

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

# New Mexico Register

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

**Volume XXXII - Issue 5 - March 9, 2021**

COPYRIGHT © 2021  
BY  
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

## **The New Mexico Register**

Published by the Commission of Public Records,  
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

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

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

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

# New Mexico Register

Volume XXXII, Issue 5

March 9, 2021

## Table of Contents

### Notices of Rulemaking and Proposed Rules

#### CHILDREN, YOUTH AND FAMILIES DEPARTMENT

Notice of Public Hearing.....166

#### HUMAN SERVICES DEPARTMENT

##### MEDICAL ASSISTANCE DIVISION

Notice of Rulemaking/Newspaper Notice.....166

#### REGULATION AND LICENSING DEPARTMENT

##### ATHLETIC COMMISSION

Notice of Public Rule Hearing and Regular Board Meeting.....171

#### REGULATION AND LICENSING DEPARTMENT

##### DENTAL HEALTH CARE, BOARD OF

Notice of Public Rule Hearing and Regular Board Meeting.....172

#### REGULATION AND LICENSING DEPARTMENT

##### PHARMACY, BOARD OF

Notice of Regular Board Meeting and Rule Hearing.....173

---

### Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

#### NURSING, BOARD OF

16.12.3 NMAC A Nursing Educational Program.....176

#### PAROLE BOARD

22.510.3 NMAC R Policy Statement Pertaining to the Granting of Parole, Denial of Parole,  
Revocation or Rescission of Parole and to the Discharge of Parolee.....182

22.510.3 NMAC N Policy Statement Pertaining to the Granting of Parole, Denial of Parole,  
Revocation or Rescission of Parole and to the Discharge of Parolee.....182

22.510.17 NMAC N Parole Hearings for Youth Sentenced in Adult Court.....185

#### REGULATION AND LICENSING DEPARTMENT

##### SIGNED LANGUAGE BOARD

16.28.1 NMAC A General Provisions.....187

16.28.2 NMAC A Education and Continuing Education Requirements.....191

16.28.3 NMAC A Application and Licensure Requirements.....192

16.28.4 NMAC A Complaint Procedures; Adjudicatory Proceedings.....196

16.28.5 NMAC A Code of Professional Conduct.....196

16.28.7 NMAC A Licensure for Military Service Members, Spouses and Veterans.....197

**Other Material Related to Administrative Law**

**ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**

**OIL CONSERVATION COMMISSION**

Notice of Termination for Proposed Rulemaking.....200

**HEALTH, DEPARTMENT OF**

2/24/2021 Amended Public Health Order.....200

2/26/2021 Public Health Order.....208

---

## Notices of Rulemaking and Proposed Rules

### CHILDREN, YOUTH AND FAMILIES DEPARTMENT

#### NOTICE OF PUBLIC HEARING

Protective Services Division (PSD) of the Children, Youth and Families Department (CYFD) will hold a public hearing via zoom link on Friday, April 9th, 2021, from 11:00 a.m. to 1:00 p.m. to take comments regarding the proposed changes to 8.8.2 NMAC, 8.10.2 NMAC, 8.10.3 NMAC, 8.10.7 NMAC, 8.10.8 NMAC, and 8.26.2 NMAC.

Proposed changes are the following:

#### 8.8.2 NMAC Protective Services General Provision:

- “Foster Parent,” “Foster Family,” and “Foster Care Provider” terminology changed to “Resource parent,” “Resource family”
- Gender neutral and non-discrimination language updates
- Supervision Framework Model section and corresponding definitions addition

#### 8.10.2 NMAC Intake:

- Safety Organized Practice definitions and language alignment with new safety tool implemented in May 2019.
- Gender neutral and non-discrimination language updates
- New Program: Differential Response additions (Resource Family Connections Program)
- New Program: REACH New Mexico Program additions

#### 8.10.3 NMAC Investigations:

- Safety Organized Practice definitions and language alignment with new safety tool implemented in May 2019.
- Gender neutral and non-

discrimination language updates

- Comprehensive Addictions Recovery Act (CARA) alignment

#### 8.10.7 NMAC Legal Services:

- Gender neutral and non-discrimination language updates
- Consular Notification and Special Immigrant Juvenile Status updates

#### 8.10.8 NMAC Permanency Planning:

- “Foster Parent,” “Foster Family,” and “Foster Care Provider” terminology changed to “Resource parent,” “Resource family”
- Safety Organized Practice definitions and language alignment with new safety tool implemented in May 2019.
- Removal of Concurrent Planning
- Gender neutral and non-discrimination language updates
- Immigration considerations updated
- Home schooling guidance removed
- Youth Grievance addition

#### 8.26.2 NMAC Placement Services:

- “Foster Parent,” “Foster Family,” and “Foster Care Provider” terminology changed to “Resource parent,” “Resource family”
- Gender neutral and non-discrimination language updates
- Removal of Concurrent Planning
- Removal of Medical and Educational sections as it is a duplication from Permanency Planning Policy
- Resource Family Grievance statement added

A free electronic copy of the proposed changes can be found at <https://cyfd.org/for-providers/rfp> and on the

sunshine portal. Due to COVID, physical copies will not be distributed or offered.

Zoom link for the public hearing is available upon request. All requests must be sent to Serra Dittel-Payne, PSD Policy and Procedure Coordinator at [Serra.Dittel-Payne@state.nm.us](mailto:Serra.Dittel-Payne@state.nm.us) or call 505-412-9597.

Written comments can be provided via e-mail to [Serra.Dittel-Payne@state.nm.us](mailto:Serra.Dittel-Payne@state.nm.us) or by mail to CYFD, Serra Dittel-Payne, Protective Services Division, PO Drawer 5160, Santa Fe, NM 87502. All written comments must be received no later than 5:00 p.m. on Friday, April 9th, 2021. Written comments provided carry the same weight as comments received during the public hearings.

Subsection D of Section 9-2A-7 NMSA 1978 states, “The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions” which provides the authority authorizing the proposed rule and the adoption of the proposed rule.

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

### 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: 8.308.6 NMAC, *Managed Care Program, Eligibility*, 8.308.7 NMAC, *Managed Care Program, Enrollment and Disenrollment*, 8.310.2 NMAC, *Health Care Professional Services, General Benefit Description*, and 8.321.2 NMAC, *Specialized Behavioral Health Services, Specialized Behavioral Health Provider Enrollment and Reimbursement*.

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: March 9, 2021  
Hearing Date: April 8, 2021  
Adoption Date: Proposed as July 1, 2021  
Technical Citations: (42 CFR §438.12, 42 CFR §438.14, 42 CFR §438.214)

**The Department is proposing to amend the rules as follows:**

**8.308.6 NMAC**

**Section 8**

Amended to include the Department's current mission statement.

**Section 9, Subsection B**

Amended to add an additional managed care exclusion. Residents in an intermediate care facility for individuals with intellectual disabilities (ICF/IID) are excluded from managed care enrollment.

**Section 10, Subsection C**

A new Subsection C was added regarding discharge from an ICF/IID. When an ICF/IID resident is discharged, enrollment into managed care will begin 60 days after discharge.

**8.308.7 NMAC**

**Section 8**

Amended to include the Department's current mission statement.

**Section 9, Subsection C**

New language added to clarify that an individual must be eligible for reenrollment into a previous MCO prior to auto assignment into that MCO.

**Section 9, Subsection F**

The notification period of the option to switch MCOs has been changed from 60 days to two months.

**Section 9, Subsection I**

Language revised to clarify where switch requests may be submitted and to update name of the Human Services Department's customer service center.

New addition; language added to clarify Continuity of Care switch request criteria: "Continuity of care (for example, a member's physician or specialist is no longer in the MCO's provider network or a member lives in a rural area and the closest physician that accepts their current MCO is too far away).

New addition; language added to clarify Family Continuity switch request criteria: "Family Continuity (for example, a switch that is requested so that all family members are enrolled with the same MCO)."

New addition; language added to clarify Administrative Error switch request criteria: "Administrative error (for example, a member chooses an MCO at initial enrollment or requests to change MCOs during an allowable switch period, but the request was not honored).

**8.310.2 NMAC**

**Section 8**

Amended to include the Department's current mission statement.

**Section 12, Subsection A**

Removed language "essentially normal".

Language added to provide gynecological or obstetrical ultrasounds without prior authorization.

Language added to provide coverage of labor and delivery services at a NMDOH licensed birth center. Does not cover the full scope of midwifery services nor does it replace pediatric care that should occur at a primary care clinic.

**Section 12, Subsection B**

Language added to provide allowances for non-emergency transportation to pharmacy for justice involved individuals.

**Section 12, Subsection C**

Language 'an inpatient of nursing facilities or hospitals' replaced by 'of an inpatient nursing facility or hospital'.

**Section 12, Subsection D**

Language 'consent to sterilization' replaced by 'sterilization consent', 'hysterectomy acknowledgement' replaced by 'hysterectomy acknowledgement/consent'. Language added that a Medical Assistance Program (MAP) eligible recipient's informed consent to the sterilization procedure must be attached to the claim.

Language added to provide coverage of labor and delivery services at a New Mexico Department of Health (NMDOH) licensed birth center. Does not cover the full scope of midwifery services nor replace pediatric care that should occur at a primary care clinic.

**Section 12, Subsection F**

Consolidated Subsection N Transplantation Services. Replaced with 'MAD covered transplantation services include hospital, a PCP, laboratory, outpatient surgical, and other MAD covered services necessary to perform the selected transplantation for the MAP eligible recipient and donor.'

Language added 'Due to special Medicare coverage available for individuals with end-stage renal disease, Medicare eligibility must be pursued by the provider for coverage of a kidney transplant before requesting MAD reimbursement.



Language added to include MAD covers the MAP eligible recipient's and donor's related medical, transportation, meals and lodging services for non-experimental transplantation.

Language added to include that MAD does not cover any transplant procedures, treatments, use of a drug, a biological product, a product or a device which are considered unproven, experimental, investigational or not effective for the condition for which they are intended or used.

Language added to include that a written prior authorization must be obtained for any transplant, with the exception of a cornea and a kidney. The prior authorization process must be started by the MAP eligible recipient's attending primary care physician (PCP) contacting the MAD utilization review (UR) contractor. Services for which prior approval was obtained remain subject to UR at any point in the payment.

#### **Section 12, Subsection G**

Language added to provide one fluoride varnish treatment every six months for members under the age of 21.

#### **Section 12, Subsection L**

Language added to provide allowances and define benefits for justice involved individual to receive non-emergency transportation to a pharmacy.

#### **Section 12, Subsection M**

Language added to provide allowances and define Telehealth benefits services.

#### **Section 12, Subsection N**

Removed and consolidated with Subsection F, Transplant Services.

#### **Section 12, Subsection O**

Language added to include 'Prior to performing pregnancy termination services providers must complete and file in the MAP eligible recipient medical record, a consent for

pregnancy termination that includes written certification of a provider that the procedure meets one of the following conditions'.

#### **Section 12, Subsection P**

Opening sentence language removed, 'Covered transplantation services include a hospital, a PCP, a laboratory, an outpatient surgical and other MAD-covered services necessary to perform the selected transplantation. Due to special medicare coverage available for individuals with end-stage renal disease, medicare eligibility must be pursued by the provider for coverage of a kidney transplant before requesting MAD reimbursement.

#### **Section 12, Subsection Q**

Title change from 'Smoking Cessation' to 'Smoking/Tobacco Cessation'.

Language 'a pregnant MAP eligible recipient and for a MAP eligible recipient under the age of 21 years of age' replaced by 'all MAP eligible recipients.'

Updated language from singular to plural.

Language 'a pregnant or postpartum' replaced by 'all'

Language 'A cessation counseling attempt includes up to four cessation counseling sessions (one attempt plus up to four sessions). Two cessation counseling attempts (or up to eight cessation counseling sessions) are allowed in any 12-month period' replaced by 'The services do not have any limits on the length of treatment or quit attempts per year. The program also allows participants to try multiple treatments and does not impose any requirement to enroll into counseling'.

#### **Section 12, Subsection R**

New language added: Screening, Brief Intervention and Referral to Treatment (SBIRT) is a community-based practice designed to identify, reduce and prevent problematic substance use or misuse and co-occurring mental health disorders as an early intervention. Through early identification in a medical setting, SBIRT services expand and enhance

the continuum of care and reduce costly health care utilization. The primary objective is the integration of behavioral health with physical health care. SBIRT is delivered through a process consisting of universal screening, scoring the screening tool and a warm hand-off to a SBIRT trained professional who conducts a face-to-face brief intervention for positive screening results. If the need is identified for behavioral health treatment, the certified SBIRT staff, with the eligible recipient's approval, assists in securing behavioral health services. Only a physical health office, clinic, or facility that has been certified by a HSD approved SBIRT trainer and uses the approved healthy lifestyle questionnaire (HLQ) can complete the screen. The physical office, clinic or facility must be the billing provider, not the individual practitioner. All practitioners must be SBIRT certified and are employees or contractors of a SBIRT physical health office, clinic, or facility. See the SBIRT policy and billing manual for detailed description of the service and billing requirements.

#### **Section 13, Subsection J**

Language changed to clarify that MAD only covers a routine physical examination for a MAP eligible recipient residing in a NF or an ICF-IID facility or a MAP eligible recipient under 21 years of age through the tot to teen healthcheck screen, New Mexico's EPSDT screening program. Included in the coverage is the physical examinations, screenings and treatment.

Throughout 8.310.2 NMAC sections have been renumbered.

#### **8.321.2 NMAC:**

##### **Section 9**

Licensed professional art therapist (LPAT) licensed by RLD's counseling and therapy practice board and certified for independent practice by the Art Therapy Credentials Board (ATCB) has been added to the allowed independent providers. A school-based health center with behavioral health supervisory



certification has been added to the list of agencies that are eligible to be reimbursed for providing behavioral health professional services when all conditions are met.

Language was added to clarify that Behavioral Health service plans can be developed by individuals employed by the agency who have Health Insurance Portability and Accountability Act (HIPAA) training, are working within their scope of practice, and are working under the supervision of the rendering provider who must be an independently licensed clinician.

Language was added clarifying that behavioral health services should be delivered in the least restrictive setting.

#### **Section 10**

Throughout the section references were changed and updated from Accredited Residential Treatment Center (ARTC) to Adult Accredited Residential Treatment Center (AARTC).

Language added to clarify that the eligible facility must be certified through an application process with behavioral health services division which includes a supervisory certificate.

Language adding emergency medical technicians with documentation of three (3) hours of annual training in substance abuse disorder are able to assess and treat the recipient and obtain and interpret information regarding the recipient's needs.

Language added to clarify the length of stay is typically 3-5 days, after which transfer to another level of care is indicated for 3.2WM's.

#### **Section 11**

Language added to clarify that a determination must be made that the eligible recipient needs the level of care (LOC) for services furnished in an ARTC. This determination must have considered all environments which are least restrictive, meaning a supervised community placement, preferably a placement with the juvenile's parent, guardian or relative. A facility or conditions of treatment

that is a residential or institutional placement should only be utilized as a last resort based on the best interest of the juvenile or for reasons of public safety.

#### **Section 12**

Language added to see Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements for eligible providers.

A New Mexico behavioral health credentialing board credentialed Certified Family Peer Support Worker under the supervision of an approved ABA supervisor has been added to additional provider types.

#### **Section 13**

Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Language added that any adaptations to the model require an approved variance from BHSD for Assertive Community Treatment Services.

#### **Section 14**

Language added to clarify that therapy includes planning, managing and providing a program of psychological services to the eligible recipient meeting a current DSM, or ICD, DC:0-5 behavioral health diagnosis and may include therapy with her or his family or parent/ caretaker, and consultation with his or her family and other professional staff.

#### **Section 15**

Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

#### **Section 17**

Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

#### **Section 18**

Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Language clarifying minimum staff qualifications for certified family peer support workers (CFPSW).

Language added to clarify that

minimum staff qualifications for the community support worker include: must have lived-experience of being actively involved in raising a child who experienced emotional, behavioral, mental health, or mental health with co-occurring substance use or developmental disability challenges prior to the age of 18 years; must have personal experience navigating child serving systems on behalf of their own child; must have an understanding of how these systems operate in New Mexico; and, must have received certification as a CFPSW.

Minimum staff qualifications for certified youth peer support workers (CYPSW) include: must be 18 years of age or older; have a high school diploma or equivalent; have personal experience navigating any of the child/family-serving systems prior to the age of 18 years; have an understanding of how these systems operate in New Mexico; and must have received certification as a CYPSW.

Language added to clarify Comprehensive Community Support Services (CCSS) must be identified in the service plan for an individual. Language added for adult accredited residential treatment center (AARTC) in the coverage criteria.

#### **Section 19**

Language changed to clarify eligible practitioners.

Language changed to clarify crisis stabilization services.

#### **Section 20**

Language added for clarification for eligible provider agencies licensed through the Department of Health.

Language changed to clarify a provider agency licensed through the Department of Health as a crisis triage center.

