and technical education and travel training for students whose IEPs require such services;

(2) provide instruction to students placed on homebound services as per their IEP; and

(3) provide instruction in state-supported

educational programs, hospitals, institutions and other settings. As set forth in the state special education regulations at Paragraph (15) of Subsection C of 6.31.2.7 NMAC, special education may include speech-language pathology services consisting of specially-designed instruction that is provided to enable a student with a disability, as recognized under IDEA, to have access to the general curriculum and to meet the educational standards of the public agency that apply to all children;

(4) provide instruction, in accordance with Subsection D of Section 22-13-1 NMSA 1978, for the unique needs of gifted and talented students;

(5) be assessed as part of the EPSS process; and

(6) support the local curriculum and EPSS.

G. Supplemental programs. Programs which supplement, but do not replace, state operational programs may include, but are not limited to: Title I - Improving the Academic Achievement of the Disadvantaged [(NCLB)]; Title II - Preparing, Training and Recruiting High Quality Teachers and Principals [(NCLB)]; Title III - Language Instruction for Limited English Proficient and Immigrant Students [(NCLB)]; Title IV, Part A - Safe and Drug Free Schools and Communities [(NCLB)]; Title V - Promoting Informed Parental Choice and Innovative Programs [(NCLB)]; Title VI - Flexibility and Accountability [(NCLB)]; Title VII - Indian, Native Hawaiian and Alaska Native Education [(NCLB)]; Title VIII - Impact Aid Program [(NCLB)], the Johnson-O'Malley Act and Individuals with Disabilities Education Improvement Act (IDEA, 2004). Supplemental programs shall:

(1) provide services as required by federal laws and assurances, including Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act (EEOA) of 1974;

(2) be assessed as part of the EPSS process; and

(3) support the local curriculum and EPSS.

H. Support services.
 Districts and charter schools shall provide support service programs which strengthen the instructional program. Required support service programs are: library media, school counseling and health services. Support services shall:

(1) have a written, delivered and assessed program, K-12;

(2) provide licensed staff to develop and supervise the program;

(3) be assessed as part of the EPSS process; and

(4) support the local curriculum and EPSS.

I. Technology in education. The Technology for Education Act establishes a fund and a system for equal distribution of funds based upon final funded student membership within each school district and charter school. The Technology for Education Act requires annual review and approval of each school district and charter school's educational technology plan, through which every school district and charter school reports to the department the fiscal distributions received, expenditures made and educational technology obtained by the district or charter school, and other related information. As districts and charter schools develop, refine and implement strategic long-range plans for utilizing educational technology, each plan shall:

(1) be in accordance with Section 22-15A-10 NMSA 1978;

(2) be assessed as part of the EPSS process; and

(3) support the local curriculum and EPSS.

[6.29.1.11 NMAC - Rp, 6.30.2.11 NMAC, 6/30/2009; A, 2/28/2017; A, 12/15/2020]

REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

This is an amendment to 16.19.6 NMAC, Sections 1, 2, 17, 21, 23 and 24 effective 12/15/2020.

Explanatory paragraph: Subsections A through C and E through H of 16.19.6.23 NMAC and Subsection A, B, E and F of 16.19.6 24 NMAC are not published, as there are no changes to these Subsections.

16.19.6.1 ISSUING AGENCY: [~~Regulation and Licensing Department~~] Board of Pharmacy [~~1650 University Blvd., NE - Ste. 400B, Albuquerque, NM 87102, (505) 841-9102~~]. [16.19.6.1 NMAC - Rp, 16 NMAC 19.6.1, 03/30/2002; A, 12/15/2020]

16.19.6.2 SCOPE: All pharmacies, resident and nonresident, as defined in Subsections S and [Y] Z of Section 61-11-2 NMSA 1978, and all persons or entities that own or operate, or are employed by, a pharmacy for the purpose of providing pharmaceutical products or services. [16.19.6.2 NMAC - Rp, 16 NMAC 19.6.2, 3/30/2002; A, 12/15/2020]

16.19.6.17 SIGNS TO BE REMOVED WHEN PHARMACY DISCONTINUES OPERATION: When a pharmacy discontinues operation, the permit issued by the board shall be immediately surrendered to the board office, all drug signs and symbols, either within or without the premises, shall be immediately removed; all drugs, devises, poisons shall be removed or destroyed:

A. Signs: Any store, shop, laboratory or place of business which has upon it or in it a sign or words "pharmacist", "pharmaceutical chemist", "apothecary", "druggist", "pharmacy", "drug store", "drugs", "drug sundries", "prescriptions", or any of these words, or words of similar import either in English or any

other language, or which is advertised by any sign containing any of these words, is defined by law to be a drug store or pharmacy and must obtain a license from the board of pharmacy. Any such place of business not licensed by the board shall remove any such sign or words which it may have upon or in it.

B. Waiver: The board may waive this requirement pursuant to a petition for waiver. Waivers granted by the board are limited to use by the party and business specified in the waiver document and other limitations set forth. Such petitions shall include:

- (1) name of the party;
- (2) address of the business;
- (3) type of business;
- (4) reason for waiver request;
- (5) supporting documents; and
- (6) photographs of the business demonstrating the use of the sign or words in question.

C. Use of pharmacy, pharmacist and other names: Any advertiser, as defined by Paragraph (2) of Subsection A of 16.19.6.21 NMAC, using the names "pharmacist", "pharmacy", "apothecary", "apothecary shop", "drug store", "druggist", "drug [~~sundries~~ sundries]", "prescriptions", or any other combination of these words or any other words of similar import that indicate to the public that the advertiser is a pharmacy, is prohibited unless the following occurs:

- (1) the advertiser is or has a licensed pharmacy in New Mexico; or
- (2) the advertiser is or has a non-resident pharmacy licensed in New Mexico; or
- (3) the advertiser has a clear statement, included with such advertisement, stating to the effect, "the advertiser is not a licensed pharmacy and does not fill prescriptions or practice pharmacy"; and

(4) the advertiser must disclose the name of the licensed pharmacy where prescriptions are filled for New Mexico residents and such disclosure would be clear and concise; and

(5) any "confidential information", as defined by Subsection D of Section 61-11-2 NMSA 1978, is obtained by persons authorized by law to receive such information.

(6) pharmacists registered in this state may advertise their professional services except such advertisement shall not solicit prescription drug (dangerous drug) sales unless in conjunction with a licensed pharmacy. [16.19.6.17 NMAC - Rp, 16 NMAC 19.6.17, 3/30/2002; A, 9/30/2003; A, 12/15/2020]

16.19.6.21 GUIDELINES TO PREVENT FALSE AND MISLEADING ADVERTISING:

A. Definitions as used in this section:

(1) "advertising" or "to advertise" means to inform customers by any means such as, but not limited to, shelf tags, preticketing, display card, handbills, billboards, and advertisements in the newspapers, magazines, the internet, radio and television or by mail;

(2) "advertiser" means any person or firm which advertises dangerous drug prices or services, defined as the practice of pharmacy (Subsection BB of Section 61-11-2 NMSA 1978), to consumers in this state;

(3) "article" includes services as well;

(4) "price disclosure" is defined as in-store verbal disclosure of price, disclosure of prices by telephone, price lists, posters in-store containing retail prices for selected drugs indicating "our price".

B. Guidelines:

(1) An advertisement shall in no way stimulate demand or promote overuse or abuse of a dangerous drug or drugs.

Prescription drugs are so intimately related to the public health that any ad which tends to promote overuse or abuse of a drug would have an adverse effect on public health, safety and welfare.

(2) The advertiser who does more than state his asking price must tell the truth in such a way that it cannot be misunderstood. Truthful price advertising, offering real bargains may be a benefit to all. But the advertiser must shun sales “gimmicks” [and/or] or adverbs which infer exclusively when they are not factual, i.e., “cheapest”, “lowest”, which lure customers into a belief that they are getting bargains when in fact they are not.

(3) No comparisons should be made or implied between the price at which an article is offered for sale and some other reference price unless the nature of the reference price is explicitly identified and the advertiser has a reasonable basis to substantiate the reference price.

(4) Comparative pricing is generally defined as the practice whereby a firm or business displays, states, or advertises, directly or by implication two or more prices for his product or services; the actual current prices and another reference price. A reference price may not be implied by a statement such as “same forty percent” unless it is substantiated pursuant to Paragraph (3) of Subsection B of [16.19.21] 16.19.6.21 NMAC.

(5) No advertisement should be made expressly or impliedly offering lowered prices as a result of some unusual circumstances, unless the circumstances are true and the prices are actually lower than the advertiser’s usual prices (i.e., clearance or special purchases, etc.)

(6) A firm should not advertise a “sale” or other temporary change in prices without disclosing as explicitly as possible, the terms of quantities available, and

the period in which the advertised prices will be available.

(7) An advertised price for an article should not be compared with a price for another article unless the price for the article is explicitly identified, and the advertiser has a reasonable basis to substantiate the existence of that price. In addition, one of the following conditions must be met:

(a) the comparability of the two articles can be established by reference to established standards of identity or performance; or

(b) the advertiser has otherwise established that the two articles are substantially identical in all significant respects; or

(c) the article is specifically identified.

(8) A retailer can be reasonably certain that his product is substantially identical to other products if he knows that all are made by the same manufacturer to the same specifications.

C. Prescription drug advertising: Every advertisement other than price disclosure of a prescription drug shall contain the following information:

(1) the proprietary or trade name of the drug product;

(2) the established name of the drug product;

(3) the established name and quantity of each active ingredient in the drug product;

(4) the declaration of the established name and quantity of each active ingredient is optional if the drug product contains more than three active ingredients. However, this option does not apply to drug products containing aspirin, phenacetin, and caffeine in combination with one or two other active ingredients;

(5) the name of the manufacturer, packager or distributor;

(6) the dosage form;

(7) the price charged for a specific number of dosage units or quantity of the drug product;

(8) the price is to include all charges to the customer;

(9) the following services are considered to be included in the price to the consumer. If any of these services are not included in the price, the advertisement shall indicate those not provided:

(a) professional fees or cost or product and mark-up;

(b) patient Rx records;

(c) delivery services;

(d) charge privileges;

(e) pharmaceutical counseling;

(f) emergency after hours service;

(g) tax or insurance information;

(h) the hours pharmaceutical services are available to the customer.

D. Prohibited drug advertising:

(1) There shall be no advertising, other than price disclosure, of a prescription drug or OTC drug which is a controlled substance regulated by the New Mexico Controlled Substances Act.

(2) There shall be no advertising, other than price disclosure, of a prescription drug product that is required by the federal Food and Drug Administration to contain a box warning statement on the label indicating there is evidence of significant incidence of fatalities or serious damage associated with the use of the drug product.

(3) Advertisements are not permitted for a drug evaluated by the drug efficacy study group, and for which no claim has been evaluated as higher than “possibly effective”.

[16.19.6.21 NMAC - Rp, 16 NMAC 19.6.21, 3/30/2002; A, 9/30/2003; A, 12/15/2020]

16.19.6.23

PRESCRIPTIONS:

D. Exchange of prescription information between pharmacies for the purpose of filling or refilling is authorized under the following conditions only.

(1) The original prescription entry shall be marked in the pharmacy computer system. Pharmacies not using a computer shall mark the hard copy.

(2) The prescription shall indicate that it has been transferred and pharmacy location and file number of the original prescription.

(3) In addition to all information required to appear on a prescription, the prescription shall show the date of original fillings as well as the number of valid refills remaining.

(4) An original unfilled non-controlled substance prescription that is transferred shall be subject to the same record keeping requirements as filled prescriptions.

~~(4)~~ (5) Transfer or forwarding of controlled [substances- Schedules III, IV, and V] substance prescriptions shall not be allowed electronically except as permitted by federal law. Any [manual] transfer of controlled substances listed in Schedules III, IV, and V must be within any rule adopted by the federal DEA under Title 21 CFR 1306. [26] 25, for refill purposes.

~~(5)~~ (6) A pharmacy may not refuse to transfer original prescription information to another pharmacy who is acting on behalf of a patient and who is making a request for this information as specified in this subsection. The transfer of original prescription information must be done in a timely manner.

I. Prescription adaptation: A pharmacist, using professional judgment, may determine in filling a new non-controlled substance prescription whether it is necessary to attempt to contact the prescriber before performing the

following adaptations:

(1) change the quantity, dosage, dosage form, or directions for use of the medication dispensed if it meets the intent of the prescriber, or

(2) complete missing information on a prescription if there is sufficient evidence to support the change.

(3) The pharmacist will document the prescription adaptation as part of the original prescription record.

(4) The pharmacist will notify the prescriber of the prescription adaptation within 24 hours; and will maintain documentation of notification.

(5) The pharmacist will provide patient counseling, in accordance with Subsection F of 16.19.4.16 NMAC, to include information pertinent to the prescription adaptation.

[16.19.6.23 NMAC - Rp 16 NMAC 19.6.23, 3/30/2002; A, 6/30/2006; A, 03/22/2015; A, 12/15/2020]

16.19.6.24 NONRESIDENT PHARMACIES:

C. Requirements for obtaining licensure.

(1) Application. Each nonresident pharmacy applying for licensure or renewal of licensure shall submit an application to the board which includes the following minimum information:

(a) The address of the principle office of the nonresident pharmacy and the name and titles of all principal corporate officers and all pharmacists who are dispensing prescription drugs to persons in New Mexico. A report containing this information shall be made on an annual basis and within 10 days after any change of office location, corporate officer or pharmacist in charge;

(b) Proof that the nonresident pharmacy maintains a valid license, permit or registration to operate the pharmacy in compliance with the laws of the resident state;

(c) A copy of the most recent inspection report resulting from an inspection of the nonresident pharmacy conducted by the regulatory or licensing agency of the resident state;

(d) If compounded sterile preparations (CSP) are to be shipped into New Mexico, a copy of the most recent CSP operations inspection report conducted by the regulatory or licensing agency of the resident state (or party recognized by that agency to perform such inspection, or party recognized by the board) which demonstrates the pharmacy operates in conformance with the requirements of applicable USP/NF General Chapters numbered below 1000. The inspection must have occurred within the 12 months immediately preceding receipt of the license application by the board. The board may deny licensure unless the applicant submits documentation satisfactory to the board that any deficiencies noted in the inspection report have been corrected. For entities also acting as outsourcing facilities, the required standard of operation shall be current good manufacturing practices (cGMP).

(e) The policy and procedure manual required by Paragraph (2) of Subsection D of 16.19.6.24 NMAC;

(f) Proof that the nonresident pharmacy has a toll-free telephone service available to New Mexico patients;

(g) The name and address of a resident in New Mexico for service of process;

(h) If the nonresident pharmacy wants to ship, mail or deliver controlled substances to New Mexico patients, then the pharmacy must submit an application for controlled substances under 16.19.20 NMAC; and

(i) All fees required by 16.19.12 NMAC.

(j) An application that is not successfully completed within 12 months of the date of initial receipt by the board will be considered withdrawn. For

consideration of license issuance, a new application and fee are required.

(2) Agent of record. Each nonresident pharmacy that ships, mails or delivers prescription drugs to a patient in New Mexico shall designate a resident agent in New Mexico for service of process. If a nonresident pharmacy does not designate a registered agent, the shipping, mailing, or delivering of prescription drugs in the state of New Mexico shall be deemed an appointment by such nonresident pharmacy of the secretary of state to be its true and lawful attorney upon whom may be served all legal process in any action or proceeding against such pharmacy growing out of or arising from such delivery.

D. Conditions of licensure.

(1) Compliance. Each nonresident pharmacy licensed by the board must comply with the following:

(a) all statutory and regulatory requirements of the state of New Mexico regarding controlled substances, drug product selection, and the labeling, advertising, and dispensing of prescription drugs including all requirements that differ from federal law or regulations, unless compliance would violate the laws and regulations of the resident state;

(b) maintain, at all times, a valid license, permit, or registration to operate the pharmacy in compliance with the laws of the resident state;

(c) maintain, if applicable, a federal registration for controlled substances;

(d) supply, upon request from the board or the regulatory or licensing authority of the resident state, all information needed to carry out the board's responsibilities under state and federal law;

(e) provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the nonresident pharmacy who has access to the patient's records. A

nonresident pharmacy shall provide the toll-free telephone service during its regular hours of operation, but not less than six days a week and for a minimum of 40 hours a week. The toll-free telephone number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

(2) Policy and procedure manual. Each nonresident pharmacy shall develop and provide the board with a policy and procedure manual that sets forth:

(a) normal delivery protocols and times;

(b) the procedure to be followed if the patient's medication is not available at the nonresident pharmacy, or if delivery will be delayed beyond the normal delivery time;

(c) the procedure to be followed upon receipt of a prescription for an acute illness, which policy shall include a procedure for delivery of the medication to the patient from the nonresident pharmacy at the earliest possible time (i.e., courier delivery), or an alternative that assures the patient the opportunity to obtain the medication at the earliest possible time;

(d) the procedure to be followed when the nonresident pharmacy is advised that the patient's medication has not been received within the normal delivery time and that the patient is out of medication and requires interim dosage until mailed prescription drugs become available[-];

(e) the procedure for ensuring proper medication storage conditions until the medication is delivered to the patient.

[16.19.6.24 NMAC - Rp, 16 NMAC 19.6.24, 3/30/2002; A, 06/09/2017; A, 11/28/2017; A, 12/15/2020]

REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

This is amendment to 16.19.12 NMAC, Sections 1, 12,13 and 20 effective 12/15/2020

16.19.12.1 ISSUING

~~AGENCY: [Regulation and Licensing Department,] Board of Pharmacy~~

~~[-Albuquerque, NM].~~

[2/15/1889...2/15/1996; 16.19.12.1 NMAC - Rn, 16 NMAC 19.12.1, 3/30/2002; A, 12/15/2002; A, 1/31/2007; A, 8/2/2019; A, 12/15/2020]

16.19.12.12 LICENSE/REGISTRATION RENEWAL:

A. Pharmacist license renewal for active \$200.00 bi-ennially

B. Pharmacist license renewal for in-active \$70.00 bi-ennially

C. Intern renewal \$25.00 per year

D. Duplicate license for interns and pharmacists \$10.00

E. Controlled substance registration \$180.00 tri-ennially

(A locum tenens practitioner may apply for an initial registration which expires no more than one year after date of issuance, and this registration fee shall be \$60.00) The board may issue a registration for a time period determined by the board and shorter than three years if it is consistent with the public health and safety.

F. Duplicate license for controlled substance \$10.00

G. Pharmacy technician renewal \$30.00 bi-ennially

H. Pharmacist clinician \$70.00 bi-ennially

I. Pharmacist license renewal for active pharmacists with 50 or more years of service - \$70.00 bi-ennially

J. Note: Waiver of license renewal fees: The board of pharmacy waives the renewal fee set forth in regulation 16.19.12.12 for individuals who are currently serving in the United States military in an active war zone or who serve in direct support of operation in active war zones.
[3/7/1980...8/27/1990; A, 7/31/1998; A, 11/14/1998; 16.19.12.12 NMAC - Rn, 16 NMAC 19.12.12, 3/30/2002; A, 12/15/2002; A, 9/30/2003; A, 7/15/2004; A, 12/15/2005; A, 1/31/2007; A, 3/22/2015; A, 6/26/2018; A, 12/15/2020]

16.19.12.13 LICENSE FEES:

- A.** Drug manufacturer
[~~\$700.00~~] \$1000.00 bi-ennially
- B.** Wholesale drug distributor
[~~\$700.00~~] \$1000.00 bi-ennially
- C.** Drug manufacturer/re-packager
[~~\$700.00~~] \$1000.00 bi-ennially
- D.** Re-packager
[~~\$700.00~~] \$1000.00 bi-ennially
- E.** Retail pharmacy
\$300.00 bi-ennially
- F.** Hospital pharmacy
\$300.00 bi-ennially
- G.** Nonresident pharmacy
\$400.00 bi-ennially
- H.** Nonresident pharmacy, sterile compounding
\$600.00 bi-ennially
- I.** Seller or dispenser of contact lenses
\$400.00 bi-ennially
- J.** Dangerous drug research
\$200.00 bi-ennially
- K.** Drug warehouse
\$200.00 bi-ennially
- L.** Duplicate license or permit(for all types)
\$10.00 per each request
- M.** Letter of good standing, verification, and certification
\$10.00 per each request

N. Roster of board of pharmacy facility license
\$30.00 per license category

O. Outsourcing facility
\$2000.00 bi-ennially

P. Third party logistics provider
[~~\$700.00~~] \$1000.00 bi-ennially
[3/7/1980...5/1/1993; 16.19.12.13 NMAC - Rn, 16 NMAC 19.12.13, 3/30/2002; A, 9/30/2003; A, 7/15/2004; A, 1/15/2005; A, 12/15/2005; A, 1/31/2007; A, 11/15/2010; A, 12/13/2015; A, 3/23/2016; A, 11/28/2017; A, 8/2/2019; A, 12/15/2020]

16.19.12.20

REINSTATEMENT FEES: Any person whose board registration or license has expired and who seeks reinstatement of the certificate of license must pay the following reinstatement fee in addition to all delinquent renewal fees:

- A.** Pharmacists
\$25.00
- B.** All other licenses issued by the board of pharmacy under the Pharmacy Act and the Drug Precursor Act including, but not limited to, licenses for retail pharmacy, non-resident pharmacy, wholesale drug distributor, drug manufacturer, hospital pharmacy, drug room, nursing home, clinic facility, wholesalers, retailers or distributors of veterinary drugs, and drug precursor, twenty-five percent of the license renewal fee not to exceed \$100.00
- C.** Controlled substance registrations are exempt from reinstatement fees. Delinquent renewal fees shall not exceed \$180.00.
[3/7/1980...2/22/1993; 16.19.12.20 NMAC - Rn, 16 NMAC 19.12.20, 3/30/2002; A, 12/13/2015; A, 8/2/2019; A, 12/15/2020]

REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

This is an amendment to 16.19.20 NMAC, Sections 1, 3, 10, 42, 44, 46, 47 and 69, effective 12/15/2020

16.19.20.1 ISSUING

AGENCY: [~~Regulation and Licensing Department-~~] Board of Pharmacy.
[16.19.20.1 NMAC - Rp 16.19.20.1 NMAC, 6/26/2018; A, 12/15/2020]

16.19.20.3 STATUTORY

AUTHORITY: Section 30-31-11 of the Controlled Substances Act, 30-31-1 through 30-31-42 NMSA 1978, authorizes the board of pharmacy to promulgate regulations and charge reasonable fees for the registration and control of the manufacture, distribution and dispensing of controlled substances. Paragraph (2) of Subsection B of Section 61-11-6 NMSA 1978 authorizes the board to provide by regulation for the electronic transmission of prescriptions.
[16.19.20.3 NMAC - Rp 16.19.20.3 NMAC, 6/26/2018; A, 12/15/2020]

16.19.20.10 REGISTRATION FEE:

A. The registration fee or renewal fee required by the Controlled Substances Act shall be [~~\$180.00 for registrants per triennium. A locum tenens practitioner may apply for an initial registration which expires no more than one year after date of issuance, and this registration fee shall be \$60.00~~] as listed in 16.19.12 NMAC.

B. Research applicants registered as a practitioner shall not be required to register as a scientific investigator if he is registered as a practitioner. However, this does not exempt him from the regulations applicable to a scientific investigator.

C. Duplicate license - \$10.00
[16.19.20.10 NMAC - Rp 16.19.20.10 NMAC, 6/26/2018; A, 12/15/2020]

16.19.20.42 PRESCRIPTION REQUIREMENTS:

A. All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner.

Information on the prescription may be added or clarified by the pharmacist after consultation with the practitioner. A practitioner may sign a paper prescription in the same manner as he would sign a check or legal document (e.g., J.H. Smith or John H. Smith). Where an oral order is not permitted, paper prescriptions must be written with ink or indelible pencil, typewriter, or printed on a computer printer and shall be manually signed by the practitioner. A computer-generated prescription that is printed out or faxed by the practitioner must be manually signed.

