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New Mexico Register

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

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The New Mexico Register

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New Mexico Register

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May 4, 2021

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Notices of Rulemaking and Proposed Rules

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION

NOTICE OF PUBLIC MEETING AND PUBLIC HEARING

The New Mexico Oil Conservation Commission (Commission) hereby gives notice that the Commission will hold the following public meeting and public hearing commencing at 9:00 am on June 9, 2021 (and subsequent days as may be necessary) online and via telephone. Oral comments may be made either online or by telephone. The Commission shall make available to the public a preliminary agenda for the meeting no later than two weeks prior to the meeting, and a final agenda for the meeting no later than 72 hours before the meeting. The agenda shall specify the order of the proceedings and, to the extent feasible, identify the specific time(s) that public comments are to be heard. The agenda shall be posted online on the Commission's Hearings page under "OCC Dockets," accessible from the following web page: <http://www.emnrd.state.nm.us/OCD/hearings.html>.

Case No. 21834: APPLICATION OF WILDEARTH GUARDIANS AND NEW MEXICO OIL CONSERVATION DIVISION TO AMEND THE COMMISSION'S RULES FOR RELEASES IN 19.15.29.6, 19.15.29.8, AND 19.15.29.15 NMAC; STATEWIDE.

WildEarth Guardians and the Oil Conservation Division propose that the Commission amend 19.15.29.6, 19.15.29.8, and 19.15.29.15 NMAC to prohibit the unauthorized release of oil, gas, produced water, and other contaminants, and to clarify the Division's authority to enforce this prohibition on major and minor releases.

Purpose of Proposed Rule Changes. The proposed rule changes are intended to prohibit major and minor releases of oil, gas, produced water, oil field waste, and other contaminants that occur during oil and gas development and

production to protect public health and the environment, and to conform 19.15.29.15 NMAC with the general enforcement provisions of 19.15.5.10 NMAC, which were adopted by the Commission in 2020.

Legal Authority. The proposed rule changes are authorized by the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, and specifically, Section 70-2-6 (authorizing the Commission to exercise jurisdiction, authority, and control of and over all persons, matters, and things necessary or proper to enforce the statute), Sections 70-2-11 (authorizing the Commission to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), Section 70-2-12 (enumerating the powers of the Commission and OCD), and Section 70-2-31 (authorizing the Division to bring administrative and judicial actions for violations of the Oil and Gas Act and Commission rules). The public hearing is governed by the Commission's rule on rulemaking proceedings, 19.15.3 NMAC.

Availability of Proposed Rule. The full text of the proposed rule changes may be obtained from the Commission Clerk, Florene Davidson at florene.davidson@state.nm.us or (505) 470-5480, or can be viewed on the Rules page of the OCD's website at <http://www.emnrd.state.nm.us/OCD/rules.html>.

Public Hearing. The Commission will hold a public hearing on the proposed rule changes at the Commission meeting commencing at 9:00 am on June 9, 2021 (and subsequent days as needed) online and via telephone. For information on how to participate in the hearing, please contact the Commission Clerk, Florene Davidson at florene.davidson@state.nm.us or (505) 470-5480, or visit the Hearings page on the OCD's website at <http://www.emnrd.state.nm.us/OCD/hearings.html>. The hearing may be continued to the following day(s) if not completed.

Proposed Modifications, Technical Testimony, and Cross Examination.

Any person intending to propose a modification to the proposed rule changes, to present technical testimony at the hearing, or to cross-examine witnesses must file a Pre-Hearing Statement conforming to the requirements of Subsection B of 19.15.3.11 NMAC, no later than 5:00 pm on May 26, 2021. Filing may be accomplished by first class mail to the Commission Clerk, Florene Davidson, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or by electronic mail to OCC.Hearings@state.nm.us. Any person who presents technical testimony will be subject to cross-examination on the subject matter of the person's direct testimony by the members of the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement.

Oral Comments. Any person who has not submitted a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement or comment at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule changes and do not unduly repeat testimony. Any person who presents non-technical testimony will be subject to cross-examination on the subject matter of the person's direct testimony by the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement. Any person who presents an unsworn statement or comment shall not be subject to cross-examination. To facilitate this virtual hearing, persons wishing to present non-technical testimony or make an unsworn statement or comment at the hearing should contact the Commission Clerk, Florene Davidson, at florene.davidson@state.nm.us or (505) 470-5480, prior to the hearing so that a list of persons may be prepared in advance. Notwithstanding this procedure, after the Commission has heard each person on the list, the Commission will open the virtual floor to any person who wishes to offer non-technical testimony or an unsworn statement or comment relevant to the proposed rule changes.

Public Comments. Any person may submit comments on the proposed

rule changes no later than 9:00 am on June 9, 2021, unless extended by the Commission or the Chair of the Commission, by first class or electronic mail to the Commission Clerk, Florene Davidson, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or florene.davidson@state.nm.us.

Persons with Disabilities. If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, including a summary or other accessible form of document, please contact the Commission Clerk, Florene Davidson, at florene.davidson@state.nm.us or (505) 470-5480, or through the New Mexico Relay Network at 1-800-659-1779, no later than five (5) days prior to the day(s) you wish to attend or participate.

Technical Information. The following technical information served as the basis for the proposed rule changes:

EPA, Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States, EPA-600-R-16-236Fa (Dec. 2016), available at: www.epa.gov/hfstudy.

Oil Conservation Division spill records may be accessed online at: <https://wwwapps.emnrd.state.nm.us/ocd/ocdpermitting/Data/Spills/Spills.aspx>, using the following search parameters under "Spill Details":

- Spill Material: All; Dates: 1/1/2010 – 12/31/2020
- Spill Material: All; Dates: 1/1/2020 – 12/31/2020
- Spill Material: Crude Oil; Dates: 1/1/2010 – 12/31/2020
- Spill Material: Crude Oil; Dates: 1/1/2020 – 12/31/2020
- Spill Material: Produced Water; Dates: 1/1/2010 – 12/31/2020
- Spill Material: Produced Water; Dates: 1/1/2020 – 12/31/2020

Pre-Hearing Statements, including technical testimony and exhibits, will be posted for public inspection on the Division's website at <http://ocdimage.emnrd.state.nm.us/imaging/CaseFileCriteria.aspx> or by searching for Case File No. 21834.