Language added to clarify the exception of services provided by the physician and the licensed independent mental health practitioner.

Language added that additional staff may include an emergency medical technician (EMT) with documentation

of three (3) hours of annual training in suicide risk assessment.

#### **Section 22**

Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements. Language added to clarify non-covered services.

#### **Section 23**

Language changed to clarify coverage of stays in a freestanding psychiatric hospital that is considered an Institution of Mental Disease (IMD) is covered only for eligible recipients up to age 21 and over age 64.

#### **Section 24**

Language changed to clarify based upon a New Mexico state plan amendment and 1115 waiver MAD covers inpatient hospitalization in an IMD for substance use disorder (SUD) diagnoses only with criteria for medical necessity and based on American Society of Addiction Medicine (ASAM) admission criteria and MCO covered stays.

#### **Section 25**

Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

#### **Section 26**

Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements. Language changed to clarify services may only be delivered through an agency approved by the Human Services Department (HSD) and Children, Youth and Families Department (CYFD) after demonstrating that the agency meets all the requirements of Intensive Outpatient Program (IOP) services and supervision.

#### **Section 27**

Language changed to state that MAD pays for coverage for medication assisted treatment (MAT) for opioid use disorder to an eligible recipient as defined in the Drug Addiction Treatment Act of 2000 (DATA 2000), the Comprehensive Addiction and

Recovery Act of 2016 (CARA), and the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act of 2018 (SUPPORT Act).

Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

#### **Section 29**

Language added to Non-Accredited Residential Treatment Center (RTC) and Group Homes to clarify that this determination must have considered all environments which are least restrictive, meaning a supervised community placement, preferably a placement with the juvenile's parent, guardian or relative. A facility or conditions of treatment that is a residential or institutional placement should only be utilized as a last resort based on the best interest of the juvenile or for reasons of public safety.

#### **Section 30**

Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Language added under staffing requirements that programs may also be staffed by: licensed substance abuse associate (LSAA); a certified peer support worker (CPSW); and emergency medical technicians (EMT) with documentation of three (3) hours of annual training in substance use disorder.

References to prescription drug monitoring program (PDMP) were changed to prescription monitoring program (PMP).

Language added for other services performed by the agency as listed are reimbursed separately and are required by (42 CFR Part 8.12 (f)), or its successor. Behavioral health prevention and education services to affect knowledge, attitude, or behavior can be rendered by a licensed substance abuse associate or certified peer support worker in addition to independently licensed practitioners.

#### **Section 32**

Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Language changed to clarify that no prior authorization is required. To determine retrospectively if the medical necessity for the service has been met additional factors listed are considered.

#### **Section 33**

Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Reference to therapeutic foster care was corrected to treatment foster care (TFC) under non-covered services.

#### **Section 34**

Language added to See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

Added nursing facilities to eligible providers and practitioners.

#### **Sections 29, 30 and 34**

Language has been added to the sections to include IHS and a tribal 638 facility and any other Indian Health Care Provider (IHCP) defined in 42 CFR §438.14(a).

Changes throughout the rules have also been made for spelling corrections and clarity.

The register for these proposed amendments to this rule will be available March 9, 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 July 1, 2021. A public hearing to receive testimony on this proposed rule will be held **via conference call** on April

8, 2021 at 10:00 a.m., Mountain Time (MT). **Conference phone 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](mailto:madrules@state.nm.us). Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on April 8, 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.

## REGULATION AND LICENSING DEPARTMENT ATHLETIC COMMISSION

### NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Athletic Commission will hold a rule hearing on Tuesday, April 13, 2021, at 10:00 a.m. Following the rule hearing, the New Mexico Athletic Commission will convene a board meeting where it may adopt the rule changes and will take care of regular business. The rule hearing and board meeting will be held via Cisco Webex Meetings. Please use the following link:

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e87212c4f2c1c0664b378761bc06025ba>

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

Access Code: 187 572 8347

The purpose of the rule hearing is to consider proposed amendments to the following rule:  
15.6.19 NMAC – Conduct of Bare-Knuckle Contests

To obtain and review copies of the proposed changes and public comments, you may go to the Board's website at: [http://www.rld.state.nm.us/boards/Athletic\\_Commission\\_Members\\_and\\_Meetings.aspx](http://www.rld.state.nm.us/boards/Athletic_Commission_Members_and_Meetings.aspx) or contact the Boards and Commissions Division at (505) 476-4622.

The Commission is currently accepting public written comments on the proposed amendments. Please submit written comments on the proposed changes to Richard Espinoza, Executive Director, via electronic mail at: [Athletic.Commission@state.nm.us](mailto:Athletic.Commission@state.nm.us), or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Monday, April 12, 2021. Written comments received prior to the rule hearing will be posted to the RLD website at: <http://www.rld.state.nm.us/boards/>

[Athletic\\_Commission\\_Members\\_and\\_Meetings](#). Persons will also be given the opportunity to present their written or oral comments at the public rule hearing.

The agenda for the Commission meeting will be posted and available at least 72 hours before the meeting on the Commission website at [http://www.rld.state.nm.us/boards/Athletic\\_Commission\\_Members\\_and\\_Meetings](http://www.rld.state.nm.us/boards/Athletic_Commission_Members_and_Meetings). Copies of the rules or the agenda may also be obtained by contacting Richard Espinoza, Executive Director at (505) 476-4622.

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

**Statutory Authority:** The Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-33, NMSA 1978, among other provisions, specifically authorizes the Board to “adopt and promulgate in accordance with the Uniform Licensing Act and the State Rules Act all rules for the implementation and enforcement of the Professional Athletic Competition Act.” NMSA 1978 § 15-6-1.

**Purpose of the Proposed Rules:** The proposed rule is to input Conduct of Bare-Knuckle Contests rules in the rulebook.

#### Summary of Proposed Changes:

**15.6.19 NMAC (NEW PART) – Conduct of Bare-Knuckle Contests**  
A new part has been added to add a reference to the statutory authority to input Conduct of Bare-Knuckle Contests.

**REGULATION AND  
LICENSING DEPARTMENT  
DENTAL HEALTH CARE,  
BOARD OF**

**NOTICE OF PUBLIC RULE  
HEARING AND REGULAR  
BOARD MEETING**

The New Mexico Board of Dental Health Care will hold a rule hearing on Friday, April 16, 2021, at 8:30 a.m. Following the rule hearing, the Board will convene a regular board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held via Cisco Webex Meetings. Please use the following link:

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e7e72cf9a141c27dcf8ee959351ed6c84>

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

Access Code: 187 439 9377

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

- 16.5.1 NMAC - General Provisions
- 16.5.3 NMAC - Mandatory Reporting Requirements
- 16.5.4 NMAC - Emergency Licensure and Certification Provisions
- 16.5.9 NMAC - Non-Dentist Owners
- 16.5.56 NMAC - Parental Responsibility Compliance
- 16.5.59 NMAC - Licensure for Military Service Members, Spouses and Veterans
- 16.5.60 NMAC (New Part) - Dental Therapists, Fees
- 16.5.61 NMAC (New Part) - Dental Therapists, Licensure and Certification
- 16.5.62 NMAC (New Part) - Dental Therapists, Continuing Education Requirements
- 16.5.63 NMAC (New Part) - Dental Therapists, License Expiration and Renewal
- 16.5.64 NMAC (New Part) - Dental Therapists, License Revocation for Non-Renewal
- 16.5.65 NMAC (New Part) - Dental

Therapists, Practice  
16.5.66 NMAC (New Part) - Dental Therapists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Actions

To obtain and review copies of the proposed changes and public comments, you may go to the Board's website at: [http://www.rld.state.nm.us/boards/Dental\\_Health\\_Care\\_Rules\\_and\\_Laws.aspx](http://www.rld.state.nm.us/boards/Dental_Health_Care_Rules_and_Laws.aspx) or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public written comments on the proposed amendments. Please submit written comments on the proposed changes to Roberta Perea, Board Administrator, via electronic mail at: [Dental.Board@state.nm.us](mailto:Dental.Board@state.nm.us), or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Thursday, April 15, 2021. Written comments received prior to the rule hearing will be posted to the RLD website at: [http://www.rld.state.nm.us/boards/Dental\\_Health\\_Care\\_Rules\\_and\\_Laws.aspx](http://www.rld.state.nm.us/boards/Dental_Health_Care_Rules_and_Laws.aspx). Persons will also be given the opportunity to present their written or oral comments at the public rule hearing.

The agenda for the board meeting will be posted and available at least 72 hours before the meeting on the Board website at [http://www.rld.state.nm.us/boards/Dental\\_Health\\_Care\\_Members\\_and\\_Meetings.aspx](http://www.rld.state.nm.us/boards/Dental_Health_Care_Members_and_Meetings.aspx). Copies of the rules or the agenda may also be obtained by contacting Roberta Perea, Board Administrator at (505) 476-4622.

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

**Statutory Authority:** The Dental Health Care Act, NMSA 1978, Sections 61-5A-1 through 61-5A-30, among other provisions, specifically authorizes the Board to “adopt

and promulgate in accordance with the Uniform Licensing Act and the State Rules Act all rules for the implementation and enforcement of the Dental Health Care Act.”  
NMSA 1978 § 61-5A-10.

**Purpose of the Proposed**

**Rules:** The purpose of the rulemaking hearing is to remove U.S. citizenship requirements for licensure in compliance with the 2020 New Mexico legislative change, amend the military service member, family and veteran licensure requirements in compliance with the 2020 New Mexico legislative change, and to clarify, define and adopt rules for the regulation, licensing and disciplining of dental therapists.

**Summary of Proposed Changes:**

**16.5.1 NMAC - General Provisions**

The amendments to this part are due to the 2019 statute amendment to include licensure for dental therapists and a 2020 amendment to rescind US citizenship for licensees.

**16.5.3 NMAC - Mandatory Reporting Requirements**

The amendments to this part are due to the 2019 statute amendment to include licensure for dental therapists.

**16.5.4 NMAC - Emergency Licensure and Certification Provisions**

The amendments to this part are due to the 2019 statute amendment to include licensure for dental therapists.

**16.5.9 NMAC - Non-Dentist Owners**

The amendment to this part adds initial and renewal fees for non-dentist owners and a 2020 statute amendment to rescind US citizenship for non-dentist owners.

**16.5.56 NMAC - Parental Responsibility Compliance**

The amendments to this part are due to the 2019 statute amendment to include licensure for dental therapists.



**16.5.59 NMAC - Licensure for Military Service Members, Spouses and Veterans**

The amendments to this part are due to the 2020 statute amendment to further define military/families and to rescind the application fee for military/families.

**16.5.60 NMAC - Dental Therapists, Fee**

This is a new part due to the 2019 statute amendment for dental therapists.

**16.5.61 NMAC - Dental Therapists, Licensure and Certifications**

This is a new part due to the 2019 statute amendment for dental therapists.

**16.5.62 NMAC - Dental Therapists, Continuing Education Requirements**

This is a new part due to the 2019 statute amendment for dental therapists.

**16.5.63 NMAC - Dental Therapists, Licensure Expiration and Renewal**

This is a new part due to the 2019 statute amendment for dental therapists.

**16.5.64 NMAC - Dental Therapists, License Revocation for non-Renewal**

This is a new part due to the 2019 statute amendment for dental therapists.

**16.5.65 NMAC - Dental Therapists, Practice**

This is a new part due to the 2019 statute amendment for dental therapists.

**16.5.66 - NMAC - Dental Therapists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Actions**

This is a new part due to the 2019 statute amendment for dental therapists.

**REGULATION AND LICENSING DEPARTMENT  
PHARMACY, BOARD OF****NOTICE OF REGULAR BOARD MEETING AND RULE HEARING**

The New Mexico Board of Pharmacy will convene for the purpose of conducting a rule hearing and regular board meeting on April 22, 2021 at 9:00 a.m. and continue until finished. If the meeting agenda items are not finished by 5:00 p.m., the Board will convene on April 23, 2021 at 9:00 a.m. and continue until finished. Pursuant to the June 12, 2020 Public Health Order restricting Mass Gatherings due to COVID-19, the rule hearing and meeting will be held virtually via Cisco WebEx.

Location: Virtual meeting

April 22, 2021

Meeting link: <https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e9f6018e4fc709c9d2d32ca7685a2f44f>

Meeting number: 146 081 4992

Password: kiPsXuC7m74

Join by phone +1-415-655-0002

United States Toll

Access code: 146 081 4992

April 23, 2021

Meeting link: <https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e2763712013e443347a0f7dd32cc2d58c>

Meeting number: 146 042 8437

Password: tGEDsDdz422

Join by phone +1-415-655-0002

United States Toll

Access code: 146 042 8437

The agenda is posted 72 hours prior to the scheduled meeting. You may view and download a copy of the agenda through the board's website: [www.rld.state.nm.us/boards/pharmacy.aspx](http://www.rld.state.nm.us/boards/pharmacy.aspx). All proposed language regarding rule hearings is linked to the Agenda, the Notice to the Public on our website, and the New Mexico Sunshine Portal.

Individuals petitioning the board regarding requests/waivers and/or interested persons wishing to comment on proposed language regarding rule hearings must submit documentation for presentation; via fax (505) 222-9835, mail or email to the Board Administrator, Gabriella Romero, [gabriella.romero@state.nm.us](mailto:gabriella.romero@state.nm.us) at least one week in advance of the scheduled meeting, as public comment is allowed during the rule hearing. On the morning of the hearing beginning at 8:00 a.m. and ending when the rule hearing adjourns, a board of pharmacy representative will be stationed at the board office, located at 5500 San Antonio Drive NE, Albuquerque, NM 87109, to receive written comments regarding the rule hearings and also to convey them to the Board. Public attendance will be limited to remote participation. Oral participation by members of the public will be limited to those comments and discussion through audiovisual means.

The board may go into Executive Session to discuss items pursuant to Section 10-15-1H(1), Section 10-15-1H(2), Section 10-15-1H(3) or Section 10-15-1H(7) of the Open Meeting Act. Agenda items may be executed at any time during the meeting to accommodate hearings.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Gabriella Romero 505-222-9835 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Gabriella Romero, at 505-222-9835 or e-mail [gabriella.romero@state.nm.us](mailto:gabriella.romero@state.nm.us) if a summary or other type of accessible format is needed.

The Board will address:

All Board Matters:

Rule Hearing: April 22, 2021 9:10 a.m.

**16.19.26 NMAC - PHARMACIST PRESCRIPTIVE AUTHORITY:**

Sections 1 and 3 – administrative updates. Section 7 – update definition of hormonal contraception drug therapy to clearly encompass formulary products delineated in the written contraception protocol approved by the board, including emergency contraception. The formulary, which was approved by the medical board and board of nursing, is unchanged. Section 9 – remove requirement to notify the department of health immunization program and patient’s designated physician of vaccine administration, as the pharmacist is required to update the department of health immunization program’s electronic database (NMSIIS) for any vaccine administered. Sections 10, 11, 12, 13 and 14 - Deletion of Section 10, emergency contraception drug therapy. Emergency contraception is included in the approved protocol formulary for the hormonal contraception drug therapy section, which was promulgated subsequent to the emergency contraception section. The hormonal contraception drug therapy definition is clarified accordingly, as above. Subsequent sections 10-13 (previously 11-14) are renumbered. Renumbered section 11, TB testing, education and training is updated to reference training providers. New section 14, prescribing dangerous drugs in conjunction with point-of-care testing – addresses pharmacist prescribing of protocol formulary dangerous drugs, specifies required education and training, records and notification. The final protocol is subject to board approval following medical board and board of nursing approval.

**STATUTORY AUTHORITY:**

Paragraphs (1), (7) and (19) of Subsection (A) of Section 61-11-6 NMSA 1978. Sections 61-11B-1 to 61-11B-3 NMSA 1978.

Disciplinary Hearing(s): At the time of publication in the NM Register, no disciplinary hearings are scheduled. Final hearing date and time for each case, if any, will be included in the agenda posted to the board’s website at least 72 hours before the meeting.

Executive Director’s Report:

Published in NM Register March 9, 2021

Published in Albuquerque Journal March 9, 2021.

---

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

**This Page Intentionally Left Blank**



## Adopted Rules

### Effective Date and Validity of Rule Filings

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

### NURSING, BOARD OF

This is an amendment to 16.12.3 NMAC, Sections 7, 8, 9 and 12 effective 4/8/2021.

#### 16.12.3.7 DEFINITIONS:

**A. "Application"**, form provided by the board of nursing (BON) to any potential nursing program to be used as the first process in opening a new program.

**B. "Approval"**, official or formal consent, confirmation or sanction.

**C. "Associate degree program"**, a formalized program of study, usually organized for completion within a two-year academic period, which prepares graduates for an associate degree in nursing and eligibility to take the national examination for registered nurses. The program is conducted as an integral department or division within a college or university.

**D. "Baccalaureate degree program"**, a formalized program of study, usually organized for completion within a four-year academic period, which prepares graduates for a degree in nursing and eligibility to take the national licensing examination for registered nursing. The program is conducted as an integral department or division within a university or college.