B. Electronic prescriptions shall be created and signed using an application that meets the requirements of Part 1311 of the Code of Federal Regulations. An individual practitioner may sign and transmit electronic prescriptions for controlled substances [~~provided the practitioner~~] in a manner that meets all of the requirements of Part 1306.08 of the Code of Federal Regulations.

(1) Effective April 1, 2021 all controlled substance prescriptions must be electronically transmitted ("Electronic Prescriptions for Controlled Substances," EPCS) except:

(a) for patients residing in an intermediate care, skilled nursing or correctional facility;

(b) for patients enrolled in hospice;

(c) for an animal by a licensed veterinarian;

(d) a prescription dispensed by a federal facility not subject to state regulation (e.g. department of veteran affairs,

indian health services, military bases);

(e) a prescription requiring information that makes electronic transmission impractical, such as complicated or lengthy directions for use or attachments; or new medications not yet in electronic system;

(f) for compounded prescriptions;

(g) for prescriptions issued during a temporary technical or electronic failure at the practitioner's or pharmacy's location;

(h) for prescriptions issued in an emergency pursuant to federal law and rules of the board;

(i) for prescriptions issued in response to a public health emergency where a non-patient specific prescription would be permitted;

(j) under extenuating circumstance, not inconsistent with federal law and where the practitioner communicates directly with the pharmacist. The pharmacist, using professional judgment, may accept the non-EPCS and is responsible for ensuring documentation of the circumstance in the prescription record; and that the prescription is otherwise in compliance with state and federal law and rules.

C. Unless otherwise specified, a pharmacist who receives a written, oral, or facsimile prescription shall not be required to verify that the prescription is subject to an exemption and may dispense a prescription drug pursuant to an otherwise valid written, oral, or facsimile prescription.

D. A prescription that falls under an exception to the EPCS requirement may be transmitted to a pharmacy in one of the following ways:

[B:] (1) A prescription for a schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile equipment, provided the original written, signed prescription

is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except as noted in [~~Subsections C and D of 16.19.20.41 NMAC and Subsection E of 16.19.20.42 NMAC.~~] Paragraphs (2), (3) and (4) of this Subsection The original prescription shall be maintained in accordance with 16.19.20.31 NMAC.

[C:] (2) A prescription prepared in accordance with Subsection A of [~~16.19.20.41~~] 16.19.20.42 NMAC written for a schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, or subcutaneous infusion may be transmitted by the practitioner or the practitioner's agent to the parenteral products pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this paragraph and it shall be maintained in accordance with 16.19.20.31 NMAC.

[D:] (3) A prescription prepared in accordance with Subsection A of [~~16.19.20.41~~] 16.19.20.42 NMAC written for a schedule II substance for a resident of a long term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this subsection and it shall be maintained in accordance with 16.19.20.31 NMAC.

[E:] (4) A prescription prepared in accordance with Subsection A of [~~16.19.20.41~~] 16.19.20.42 NMAC written for a schedule II narcotic substance for a patient enrolled in a hospice program certified by Medicare under title XVIII or licensed by the state may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or the practitioner's agent will note on the prescription that the patient is a hospice patient. The facsimile serves as the original written prescription for purposes of this subsection and it shall be maintained in accordance with 16.19.20.31 NMAC.

~~[F.]~~ **(5)** A pharmacist may dispense directly a controlled substance listed in schedule III ~~[or]~~, IV, or V which is a prescription drug as determined under the New Mexico ~~[Drugs]~~ Drugs, Device and Cosmetic Act, only pursuant to either a written prescription signed by a practitioner or a facsimile of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy or pursuant to an oral prescription made by an individual practitioner and promptly reduced to written form by the pharmacist containing all information required for a prescription except the signature of the practitioner. A telephone order for a new therapy for an opiate listed in schedule III, IV, or V shall not exceed a 10 day supply, based on the directions for use, unless a written prescription is on file at this pharmacy from any practitioner for the same opiate within the past six months. A telephone order for this new opiate therapy may not be refilled.

~~[G.]~~ **E.** A pharmacy employee shall verify the identity of the patient or the patient's representative who is receiving any prescription for a controlled substance listed in schedule II, III, IV, or V before it is released. Acceptable identification means a current state issued driver's license, including photo, or other current government issued photo identification of the person presenting said identification. The identification type (*e.g.* driver's license, identification card, passport, etc.), number, name imprinted on that identification, and state must be recorded. Exceptions are, a new controlled substance prescription filled for a patient known to the pharmacist or pharmacist intern, whose identification has already been documented in a manner determined by a written policy developed by the pharmacist-in-charge; a controlled substance prescription filled for home delivery; or a controlled substance prescription filled for and delivered to a licensed facility.
[16.19.20.42 NMAC - Rp 16.19.20.42 NMAC, 6/26/2018; A, 12/15/2020]

16.19.20.44 REFILL PROCEDURE: Each refilling of a schedule III, IV or V controlled substance prescription shall be entered ~~[on the back of the prescription]~~ in the prescription record, indicating the amount dispensed, if less than the amount called for on the prescription, the date of refill and the initials of the pharmacist dispensing the substance.
[16.19.20.44 NMAC - Rp 16.19.20.44 NMAC, 6/26/2018; A, 12/15/2020]

16.19.20.46 PRESCRIPTION - PARTIALLY FILLED:

A. A prescription for a controlled substance in schedule II may be partially filled if:

- (1) the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed;
- (2) the partial fill amount is recorded on the written prescription or in the electronic prescription record; and
- (3) the remaining portions shall be filled not later than 30 days after the date on which the prescription is ~~[written]~~ issued.

B. A prescription for a controlled substance in schedule II initially filled later than 30 days after the date ~~[written]~~ issued may be partially filled if:

- (1) the pharmacist is unable to dispense the total quantity prescribed;
- (2) the partial fill amount is recorded on the written prescription or in the electronic prescription record;
- (3) the remaining portion is filled within 72 hours of the partial filling; and
- (4) the pharmacist notifies the prescribing physician if the remaining portion cannot be filled within the 72 hour period. No further quantity may be supplied beyond 72 hours without a new prescription.

C. Partial filling of a prescription for schedule III ~~[or]~~, IV or V shall be recorded in the same manner as a refill, providing the total quantity of partial filling does not

exceed the total quantity prescribed and no dispensing occurs after six months from date of prescription.

D. A prescription for a schedule II controlled substance written for a patient in a long term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities, to include individual dosage units.

(1) If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. The pharmacist shall record on the prescription whether the patient is "terminally ill" or an "LTCF patient".

(2) A prescription that is partially filled and does not contain the notation "terminally ill" or LTCF patient" shall be deemed to have been filled in violation of this regulation. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed and the identification of the dispensing pharmacist.

(3) The total quantity of schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed. Schedule II prescriptions, for patients in a LTCF or patients with a medical diagnosis documenting a terminal illness, shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of medication.

[16.19.20.46 NMAC - Rp 16.19.20.46 NMAC, 6/26/2018; A, 12/15/2020]

16.19.20.47 EMERGENCY DISPENSING:

A. Emergency dispensing of schedule II controlled

substances. “Emergency situation” means the prescribing physician determines:

(1) that immediate administration of a controlled substance is necessary for proper treatment of the intended patient;

(2) that no appropriate alternative treatment is available, including administration of a drug which is not a controlled substance under schedule II; and

(3) that it is not reasonably possible for the prescribing practitioner to provide [a] an electronically prescribed or written prescription to be presented to the person dispensing the substance prior to the dispensing.

B. A pharmacy may dispense a schedule II controlled substance in the above instance only if he receives oral authorization of a practitioner or authorization via facsimile machine and provided:

(1) the quantity prescribed is limited to the amount needed to treat the patient during the emergency period;

(2) the pharmacist shall reduce the prescription to a written form and it contains all information required of a schedule II controlled substance prescription except the signature of the prescribing practitioner;

(3) the prescribing physician, within seven days after authorization of the emergency dispensing, shall furnish a written, signed prescription to the pharmacist. The signed prescription shall have written on the face “AUTHORIZATION FOR EMERGENCY DISPENSING” and the date of the oral order or facsimile order;

(4) the signed prescription shall be attached to the oral emergency prescription order or the facsimile emergency prescription order and be filed as other schedule II prescriptions.

C. In the event the prescribing physician fails to deliver a signed written prescription to the pharmacist, within the seven days

period, the pharmacist shall notify the nearest DEA office, and the board of pharmacy.

[16.19.20.47 NMAC - Rp 16.19.20.47 NMAC, 6/26/2018; A, 12/15/2020]

16.19.20.69 SCHEDULE V:

A. Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone.

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than two and five-tenths milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(6) Not more than five-tenths milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

B. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers.

(1) Pyrovalerone.

(2) Pseudoephedrine as a drug

that includes any compound, mixture, or preparation that contains any detectable quantity of pseudoephedrine, its salts or its optical isomers, or salts of its optical isomers. Pursuant to 30-31-10.C the following substances are excluded from schedule V controlled substances: pseudoephedrine products in liquid form including liquid filled gel caps and pseudoephedrine products already classified as dangerous drugs.

C. Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]

(2) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid]

(3) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino-phenyl)]-carbamic acid ethyl ester]

(4) Brivaracetam

~~(5) drug product approved for marketing by the U.S. Food and Drug Administration and which contains cannabidiol derived from cannabis and no more than 0.1 percent tetrahydrocannabinols.]~~

[16.19.20.69 NMAC - Rp 16.19.20.69 NMAC, 6/26/2018; A, 12/17/2019; A, 12/15/2020]

REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

This is an amendment to 16.19.30 NMAC, Sections 1, 2, 3 and 9, effective 12/15/2020.

Explanatory Statement: Subsection B through G of 16.19.30.9 NMAC are not published, as there are no changes to these Subsections.

16.19.30.1 ISSUING
AGENCY: [~~Regulation and Licensing Department~~] Board of Pharmacy
 [16.19.30.2 NMAC - N, 9/15/2006; A, 12/15/2020]

16.19.30.2 SCOPE: All pharmacies as defined in [~~61-11-2 (S), (Y)~~] Subsections S and Z of Section 61-11-2 NMSA 1978, and all persons or entities that own or operated, or are employed by a pharmacy for the purpose of providing pharmaceutical products or services.
 [16.19.30.3 NMAC - N, 9/15/2006, A, 12/15/2020]

16.19.30.3 STATUTORY AUTHORITY: [~~Sections 61-11-9(A)(6)~~] Paragraph (6) of Subsection A of Section 61-11-6 NMSA 1978 requires that the board of pharmacy provide for the licensing [~~of~~] of retail pharmacies and nonresident pharmacies and for the inspection of their facilities and activities.
 [16.19.30.3 NMAC - N, 9/15/2006; A, 12/15/2020]

16.19.30.9 OPERATIONAL STANDARDS:
A. General requirements.

(1) Non-sterile drug products may be compounded in licensed pharmacies as a result of a practitioner’s prescription order based on the practitioner-patient-pharmacist relationship in the course of professional practice.

(2) Preparing limited quantities of prescription drug orders in anticipation based upon a history of receiving valid prescriptions issued within an established practitioner-patient-pharmacist relationship in the course of professional practice.

The beyond-use date should be based on the criteria outlined in USP Chapter <795>.

Any product compounded in anticipation of future prescription drug or medication orders shall be labeled. Each label shall contain:

- (i) name and strength of the compounded medication or list of the active ingredient and strengths;
- (ii) facility’s lot number;
- (iii) beyond-use date;
- (iv) quantity or amount in the container.

(3) Commercially available product may be compounded for dispensing to individual patients provided the following conditions are met:

- (a) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet patient’s needs; and
- (b) the prescribing practitioner has requested that the drug be compounded; or

(c) if the compounded product is changed to produce for that patient a significant difference, as authorized by the prescriber, between the compounded drug and the comparable commercially available drug product, or if use of the compounded product is in the best interest of the patient; “significant difference” would include the removal of a dye for medical reason such as an allergic reaction; when a compounded product is to be dispensed in place of a commercially available product, the prescriber and patient shall be informed that the product will be compounded.

(4) Compounding veterinarian [~~products~~] preparations.

(a) [~~Products~~] Preparations for animals may be compounded based on an order or prescription from a duly authorized veterinarian.

(b) These [~~products~~] preparations are to be handled and filled the same as the human prescriptions.

(c) Compounding of drugs for animals must be in accordance with the Animal Medicinal Drug Use Clarification Act of 1994 or successor Act.

(d) A licensed pharmacy may compound veterinary non-controlled substance drug preparations in reasonable quantities to be used by veterinarians in their office for administration to patients (“office use preparations”).

(e) Compounded office use preparations may be dispensed by a veterinarian to clients only under the following conditions:

(i) a valid veterinarian client patient relationship exists;

(ii) the patient has an emergency condition that the compounded drug is necessary to treat;

(iii) dispensed amount is for use in a single course of treatment, not to exceed a 120-hour supply;

(iv) timely access to a compounding pharmacy is not available; and

(v) the medication is not a controlled substance.

(f) Prohibition on wholesaling:

(i) Office use preparations will not be distributed by a person other than the pharmacy that compounded such veterinary drug preparations.

(ii) This does not prohibit administration or dispensing pursuant to a prescription drug order executed in accordance with federal and state law; and the conditions of this Paragraph (4).

(g) Providing samples of compounded veterinary preparations is prohibited.

(5) Compounding pharmacies/ pharmacists may advertise and promote the fact that they provide non-sterile prescription compounding services which may include specific drug products and classes of drugs.

[16.19.30.9 NMAC - N, 9/15/2006; A, 6/29/2013; A, 12/19/2013; A, 12/13/2015; A, 12/15/2020]

**REAL ESTATE
COMMISSION**

This is an amendment to 16.61.1 NMAC, Section 7 effective, 1/3/2021.

16.61.1.7 DEFINITIONS:

A. “Acceptable financial institution”: is a federally insured bank, savings and loan or title company authorized to do business in the state of New Mexico.

B. “Agency”: the fiduciary relationship created solely by the express written agency agreement between a person and a brokerage, authorizing the brokerage to act as agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission.

C. “Agent”: the brokerage authorized solely, by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, “agent” means the person who has been authorized to act by that associate broker’s qualifying broker. In the case of residential property management, the property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) under the property management agreement. In the case of commercial property management, the property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) pursuant to a property management agreement if the property management agreement specifically creates an agency relationship.

~~**D. “Approved education course”:** a commission-approved course offered by a commission approved sponsor in real estate law and practice; real estate financing including mortgages and other financing techniques; material specific to the regulatory, technical~~

~~and ethical practice of real estate; and all state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure.~~

~~**E. “Approved training course”:** a commission-approved course offering in personal and property protection for the broker and clients; offerings in using the computer, the internet, business calculators, and other technologies to enhance the broker’s service to the public; offerings concerning professional development, customer relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.]~~

~~**[F:] D. “Associate broker”:** a person holding a New Mexico associate broker’s license who is affiliated with a New Mexico qualifying broker.~~

~~**[G:] E. “Broker”:** any person holding a current New Mexico associate broker’s or qualifying broker’s real estate license.~~

~~**[H:] E. “Brokerage”:** a person, corporation, partnership or association qualified by a New Mexico licensed qualifying broker to conduct real estate brokerage activity in New Mexico.~~

~~**[I:] G. “Brokerage relationship”:** the relationship between a customer or client and a brokerage for the provision of services in connection with a real estate transaction.~~

~~**[J:] H. “Brokerage trust account”:** an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during a real estate sales transaction.~~

~~**[K:] L. “Broker duties”:** certain duties owed by brokers to prospective buyers, sellers, owners and tenants, and broker obligation to other brokers as set forth in Part 16.61.19.8 NMAC.~~

~~**[L:] J. “Broker in charge”:** a New Mexico licensed real estate broker qualified to be a qualifying broker who has~~

been designated in writing by the qualifying broker to assume responsibility for the brokerage during a period of time when supervision by the qualifying broker is not possible.

~~**[M:] K. “Client”:** a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission.~~

~~**[N:] L. “Commercial real estate”:** real estate that is zoned for business or commercial use by a city or county; or designated by a city or county to allow five or more multi-family units; provided that all units are located on a single parcel of land with a single legal description.~~

~~**[O:] M. “Core course”:** the four-hour commission-approved continuing education course that all brokers are required to complete annually as a condition of license renewal.~~

~~**[P:] N. “Core elective course”:** [a four-hour] commission-approved advanced continuing education course in residential transactions, commercial transactions, property management transactions, or vacant land/ranch transactions required once during each three-year cycle, core elective courses advance the broker’s practice of real estate by one or more of the following:~~

~~(1) improve broker transactional expertise focusing on, but not limited to, contractual and disclosure forms used in the practice of real estate, real estate title issues, contracts, and real estate transactional negotiating skills;~~

~~(2) improves broker business practices and professionalism focusing on, but not limited to, broker responsibilities and duties;~~

~~(3) improves broker awareness of issues that impact the public and real estate transactions focusing on, but not limited to, land development, jurisdictional taxation issues; or~~

~~(4) increases the broker knowledge of third party services within a transaction. The number of core elective hours required for both associate brokers~~

and qualifying brokers is further defined at 16.61.13.8 NMAC.

~~[Q:]~~ **Q. “Credit hours(s)”**: credits toward education requirements as assigned by the real estate commission for each commission-approved course.

~~[R:]~~ **P. “Custodial [trust] account”**: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of an owner. The account shall be established in the owner’s name ~~[with the qualifying broker as trustee]~~ under the qualifying broker’s control. This account may be interest bearing.

~~[S:]~~ **Q. “Customer”**: a person who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission.

~~[F:]~~ **R. “Designated agent”**: a broker who is designated in writing by their qualifying broker to represent a client of the brokerage as their exclusive agent in a real estate transaction.

~~[H:]~~ **S. “Designated agency”**: a policy chosen by the qualifying broker of a brokerage that discloses to a client of the brokerage that the broker representing them as an agent by means of an express written agency agreement is their only representative in the brokerage. The designated agency disclosure is made at the time that the client and the brokerage enter into an express written agency agreement, or at such time that the qualifying broker of a brokerage determines the need to designate one broker of the brokerage as agent of the buyer and another as agent of the seller in the same transaction.

~~[V:]~~ **T. “Distance education”**: distance learning is education and training that takes place outside of the traditional classroom setting and in which other instructional media are used because the instructor, teaching materials, and student are separated by either distance or time.

~~[W:]~~ **U. “Dual agency”**: an express written agreement that

modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

~~[X:]~~ **V. “Dual agent”**: the brokerage in a dual agency relationship working as a facilitator in a single transaction for both a buyer client and a seller client who have modified existing exclusive agency agreements with the brokerage.

~~[W.]~~ **Elective course:** a commission approved elective course not considered as intensive in focus as a core elective course in a broad array of topics directly and indirectly related to the practice of real estate or the skills necessary to practice real estate including: real estate law and practice; real estate financing, mortgages and other financing techniques; material specific to the regulatory, technical and ethical practice of real estate; and all state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure. This broad category of courses also includes courses associated with various national and state designations and certifications not already categorized as core electives; courses in personal and property protection for the broker and clients; broker skills-related offerings in using the computer, the internet, business calculators, and other technologies to enhance the broker’s service to the public; other skills offerings related to broker professional development, broker customer relations skills, broker sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

~~[Y:]~~ **X. “Employee”**: for the purposes of Paragraph (1) of Subsection C of Section 61-29-2 NMSA 1978 of the real estate license law, a person employed by an owner of real property, or a person employed by the brokerage acting on behalf of the owner of real property. In determining whether a person is an employee, as opposed

to an independent contractor, the commission shall consider the following:

- (1) does the employer withhold income tax from the person’s wages, salary, or commission;
- (2) does the employer pay a portion of the person’s FICA tax;
- (3) is the person covered by workers’ compensation insurance;
- (4) does the employer make unemployment insurance contributions on behalf of the person.

~~[Z:]~~ **Y. “Errors and omissions insurance”**: a type of professional liability insurance that provides insurance coverage to holders of active New Mexico real estate brokers licenses for errors and omissions made during the course of real estate transactions, subject to the coverage’s, limitations, and exclusions of the specific insurance policy or policies in place.

~~[AA:]~~ **Z. “Exclusive agency”**: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, subagency ~~[and]~~, residential property management, and may include commercial property management.

~~[BB:]~~ **AA. “Expired license”**: an associate broker’s or qualifying broker’s license that has not been renewed as of the last day of the month following the broker’s birth month at the end of the broker’s three-year licensing cycle.

~~[CC:]~~ **BB. “Express written agreement”**: any written agreement signed by all parties pertaining to a real estate transaction or the provision of real estate services.

~~[DD:]~~ **CC. “Facilitator”**: the role of a brokerage in either a dual agency relationship or a transaction brokerage relationship in which the exclusive relationships

between a seller or landlord client or buyer or tenant client are modified so that the brokerage impartially facilitates the transaction.

~~[EE:]~~ **DD.** “**Foreign broker**”: a real estate broker who does not hold a real estate license issued by the New Mexico real estate commission, but who holds a current and valid real estate broker’s license issued by another state in the United States, a province of Canada, or any other sovereign nation.

~~[FF:]~~ **EE.** “**Honesty and reasonable care and ethical and professional conduct**”: conduct that a reasonable person would understand to meet standards of professionalism and ethical conduct within a profession, including but not limited to good faith, competence, trustworthiness, diligence, and lawful behavior.

~~[GG:]~~ **FF.** “**Inactive broker**”: a New Mexico licensed real estate broker not currently affiliated with a New Mexico real estate brokerage and therefore ineligible to participate in any brokerage activity or collect fees or commissions in connection with such activity except as provided in Subsection C of 16.61.9.8 NMAC.

~~[HH:]~~ **GG.** “**In house transaction**”: a transaction ~~[that occurs]~~ in which both sides of the transaction occur under the supervision of one qualifying broker in the same brokerage.

~~[H:]~~ **HH.** “**Land title trust account**”: a pooled interest-bearing account subject to the land title trust fund act.

~~[JJ:]~~ **II.** “**Military service member**”: a person, ~~[or]~~ the spouse of a person, or the dependent children of a person, who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard. For purposes of this definition, any dependent child must be a dependent for federal income tax purposes.

~~[KK:]~~ **JJ.** “**Owner or property owner**”: a person who is recognized and held responsible by law as the owner of real property,

including real property held by any legally recognized entity in which the owner has an interest of ten percent or more.

~~[LL:]~~ **KK.** “**Party to the transaction**”: a client or customer or any other person who utilizes real estate related services subject to the jurisdiction of the commission, not including a person who acquires an interest as security for an obligation.

~~[MM:]~~ **LL.** “**Person**”: any natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal entity.

~~[NN:]~~ **MM.** “**Post-licensing course**”: the commission-approved new broker business practices course required within the first year of licensure of brokers first licensed in New Mexico as associate brokers on or after January 1, 2009.

~~[OO:]~~ **NN.** “**Principal**”: any person who authorizes or employs another to do certain acts on behalf of that person.

~~[PP:]~~ **OO.** “**Property ledger**”: a record of deposits and disbursements within a trust account or custodial account that are associated with the same property or owner.

~~[QQ:]~~ **PP.** “**Property management**”: real estate services as specified by a written management agreement between a property owner or owner association and a third party property management company; which ~~[include]~~ includes, but are not limited to, the marketing, showing, renting and leasing of real property; the collection and disbursement of funds on behalf of owners or owner associations; the supervision of employees and vendors; the coordination of maintenance and repairs; the management of tenant relations; or the preparation of leases or rental agreements, financial reports, disclosure certificates, resale certificates, and other documents, or the undertaking of any of the foregoing activities on behalf of a homeowners’ or unit owners’ association. In the course of listing

and marketing properties for sale, inspections of the property, repairs and maintenance incident to the sale and authorized by the owner shall not be considered property management. Advertising and taking reservations for vacation rental properties shall not be considered property management.