HEALTH, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health ("Department") will hold a public hearing on proposed amendments to various sections of 7.27.2 NMAC and 7.27.11 NMAC. The hearing will be held on June 7, 2021 at 9:00 a.m. via an Internet-based video conference (Cisco Webex), and via telephone, due to the ongoing public health emergency concerning the threatening contagious disease COVID-19; in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004 and subsequent Executive Orders which declared an ongoing Public Health Emergency; and in accordance with the Public Health Orders issued by the Cabinet Secretary of the New Mexico Department of Health which limit mass gatherings. Members of the public who wish to submit public comment regarding the proposed rule changes will be able to do so via video conference and via telephone during the course of the hearing, and by submitting written comment before the conclusion of the hearing.

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

The proposed rule amendments include (but are not limited to) the following:

7.27.2.11 NMAC: makes certain revisions to licensure renewal requirements, in order to modify those requirements, including certain continuing education requirements.

7.27.2.12 NMAC: revises the EMS personnel identification requirements, to remove references to license wallet cards, and to specify that licensees will no longer be required to present a state wallet card as proof of licensure, but must be identified on the EMS Bureau's list of licensed personnel as being fully licensed.

7.27.2.14 NMAC: revises enforcement provisions concerning the potential for disciplinary action to be taken on the basis of a criminal conviction, in order to make the rule text consistent with recent revisions to the NM Criminal Offender Employment Act, Section 28-2-1 NMSA 1978 et seq.

7.27.2.16 NMAC: revises criminal history screening requirements, in order to make those provisions consistent with recent revisions to the NM Criminal Offender Employment Act, Section 28-2-1 NMSA 1978 et seq.

7.27.11.2 NMAC: adds text to clarify scope of rule.

7.27.11.8 NMAC: makes various revisions, to modify the scopes of practice for emergency medical technicians and EMS first responders, including allowable skills, allowable drugs, allowed routes of administration, and drugs allowed for monitoring during inter-facility transports.

7.27.11.9 NMAC: revises the section concerning approved training programs, in order to clarify that approved training programs can be accredited by an EMS Bureau-approved national accrediting organization, and to correct the listed number of currently approved training programs

7.27.11.10 NMAC: makes various revisions to the special skills application and reporting procedures, to clarify the process that EMS personnel must follow when requesting approval to conduct special skills.

The legal authority for the proposed rule amendments is at Subsection E of Section 9-7-6 NMSA 1978, and Section 24-10B-4 NMSA 1978.

The public hearing will be conducted to receive public comment on the proposed rule amendments described above. Any interested member of the public may attend the hearing and submit data, views, or arguments either orally or in writing on the proposed rule amendments during the hearing. To access the hearing by telephone: please call 1-844-992-4726, and enter the access code below. Your telephone comments will be recorded. To access the hearing via the Internet: please go to <http://www.webex.com>; click the "Join" button; click the "Join a Meeting" button; enter the following meeting number and password where indicated on the screen: Meeting Number (Access Code): 187 619 6692 # Meeting Password: azN3TfxHv28 Then click the "OK" button.

Written public comment regarding the proposed rule amendments can be submitted by either mailing the comment to the following address: Jacob Bennett
NM Department of Health
EMS Bureau
P.O. Box 26110
Santa Fe, NM 87502-6110
Or preferably by e-mailing the comment to the e-mail address Jacob.Bennett@state.nm.us.

Written comments must be received by the close of the public rule hearing on June 7, 2021. All written comments will be published on the agency website at <http://nmhealth.org/about/asd/cmo/rules/> within 3 days of receipt, and will be available at the New Mexico Department of Health Medical Cannabis Program for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Jacob Bennett by telephone at (505) 476-8246. The Department requests at least ten (10) days' advance notice to provide requested special accommodations.

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance ("Superintendent"), pursuant to the New Mexico Insurance Code, Sections 59A-1-1 et seq. NMSA 1978 and 13.1.4 NMAC, proposes to repeal and replace Rule 13.10.16 NMAC: PROVIDER GRIEVANCES.

PURPOSE OF THE PROPOSED REPLACEMENT RULE: The purpose of this rule is to mandate provider grievance processes that are fair, efficient and compliant with all applicable state and federal laws, and to specify practices and procedures for external OSI review of provider grievance appeals.

STATUTORY AUTHORITY: Sections 59A-16-21.1, 59A-23-14, 59A-46-54, 59A-47-49 and 59A-57-6 NMSA 1978.

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

OSI will hold a public video/ telephonic hearing on the proposed rule on June 10, 2021 at 9:00 a.m.

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

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

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

Written comments and proposals will be accepted through 4:00 pm on June 10, 2021. Responses to written comments or oral comments will be

accepted through 4:00 pm on June 21, 2021. Comments may be submitted via email to OSI-docketfiling@state.nm.us or may be filed by sending original copies to:

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

Docket No.: 21-00025-RULE-LH
IN THE MATTER OF REPEALING
AND REPLACING 13.10.16 NMAC
PROVIDER GRIEVANCE RULES

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

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

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

ISSUED this 4th day of May, 2021
/S/RUSSELL TOAL

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

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Adopted Rules

Effective Date and Validity of Rule Filings

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

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an amendment to 8.10.8 NMAC, Sections 7, 8, 10, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 29, 30, and 31, effective 5/4/2021.

8.10.8.7 DEFINITIONS:

A. “Caregiver” is an adult, parent, guardian or custodian in the household who provides care and supervision for the child.

[A.] B. “Case plan” means a plan created jointly with clients for a child, youth, parent, guardian, custodian or respondent that identifies the appropriate services based on the needs identified to achieve the child’s or youth’s permanency plan and to promote the safety and well-being of each child or youth.

[B.] C. “Close proximity” means a location physically close enough to facilitate family visiting, consistent with the best interest and identified needs of the child.

[C.] D. “Community home” means a home which operates 24 hours a day and provides full time care, supervision and support to no more than 16 children in a single residential building, and which meets the definition of “group home” as outlined in the Human Services Department Act, Section 9-8-13 NMSA 1978.

E. “Complicating factors” are conditions that make it difficult for a caregiver to create safety for their child, but do not by themselves constitute imminent danger. Refer to the structure decision making manual to review the list of complicating factors protective services workers use in the New Mexico child safety and risk assessment tool.

[D.] “Concurrent plan” means a second permanency plan of adoption or guardianship in addition to the primary permanency plan of reunification.

E. “Conditionally safe” means that one or more safety threats have been identified that places the child in present or impending danger of serious harm, however one or more protective capacities has been identified to offset, mitigate or control the threat of present or impending danger of serious harm.]