**E. "Board"**, New Mexico board of nursing.

**F. "Clinical facilities"**, institutions which are established for the delivery of nursing care services (hospital, extended care facilities, nursing homes, medical clinics, public health facilities, physician's offices, out-patient clinics, etc.).

**G. "Clinical preceptors"**, nurses who have been a nurse for at least two years and have

demonstrated competencies related to the area of assigned clinical teaching responsibilities and will serve as a role model and educator to the student.

**H. "Clock/contact hour"**, unit of measurement used by educational institutions to determine work load.

**I. "Curriculum"**, a course of study which is offered within a particular program.

**J. "Director"**, the nurse educator (regardless of the official title assigned by any specific institution who is delegated the administrative responsibility and authority for the direction of the basic educational program in nursing. An "administrator" shall be considered synonymous with "director" unless the institution has divided up authority between a program "director" and an administrator.

**K. "Educational institution"**, an institution within the educational system which is organized and accredited for teaching and study (university, high school, post-secondary, approved area vocational institution).

**L. "High-fidelity"**, provides the highest levels of realism. Scenarios may incorporate the above low- and medium-fidelity plus the use of computer-based equipment with automatic cues and responses.

**M. "Involuntary closure"**, mandatory closure by the board for failure of a program to meet the minimum requirements as established by the board.

**N. "Low-fidelity"**, the least realistic of available options. Scenarios may include but not limited to the use of static manikins, written case studies, simulated medication administration and other nursing tasks.

**O. "Medium-**

**fidelity"**, scenarios may include use of low-fidelity resources noted above plus standardized (live) patients incorporation with increased realism. Automatic cues and responses (aside from simulation faculty & staff) remain absent.

**P. "Must"**, a requirement.

**Q. "National licensing examination"**, examination for licensure as provided by the national council of state boards of nursing.

**R. "National nursing accreditation"**, recognition of an institution of learning by a board recognized national nursing organization as maintaining prescribed standards requisite for its graduates to gain admission to other reputable institutions of higher learning or achieve credentials for professional practice.

**S. "Parent institution"**, an institution within the educational system which is organized and accredited for teaching and study (university, college, high school).

**T. "Practical nurse program"**, a formalized program, which prepares a graduate for a diploma or certificate and eligibility to take the national licensing examination for practical nursing. The program is conducted as an integral part of an educational institution.

**U. "Pre-licensure program"**, nursing education program that prepares an individual for the national licensing examination for registered nursing or practical nursing.

**V. "Program"**, the curriculum and all of the activities/ functions that take place which are necessary to fulfill the purpose of nursing education.

**W. "Recommendations"**, statements

which should guide programs of nursing in the development and direction of the program but which are not mandatory:

**X. “Regulation and policies”**, statements governing practice of the board of nursing in the approval of a program of nursing.

**Y. “Requirements”**, conditions which any program of nursing shall meet to obtain approval.

**Z. “Shall”**, mandatory; a requirement.

**AA. “Should”**, a suggestion or recommendation; not a requirement.

**BB. “Simulation”**, an experience that imitates the real environment, requiring individuals to demonstrate the procedural techniques, decision-making, and critical thinking needed to provide safe and competent patient care.

**CC. “Supervision of part-time faculty without msn”**, initial verification of instructor’s knowledge and skills in supervision of students in clinical settings, followed by periodic observation, direction and evaluation of instructor’s knowledge and skills related to supervision of students in clinical settings.]

**A. Definitions beginning with “A”:**

**(1) “application”**, form provided by the board of nursing (BON) to any potential nursing program to be used as the first process in opening a new program;

**(2) “approval”**, official or formal consent, confirmation or sanction:

**(3) “associate degree program”**, a formalized program of study, usually organized for completion within a two-year academic period, which prepares graduates for an associate degree in nursing and eligibility to take the national examination for registered nurses. The program is conducted as an integral department or division within a college or university.

**B. Definitions beginning with “B”:**

**(1) “baccalaureate degree program”**, a

formalized program of study, usually organized for completion within a four-year academic period, which prepares graduates for a degree in nursing and eligibility to take the national licensing examination for registered nursing. The program is conducted as an integral department or division within a university or college;

**(2) “board”**, New Mexico board of nursing.

**C. Definitions beginning with “C”:**

**(1) “clinical facilities”**, institutions which are established for the delivery of nursing care services (hospital, extended care facilities, nursing homes, medical clinics, public health facilities, physician’s offices, out-patient clinics, etc.);

**(2) “clinical preceptors”**, nurses who have been a nurse for at least two years and have demonstrated competencies related to the area of assigned clinical teaching responsibilities and will serve as a role model and educator to the student;

**(3) “clock/contact hour”**, unit of measurement used by educational institutions to determine work load;

**(4) “curriculum”**, a course of study which is offered within a particular program.

**D. Definitions beginning with “D”:** **“director”**, the nurse educator (regardless of the official title assigned by any specific institution who is delegated the administrative responsibility and authority for the direction of the basic educational program in nursing. An “administrator” shall be considered synonymous with “director” unless the institution has divided up authority between a program “director” and an administrator.

**E. Definitions beginning with “E”:** **“educational institution”**, an institution within the educational system which is organized and accredited for teaching and study (university, high school, post-secondary, approved area vocational institution).

**F. Definitions beginning with “F”:** **[RESERVED]**

**G. Definitions beginning with “G”:** **[RESERVED]**

**H. Definitions beginning with “H”:** **“High-fidelity”**, provides the highest levels of realism. Scenarios may incorporate the above low- and medium-fidelity plus the use of computer-based equipment with automatic cues and responses.

**I. Definitions beginning with “I”:** **“Involuntary closure”**, mandatory closure by the board for failure of a program to meet the minimum requirements as established by the board.

**J. Definitions beginning with “J”:** **[RESERVED]**

**K. Definitions beginning with “K”:** **[RESERVED]**

**L. Definitions beginning with “L”:** **“Low-fidelity”**, the least realistic of available options. Scenarios may include but not limited to the use of static manikins, written case studies, simulated medication administration and other nursing tasks.

**M. Definitions beginning with “M”:**

**(1) “medium-fidelity”**, scenarios may include use of low-fidelity resources noted above plus standardized (live) patients incorporation with increased realism. Automatic cues and responses (aside from simulation faculty & staff) remain absent;

**(2) “must”**, a requirement.

**N. Definitions beginning with “N”:**

**(1) “National licensing examination”**, examination for licensure as provided by the national council of state boards of nursing;

**(2) “National nursing accreditation”**, recognition of an institution of learning by a board recognized national nursing organization as maintaining prescribed standards requisite for its graduates to gain admission to other reputable institutions of higher learning or achieve credentials for professional practice.

**O. Definitions**  
**beginning with “O”:** [RESERVED]

**P. Definitions**  
**beginning with “P”:**

(1) **“parent institution”**, an institution within the educational system which is organized and accredited for teaching and study (university, college, high school);

(2) **“practical nurse program”**, a formalized program, which prepares a graduate for a diploma or certificate and eligibility to take the national licensing examination for practical nursing. The program is conducted as an integral part of an educational institution;

(3) **“pre-licensure program”**, nursing education program that prepares an individual for the national licensing examination for registered nursing or practical nursing;

(4) **“program”**, the curriculum and all of the activities/functions that take place which are necessary to fulfill the purpose of nursing education.;

(5) **“public health emergency”**, an executive order pursuant to the Public Health Emergency Response Act or an executive order invoked by gubernatorial powers under the All Hazards Emergency Management Act.

**Q. Definitions**  
**beginning with “Q”:** [RESERVED]

**R. Definitions**  
**beginning with “R”:** [RESERVED]

(1) **“recommendations”**, statements which should guide programs of nursing in the development and direction of the program but which are not mandatory;

(2) **“regulation and policies”**, statements governing practice of the board of nursing in the approval of a program of nursing;

(3) **“requirements”**, conditions which any program of nursing shall meet to obtain approval.

**S. Definitions**  
**beginning with “S”:**

(1) **“shall”**, mandatory; a requirement;

(2) **“should”**, a suggestion or recommendation; not a requirement;

(3) **“simulation”**, an experience that imitates the real environment, requiring individuals to demonstrate the procedural techniques, decision-making, and critical thinking needed to provide safe and competent patient care;

(4) **“supervision of part-time faculty without msn”**, initial verification of instructor’s knowledge and skills in supervision of students in clinical settings, followed by periodic observation, direction and evaluation of instructor’s knowledge and skills related to supervision of students in clinical settings.

**T. Definitions**  
**beginning with “T”:** [RESERVED]

**U. Definitions**  
**beginning with “U”:** [RESERVED]

**V. Definitions**  
**beginning with “V”:** [RESERVED]

**W. Definitions**  
**beginning with “W”:** [RESERVED]

**X. Definitions**  
**beginning with “X”:** [RESERVED]

**Y. Definitions**  
**beginning with “Y”:** [RESERVED]

**Z. Definitions**  
**beginning with “Z”:** [RESERVED]  
 [16.12.3.7 NMAC - Rp, 16.12.3.7 NMAC, 10/1/2016; A, 4/8/2021]

**16.12.3.8 TYPES OF APPROVAL:**

**A. Initial approval:**

(1) Initial approval shall be granted as outlined in numbers 16.12.3.11 NMAC “requirements for the establishment of new programs and 16.12.3.12 NMAC “minimum standards for nursing programs” of these rules. Initial approval is valid from the time granted through the graduation of the first nursing class.

(2) The program shall have initial approval prior to recruiting and enrolling students into the nursing program.

(3) Immediately preceding graduation of the first nursing class, an approval site visit shall be made by representatives of the board to determine compliance with “minimum standards for nursing programs” and for consideration of continued approval.

(4) When a program fails to meet the minimum standard requirements with the initial graduating class then an initial approval with warning will be granted:

(5) Initial approval with warning:

(a) The program must correct all the identified deficiencies of the minimum standards not met.

(b) The board of nursing will evaluate the program for deficiencies of minimum standards:

(c) Initial approval with warning shall not exceed two years.]

**B. Initial approval with warning:**

(1) When a program fails to meet the minimum standard requirements with the initial graduating class then initial approval with warning will be granted.

(2) The program must correct all the identified deficiencies of the minimum standards not met.

(3) Initial approval with warning shall not exceed two years.

(4) When a program fails to meet the minimum standards for nursing programs within two years, the program will be placed in conditional approval.

[B.] **C. Full approval:**

(1) Full approval status shall be granted after the board verifies [through a site visit] that the “minimum standards for nursing programs” have been met.

(2) Full approval for a continuing period not to exceed ten years, shall be granted to nursing education programs if, in the opinion of the board, the program continues to demonstrate compliance

with minimum standards for nursing programs.

(3) National nursing accreditation.

(a) All currently board approved nursing programs shall achieve national nursing accreditation by January 1, 2018.

(b) New programs shall be required to achieve national nursing accreditation by two years after the graduation of the first cohort.

(c) Programs which have received accreditation from a board-recognized national nursing accreditation agency shall file evidence of initial accreditation with the board, and thereafter shall file notice of any change in program accreditation status and report from accrediting agency's board of review; the board shall grant approval based upon evidence of such accreditation.

(d) Programs holding approval based upon national accreditation are also responsible for complying with "minimum standards for nursing programs".

(e) Full approval for a continuing period not to exceed ~~ten~~ 10 years, shall be granted to nursing programs with full national nursing accreditation.

(f) Programs that do not meet or maintain this requirement will be placed on full approval with warning.

(g) Full approval with warning:

(i) the program must correct all the identified deficiencies of the minimum standards not met;

(ii) nursing programs shall provide a corrective action plan (CAP);

(iii) full approval with warning shall not exceed two years;

(iv) any other discretion or conditions deemed necessary by the board may be imposed.];

(4) Ongoing

approval status is assessed annually by the board and is based on information reported or provided in the program's annual report, NCLEX exam pass rates, and information related to the minimum standards.

(a)

An annual report which includes information regarding compliance with 16.12.3.12 NMAC minimum standards for nursing programs shall be submitted to the board by the nursing education program.

(b)

The annual NCLEX pass rate for each nursing education program is determined by the percentage of first time test takers who pass the examination during the exam year, from January 1<sup>st</sup> through December 31<sup>st</sup> of the calendar year.

(i)

Eighty percent of the first-time NCLEX candidates are required to achieve a passing score on the NCLEX examination during the exam year.

(ii)

When a program fails to maintain a passing rate of eight percent of first time candidates for one year, the program will receive notification from the board of nursing.

(iii)

The program is required to submit a self-study report with corrective action to the board of nursing by June 1<sup>st</sup> of the calendar year.

(iv)

When a program fails to maintain a passing rate of eighty percent of first time candidates for two consecutive calendar years the nursing education program will be granted full approval with warning.

C. Full approval with warning:

(1) the program must correct all the identified deficiencies of the minimum standards not met;

(2) nursing programs shall provide a corrective action plan (CAP);

(3) full approval with warning shall not exceed two years;

(4) any other

discretion or conditions deemed necessary by the board may be imposed.

[~~E.~~] D. Conditional approval:

(1) The nursing education program shall be placed on conditional approval not to exceed two years when there is evidence of substantial non-compliance with the "minimum standards for nursing programs" as specified in these rules.

(2) When on conditional approval status, the nursing program shall cease admissions.

(3) The following situations are cause for review or a site visit by the board to determine if the minimum standards for nursing programs are being met:

(a) complaints relating to violations of the "minimum standards for nursing programs";

(b) denial, withdrawal or change of program accreditation status by a board-recognized national nursing accreditation agency or general academic accreditation agency;

(c) failure to obtain board approval of changes that require approval of the board under "program changes";

(d) providing false or misleading information to students or the public concerning the nursing program;

(e) violation of the rules 16.12.3 NMAC;

(f) continuous disruptions in retaining a qualified director or faculty, resulting in disorganization and breakdown of supervision and teaching of students;

(g) non-compliance with the program's stated philosophy, objectives, policies, and curriculum resulting in unsatisfactory faculty/student achievement;

(h) failure to provide clinical experiences necessary to meet the objectives of the nursing program;

(i) less than a passing rate of eighty



percent of first time writers of the national licensing examination for more than three consecutive calendar years or is on full approval with warning for two years and has not met the “minimum standards of a nursing programs” including maintaining an adequate pass rate:

(i) when a program fails to maintain a passing rate of eighty percent of first time writers for one calendar year from January 1st through December 31st of the same year, a letter will be sent to the program notifying them that they are not in compliance with the rules and to provide the board with an assessment of possible problem areas within six months;

(ii) when a program fails to maintain a passing rate of eighty percent of first time writers for two consecutive calendar years, a report addressing areas of concern with a plan for corrective action will be submitted to the board within six months and an evaluation visit may be required.]

(4)

Conditional approval is not renewable. Failure to correct deficiencies within the designated time period will result in withdrawal of approval and involuntary closure of the program by the board. Full approval status shall be granted after the board verifies through a site visit that correction of deficiencies have occurred within the designated time period.

(5) The board may deny approval or withdraw approval of a nursing education program that does not meet the “minimum standards for nursing programs.”

[16.12.3.8 NMAC - Rp, 16.12.3.8 NMAC, 10/1/2016; A, 4/8/2021]

**16.12.3.9 TYPES OF BOARD VISITS TO NURSING PROGRAMS:**

A. Approval visit - visits made to programs of nursing by board representative(s) for the sole purpose of granting board approval. A pre-licensure nursing program must have an approval visit by the board

of nursing at least once in a 10 year period.

B. Evaluation visit - visits made to programs of nursing by board representative(s), at the request of the board, for the purpose of evaluating a program’s progress and approval status.

C. Consultation visit - visits made to programs of nursing by the board representative(s), at the request of the program of nursing or educational institution. Requests to the board for consultation must be made, in writing, to the executive director of the board of nursing. Consultation visits are made at the expense of the program of nursing or educational institution.

D. Survey visit - may be done at the discretion of the board during any national accreditation visit. [16.12.3.9 NMAC - Rp, 16.12.3.9 NMAC, 10/1/2016; A, 4/8/2021]

**16.12.3.12 MINIMUM STANDARDS FOR NURSING PROGRAMS:**

A. Administration and organization:

(1) The nursing education program shall be an integral part of an institution of higher education that is authorized by this state to confer credentials in nursing and that is also accredited by an accreditation agency recognized by the US department of education.

(2) The nursing program shall obtain national nursing accreditation within two years of the first graduating class.

(3) The nursing programs shall have status comparable with other academic units. There shall be an organizational chart which identifies the relationships, within and between the program and other administrative areas of the parent institution.

(4) The administration of the parent institution shall provide adequate financial support for the nursing program.

(5) The parent institution shall designate a qualified, nursing director who is licensed to practice as a registered nurse in

New Mexico or in a compact state. The nursing program director shall have responsibility and authority comparable with the administrative position including but not limited to development, implementation, evaluation, administration and organization of the nursing program.