~~[RR:]~~ **OO.** “**Property management trust account**”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during the management of real property for others.

~~[SS:]~~ **RR.** “**Property manager**”: a broker who, for a fee, salary, commission or other valuable consideration, is engaged in managing property for others including owner associations. ~~[The]~~ A residential property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) under the Uniform Owner-Resident Relations Act [and/or] and under the rental or lease agreement. A commercial property manager may be an agent of the owner(s) as determined by the contract with the owner(s).

~~[TT:]~~ **SS.** “**Qualifying broker**”: a broker who has qualified a proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico, and who discharges the responsibilities of a qualifying broker as set forth in 16.61.16.9 NMAC.

~~[UU:]~~ **TT.** “**Recent veteran**”: a person who has received an honorable discharge or separation from military service within the ~~[two]~~ three years immediately preceding the date the person applied for a real estate broker’s license.

~~[VV:]~~ **UU.** “**Reconciliation**”: the process by which the property ledgers within a trust account or custodial account are balanced with the trust account or custodial account and the ~~[trust]~~ account or custodial account is balanced with the bank statement.

~~[WW:]~~ **VV.** “**Referral**”: the communication by

one broker or brokerage to another broker or brokerage of the identity of a potential buyer/tenant or seller/lessor of real property available for sale, lease, rent or exchange.

~~XX.~~ **WW.**

“Responsible person”: the qualifying broker or associate broker for whom an unlicensed assistant works. If an unlicensed assistant works for more than one broker, each broker for whom the unlicensed assistant works is a responsible person. Each responsible person will be subject to the provisions of Paragraph (7) of Subsection A of Section 61-29-12 NMSA 1978.

XX. “Residential real estate”: real estate which is zoned for private use as a living facility by a city or county; or designated by a city or county to allow four or less multi-family units on a single parcel of land with a single legal description.

YY. “Scope of authority”: the range of authority granted by the principal to act on behalf of that principal.

ZZ. “Special trust account”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of a named party to a transaction. This account may be interest bearing.

AAA. “Sponsor”: an organization or entity approved by the real estate commission to offer courses approved by the real estate commission.

BBB. “Subagent”: an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

CCC. “Transaction coordinator”: a person engaged by a broker who assists the broker in the processing of the real estate transaction, and whose services may include, but not be limited to, the following: gathering necessary information and paperwork for and from buyers and sellers, overseeing and organizing contractual deadlines, communicating and coordinating with lenders, title companies, inspectors,

other brokers in the transaction and the parties to the contract to facilitate the closing of the real estate transaction, and assembling the final real estate transaction file for closing.

A transaction coordinator involved in real estate transactions in New Mexico must have a New Mexico broker’s license. A person assisting with real estate transactions who is not licensed is an unlicensed assistant.

DDD. “Transaction”: any real estate activity subject to the jurisdiction of the commission.

EEE. “Transaction broker”: a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship. The transaction broker relationship is a non-fiduciary relationship.

FFF. “Trust account”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of others received by the qualifying broker in a transaction which includes a brokerage trust account, property management trust account [~~custodial trust account~~] or special trust account.

GGG. “Unlicensed assistant”: a person who does not hold an active New Mexico broker’s license and works under the supervision of a responsible person to perform duties for the brokerage as provided in 16.61.21 NMAC.

HHH. “Vacation rental”: With the exception of hotels and motels, a vacation rental is the rental of real property by a renter who does not manifest an intent to make the real property a permanent residence. Evidence that the renter does not intend to make the real property a permanent residence includes, but is not limited to, the following: landlord/property manager supplies all furnishings, appliances, bedding, towels, utensils, plates, and silverware.

III. “Virtual office”: A real estate brokerage office that provides communication and address services without providing dedicated office space.

[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1/1/2012; A, 1/1/2017, A, 1/15/2018; A, 1/1/2019; A, 1/3/2021]

REAL ESTATE COMMISSION

This is an amendment to 16.61.3 NMAC, Sections 9, 10, 12 and 13, effective, 1/3/2021.

16.61.3.9 EXAMINATION AND LICENSING REQUIREMENTS:

A. Associate broker’s license: prior to applying for an associate broker’s license, an applicant must pass ~~the~~ both a national broker examination prescribed by the commission, and the New Mexico real estate broker’s examination prescribed by the commission.

B. Examination application.

(1) Applications to take the prescribed broker’s [examination] examination(s) are made directly to the commission’s examination contractor on a form prescribed by the commission and provided by the contractor in a candidate information bulletin. Along with the application form, an applicant must submit certificates of completion of commission-approved ~~[30-hour]~~ 30-hour pre-licensing courses in real estate principles and practice, real estate law, and broker basics. These pre-licensing courses must have been completed within the three years prior to application to take the ~~[broker’s examination]~~ examinations. Exam candidates who are licensed as associate brokers and are taking the broker’s examination to upgrade to qualifying broker are exempt from the three-year time limit and must only provide documentation of course completion.

(2) Exam candidates ~~[currently]~~ originally licensed as real estate salespersons or brokers or licensees in other states or jurisdictions ~~[will be exempt]~~ may apply for waivers from completing the real estate principles and practice

and real estate law courses in New Mexico and from taking the national portion of the broker's examination if they can provide a certified license history from their resident licensing jurisdiction documenting that they have completed these courses or their equivalent. A New Mexico associate broker upgrading to qualifying broker will [also] be exempt from taking the national portion of the broker's exam.

(3) Except in a case of a license applicant from a state or jurisdiction with which the New Mexico real estate commission has a written license recognition agreement, an exam applicant cannot be exempted from completing the commission-approved 30-hour broker basics course.

(4) License applicants currently licensed by state or jurisdiction with which the commission has a written license recognition agreement are not required to take any of the prescribed pre-licensing courses or take either portion of the broker's examination to be eligible to apply for a New Mexico broker's license.

(5) Exam applicants exempted from taking the real estate principles and practice and real estate law courses by virtue of having a current real estate broker's license in another state shall attach to their examination application a letter of pre-licensing education waiver from the commission and a certificate of completion of the 30-hour broker basics course.

(6) All other applicants for the examination shall attach to their license examination application certificates documenting completion of one 30-hour pre-licensing course each in real estate principles and practice, real estate law, and broker basics.

(7) At the time of making application to take the examination, applicants shall pay to the commission's examination contractor a non-refundable fee not to exceed \$95.

(8) Applicants are required to pass both the state and national portions of the examination

with a minimum score of 75 no later than 90 calendar days after the first time they took the examination. Applicants failing to pass both portions of the examination within this time frame will be required to re-take and pass both portions of the examination before being eligible to apply for a broker's license.

C. Associate Broker License application.

(1) Upon passing both portions of the New Mexico real estate broker's examination, an individual has six months to apply for an associate broker's license on the application prescribed by the commission.

(2) An individual who fails to apply for an associate broker's license within six months of having passed both portions of the broker's examination shall be required to re-take both portions of the examinations six month deadline.

(3) An applicant for an associate broker's license shall be a legal resident of the United States and have reached the age of majority in New Mexico or in the state in which the applicant resides.

(4) Along with the license application form prescribed by the commission, the applicant must submit a written score report provided by the examination contractor documenting that the applicant has passed both portions of the examination with a minimum score of 75, documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate of insurance documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270. Recent veteran applicants and military service members, their spouses and dependent children, are exempt from the license application fee for the first period of licensure.

D. Qualifying broker's license examination: there is no separate qualifying broker's examination.

E. Military service members and recent veterans.

(1) [~~The commission shall, as soon as practicable after a military service member, the spouse of a military service member or a recent veteran files an application for an associate broker's or qualifying broker's license, process the application and issue a license to a qualified applicant who submits satisfactory documentation that the applicant holds a real estate license issued by another licensing jurisdiction, including a branch of the armed forces of the United States, that is current and in good standing, and that has licensing requirements that are substantially equivalent to New Mexico requirements.~~] The commission shall process the application and issue a license to the spouse of a military service member, a dependent child of a military service member, or a recent veteran that meets all the requirements for licensure as a real estate broker in New Mexico.

(2) A license issued pursuant to this part is not a provisional license and confers the same rights, privileges, and responsibilities as any other license issued by the commission.

(3) A license issued pursuant to this part shall not be renewed unless the licensee satisfies the commission's requirements for license renewal.

(4) Military service members and recent veteran applicants, their spouses and dependent children, are exempt from the license application fee for the first period of licensure.

[16.61.3.9 NMAC - Rp. 16.61.3.9, 1/15/2018; A, 1/3/2021]

16.61.3.10 QUALIFYING BROKER LICENSING REQUIREMENTS:

To be eligible to apply for a New Mexico qualifying broker's license, an applicant must

furnish the commission satisfactory evidence of completing the following:

- A. Passage of the broker’s examination pursuant to Subsection D of 16.61.3.9 NMAC.
- B. At least four years active experience as a licensed associate broker during the 60-month period, immediately preceding the filing of the application.
- C. In the case of a qualifying broker who will not be supervising or managing other brokers, at least two years of active experience as a licensed associate broker during the 60-month period immediately preceding the filing of the application.
- D. Qualifying brokers who have qualified for qualifying broker status under the exception provided in subsection C, must document at least four years of active experience as an associate broker and qualifying broker before being eligible to supervise other brokers.
- E. If licensed in another state, not less than four years’ experience as the equivalent of an associate broker during the 60-month period immediately preceding the filing of the application with verification in writing by the applicant’s qualifying broker(s) or the state’s applicable equivalent to a qualifying broker. A candidate for a qualifying broker license from another state will, in all circumstances, be required to fulfill all the remaining requirements, including experience, education and acknowledgement of responsibilities.
- F. Documented qualifying transactional experience totaling 100 points, with at least one transaction accomplished during each of the four years prior to filing of the application. These transactions are to be verified in writing by the applicant’s qualifying broker. Transactions involving property owned by the applicant do not count toward the required total. Points are awarded as follows and can be accumulated through any combination of the following activities:
 - (1) Each sale or lease transaction is deemed to have

two sides; one side working with the buyer/tenant and the other side working with the seller/owner. Both transaction sides receive points.

(2) In the event of transactions handled by teams comprised of more than one associate broker the qualifying broker shall monitor the transactions to determine which associate broker is deserving of earning the points allowed, or the division of the allowable points among team members.

(3) Real estate and property management transactions; total points available per transaction side:

- (a) Residential sales transactions: five points
- (b) Residential lot sale transactions: three points
- (c) Residential lease transactions: four points
- (d) Commercial improved property sale transactions: eight points
- (e) Commercial unimproved lot sale transactions: six points
- (f) Commercial lease transactions: six points

(g) Property management points are accumulated as follows: Points are awarded for each location for which the broker has direct responsibility. Direct responsibility means acting as an agent for the owner and is not just collecting rent. Property management points are accumulated as follows:

- (i) Residential property management: Each property receives three points, plus one point for each additional unit in that property to a maximum of 25 points per property per year. A unit is defined as a separate residence with its own postal address.
- (ii) Commercial property management: Each property receives four points, plus one point for each individual tenant space in that property to a

maximum of 25 points per property per year. A space is defined as a commercial location that has its own postal address.

(h) Farm and ranch/vacant land - For the purposes of this paragraph a farm or a ranch is defined as a property which is used for commercial agricultural purposes. Farm and ranch points are awarded as follows:

- (i) Less than 100 acres, eight points.
- (ii) 100 acres or more, 10 points.

(i) Limited waiver: A waiver may be granted by the commission to an associate broker who can demonstrate that their particular circumstance, i.e. size of market, lack of property types, health issues, force majeure, make it very difficult to obtain 100 points. The commission may waive up to 30 points and the transaction per year requirement. Written documentation and statements of proof shall be submitted with the application for waiver. [16.61.3.9 NMAC – Rp. 16.61.3.10, 1/15/2018; A, 1/3/2021]

16.61.3.12 QUALIFYING BROKER APPLICATION REQUIREMENTS:

An associate broker or salesperson licensed in another state who is applying for a qualifying broker license shall furnish the commission satisfactory evidence of the following:

- A. A notarized affidavit of the applicant’s acknowledgement of the responsibilities of a qualifying broker, including the direct supervision of all brokers affiliated with the qualifying broker. Supervision shall be defined in the affidavit as follows:
 - (1) Review and maintain all records and documents required for real estate related matters processed by personnel supervised by the qualifying broker.
 - (2) Provide or promote appropriate training of all brokers and staff affiliated with the qualifying broker for compliance

with the real estate license law and commission rules.

(3) Supervise advertising of real estate or real estate services conducted on behalf of others by anyone affiliated with the qualifying broker.

(4) Execute and maintain current written employment agreements or independent contractor agreements with associate brokers affiliated with the qualifying broker.

B. A broker applying to be licensed as a qualifying broker supervised by another qualifying broker is not required to submit this affidavit.

C. A supervisory plan which will outline the qualifying broker's schedule of training and education provided or promoted. The supervisory plan will be applicable to the broker applying to be a qualifying broker and to all other brokers affiliated with them, if any. A broker applying to be licensed as a qualifying broker supervised by another qualifying broker is not required to submit a supervisory plan.

D. Applicants with current licenses who can document that they were New Mexico qualifying brokers on or before December 31, 2005, are not subject to those requirements and may regain qualifying broker status by filling a trade name registration form and paying the trade name registration fee to the commission.

E. Brokers who were salespersons on January 1, 2006 when the license law was amended to eliminate the salesperson category and were converted to associate broker status, shall in addition to meeting the requirements in the preceding section, document that they have met the requirements for and passed the broker's examination prior to being issued a qualifying broker's license.

F. An application for a New Mexico qualifying broker's license shall be made on the form prescribed by the commission and shall be accompanied with documentation of having been

fingerprinted for purposes of matching with state and national arrest record databases, a certificate documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270.

G. [~~Military service members~~] Military service members and recent veterans:

(1) The commission shall, as soon as practicable after a military service member, the spouse of a military service member or a recent veteran files an application for an associate broker's or qualifying broker's license, process the application and issue a license to a qualified applicant who submits satisfactory documentation that the applicant holds a real estate license issued by another licensing jurisdiction, including a branch of the armed forces of the United States, that is current and in good standing, and that has licensing requirements that are substantially equivalent to New Mexico requirements.

(2) A license issued pursuant to this part is not a provisional license and confers the same rights, privileges, and responsibilities as any other license issued by the commission.

(3) [~~A license issued pursuant to this part shall not be renewed unless the licensee satisfies the commission's requirements for license renewal.~~] The commission shall, process the application and issue a license to the spouse of a military service member, a dependent child of a military service member, or a recent veteran that meet all the requirements for licensure as a real estate broker in New Mexico.

(4) A license issued pursuant to this part is not a provisional license and confers the same rights, privileges, and responsibilities as any other license issued by the commission.

(5) A license issued pursuant to this part

shall not be renewed unless the licensee satisfies the commission's requirements for license renewal.

(6) Military service members and recent veteran applicants, their spouses and dependent children, are exempt from the license application fee for the first period of licensure.

[16.61.3.9 NMAC - Rp. 16.61.3.12, 1/15/2018; A, 1/1/2019; A, 1/3/2021]

16.61.3.13 QUALIFYING BROKER LICENSE RENEWAL REQUIREMENTS:

A qualifying broker applying for renewal of their license shall furnish the commission satisfactory evidence of successful completion of:

A. The qualifying broker refresher course.

B. A minimum of [36] 42 hours of commission-approved courses, including

(1) The four-hour core course in each year of the broker's licensing cycle

(2) Eight hours of core elective courses.

(3) The qualifying broker refresher course (6 hours)

(4) Four hours of ethics.

C. Attendance at one commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be by live meeting/hearing or by live or recorded distance broadcast, but must be documented by signing into and out of the meeting/hearing. In the event of broker hardship, approved by the commission, the real estate commission may authorize an equivalent to the attendance of a commission meeting either by an online download, attendance at any approved equivalent, or by other approved participation.

D. An application for renewal of a qualifying broker's license shall include a notarized affidavit of the applicant's acknowledgement of the responsibilities of a qualifying broker,

including the direct supervision of all brokers affiliated with the brokerage, including but not limited to:

- (1) Review and maintain all records and documents required for real estate related matters processed by the brokerage.
- (2) Provide or promote appropriate training of all brokers and staff affiliated with the qualifying broker to ensure compliance with the Real Estate License Law and commission rules.
- (3) Supervise advertising of real estate or real estate services conducted on behalf of others by anyone affiliated with the qualifying broker.
- (4) Execute and maintain current written employment agreements or independent contractor agreements with associate brokers affiliated with the qualifying broker.

E. A qualifying broker applying for license renewal who will be supervised by another qualifying broker will not be required to submit this affidavit.

F. An application for renewal of a qualifying broker's license shall include a statement affirming that the qualifying broker substantially fulfilled the supervisory plan filed with the initial application, and a plan outlining the schedule of training and education to be provided or promoted and the policies for supervision in the next licensing cycle. The supervisory plan will be applicable to the applicant for renewal of the qualifying broker's license and all affiliated brokers, if any. A qualifying broker who is supervised by another qualifying broker is not required to submit a supervisory plan. [16.61.3.9 NMAC – Rp. 16.61.3.13, 1/15/2018; A, 1/1/2019; A, 1/3/2021]

REAL ESTATE COMMISSION

This is an amendment to 16.61.7 NMAC, Section 8 effective, 1/3/2021.

16.61.7.8 REQUIREMENTS:

A. All persons applying for [~~or renewing~~] a New Mexico real estate broker's license or upgrading an associate broker's license to a qualifying broker's license must be fingerprinted as a condition of licensure [~~or license renewal~~].

B. Applicant fingerprints and processing fees are submitted electronically to the New Mexico department of public safety from approved live scan vendor sites for the purpose of matching applicant fingerprints with fingerprints in state and national arrest record databases. Applicants must register on the vendor web site prior to being fingerprinted. The vendor web site address and a list of approved live scan sites are available on the real estate commission web site at www.rld.state.nm.us.

C. To verify compliance with the fingerprinting requirement, applicants for licensure [~~or license renewal~~] shall submit to the commission along with their license [~~or renewal~~] application a copy of the commission-approved fingerprint certification form completed by the vendor. To ensure that the commission is receiving the most current information available, fingerprinting shall be done no earlier than 21 days prior to submitting documents to apply for [~~or renew~~] a license. The commission cannot accept fingerprints that are older than 21 days.

D. Background checks: The commission will conduct a background check on all applications including renewal applications and may use that information in determining the applicant's eligibility for licensure or renewal. [16.61.7.8 NMAC - Rp, 16.61.7.8 NMAC, 1/1/2012; A, 1/1/2017; A, 1/3/2021]

REAL ESTATE COMMISSION

This is an amendment to 16.61.11 NMAC, Section 8, effective 1/3/2021.

16.61.11.8 REQUIREMENTS: [~~Every real estate license expires every three years on the last day of the month following the broker's birth month, unless it is renewed on or before that date. Renewal of a license is the sole responsibility of each broker. A broker whose license has expired may reinstate their license without reexamination up to one year after expiration by paying a reinstatement fee three times the regular license renewal fee. A qualifying broker with multiple licenses cannot avoid paying the late fee on an expired license by allowing the license to expire and applying for an additional license. An application for an additional license within one year of the broker's license expiration date will only be accepted if the qualifying broker brings all other licenses current with respect to fees, continuing education, and other renewal requirements. In addition to paying a reinstatement fee, the broker will be required as a condition of reinstatement to provide documentation of the completion of 36 hours of commission-approved continuing education courses. The commission shall email online license renewal forms and all related web links to brokers at the broker's email address on file at the commission, and if possible, in the case of active associate brokers, send a copy of said email notice to the applicable qualifying broker. Brokers are responsible for providing the commission with a current email address, and phone number, and, for notifying the commission within 10 days of a change of email address. Brokers must also maintain a current residential address with the commission and notify the commission within 10 days of a residential address change. The qualifying broker may pay a commission to a broker whose~~]

license is expired or to the estate of a deceased broker if the transaction was under contract while the broker's license was current.]

A. Renewal period:

Every real estate license expires every three years on the last day of the month following the broker's birth month unless it is renewed on or before that date. Renewal of a license is the sole responsibility of each broker.

B. Late renewal fee

penalty: A broker whose license has expired may reinstate their license without reexamination up to one year after expiration by paying a renewal/reinstatement fee three times the regular \$270 license renewal fee.

C. Exemption from late fee penalty for documentable medical or military reasons:

Pursuant to Section 61-29-8 NMSA 1978, a broker may be excused from paying a late license renewal/reinstatement fee of three times the normal \$270 renewal fee if the broker by reason of (1) active duty military service; or (2) due to impairment by illness or injury, cannot complete renewal requirements. In these cases the broker may make application for a license renewal/reinstatement if the application is submitted within the one-year period after license expiration. A broker may apply for an exemption from the late fee under the following conditions and procedures:

(1) Active

military/reserve duty: The broker or their spouse must have been placed on active military/reserve duty, and can document military orders.

(2)

Medically related impairment or incapacitation: The broker, spouse or a member of the broker's immediate family is placed under a doctor's care, suffering from an illness or injury of such severity that the broker is physically or mentally incapable or otherwise deterred of completing renewal requirements on time, and deterred from submitting an application for license renewal prior to license expiration. This exemption includes brokers who are temporarily deterred from completing

renewal requirements due to parental or immediate family caregiving as documentable by sufficient medical affidavit.

(3)

Documentation: The broker's late renewal/reinstatement application must contain documentable medical evidence, or in the case of military service, a document that shows the effective date of return from active military duty. Nevertheless, in all cases, the license will be considered expired and the broker may not practice real estate until the broker, within the one year from expiration, renews/reinstates his/her license. In all cases, brokers renewing/reinstating late must meet all continuing education requirements due during the expired cycle in question.

(4)

Procedure: Brokers seeking the late fee exemption under the above conditions must first contact commission staff prior to submittal of the late renewal application, and must submit a letter of explanation along with the pertinent documentation supporting late fee exemption request. Following commission staff review of the documentation, commission staff will determine the validity of the documentation. If a late fee exemption is granted, the commission staff will notify the broker to submit the late renewal application. If an exemption from the late fee is not granted, the broker may still submit the late renewal, but be subject to the late fee penalty at the time of submission.

D. Forfeiture of license renewal/reinstatement:

After the time period of one year from the date of license expiration, the broker will not be able to renew or reinstate their license, and the broker would have to undergo all precensure requirements to become licensed in the future.

E. Multiple license circumvention of late fees

disallowed: A qualifying broker with multiple licenses cannot avoid paying the late fee on an expired license by allowing the license to expire and subsequently applying for an

additional license. An application for an additional license within one year of the broker's license expiration date will only be accepted if the qualifying broker brings all other licenses current with respect to fees, continuing education, and other renewal requirements. In addition to paying a license renewal/reinstatement fee, the broker will be required, as a condition of license renewal/reinstatement, to provide documentation of the completion of the necessary 42 hours of continuing education required for a qualifying broker.

F. On-line renewal

forms: The commission shall email online license renewal forms and all related web links to brokers at the broker's email of record on file at the commission, and if possible, in the case of active associate brokers, send a copy of said email renewal notice to the applicable qualifying broker.

G. Phone number

of record and email of record address changes: Brokers are responsible for providing the commission with a current email address, and phone number; and, for notifying the commission within 10 days of a change of email address. Brokers must also maintain a current residential address with the commission and notify the commission within 10 days of a residential address change.

H. Payment of

commissions to brokers with expired license: The qualifying broker may pay a commission to a broker whose license is expired or to the estate of a deceased broker only if the transaction was under contract while the broker's license was current.

I. Background

checks: The commission will conduct a background check on all renewal applicants and may use that information in determining their eligibility for renewal.

[8/15/1997; A, 1/1/2000; 16.61.11.8 NMAC - Rn & A, 16 NMAC 61.11.8, 1/1/2002; A, 1/1/2004; A, 1/1/2006; A, 12/31/2008; A, 1/1/2012; A, 1/1/2017; A, 1/1/2019; A, 1/3/2021]

REAL ESTATE COMMISSION

This is an amendment to 16.61.13 NMAC, Section 8, effective 1/3/2021.