F. “CYFD” refers to the New Mexico children, youth and families department.

G. “Danger indicators” are conditions resulting in a child being exposed to harm or injury and was placed at risk of harm or injury that could occur immediately. Refer to the structured decision making manual to review the list of ten identified factors protective services workers use in the New Mexico child safety and risk assessment tool.

[G.] H. “Early and periodic screening, diagnosis and treatment (EPSDT),” is a medicaid program designed to provide comprehensive and preventive health care services to medicaid-eligible children under age 21.

I. “Family” are caregivers, adults fulfilling the caregiver role, guardians, and others related by ancestry, adoption, or marriage, or as defined by the family or child.

[H.] J. “Fictive kin” means a person not related by birth, adoption or marriage with whom the child has an emotionally significant relationship.

[I.] “Foster care provider” refers to a person or entity licensed by CYFD, licensed

by another state’s child welfare agency, or a licensed child placement agency to provide foster care services including respite, non-relative, relative, or treatment foster care.]

[J.] K. “Foster child” or “child in foster care” as referred to as “child” herein, means a child who is placed in the care and custody of children, youth and families department protective services division either under the legal authorization of the Children’s Code or through a voluntary placement agreement signed by the parent or legal guardian, or a child who is placed with a licensed child placement agency under the authority of the Child Placement Agency Licensing Act. If the court orders legal custody to a relative, person, facility, or agency other than the children, youth and families department protective services division, the child is not a foster child of protective services division.

[K.] “Foster home license” is the document which bears the name or names and address or addresses of those who are foster parents for the protective services division or licensed child placement agency. The license displays the ages and number of foster children the licensees are authorized to care for and the date such authorization begins and ends. The license shall bear the signature of the authorized person who issued the license.

L. “Foster parent” is the person named on the license issued by protective services division or a licensed child placement agency who is authorized to care for foster children. Throughout this policy, the term foster parent also refers to an adoptive parent whose adoption has not yet finalized.]

L. “Household” are all persons who have significant in-

home contact with the child, including those who have a familial or intimate relationship with any person in the home. This may include persons who have an intimate relationship with a caregiver in the household (partner/significant other) but may not physically live in the home, or a relative whom the caregiver allows authority in parenting and caregiving decisions.

M. “Indian child”

means any unmarried person who is under age 18 and is either a member of an Indian tribe, or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

N. “Maintenance payments” are payments designed to reimburse [foster care providers] resource families for the cost of food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, and reasonable travel required to address the child’s needs. Maintenance payments are not considered income.

O. “New Mexico Children’s Code” refers to Section 32A-1-1 NMSA 1978.

P. “Needs” may refer to services and supports to address safety and the physical and emotional well-being of the child, parent, guardian, or [foster parent] resource parent. Needs may also include activities that promote the normalcy of the child.

Q. “Parent” as defined in the Children’s Code, Subsection Q of Section 32A-1-4 NMSA 1978, includes a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child.

R. “Permanency planning” is the systematic process of carrying out, within a time-limited period, a set of goal directed activities designed to help children live in families that offer continuity of relationships with nurturing parents or legal guardians and the opportunity to establish healthy and positive lifetime relationships that are in the best interest of the child or youth.

S. “Protective services division (PSD)” refers to the [protective services] division [of] within the children, youth and families department, and is the state’s designated child welfare agency.

T. “Provider” refers to a person or agency providing services to a PSD client.

[F:] U. “PSD custody” means custody of children as a result of an action filed pursuant to the New Mexico Children’s Code, 32A-4-1 NMSA 1978 or 32A-3B-1 NMSA 1978.

[H:] V. “Relative” means a person related to another person by birth, adoption or marriage within the fifth degree of consanguinity or affinity.

W. “Resource family” refers to a person or entity licensed by CYFD, licensed by another state’s child welfare agency, or a licensed child placement agency to provide foster care services including respite, non-relative, relative, or treatment foster care. Resource family includes foster parents as defined by Subsection I of Section 32A-1-4 NMSA and pre-adoptive parents as defined by Subsection U of Section 32A-1-4 NMSA.

X. “Resource family license” is the document which bears the name or names and address or addresses of those who are resource parents for the protective services division or licensed child placement agency. The license displays the ages and number of children in foster care the licensees are authorized to care for and the date such authorization begins and ends. The license shall bear the signature of the authorized person who issued the license.

Y. “Resource parent” is the person named on the license issued by protective services division or a licensed child placement agency who is authorized to care for children in foster care. Resource parent includes foster parents as defined by Subsection I of Section 32A-1-4 NMSA and pre-adoptive parents as defined by Subsection U of Section 32A-1-4 NMSA.

[V:] Z. “Safe” [is the term used to describe CYFD’s assessment based upon available information that a child’s immediate circumstance or environment is free from persons and situations that have been identified as possible causes of harm to the child] is a New Mexico child safety tool decision when no danger indicators have been identified.

AA. “Safe with a plan” is a New Mexico child safety assessment tool decision when one or more danger indicators are present, however, the child can safely remain in the home with a safety plan.

BB. “Safety decision” is based on the presence of danger indicators and safety planning capacities a family possesses that may that offset, mitigate or control the identified danger indicators. Using the New Mexico child safety assessment tool, a child may be assessed to be safe, safe with a plan or unsafe.

CC. “Safety plan” is a detailed strategy that outlines immediate action steps the family and their network will take to help keep the child safe from the identified danger indicators.

DD. “Safety planning capacities” are those assets possessed by the caregiver that reduce or control the identified danger indicators. Refer to the structured decision making manual to review the list of four identified safety planning capacities protective services workers use in the New Mexico child safety and risk assessment tool.

[W:] EE. “Sex or human trafficking” consists of a child or youth who may have experienced being recruited, solicited, enticed, harbored, exploited or transported by another person whose intent is to exploit or use force, fraud, manipulation or coercion to subject the child or youth into labor, services or sexual activity.

[X:] FF. “Sibling” [means a brother or sister having one or both parents in common by birth or adoption] one of two or more children or offspring having one or both parents in common by birth or adoption.

[Y:] GG. “**Treatment foster care home**” is a [~~foster home~~] resource parent licensed by a child placement agency to provide intensive therapeutic support, intervention and treatment for a child who would otherwise require a more restrictive placement.

[Z:] HH. “**Trial home visit**” is the period of time, not to exceed six months, in which a child with a plan of reunification resides with their parent or guardian while services are provided to the child and family to address risk factors and ensure safety of the child.

[AA:] II. “**Tribally licensed home**” means a [~~foster~~] resource family home licensed or approved by an Indian tribe or pueblo.

JJ. “**Unsafe**” is a New Mexico child safety assessment tool decision when one or more danger indicators are present and a safety plan cannot be created.