(6) The nursing program shall have specific written policies available to students and the public regarding, but not limited to, admission, readmission, transfer, advanced placement, progression, graduation, withdrawal, dismissal, student rights and responsibilities, grievances, health and safety.

(7) The nursing program shall provide accurate, complete and appropriate information to all students and prospective students about the program including, but not limited to:

(a) nature of the program, including course sequence, prerequisites, co-requisites and academic standards;

(b) length of the program;

(c) current cost of the program;

(d) transferability of credits to other public and private educational institutions in New Mexico;

(e) program teaching methods and supporting technology;

(f) current standing and any change in regional or national institutional accreditation status and national nursing accreditation status and board approval status.

(8) Faculty and students shall participate in program planning, implementation, evaluation and continuous improvement.

B. Curriculum:  
(1) The mission of the nursing unit shall be consistent with that of the parent institution.

(2) A nursing program shall develop and implement a curriculum that includes

level objectives, course objectives; measurable learning outcomes for each course that:

- (a) reflect its mission and goals;
- (b) are logically consistent between and within courses;

(c) are designed so that the students who complete the program will have the knowledge and skills necessary to function in accordance with the definition and scope of practice specified in New Mexico Nurse Practice Act.

(3) The curriculum shall extend over a period of time sufficient to provide essential, sequenced learning experiences which enable a student to develop nursing competence and shall evidence an organized pattern of instruction consistent with principles of learning and educational practice.

(4) Clinical experience shall provide opportunities for application of theory and for achievement of the stated objectives in a client care setting or simulation learning settings, and shall include clinical learning experience to develop nursing skills required for safe practice. In the client care clinical setting, the student/faculty ratio shall be based upon the level of students, the acuity level of the clients, the characteristics of the practice setting and shall not exceed 8:1. In the simulation setting there shall be nursing faculty who has received focused training in simulation pedagogy and techniques. Clinical evaluation tools for evaluation of students' progress, performance and learning experiences shall be stated in measurable terms directly related to course objectives. Simulation learning experiences may concurrently include the use of low, medium, and high fidelity experiences. Nursing programs shall:

- (a) establish clearly-defined simulation learning outcomes incorporating objective measures for success;
- (b) incorporate written, planned design

of individual training experiences and shall include consideration of the educational and experiential levels of the learners;

- (c) make use of checklists for pre- and post-experience analysis and review;
- (d) may substitute up to a maximum of fifty percent of a clinical education experiences using simulation programs and practices;

(i) in the event of a public health emergency that negatively impacts access to clinical placement, nursing programs submit a major change notification increasing the simulation substitution to a maximum of seventy percent;

(ii) the major change would be in effect for the period of the public health event ending when the health order is terminated;

(e) have written simulation policies and procedures specific to the nursing education available to all faculty and pertinent staff. Simulation learning policies and procedures shall include evaluative feedback mechanisms for ongoing program improvement;

(f) incorporate facilitated student-centered debriefing sessions upon the conclusion of simulation-based activities.

(5) The curriculum shall provide instruction in the discipline of nursing across the lifespan and include content relevant to national and local health care needs. Support courses shall be an integral part of the nursing curriculum.

(6) The nursing program shall implement a comprehensive, systematic plan for ongoing evaluation that is based on program outcomes and incorporates continuous improvement.

C. Program director requirements:

(1) Prior to appointment, the program director shall:

- (a) hold a graduate degree in nursing;
- (b) hold a current registered nurse license to practice in New Mexico;
- (c) have work experience in clinical nursing practice;
- (d) have work experience as a nurse educator.

(2) The program director shall:

- (a) maintain a current registered nurse license to practice in New Mexico;
- (b) be afforded appropriate resources to accomplish the program mission, goals and expected program outcomes;
- (c) have the authority and responsibility for administration of the program to include but not limited to budget management, workload assignments, management and supervision of faculty and staff, development and enforcement of policies, meeting regulatory and accreditation requirements, and development and implementation of curriculum;
- (d) have at least eighty percent of obligated work time to administer the program.

D. Faculty requirements:

(1) The [administrator] faculty of the nursing program shall hold a current license to practice as a registered nurse in New Mexico.

(a) A formal plan will be in place which will include an orientation to nursing program.

(b) Nursing faculty who teach full-time shall hold a graduate degree in nursing; faculty without a graduate degree may be employed for one year and then are required to complete a graduate degree within the next five years, an educational contract with evidence of progression will be submitted with program annual report.

(c) Nursing faculty who teach part time shall hold a minimum of a bachelor's degree in nursing; faculty without a Bachelor of Science in Nursing BSN may be employed for one year and then are required to complete a BSN completion program or Master of Science in Nursing (MSN) program within five years, an educational contract with evidence of progression will be submitted with program annual report.

(i) Part time faculty without a graduate degree in nursing shall report to a master's prepared faculty and evidence of routine supervision shall be documented.

(ii) Part-time faculty shall be oriented to the curriculum, and provided with instruction in didactic and clinical teaching strategies.

(2) Clinical preceptors are licensed as a nurse at or above the educational level for which the student is preparing.

(3) Personnel policies for nursing faculty shall be the same as those in effect for other faculty with the exception of:

(a) nursing faculty workload shall be calculated by teaching clock/contact hour;

(b) evidence of full time and part time faculty evaluation shall be in place;

(4) A nursing program shall maintain current and accurate faculty and student records.

(5) The nursing program will retain a qualified director and a sufficient number of qualified faculty to meet the outcomes and purposes of the nursing education program.

E. Resources: The parent institution shall provide sufficient resources, services and facilities to operate the nursing program.

F. The nursing education program will maintain a passing rate of eighty percent or above of first time writers of the national licensing exam.

[16.12.3.12 NMAC - Rp, 16.12.3.12 NMAC, 10/1/2016; A, 9/12/2017; A, 4/8/2021]

**PAROLE BOARD**

The New Mexico Parole Board approved at its 1/20/2021 hearing to repeal its rule 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, filed 12/2/1982, and replace it with 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, effective 3/9/2021.

**PAROLE BOARD**

**TITLE 22 COURTS  
CHAPTER 510 PAROLE  
PART 3 POLICY  
STATEMENT PERTAINING  
TO THE GRANTING OF  
PAROLE, DENIAL OF PAROLE,  
REVOCATION OR RESCISSION  
OF PAROLE AND TO THE  
DISCHARGE OF PAROLEE**

**22.510.3.1 ISSUING AGENCY:** New Mexico Parole Board.  
[22.510.3.1 NMAC – Rp, 22.510.3.1 NMAC, 3/9/2021]

**22.510.3.2 SCOPE:** The provisions of Part 3 apply to persons subject to the granting of parole, denial of parole, revocation or rescission of parole and to the discharge of parole.  
[22.510.3.2 NMAC – Rp, 22.510.3.2 NMAC, 3/9/2021]

**22.510.3.3 STATUTORY AUTHORITY:** Paragraph 8 of Subsection B of Section 31-21-25 NMSA 1978.  
[22.510.3.3 NMAC – Rp, 22.510.3.3 NMAC, 3/9/2021]

**22.510.3.4 DURATION:**  
[Permanent]  
[22.510.3.4 NMAC – Rp, 22.510.3.4 NMAC, 3/9/2021]

**22.510.3.5 EFFECTIVE DATE:** March 9, 2021, unless a later date is cited at the end of a section.  
[22.510.3.5 NMAC – Rp, 22.510.3.5 NMAC, 3/9/2021]

**22.510.3.6 OBJECTIVE:** To qualify the application of Subsection A of 22.510.3.8 and its exclusion of persons serving indeterminate life sentences who were under the age of eighteen (18) at the time their crime was committed, which relates to the enactment of 22.510.17.  
[22.510.3.6 NMAC – Rp, 22.510.3.6 NMAC, 3/9/2021]

**22.510.3.7 DEFINITIONS:**  
[RESERVED]  
[22.510.3.7 NMAC – Rp, 22.510.3.7 NMAC, 3/9/2021]

**22.510.3.8 POLICY STATEMENT PERTAINING TO THE GRANTING OF PAROLE, DENIAL OF PAROLE, REVOCATION OR RESCISSION OF PAROLE AND TO THE DISCHARGE OF PAROLEE:**

A. The provisions of Subsection A of 22.510.3.8 NMAC apply to persons serving determinate sentences for crimes committed on or after July 1, 1979, except for persons serving indeterminate life sentences for crimes committed on or after July 1, 1979.

(1) Before release of an individual in this category, the board shall furnish to each inmate, as a prerequisite to his release under its supervision, a written statement of the conditions of parole which will be accepted and agreed to by the inmate as evidenced by his signature affixed to a duplicate copy to be retained in the files of the board. The board shall also require, as a prerequisite to release, the submission and approval of a parole plan which shall include, unless waived by the board, evidence of having secured gainful employment or satisfactory



evidence of self support.

(2) In setting conditions of parole and in approving a parole plan for the inmate, the following factors will be considered by the board:

- (a) the inmate's employment history and his occupational skills and training, both civilian and/or military, and any skills he may have attained while in the corrections system;
- (b) the inmate's plans, including proposed residence, proposed employment and other intended pursuits when released;
- (c) the inmate's past use of narcotics, other controlled substances or excessive use of alcohol;
- (d) any pre-sentence or pre-release investigative reports prepared in with accordance with Section 31-21-9 NMSA 1978;
- (e) the inmate's criminal record, including parole and probation history;
- (f) reports of physical and mental examinations as have been made, conclusions and recommendations made therein;
- (g) whether the inmate should be paroled for hospitalization/treatment;
- (h) the inmate's institutional record;
- (i) the availability of community resources to assist the inmate when paroled;
- (j) whether or not parole costs are required to be included as a parole condition for a crime committed on or after June 19, 1981, and the amount thereof;
- (k) whether or not victim restitution has been ordered by the court with accordance with Section 31-17-1 NMSA 1978;
- (l) any other factor which is deemed relevant by the board in a particular case.

**B.** The provisions of Subsection B of 22.510.3.8 NMAC apply to persons serving indeterminate life sentences for crimes committed on or after July 1, 1979. Before ordering the parole of an inmate sentenced to life imprisonment in this category, the board shall:

- (1) interview the inmate at the institution where he is committed;
- (2) consider all pertinent information concerning the inmate including:
  - (a) the circumstances of the offense;
  - (b) mitigating and aggravating circumstances;
  - (c) whether a deadly weapon was used in the commission of the offense;
  - (d) whether an inmate is a habitual offender;
  - (e) any pre-sentence or pre-release investigative reports filed under Section 31-21-9 NMSA 1978;
  - (f) the reports of such physical and mental examinations as have been made while in prison; the board may require mental examinations in appropriate cases;
- (3) make a determination that parole is in the best interest of society and the inmate;
- (4) make a determination that the inmate is able and willing to fulfill the obligations of a law abiding citizen.

**C.** The provisions of Subsection C of 22.510.3.8 NMAC apply to persons serving indeterminate sentences for crimes committed prior to July 1, 1979. Where appropriate, the provisions of this section also apply to persons serving indeterminate life sentences for crimes committed on or after July 1, 1979. In accordance with Section 31-21-25 NMSA 1978, the parole board hereby adopts a written policy specifying the criteria to be considered by the board in determining whether to grant, deny or revoke parole or to discharge a

parolee from supervision.

(1) With respect to the grant or denial of parole, the following criteria will be considered by the parole board in making a determination:

- (a) whether the inmate has given evidence of having secured gainful employment or satisfactory evidence of self-support;
- (b) whether the inmate can be released without detriment to himself or to the community;
- (c) whether the inmate is able and willing to fulfill the obligations of a law-abiding citizen;
- (d) criteria (a), (b) and (c) of this paragraph must be met in order for an inmate to be paroled to the community.

(2) In determining whether criteria (a), (b) and (c)] have been met, the following factors will be considered by the board:

- (a) the inmate's ability and readiness to assume the obligations and responsibilities provided in the parole certificate;
- (b) the degree to which the inmate has close ties to family and friends;
- (c) the degree to which the type of residence or community in which the inmate plans to live is conducive to good behavior while on parole;
- (d) the inmate's employment history and his occupational skills and training, both civilian and/or military, and any skills he may have attained while in the custody of the corrections department;
- (e) the inmate's plans, including residence, employment and other intended pursuits if released;
- (f) the inmate's past use of narcotics or excessive use of alcohol;
- (g) any recommendation made by the

sentencing court, district attorneys, law enforcement agencies, and probation and parole officers;

(h) the inmate’s conduct during his term of imprisonment;

(i) any pre-sentence or pre-release investigative reports prepared in accordance with Section 31-21-9 NMSA 1978;

(j) the inmate’s criminal record;

(k) reports of physical and mental examinations as have been made, and conclusions and recommendations made therein; the board may require mental examinations in appropriate cases;

(l) the inmate’s behavior and attitude during confinement;

(m) the inmate’s behavior and attitude while on probation or parole from any other sentence and the recentness of such probation or parole;

(n) the availability of community resources to assist the inmate if paroled;

(o) the circumstances of the offense of which the inmate was convicted and sentenced;

(p) any recommendations or comments filed with the board regarding the inmate’s suitability for parole;

(q) the inmate’s previous social history, including his reputation in his home community;

(r) the inmate’s positive efforts on behalf of others;

(s) the inmate’s culture, language, values, mores, judgments, communicative ability and other unique qualities;

(t) whether or not victim restitution has been ordered by the court;

(u) whether or not parole costs are required to be included as a parole condition for a crime committed on or

after June 19, 1981, and the amount thereof;

(v) any other relevant factor deemed appropriate by the parole board in any particular case.

**D.** The provisions of Subsection D of 22.520.3.8 NMAC apply to inmates serving indeterminate sentences for crimes committed prior to July 1, 1979, and to persons serving indeterminate life sentences for crimes committed on or after July 1, 1979. With respect to the parole of an inmate in this category to a detainer or to a consecutive sentence, the following criteria will be considered by the board in making a determination:

(1) The inmate must sufficiently demonstrate the attitude that he could, if released to the community, be able and willing to be a law-abiding citizen.

(2) The inmate must sufficiently demonstrate the attitude that, if he were released to the community, he would not be a detriment to himself or to the community.

(3) The parole of an inmate to a detainer or to a consecutive sentence must be in the best interest of the applicant and society.

**E.** The provisions of Subsection E of 22.510.3.8 NMAC apply to all applicants for parole. With respect to the parole of an inmate for hospitalization, the following criteria will be considered by the board in making a determination:

(1) It must appear that the inmate needs and will benefit from physical or mental treatment.

(2) It must appear that such treatment, if successful, would probably render the inmate a suitable candidate for parole to the community.

**F.** The provisions of Subsection F of 22.510.3.8 NMAC apply to all persons facing possible parole revocation. With respect to the revocation of parole, the following criteria apply:

(1) whether the parolee has violated a condition of parole. Whether the violation or violations of one or more conditions of parole demonstrate a disregard of or careless attitude towards the conditions of parole; whether the parolee, whose violation of parole is established, should be recommitted to the custody of the corrections department or should other steps be taken to protect society and improve chances of rehabilitation;

(2) if the violation is sufficiently justified by the parolee, the board may continue parole or may enter any other order it deems appropriate;

(3) if the violation is not established, the parolee will be reinstated on parole;

(4) when a parolee has been returned to a correctional facility of the corrections department, bail or bond release cannot be accomplished by the parole board during final parole revocation hearing;

(5) an electronic recording will be made of all violation hearings.

**G.** The provisions of Subsection G of 22.510.3.8 NMAC apply to persons serving determinate sentences for crimes committed on or after July 1, 1979. With respect to the criteria to be considered by the board in determining whether to discharge a parolee, the following will be considered: persons serving determinate sentences will be discharged upon completion of the mandatory parole period and a certificate of parole discharge will be issued.

**H.** The provisions of Subsection H of 22.510.3.8 NMAC] apply to persons serving indeterminate sentences for crimes committed prior to July 1, 1979, and to persons serving indeterminate life sentences for crimes committed on or after July 1, 1979. With respect to the criteria to be considered by the board in determining whether to discharge a parolee, the following will be considered:

(1) Upon recommendation by field services division, a parolee who has performed the obligations of his release for such time as will satisfy the board that his final release is not incompatible with his welfare and that of society, the board will, consistent with Paragraphs (2) and (3) below, make final order of parole discharge to the parolee.

(2) For persons sentenced for crimes committed prior to July 1, 1979, no such order of discharge will be made in any case within a period of less than one year after the date of parole release, except where the sentence expires prior thereto.

(3) For persons serving life sentences for crimes committed on or after July 1, 1979, no such order of discharge shall be made in any case until after the parolee has served at least five years on parole.  
[22.510.3.8 NMAC – Rp & A, 22.510.3.8 NMAC, 3/9/2021]

**HISTORY OF 22.510.3 NMAC:**  
Pre-NMAC History: Material in this part was derived from that previously filed with the State Records Center: PB 71-1, Parole Hearing Board, Procedures Manual, filed 11/17/1971. PB 76-1, Rules, Regulations, Procedures and Parole Board Statutes, filed 8/2/1976. PB 80-1, Rules, Regulations, Procedures and Parole Board Statutes (February 1979 Revision), filed 10/17/1980. PB Rule 82-2, Policy Statement Pertaining to the Granting of Parole, Denial of Parole, Revocation or Rescission of Parole and to the Discharge of Parolee, filed 12/2/1982. 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, filed 12/2/1982, was repealed and replaced by 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, effective 3/9/2021.