16.61.13.8

REQUIREMENTS: Except for brokers who are exempt from continuing education by virtue of having attained 65 years of age and a minimum of 20 years of continuous licensure prior to July 1, 2011, the following requirements apply:

A. All active and inactive associate brokers [and qualifying brokers] shall successfully complete a minimum of 36 credit hours of continuing education in courses approved by the commission during each licensing cycle. All active and inactive qualifying brokers shall successfully complete a minimum of 42 credit hours of continuing education in courses approved by the commission during each licensing cycle, which includes the qualifying broker refresher course.

B. Required courses include the four-hour New Mexico real estate commission (NMREC) core course to be completed annually; a four-hour commission-approved core elective course to be completed once during each three-year licensing; and four hours of commission-approved ethics courses to be completed during each three-year licensing cycle.

C. Of the remaining 16 credit hours, no more than 10 credit hours may be earned toward the continuing education requirement from commission-approved training category courses. All 16 remaining credit hours may be earned toward the continuing education requirement from commission-approved education category courses.

D. The NMREC core course requirements shall apply to those associate brokers and qualifying brokers who have not completed the eight-hour mandatory course in their current licensing cycle by December 31, 2016. If a broker has so completed the eight-hour mandatory course, the

NMREC core course requirement will not apply until their next licensing cycle. Brokers who have completed the eight-hour mandatory course in their current licensing cycle and who wish to take the NMREC core course will receive four additional hours of education category credit in their current licensing cycle.

E. The NMREC core course will have a unique course name and course number each year, including the year in which it was presented. The commission shall ensure that the content is unique for each year's course to ensure that brokers are not receiving identical information in more than one course.]

B. For each three-year licensing cycle, required courses include: the four-hour New Mexico real estate commission (NMREC) core course to be completed annually; four hours of commission-approved core elective course(s) to be completed during each three-year licensing for associate brokers; eight hours of commission-approved core elective course(s) to be completed during each three-year licensing cycle for qualifying brokers; and for all brokers, four hours of commission-approved ethics courses to be completed during each three-year licensing cycle. Property managers have additional continuing education requirements as specified in Subsection M of this section.

C. All remaining credit hours may be earned toward the cumulative continuing education renewal requirement from commission-approved elective category courses, additional core elective category courses or additional ethics category courses.

D. Each annual iteration of the NMREC core course title will contain the calendar year in which it is to be presented. The commission shall ensure that the content of each annual iteration is unique for each year's course to ensure that brokers are not receiving identical information in more than one course.

E. Pursuant to 16.61.11.8 NMAC, the broker's

[licensee's] license will expire and can only be renewed within one year of expiration by payment of a late fee, notwithstanding any exemptions by law or rule, and successful completion of all renewal requirements; including all applicable annual core course requirements. If a [licensee] broker fails to meet the core course requirements at the time of renewal, and [are] is not exempt under 16.61.13.8 NMAC, the following policy will be in effect [until December 31, 2019]:

(1) If a broker failed to complete the core course required for [the renewal year], the third calendar year of their license renewal cycle, the broker must complete that core course with a core course instructor, in a regular core course class setting, or another format that has been approved by the commission within one year of expiration.

(2) If a broker failed to complete the core course required for the first and/or second years of their license renewal cycle, the broker must complete that core course with a core course instructor, in a regular core course class setting, or other format that has been approved by the commission. The broker will have the option to repeat the current year's core course, with a different instructor, to fulfill the renewal requirements of the first and/or second year's core course. The broker will be given credit for the repeated core course for renewal purposes, but will not be given any continuing education credit for the repeated core course.]

(3) **(2)** [Effective January 1, 2020, paragraph (2) above will be replaced by the following:] If a broker failed to complete [the] an annual core course required for the first [and/or] or second years of their three-year license renewal cycle, and is unable to complete a make-up of the missed course(s) with an approved core course instructor prior to license expiration, the broker will be required to successfully complete the 30-hour broker basics course prior to expiration or as a condition of

expired license renewal/reinstatement.
The broker will be given credit for renewal purposes, but will not be given any continuing education credit.

(3) If a broker failed to complete any one of the three annual core course requirements within the context of their three-year cycle due to medical reasons and can present documentation to the commission of such medical reasons or active military deployment, the commission may authorize the broker to take the missed core course iteration by repeating, preferably under different instructors, the most recent core course iteration the number of annual core courses they missed prior to license expiration. Such medical reasons may include documentation (i.e., doctor's affidavit/letter) indicating the necessity of the broker to serve as a parental or immediate family caregiver.

(G.) F. Commission-approved pre-licensing courses may count for up to 10 credit hours toward continuing education credit for license renewal. The commission approved 30-hour post-licensing course may also count for up to 10 ~~[education-category]~~ credit hours toward continuing education.

(H.) G. No individual commission-approved continuing education course ~~[in either the education or the training category]~~ will be granted more than 10 credit hours of continuing education credit.

(I.) H. Continuing education credit hours generally cannot be carried forward to the next licensing cycle except for new calendar year iterations of the annual core courses in excess of 12 core course hours normally sufficient for the cycle. If the broker renews their license early within their on-line renewal two-month window, and they meet the 36-hour minimum for that renewal for an associate broker and the 42-hour minimum for that renewal for a qualifying broker, and the broker takes a core course between the date of the renewed license, and the end of the cycle's date of expiration, they may carry a fourth four-hour core course credit forward to the next cycle.

~~(J.) I.~~ The same continuing education course ~~[cannot]~~ may not be repeated for credit in ~~[a]~~ the same three-year renewal cycle.

~~(K.) J.~~ Brokers may receive up to a maximum of four approved ~~[education]~~ elective course credit hours during each licensing cycle for attending commission meetings, rule hearings, disciplinary hearings, or meetings of the education advisory committee (EAC). Brokers are prohibited from receiving credit for attending a disciplinary hearing in which they are a respondent.

~~(L.) K.~~ Approved instructors may use up to ~~[+0]~~ 28 credit hours during each three-year licensing cycle toward fulfillment of their own continuing education requirements for teaching commission approved courses. Teaching documentation must be provided by the course sponsor. Instructors may not use the same course for credit during any three-year licensing cycle.

~~(M.) L.~~ Classes required by the commission for disciplinary reasons cannot be counted towards the continuing education requirements for license renewal.

~~(N.) M.~~ Pursuant to 16.61.3.14 NMAC, all brokers who intend to offer property management services for others, shall as a condition of offering property management services complete the education requirements as listed below:

(1) Completion of the commission approved course, Uniform Owner-Resident Relations Act, or a commission approved equivalent property management related course, prior to offering property management services and every subsequent three-year licensing cycle.

(2) As a condition of offering property management services, in addition to the course requirement in subsection A above, associate brokers shall complete a minimum of six hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue

during each three-year licensing cycle.

(3) Qualifying brokers who offer or intend to offer property management services for others, shall as a condition of offering such services, in addition to the course requirement in subsection A above, complete a minimum of 12 hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue, each three-year licensing cycle.

(4) While qualifying brokers are already subject to the meeting attendance requirements for license renewal under Subsection C of 16.61.3.13 NMAC, associate brokers who offer or intend to offer property management services shall also be subject to the same meeting attendance requirements namely, the attendance at one commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be live meeting/hearing or by live or recorded distance broadcast, but must be documented by signing into and out of the meeting/hearing. In the event of broker hardship, approved by the commission, the real estate commission may authorize an equivalent to the attendance of a commission meeting either by an online download, attendance at any approved equivalent, or by other approved participation.

N. In recognition of the volunteer service to the real estate commission and subject to Subsection J of 16.61.13.8 NMAC, the following is in effect:

(1) Effective with the appointment of new commissioners after January 1, 2021, a broker currently serving their appointed term as a real estate commissioner may receive up to a maximum of 16 elective credit hours during each three-year licensing cycle for which they serve.

(2) A broker currently serving their appointed term as an education advisory committee member may receive up to a maximum of 16 elective credit hours during each three-year licensing cycle for which they serve upon written request to the commission at least two months prior to the date of license expiration.

(3) A broker currently serving their appointed term as a member of any other real estate commission task force or ad-hoc committee may receive up to a maximum of 16 elective credit hours during each three-year licensing cycle for which they serve upon written request to the commission at least two months prior to the date of license expiration.

(4) All those seeking volunteer service credit must submit a summary of such service to commission staff.
[1/1/2000; 16.61.13.8 NMAC - Rn & A, 16 NMAC 61.13.8, 1/1/2002; A, 1/1/2006; A, 1/1/2007; A, 12/31/2008; A, 1/1/2012; A, 1/1/2017; A, 1/1/2019; A, 1/3/2021]

REAL ESTATE COMMISSION

This is an amendment to 16.61.15 NMAC, Sections 8 through 11, effective 1/3/2021

16.61.15.8 EDUCATION ADVISORY COMMITTEE:

The commission shall appoint an education advisory committee (EAC), hereinafter referred to as the committee, with the goal of upgrading and improving the real estate education program in order to carry out the commission's mission of protecting the public and increasing the professional competence of real estate brokers. The committee shall advise the commission on all matters related to broker education.

A. The committee shall meet monthly or as required for the purpose of evaluating applications for real estate course sponsors, courses, and instructors and shall make

recommendations to the commission as to its findings.

(1) The committee shall use specific criteria to evaluate a course, an instructor or course sponsor for approval. These specific criteria shall consider both the instructor's depth of knowledge of the subject and the instructor's ability to convey that knowledge.

(2) The committee shall clearly state in writing to the applicant the reasons for which a course, an instructor or course sponsor are not approved.

(3) A sponsor or instructor applicant not recommended for approval by the committee may ask the commission to review the committee's unfavorable recommendation.

B. The committee shall consist of up to nine [voting members and not fewer than three non-voting instructor/advisory members] non-instructor members and no fewer than three instructor members. [The] A committee chair and a vice chair shall be elected by the committee. [from among the voting members. Upon the effective date of this rule, approximately half of the members shall be appointed to two-year terms and half to three-year terms. Thereafter, all] All members shall be appointed to three-year terms.

C. Members shall serve a maximum of two consecutive terms, but may reapply for membership on year after the expiration of their second term. The commission shall appoint members to fill vacancies until the end of the term of the vacant position.

[16.61.15.8 NMAC - Rp, 16.61.15.8 NMAC, A, 1/15/2018; A, 1/3/2021]

16.61.15.9 APPROVAL OF EDUCATION PROGRAMS:

A. Courses offered for New Mexico real estate commission approved credit must be offered by sponsors approved by the New Mexico real estate commission and be taught by instructors approved by the commission.

~~[B.] Applications for sponsor, instructor and course~~

approvals shall be accompanied by the fee(s) specified in 16.61.2.8 NMAC of the commission rules.

~~(1) An approved education category course shall consist of a course offered by a commission approved sponsor in real estate law and practice; real estate financing including mortgages and other financing techniques; material specific to the regulatory, and ethical practice of real estate; and real estate related local, state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure.~~

~~(2) Approved training category courses include personal and property protection for the broker and clients; using the computer, the internet, business calculators and other technologies to enhance the broker's service to the public; concerning professional development, customer relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses:~~

~~(3) With the exception of courses taken in states with which New Mexico has a written license recognition agreement, non-acceptable continuing education classes shall include courses taken in fulfillment of another state's continuing education requirements. Other non-acceptable courses include mechanical office and business skills such as typing; speed reading; memory improvement; language report writing; offerings concerning physical well-being or personal development such as personal motivation; stress management; time management; dress-for-success; or similar courses.]~~

B. Applications for sponsor, instructor and course approvals must be filled in completely and accompanied with the necessary supporting documentation (i.e. timed outlines, power point slides, electronic links, course review access information, etc.). Any fees as specified in 16.61.2.8 NMAC will be due to the commission following final

approval. Course applications must request one of the following course categories: Core elective, or elective. If a core elective category designation is requested, the application must clearly state the reason the course meets the requirements for the core elective category designation. The course category definitions are as follows:

(1) A core elective category course shall consist of an advanced course offered by a commission approved sponsor in residential transactions, commercial transactions, property management transactions, or vacant land/ranch transactions required once during each three-year cycle, and which advance the broker's practice of real estate by one or more of the following: improve broker transactional expertise focusing on, but not limited to, contractual and disclosure forms used in the practice of real estate, real estate title issues, contracts, and real estate transactional negotiating skills; improves broker business practices and professionalism focusing on, but not limited to, broker responsibilities and duties; improves broker awareness of issues that impact the public and real estate transactions focusing on, but not limited to, land development, jurisdictional taxation issues; or increases the broker knowledge of third party services within a transaction. The number of core elective hours required for both associate brokers and qualifying brokers is further defined at 16.61.13.8 NMAC.

(2) An elective category course shall consist of a course offered by a commission approved sponsor in real estate law and practice; real estate financing including mortgages and other financing techniques; material specific to the regulatory, and ethical practice of real estate; and real estate related local, state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure. This broad category of courses also includes some national designation and certifications

offerings not already categorized as core electives; courses in personal and property protection for the broker and clients; broker skills-related offerings in using the computer, the internet, business calculators, and other technologies to enhance the broker's service to the public; other skills offerings related to broker professional development, broker customer relations skills, broker sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

(3) With the exception of courses taken in states with which New Mexico has a written license recognition agreement, non-acceptable continuing education classes shall include courses taken in fulfillment of another state's continuing education requirements. Other non-acceptable courses include mechanical office and business skills such as typing; speed reading; memory improvement; language report writing; offerings concerning physical well-being or personal development such as personal motivation; stress management; time management; dress-for-success; or similar courses.

C. The committee shall review instructor candidates:

(1) to determine the candidate's knowledge of the subject matter;

(2) to determine the candidate's ability to communicate his/her knowledge to students;

(3) to determine if the candidate uses appropriate teaching delivery skills;

(4) to determine if the candidate is honest, truthful, reputable, professional, and competent.

[16.61.15.9 NMAC - Rp, 16.61.15.9 NMAC, 1/1/2012; A, 1/1/2017; A, 1/1/2019; A, 1/3/2021]

16.61.15.10 APPROVAL OF SPONSORS AND RESPONSIBILITIES:

A. All sponsors wishing to offer commission approved

courses for credit must be approved by the commission before the course being offered for credit.

B. Educational institutions, proprietary schools, professional organizations or businesses wishing to become commission approved sponsors must submit a completed sponsor application form with supporting documentation as required by the commission.

C. The commission will maintain a list of approved sponsors.

D. An approved sponsor shall comply with the following requirements:

(1) conduct all courses in accordance with commission rules and education policies, and in accordance with approved course content;

(2) permit all New Mexico real estate brokers to attend all classes offered by the sponsor for which continuing education credit is awarded;

(3) document electronically to the real estate commission that the student has completed the course;

(a) certify no candidate as successfully completing the broker basics or brokerage office administration course unless the student has attended at least ninety percent of the classroom instruction and has passed a written examination at the conclusion of the course;

(b) certify no broker as successfully completing a commission approved course unless the broker has attended 50 minutes of each hour, or successfully completed a distance education course approved by the New Mexico real estate commission.

(4) maintain current, complete, and accurate student records; these records shall include, but not be limited to, a record of payments made, a record of attendance, and a record of course work completed; records shall be maintained for a period of three years;

(5) permit

the commission or its representative access to classes being conducted, and make available to the commission, upon request, all information pertaining to the activities of the sponsor;

(6) advertise at all times in a manner free from misrepresentation, deception or fraud; all course advertising must include the name of the commission-approved sponsor, and must specify whether the course is ~~[in the education or training category]~~ a core elective, an elective, or ethics course;

(7) in the event a sponsor determines that it intends to cease sponsoring real estate classes it shall inform the commission in writing not less than 30 days before cessation;

(8) advise the commission within 30 days of changes in ownership, directorship, financial status, location or other pertinent information, and reapply for sponsorship in the event of change of majority ownership;

(9) at the end of each course, the sponsor shall collect from each student an evaluation that evaluates adherence to course content, the effectiveness of the instructor, and other prescribed criteria; the evaluation forms shall be maintained by the sponsor for not less than one year and shall be made available to the commission, or any duly authorized commission representative, upon request;

(10) renew sponsorship approval every three years by submitting a sponsor renewal form and renewal fee to the commission;

(11) shall meet the requirements of the Americans with Disabilities Act and all other local, state and federal laws.

E. Failure to comply with this rule may result in the loss of sponsor approval. The commission may investigate any claim of violation of this rule.

[16.61.15.10 NMAC - Rp, 16.61-15.10 NMAC, 1/1/2012; A, 1/1/2019; A, 1/3/2021]

16.61.15.11 APPROVAL OF COURSES:

A. Any pre-licensing or continuing education course must have been approved by the commission before the course being offered for credit. Courses must incorporate New Mexico law and rules when relevant. A course application form must be completed and submitted to the commission before consideration of a course for approval by the committee.

(1) Before course approval, the instructor teaching the course shall make a presentation before the committee according to presentation criteria established by the committee.

(2) The committee shall assign the number of credit hours to each course and determine whether the course is in the ~~[education or training category]~~ core elective, elective, or ethics categories.

(3) Commission approved pre-licensing courses may count for up to ten credit hours toward continuing education requirements for license renewal.

B. The committee may waive a course presentation appearance by a nationally recognized professional real estate organization that provides professional designations if the organization can document to the committee's satisfaction that the course instructor received training in the course subject matter in addition to attending a train the trainer class.

C. The commission must approve any continuing education course offered for one-time credit before the course being offered.

(1) A commission approved application form for one-time credit approval must be completed and submitted to the committee before consideration of the course for credit. Applications must contain all the necessary supporting materials regarding the instructors and the venue and date(s) the course will be offered.

(2) Approved sponsors are limited to 10 course submittals for one-time credit during each calendar year.

(3) The sponsor, or its representative, requesting one-time course credit, shall make a presentation before the committee according to presentation criteria established by the committee.

D. ~~[The course]~~ All courses shall conform to the generally accepted principles of education as prescribed by the real estate educators association (REEA) and shall comply with commission approved course content requirements. The minimum length of a course shall be one hour.

E. The commission will maintain a list of courses that have been approved for credit.

F. If the course represents an update to a previously approved course, and new material becomes available, the instructor shall be responsible for updating the course and presenting the most current information. Significant changes to course outlines should be provided by the instructor to the commission's education administrator as they occur. If a course outline has not been updated within the last three years the committee may, at its discretion, recommend to the commission that the course be removed from the list of approved courses.

G. Distance education: For purposes of this part, distance learning is ~~[education and training]~~ approved course activity that takes place outside of the traditional classroom setting and in which non-traditional instructional media are used because the teacher and student are separated by distance or time. Distance education sponsors seeking continuing education credit for their courses will be required to designate a New Mexico approved instructor to make a presentation to the committee and shall submit for committee review and approval:

(1) course syllabus which clearly states the course objectives and the specific learning objectives for desired student competencies;

(2) instructions for accessing, using and testing the online materials for committee auditing purposes

including everything necessary for evaluating course content materials, duration, accuracy and timeliness;

(3) reference materials appropriate to the course;

(4) when a series of courses is offered in a curriculum, evidence of sequential development and logical progression;

(5) description of the method, such as examination and quizzes, by which student progress and mastery of the subject matter are measured, and for determining what is required for a student to successfully complete the course;

(6) description of the method by which student identity is verified, such as user name and password;

(7) the names, telephone numbers and email addresses of individuals, web-sites or other resources that students can contact for technical assistance;

(8) the name and contact information of the New Mexico instructor approved to teach the course who will be available to answer subject matter questions during regularly posted hours;

(9) a description of the methodology used by the sponsor in determining the classroom hour equivalency of each distance education course.

H. Live distance education is distance education in which the teacher and student are separated by distance, but not time. In addition to the requirements of subsection G, the following regulations will apply to live distance education. Live distance education sponsors and instructors seeking approval to offer continuing education credit will be required to designate a New Mexico approved instructor to make a presentation to the committee and shall submit for committee approval the following:

(1) The technology a sponsor intends to use to provide live distance education will be in place, at the place of instruction and at student location(s), and demonstrated to the committee

in a situation as near to the actual proposed class setting as possible.

(2) The sponsor or instructor will provide technical support sufficient to rectify minor technical problems. If there are interruptions that exceed the regulatory mandate of 50 minutes of instruction per hour, no credits will be issued to students.

(3) At live distance education locations where there is a proctor provided by the sponsor or the instructor, a final examination is not required. At locations where there is no proctor, a final examination is required.

(4) Live distance education core course instruction will be proctored, will have a maximum of 40 students total, and a minimum of five students at each location, unless there is a one teacher to one student instruction. [16.61.15.11 NMAC - Rp, 16.61.15.11 NMAC, 1/1/2012; A, 1/1/2017; A, 1/1/2019; A, 1/3/2021]

REAL ESTATE COMMISSION

This is an amendment to 16.61.16 NMAC, Sections 8, 9 and adding Section 10, effective 1/3/2021.

16.61.16.8 AFFILIATION: A qualifying broker is responsible for all real estate activities within the brokerage. A qualifying broker may serve concurrently as a qualifying broker for more than one brokerage. A qualifying broker may by written agreement engage the services of associate brokers and qualifying brokers, provided that the terms of such agreements are consistent with the responsibilities of associate brokers and qualifying brokers as set forth in parts 16.61.16.9 NMAC and 16.61.17.9 NMAC. A qualifying broker may serve as qualifying broker and associate broker for different brokerages simultaneously provided that there are written agreements executed specifying the responsibilities and scope of authority that the broker has for each brokerage.

For purposes of this section “broker” means any licensee in a brokerage who is not acting in the capacity of a supervising qualifying broker. [16.61.16.8 NMAC - Rp, 16.61.16.8 NMAC, 1/1/2012; A, 1/3/2021]

16.61.16.9 RESPONSIBILITIES: A qualifying broker shall, in addition to all other requirements imposed by law, comply with the following:

A. Conduct the real estate brokerage business under the trade name and from the brokerage address or addresses registered with the commission.

B. Prominently display in the brokerage office, the qualifying broker’s own license and the licenses of all other affiliated associate brokers conducting real estate brokerage business from the brokerage office; in the event of a virtual office, this requirement is met by displaying a legible photo or scanned image of the licenses on the brokerage’s web site through a link labeled “real estate licenses.

C. Have in the brokerage office and available to all affiliated associate brokers and qualifying brokers a current copy of the state of the New Mexico real estate license law and rules manual.

D. Notify the commission in writing within 10 days of a change of the brokerage office address or telephone number.

~~**E.** Supervise all real estate related activities performed by all personnel, licensed or unlicensed, on behalf of others; as follows:~~

~~(1) Review and maintain all records and documents required for real estate related matters processed by all personnel supervised by the qualifying broker.~~

~~(2) Provide or promote appropriate training of all brokers and staff affiliated with the qualifying broker for compliance with the Real Estate License Law and Commission Rules.~~

~~(3) Supervise advertising of real estate or real estate services conducted on behalf of~~

others by anyone affiliated with the qualifying broker.

(4)

Execute and maintain current written employment agreements or independent contractor agreements with associate brokers affiliated with the qualifying broker.

F. All records and documents wherein the qualifying broker and affiliated associate brokers are engaged on behalf of others, or on their own behalf, in real estate related matters; the required records shall be available to the Commission or any duly authorized Commission representative at the place of business of the qualifying broker or at the Commission office. All such records whether in paper or electronic format shall be retained for a period of not less than six years. In the case of a property manager, all records shall be retained for the full term of any agreement and for six years from the termination of the management agreement.]

[G.] E. [Supervision of] Supervise trust account management by brokerage owners whether or not the brokerage owners are licensed real estate brokers. Such trust account management will conform to other trust account requirements in the commission rules.

H. Deposit all money received on behalf of others in the proper trust account as soon after receipt as is practicably possible after securing signatures of all parties to the transaction documents.