[8.10.8.7 NMAC - Rp, 8.10.8.7 NMAC, 9/29/2015; A, 5/4/2021]

8.10.8.8 PURPOSE OF PERMANENCY PLANNING SERVICES:

A. [~~Purpose:~~] The purpose of permanency planning services is to systematically carry out, within a time-limited period, a set of goal-directed activities designed to help children live in families that offer the continuity of relationships with nurturing parents or guardians and the opportunity to establish healthy and positive lifetime relationships.

B. PSD provides permanency planning services to children or youth who come into [~~the~~ custody of PSD] PSD custody:

(1) through an abuse or neglect petition, voluntary placement outside of the home, or a family in need of court ordered services (FINCOS) case;

(2) as an undocumented immigrant child or youth through an abuse or neglect petition;

(3) as an unaccompanied alien child or youth as provided for and defined by the department of health and

human services, administration for children and families, office of refugee resettlement, or division of unaccompanied children services;

(4) as an infant left at a hospital as outlined in the Safe Haven for Infants Act, 24-22-1 NMSA 1978; and

(5) as children returned to the custody of the parent, guardian or custodian subject to any condition or limitations as the court may prescribe including protective supervision of the child by PSD.

[8.10.8.8 NMAC - Rp, 8.10.8.8 NMAC, 9/29/2015; A, 5/4/2021]

8.10.8.10 OUT OF HOME PLACEMENT:

When a child cannot safely remain in [~~his or her~~] their home, PSD shall pursue legal custody of the child. When the court has determined [~~that~~] it is contrary to the welfare of the child to remain in [~~his or her~~] their home, PSD is awarded legal custody and the child shall be placed with a licensed [~~foster care provider~~] resource family to ensure the child’s safety and well-being. The placement of a child into foster care shall not be delayed or denied on the basis of the [~~race, color, sexual orientation, gender identity or national origin of the foster parent, or the child involved~~] race; ethnicity; creed; color; age; religion; sex or gender; gender identity; gender expression; sexual orientation; marital status or partnership; familial or parental status; pregnancy and breastfeeding or nursing; disability; genetic information; intersex traits; medical condition, including HIV/AIDS; citizenship or immigration status; national origin; tribal affiliation; ancestry; language; political affiliation; military or veteran status; status as a survivor of domestic violence; sexual assault, or stalking; or any other factor unrelated to suitability to parent.

A. Entry into foster care: The child is considered to have entered foster care on the earlier of:

(1) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

(2) the date that is 60 days after the date on which the child is removed from the home.

B. Relative and relative notification:

(1) PSD shall give preference to relatives when making placement decisions. PSD considers fictive kin for placement if appropriate for best interest placement consideration.

(2) Within 30 days of the child’s removal, PSD shall exercise due diligence to identify and notify the following relatives: all adult grandparents, all parents with legal custody of a sibling of the child, and other adult relatives of a child.

(3) When the court adopts a permanency plan other than reunification, and the child is not placed with a relative, PSD shall continue to make reasonable efforts to identify and locate appropriate and willing relatives to become licensed [~~foster care providers~~] resource parents.

C. Placement types:

When the court places a child in the legal custody of PSD, PSD shall be responsible for placing that child with a licensed [~~foster care provider~~] resource family, which may include, but is not limited to:

(1) relative and non-relative foster care;

(2) treatment foster care;

(3) a licensed facility such as residential treatment center, group home, or emergency shelter; or;

(4) a licensed community home.

D. Indian child placement:

PSD shall make active efforts to place an Indian child in accordance with the placement preferences of the Indian Child Welfare Act (ICWA.), which may include placement in tribally licensed homes.

E. Least restrictive environment and proximity of placement:

(1) Children are placed in the least restrictive setting consistent with the assessment of their individual needs.

(2) PSD shall make efforts to place children in close proximity to their home of origin; PSD shall document any reason as to why a child cannot be safely placed in close proximity to their home of origin.

F. Educational continuity: At the initial placement and any placement change thereafter, PSD shall develop plan for transportation for the child to remain in the same education setting in which the child was enrolled at the time of placement, if reasonable in the child's best interest.

G. Level of care assessment: PSD shall determine level of care within 30 days of entry into custody and every six months thereafter at a minimum. In addition, a determination will be made regarding the appropriateness of applying for social security insurance (SSI) or the developmentally disabled (DD) waiver.

H. Change of placement:

(1) When a child's placement is changed, including a return to the child's home, PSD shall provide written notice to the child's guardian ad litem or attorney, all parties, the child's CASA, the child's [~~foster parents~~] resource parents and the court. This notice is required 10 days prior to the placement change, unless an emergency situation requires moving the child prior to the notice. When prior notice is not possible, written notice must be provided to the GAL or attorney, all parties, the CASA, the [~~foster parents~~] resource parents, and the court within three days after the placement change has occurred.

(2) Written notice is not required for removal of a child from respite. In respite situations, PSD shall provide verbal notification of the removal to the child's guardian ad litem or attorney.

(3) When a child, through [~~his or her~~] their GAL or attorney, files a motion and requests a court hearing to contest the placement change, PSD shall not [~~changes~~] change the child's

placement pending the results of the court hearing, unless an emergency requires changing the child's placement prior to the hearing.

I. Sibling continuity:

(1) PSD shall make reasonable efforts to place siblings together when possible.

(2) PSD shall document reasons for not placing siblings together, such as when there are safety concerns or placement together is not a viable option.

(3) PSD shall facilitate visitation, as appropriate, between siblings not placed together or siblings who are not placed in PSD custody, including any adult siblings. [8.10.8.10 NMAC - N, 9/29/2015; A, 5/4/2021]

8.10.8.12 THE PERMANENCY PLAN:

The permanency plan reflects the permanency goal within the child's case plan to be achieved by PSD's intervention with the family. Permanency goals include:

A. Reunification:

The goal of reunification is to safely reunify the child to the home of the parent or legal guardian. Reunification is the preferred goal in all cases unless the court finds that aggravated circumstances exist.

B. Adoption: The goal of adoption is to judicially terminate the rights, privileges and duties as between the child and the biological parent, and to judicially establish in another family such rights, privileges and duties as between a child and heir, and the adoptive parent.

C. Permanent guardianship: The goal of permanent guardianship is to establish a court-sanctioned arrangement which vests in a guardian all rights and responsibilities of a parent without terminating the rights of the parent as set forth in the Children's Code, Section 32A-4-32 NMSA 1978.