**History of Repealed Material:**

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, filed 12/2/1982, was repealed and replaced by 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, effective 3/9/2021.

**PAROLE BOARD**

**TITLE 22 COURTS  
CHAPTER 510 PAROLE  
PART 17 PAROLE  
HEARINGS FOR YOUTH  
SENTENCED IN ADULT COURT**

**22.510.17.1 ISSUING**  
**AGENCY:** New Mexico Parole Board.  
[22.510.17.1 NMAC – N, 3/9/2021]

**22.510.17.2 SCOPE:** The provisions of Part 17 apply to persons serving indeterminate life sentences for crimes committed when under the age of 18 and sentenced on or after July 1, 1979.  
[22.510.17.2 NMAC – N, 3/9/2021]

**22.510.17.3 STATUTORY**  
**AUTHORITY:** Paragraph 8 of Subsection B of Section 31-21-25 NMSA 1978.  
[22.510.17.3 NMAC – N, 3/9/2021]

**22.510.17.4 DURATION:**  
Permanent.  
[22.510.17.4 NMAC – N, 3/9/2021]

**22.510.17.5 EFFECTIVE**  
**DATE:** March 9, 2021, unless a later date is cited at the end of a section.  
[22.510.17.5 NMAC – N, 3/9/2021]

**22.510.17.6 OBJECTIVE:**  
In accordance with the prohibition on cruel and unusual punishment of the Eighth Amendment of the U.S. Constitution and Article II, Section 13 of the New Mexico Constitution and the rehabilitative purposes of the New

Mexico Children’s Code, the parole board is responsible for providing an inmate sentenced for offenses committed under the age of 18 with a meaningful opportunity for release. Because of the unique constitutional requirements announced in supreme court precedent, the parole board must treat cases involving youthful offenders differently than those involving adult offenders.  
[22.510.17.6 NMAC – N, 3/9/2021]

**22.510.17.7 DEFINITIONS:**

**A. “Aggravating factor”**--a circumstance or factor the parole board is permitted or required to weigh against the grant of parole. *See also* mitigating factor.

**B. “Deadly weapon”**-- as defined in Section 31-1-12 NMSA 1978, a deadly weapon means any firearm, whether loaded or unloaded; or any weapon which is capable of producing death or great bodily harm, including but not restricted to any types of daggers, brass knuckles, switchblade knives, bowie knives, poniards, butcher knives, dirk knives and all such weapons with which dangerous cuts can be given, or with which dangerous thrusts can be inflicted, including sword, canes, and any kind of sharp pointed canes, also slingshots, slung shots, bludgeons; or any other weapons with which dangerous wounds can be inflicted.

**C. “Experts”** – an expert permitted to submit evidence in support of release under Subsection D of 22.510.17.8 is limited to those psychologists, psychiatrists, social workers, and other licensed professionals in adolescent brain development who have conducted an individual evaluation of the inmate for purposes of parole review under the provisions of this rule.

**D. “Family member of the victim”** – as defined in Section 31-21-25 NMSA 1978, “family member of the victim” is a mother, father, sister, brother, child or spouse of the victim or a person who has custody of the victim.

**E. “Habitual offender”** – as defined in Section 31-18-17 NMSA 1978, a habitual

offender is a person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred one prior felony conviction that was part of a separate transaction or occurrence or conditional discharge under Section 31-20-13 NMSA 1978.

**F. “Mitigating factor”** – a circumstance or factor the Parole Board is permitted or required to weigh in favor of the grant of parole. *See also* aggravating factor. [22.510.17.7 NMAC – N, 3/9/2021]

**22.510.17.8 PRESENTATION AND CONSIDERATION OF YOUTHFUL CHARACTERISTICS:**

The parole board shall consider the following mitigating factors for inmates sentenced for crimes committed before the age of 18:

**A.** The age and life circumstances of the inmate as of the date of the commission of the crime(s), including, but not limited to, diminished understanding of risks and consequences, diminished ability to resist peer pressure, and diminished ability to control surroundings;

**(1)** The hallmark features of youth at the time of the commission of the crime(s), including, but not limited to, diminished understanding of risks and consequences, diminished ability to resist peer pressure, and diminished ability to control surroundings;

**(2)** Whether the inmate has demonstrated growth and increased maturity since the date of the commission of the crime(s);

**(3)** The inmate’s contributions to the welfare of other persons through service while incarcerated;

**(4)** When appropriate, the inmate’s efforts to overcome substance abuse, addiction, or trauma;

**(5)** Lack of education or obstacles that the inmate may have faced as an adolescent in the adult correctional system;

**(6)** The inmate’s opportunities for, or lack

thereof, rehabilitation services in the correctional system, including, but not limited to, mental health services, counseling, educational programs, and vocational training; and

**(7)** The overall degree of the inmate’s rehabilitation considering the inmate’s age and life circumstances at the time of the crime, the nature and circumstances of the inmate’s involvement in the crime(s), and the inmate’s opportunities for rehabilitation while incarcerated.

**B.** An inmate shall be allowed to present, and the parole board shall consider, evidence of the inmate’s youthful characteristics prior to the crime(s) and during incarceration in the form of paper, photographic, and electronic records, expert reports, and written statements.

**C.** Individuals, including, but not limited to, family members, friends, school and vocational personnel, faith leaders, teachers, correctional officials, and representatives from community-based organizations with knowledge about relevant evidence about the inmate may submit statements to the parole board as mitigating evidence of the inmate’s maturity and life circumstances prior to the crime and/or as mitigating evidence of the inmate’s growth and maturity since the time of the offense.

**D.** Experts in adolescent development, brain science, trauma, mental and physical health, and other relevant areas of expertise may present to the parole board on reports, affidavits, or other written statements to the parole board submitted as mitigating evidence. To qualify for consideration by the parole board, expert reports must address the inmate’s particular circumstances and be based on an individual evaluation of the inmate.

**E.** Institutional infractions received prior to age 25 shall not be weighed against the inmate when determining whether to grant or deny parole.

[22.510.17.8 NMAC – N, 3/9/2021]

**22.510.17.9 GRANT OF PAROLE AND INCORPORATION OF SECTION 31-21-10 NMSA 1978:**

**A.** Where credible evidence of rehabilitation, growth, and maturity is present, a presumption of fitness for parole shall be applied. In applying this presumption, the parole board shall abide by the statutory requirements under Section 31-21-10 NMSA 1978, for granting parole of an inmate sentenced to life imprisonment. In accordance with Section 31-21-10 NMSA 1978, before granting parole, the parole board shall also consider:

**(1)** The circumstances of the offense;

**(2)** Mitigating and aggravating circumstances;

**(3)** Whether a deadly weapon was used in the commission of the offense;

**(4)** Whether the inmate is a habitual offender;

**(5)** The reports filed under Section 31-21-9 NMSA 1978; and

**(6)** The reports of such physical and mental examinations as have been made while in an institution.

**B.** In accordance with Section 31-21-10 NMSA 1978, in support of a grant of parole, the parole board shall also:

**(1)** Make a finding that parole is in the best interest of society and the inmate; and

**(2)** Make a finding that the inmate is able and willing to fulfill the obligations of a law-abiding citizen.

[22.510.17.9 NMAC – N, 3/9/2021]

**22.510.17.10 RIGHTS OF CRIME VICTIMS AND INCORPORATION OF SECTION 31-21-25 NMSA 1978:**

The parole board shall allow the victim of the offender’s crime or a family member of the victim to be present during the parole hearing. If the victim or a family member of the victim requests an opportunity to speak to the parole board during the hearing in public or private, the parole



board shall grant the request.  
[22.510.17.10 NMAC – N, 3/9/2021]

**22.510.17.11 DENIAL OF PAROLE:**

**A.** Where credible evidence of rehabilitation, growth, and maturity is present, a presumption of fitness for parole shall be applied. The focus of the parole board's determination should be on the credible evidence provided by the inmate demonstrating rehabilitation, growth, and maturity. Denial of parole is permitted if the parole board determines there is insufficient evidence of rehabilitation, growth, and maturity. The parole board shall articulate the basis of its decision in writing if release is denied. The written denial shall include, but is not limited to:

(1) The specific reason(s) why release is not in the best interest of society and the inmate; and

(2) An analysis of the characteristics of youth as outlined in 22.510.17.8.

**B.** In accordance with Subsection A of Section 31-21-10 NMSA 1978, if release is denied, the inmate shall be eligible for a subsequent parole review after two years from the date of the most recent denial.  
[22.510.17.11 NMAC – N, 3/9/2021]

**22.510.17.12 LEGAL COUNSEL AND DEFENSE PROFESSIONALS:**

**A.** Inmates appearing before the parole board sentenced to indeterminate life for an offense or offenses committed under the age of 18 shall have the right to retain counsel for representation before the parole board. Counsel shall be permitted to participate in the hearing, argue the application of the provisions of this rule in the case of their client, and submit to the members of the parole board memorandum of this proposed application and supporting evidence.

**B.** The parole board shall have the right to have legal counsel of its own present at the hearing.

**C.** Social workers and other defense professionals also engaged in the representation of the inmate before the parole board shall be permitted to submit reports, affidavits, or other written or testamentary statements to the parole board as mitigating evidence.  
[22.510.17.12 NMAC – N, 3/9/2021]

**22.510.17.13 NOTICE:**

**A.** Inmates will be provided a minimum of 30 days' notice of the date and time of their hearing under this rule.

**B.** Inmates will be informed of the parole board's decision within 30 days from the date of the hearing.  
[22.510.17.13 NMAC – N, 3/9/2021]

**22.510.17.14 PRESERVATION OF RECORD:**

Parole hearings will be tape recorded and kept by the parole board. A recording of the hearing will be made available to anyone upon written request to the parole board and sent within 14 days of the request.  
[22.510.17.14 NMAC – N, 3/9/2021]

**History of 22.510.17 NMAC:  
[RESERVED]**

**REGULATION AND LICENSING DEPARTMENT SIGNED LANGUAGE BOARD**

**This is an amendment to 16.28.1 NMAC, Sections 7 and 9 effective 3/27/2021.**

**16.28.1.7 DEFINITIONS:**

As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning:

~~\_\_\_\_\_ **A.** "Accredited" means approved by the:~~

~~\_\_\_\_\_ **(1)** New England association of schools and colleges;~~

~~\_\_\_\_\_ **(2)** middle states association of colleges and secondary schools;~~

~~\_\_\_\_\_ **(3)** north~~

~~central association of colleges and schools;~~

~~\_\_\_\_\_ **(4)** northwest association of schools and colleges;~~

~~\_\_\_\_\_ **(5)** southern association of colleges and schools; or~~

~~\_\_\_\_\_ **(6)** western association of schools and colleges.~~

~~\_\_\_\_\_ **B.** "ACET" refers to the associate continuing education tracking system within registry of interpreters for the deaf (RID);~~

~~\_\_\_\_\_ **C.** "Act" means the Signed Language Interpreting Practices Act, Section 61-34-1 through 61-34-17 NMSA 1978.~~

~~\_\_\_\_\_ **D.** "Administrator" or "board administrator" means the staff person assigned certain express or implied executive and administrative functions of the board as defined by board regulations or as required to carry out the provisions of the Signed Language Interpreting Practices Act.~~

~~\_\_\_\_\_ **E.** "Adult" means all persons 18 years of age or older.~~

~~\_\_\_\_\_ **F.** "Applicant" means a person who has completed all educational requirements of the eligibility requirements for licensure and has submitted a complete application to the board. An applicant is seeking approval of their application by the board to advance them to candidacy for licensure.~~

~~\_\_\_\_\_ **G.** "Board" means the signed language interpreting practices board.~~

~~\_\_\_\_\_ **H.** "Board regulations" or "regulations" means any part adopted by the board pursuant to authority under the act and includes any superseding regulation.~~

~~\_\_\_\_\_ **I.** "CEU" refers to continuing education unit as is used by the registry of interpreters for the deaf.~~

~~\_\_\_\_\_ **J.** "CMP" means the certification maintenance program as is used by the registry of interpreters for the deaf.~~

~~\_\_\_\_\_ **K.** "Community signed language interpreter" means an interpreter holding one or more certifications recognized by RID with the exception of educational~~

certificate: K-12 (ED: K-12) and holding a community signed language interpreter's license. A community signed language interpreter's license entitles its holder to provide signed language interpreting services in community, K-12 educational, and post-secondary educational settings as appropriate under the national association of the deaf - registry of interpreters for the deaf (NAD-RID) code of professional conduct.

——— **L.** ——— **“Annual compliance review”** means an annual review conducted by the board ensuring that interpreters holding a provisional signed language interpreting license are in compliance with all requirements established by the statute and rules.

——— **M.** ——— **“Consumer”** means a person using the services of a signed language interpreter.

——— **N.** ——— **“Confidential communication”** means a communication that is not intended to be disclosed to third persons other than those present to further the interest of the person requiring the interpreting.

——— **O.** ——— **“Copy Signing”** means signing verbatim a comment or question for those who are not able to see the original signed message due to a visual obstruction.

——— **P.** ——— **“Deaf person”** means a person who has either no hearing or who has significant hearing loss.

——— **Q.** ——— **“Deaf-blind person”** means a person who has either no hearing or who has significant hearing loss and a significant vision loss.

——— **R.** ——— **“Department”** means the New Mexico regulation and licensing department.

——— **S.** ——— **“Educational signed language interpreter”** means an interpreter holding the ED: K-12 credential from the registry of interpreters for the deaf or meeting the criteria in Subsection D of 16.28.3.11 NMAC and holding an educational signed language interpreter's license. An educational signed language interpreter's license entitles its holder to provide signed

language interpreting services in K-12 educational settings as appropriate under the NAD-RID code of professional conduct and in post-secondary education settings only for consumers currently enrolled in a secondary program and not earning college credit.

——— **T.** ——— **“EIPA”** refers to the educational interpreter performance assessment, a diagnostic tool that measures proficiency in interpreting for children or young adults in an educational setting.

——— **U.** ——— **“Filed with the board”** means hand delivered or postal mail received during normal business hours by the board office in Santa Fe, New Mexico.

——— **V.** ——— **“Hard-of-hearing person”** means a person who has either no hearing or who has significant hearing loss.

——— **W.** ——— **“Intern”** means a student in training who is currently enrolled in an interpreter education program, interpreter preparation program, or a program of study in signed language interpreting at an accredited institution of higher learning approved by the board, and actively supervised by an interpreter holding a community or educational signed language interpreter license or a consumer of interpreting services approved by the institution in which the intern is enrolled.

——— **X.** ——— **“Interpreter”** means a person who practices signed language interpreting.

——— **Y.** ——— **“Interpreter education program”** or “interpreter preparation program” means a post-secondary degree program of at least two year's duration accredited by the state or similar accreditation by another state, district or territory; or a substantially equivalent education program approved by the board.

——— **Z.** ——— **“Interpreting”** means the process of providing accessible communication between deaf, hard-of-hearing, or deaf-blind persons and hearing persons, including communication between signed language and spoken language and other modalities such as visual, gesture and tactile methods, not to

include written communication. A person is interpreting if the person advertises, offers to practice, is employed in a position described as interpreting or holds out to the public or represents in any manner that the person is an interpreter in New Mexico

——— **AA.** ——— **“Licensee”** means an interpreter who holds a current license issued under the act and these rules.

——— **BB.** ——— **“NAD”** means the national association of the deaf.

——— **CC.** ——— **“New Mexico administrative code”** or **“NMAC”**, Section 14-4-7.2 NMSA 1978 is the official compilation of current rules filed by state agencies in accordance with New Mexico statutes.

——— **DD.** ——— **“New Mexico statutes annotated 1978 or NMSA 1978”** is the official compilation of state laws.

——— **EE.** ——— **“Open Meetings Act”** or **“OMA”**, 10-15-1 through 10-15-4 NMSA 1978 is the statutory provision requiring that public business be conducted in full public view; providing guidelines governing both public and closed meetings, and regulating the notice, agenda and minutes of such meetings.

——— **FF.** ——— **“Properly made application”** means a completed application form for a signed language interpreter license filed with the board that is complete in all particulars and appears on its face to satisfy all minimum age, educational, supervision, payment and other requirements for licensure as required by the act and these regulations.

——— **GG.** ——— **“Provisional signed language interpreter”** means an interpreter who holds a provisional signed language interpreter's license. A provisional signed language interpreter's license entitles its holder to provide signed language interpreting services in community and educational settings as appropriate under the NAD-RID code of professional conduct for a maximum of five years while working to satisfy the requirements for a community signed language interpreter's license or an educational

signed language interpreter's license.