I. Receive and disburse all commissions, referral fees, and other considerations to any broker affiliated with the qualifying broker, or broker who had been affiliated with the qualifying broker at the time the transaction went under contract; the qualifying broker may also disburse or authorize the disbursement of such commissions and fees to any entity entitled by law to receive same, including the estate of a deceased broker, the deceased broker's surviving spouse, or any legally recognized entity wholly owned by an associate broker and their spouse. Such partnership,

corporation, or limited liability company shall not be required to have a qualifying broker for purposes of this subsection:

J. Assure that when the brokerage cooperates with or makes a referral to, or receives a referral from any broker, there be a transaction specific written co-brokerage or referral agreement signed by the qualifying broker.

K. Designate a broker in charge in the event actual supervision by the qualifying broker is not possible, and inform the commission of such designation in writing. During this period of time, the broker in charge shall assume all of the responsibilities of the qualifying broker for the brokerage.

L. Return the associate broker's license to the commission within 48 hours of termination or discharge.

M. Ensure that each qualifying broker and associate broker affiliated with the brokerage obtain and maintain a current errors and omissions insurance policy as provided in Section 61-29-4.2 NMSA-1978 of the Real Estate License Law and 16.61.5 NMAC of the commission rules.

N. Successfully complete as a condition of license renewal or as a condition of reinstatement of qualifying broker status the commission-approved four hour qualifying broker refresher course.

O. Ensure that associate brokers affiliated with their brokerage complete the commission-approved new broker business practices course or the CCIM 101 course within their first year of licensure.

P. Ensure that the qualifying broker's name and contact information is clearly and conspicuously displayed on any written document generated by the brokerage or presented to a prospective customer or client, and that has the potential to become an express written agreement.]

F. Maintain all transaction records for six years if not

performing property management, and for the full term of the assignment if performing property management. All such records shall be available to the commission or any duly authorized commission representative at the place of business of the qualifying broker or at the commission office. Records may be in paper or electronic format. In the case of property managers, all records shall be retained for the full term of any agreement and for six years from the termination of the management agreement;

G. Develop written office policies describing duties and responsibilities of brokers within the brokerage and guidance to brokers in avoiding violations of state or federal laws regarding real estate or rules of the real estate commission. Qualifying brokers who do not supervise are not required to develop written office policies. Office policies shall:

(1) Be provided to each broker within the brokerage and must include a signed acknowledgement by broker that policies were received and read and that broker agrees to follow the policies;

(2) Be available for inspection, upon request, by any authorized representative of the commission;

(3) Include obligations for brokers to inform the qualifying broker of any situation in which the broker is unsure, untrained, or concerned;

(4) Include obligations for the broker to be competent;

(5) Include obligations of the qualifying broker to make reasonable attempts to resolve issues that arise;

(6) Include a requirement to follow the state and federal laws regarding real estate and the rules of the real estate commission;

(7) Include a requirement for broker to present all advertising drafts not prepared by the brokerage to the qualifying broker for approval; and,

(8) Include a requirement for brokers to renew their license on time, and to be responsible for completing continuing education as required by the commission rules for renewal.

H. Provide guidance to newly licensed brokers throughout their first six transactions or more if deemed necessary by the qualifying broker. Provide guidance for all new and experienced brokers including but not limited to:

(1) Review of the office policies;

(2) Provide consultation, ongoing training and education to help the brokers avoid violations of local, state, and federal laws regarding real estate and rules of the real estate commission;

(3) Timely take action to mitigate potential or actual violations of which qualifying broker is made aware; (4)

Respond to broker promptly regarding any issues on the previous list;

(5) Provide assistance in preparing contracts as necessary;

(6) Monitor transactions as necessary;

(7) Instruct the associate broker to review closing documents and attend closing or have an experienced substitute attend closing (unless restricted by the title company); and,

(8) The qualifying broker may require review of all transaction documents.

I. Require all brokers to provide drafts of advertising not drafted by the brokerage to the qualifying broker for review and approval.

J. Execute and maintain written independent contractor agreements with brokers affiliated with qualifying broker. This section shall not be construed to mean that an employer/employee relationship is required between the qualifying broker and any broker.

K. Deposit all money received on behalf of others in the proper trust account as soon after receipt as is practicably possible after

securing the signatures of all parties to the transaction on the documents;

L. Receive and disburse or authorize the disbursement of all commissions, referral fees, and other considerations to a broker affiliated with the qualifying broker, or broker who had been affiliated with the qualifying broker at the time the transaction went under contract; the qualifying broker may also disburse or authorize the disbursement of such commissions and fees to any entity entitled by law to receive same, including the estate of a deceased broker, the deceased brokers surviving spouse, or any legally recognized entity wholly owned by an associate broker and their spouse. Such partnership, corporation, or limited liability company (LLC) shall not be required to have a qualifying broker for purposes of this subpart;

M. When the brokerage cooperates with, in expectation of compensation, or makes a referral to, or receives a referral from any broker, there must be a transaction specific written co-brokerage or referral agreement or for corporate or network referrals, a general referral agreement or contract signed by the qualifying broker;

N. Designate a broker in charge in the event actual supervision by the qualifying broker is not possible, and inform the commission of such designation in writing. During this period of time, the broker in charge shall assume all of the responsibilities of the qualifying broker for the brokerage;

O. Return broker's license to the commission within 48 hours of termination or discharge;

P. Require each broker affiliated with the brokerage to obtain and maintain a current errors and omissions policy as provided in Section 61-29-4.2 NMSA 1978 of the Real Estate License Law and 16.61.5 NMAC of the commission rules;

Q. Successfully complete the commission-approved qualifying broker refresher course as a condition of license renewal or as a condition of reinstatement of qualifying broker status;

R. Require each broker affiliated with their brokerage to complete the commission-approved new broker business practices course, or the CCIM 101 course within their first year of licensure;

S. Require brokers to include the qualifying broker's name and contact information, including license number, clearly and conspicuously on any written document generated by the brokerage or presented to a prospective customer or client, and that has the potential to become an express written agreement;

T. Identify oneself on real estate related phone calls, texts or emails as a licensed New Mexico real estate broker.

U. Disclose, when buying, selling or leasing real property on broker's own behalf, that broker holds a New Mexico real estate license.

[16.61.16.9 NMAC - Rp, 16.61.16.9 NMAC, 1/1/2012; A, 1/1/2017, A, 1/15/2018; A, 1/3/2021]

16.61.16.10 MITIGATING FACTORS TO QUALIFYING BROKER RESPONSIBILITIES

Any of the following may be considered by the commission as mitigating factors regarding an alleged violation of the responsibilities named in 16.61.16.9 NMAC, above:

A. The qualifying broker has written policies guiding brokers from violating state or federal laws regarding real estate or rules of the real estate commission as demonstrated by all of the following:

(1) The qualifying broker demonstrates the broker received written policies and an acknowledgment that broker read and agreed to follow the policies;

(2) The qualifying broker can demonstrate access was provided to associate brokers to any of the following:

(a) Ongoing training or education sessions for associate brokers;

(b) Ongoing discussions regarding real estate practice, procedures and law.

the rules of the commission:

(c)

Ongoing discussions regarding completing real estate forms correctly:

(d)

Ongoing discussions regarding changes to forms, rules and regulations, statutes and any other commission regulations

B. Any violation of the provisions of the New Mexico Real Estate License Act by any licensee associated with qualifying broker shall not be cause for suspension or revocation of a qualifying broker license unless the qualifying broker had guilty knowledge of the act or rule violation.

C. The qualifying broker's failure to provide an appropriate written company policy may be cause for discipline, including suspension or revocation of the qualifying broker's license.

[16.61.16.10 NMAC - N, 1/3/2021]

REAL ESTATE COMMISSION

This is an amendment to 16.61.17 NMAC, Section 9, effective 1/3/2021.

16.61.17.9

RESPONSIBILITIES: An active associate broker shall:

A. complete within their first year of licensure, the commission-approved new broker business practices course or the CCIM 101 course. Associate brokers who have been on inactive status since their initial licensure shall complete the new broker business practices course or the CCIM 101 course prior to activation of their license;

B. be affiliated with only one qualifying broker license at a time;

C. not engage in any real estate activity for any other qualifying broker other than the qualifying broker with whom the broker is affiliated;

D. Notify the qualifying broker immediately and seek counsel and advice of the

qualifying broker if the associate broker has questions or concerns about a transaction or process, including but not limited to, possible violations of office policies and procedures, local, state and federal laws regarding real estate and rules of the real estate commission, and must seek help with contract creation and completion when unsure.

E. Ensure associate broker's own competence and knowledge of the profession by taking continuing education courses in areas where associate broker is lacking skill or knowledge in those areas.

F. Read, understand and follow the written policies provided by qualifying broker.

~~[D:]~~ **G.** not engage in any real estate activities for others for which a real estate license is required outside the knowledge and supervision of their qualifying broker;

~~[E:]~~ **H.** not engage in any real estate activities on their own behalf outside the knowledge of the qualifying broker with whom the broker is affiliated;

~~[F:]~~ **I.** not engage in any real estate activity under a trade name(s) other than the trade name(s) of the qualifying broker with whom the broker is affiliated;

~~[G:]~~ **J.** not receive any commissions or fees for real estate activities from anyone other than the qualifying broker with whom the broker was affiliated with at the time the transaction went under contract, or persons authorized in writing by the qualifying broker to disburse such commissions or fees;

~~[H:]~~ **K.** when advertising real estate or real estate services for others, include in the advertising the trade name and telephone number as registered with the commission of the qualifying broker with whom the broker is affiliated;

~~[I:]~~ **L.** remit all funds received from others related to real estate transactions to the qualifying broker or their designee as soon as possible after receipt of those funds, and after securing signatures of all parties to the transaction;

~~[J:]~~ **M.** deliver in a timely

manner to their qualifying broker all records required to be maintained by their qualifying broker under 16.61.16 NMAC; and

~~[K:]~~ **N.** maintain a current errors and omissions insurance policy as provided in Section 61-29-4.2 NMSA 1978 of the Real Estate License Law and 16.61.5.8 NMAC of the commission rules, and provide documentation of such policy to their qualifying broker.

O. Disclose, when buying, selling or leasing real property on broker's own behalf, that broker holds a New Mexico real estate license.

P. Identify oneself on real estate related phone calls, texts or emails as a licensed New Mexico real estate broker.

Q. Renew the real estate license timely and take all required continuing education courses in order to renew the license. Notify qualifying broker immediately if the license cannot be renewed or has expired.

R. Submit all advertising not prepared by the brokerage to the qualifying broker for review and approval prior to public release.

[1/1/2000, A, 2/14/2000; 16.61.17.9 NMAC - Rn, 16 NMAC 61.17.9, 1/1/2002; A, 1/1/2006; A, 12/31/2008; A, 1/1/2012; A, 1/1/2014; A, 1/1/2017; A, 1/3/2021]

REAL ESTATE COMMISSION

This is an amendment to 16.61.19 NMAC, Section 8, effective 1/3/2021.

16.61.19.8 BROKER

DUTIES; DISCLOSURE: Brokers owe specific broker duties to prospective buyers, sellers, landlords (owners), tenants as set forth herein, 16.61.19.8 NMAC. Brokers shall disclose the applicable set of broker duties owed to buyers, sellers, landlords (owners) of rental property and tenants as set forth herein, 16.61.19.8 NMAC, prior to the time

the broker generates or presents any written document to that party that has the potential to become an express written agreement and obtain from that applicable party written acknowledgement that the broker has made such disclosures. Brokers shall perform all duties established for brokers by the commission. In the case of prospective buyers, sellers, landlord (owners) and tenants to whom the broker is not directly providing real estate services, such disclosure and acknowledgment of receipt shall be made through the broker who is directly providing real estate services to that buyer, seller, landlord (owner) or tenant.

A. Brokers owe the following duties to prospective buyers, sellers, landlords (owners) and tenants:

- (1) Honesty and reasonable care and ethical and professional conduct.
- (2) Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules, the New Mexico Uniform Owner Resident Relations Act, and other applicable local, state, and federal laws and regulations.
- (3) Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or tenant.
- (4) Written disclosure of any potential conflict of interest [~~or any other written agreement~~] that the broker has in the transaction including but not limited to:
 - (a) Any written brokerage relationship the broker has with any other parties to the transaction,
 - (b) Any material interest or relationship of a business, personal, or family nature that the broker has in the transaction, or;
 - (c) Any written agreement the broker has with a transaction coordinator who

will be providing brokerage services related to the transaction.

(5) Written disclosure of any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.

B. In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this Subsection A of 16.61.19.8 NMAC, Brokers owe the following broker duties to the buyers, sellers, landlord (owners) and tenants to whom the broker is directly providing real estate services, regardless of the scope and nature of those services; brokers working as property managers for a landlord (owner) are directly providing real estate services to the landlord (owner), not to the tenant:

- (1) Assistance to the party in completing the transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services, including:
 - (a) Timely presentation of and response to all written offers or counter-offers; and
 - (b) Active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction; If the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (a) and (b) of this Subsection B of 16.61.19.8 NMAC, the party must agree in writing that the broker is not expected to provide such service, advice or assistance. The broker shall disclose the existence of such agreement in writing to the other brokers involved in the transaction.

(2) Acknowledgement by the broker that there may be matters related to

the transaction that are outside the broker's knowledge or expertise and that the broker will suggest that the party seek expert advice on these matters.

(3) Advice to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the brokerage or presented to the party and that has the potential to become an express written agreement.

(4) Prompt accounting for all money or property received by the broker;

(5) Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;

(6) Written disclosure of brokerage relationship options available in New Mexico;

(7) Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller/owner shall not disclose the following to the buyer/tenant in a transaction:

- (a) That the seller/owner has previously indicated they will accept a sales/lease price less than the asking or listed price of a property;
- (b) That the seller/owner will agree to financing terms other than those offered;
- (c) The seller/owner's motivations for selling/leasing; or
- (d) Any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law.

(8) Unless otherwise authorized in writing, a broker who is directly providing real estate services to a buyer/tenant shall not disclose the following to the seller/owner in the transaction:

(a) That the buyer/tenant has previously indicated they will pay a price greater

than the price submitted in a written offer;

(b)

The buyer/tenant’s motivation for buying/leasing; or

(c)

Any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.

(9)

In the event the broker is working for the landlord (owner) as a residential property manager, the broker additionally owes to the landlord (owner) all duties owed under the law of agency.

C. In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this Subsection A of 16.61.19.8 NMAC, brokers working as property managers for a landlord (owner) owe the following duties to tenants:

(1)

Prompt accounting for all money or property received by the broker from the tenant, including issuance of a receipt for cash received;

(2)

If a residential property manager, written disclosure that the broker is the agent of the owner of the property and not of the tenant; in the commercial property management context, written disclosure of the broker’s relationship with the landlord (owner).

D. Broker obligations to other brokers. Brokers owe the following professional obligations to other brokers; however, brokers are not required to provide to one another a list of these broker obligations.

(1)

Honesty, reasonable care, and ethical and professional conduct;

(2)

Timely presentation of all written offers or counter-offers and responses thereto, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;

(3)

Active participation in assisting the party to whom the broker is directly providing real estate services in complying with the terms and conditions of the

contract and with the closing of the transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;

(4)

Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules; the New Mexico Uniform Owner-Resident Relations Act, and other applicable local, state, and federal laws and regulations;

(5)

Written disclosure of any adverse material facts actually known by the broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act;

(6)

Written disclosure of any potential conflict of interest that the broker has in the transaction, including but not limited to, any material interest the broker has in the transaction or any relationship of a business, personal, or family nature that the broker has with a party to the transaction;

(7)

Non-interference with a purchase agreement or any express written agreement that another broker has with a buyer, seller, landlord (owner) or tenant.

[16.61.19.8 NMAC - Rp, 16.61.19.8 NMAC, 1/1/2004; A, 1/30/2004; A, 3-27-2004; A, 1/1/2006; A, 1/1/2006, A, 1/1/2007; A, 12/31/2008; A, 1/1/2012; A, 1/1/2014. A, 1/15/2018; A, 1/1/2019; A, 1/3/2021]

REAL ESTATE COMMISSION

This is an amendment to 16.61.20 NMAC, Section 8, effective 1/3/2021.

16.61.20.8 REQUIREMENTS:
A. [Any transaction-

coordinator performing activities that require a New Mexico real estate license, including offering and negotiating contracts and leases, must hold a current real estate license issued by the real estate commission.]

Any transaction coordinators involved in real estate transactions in New Mexico including transaction coordinators from other states must have a New Mexico broker’s license.

B.

A transaction coordinator performing activities for a brokerage under one ownership is not required to have a qualifying broker’s license provided that the transaction coordinator is under the direct supervision of a qualifying broker of that same brokerage.

C.

Any transaction coordinator providing services for multiple brokerages other than the transaction coordinator’s own brokerage must hold a current New Mexico qualifying broker’s license.

D.

Any transaction coordinator providing services for a brokerage other than the transaction coordinator’s own brokerage must have a [transaction-specific] written agreement with the qualifying broker of the brokerage for which those transaction coordinator services are being provided that details the services being provided by the transaction coordinator and any compensation being paid to the transaction coordinator for those services.

E.

A broker who engages the services of a transaction coordinator [to perform activities that may require a real estate license] whether within the broker’s brokerage or outside the broker’s brokerage, shall be responsible for disclosing the name(s) of the transaction coordinator, in writing, to the buyer, seller and brokers in the transaction.

F.

A broker who hires a transaction coordinator must have a [transaction-specific] written agreement with that broker’s qualifying broker detailing the services being provided by the transaction coordinator and any compensation being paid to the transaction coordinator for

those services, including written authorization that the transaction coordinator may be paid by the associate broker who has hired him or her.

G. A broker who hires a transaction coordinator remains responsible for the transaction; the hiring of a transaction coordinator in no way eliminates or mitigates the broker’s responsibilities or obligations to the broker’s customer or client or to other brokers and parties to the transaction.

H. [Transaction coordinators may owe the following broker duties:] A transaction coordinator owes broker duties as delineated in 16.61.19.8 NMAC.

~~(1) — If a transaction coordinator does not hold a real estate license and is not performing duties that require a real estate license, no broker duties are owed.~~

~~(2) — If a transaction coordinator performs duties that require a real estate license, but only works for the broker that hired the transaction coordinator and has no interaction with the broker’s customer or client or other brokers involved in the transaction, the transaction coordinator owes the broker duties under paragraphs (1) through (5) of Subsection A of 16.61.19.8 NMAC, as follows:~~

~~(a) — Honesty and reasonable care and ethical and professional conduct;~~

~~(b) — Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the Real Estate Commission rules, the New Mexico Uniform Owner-Resident Relations Act, and other applicable local, state, and federal laws and regulations;~~

~~(c) — Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or occupant;~~

~~(d) — Written disclosure of any potential conflict of interest or any other~~

~~written agreement that the broker has in the transaction including but not limited to:~~

~~(i) — Any written brokerage relationship the broker has with any other parties to the transaction or;~~

~~(ii) — Any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;~~

~~(iii) — Any written agreement the broker has with a transaction coordinator who will be providing brokerage services related to the transaction.~~

~~(e) — Written disclosure of any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.~~

~~(3) — If a transaction coordinator performs duties that require a real estate license and works directly with a customer or client or other brokers and parties involved in the transaction, the transaction coordinator owes the following broker duties listed under paragraphs (1) through (5) of Subsection A of 16.61.19.8 NMAC listed in the preceding subparagraphs (a) through (e); and paragraphs (5) (7) and (8) of Subsection B of 16.61.19.8 NMAC, as follows:]~~

~~(a) (1) — The broker shall maintain any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal’s written consent or is required by law;~~

~~(b) (2) — Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller/owner shall not disclose the following to the buyer/occupant in a transaction:~~

~~(i) (a) — That the seller/owner has previously indicated they will accept a sales/lease price less than the asking or listed price of a property;~~

~~(ii) (b) — That the seller/owner will agree to financing terms other than those offered;~~

~~(iii) (c) — The seller/owner’s motivations for selling/leasing; or~~

~~(iv) (d) — Any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law;~~

~~(e) (3) — Unless otherwise authorized in writing, a broker who is directly providing real estate services to a buyer/tenant shall not disclose the following to the seller/owner in the transaction:~~

~~(i) (a) — That the buyer/tenant has previously indicated they will pay a price greater than the price submitted in a written offer;~~

~~(ii) (b) — The buyer/tenant’s motivation for buying/leasing; or~~

~~(iii) — Any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.] [16.61.20.8 NMAC - N, 1/1/2019; A, 1/3/2021]~~

REAL ESTATE COMMISSION

This is an amendment to 16.61.23 NMAC, Sections 8 through 12, effective 1/3/2021.

16.61.23.8 DESCRIPTION, DESIGNATION AND RECONCILIATION:

A. Funds of others.
A qualifying broker who receives money belonging to others related to a real estate transaction shall deposit same only in a trust account in an acceptable financial institution, title company or with a qualifying broker also involved in the transaction.

B. Designation. All trust accounts shall be designated on the institution's records as "trust account" and include the trade name of the brokerage as registered with the commission.

C. Electronic transactions. Online payments, direct deposits and other electronic transactions are permitted as long as each transaction can be tracked on the bank statement and on the property ledger.

D. Reconciliation. As defined in Subsection VV of 16.61.1 NMAC Section 1 of the commission rules, trust account reconciliation must be performed monthly and verified by the qualifying broker.

E. Property ledgers. Each trust account transaction shall be assigned to [a managed property] and properly accounted for in relation to the managed property to which it belongs (e.g. single family home, apartment complex or commercial property).

F. Number of trust accounts. A brokerage may have more than one trust account. [16.61.23.8 NMAC - Rp, 16.61.23.8 NMAC, 1/1/2012; A, 1/1/2017; A, 1/3/2021]

16.61.23.9 TYPES OF TRUST ACCOUNTS: A qualifying broker shall have only the following types of accounts and they shall be used only for the purposes stated.

A. Brokerage trust account. This account shall be used for money belonging to others related to a real estate sales transaction. Property management funds may not be placed in this trust account. In lieu of a brokerage trust account, a broker may deposit funds with a title company authorized to do business in the state of New Mexico. If a title company is used in lieu of a brokerage trust account, then receipt and deposit records shall be kept as outlined in this section.

B. Property management trust account. This account shall be used for money belonging to others received by a qualifying broker related to managing

properties for others. All management commissions and fees may be deposited, withdrawn and tracked through the property management trust account as long as those commissions and fees are specified in the [management] agreement between the property owner and brokerage.

C. Special trust account. In the event the principals to a sale transaction agree in writing that an interest bearing special trust account is to be established, a written agreement shall be prepared stating as a minimum the following:

- (1) the qualifying broker shall be named as sole trustee;
- (2) name of the acceptable financial institution wherein the funds are to be deposited;
- (3) the amount of interest to be paid on the funds and to whom the interest shall accrue;
- (4) the final disposition of principal and interest upon closing, termination or default by either party to the transaction; and
- (5) the signatures of all parties to the transaction and the qualifying broker as trustee.

D. Custodial account. Funds designated to be deposited in a custodial account shall first be placed in a brokerage trust account or a property management trust account of the qualifying broker and then may be transferred to the custodial account of the owner. Custodial accounts shall not contain any funds other than those belonging to the owner of the custodial account. Custodial accounts may be interest bearing; however, the interest shall be paid only to the owner or his designee. The qualifying broker shall have on file a written agreement signed by all principals as to the establishment and operational details of each custodial account.

[16.61.23.9 NMAC - Rp, 16.61.23.8 & 9 NMAC, 1/1/2012; A, 1/3/2021]

16.61.23.10 RECORD ACCESSIBILITY, RETENTION AND INSPECTION: Every qualifying broker shall keep bank and office records of all funds related to

all trust and custodial accounts under the qualifying broker's control, as set forth below.

A. Accessibility. Records shall be maintained at or accessible from the brokerage office as registered with the commission.

B. Retention. All trust and custodial account records shall be retained for six years after the completion of a transaction.