D. Placement with a fit and willing relative: The goal of placement with a fit and willing relative is to establish a court sanctioned relationship between the child and the child's relative or fictive

kin in order to maintain family or family-like relationships to the extent possible, consistent with the best interests of the child.

E. Planned permanent living arrangement: The goal of a planned permanent living arrangement is to establish a court sanctioned arrangement to provide physical and emotional permanency for the child when the court determines [~~that~~] this is the most appropriate permanency plan for the child after considering all other permanency plans. Planned permanent living arrangement may only be used for youth over the age of 16.

[8.10.8.12 NMAC - N, 9/29/2015; A, 5/4/2021]

8.10.8.13 CASE PLANNING:

A. As part of the initial case planning process, PSD shall hold an initial assessment planning conference prior to the 10 day custody hearing. An initial assessment plan shall be developed at the assessment planning conference. The initial assessment plan is ordered at the custody hearing and remains in effect until a case plan is ordered at the dispositional hearing.

B. PSD shall develop a case plan to address [~~safety threats to the child~~] the identified danger indicators and include plan-directed activities for both the child and parent, guardian or custodian to achieve permanency without the need for the PSD intervention.

C. At a minimum, the case plan shall be re-assessed prior to any court hearing.

D. For [~~children-age~~] youth ages 14 and older, the case plan shall be developed in consultation with the [~~child~~] youth and, at the option of the [~~child~~] youth, with up to two members of the case planning team who are chosen by the [~~child~~] youth and who are not a [~~foster parent~~] resource parent of or a caseworker for, the [~~child~~] youth. PSD may reject an individual selected by [~~a child~~] the youth to be a member of the case planning team at any time if PSD has good cause

to believe the individual would not act in the best interest of the [child] youth. An individual shall be selected by the [child] youth to be a member of the [child's] youth's case planning team, and may be designated to be the [child's] youth's advisor and, as necessary, advocate with respect to the application of the reasonable and prudent parent standard to the [child] youth.

E. As part of the youth's case plan, PSD shall provide to the youth the New Mexico foster child and youth bill of rights and the New Mexico foster youth document of responsibilities [to youth age 14 or older].

(1) PSD shall provide a document that describes the rights of the child with respect to education, health, visitation, and court participation, the right to be provided with the documents and the right to stay safe and avoid exploitation.

(2) PSD shall obtain a signed acknowledgement that the child has received a copy of those documents and understands those rights and responsibilities; and

(3) PSD shall also provide and adhere to youth the youth grievance process.

G. Other plans within the case plan: As part of the case planning process the following plans shall be incorporated into the case plan as appropriate:

(1) **Permanency plan:** The permanency plan reflects the permanency goals to be achieved. Every child's case plan shall have a permanency plan, which may change throughout the life of the case.

~~(2) — Concurrent plan: A concurrent plan means a second permanency plan of adoption or guardianship in addition to the primary permanency plan of reunification.~~

~~(3)~~ (2) **Transition home plan:** A transition home plan shall be submitted to the court prior to or at the initial permanency hearing when the child's plan remains reunification. The plan shall be completed within 90 days of the

initial permanency hearing. The plan results in the child being placed with [his or her] their parent, guardian or custodian on a trial home visit.

(a) As part of the transition home plan, PSD shall set up a trial home visit in which the child resides with [his or her] their parent, guardian or custodian until it has been determined no safety threats exist to the child and the case can be dismissed. If the trial home visit is unsuccessful, then the child shall be removed from the home of the parent, guardian or custodian and placed in the same or another out of home placement.

(b) A trial home visit normally does not exceed six months in duration.

(c) If a trial home visit exceeds six months in duration, or exceeds a longer time period deemed appropriate by the court, and the child is subsequently returned to foster care, the placement is considered a new placement and procedures must be followed to newly establish title IV-E eligibility.

(4) **Life skills plan:** PSD shall develop a life skills plan, using the life skills assessment, with youth age 14 or older who are in [the custody of PSD] PSD custody. The life skills plan shall identify the activities, tasks, and services needed for the youth to develop the life skills necessary to safely transition into independent living as an adult, regardless of the [child's] youth's permanency plan.

(5) **Transition plan:** PSD shall begin developing a transition plan with the [child] youth prior to [the child's 17th] their seventeenth birthday to identify [a child's] needs, strengths and goals in the areas of safety, housing, education, employment or income, physical health and mental health, local opportunities for mentors and continuing support services. The plan shall identify activities, responsibilities and timeframes to address specified goals. PSD shall present the transition plan to the court at the first hearing scheduled after the [child's] youth's seventeenth birthday.

The court shall order the transition plan for the [child] youth. The transition plan approved by the court shall be reviewed at every subsequent review and permanency hearing. [8.10.8.13 NMAC - N, 9/29/2015; A, 5/4/2021]

8.10.8.14 ADJUDICATION AND DISPOSITION:

A. PSD shall schedule a mandatory pre-adjudicatory meeting prior to the adjudicatory hearing.

B. The adjudicatory hearing shall be held within 60 days after the date of service on the respondent.

C. Prior to the dispositional hearing, PSD shall prepare a pre-dispositional study and report.

D. The dispositional hearing may occur simultaneously with the adjudicatory hearing, but no later than 30 days after the conclusion of the adjudicatory hearing.

E. [Foster parents] Resource parents, pre-adoptive parents [or], relatives or fictive kin providing care to the child shall be given notice and an opportunity to be heard at the dispositional hearing. [8.10.8.14 NMAC - N, 9/29/2015; A, 5/4/2021]

8.10.8.15 INITIAL JUDICIAL REVIEW, FIRST PERMANENCY HEARING AND SUBSEQUENT HEARINGS:

A. The initial judicial review shall be held within 60 days of the dispositional hearing. PSD shall inform the court of the progress made toward the permanency plan.

B. The initial permanency hearing shall be commenced within six months of the initial judicial review of a child's dispositional order or within 12 months of a child entering foster care, whichever occurs first.

C. Prior to the initial permanency hearing, PSD shall attend a mandatory meeting with all other parties to mediate issues attendant to the permanency hearing and to develop a case plan that services in the child's best interest.

D. At the initial permanency hearing and subsequent hearings thereafter, PSD shall document the following:

(1) the efforts made to return the child home;

(2) the steps PSD has taken to ensure the child's [foster care provider] resource family is following the reasonable and prudent parent standard;

(3) the steps PSD has taken to ensure the child has regular, ongoing opportunities to engage in age and developmentally appropriate activities.