**HH.** **"RID"** refers to the registry of interpreters for the deaf, which is a national association of signed language interpreters.

**H.** **"Rule"** means board regulations.

**JJ.** **"State Rules Act"**, Sections 14-4-1 through 14-4-5 NMSA 1978, is the statutory provision that ensures that state agencies file with the state records center and archives all rules and regulations including amendments or repeals.

**KK.** **"Statute"** means a law that governs conduct within its scope. A bill passed by the legislature becomes a statute; and "statutory authority" means the boundaries of the board's lawful responsibility as laid out by the statute that created it.

**LL.** **"Substantial compliance"** means sufficient compliance with the statutes or rules so as to carry out the intent for which the statutes or rules were adopted and in a manner that accomplished the reasonable objective of the statutes or rules.

**MM.** **"Supervised interpreter intern or student"** means a person who is currently enrolled in an interpreter education program, interpreter preparation program, or a program of study in signed language interpreting at an accredited institution of higher learning.

**NN.** **"Uniform Licensing Act" or "ULA"**, Section 61-1-1 through 61-1-3 NMSA 1978 is the statutory provision that governs the major duties of the board in area of:

(1) procedures which must be followed to accord due process to applicants for licensure and to licensees if the board takes action against the licensee for acts of misconduct that would adversely affect public health, safety and welfare, and

(2) rulemaking procedures that the board shall follow in adopting valid regulations affecting signed language interpreters.]

**A. Definitions beginning with "A":**

(1)

**"Accredited"** means approved by the:

(a)

New England association of schools and colleges;

(b)

middle states association of colleges and secondary schools;

(c)

north central association of colleges and schools;

(d)

northwest association of schools and colleges;

(e)

southern association of colleges and schools; or

(f)

western association of schools and colleges.

(2) **"ACET"**

refers to the associate continuing education tracking system within registry of interpreters for the deaf (RID).

(3) **"Act"**

means the Signed Language Interpreting Practices Act, Section 61-34-1 through 61-34-17 NMSA 1978.

(4)

**"Administrator"** or "board administrator" means the staff person assigned certain express or implied executive and administrative functions of the board as defined by board regulations or as required to carry out the provisions of the Signed Language Interpreting Practices Act.

(5) **"Adult"**

means all persons 18 years of age or older.

(6) **"Annual compliance review"**

means an annual review conducted by the board ensuring that interpreters holding a provisional signed language interpreting license are in compliance with all requirements established by the statute and rules.

(7)

**"Applicant"** means a person who has completed all educational requirements of the eligibility requirements for licensure and has submitted a complete application to the board. An applicant is seeking approval of their application by the

board to advance them to candidacy for licensure.

**B. Definitions**

**beginning with "B":**

(1) **"BEI"**

means the board for evaluation of interpreters, which is a nationally-recognized testing and certifying body of signed language interpreters.

(2)

**"Board"** means the signed language interpreting practices board.

(3) **"Board regulations"**

or "regulations" means any part adopted by the board pursuant to authority under the act and includes any superseding regulation.

**C. Definitions**

**beginning with "C":**

(1) **"CEU"**

refers to continuing education unit as is used by the registry of interpreters for the deaf.

(2) **"CMP"**

means the certification maintenance program as is used by the registry of interpreters for the deaf.

(3)

**"Community signed language interpreter"** means an interpreter holding one or more certifications recognized by RID with the exception of educational certificate: K-12 (ED: K-12) and holding a community signed language interpreter's license. A community signed language interpreter's license entitles its holder to provide signed language interpreting services in community, K-12 educational, and post-secondary educational settings as appropriate under the national association of the deaf - registry of interpreters for the deaf (NAD-RID) code of professional conduct.

(4)

**"Consumer"** means a person using the services of a signed language interpreter.

(5)

**"Confidential communication"** means a communication that is not intended to be disclosed to third persons other than those present to further the interest of the person requiring the interpreting.



**(6) “Copy signing”** means signing verbatim a comment or question for those who are not able to see the original signed message due to a visual obstruction.

**D. Definitions beginning with “D”:**

**(1) “Deaf person”** means a person who has either no hearing or who has significant hearing loss.

**(2) “Deaf-blind person”** means a person who has either no hearing or who has significant hearing loss and a significant vision loss.

**(3) “Department”** means the New Mexico regulation and licensing department.

**E. Definitions beginning with “E”:**

**(1) “Educational signed language interpreter”** means an interpreter holding the ED: K-12 credential from the registry of interpreters for the deaf or meeting the criteria in Subsection D of 16.28.3.11 NMAC and holding an educational signed language interpreter’s license. An educational signed language interpreter’s license entitles its holder to provide signed language interpreting services in K-12 educational settings as appropriate under the NAD-RID code of professional conduct and in post-secondary education settings only for consumers currently enrolled in a secondary program and not earning college credit.

**(2) “EIPA”** refers to the educational interpreter performance assessment, a diagnostic tool that measures proficiency in interpreting for children or young adults in an educational setting.

**F. Definitions beginning with “F”:** **“Filed with the board”** means hand delivered or postal mail received during normal business hours by the board office in Santa Fe, New Mexico.

**G. Definitions beginning with “G”:** [RESERVED]

**H. Definitions beginning with “H”:** **“Hard-of-hearing person”** means a person

who has either no hearing or who has significant hearing loss.

**I. Definitions beginning with “I”:**

**(1) “Intern”** means a student in training who is currently enrolled in an interpreter education program, interpreter preparation program, or a program of study in signed language interpreting at an accredited institution of higher learning approved by the board, and actively supervised by an interpreter holding a community or educational signed language interpreter license or a consumer of interpreting services approved by the institution in which the intern is enrolled.

**(2) “Interpreter”** means a person who practices signed language interpreting.

**(3) “Interpreter education program”** or “interpreter preparation program” means a post-secondary degree program of at least two year’s duration accredited by the state or similar accreditation by another state, district or territory; or a substantially equivalent education program approved by the board.

**(4) “Interpreting”** means the process of providing accessible communication between deaf, hard of hearing, or deaf-blind persons and hearing persons, including communication between signed language and spoken language and other modalities such as visual, gesture and tactile methods, not to include written communication. A person is interpreting if the person advertises, offers to practice, is employed in a position described as interpreting or holds out to the public or represents in any manner that the person is an interpreter in New Mexico

**J. Definitions beginning with “J”:** [RESERVED]

**K. Definitions beginning with “K”:** [RESERVED]

**L. Definitions beginning with “L”:** **“Licensee”** means an interpreter who holds a current license issued under the act and these rules.

**M. Definitions beginning with “M”:** [RESERVED]

**N. Definitions beginning with “N”:**

**(1) “NAD”** means the national association of the deaf.

**(2) “New Mexico administrative code”** or “NMAC”, Section 14-4-7.2 NMSA 1978 is the official compilation of current rules filed by state agencies in accordance with New Mexico statutes.

**(3) “New Mexico statutes annotated 1978 or NMSA 1978”** is the official compilation of state laws.

**O. Definitions beginning with “O”:** **“Open Meetings Act”** or “OMA”, 10-15-1 through 10-15-4 NMSA 1978 is the statutory provision requiring that public business be conducted in full public view; providing guidelines governing both public and closed meetings, and regulating the notice, agenda and minutes of such meetings.

**P. Definitions beginning with “P”:**

**(1) “Properly made application”** means a completed application form for a signed language interpreter license filed with the board that is complete in all particulars and appears on its face to satisfy all minimum age, educational, supervision, payment and other requirements for licensure as required by the act and these regulations.

**(2) “Provisional signed language interpreter”** means an interpreter who holds a provisional signed language interpreter’s license. A provisional signed language interpreter’s license entitles its holder to provide signed language interpreting services in community and educational settings as appropriate under the NAD-RID code of professional conduct for a maximum of five years while working to satisfy the requirements for a community signed language interpreter’s license or an educational

signed language interpreter's license.

**Q. Definitions**

**beginning with "O": [RESERVED]**

**R. Definitions**

**beginning with "R":**

**(1) "RID"**

refers to the registry of interpreters for the deaf, which is a national association of signed language interpreters.

**(2) "Rule"**

means board regulations.

**S. Definitions**

**beginning with "S":**

**(1) "State**

**Rules Act"**, Sections 14-4-1 through 14-4-11 NMSA 1978, is the statutory provision that ensures that state agencies file with the state records center and archives all rules and regulations including amendments or repeals.

**(2) "Statute"**

means a law that governs conduct within its scope. A bill passed by the legislature becomes a statute; and "statutory authority" means the boundaries of the board's lawful responsibility as laid out by the statute that created it.

**(3)**

**"Substantial compliance"** means sufficient compliance with the statutes or rules so as to carry out the intent for which the statutes or rules were adopted and in a manner that accomplished the reasonable objective of the statutes or rules.

**(4)**

**"Supervised interpreter intern or student"** means a person who is currently enrolled in an interpreter education program, interpreter preparation program, or a program of study in signed language interpreting at an accredited institution of higher learning.

**T. Definitions**

**beginning with "T": [RESERVED]**

**U. Definitions**

**beginning with "U": "Uniform Licensing Act" or "ULA"**, Section 61-1-1 through 61-1-3 NMSA 1978 is the statutory provision that governs the major duties of the board in area of:

**(1) procedures**

which must be followed to accord due

process to applicants for licensure and to licensees if the board takes action against the licensee for acts of misconduct that would adversely affect public health, safety and welfare, and

**(2) rulemaking**

procedures that the board shall follow in adopting valid regulations affecting signed language interpreters.

**V. Definitions**

**beginning with "V": [RESERVED]**

**W. Definitions**

**beginning with "W":**

**[RESERVED]**

**X. Definitions**

**beginning with "X": [RESERVED]**

**Y. Definitions**

**beginning with "Y": [RESERVED]**

**Z. Definitions**

**beginning with "Z": [RESERVED]**

[16.28.1.7 NMAC - N, 07/21/09; A, 08/18/11; A, 01/15/14; A, 12/16/15; A, 6/18/2017; A, 3/27/2021]

**16.28.1.9 BOARD**

**RECORDS:**

**A. Inspection of**

**Public Records Act [~~"IPRA"~~]**

**IPRA.** Public records shall be available for inspection in accordance with the provisions of the IPRA, Section 14-2-1 through 14-2-12 NMSA 1978 and Section 61-9-5.1 NMSA 1978.

**B. Removal.**

Public records shall not be removed from the board office except by board member, board staff, or agents of the board for official public business.

[16.28.1.9 NMAC - N, 07/21/09; A, 3/27/2021]

**REGULATION AND LICENSING DEPARTMENT SIGNED LANGUAGE BOARD**

**This is an amendment to 16.28.2 NMAC, Sections 8 and 9 effective 3/27/2021.**

**16.28.2.8 EDUCATION REQUIREMENTS:**

**A.**

The board shall issue a license as a signed language interpreter to an applicant, otherwise qualified, who furnishes evidence

satisfactory to the board that the applicant has fulfilled the degree requirements for certification as established [~~by registry of interpreters for the deaf (RID)~~] RID. Official or unofficial transcripts showing the degree awarded or documentation of educational equivalency approval from RID is acceptable evidence.

**B.** Applicants for provisional licenses must submit official or unofficial transcripts showing proof of completion of an interpreting education program or an interpreter preparation program from an accredited institution or a letter of completion on letterhead from the director of the interpreting program with a copy of the degree audit report. [16.28.2.8 NMAC - N, 07/21/09; A, 12/16/15; A, 3/27/2021]

**16.28.2.9 CONTINUING EDUCATION REQUIREMENTS:**

**A. Community**

or educational signed language [~~interpreter license~~] interpreters are required to comply with the RID certification maintenance program (CMP) requirements, regardless of their certifying body. RID certified interpreters shall submit a copy of [~~the applicant's~~] their current RID membership card or verification letter from the RID member portal showing current certified membership status documenting compliance with the requirements of the [~~certification-maintenance program (CMP)~~] CMP which requires eight RID-approved continuing education units (CEUs) 80 contact hours per four-year CMP cycle. Should RID change its number of CEUs required an interpreter must comply with the new requirement in order to maintain licensure in New Mexico. [~~An~~] BEI certified interpreters and educational signed language interpreter meeting the criteria in Subsection D of 16.28.3.11 NMAC but not holding the ED:K-12 credential must submit associate continuing education tracking (ACET) transcripts showing four CEU's (40 hours) of continuing education at each [~~biannual~~] biennial renewal.

**B.** Provisional license: two CEUs (20 hours) of continuing education annually documented on the applicant’s associate continuing education tracking (ACET) transcript from RID. Interpreting students should be aware that they need to become associate members of RID before the end of March in their year of graduation for CEU’s earned prior to July 1st to be tracked on their ACET transcripts.

**C.** Provisional licensees who are within their first year may provide certificates of completion to the board office if the approved CEUs are not on ACET transcripts. [16.28.2.9 NMAC - N, 07/21/09; A, 08/18/11; A, 01/15/14; A, 12/16/15; A, 6/18/2017; A, 3/27/2021]

**REGULATION AND LICENSING DEPARTMENT  
SIGNED LANGUAGE BOARD**

**This is an amendment to 16.28.3 NMAC, Sections 11, 12, 13, 16, 17, 19 and 20, effective 3/27/2021.**

**16.28.3.11 APPLICATION FOR LICENSURE:**

**A.** An application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose.

**B.** All applications for licensure must include:

- (1) a completed and signed application;
- (2) applicant name;
- (3) proof of age indicating applicant is at least eighteen years of age (copy of birth certificate, driver’s license, state issued identification card, or baptismal certificate);
- (4) mailing address;
- (5) business address;
- (6) phone number;
- (7) non-refundable application fee as required by the board;

(8) photograph: applicants for original licensure shall attach a recent color photograph, front-view of face.

**C.** An application for a community signed language interpreter license must also include:

(1) a copy of the applicant’s current [~~registry of interpreters for the deaf (RID)~~] RID membership card or

(2) verification letter from the RID member portal showing that the applicant holds one or more certifications recognized by RID at the time of application for licensure with the exception of [~~exception of~~] educational certificate: K-12 (ED-K-12); or

(3) a copy of the applicant’s current BEI card showing one of the following certifications:

(a)

BEI Advanced;

(b)

BEI Master;

(c)

BEI IV;

(d)

BEI V;

(e)

BEI Level IV Intermediary;

(f)

BEI Level V Intermediary and

(4) a copy of the applicant’s current RID membership card or verification letter from the RID member portal showing that the applicant is an associate member for purposes of tracking continuing education units (CEU) requirements through the associate continuing education tracking (ACET) program as outlined in Subsection A of 16.28.2.9 NMAC.

**D.** An application for an educational signed language interpreter license must also include: proof of educational interpreter performance assessment (EIPA) rating of 4.0 - 5.0 and a copy of the applicant’s current RID membership card or verification letter from the RID member portal showing that the applicant holds the ED: K-12 certified member status by virtue of EIPA rating; or a copy of the

applicant’s current RID membership card or verification letter from the RID member portal showing that the applicant holds one or more certifications currently recognized by RID, or proof of an educational interpreter performance assessment (EIPA) rating of 4.0 - 5.0, proof of passing the EIPA Written test, proof of satisfying the RID educational requirements, and a copy of the applicant’s current RID membership card or verification letter from the RID member portal showing associate membership status.

**E.** An application for a provisional signed language interpreter license must also include: proof of completion of an interpreter education program or interpreter preparation program at an accredited institution; or proof of employment as a community signed language interpreter or an educational signed language interpreter at the time the act became effective (June 15, 2007) and after the applicant reached the age of (18); and a copy of the applicant’s current RID membership card or verification letter from the RID member portal showing that the applicant is an associate member for purposes of tracking continuing education units [(~~CEUs~~) CEU] requirements through the associate continuing education tracking (ACET) program as outlined in Subsection B of 16.28.2.9 NMAC.

In lieu of proof of completion of an interpreter training program, deaf applicants may submit proof of satisfying the training requirement established by RID to take the certified deaf interpreter (CDI) written exam. If the applicant provides proof of completion of an interpreter education program or interpreter preparation program more than one year prior to their application for a provisional license, they must also submit a résumé and one professional letter of reference from an employer, internship supervisor, mentorship director, graduate school, or other applicable source documenting continued involvement in interpreting or the deaf community since the time of completion of the program.



**F.** If an applicant submits an incomplete license application they will be requested to submit any missing documentation; failure to do so within six months of receipt of the original application will result in the application file being closed. After the file has been closed, the applicant will be required to submit a new application and application fee to apply again.

**G. “Electronic Applications”** In accordance with Section 14-16-1 thru 14-16-21 NMSA 1978 of the Uniform Electronic Transactions Act, the board or its designee will accept electronic applications.

(1) Any person seeking a New Mexico signed language interpreting license may do so by submitting an electronic application. Applicants are required to also submit all required information as stated in 16.28.3.11 NMAC.