C. Property management. All trust and custodial account records shall be retained for the [previous six years during a management agreement] full term of any agreement. At the termination of a management agreement, records shall be retained for six years from the date of termination.

D. Inspection. All financial documents shall be subject to inspection by the commission or its duly authorized representative at the designated location of such records or at the offices of the commission. The records shall include, at a minimum, clear indication of all funds received and disbursed on behalf of others in all real estate transactions wherein the qualifying broker is involved.

E. The qualifying broker is responsible for the maintenance and safekeeping of all trust and custodial account records. [16.61.23.10 NMAC - Rp, 16.61.23.9 NMAC, 1/1/2012; A, 1/3/2021]

16.61.23.11 DEPOSITS, DISBURSEMENTS AND COMMINGLING:

A. Deposits. All trust account deposits shall conform to the following requirements.

(1) Timeliness. All funds of others pertaining to a real estate transaction shall be deposited into the proper trust or custodial account per written agreement of the parties to the transaction.

(2) Receipt records. A detailed record of all funds received shall be maintained by the qualifying broker and shall clearly indicate the following:

- (a) date received;

(b) date deposited;

(c) from whom received;

(d) amount of deposit;

(e) property address or legal description including unit number (if unit number is applicable); and

(f) category or purpose of receipt (e.g., earnest money, rent, security deposit, funds from owner, etc.).

(3) Wrongful deposits. The following actions involving any trust account shall be improper and shall constitute commingling:

(a) depositing a broker's own funds into a trust or custodial account without disclosure to the owner of a managed property and the real estate commission;

(b) depositing funds in a trust or custodial account that are not directly related to a real estate transaction or a managed property except as allowed by law; and

(c) depositing funds of others in an account that is not a properly designated trust account.

B. Disbursements.
All trust account disbursements shall conform to the following requirements.

(1) Timeliness.
All funds of others pertaining to a real estate transaction shall be disbursed as soon as reasonably possible after [~~the conclusion of a transaction~~] receipt of the funds.

(2) Disbursement records. A detailed record of all funds disbursed shall be maintained by the qualifying broker and shall clearly indicate the following:

(a) check number or unique transaction identification number;

(b) date of disbursement;

(c) payee;

(d) category or purpose of disbursement;

(e) amount of disbursement;

(f) property address or legal description including unit number (if unit number is applicable).

(3) Fees due broker. Fees as determined by written agreement may be disbursed as soon as the basis for calculation can be determined and funds are available.

(4) Wrongful disbursements. The following actions involving any trust or custodial account shall be improper and shall constitute commingling:

(a) disbursing trust funds or custodial funds for personal use of the qualifying broker, an associate broker or the broker's designee;

(b) disbursing commission or commission splits from any trust or custodial account to any entity other than the qualifying broker.

(c) disbursing New Mexico gross receipts tax or other non-property related business expenses directly from a trust or custodial account;

(d) disbursing funds before the completion of the related transaction, except upon court order; this provision does not prevent a broker from transferring funds from one properly designated trust or custodial account to another properly designated trust or custodial account within the same brokerage;

(e) disbursing funds in excess of the trust or custodial account balance or in excess of a specific property or client ledger balance; and

(f) trust or custodial account overages can only be disbursed in accordance with the Unclaimed Property Act with written notification to the commission.

C. Commingling.
Commingling of trust or custodial account funds is not permitted.

Commingling shall include, but is not limited to, the following actions:

(1) wrongful deposits as described in this section;

(2) wrongful disbursements as described in this section;

(3) allowing a property or client ledger within a trust or custodial account to be in deficit;

(4) placing funds derived from the management of the qualifying broker's personally owned properties, or properties owned by any legally recognized entity in which the qualifying broker has [~~a ten percent or more~~] any interest in a trust account containing funds of others;

(5) failing to withdraw from the trust or custodial account within a reasonable time, funds to which the qualifying broker is entitled;

(6) allowing money designated to one property or transaction to be used for the benefit of another property or transaction.

D. Exceptions to commingling.

(1) Non-trust funds may be placed in a trust or custodial account in an amount not to exceed the required minimum balance requirements of a financial institution necessary to maintain the account and avoid charges.

(2) Non-trust funds may be placed in a trust or custodial account in order to pay fees for credit card transactions and bank fees.

(3) Depositing a broker's own funds in a trust or custodial account with full disclosure to the owner of a managed property and with specific, prior written approval of the commission followed immediately by written documentation to the owner and to the commission of the deposit transaction.

(4) If a written sharing agreement specifies, funds of one property may be used for the benefit of another property owned by the same person or entity.

(5) Funds received from an owner for the benefit of all their managed properties may

be credited to an owner’s ledger.
 [16.61.23.11 NMAC - Rp,
 16.61.23.10 NMAC, 1/1/2012; A,
 1/1/2014; A, 1/3/2021]

**16.61.23.12 TRUST
 ACCOUNT DECLARATION
 AND RECORD KEEPING:**

Qualifying brokers who offer property management services for others shall:

A. Execute and submit to the commission, on a form provided by the commission, a declaration of intent to offer such services. Such declaration will acknowledge the qualifying broker’s responsibility for all property management services provided by the brokerage including maintenance of the records described below.

B. Maintain records of such services as provided in 16.61.23 NMAC and 16.61.24 NMAC, including:

(1) A list of all property management trust and custodial accounts maintained by the brokerage;

(2) The name of the bank(s) at which such trust or custodial accounts are maintained;

(3) Monthly trust or custodial account reconciliation(s) demonstrating a three-way reconciliation between the trust or custodial account, the bank statement, and the property ledger;

(4) Trust or custodial account year-end balances.

C. Qualifying brokers who offer property management services for others shall review 16.61.23 NMAC and 16.61.24 NMAC of the commission rules with licensed and unlicensed personnel performing property management services at the brokerage.

D. Qualifying brokers offering property management services for others shall make the records and information delineated in this part available to the commission upon request.

E. Failure of a qualifying broker to comply with the provisions of 16.61.23.12 NMAC, shall subject the qualifying broker to disciplinary action.

[16.61.23.12 NMAC – N, 1/1/2019; A, 1/3/2021]

**REAL ESTATE
 COMMISSION**

This is an amendment to 16.61.24 NMAC, Sections 9 through 12, 15 and 17 effective, 1/3/2021.

**16.61.24.9 DECLARATION
 OF INTENT:**

At any time that a qualifying broker or associate broker offers or intends to offer property management services for others, the broker shall declare that intent on a form approved by the commission, and shall be subject to education and meeting attendance requirements pursuant to 16.61.3.14 NMAC, and delineated as follows:

A. Qualifying brokers and associate brokers who offer or intend to offer property management services for others, shall as a condition of offering property management services, first complete the commission approved course, Uniform Owner-Resident Relations Act, or a commission approved equivalent property management related course, prior to offering such services, and in every subsequent three-year licensing cycle.

B. Associate brokers who offer or intend to offer property management services for others, shall do so only with the knowledge, written permission and under the supervision of their qualifying broker. As a condition of offering property management services, in addition to the course requirement in Subsection A above, the broker shall complete a minimum of six hours of approved continuing education courses in property management selected from the commission’s most current approved course catalogue during each three-year licensing cycle.

C. Qualifying brokers who offer or intend to offer property management services for others, shall as a condition of offering such services, in addition to the course requirement in Subsection A above, complete a minimum of 12 hours

of approved continuing education courses in property management selected from the commission’s most current approved course catalogue, each three-year licensing cycle.

D. Qualifying brokers and associate brokers offering property management services shall attend at least one New Mexico real estate commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first, in each [three] three-year licensing cycle. Attendance may be at a live meeting/hearing or by live or recorded distance broadcast; but must be documented by signing into and out of the meeting/hearing.

[16.61.24.9 NMAC - N, 1/1/2012; A, 1/1/2014; A, 1/1/2019; A, 1/3/2021]

**16.61.24.10 COMPLIANCE
 WITH APPLICABLE LAW:**

Brokers shall comply with applicable local, state and federal laws and ordinances concerning managing and leasing, and maintaining property for others, including but not limited to the following:

A. Federal fair housing law

B. New Mexico Uniform Owner-resident Relations Act

C. Federal lead-based paint regulations, including provisions of the federal Environmental Protection Agency’s lead-based paint renovation, repair and painting rule

D. Construction Industries Licensing Act (CILA NMSA Chapter 60 Article 13), The Manufactured Housing Act (MHA NMSA chapter 60 Article 14), and the LPG and CNG Act (NMSA chapter 70 Article 5).

[16.61.24.10 NMAC - N, 1/1/2012; A, 1/1/2019; A, 1/3/2021]

**16.61.24.11 PROPERTY
 MANAGEMENT TRUST AND
 CUSTODIAL ACCOUNTS:**

In addition to the rules set forth in 16.61.23 NMAC, the following also apply to property management trust and custodial accounts.

~~A.~~ [This] A property management trust account shall only contain funds derived from the management of property for others and shall be clearly identified with the banking institution as well as the public as a property management trust account.

~~B.~~ A custodial account utilized for property management shall contain funds derived from the management of property for only one property owner and the account will be in the name of that property owner and will be under the care and direction of the qualifying broker. The property owner may have signatory or viewing rights to this account.

~~[B:] C.~~ All funds received by the qualifying broker which are received in association with managed properties, shall be deposited into the property management trust account, excepting funds which are received for the management of property which in whole or part belongs to the qualifying broker, prior to any disbursements. Once deposited, the qualifying broker may then disburse funds as specified in the management agreement.

~~[C:] D.~~ [Deposits from tenants shall be placed in a property management trust account. Deposits may be held in a property management trust account or may be disbursed to the owner as specified in the property management agreement and agreed to by the tenant.] Unless the tenant occupies a property owned by the qualifying broker, deposits shall be placed in a property management trust account. Deposits may be held in a property management trust account, or may be disbursed to the owner as specified in the property management agreement and agreed to by the tenant.

~~[D:] E.~~ Commingling of funds is not permitted. No funds may be deposited in a property management trust account that are not received in connection with a managed property except as provided for in 16.61.23 NMAC Exceptions to commingling.

~~[E:] E.~~ Property ledgers.

When the property management trust account contains funds from the rental or lease of more than one property, separate accounting records shall be maintained on each property.

[16.61.24.11 NMAC - Rp, 16.61.24.8 NMAC, 1/1/2012; A, 1/1/2014; A, 1/1/2019; A, 1/3/2021]

16.61.24.12 REPORTS AND DOCUMENTS TO OWNERS:

~~A.~~ Owner statements. The qualifying broker shall provide the owner with a report of receipts and disbursements monthly or as required by the management agreement, showing the following:

- ~~(1)~~ previous balance;
- ~~(2)~~ funds deposited by category;
- ~~(3)~~ funds disbursed by category; and
- ~~(4)~~ ending balance.

~~B.~~ Additional reports may be provided as set forth in the property management agreement.

~~C.~~ Documents. Fully executed copies of the management agreement shall be provided to the owner after obtaining all signatures. Signed leases or other documents related to the management agreement shall be provided to the owner upon request, except for documents that the property manager is prohibited by law or contract from disclosing, [including] which may include but are not limited to criminal background checks and credit reports.

~~D.~~ Final statement after termination. Final accounting of trust account or custodial account funds shall be provided to the owner within 60 days of the effective date of termination of a management agreement.

[16.61.24.12 NMAC - Rp, 16.61.24.12 NMAC, 1/1/2012; A, 1/1/2014; A, 1/1/2019; A, 1/3/2021]

16.61.24.15 RECORD ACCESSIBILITY, RETENTION AND INSPECTION: The property management brokerage shall maintain office records of all properties managed for others.

~~A.~~ Accessibility. Records shall be maintained at or accessible from the brokerage office at the location as registered with the commission.

~~B.~~ Retention. All property management records shall be retained for the [previous] duration of the contract and six years during a management agreement. At the termination of a management agreement, records shall be retained for six years from the date of termination.

~~C.~~ Inspection. All records are subject to inspection by the commission or its duly appointed representative at or accessible from the brokerage office or at the offices of the commission.

~~D.~~ The qualifying broker is responsible for the maintenance and safe-keeping of all property management records. [16.61.24.15 NMAC - Rp, 16.61.24.15 NMAC, 1/1/2012; A, 1/3/2021]

16.61.24.17 VENDORS:

All ~~[brokers]~~ property managers hiring vendors or employees to perform maintenance, repair or renovation activities on behalf of property owners which may require a permit issued by the construction industries division or an equivalent local or municipal permitting agency shall only use vendors and employees who are:

~~A.~~ certified [and/or] or licensed as required by local, state [and/or] or federal law; and,

~~B.~~ insured [and/or] or bonded.

[16.61.24.17 NMAC - N, 1/1/2019; A, 1/3/2021]

REAL ESTATE COMMISSION

This is an amendment to 16.61.32 NMAC, Section 8, effective 1/3/2021.

16.61.32.8 ADVERTISEMENTS:

~~A.~~ All real estate

advertising shall be a true and factual representation of the property and real estate services being advertised and the brokerage providing the services and shall not be presented in such a manner that will confuse or mislead the public.

B. Every qualifying broker advertising real property for others for sale, purchase, lease, exchange or rent, including short-term or vacation rentals, or advertising real estate services, shall at a minimum, use in such advertising the trade name and current brokerage office telephone number as registered with the commission. Directional signs are exempt from these requirements. Additional telephone numbers may be used in such advertising.

C. Associate brokers, when advertising real property for others for sale, purchase, lease, exchange or rent, or when advertising real estate services, shall include in the advertisement the trade name and the current telephone number as registered with the commission of the brokerage with which they are affiliated. Effective January 1, 2017, the brokerage trade name and telephone number shall be prominently displayed in a type size not less than thirty-three percent of the type size of the associate broker's name, or in the case of a team of associate brokers, the team name.

D. ~~[A broker advertising to, sell, or exchange real property which the broker owns or partially owns shall indicate within such advertising, including signs, that the broker owns the real property. Disclosure of such ownership must also be made in the listing contract, purchase agreement, or exchange agreement. If an owner-broker engages a third party broker to list the owner-broker's property, the third party broker is not required to make an owner-broker disclosure in advertising and signs, but such disclosure is required in the listing contract, purchase agreement or exchange agreement. A broker advertising to rent or lease real property which the broker owns or partially owns is not required~~

~~to disclose such ownership in advertising and signs, but is required to make such disclosure in rental or lease agreements.] A broker advertising to buy, sell, lease, rent, or exchange real property which the broker owns, partially owns, will own or will partially own shall indicate within such advertising, including signs, that the broker owns or will own the real property. Disclosure of such ownership must also be made in the listing contract, purchase agreement, rental agreements, lease agreements, or exchange agreements. If an owner-broker engages a third party broker to list the owner-broker's property, the third party broker is not required to make an owner-broker disclosure in advertising and signs, but such disclosure is required in the listing contract, purchase agreement, rental agreement, lease agreement, or exchange agreement.~~

E. When advertising real property owned by a broker and the telephone number of the brokerage is used in the advertisement, the advertisement must also include the trade name of the brokerage as registered with the commission.

F. All advertising must be in compliance with all local, state and federal laws and regulations.

G. These requirements apply to all forms of advertising, including but not limited to print, audio and video recordings, computer presentations, online and electronic media. In the event that disclosure of the brokerage name and telephone number as registered with the commission is not practical in electronic displays of limited information, such as thumbnails, text messages, links and tweets of 200 characters or less, such displays are exempt from the disclosure requirement provided such displays are linked to a display that includes all of the required disclosures.

[N, 1/1/2000; 16.61.32.8 NMAC - Rn, 16 NMAC 61.32.8, 1/1/2002; A, 1/1/2006; A, 1/1/2007; A, 1/1/2017; A, 1/3/2021]

TAXATION AND REVENUE DEPARTMENT

This is an amendment to 18.19.5 NMAC, Sections 7, 12, 14 and 15 and repeal of Sections 16 and 17, effective 12/15/2020.

18.19.5.7 DEFINITIONS:

A. As used in regulations under the provisions of the New Mexico Commercial Driver's License Act:

(1)

"commercial driver's license" means a license issued by a state or other jurisdiction which authorizes the holder to operate a commercial motor vehicle;

(2)

"commercial motor vehicle" means a motor vehicle of a type used in commerce:

(a) if

the vehicle has a gross vehicle weight rating of 26,001 or more pounds;

(b)

if the vehicle is designed to transport sixteen or more passengers, including the driver; or

(c) if

the vehicle is transporting hazardous materials and is required to be placarded pursuant to applicable law;

(3)

"combination vehicle" means a power or tractor unit with one or more semi-trailers, trailers or semi-trailers converted to trailers by means of a converter gear;

(4)

"disqualified" means a driver who has had the qualification to drive a commercial motor vehicle removed and whose New Mexico commercial driver's license is canceled; for purposes of this definition and Section 66-5-68 NMSA 1978, "canceled" shall mean that the commercial driver's license is in "revocation" as that term is defined in Subsection B of Section 66-5-1 NMSA 1978, and the driver is not eligible to apply for a commercial driver's license until the period of time for which the driver was disqualified has elapsed; and

(5) "resident"

means a person who intends to

reside in New Mexico evidenced by registration to vote or other action acceptable to the motor vehicle division.

B. As used in Subsection C of Section 66-5-6 NMSA 1978, “healing arts practitioner” means a person licensed to practice in this state medicine, osteopathic medicine, oriental medicine, chiropractic, or similar medical services for human beings. The term also includes a person licensed to practice in this state as a certified nurse practitioner, clinical nurse specialist, physician assistant or osteopathic physician assistant.

C. As used in regulations under the provisions of the New Mexico Motor Vehicle Code:

(1) “driver’s license” means any license, permit or driving authorization card issued by a state or other jurisdiction recognized under the laws of New Mexico pertaining to the authorizing of persons to operate motor vehicles and including a REAL ID-compliant driver’s license and a standard driver’s license;

(2) “identification card” means a document issued by the department or the motor vehicle administration of a state or other jurisdiction recognized under the laws of New Mexico that identifies the holder and including a REAL ID-compliant identification card and a standard identification card;

(3) “license” without modification means any license, permit or driving authorization card issued by a state or other jurisdiction under the laws of New Mexico pertaining to authorizing of persons to operate motor vehicles including a REAL ID-compliant driver’s license and a standard driver’s license;

(4) “REAL ID-compliant driver’s license” means a license or a class of license issued by a state or other jurisdiction pertaining to the authorizing of persons to operate motor vehicles and that meets federal requirements to be accepted by federal agencies for

official federal purposes:

(5) “REAL ID-compliant identification card”

means an identification card that meets federal requirements to be accepted by federal agencies for official federal purposes;

(6) “sex” male, female or gender x;

(7) “standard driver’s license” means a license or a class of license issued by a state or other jurisdiction recognized by the law of New Mexico that authorizes the holder to operate motor vehicles and is not guaranteed to be accepted for official federal purposes;

(8) “standard identification card” means an identification card that is not guaranteed to be accepted for official federal purposes.

[2/28/1990, 8/20/1993, 10/31/1996; 18.19.5.7 NMAC - Rn & A, 18 NMAC 19.5.7, 9/14/2000; A, 10/31/2007, A, 12/15/2020]

18.19.5.12 [PROOF OF IDENTIFICATION NUMBER, IDENTITY, AND AGE FOR UNITED STATES CITIZEN, UNITED STATES NATIONAL OR PERMANENT RESIDENT ALIEN] REAL ID-COMPLIANT DRIVER’S LICENSES AND IDENTIFICATION CARDS FOR UNITED STATES CITIZENS, UNITED STATES NATIONALS OR PERMANENT RESIDENT ALIENS:

A. A United States citizen, United States national or permanent resident alien applying for a REAL ID [Act of 2005] compliant New Mexico driver’s license or identification card, [driving permit, provisional driver’s license, or driver’s license,] other than a commercial driver’s license, must provide documentary proof of their identification number, identity, age, indication of sex, lawful status and New Mexico residency.

B. Proof of identity and age: To establish identity and age [and lawful status] the applicant must present at least one of the following documents:

(1) a valid, unexpired United States passport;

(2) a valid, unexpired United States passport card;

(3) a valid foreign passport with I-551 stamp;

(4) an original or a certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual’s place (state) of birth;

(5) a consular report of birth abroad (CRBA) issued by the U.S. department of state, form FS-240, DS-1350 or FS-545;

(6) a valid, unexpired permanent resident card (form I-551) issued by the U.S. department of homeland security (DHS) or immigration and naturalization service (INS);

(7) a certificate of naturalization issued by DHS, form N-550 or form N-570;

(8) a certificate of citizenship, form N-560 or form N-561, issued by DHS;

(9) [other documents as DHS may designate by notice published in the federal register; or] a valid unexpired employment authorization document (EAD) issued by DHS, form I-766 or form I-688B, verified through the systematic alien verification for entitlement system (SAVE);

(10) [other documents as allowed by an approved DHS exception process.] a foreign passport with unexpired U.S. visa affixed, accompanied by the approved I-94 form documenting the applicant’s most recent admittance into the U.S., verified by SAVE;

(11) REAL ID driver’s license or ID card combined proof of legal presence if legal presence is temporary; or

(12) other documents as allowed by an approved DHS exception process.

C. Proof of Identification number: Along with the proof of identity and age document listed above, an applicant must also present [his or her social security administration (SSA) account

number card. If a SSA account card is not available, the person shall present] one the following documents, provided that the document bears the applicant's social security number:

(1) a social security number (SSN) card;

~~(1)~~ (2) a W-2 form;

~~(2)~~ (3) a social security administration (SSA)-1099 form;

~~(3)~~ (4) a non-SSA-1099 form; or

~~(4)~~ (5) a pay stub with the applicant's name and social security number on it.

D. Proof of New Mexico residency: The applicant must present at least two of the following documents that include the individual's name and principal residence:

(1) a current real property rental agreement or a purchase agreement;

(2) a utility bill dates within 60 days of the application and that is not a cellular phone bill;

(3) an insurance bill, card or binder dated within the past six months of the application;

(4) a bank or credit card statement dated within 60 days of the application;

(5) an employment pay stub containing applicant's name and address, dated within 60 days of the application;

(6) a local property tax statement from the county assessor's office of the county where the property is located;

(7) documentation from an educational institution such as a transcript, report card or enrollment confirmation, dated within 60 days of the application;

(8) original documentation from a city, county, state, tribal or federal government organization or community organization attesting to the applicant's New Mexico residency;

(9) a New Mexico medical or public assistance

card with address on card, letter from issuing agency that came with the card, showing name and address, or profile print-out from issuing agency;

(10) documents indicating membership in a New Mexico religious organization provided applicant is less than 18 years of age;

(11) documents indicating membership in a New Mexico sports organization provided applicant is less than 18 years of age;

(12) if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico identification card, or two proofs of residency of the parent/guardian; or

(13) a document evidencing eligibility and proof that the applicant is currently receiving services from a non-profit organization qualified pursuant to Section 501 (c)(3) of the Federal Internal Revenue Code of 1986 provided the document displays the applicant's address.

E. Indication of sex: an applicant must indicate their sex as either male, female or gender x.

F. Proof of lawful status: An applicant must present one of the documents listed in Paragraph (1) a valid unexpired US passport, Paragraph (2) a valid unexpired US passport card, Paragraph (4) an original or a certified copy of birth certificate filed with a state office of vital statistics or equivalent agency in the individual's place (state) of birth, Paragraph (5) a consular report of birth abroad, Paragraph (6) a valid unexpired permanent resident card, or Paragraph (7) a certificate of naturalization of Subsection (B) of 18.19.5.12 NMAC.

G. Exceptions process: A process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity or age. Alternative documents to demonstrate lawful status will only be allowed

to demonstrate U.S. citizenship. Circumstances deemed "beyond the person's control" include but are not limited to: an event occurred prior to the year official documents are available from the state or territory; natural disaster circumstances; customer provides proof from the issuing agency that documents were destroyed; or non-issuance of official records.