E. PSD evaluates the status of each child within six months of the conclusion of the permanency hearing or, if a motion has been filed for termination of parental rights or permanent guardianship, within six months of the decision on that motion, and re-evaluates the status every six months thereafter so long as the child remains in custody. The evaluation includes a determination of the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care. The evaluation also projects a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship.

[8.10.8.15 NMAC - N, 9/29/2015; A, 5/4/2021]

8.10.8.17 MEDICAL AND BEHAVIORAL HEALTH:

A. Within the first 30 days of PSD custody, the child shall have a complete physical examination or, if medicaid eligible, an early and periodic screening, diagnostic and treatment services (EPSDT). The child shall receive an annual well-child check and dental and eye exam thereafter.

B. In order to support the child through the experience of foster care, in addition to supporting their history of possible trauma, PSD conducts both the crisis assessment

tool (CAT) and child and adolescent needs and strengths-trauma (CANS) assessments to better understand the needs of the child and to make appropriate referrals to community providers. Once an abuse and neglect petition has been filed, all children in the case will have a CAT completed by the investigator and filed with the court 24 hours prior to the 10-day hearing. CANS assessments shall be completed by PSD, within 45 days of removal from the home. Children in care shall be reassessed prior to every subsequent court hearing to assess progress in treatment (or within six months, whichever comes first) or to adjust services and supports as results may indicate. CANS shall also be completed whenever any change in behavior is identified, and also after any significant emotional event. CANS shall also be updated upon discharge from CYFD custody.

~~[B:]~~ **C.** While a child is in the custody of PSD and until parental rights have been terminated, the child's parent, guardian or custodian shall continue to be responsible for the child's medical needs. If support by the parent, guardian or custodian is not available, PSD shall seek to obtain other medical coverage or, if all other possibilities are exhausted, to qualify the child for medicaid through supplemental security income (SSI).

~~[C:]~~ **D.** If available, PSD shall obtain ~~[, if available,]~~ and keep current the child's immunization records. In any case, where the parent, guardian, or custodian objects to immunizing the child, PSD shall inform the parent, guardian, or legal custodian that ~~[he or she]~~ they may obtain a waiver from the department of health objecting to the immunizations.

~~[D:]~~ **E.** PSD shall arrange for behavioral health services for children, parents, guardians or custodians to address identified needs and to move the case planning process along in order for the child to achieve permanency.

F. The use of psychotropic medication is one of several interventions used to address the emotional and behavioral needs of

children in PSD custody and is used in concert with other interventions in accordance with the treatment plan. Children are to be free from unnecessary or excessive medication as expressed in the Children's Code 32A-6A-12A (12). PSD shall adhere to internal procedures regarding psychotropic medication (permanency planning procedure 17—mental and behavioral health).

(1) PSD shall ensure each child in PSD custody is not inappropriately medicated while ensuring timely access to medically necessary medication and treatment. Psychotropic medication shall only be prescribed by a person licensed by the state of New Mexico to prescribe psychotropic medications.

(2) PSD must first approve any medication, including medication changes, by consulting with the prescribing provider, parent, guardian or custodian, and their supervisor within seven calendar days of the medication recommendation. Psychotropic medication shall not be prescribed for a child in care unless the prescribed use of the psychotropic medication is for a medically accepted indication that is age-appropriate and its proposed beneficial properties outweigh any risks identified in peer-reviewed medical literature relating to the children's use of the psychotropic medication. Psychosocial interventions shall be the first intervention utilized prior to exploring psychotropic medication. PSD shall inquire about the most appropriate use of medication, dosage and ongoing monitoring. PSD must monitor medication success and impacts on the child. PSD may seek a second opinion from a licensed prescriber if there are concerns regarding the recommended medication.

(3) Depending on the age of the child, type of medication and the number of medications prescribed, PSD shall request a higher level of monitoring and consultation with a PSD staff person or contracted provider licensed by the state of New Mexico to prescribe psychotropic

medications to review the child's medications. This secondary review is to ensure medication is not misused as a primary response to trauma-related behaviors and to evaluate the effectiveness of the medication on the child's wellbeing and quality of life. The review in consultation with the PSD contracted provider licensed by the state of New Mexico will include a review of the polypharmacy, dosage and frequency for all prescribed medication, adverse side-effects and the use of any atypical antipsychotics.

(4) PSD shall document medication prescribed to the child in the case management system and in every court report. PSD must report any medications or changes in medications, impact and side effects to the court.

(5) PSD shall monitor any trends in psychotropic medications in relation to children in PSD care and appropriate PSD staff will provide training, consultation or other response depending on the trends identified.

(6) PSD shall be responsible for regularly assessing the impact the medication has on the child. PSD shall participate in medication management meetings with the child's treatment team. The meetings may occur with the prescribing physician at least monthly if the child is in treatment foster care or a residential treatment center or as recommended by the prescriber.

(7) CYFD shall consult with other state agencies to provide CYFD with information, training, data and support to monitor psychotropic medication trends and outliers.

[8.10.8.17 NMAC - N, 9/29/2015; A, 5/4/2021]

8.10.8.18 EDUCATION:

A. PSD shall develop a plan for transportation with the [~~foster care provider~~] resource family and child, if age appropriate, in order for the child to remain in the same education setting in which the child was enrolled at the time of placement, if reasonable and in the child's best interest.

B. PSD shall work with the child's school to identify the child's educational needs and the need for an individualized education plan (IEP) and if appropriate, assist in the development of the IEP. For children with an IEP, the PSD worker shall assist the child and the child's school in implementing the IEP.

C. For children in eighth grade and older, PSD shall request and review the child's next step plan and actively participate in updating the plan each year with the child to prepare post-secondary educational goals.

D. An educational decision maker shall be appointed for every child in PSD custody. The [~~education~~] educational decision maker shall be named prior to the custody hearing and shall be re-evaluated at every hearing thereafter. [8.10.8.18 NMAC - N, 9/29/2015; A, 5/4/2021]

8.10.8.19 VISITATION:

A. Family visits: PSD shall arrange for visitation between the child and [~~his or her~~] their family or fictive kin as appropriate.

B. Sibling visits: PSD shall arrange for and facilitate visitation, as appropriate, between children in PSD custody and their siblings who are either in PSD custody, but not in same out of home placement, or siblings who are not in PSD custody including adult siblings.

C. Worker-child visits: PSD shall visit each child at least monthly in the child's placement to assess the placement for appropriateness in meeting the child's safety, emotional and well-being needs.

D. Worker-parent visits: PSD shall arrange for visits at least monthly with the parent, guardian or custodian to share information about the child and discuss case plan progress.