(2) Any licensee may renew their license electronically through a designated website provided by the board. All license holders renewing their signed language interpreting license are also required to submit all documentation as stated in 16.28.3.17 NMAC.

(3) Any person whose license has been expired may apply electronically to the board for renewal of the license at any time within 60 days of the expiration. Any persons seeking renewal are also required to submit all supporting documents as stated in 16.28.3.17 NMAC.

(4) Any person whose license has been lapsed may apply electronically to the board for reinstatement of the license at any time. Any persons seeking reinstatement are also required to submit all supporting documents as stated in 16.28.3.17 NMAC.

**H. “Electronic Signatures”** Electronic signatures will be acceptable for applications submitted pursuant to Sections 14-16-1 through 14-16-19 NMSA 1978.

**I. “Administrative Errors”** In the event that a community or educational license is

issued due to an administrative error, and if the Interpreter is qualified for a provisional license, the permitted five years for the provisional license shall began at the time of the issuance of the erroneously issued license.

[16.28.3.11 NMAC - N, 07/21/09; A, 08/18/11; A, 01/15/14; A, 12/16/15; A, 6/18/2017; A, 3/27/2021]

**16.28.3.12 REQUIREMENTS FOR A LICENSE FOR A COMMUNITY SIGNED LANGUAGE INTERPRETER:**

A license for a community signed language interpreter shall be granted to a person who:

**A.** files a completed application that is accompanied by the required fees; and,

**B.** submits satisfactory evidence that the person:

(1) has reached the age of majority;

(2) is of good moral character;

(3) has completed all educational requirements established by the board;

(4) holds active certification [~~recognized at the time of application by the registry of interpreters for the deaf (RID) with the exception of ED: K-12 (educational certificate: K-12);~~] as outlined in Subsection C of 16.28.3.11 NMAC; and

(5) complies with the registry of interpreters for the deaf (RID) certification maintenance program (CMP).

[16.28.3.12 NMAC - N, 07/21/09; A, 08/18/11; A, 3/27/2021]

**16.28.3.13 REQUIREMENTS FOR A LICENSE FOR AN EDUCATIONAL SIGNED LANGUAGE INTERPRETER:**

A license for an educational signed language interpreter shall be granted to a person who:

**A.** files a completed application that is accompanied by the required fees; and,

**B.** submits satisfactory evidence that the person:

(1) has reached the age of majority;

(2) is of good moral character;

(3) has completed all educational requirements established by the board;

(4) [~~has passed the educational interpreter written and performance assessment (EIPA) with a score of 4.0 - 5.0 and holds active-ED: K-12 (educational certification: K-12) or other certification recognized at the time of application by the registry of interpreters for the deaf (RID); or has passed the educational interpreter performance assessment (EIPA) with a score of 4.0 - 5.0, has passed the EIPA written test, and is an associate member of RID]~~ meets credential requirements outlined in Subsection C of 16.28.3.11 NMAC; and

(5) complies with the registry of interpreters for the deaf (RID) certification maintenance program (CMP).

[16.28.3.13 NMAC - N, 07/21/09; A, 08/18/11; A, 6/18/2017; A, 3/27/2021]

**16.28.3.16 LICENSE EXPIRATION:**

**A.** Community signed language interpreter licenses expire two years from the last day of the month in which they were issued.

**B.** Educational signed language interpreter licenses expire two years from the last day of the month in which they were issued.

**C.** Provisional signed language interpreter licenses expire five years from the last day of the month in which they were issued, but are subject to an annual compliance review. Revocation proceedings may be initiated by the board if the holder of a provisional license fails to pass the annual compliance review—each year by the last day of the month in which the license was issued.

~~[(1) —provisional signed language interpreter licenses issued prior to August 15, 2013 must complete the compliance review each year by September 30;~~

~~(2) —provisional~~

signed language interpreter licensees with provisional licenses issued after August 15, 2013 must complete the compliance review each year by the last day of the month in which the license was issued.]

[16.28.3.16 NMAC - N, 07/21/09; A, 01/15/14; A, 3/27/2021]

**16.28.3.17 LICENSE RENEWAL:**

**A.** A licensee may renew a community signed language interpreter license or an educational signed language interpreter license every two years by:

(1) submitting a completed renewal application provided by the board that is accompanied by the required fees; and

(2) submitting the continuing education requirements as specified in 16.28.2.9 NMAC.

**B.** A licensee must complete the mandatory annual compliance review for a provisional interpreter license four consecutive times by:

(1) submitting a completed compliance review application provided by the board that is accompanied by the required fees; and

(2) submitting the continuing education requirements as specified in 16.28.2.9 NMAC.

**C.** If a community or educational license is not renewed by the expiration date, the license shall be considered expired, and the licensee shall refrain from practicing. The licensee may renew within a sixty-day grace period, which begins the first day the license expires, by submitting payment of the renewal fee and late fee and complying with all renewal requirements. Upon renewal of the license, the licensee may resume practice.

**D.** If a provisional license does not complete the annual compliance review by the due date, the license shall be considered expired, and the licensee shall refrain from practicing. The licensee may complete the review within a 60-day grace period, which begins the first day the license expires, by submitting

payment of the compliance review fee and late fee and complying with all compliance review requirements. Upon passing the compliance review, the licensee may resume practice.

**E.** Any person whose [provisional] license has lapsed may apply to the board for reinstatement of the license.

(1) In making application for reinstatement of a provisional license, the applicant must state why the license should be reinstated and should specifically set forth an explanation of why the license lapsed and how changed circumstances would justify reinstatement. Documentation must be provided.

(2) Any licensed interpreter applying for reinstatement of a provisional license must submit an application fee as set forth in 16.28.6.8 NMAC and provide proof of attendance of continuing education hours as set forth in 16.28.2.9 NMAC for each year of lapse.

(3) Provisionally licensed interpreters will still be limited to a total of five years from the time the initial license was granted.

(4) [If the board approves the reinstatement application, the original license number will be issued to the applicant.] Any licensed interpreters applying for reinstatement of a community or educational license who moved away from the state of New Mexico and maintained certification during the lapse shall be granted a license. Those who remained in the state of New Mexico must state why the license should be reinstates and should specifically set forth an explanation of why the license lapsed and how changed circumstances would justify reinstatement. Documentation must be provided.

(5) If the board approves the reinstatement application, the original license number will be issued to the applicant.

[16.28.3.17 NMAC - N, 07/21/09; A, 08/18/11; A, 01/15/14; A, 3/27/2021]

**16.28.3.19 EXEMPTIONS:**

~~[A. The Signed Language Interpreting Practices Act does not apply to:~~

~~(1) non-resident interpreters working in New Mexico less than 30 calendar days per year;~~

~~(2) non-resident interpreters must contact the board administrator via e-mail prior to providing Interpreting services in New Mexico, regardless of the number of hours of service they provide each time. interpreters must provide the following for the purpose of tracking the number of days services are provided in New Mexico:~~

~~(a) name;~~

~~(b) address;~~

~~(c) email address;~~

~~(d) credentials, (a copy of their current RID card or other credentials);~~

~~(e) date(s) and city or cities in which services will be provided.~~

~~B. This exception is for interpreters living outside of New Mexico and providing occasional services within the state. It is not for use by interpreters in the process of moving to New Mexico temporarily or permanently.~~

~~(1) interpreting in religious or spiritual settings;~~

~~(2) interpreting in informal settings for friends, families or guests;~~

~~(3) interpreting in emergency situations where the deaf, hard-of-hearing or deaf-blind person or that person's legal representative decides that the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the consumer;~~

~~(4) the activities or services of a supervised interpreter intern or student in training who is enrolled in an interpreter education program, interpreter preparation program, or a program of study in signed language interpreting~~

at an accredited institution of higher learning approved by the board;

C. Interpreter interns must contact the board administrator via email at the beginning of their internship period and provide the following:

- \_\_\_\_\_ (1) name;
- \_\_\_\_\_ (2) address;
- \_\_\_\_\_ (3) email address;
- \_\_\_\_\_ (4) institution at which they are enrolled;
- \_\_\_\_\_ (5) name of program internship coordinator;
- \_\_\_\_\_ (6) anticipated date of graduation;]

A. The Signed Language Interpreting Practices Act does not apply to:

(1) nonresident interpreters working in New Mexico less than thirty calendar days per year;

(2) interpreting in religious or spiritual settings;

(3) interpreting in informal settings for friends, families or guests;

(4) interpreting in emergency situations where the deaf, hard of hearing or deaf-blind person or that person's legal representative decides that the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the consumer;

(5) the activities or services of a supervised interpreter intern or student in training who is enrolled in an interpreter education program, interpreter preparation program, or a program of study in signed language interpreting at an accredited institution of higher learning approved by the board;

(6) multilingual interpreting in order to accommodate the personal choice of the consumer.

B. Nonresident interpreters must contact the board administrator via email prior to providing interpreting services in New Mexico, regardless of the number of hours of service they provide each time.

(1) Interpreters must provide the following for the purpose of tracking the number of days services are provided in New Mexico:

\_\_\_\_\_ (a) Name.

\_\_\_\_\_ (b) Address.

\_\_\_\_\_ (c) Email Address.

\_\_\_\_\_ (d) Credentials (a copy of their current RID card or other credential).

\_\_\_\_\_ (e) Date(s) and city or cities in which services will be provided.

(2) This exemption is for interpreters living outside of New Mexico and providing occasional services within the state. It is not for use by interpreters in the process of moving to New Mexico temporarily or permanently.

C. Interpreter interns must contact the board administrator via email at the beginning of their internship period and provide the following:

\_\_\_\_\_ (1) Name.

\_\_\_\_\_ (2) Address.

\_\_\_\_\_ (3) Email address.

\_\_\_\_\_ (4) Institution at which they are enrolled.

\_\_\_\_\_ (5) Name of program internship coordinator.

\_\_\_\_\_ (6) Anticipated date of graduation.

[16.28.3.19 NMAC - N, 07/21/09; A, 08/18/11; A, 12/16/15; A, 6/18/2017; A, 3/27/2021]

#### **16.28.3.20 LICENSE DENIAL, SUSPENSION, OR REVOCATION:**

A. In accordance with procedures contained in the Uniform Licensing Act, Section 61-1-1 NMSA 1978, the board may deny, revoke or suspend a license held or applied for under the Signed Language Interpreting Practices Act, upon grounds that the licensee or applicant:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license;

(2) is guilty of gross incompetence;

(3) is guilty of unprofessional or unethical conduct as defined by rule of the board;

(4) uses untruthful or misleading advertising;

(5) is habitually or excessively using controlled substances or alcohol to such a degree the licensee or applicant is rendered unfit to practice as a signed language interpreter pursuant to the Signed Language Interpreting Practices Act;

(6) has violated the Signed Language Interpreting Practices Act;

(7) is guilty of aiding and abetting a person not licensed to practice signed language interpreting pursuant to the Signed Language Interpreting Practices Act; or

(8) as evidenced by a certified copy of the record of jurisdiction, has had a license, certificate or registration to practice signed language interpreting revoked, suspended or denied in any state or territory of the United States for actions pursuant to this section.

B. Disciplinary proceedings may be initiated by a complaint of a person, including members of the board, and shall conform with the provisions of the Uniform Licensing Act.

C. A person filing a complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

D. In the event that a community or educational license is issued in error and if the interpreter is qualified for a provisional license the permitted five years for the provisional license shall began at the time of the issuance of the improperly issued license.

E. In the event that an interpreter fails to maintain the certification qualifying them for the license they hold, they must inform the board immediately. Their license will automatically be revoked and must be relinquished until certification is restored.

**F.** An interpreter whose community of educational license has lapsed or has been revoked is not eligible for a provisional license.

[16.28.3.20 NMAC - N, 12/16/15; A, 2/29/16; A, 6/18/2017; A, 3/27/2021]

**REGULATION AND LICENSING DEPARTMENT SIGNED LANGUAGE BOARD**

**This is an amendment to 16.28.4 NMAC, Sections 7 and 11, effective 3/27/2021.**

**16.28.4.7 DEFINITIONS:**

- A. “Complaint”** means a complaint filed with the board against an applicant for licensure or against a licensee.
- B. “Complainant”** means the party who files a complaint against a licensee or an applicant for licensure.
- C. “Respondent”** means the applicant for licensure or the licensee who is the subject of the complaint filed with the board.
- D. “Hearing”** means the formal process whereby the respondent is afforded the opportunity to be heard by the board, or its designated hearing officer, before the board takes action which might result in the disciplinary action against the respondent’s application for licensure or ~~[his or her]~~ their license to practice signed language interpreting.
- E. “Violation”** means a violation of the Signed Language Interpreting Practices Act or the rules and regulations duly adopted by the board.
- F. Notice of contemplated action” or “NCA”** means the administrative process provided for by the Uniform Licensing Act whereby the respondent is notified of the board’s intent to take action based upon the alleged violations of practice and whereby the respondent is afforded the opportunity for a hearing before the board.
- G. “License revocation”** means to prohibit the conduct authorized by the license.

**H. “License suspension”** means to prohibit, for a stated period of time, the conduct authorized by the license.

**I. “License restricted subject to conditions”** means to allow the conduct authorized by the license for a stated period of time, subject to conditions that are reasonably related to the grounds for disciplinary action.

[16.28.4.7 NMAC - N, 08/18/11; A, 3/27/2021]

**16.28.4.11 STANDARDS OF PRACTICE COMMITTEE:**

The standards of practice committee is formed for the purpose of investigating disciplinary matters referred to it by the board. The board chairperson shall appoint a member or members of the board to the standards of practice committee.

- A.** The standards of practice committee shall review all documentation provided to it in reference to the subject complaint.
- B.** The standards of practice committee may provide the respondent with a copy of the complaint and allow a reasonable time for the respondent to respond to the allegations in the complaint.
- C.** The foregoing notwithstanding, the standards of practice committee will not be required to provide the respondent with notice of the complaint filing, or a copy of the complaint, or any related investigatory evidence prior to the notice of contemplated action, if the committee determines that disclosure may impair, impede, or compromise the efficacy or integrity of the investigation.
- D.** The standards of practice committee may employ an investigator or other persons determined to be necessary in order to assist in the processing and investigation of the complaint.
- E.** The standards of practice committee will have independent authority to direct the board administrator to contract for the services of such persons without prior approval of the board after the board administrator has determined

budgetary availability for such services.

**F.** Upon completion of its investigation, the standards of practice committee shall submit to the board its proposed recommendations concerning the proper disposition of the subject complaint.

**G.** Upon review the board shall vote upon the proposed recommendations and either uphold, reverse, or modify the standards of practice committee recommendations.

**H.** Standards of practice committee members who participate in the preparation of recommendations to the remaining board members shall not participate further in any actions initiated by the board against the licensee or applicant who is the subject of the complaint.

**I.** If the board determines that it lacks jurisdiction, or that there is insufficient evidence or cause to issue a notice of contemplated action, the board may vote to dismiss or close the complaint.

**J.** If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, it may vote to refer the complaint to the attorney general’s office for possible prosecution in accordance with the provisions contained in the Uniform Licensing Act.

**K.** The board may take any other action with regard to the complaint which is within its authority and which is within the law, including referring the complaint to the attorney general ~~[and/or]~~ and the district attorney for prosecution of persons alleged to be practicing without a valid license.

[16.28.4.11 NMAC - N, 07/21/09; Repealed, 08/18/11; 16.28.4.11 NMAC - N, 08/18/11; A, 3/27/2021]

**REGULATION AND LICENSING DEPARTMENT SIGNED LANGUAGE BOARD**

**This is an amendment to 16.28.5 NMAC, Section 8, effective 3/27/2021.**



**16.28.5.8 STANDARDS OF PRACTICE:**

**A. NON-DISCRIMINATION:** The licensee shall provide interpreting services with objectivity and with respect for the unique needs and values of an individual; the licensee shall avoid discrimination on the basis of factors that are irrelevant to the provision of interpreting services, including, but not limited to race, creed, sex, age or disability.

**B. CREDENTIALS:** The licensee shall accurately represent ~~his~~ their professional qualifications and credentials;

**C. COMPLIANCE WITH LAW:** The licensee shall comply with all laws and regulations concerning the profession.

**D. PROFESSIONAL CONDUCT:**

(1) Interpreters adhere to standards of confidential communication.

(2) Interpreters possess the professional skills and knowledge required for the specific interpreting situation.

(3) Interpreters conduct themselves in a manner appropriate to the specific interpreting situation.

(4) Interpreters demonstrate respect for consumers.

(5) Interpreters demonstrate respect for colleagues, interns, and students of the profession.

(6) Interpreters maintain ethical business practices.

(7) Interpreters engage in professional development.

[16.28.5.8 NMAC - N, 07/21/09; A, 3/27/2021]

**REGULATION AND  
LICENSING DEPARTMENT  
SIGNED LANGUAGE BOARD**

**This is an amendment to 16.28.7 NMAC, Section 10, effective 3/27/2021.**

**16.28.7.10 RENEWAL REQUIREMENTS:**

**A.** A license issued

pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance and for the renewal of a license pursuant to Chapter 61, Articles 2 through 34 NMSA 1978.