(1) Defined exception process #1: Certified letter of enrollment or of Indian blood & affidavit of birth. If the applicant is a member of a federally- recognized Indian nation, tribe or pueblo and does not have a birth certificate because they were not born in a hospital, the motor vehicle division will accept their certified letter of enrollment or valid identification card issued by a federally recognized Indian nation, tribe or pueblo and the applicant's birth registration notification issued by the U.S. census office for the applicant's federally- recognized Indian nation, tribe or pueblo so long as the letter contains the applicant's name and date of birth and the applicant provides a letter from the New Mexico department of health, bureau of vital statistics rejecting the applicant's request for a delayed birth registration. The combination of these documents provides proof of U.S. citizenship and identity.

(2) Defined exception process #2: Certified letter of enrollment or valid identification card issued by a federally recognized Indian Nation, tribe or pueblo as proof of age. If the applicant is a member of a federally- recognized Indian nation, tribe or pueblo and does not have a birth certificate to demonstrate proof of age, the applicant may use a certified letter of enrollment or valid photo-identification card issued by a federally- recognized Indian nation, tribe or pueblo as documentary proof of the applicant's age so long as the letter contains the applicant's name and date of birth and the applicant provides a letter from the New Mexico department of health, bureau of vital statistics rejecting the

applicant's request for a delayed birth registration.

(3) Defined exception process #3: Baptismal certificate as proof of age. If the applicant was born before December 31, 1941, the applicant may use an original baptismal record or certified copy of a baptismal record as documentary proof of the applicant's age so long as the baptismal record contains the applicant's name and date of birth or date of baptism and the applicant provides a letter from the New Mexico department of health, bureau of vital records and health statistics rejecting the applicant's request for a delayed birth registration.

(4) Defined exception process #4: Military records as proof of age. If the applicant was born before December 31, 1941, the applicant may use a certified copy of military records as documentary proof of the applicant's age so long as the record contains the applicant's name and date of birth and the applicant provides a letter from the New Mexico department of health, bureau of vital records and health statistics rejecting the applicant's request for a delayed birth registration.

[18.19.5.12 NMAC - N, 6/29/2001; A, 6/14/2002; A, 6/30/2003; A, 10/1/2007; A, 7/31/2009; A, 11/15/2016; A, 12/15/2020]

18.19.5.14 [PROOF OF IDENTIFICATION NUMBER, IDENTITY, AGE, AND LAWFUL STATUS] REAL ID-COMPLIANT DRIVER'S LICENSE AND IDENTIFICATION CARDS FOR LAWFUL UNITED STATES RESIDENTS:

A. A person who is legally in the United States but not a United States citizen, United States national or permanent resident alien may apply for a REAL ID [Act of 2005] compliant New Mexico driver's license, or identification card [driving permit, provisional driver's license, or driver's license], other than a commercial driver's license, and must provide documentary proof of their

identification number, identity, age, indication of sex, lawful status and New Mexico residency.

B. Proof of identity and age: To establish identity and age, the applicant must present one of the following documents:

(1) an unexpired employment authorization document issued by U.S. department of homeland security (DHS), form I-766 or form I-688B, verified by the systematic alien verification for entitlements system (SAVE);

(2) an unexpired foreign passport with a valid, unexpired U.S. visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States, verified by SAVE.

This document can be used to satisfy both the identity and age requirement, and proof of identification number requirement for a REAL ID compliant credential.

(3) REAL ID [Act of 2005] driver's license or identification card issued in compliance with the standards established by this part.

C. If the identity document submitted is [~~from one~~] a REAL ID driver's license or identification card as listed in Paragraph (3) of Subsection B of 18.19.5.14 NMAC, then to establish legal or lawful presence in the United States, the applicant must present one of the following documents issued by the U.S. federal government verified through SAVE:

(1) an unexpired immigrant or nonimmigrant visa status for admission into the United States;

(2) a pending or approved application for asylum in the United States;

(3) documentation of admission into the United States as a refugee;

(4) a pending or approved application for temporary protected status in the United States;

(5) documentation of approved deferred action status;

(6) a pending application for adjustment of status to legal permanent resident or conditional resident;

(7) conditional permanent resident alien status; or

(8) other documents as DHS may designate by notice published in the federal register.

D. Proof of identification number: An applicant must also present documentary evidence of their identification number from one of the following documents:

(1) if, eligible for social security number, [~~his or her social security administration (SSA) account number card. If a social security administration account card is not available, the person shall present~~] one the following documents, provided that the document bears the applicant's social security number:

~~(a)~~ a social security number (SSN) card;

~~(b)~~ a W-2 form;

~~(c)~~ a SSA-1099 form;

~~(d)~~ a non-SSA-1099 form;

~~(e)~~ a pay stub with the applicant's name and social security number on it; or

(2) an unexpired foreign passport with a valid, unexpired U.S. visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States, verified by SAVE. This document can be used to satisfy both the identity and age requirement, and identification number requirement for a Real ID compliant credential.

E. Indication of sex: an applicant must indicate their sex as either male, female or gender x.

F. Proof of New Mexico residency: The applicant must present at least two of the following documents that include the individual's name and principal residence:

(1) a current real property rental agreement or a purchase agreement;

(2) a utility bill dates within 60 days of the application and that is not a cellular phone bill;

(3) an insurance bill, card or binder dated within the past six months of the application;

(4) a bank or credit card statement dated within 60 days of the application;

(5) an employment pay stub containing applicant's name and address, dated within 60 days of the application;

(6) a local property tax statement from the county assessor's office of the county where the property is located;

(7) documentation from an educational institution such as a transcript, report card or enrollment confirmation, dated within 60 days of the application;

(8) original documentation from a city, county, state, tribal or federal government organization or community organization attesting to the applicant's New Mexico residency;

(9) a New Mexico medical or public assistance card with address on card, letter from issuing agency that came with the card, showing name and address, or profile print-out from issuing agency;

(10) documents indicating membership in a New Mexico religious organization provided applicant is less than 18 years of age;

(11) documents indicating membership in a New Mexico sports organization provided applicant is less than 18 years of age;

(12) if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico identification card, or two proofs of residency of the parent/guardian; or

(13) a document evidencing eligibility and proof that the applicant is currently receiving services from a non-profit

organization qualified pursuant to Section 501 (c)(3) of the Federal Internal Revenue Code of 1986 provided the document displays the applicant's address.
[18.19.5.14 NMAC - N, 11/15/2016, A, 12/15/2020]

18.19.5.15 ~~[PROOF OF IDENTITY, AND AGE FOR A DRIVING AUTHORIZATION CARD OR] STANDARD DRIVER'S LICENSE OR STANDARD IDENTIFICATION CARD THAT IS NOT ACCEPTABLE FOR FEDERAL PURPOSES:~~

A. Applicants for a New Mexico [~~driving authorization card~~] standard license or standard identification card that is not acceptable for federal purposes must provide documentary proof of their identity, indication of sex, age and New Mexico residency.

B. [~~An applicant who cannot establish lawful status and who does not hold a current, valid New Mexico driver's license or identification card must also submit fingerprints for a background check, as provided in 19.18.5.17 NMAC.~~

C.] Proof of identity and age: To establish identity and age, [~~Applicants~~] applicants can use one of the following documents if it contains the applicant's name and date of birth, to provide documentary proof of their identity and age. If the document does not contain the applicant's name and date of birth, two of the following documents will be required:

- (1) an original or certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's place of birth;
- (2) a consular report of birth abroad issued by the U.S. department of state, form FS-240, DS-1350 or FS-545;
- (3) an unexpired employment authorization document issued by the U.S. department of homeland security, form I-766 or form I-688B, verified by SAVE;

(4) an identification card issued by a foreign consulate, such as the consulate of Mexico in El Paso, Texas, or Albuquerque, New Mexico [or such other foreign consulate];

(5) a certified letter of enrollment issued by a federally recognized Indian nation, tribe or pueblo;

(6) a valid identification card issued by a federally recognized Indian nation, tribe or pueblo;

(7) certified copy of foreign birth certificate issued by the applicant's place or birth, provided that if the document is not in English, a certified copy of the foreign birth with a notarized English translation;

(8) affidavit of Indian birth;

(9) a state issued driver's license, a driver's license issued by a territory of the United States, or by jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(10) a state government-issued photo identification card, or a photo identification card issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(11) a state government-issued photo learner's permit, or a photo learner's permit issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(12) an American Indian or Alaskan proof of Indian blood, certificate of degree of Indian blood, federal Indian census card or tribal membership card;

(13) a photo identification card issued by the United States military, United States coast guard or New Mexico national guard;

(14) an identification document issued by the United States veterans administration,

so long as it is accompanied by a United States veterans administration medical center identification card;

(15) a valid United States active duty/retiree/reservist military identification card (DOD ID DD-2);

(16) a United States, state, or local government-issued photo ID, issued based on name, social security number and date of birth;

(17) N560 certificate of citizenship if verified in SAVE;

(18) N550 certificate of naturalization if verified in SAVE;

(19) a valid permanent resident card issued by the United States government if verified in SAVE;

(20) a valid I-551 resident alien card issued since 1997 if verified in SAVE;

(21) a valid New Mexico license or identification card;

(22) a court order for name change, gender change, adoption or divorce, as long as it includes the legal name, date of birth and court seal;

(23) a New Mexico correction department photo identification card, or a photo identification card issued by the federal bureau of prisons, that includes the name, date of birth and documentation that the card has not expired within the past year;

(24) a social security card;

(25) military discharge/separation papers (DD 214);

(26) selective service card;

(27) an I-94 form presented without a passport if it contains the applicant's photo;

(28) a military dependent identification card that includes the applicant's photo;

(29) a medical insurance card or documentation of medical insurance coverage or eligibility containing an insurance

identification number including a Medicaid or Medicare card;

(30) a passport or passport card from the applicant's country of citizenship;

(31) a passport or passport card from the United States if verified through systematic alien verification for entitlements system (SAVE);

(32) individual tax identification number (ITIN);

(33) a medical record less than one year old that is not from a visit to an emergency room or urgent care facility;

(34) proof of eligibility for and receipt of [welfare] public assistance benefits, including general assistance, temporary assistance for needy families and the supplemental nutrition assistance program with a copy of the state human services department eligibility profile page dated with the last year.

C. Proof of New Mexico residence: A person must present at least two of the following documents that include the individual's name and principal residence:

(1) a current real property agreement or a purchase agreement;

(2) a utility bill dated within 60 days of the application and does not include a cell phone bill;

(3) an insurance bill, card or binder dated within the past six months of the application;

(4) a bank or credit card statement dated within 60 days of the application;

(5) an employment pay stub containing applicant's name and address, dated within 60 days of the application;

(6) a local property tax statement from the county assessor's office of the county where the property is located;

(7) documentation from an education institution such as a transcript, report card or enrollment confirmation, dated within 60 days of the application;

(8) original documentation from a city, county, state, tribal or federal government organization or community organization attesting to the applicant's New Mexico residency;

(9) a New Mexico medical or public assistance card with address on card, letter from issuing agency that came with the card, showing name and address, or profile print-out from issuing agency;

(10) documents indicating membership in a New Mexico religious organization provided applicant is less than 18 years of age;

(11) documents indicating membership in a New Mexico sports organization provided applicant is less than 18 years of age;

(12) if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico identification card, or two proofs of residency of the parent/guardian;

(13) a document evidencing eligibility and proof that the applicant is currently receiving services from a non-profit organization qualified pursuant to Section 501 (c)(3) of the Federal Internal Revenue Code of 1986 provided the document displays the applicant's address.

D. Applicants for a standard driver's license or standard identification card not acceptable for federal purposes who are homeless or in temporary lodging and unable to provide two of the documents identified in Subsection C of 18.19.5.15 NMAC may provide an affidavit or a notarized letter from a representative of a New Mexico governmental entity, not-for-profit organization, assisted care facility/home, adult assisted living facility/home, homeless shelter, transitional service provider, or group/half way house attesting to the address where the applicant resides or receives services in lieu of the documents required in Subsection C of 18.19.5.15 NMAC.

E. Indication of sex:

an applicant must indicate their sex as either male, female or gender x.

[18.19.5.15 NMAC - N, 11/15/2016; A/E, 6/26/2018; A, 10/30/2018, A, 12/15/2020]

18.19.5.16 - [PROOF OF NEW MEXICO RESIDENCY:

A. All applicants for a REAL ID Act of 2005 compliant New Mexico identification card, driving permit, provisional driver's license, or driver's license, other than a commercial driver's license, and all applicants for a driving authorization card or identification card not acceptable for federal purposes must provide documentary evidence demonstrating New Mexico residency:

B. Applicants must provide two of the following documents, showing the applicant's name or the name of applicant's spouse in combination with a certificate of marriage and a New Mexico residential address for the applicant, as proof that the applicant lives in New Mexico:

(1) a current real property rental agreement or purchase agreement;

(2) a utility bill dated within 60 days, such as water, gas, electric, waste, telephone, cable or satellite bill, but not a bill for a cell phone;

(3) an insurance bill, card or binder, dated within the past 6 months;

(4) a bank or credit card statement dated within 60 days;

(5) an employment pay stub that contains the applicant's name and address, dated within 60 days;

(6) a current, local property tax statement or mortgage documents;

(7) a document from an education institution, such as a transcript, report card or enrollment confirmation, provided it is dated within 60 days;

(8) original documents from a city, county,

state, tribal or federal government organization attesting to the fact that the applicant is a New Mexico resident;

(9) a New Mexico medical assistance card with address on card, letter from issuing agency that came with card showing name and address, or profile printout from issuing agency;

(10) a New Mexico public assistance card with address on card, letter from issuing agency that came with card showing name and address, or profile printout from issuing agency;

(11) documents indicating membership in a New Mexico religious organization, provided that the applicant is less than 18 years of age; or

(12) documents indicating membership in a New Mexico sports organization, provided that the applicant is less than 18 years of age;

(13) a New Mexico medical or public assistance card, profile printout or a letter from the issuing agency;

(14) if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico driver's license, the parent/guardian's New Mexico identification card, or two proofs of New Mexico residency of the parent/guardian; and

(15) a document evidencing eligibility and proof that the applicant is currently receiving services from a non-profit organization qualified pursuant to Section 501(c)(3) of the Federal Internal Revenue Code of 1986 provided the document displays the applicant's address.

C. Applicants for an identification card not acceptable for federal purposes who are homeless or in temporary lodging and unable to provide two of the documents identified in Subsection B of 18.19.5.16 NMAC may provide an affidavit or a notarized letter from

a representative of a New Mexico governmental entity, not-for-profit organization, assisted care facility/home, adult assisted living facility/home, homeless shelter, transitional service provider, or group/half way house attesting to the address where the applicant resides or receives services *in lieu of* the documents required in Subsection B of 18.19.5.16 NMAC.]; **[RESERVED]** [18.19.5.16 NMAC - N, 11/15/2016; A/E, 6/26/2018; A, 10/30/2018, Repealed, 12/15/2020]

18.19.5.17 [FINGERPRINTS AND CRIMINAL HISTORY SCREENING:

A. Authority; use of criminal history information: The taxation and revenue department (TRD) is authorized to obtain the criminal history records of applicants for driving authorization cards and TRD is authorized to obtain criminal history records of applicants for identification cards that are not acceptable for federal agencies for federal purposes, provided that the applicant does not possess a valid New Mexico license or identification card and that the applicant does not provide proof of lawful status.

B. Procedure for applicants:

(1) If an applicant otherwise meets the application and eligibility requirements, then TRD shall take a full-face or front-view photograph and fingerprints of the applicant and shall submit the same to the New Mexico department of public safety (DPS) for the purpose of obtaining a current criminal history screening through the national crime information center as well as a criminal history screening through the records of DPS.

(2) An applicant shall provide to TRD a criminal background screening request, fingerprints, and supporting documentation including an authorization for release of information to TRD in accordance with the procedures of DPS.

(3) DPS will review state records and also

transmit the fingerprints to the federal bureau of investigation for a national screening. The results of the screening will be transmitted to TRD for review:

~~(4)~~

~~Applicants and licensees shall bear any costs associated with ordering or conducting criminal history screening. Fees are determined by and payable to DPS or designee of DPS. Fees cannot be waived by TRD:~~

~~(5) TRD~~

~~shall comply with applicable confidentiality requirements of the DPS and the federal bureau of investigation regarding the handling and dissemination of criminal history information:~~

~~C. TRD review of criminal history information:~~

~~(1) TRD shall~~

~~review the results and shall not issue a driving authorization card if the results show that the applicant has an outstanding criminal arrest warrant for a felony or a misdemeanor charge in any state or country or if the results show that the applicant's fingerprints are associated with any name, date of birth or social security number other than those provided when the person applied for the driving authorization card:~~

~~(2) TRD shall~~

~~notify the person if the application is denied, including the reason for the denial, and the person's right to a hearing:~~

~~(3) TRD shall~~

~~destroy the results of the screening after it has completed its review and issued the driving authorization card, or one year from the date of the denial, whichever occurs sooner:~~

~~D. Evidence of eligibility: A person whose application for a driving authorization has been denied shall become eligible upon submitting evidence that the basis for ineligibility was resolved. Such evidence may include:~~

~~(1) documents~~

~~that demonstrate that the criminal arrest warrant was quashed, withdrawn, or resolved;~~

~~(2) documents~~

~~that demonstrate that there is not a~~

conflict with the name, date of birth or social security number; or

~~(3) other~~

~~documents as approved by the director of the motor vehicle division.] [RESERVED]~~

~~[18.19.5.17 NMAC - N, 11/15/2016; A/E, 6/26/2018; A, 10/30/2018, Repealed, 12/15/2020]~~

End of Adopted Rules

Other Material Related to Administrative Law

**GOVERNOR,
OFFICE OF THE**
EXECUTIVE ORDER 2020-083

On March 11, 2020, I issued Executive Order 2020-004, which declared a state of public health emergency under the Public Health Emergency Response Act and invoked powers provided by the All Hazards Emergency Management Act (“AHEMA”) and the Emergency Licensing Act (“ELA”). That public health emergency was declared for a period of 30 days. The President of the United States approved a Major Disaster Declaration for the State of New Mexico on April 5, 2020. I have renewed and extended the public health emergency in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-55, 2020-059, 2020-064, 2020-073, and 2020-80. That declaration is likely to be extended and renewed on an ongoing basis for the foreseeable future.

The facts precipitating my invocation of emergency powers under the AHEMA and ELA are well documented. On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China, and reported to the World Health Organization (“WHO”). The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease which has been referred to “COVID-19.” By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. Cases of COVID-19 and deaths related to COVID-19 continue to proliferate at an alarming pace. As of December 4, 2020 the WHO reported nearly 64 million worldwide infections and more than 1,490,000 related deaths. According to the United States Centers for Disease Control and Prevention, more than 13.8 million people have

been infected in the United States, including confirmed cases in every state, with more than 272,000 related deaths. The numbers of reported cases and deaths are continuing to increase exponentially throughout many parts of the world and in many parts of the United States. It is also highly likely that there are many unreported cases and deaths.

The numbers have also risen dramatically in our State since I declared a public health emergency. As of December 1, 2020, the New Mexico Department of Health reported more than 99,000 confirmed cases of COVID-19 in New Mexico and over 1,589 related deaths.

Since March 11, 2020, New Mexico has seen multiple surges of COVID-19 cases in different areas of the state. In October and November, 2020, the state has seen an unprecedented spike in COVID-19 cases, deaths and hospitalizations in every region of the state. Moreover, high test positivity rates in every region of the state suggest that the actual number of cases is significantly greater than test results indicate. Modelling performed by Los Alamos National Laboratory indicates that hospitalizations will continue to increase significantly throughout the month of December even if case counts begin to drop in December.

New Mexico is in the midst of an urgent medical crisis caused by the COVID-19 pandemic which has strained the ability of both institutional and individual providers to deliver the quality of care New Mexicans generally, and reasonably, expect. Particularly for our hospitals, this crisis - and the most recent surge of COVID-19 cases - has created extraordinary medical circumstances that will severely handicap health care workers in almost every kind of care they provide, and it will require providers to change their normal perspective to a crisis perspective. Normally, providers have an ethical and legal obligation to do whatever is in the best interest of each of their patients; under crisis standards of

care, providers instead have an ethical and legal obligation to do what is best for everyone in the state, not just what is best for their individual patients.

While healthcare providers are always held to a legal standard that requires them to do what reasonable providers would do under the circumstances, it is vital to realize that those circumstances are now determined by factors which are unique in the public health history of the State of New Mexico. While providers’ adherence to their professional and ethical obligations has precluded them from threatening not to work without additional protection, they are deserving of our admiration and support. They cannot be expected to do what no human being reasonably can do.

Any standard of care applied to assess the liability of providers offering healthcare during the period of the declaration of this crisis must consider the fact that during this period there will be an inadequate number of physicians, nurses and other healthcare workers available given the number of cases; many providers work substantially more hours than good practice would suggest under normal circumstances; some providers must continue to work even when sick - and even when sick with COVID-19 if treating COVID-19 patients; many essential clinical services have been limited, postponed or discontinued because of the urgent requirements of patients with COVID-19; much treatment has been delayed because of strains on the systems in place for transferring patients from one facility to another; many supplies are unavailable, or unavailable in amounts necessary to provide adequate treatment under normal circumstances; many patients must be treated without access to adequate medical records (or any medical records at all), and without access to close family members who can provide information and make decisions; many providers must provide care within the scope of practice of their license but beyond

their normal scope or practice; many hospital facilities are in short supply and some are unavailable at some time; medications are not fully available and some are not available at all; earlier than recommended discharge of patients is common because of the desperate need for inpatient facilities; care is limited by lack of adequate medical supplies or PPE; procedures normally provided only to inpatients must be provided to patients who have been discharged; and there will be a host of other modifications of normal practice necessitated by the pandemic.

Further, the special circumstances that must be considered when determining whether a provider met the standard of care expected of that provider during a pandemic crisis are not all-or-nothing circumstances which turn liability on and off. Rather, they are a continuum of circumstances that begin to be significant factors when providers enter levels of care for which they have done contingent planning and continue to the point at which crisis standards are in place, when the ordinary negligence standard is virtually indistinguishable from a standard that would allow for liability only upon a finding of gross negligence or reckless or willful conduct.

Due to the nature of the public health emergency and the impact on medical resources, the State has convened a group of experts in health, ethics, and law (referred to hereafter as “the Medical Advisory Team”) to, inter alia, address best practices in the treatment and care of New Mexicans suffering from COVID-19. To that end, the Medical Advisory Team has developed the “New Mexico Statewide Acute Care Medical Surge Plan for COVID-19 Pandemic Response” (hereafter referred to as the “COVID-19 Medical Surge Plan”). The COVID-19 Medical Surge Plan supplements New Mexico’s 2018 Crisis Standards of Care, which address the allocation of health resources during this public health emergency. Among other things, the COVID-19 Medical Surge

Plan identifies numerous markers that show when hospitals move from normal (conventional) standards of care to lower and higher levels of contingency care and eventually to the most acute of these standards, identified as “Crisis Care” and occurs only “where the demand for care surpasses resource supply despite contingency care strategies. The normal standard of care cannot be maintained and allocation and triage strategies must be implemented.” Current projections indicate that “Crisis Care” standards may need to be implemented over the next several weeks and our State should prepare for that possibility.

Contingency care has already been implemented in hospitals throughout New Mexico, requiring some healthcare professionals to work outside their usual scope of practice. In addition, hospitals throughout the State are coordinating care of patients and transferring patients to facilities with available beds, staff and resources to provide care. If “Crisis Care” standards are implemented, healthcare professionals will be asked to assist in additional areas outside their scope of practice and to provide support, in any way possible, with the treatment and care of those infected with the COVID-19 virus and to stretch limited resources beyond usual and customary practice. Providers have raised concerns about their legal protections when asked to address the extraordinarily demands of treating New Mexicans with and without COVID-19 during this heightened medical surge.