[8.10.8.19 NMAC - Rp, 8.10.8.22 NMAC, 9/29/2015; 5/4/2021]

8.10.8.20 OUT-OF-STATE PLACEMENTS OF FOSTER CHILDREN: PSD shall visit each

child in an out-of-state placement in that placement at least every six months. PSD, in accordance with the Interstate Compact for the Placement of Children (ICPC), shall request other receiving state child welfare agencies to visit the child in [~~his or her~~] their placement monthly and provide PSD with reports on those visits.

[8.10.8.20 NMAC - Rp, 8.10.8.14 NMAC, 9/29/2015; A, 5/4/2021]

8.10.8.21 INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN (ICPC):

A. PSD may place children in custody in licensed out-of-state placements, and may accept children in the custody of another state for placement in New Mexico in accordance with the Interstate Compact for the Placement of Children (ICPC).

B. CYFD has no authority to license [~~foster home~~] resource families in other states. [8.10.8.21 NMAC - Rp, 8.10.8.27 NMAC, 9/29/2015; 5/4/2021]

8.10.8.22 SPECIAL IMMIGRANT JUVENILE STATUS (SIJS): If a child is [~~an undocumented foreign national~~] a foreign national child without legal permanent residency in the United States, PSD shall apply to the department of homeland security's (DHS) citizen and immigration services (USCIS) to obtain "special immigrant juvenile status" for the child.

A. In those cases in which a child is a foreign national child without legal permanent residency in the United States, and if the permanency plan does not include reunification with at least one parent and PSD does not recommend that the child be returned to the country of origin, PSD shall determine whether the child may be eligible for SIJS under federal law. Under federal law, in addition to legal requirements of being under court jurisdiction and the court making the necessary judicial determination, a child must be in the

United States, unmarried and under the age of 21.

B. If the child is eligible for SIJS, PSD shall move the court for a SIJS order containing a judicial determination that the child is deemed unable to reunify with one or both parents due to abuse, neglect or abandonment, and that it is not in the child's best interest to return to the country of nationality or last habitual residence. PSD's motion shall include a statement of the express wishes of the child, as expressed by the child or the child's guardian ad litem or attorney.

C. If it has been determined that it is in the child's best interest to file a petition for SIJS and an application for adjustment of status, then within 60 days after an entry of the SIJS order, PSD shall file a petition for SIJS and an application for adjustment of status on behalf of the child.

D. The court order for SIJS must be filed and accepted by the court prior to the child turning age 18.

E. The children's court attorney shall request court jurisdiction and set review hearings pending the granting of SIJS. The children's court attorney shall provide judicial review reports for a child for whom the court has granted the SIJS order, and shall advise the court of the status of the petition and application process concerning the child.

F. The court's jurisdiction terminates upon the final decision of the federal authorities, however the court may not retain jurisdiction of the case after the child's twenty-first birthday. [8.10.8.22 NMAC - N, 9/29/2015; A, 5/4/2021]

8.10.8.23 CONSULAR NOTIFICATION: [~~When PSD is given custody of a foreign national child, that is, a child who is not a citizen of the United States, PSD shall notify that child's foreign national consulate in writing within five business days.~~]

A. Foreign national children: When PSD is given custody of a foreign national child, that is,

a child who is not a citizen of the United States, PSD shall notify that child's foreign national consulate in writing without delay after obtaining custody. When PSD is given custody of a child who has at least one parent who is a foreign national of any country other than Mexico, PSD shall notify the appropriate foreign consulate except in cases in which notification may create a risk to the child's safety or may impede the goal of reunification of the child with their family.

B. Mexican national children: When PSD is given custody of a Mexican national child, that is, a child who is a national of Mexico or has at least one parent who is a national of Mexico, PSD shall notify the Mexican consulate without delay. [8.10.8.23 NMAC - N, 9/29/2015; A, 5/4/2021]

8.10.8.24 PREVENTING, IDENTIFYING AND REPORTING SEX AND HUMAN TRAFFICKING AND REPORTING RUNAWAYS:

A. PSD shall identify, document, and determine appropriate services for children or youth who have disclosed or who may be at risk of being the victim of human trafficking.

B. PSD shall immediately, but [~~not~~] no later than 24 hours, notify law enforcement of children or youth who PSD has identified as victims of sex or human trafficking.

C. PSD shall make reasonable efforts to locate children or youth missing from foster care, including determining the factors that led to the child or youth being absent from foster care. PSD shall also [~~and assessing~~] assess the child or youth's experience while absent from foster care, including whether the child or youth is a victim of sex or human trafficking.

D. PSD shall report immediately, but no later than 24 hours, after receiving information on missing or abducted children or youth to law enforcement authorities for entry into national crime information

center (NCIC) database of the federal bureau of investigation.

E. PSD shall report immediately, but no later than 24 hours, after receiving information on missing or abducted children or youth to the national center for missing and exploited children. [8.10.8.24 NMAC - N, 9/29/2015; A, 5/4/2021]

8.10.8.25 INCIDENTS INVOLVING CHILDREN IN CUSTODY:

A. Incidents in foster care may refer to a broad spectrum of events which may include, but are not limited to, reports of:

(1) alleged policy or procedures violations by [~~foster parents~~] resource parents, including [~~foster parent~~] resource parents failure to comply with case [~~plan~~] plans or safety plan requirements;

(2) alleged violations of the New Mexico foster child and youth bill of rights or the New Mexico foster youth document of responsibilities;

(3) serious illness or accidental injury of [~~foster child~~] a child in foster care; or

(4) [~~foster parent~~] resource parent reporting concerns related to parent-child or sibling visitation; or

(5) [~~foster~~] child in care running away.

B. Incidents in foster care shall not include reports of alleged abuse or neglect. Reports of alleged abuse or neglect are called in to statewide central intake (SCI) and if warranted, assigned for PSD investigation. [8.10.8.25 NMAC - N, 9/29/2015; A, 5/4/2021]

[8.10.8.25 NMAC - N, 9/29/2015; A, 5/4/2021]

8.10.8.27 MAINTENANCE PAYMENTS AND INCIDENTALS

A. [~~Foster care providers~~] Resource families are reimbursed for the care provided to children at rates established by the state legislature.

B. [~~To be honored,~~ requests from foster care providers]

Requests from resource families for reimbursements for pre-approved purchases must be submitted within 45 days of the expenditure.