(1) an application for a community signed language interpreter license must also include: a copy of the applicant's current registry of interpreters for the deaf (RID) membership card or verification letter from the registry of interpreters for the deaf RID member portal showing that the applicant holds one or more certifications recognized by the RID at the time of application for licensure with the exception of educational certificate: K-12 (ED: K-12); or

(2) a copy of the applicant's current BEI card showing one of the following certifications:

(a) BEI Advanced.

(b) BEI Master.

(c) BEI IV.

(d) BEI V.

(e) BEI Level IV Intermediary.

(f) BEI Level V Intermediary.

(3) and a copy of the applicant's current RID membership card or verification letter from the RID member portal showing that the applicant is an associate member for purposes of tracking continuing education units (CEU) requirements through the associate continuing education tracking (ACET) program as outlined in Subsection A of 16.28.2.9 NMAC;

(4) an application for an educational signed language interpreter license must also include: proof of educational interpreters performance assessment (EIPA) rating of 4.0 - 5.0 and a copy of the applicant's current registry of interpreters for the deaf RID membership card or verification letter from the RID member portal showing that the applicant holds the

ED: K-12 certified member status by virtue of EIPA rating; or a copy of the applicant's current RID membership card or verification letter from the registry of interpreters for the deaf RID member portal showing that the applicant holds one or more certifications currently recognized by the registry of interpreters for the deaf RID, or has passed the educational interpreter performance assessment (EIPA) with a score of 4.0 - 5.0, has passed the EIPA written test, and is an associate member of RID;

(5) an application for a provisional signed language interpreter license must also include: proof of completion of an interpreter education program or interpreter preparation program at an accredited institution; or proof of employment as a community signed language interpreter or an educational signed language interpreter at the time the act became effective (June 15, 2007) and after the applicant reached the age of 18; and a copy of the applicant's current registry of interpreters for the deaf RID membership card or verification letter from the registry of interpreters for the deaf RID member portal showing that the applicant is an associate member (for purposes of tracking continuing education units [(CEUs)] CEU requirements through the associate continuing education tracking (ACET) program as outlined in Subsection B of 16.28.2.9 NMAC. If the applicant provides proof of completion of an interpreter education program or interpreter preparation program more than one year prior to their application for a provisional license, they must also submit a résumé and one professional letter of reference from an employer, internship supervisor, mentorship director, graduate school, or other applicable source documenting continued involvement in interpreting or the deaf community since the time of completion of the program.

**B.** Original and renewed community and educational license shall be valid for a period of two years.

**C.** Original and

completed compliance reviewed  
provisional license shall be valid for  
a period of one year, not to exceed  
four consecutive annual compliance  
review cycles.

**D.** Prior to the  
expiration of the license, all licensed  
interpreters shall apply for license  
renewal and shall pay the renewal fee  
as set forth in 16.28.6.9 NMAC.  
[16.28.7.10 NMAC - N, 01/15/14; A,  
12/16/15; A, 6/18/2017; A, 3/27/2021]

---

**End of Adopted Rules**

**This Page Intentionally Left Blank**

---

**Other Material Related to Administrative Law**


---

**ENERGY, MINERALS AND  
NATURAL RESOURCES  
DEPARTMENT  
OIL CONSERVATION  
COMMISSION**
**NOTICE OF TERMINATION  
FOR PROPOSED RULEMAKING**

The New Mexico Oil Conservation Commission hereby provides notice terminating the public rule hearing previously scheduled for Thursday, April 1, 2021 and continuing to and through April 8, 2021 in Oil Conservation Case No. 21529, during which the Commission was to consider proposed amendments to 19.15.29.6 and 19.15.29.8 NMAC to prohibit unauthorized spills or releases of oil, gas, produced water, and other oil and gas waste. The Commission may take up new rulemaking upon the filing of a new application and shall issue notice as required by 14-4-1 NMSA 1978 *et. seq.* The Oil Conservation Commission issues this termination notice in accordance with Subsection C of Section 14-4-5 NMSA 1978.

---

**HEALTH,  
DEPARTMENT OF**
**PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT  
OF HEALTH  
SECRETARY-DESIGNATE  
TRACIE C. COLLINS, M.D.**
**FEBRUARY 24, 2021**

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

B. December

15, 2020 Amended 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;

C.

January 8, 2021 Emergency Order Implementing Administration and Reporting Requirements for All COVID-19 Vaccine Providers; and

D. January

29, 2021 Amended Public Health Emergency Order Temporarily Limiting Long-Term Care Facilities Visitation Due to COVID-19.

3. The January 29, 2021 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders Limiting Businesses and Non-Profit Entities’ Operations and Providing Additional Restrictions on Mass Gatherings Due to COVID-19 is hereby amended as follows:

**ORDER**

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

**WHEREAS**, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through March 5, 2021;

**WHEREAS**, confirmed cases in the United States have risen to more than 28 million and confirmed COVID-19 infections



in New Mexico have risen to over 183,000;

**WHEREAS**, COVID-19 is a deadly virus and has taken the lives of over 500,000 Americans and over 3,600 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**, Tracie C. Collins, M.D., Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her

emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

#### DEFINITIONS

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

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

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

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

c. Childcare facilities;

d. Grocery stores, supermarkets, food banks, farmers' markets and vendors who sell food, convenience stores, and other businesses that generate more than one-third of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, animal feed or supplies, fresh

meats, fish, and poultry, and any other consumable 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 also businesses that store, transport, or deliver groceries, food, materials, goods, or services directly to residences, retailers, government institutions, or essential businesses.

(2) “Close-contact businesses” include barbershops, hair salons, tattoo parlors, nail salons, spas, massage therapy services, esthetician clinics, and tanning salons.

(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) “Large entertainment venues” mean any publicly or privately owned venue typically or actually used to host large audiences for the purposes of entertainment or amusement, including, but not limited to: convention centers, concert venues, movie theaters, performance venues, professional or semi-professional sports venues, racetracks, and theaters.

(6) “Recreational facilities” include means any publicly or privately owned facility typically or actually used for recreational activities capable of bringing persons within close proximity of one another, including, but not limited to: aquariums, amusement parks, arcades, basketball courts, baseball fields, bowling alleys, botanical gardens, family entertainment centers, football fields, go kart courses, golf courses, guided raft and balloon tours, ice-skating rinks, museums with interactive displays or exhibits, miniature golf courses, ski areas, soccer fields, swimming pools, tennis courts, trampoline parks, youth programs, and zoos.

(7) “Bars and clubs” means any business, other than those specifically defined as a “food and drink establishment,” that typically or actually generates more than half of its revenue from the sale of alcohol for on-premises consumption, as well as adult entertainment venues, nightclubs, and dance clubs, regardless of the source of their revenue.

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

(9) “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.

(10) “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.

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

**THE “RED TO GREEN” FRAMEWORK**

**I DIRECT** that the State shall continue to reopen according to the following county-by-county framework:

**SUMMARY**

This Order sets out the “Red to Green” framework, which includes four levels of operations that are based on a county’s ability to satisfy specified metrics: Turquoise Level, 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) Turquoise Level – Counties seeking to operate at this level must have satisfied the metrics required to operate at Green Level for the two most recent 14-day reporting periods.

(2) 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%.

(3) 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%.

(4) Red Level – All other counties shall operate at the Red Level.

### REQUIREMENTS FOR EACH LEVEL

Turquoise Level - Turquoise Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all “mass gatherings” of more than one hundred fifty (150) individuals are prohibited. “Mass gatherings” in which individuals gather in vehicles are permitted so long as the gathering is limited to two hundred (200) 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 75% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. Further, such “retail spaces” may operate up to 100% capacity of any outdoor space on the premises.

c. “Houses of worship” may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not exceed 75% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. “Large entertainment venues” may operate up to 33% of the maximum occupancy of any enclosed space

on the premises, as determined by the relevant fire marshal or fire department. Further, “large entertainment venues” may operate up to 75% capacity of any outdoor space on the premises.

e. “Recreational facilities” may operate up to 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. Further, “recreational facilities” may operate up to 75% capacity of any outdoor space on the premises.

f. “Bars and clubs” may operate up to 33% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. Further, “bars and clubs” may operate up to 75% capacity of any outdoor space on the premises, where applicable. “Bars and clubs” shall comply with all other requirements applicable to “food and drink establishments.”

g. “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://nmsafecertified.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 75% 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.

h. "Places of lodging" which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 100% of maximum occupancy. All other "places of lodging" shall not operate at more than 50% 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 fifteen (15) 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.

1. Any entity not identified above may operate but may not exceed 75% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. Further, such entities may operate up to 100% capacity of any outdoor space on the premises.

**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 twenty (120) 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 the 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 the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. "Large entertainment venues" may operate up to 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. Further, "large entertainment venues" may operate up to 50% capacity of any outdoor space on the premises.

e. "Recreational facilities" may operate up to 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. Further, "recreational facilities" may operate up to 50% capacity of any outdoor space on the premises.

f. "Bars and clubs" may operate up to 25% capacity of any outdoor space on the premises, where applicable, but shall not permit patrons to enter any indoor portion of the premises

except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the premises only to the extent necessary to operate the outdoor portion. "Bars and clubs" shall comply with all other requirements applicable to "food and drink establishments."

g. "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://nmsafecertified.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.

h. "Places of lodging" which have completed the NM Safe Certified training offered at <https://nmsafecertified.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.

i.. Any entity not identified above may operate but may not exceed 50% of the maximum occupancy of any outdoor or 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 eighty (80) 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 33% of the maximum occupancy of any outdoor or 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 33% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. “Large entertainment venues” may operate up to 25% capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the venue except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the facility only to the extent necessary to operate the outdoor portion. Notwithstanding the foregoing, “large entertainment venues” may operate up to 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, for the limited purposes of recording and broadcasting entertainment, but shall in no event permit any live, in-person audience.

e. “Recreational facilities” may operate up to 33% capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the facility except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the facility only to the extent necessary to operate the outdoor portion.

f. “Bars and clubs” may not operate.

g. “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 33% 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., but may continue to provide delivery service so long as customers are permitted on the premises. “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.

h. “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 33% 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.

i. “Close-contact businesses” may operate but may not exceed the lesser of 33% of the maximum occupancy of any outdoor or 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.

j. Any entity not identified above may operate but may not exceed 33% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

**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 forty (40) 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 25% of the maximum

occupancy of any outdoor or 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 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. “Large entertainment venues” may not operate.

e. “Recreational facilities” may operate up to 25% capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the facility except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the facility only to the extent necessary to operate the outdoor portion. Notwithstanding the foregoing, amusement parks may not operate.

f. “Bars and clubs” may not operate.

g. “Food and drink establishments” may provide service in outdoor seating areas up to 25% occupancy, where applicable, but shall not permit patrons to enter any indoor portion of the premises except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the premises only to the extent necessary to operate the outdoor portion. 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. but may continue to provide delivery service so long as no customers are permitted on the premises.

h. “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.

i. “Close-contact businesses” may operate but may not exceed 25% of the maximum occupancy of any outdoor or 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.

j. Any entity not identified above may operate but may not exceed 25% of the maximum occupancy of any outdoor or enclosed space on the premises, as determined by the relevant fire marshal or fire department.

#### **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. In the event the pertinent CSP’s specify a reduced occupancy or capacity limit, the CSP’s limit shall control.

(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 50% 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, pursuant to the procedures in the current COVID-19 Response Toolkit for New Mexico’s Public Elementary Schools. Private schools must immediately close for a period of fourteen (14) days following the last occurrence of four (4) or more rapid responses within a fourteen (14) day period. Private schools also are subject to inclusion on the New Mexico Environment Department’s watchlist and closure list.

(6) State parks shall be open to camping with reservations and day-use only. Event facilities at state parks shall remained closed. 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.

(7) State museums may operate subject to the occupancy level and restrictions applicable to comparable private

museums located in their respective counties.

**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 February 24, 2021 and remain in effect through March 24, 2021.

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

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

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

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

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



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

**DONE AT THE EXECUTIVE OFFICE THIS 24TH DAY OF FEBRUARY 2021**

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

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

**/S/ TRACIE C. COLLINS, M.D.  
SECRETARY DESIGNATE OF THE STATE OF NEW MEXICO  
DEPARTMENT OF HEALTH**

**HEALTH,  
DEPARTMENT OF  
PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT  
OF HEALTH  
SECRETARY-TRACIE C.  
COLLINS, M.D.**

**FEBRUARY 26, 2021**

**Public Health Emergency Order  
Implementing Administration  
Requirements for all COVID-19  
Vaccine Providers and Requiring  
Accurate Information  
be Provided by Individuals  
Registering to Receive the  
COVID-19 Vaccine**

**WHEREAS**, on January 30, 2020, the World Health Organization announced the emergence of a novel Coronavirus Disease 2019 (“COVID-19”) that had not previously circulated in humans, but has been found to have adopted to humans such that it is contagious and easily spread from one person to another and one country to another;

**WHEREAS**, COVID-19 has been confirmed in New Mexico since March 11, 2020, when

the New Mexico Derailment of Health confirmed the first cases of individuals infected with COVID-19 in New Mexico and additional cases have been confirmed each day since then;

**WHEREAS**, on March 11, 2020, because of the spread of COVID-19, Michelle Lujan Grisham, the Governor of the State of New Mexico, issued Executive Order 2020-004 declaring that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoking her authority under the All Hazards Emergency Management Act;

**WHEREAS**, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through March 5, 2021;

**WHEREAS**, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, and wellbeing of 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**, in the effort to stop further spread of COVID-19, the State, through the New Mexico Department of Health, has begun to distribute COVID-19 Vaccine (the “Vaccine”) to medical providers for administration to specific populations by phase;

**WHEREAS**, New Mexico has prioritized vaccine allocation consistent with the Centers for Disease Control and Prevention (CDC) phases, adapting those phases where necessary to protect New Mexican residents as effectively as possible. The state’s vaccination distribution plan aims to ensure the continuing functioning of the health care system and essential

services in the community, and protect people at increased risk for severe COVID 19-related illness.

**WHEREAS**, it is essential that medical providers, including physicians, nurses, pharmacists, nurse practitioners, physician’s assistants and other health care providers authorized by the New Mexico Department of Health (collectively, “Vaccine Providers”) to receive doses of the Vaccine, oversee administration of the Vaccine, and follow the phases outlined in the current Vaccine Allocation Plan in their administration of the Vaccine;

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

**NOW, THEREFORE, I, Tracie C. Collins, M.D., 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 that is it necessary that Vaccine Providers administer the vaccine following the phased administration approach outlined in this Order so as to respond to the instant public health emergency, to ensure the quality and accessibility of health care services and the provision of health care when healthcare is unavailable or in limited supply, and to ensure a competent public health workforce pursuant to NMSA 1978, Section 24-1-3.**

**I ORDER and DIRECT** as follows:

- (1) All Vaccine



Providers who administer the Vaccine in the state must administer the Vaccine to eligible individuals based on the appropriate phase of the most current Vaccine Allocation Plan, as published by the New Mexico Department of Health.

(2) If the Vaccine Provider has Vaccine doses remaining that, if not administered would otherwise go to waste, the Vaccine Provider must document the circumstances leading to the excess Vaccine. The Vaccine Provider must then attempt to contact the next eligible individual to receive the Vaccine before it expires and document such attempts. If no eligible individual is available to receive the Vaccine before it expires, the Vaccine Provider may administer the Vaccine to an individual who is outside of the current Vaccine allocation phase.

(3) All persons registering on the Vaccine Registration System to receive the Vaccine or providing information directly to a Vaccine Provider for the purpose of receiving the Vaccine must provide true and accurate information regarding their eligibility to receive the Vaccine during the current vaccine allocation phase.

(4) Vaccine Providers may rely on the information provided by individuals in the Vaccine Registration System or provided directly from the individual certifying their Vaccine eligibility.

(5) Any and all State officials authorized by the Department of Health may enforce this Order by issuing a citation of violation to any person who willfully violates this order, which may result in civil administrative penalties of up to \$5,000 for each violation under NMSA 1978, Section 12-10A-19, in addition to other civil or criminal penalties that may be available at law.

**I FURTHER ORDER AND 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 shall take effect on February 26, 2021 and remain in effect for the duration of the public health emergency first declared in Executive Order 2020-004 and any subsequent renewals of that public health emergency declaration unless otherwise rescinded. This Order may be renewed consistent with any direction from the Governor.

**DONE AT THE EXECUTIVE OFFICE THIS 26TH DAY OF FEBRUARY 2021**

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

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

/S/ TRACIE C. COLLINS, M.D.  
**SECRETARY DESIGNATE OF THE STATE OF NEW MEXICO**  
**DEPARTMENT OF HEALTH**

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

# 2021 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXXII, Issues 1-24

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

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

The New Mexico Register is available free online at: <http://www.srca.nm.gov/new-mexico-register/>. For further information, call 505-476-7941.