For these reasons, I find that it is in the public interest to invoke certain provisions of AHEMA and ELA to ensure that physicians will not hesitate to respond and provide necessary assistance as “Contingency Care” standards have been implemented in many hospitals and in the potential event that “Crisis Care” standards are brought into effect.

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. Pursuant to the authority vested in me by NMSA 1978, Section 12-10-4, and in accordance with NMSA 1978, Sections 12-10-4, 12-10-11, and 12-10-13, the New Mexico Department of Health is hereby directed to undertake all steps necessary to credential physicians and other licensed healthcare providers with authority under New Mexico law to provide medical care independently and not under the supervision of a physician (“advanced practice clinicians”) who are providing care to a person infected with the COVID-19 virus or providing care to a person that a physician or advanced practice clinician reasonably believes may be infected with COVID-19 virus. Such physicians shall be identified as “COVID-19 Credentialed Physicians”. Such advanced practice clinicians shall be identified as “COVID-19 Credentialed Advanced Practice Clinicians”. For purposes of this Order, “physicians” include medical doctors and doctors of osteopathic medicine. For purposes of this Order, “advanced practice clinicians” include certified nurse practitioners (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978 § 61-3-23.2), certified registered nurse anesthetists (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978 § 61-3-23.3), clinical nurse specialists (licensed by the Board of Nursing in accordance with NMSA 1978 § 61-3-23.4), and certified nurse-midwives (licensed by the Board of Nursing pursuant to the Nursing Practice Act and licensed by the Department of Health as a certified nurse-midwife pursuant to NMSA 1978 § 24-1-3(R) and NMAC 16.11.2).

2. The Secretary of Health (the “Secretary”) shall designate physicians as “COVID-19 Credentialed Physicians” and advanced practice clinicians as “COVID-19 Advanced Practice Clinicians” based upon findings that: (1) the physician/advanced

practice clinician services will materially further the State interest in public health and welfare and (2) the physician/advanced practice clinician possesses the requisite skills and background necessary to provide care during the pendency of the existing health emergency. The Secretary may weigh and consider any additional factors the Secretary deems appropriate given the operative facts and circumstances.

3. "COVID-19 Credentialed Physicians" and "COVID-19 Credentialed Advanced Practice Clinicians" shall be considered public employees for purposes of the Tort Claims Act when performing the COVID-19-related duties for which they received that credential. NMSA 1978, §§ 41- 4-1 et seq. See NMSA 1978, § 12-10-4; NMSA 1978, § 12-10-11, and § 12-10-13.

4. I further order the Secretary to request the New Mexico Medical Advisory Team to consult with hospitals throughout the State and make a recommendation to the Secretary, based on criteria developed by the Medical Advisory Team, if and when the New Mexico Medical Advisory Team determines that it is appropriate for the Secretary to declare that the State should apply Crisis Care standards.

5. The directives contained in paragraphs 1-3 within this Order become effective and may be invoked only after "Crisis Care" standards have been activated by the New Mexico Medical Advisory Team and upon the Secretary's determination that such measures are necessary.

6. I further order the Superintendent of Insurance to take action to ensure that healthcare providers continue to receive professional liability coverage while providing health care services to patients under standards for Contingency and Crisis Standards of Care as reflected in the COVID-19 Medical Surge Plan and that patients are covered for treatment even if it is received in a hospital outside the patient 's health plan's usual provider network.

7. This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect immediately, and shall remain in effect for thirty (30) days.

DONE AT THE EXECUTIVE OFFICE THIS 4TH DAY OF DECEMBER 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 30, 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 Impose County-by-County 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 devastating effects that are now resulting from

the 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

D. November 18, 2020 Public Health Emergency

Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition COVID-19 Test Results to the New Mexico Epidemiology and Response Division.

3. The 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 (the “November 18 Order”) 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 12.8 million and confirmed COVID-19 infections in New Mexico have risen to over 89,000, with significant recent spikes in cases in New Mexico threatening to overwhelm our hospitals;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 260,000 Americans and over 1,400 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-IOA-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 businesses” 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 food and drink 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, licensed check cashing businesses, 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 other 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, group fitness classes, tattoo parlors, nail salons, spas, massage therapy services, 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, ski basins, youth programs, youth livestock shows, horseracing tracks, botanical gardens, and outdoor zoos.

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

(8) "Retail space" means any business that regularly sells goods or services directly to consumers or end-users at the business location and includes, but is not limited to, the following "essential businesses" identified in the categories above: (1)d, (1)k, (1)m, and (1)n.

(9) "Mass gathering" means any public gathering, private gathering, organized event, ceremony, parade, funeral, or any other grouping that brings together a specified number of individuals in a single room or connected space, confined outdoor space, or open outdoor space. "Mass gatherings" also includes coordinated events in which individuals gather in vehicles. "Mass gathering" does not include the presence of any number of 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” (“CSP’s”) 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/>.

THE “RED TO GREEN” FRAMEWORK

Beginning December 2, 2020 at 12:00 pm., I DIRECT that the State shall reopen according to the following county-by-county framework:

BACKGROUND

This Order sets out the “Red to Green” framework, which includes three levels of operations that are based on a county’s ability to satisfy specified metrics: Green Level, Yellow Level, and Red Level. A county will remain at a given operating level so long as it continues to satisfy the specified metrics for that level. The Department of Health maintains the official map displaying each county’s current level at: <https://cvprovider.nmhealth.org/public-dashboard.html>. The Department of Health updates this map every other Wednesday. If a county fails to meet the specified metrics for a given level, the county must begin operating at the lower level’s restrictions within 48 hours of the map’s update. If a county begins meeting the specified metrics for a less restrictive level, the county may begin operating at that level’s restrictions immediately upon the map’s update.

REOPENING LEVEL METRICS

Counties shall be categorized

according to one of the following levels:

(1) Green Level - Counties seeking to operate at this level must satisfy both of the following metrics:

(a) A new COVID-19 case incidence rate of no greater than 8 cases per 100,000 inhabitants during the most recent two-week period; and

(b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 5%.

(2) Yellow Level - Counties seeking to operate at this level must meet either of the following metrics:

(a) A new COVID-19 case incidence rate of no greater than 8 cases per 100,000 inhabitants during the most recent two-week period; or

(b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 5%.

(3) Red Level - All other counties shall operate at the Red Level.

REQUIREMENTS FOR EACH LEVEL

Green Level - Green Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all “mass gatherings” of more than twenty (20) individuals are prohibited. “Mass gatherings” in which individuals gather in vehicles are permitted so long as the gathering is limited to one hundred (100) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All “essential businesses,” excluding

those defined as a “retail space,” may operate without occupancy limitations but must limit operations to only those absolutely necessary to carry out essential functions.

b. “Essential businesses” identified as a “retail space” may operate but may not exceed 50% of their maximum occupancy, as determined by the relevant fire marshal or fire department.

c. “Houses of worship” may operate but may not exceed 50% of their maximum occupancy, as determined by the relevant fire marshal or fire department.

d. “Outdoor recreational facilities” may operate at 50% capacity unless specified otherwise in the pertinent CSP’s, in which case the CSP’s capacity limits are controlling. Notwithstanding any other provision herein, horseracing tracks are prohibited from having spectators.

e. “Food and drink establishments” may not provide dine-in service, except those restaurants that have completed the NM Safe Certified training program. All “food and drink establishments” that have completed the NM Safe Certified offered at <https://mnsafecertified.org>, and also 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 may operate at 50% occupancy of the maximum occupancy in any enclosed space on the premises, as determined by the relevant fire marshal or fire department. All “food and drink establishments,” regardless of compliance with the NM Safe Certified requirements, may provide service in outdoor seating areas up to 75% occupancy,

where applicable. In all instances, tables 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, and no bar or counter seating is permitted. "Food and drink establishments" may provide carryout service, or delivery service if otherwise permitted by law.

f. "Places of lodging" which have completed the NM Safe Certified training offered at <https://mnsafecertified.org> may operate up to 75% of maximum occupancy. All other "places of lodging" shall not operate at more than 40% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed ten (10) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

g. "Close-contact recreational facilities" may not operate.

h. Any entity that is not identified as an "essential business," "house of worship," "outdoor recreational facility," "food and drink establishment," "place of lodging," or "close-contact recreational facility" may operate but may not exceed 50% of its maximum occupancy, as determined by the relevant fire marshal or fire department.

i. State museums may operate but may not exceed 50% of their maximum occupancy, as determined by the relevant fire marshal or fire department.

Yellow Level - Yellow Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all "mass gatherings" of more than ten (10) individuals are prohibited. "Mass gatherings" in which individuals gather in vehicles are permitted so long as the gathering is limited to twenty-five (25) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All "essential businesses," excluding those defined as a "retail space," may operate but must limit operations to only those absolutely necessary to carry out essential functions.

b. "Essential businesses" identified as a "retail space" may operate but may not exceed the lesser of 25% of its maximum occupancy, as determined by the relevant fire marshal or fire department, or one hundred twenty-five (125) customers inside the business location.

c. "Houses of worship" may operate but may not exceed 25% of their maximum occupancy, as determined by the relevant fire marshal or fire department.

d. "Outdoor recreational facilities" may operate at 25% capacity unless specified otherwise in the pertinent CSP's, in which case the CSP's capacity limits are controlling. Notwithstanding any other provision herein, horseracing tracks are prohibited from having spectators.

e. "Food and drink establishments" may not provide dine-in service unless they 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. Those "food and drink establishments" that complete the NM Safe Certified training and comply with all attendant requirements mandated by that program may provide dine-in services 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. All "food and drink establishments," regardless of compliance with the NM Safe Certified requirements, may provide service in outdoor seating areas up to 75% occupancy, where applicable. In all instances, tables 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, and no bar or counter seating is permitted. 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. "Food and drink establishments" may provide carryout service, or delivery service if otherwise permitted by law.

f. "Places of lodging" which have completed the NM Safe Certified training offered at <https://mnsafecertified.org> may operate up to 60% of maximum occupancy. All other "places of lodging" shall not operate at more than 25% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are

engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

g. "Close-contact recreational facilities" may not operate.

h. "Close-contact businesses" may operate but may not exceed the lesser of 25% of their maximum occupancy, as determined by the relevant fire marshal or fire department, or twenty (20) customers inside the building at any given time.

i. Any entity that is not identified as an "essential business," "house of worship," "outdoor recreational facility," "food and drink establishment," "place of lodging," "close-contact recreational facility," or "close-contact business" may operate but may not exceed the lesser of 25% of its maximum occupancy, as determined by the relevant fire marshal or fire department, or one hundred twenty-five (125) customers inside its building at any given time.

j. State museums may not operate.

Red Level -Red Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all "mass gatherings" of more than five (5) individuals are prohibited. "Mass gatherings" in which individuals gather in vehicles are permitted so long as the gathering is limited to ten (10) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All "essential businesses," excluding those defined as a "retail space,"

may operate but must limit operations to only those absolutely necessary to carry out essential functions.

b. "Essential businesses" identified as a "retail space" may operate but may not exceed the lesser of 25% of their maximum occupancy, as determined by the relevant fire marshal or fire department, or seventy-five (75) customers inside the building at any given time.

c. "Houses of worship" may operate but may not exceed 25% of their maximum occupancy, as determined by the relevant fire marshal or fire department.

d. "Outdoor recreational facilities" may operate at 25% capacity unless specified otherwise in the pertinent CSP's, in which case the CSP's capacity limits are controlling. Notwithstanding any other provision herein, horseracing tracks are prohibited from having spectators.

e. "Food and drink establishments" may not provide indoor dine-in service but may provide service in outdoor seating areas up to 25% occupancy, where applicable. Tables 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, and 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 9:00 p.m. and must remain closed until at least 4:00 a.m. "Food and drink establishments" may provide delivery service after 9:00 p.m. but no customers are permitted on the premises.

f. "Places of lodging" which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 40% of maximum

occupancy. All other "places of lodging" shall not operate at more than 25% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

g. "Close-contact recreational facilities" may not operate.

h. "Close-contact businesses" may operate but may not exceed the lesser of 25% of their maximum occupancy, as determined by the relevant fire marshal or fire department, or ten (10) customers inside the building at any given time.

i. Any entity that is not identified as an "essential business," "house of worship," "outdoor recreational facility," "food and drink establishment," "place of lodging," "close-contact recreational facility," or "close-contact business" may operate but may not exceed the lesser of 25% of its maximum occupancy, as determined by the relevant fire marshal or fire department, or seventy-five (75) customers inside the building at any given time.

j. State museums may not operate.

BASELINE DIRECTIVES

Regardless of a county's level, **I DIRECT** that the following baseline directives apply at all times and in all instances:

(1) 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 do not satisfy this requirement.

“Retail spaces” 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.

(2) 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.

(3) Any “food and drink establishment,” “close-contact business,” “place of lodging,” “retail space,” or other business (including “essential businesses” 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 New Mexico Environment Department, determines that the business is a necessary provider of goods or services within the community in light of geographic considerations. Further, “essential businesses” that test each employee every two weeks and regularly provide contact tracing data to the Environment Department shall not be subject to closure under this provision.

(4) All businesses, houses of worship, and other non-profit entities must adhere to the pertinent CSP’s.

(5) 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.”

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 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 at 12:00 p.m. on December 2, 2020 and remain through December 30, 2020. Until that time, all restrictions, directives, and mandates set out in the November 18 Order shall remain in effect.

(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 New Mexico Environment Department, 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 Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under NMSA 1978, 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 30TH 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**

DECEMBER 2, 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 Impose County-by-County 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 devastating effects that are now resulting from the 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

D. November 18, 2020 Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition COVID-19 Test Results to the New Mexico Epidemiology and Response Division.

3. The November 30, 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 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 12.8 million and confirmed COVID-19 infections in New Mexico have risen to over 89,000, with significant recent spikes in cases in New Mexico threatening to overwhelm our hospitals;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 260,000 Americans and over 1,400 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

businesses” 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 food and drink 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, licensed check cashing businesses, 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 other 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, tattoo parlors, nail salons, spas, massage therapy services, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, bowling alleys, and ice skating rinks.

(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, ski basins, youth programs, youth livestock shows, horseracing tracks, botanical gardens, and outdoor zoos.

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

(8) “Retail space” means any business that regularly sells goods or services directly

to consumers or end-users at the business location and includes, but is not limited to, 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, or any other grouping that brings together a specified number of individuals in a single room or connected space, confined outdoor space, or open outdoor space. “Mass gatherings” also includes coordinated events in which individuals gather in vehicles. “Mass gathering” does not include the presence of any number of 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” (“CSP’s”) 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/>.

THE “RED TO GREEN” FRAMEWORK

Beginning December 2, 2020 at 12:00 pm., I **DIRECT** that the State shall reopen according to the following county-by-county framework:

BACKGROUND

This Order sets out the “Red to Green” framework, which includes three levels of operations that are based on a county’s ability to satisfy specified metrics: Green Level, Yellow Level, and Red Level. A county will remain at a given operating level so long as it continues to satisfy the

specified metrics for that level. The Department of Health maintains the official map displaying each county’s current level at: <https://cvprovider.nmhealth.org/public-dashboard.html>. The Department of Health updates this map every other Wednesday. If a county fails to meet the specified metrics for a given level, the county must begin operating at the lower level’s restrictions within 48 hours of the map’s update. If a county begins meeting the specified metrics for a less restrictive level, the county may begin operating at that level’s restrictions immediately upon the map’s update.

REOPENING LEVEL METRICS

Counties shall be categorized according to one of the following levels:

(1) Green Level - Counties seeking to operate at this level must satisfy both of the following metrics:

(a) A new COVID-19 case incidence rate of no greater than 8 cases per 100,000 inhabitants during the most recent two-week period; AND

(b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 5%.

(2) Yellow Level - Counties seeking to operate at this level must meet either of the following metrics:

(a) A new COVID-19 case incidence rate of no greater than 8 cases per 100,000 inhabitants during the most recent two-week period; OR

(b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 5%.

(3) Red Level - All other counties shall operate at the Red Level.

REQUIREMENTS FOR EACH LEVEL

Green Level - Green Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all “mass gatherings” of more than twenty (20) individuals are prohibited. “Mass gatherings” in which individuals gather in vehicles are permitted so long as the gathering is limited to one hundred (100) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All “essential businesses,” excluding those defined as a “retail space,” may operate without occupancy limitations but must limit operations to only those absolutely necessary to carry out essential functions.

b. “Essential businesses” identified as a “retail space” may operate but may not exceed 50% of their maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

c. “Houses of worship” may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not exceed 50% of their maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. “Outdoor recreational facilities” may operate at 50% capacity unless specified otherwise in the pertinent CSP’s, in which case the CSP’s capacity limits are controlling. The indoor portions of “outdoor recreational facilities” must comply with the requirements contained in paragraph (2)h below unless specified otherwise in the pertinent CSP’s. Notwithstanding any other provision herein, horseracing tracks are prohibited from having spectators.

e. “Food and drink establishments” may not provide dine-in service, except those restaurants that have completed the NM Safe Certified training program. All “food and drink establishments” that have completed the NM Safe Certified offered at <https://mnsafecertified.org>, and also 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 may operate at 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. All “food and drink establishments,” regardless of compliance with the NM Safe Certified requirements, may provide service in outdoor seating areas up to 75% occupancy, where applicable. In all instances, tables 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, and no bar or counter seating is permitted. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law.

f. “Places of lodging” which have completed the NM Safe Certified training offered at <https://mnsafecertified.org> may operate up to 75% of maximum occupancy. All other “places of lodging” shall not operate at more than 40% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed ten (10) guests. Healthcare providers who are engaged in the provision of care to

New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

g. “Close-contact recreational facilities” may not operate.

h. Any entity that is not identified as an “essential business,” “house of worship,” “outdoor recreational facility,” “food and drink establishment,” “place of lodging,” or “close-contact recreational facility” may operate but may not exceed 50% of its maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

i. State museums may operate but may not exceed 50% of their maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

Yellow Level - Yellow Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all “mass gatherings” of more than ten (10) individuals are prohibited. “Mass gatherings” in which individuals gather in vehicles are permitted so long as the gathering is limited to twenty-five (25) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All “essential businesses,” excluding those defined as a “retail space,” may operate but must limit operations to only those absolutely necessary to carry out essential functions.

b. “Essential businesses” identified as a “retail space” may operate but may

not exceed the lesser of 25% of its maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, or one hundred twenty-five (125) customers inside the business location.

c. "Houses of worship" may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not exceed 25% of their maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. "Outdoor recreational facilities" may operate at 25% capacity unless specified otherwise in the pertinent CSP's, in which case the CSP's capacity limits are controlling. The indoor portions of "outdoor recreational facilities" must comply with the requirements contained in paragraph (2)i below unless specified otherwise in the pertinent CSP's. Notwithstanding any other provision herein, horseracing tracks are prohibited from having spectators.

e. "Food and drink establishments" may not provide dine-in service unless they complete the NM Safe Certified training offered at <https://nmsafecertified.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. Those "food and drink establishments" that complete the NM Safe Certified training and comply with all attendant requirements mandated by that program may provide dine-in services but they may not exceed more than 25% occupancy of the maximum occupancy of any

enclosed space on the premises, as determined by the relevant fire marshal or fire department. All "food and drink establishments," regardless of compliance with the NM Safe Certified requirements, may provide service in outdoor seating areas up to 75% occupancy, where applicable. In all instances, tables 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, and no bar or counter seating is permitted. 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. "Food and drink establishments" may provide carryout service, or delivery service if otherwise permitted by law.

f. "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. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

g. "Close-contact recreational facilities" may not operate.

h. "Close-contact businesses" may operate but may not exceed the lesser of 25% of their maximum occupancy of any enclosed space on the premises,

as determined by the relevant fire marshal or fire department, or twenty (20) customers inside the building at any given time. Bowling alleys may open for league play only. Ice skating rinks may operate for athletic training and practice by reservation only.

i. Any entity that is not identified as an "essential business," "house of worship," "outdoor recreational facility," "food and drink establishment," "place of lodging," "close-contact recreational facility," or "close-contact business" may operate but may not exceed the lesser of 25% of its maximum occupancy of the premises, as determined by the relevant fire marshal or fire department, or one hundred twenty-five (125) customers inside its building at any given time. Notwithstanding the foregoing, indoor shopping malls may operate, provided that the total number of persons within the mall does not exceed 25% of the maximum occupancy of the premises, as determined by the relevant fire marshal or fire department.

j. State museums may not operate.

Red Level -Red Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all "mass gatherings" of more than five (5) individuals are prohibited. "Mass gatherings" in which individuals gather in vehicles are permitted so long as the gathering is limited to ten (10) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All "essential businesses," excluding those defined as a "retail space," may operate but must limit operations to only those absolutely

necessary to carry out essential functions.

b. “Essential businesses” identified as a “retail space” may operate but may not exceed the lesser of 25% of their maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, or seventy-five (75) customers inside the building at any given time.

c. “Houses of worship” may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not exceed 25% of their maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. “Outdoor recreational facilities” may operate at 25% capacity unless specified otherwise in the pertinent CSP’s, in which case the CSP’s capacity limits are controlling. The indoor portions of “outdoor recreational facilities” must comply with the requirements contained in paragraph (2)i below unless specified otherwise in the pertinent CSP’s. Notwithstanding any other provision herein, horseracing tracks are prohibited from having spectators.

e. “Food and drink establishments” may not provide indoor dine-in service but may provide service in outdoor seating areas up to 25% occupancy, where applicable. Tables 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, and 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 9:00 p.m. and must remain closed until at least 4:00 a.m. “Food and drink establishments” may provide

delivery service after 9:00 p.m. but no customers are permitted on the premises.

f. “Places of lodging” which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 40% of maximum occupancy. All other “places of lodging” shall not operate at more than 25% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

g. “Close-contact recreational facilities” may not operate.

h. “Close-contact businesses” may operate but may not exceed the lesser of 25% of their maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, or ten (10) customers inside the building at any given time. Bowling alleys may open for league play only. Ice skating rinks may operate for athletic training and practice by reservation only.

i. Any entity that is not identified as an “essential business,” “house of worship,” “outdoor recreational facility,” “food and drink establishment,” “place of lodging,” “close-contact recreational facility,” or “close-contact business” may operate but may not exceed the lesser of 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, or seventy-five (75) customers inside the building at any given time. Notwithstanding the foregoing, indoor shopping malls may operate,

provided that the total number of persons within the mall does not exceed 25% of the maximum occupancy of the premises, as determined by the relevant fire marshal or fire department.

j. State museums may not operate.

BASELINE DIRECTIVES

Regardless of a county’s level, **I DIRECT** that the following baseline directives apply at all times and in all instances:

(1) 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 do not satisfy this requirement. “Retail spaces” 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.

(2) 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.

(3) Any “food and drink establishment,” “close-contact business,” “place of lodging,” “retail space,” or other business (including “essential businesses” other than those which meet the definition of a healthcare operation, utility, or indigent care services) 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 New Mexico Environment Department, determines that the business is a necessary provider of goods or services within the community in light of geographic considerations. Further, “essential businesses” that test each employee every two weeks and regularly provide contact tracing data to the Environment Department shall not be subject to closure under this provision.

(4) All businesses, houses of worship, and other non-profit entities must adhere to the pertinent CSP’s.

(5) 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.” Private schools shall report to the New Mexico Public Education Department all cases of COVID-19 positive students, staff, contractors and volunteers associated with the school within four hours of the school being notified of the positive case, and consistent with the COVID-19 Response Toolkit for New Mexico’s Public Elementary Schools, as well and any updates or revisions made to the Toolkit document. Private schools, like public schools, are also subject to inclusion on the New Mexico Environment Department’s watchlist and closure list, as well as any accompanying restrictions.

(6) State parks shall

only be open to New Mexico residents for day-use only. 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.

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 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 at 12:00 p.m. on December 2, 2020 and remain through December 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 New Mexico Environment Department, 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 Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under NMSA 1978, 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 2ND DAY OF DECEMBER 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

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2021 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXII, Issues 1-24

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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
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