C. PSD is not liable and [with] shall not reimburse any person for any loss or property damage, real or personal, in excess of \$25,000, that is shown to be caused by a child in PSD custody. [8.10.8.27 NMAC - N, 9/29/2015; A, 5/4/2021]

8.10.8.29 COURT APPOINTED SPECIAL ADVOCATE (CASA) AND ~~(CITIZEN REVIEW BOARD (CRB))~~ SUBSTITUTE CARE ADVISORY COUNCIL (SCAC):

A. If the court has appointed a CASA, PSD shall involve and inform the CASA as required by the Children’s Code.

B. PSD refers each child in custody to the [citizen review board] SCAC as required by the New Mexico Children’s Code. The [citizen review board] SCAC provides the [foster] resource parent or relative providing care for the child with timely notice of and an opportunity to be heard before the [citizen review board] SCAC. The notice and opportunity to be heard do not include the right to standing as a party in the case.

[8.10.8.29 NMAC - Rp, 8.10.8.25 NMAC, 9/29/2015; A, 5/4/2021]

8.10.8.30 CHILD PROTECTIVE SERVICES CHILD CARE

A. PSD provides child protective services childcare as one part of a case for children and families receiving services to address child maltreatment safety and risk factors.

B. The purpose of protective services childcare [are] is:

(1) to enable parents, [guardian] guardians or custodians to participate in activities which are part of the comprehensive treatment plan;

(2) to enable [foster] resource parents to maintain employment, obtain job training and attend educational programs while

children are in placement in the home; and

(3) to provide childcare as crisis intervention for those families who lack other resources, are at risk of child maltreatment, and unable to provide adequate care for their child.

C. PSD provides childcare:

(1) without regard to income eligibility;

(2) depending on the assessment of need for the child and family or [foster] resource family; and

(3) as appropriate and to maintain stability of a placement.

D. PSD arranges for childcare by providers who meet the requirements established by and who are licensed or certified by the New Mexico early childhood education and care department.

E. The child’s worker determines an appropriate childcare provider in cooperation with the child’s family or [foster] resource family.

F. PSD follows the service standards and payment rates for childcare that are established by the New Mexico early childhood education and care department.

G. PSD arranges child protective services childcare from any of the following approved provider types:

(1) licensed family child care;

(2) certified family child care; and

(3) licensed childcare center.

[8.10.8.30 NMAC - N, 9/29/2015; A, 5/4/2021]

8.10.8.31 DOCUMENTATION AND CONFIDENTIALITY:

A. **Documentation:** PSD shall maintain the case record, which consists of both the electronic record [maintained in FACTS] and the paper case record. The case record is a working tool and shall contain all documents [that are] necessary for the [appropriate] provision of services.

B. Confidentiality:

All PSD staff and CYFD contractors shall maintain confidentiality of records and information in accordance with the laws and regulations that apply to specific services.

(1) Abuse and neglect records: Abuse and neglect records are confidential pursuant to the New Mexico Children’s Code Subsection A of Section 32A-4-33 NMSA 1978. The name and information regarding the reporting party shall not be disclosed absent the consent of the reporting party or a court order.

(2) Foster care and adoption records: Under CYFD’s general rulemaking authority Section 9-2A-7 NMSA 1978, the confidentiality provisions of the Children’s Code, Sections 32A-3B-22 and 32A-4-33 NMSA 1978, the specific authority related to certification of foster homes, Subsection (D) of Section 40-7-4 and the Adoption Act, Sections 32A-5-6 and 32A-5-8 NMSA 1978, all client case records and client identifying information including [foster] resource and adoptive families, and applicant files are confidential and may not be publicly disclosed. PSD may release such files only upon a valid court order provided that confidential criminal and abuse and neglect information may not be released, unless a court order specifically orders such a release.

(3) Records related to an adoption proceeding: Records related to an adoption proceeding are confidential pursuant to the Children’s Code, Section 32A-5-8 NMSA 1978. Post decree adoption records: Guidance on obtaining access of post decree adoption records by an adult adoptee, biological parent of an adult adoptee, sibling of an adoptee, or adoptive parent of a minor adoptee is outlined in the Adoption Act Regulations, Subsection C of 8.26.3.41 NMAC.

(4) Social security administration electronic records: Any information obtained through the social security administration (SSA) data system,

ISD2, either directly or from another individual with access to the ISD2, is confidential. Improper access, use or disclosure of ISD information is a violation of the Privacy Act of 1974 (5 U.S.C. Section 552a, Public Law No 93-579), and could result in civil and criminal sanctions pursuant to applicable federal statutes. When a PSD becomes aware of a loss or suspected loss of any file containing ISD information (whether a hard copy file, or on a laptop, removable drive, etc.), PSD shall notify CYFD office of the general counsel (OGC) within one hour of the discovery of the loss. [8.10.8.31 NMAC - Rp, 8.10.8.28 NMAC, 9/29/2015; A, 5/4/2021]

ECONOMIC DEVELOPMENT DEPARTMENT

TITLE 2 PUBLIC FINANCE CHAPTER 92 LEDA RECOVERY GRANT PART 1 GENERAL PROVISIONS

2.92.1.1 ISSUING AGENCY: Economic development department. [2.92.1.1 NMAC – N/E, 4/16/2021]

2.92.1.2 SCOPE: All persons or entities applying for grants for the reimbursement of rent, lease or mortgage payments pursuant to House Bill 11 of 1st Session of the 55th Legislature (hereafter, the “LEDA Recovery Grants Legislation”). [2.92.1.2 NMAC - N/E, 4/16/2021]

2.92.1.3 STATUTORY AUTHORITY: Section 5-10-16 NMSA 1978 (hereafter, the “LEDA Recovery Grants Legislation”). [2.92.1.3 NMAC - N/E, 4/16/2021]

2.92.1.4 DURATION: 120 days. [2.92.1.4 NMAC - N/E, 4/16/2021]

2.92.1.5 EFFECTIVE DATE: April 16, 2021, unless a later date is cited at the end of a section. [2.92.1.5 NMAC - N/E, 4/16/2021]

2.92.1.6 OBJECTIVE: Explanatory note: On March 11, 2020, in response to the presence in New Mexico of a highly contagious respiratory novel coronavirus disease known as COVID-19, Governor Michelle Lujan Grisham declared that a public health emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked all power and authority under the All Hazards Emergency Management Act. On March 23, 2020, the New Mexico department of health, pursuant to the All Hazards Emergency Management Act, issued a public health emergency order to close all businesses and non-profit entities except for those deemed essential, while also limiting mass gatherings due to COVID-19. Since March 23, 2020, the Public Health Emergency Order has been extended and modified to address the ongoing threat of COVID-19. On February 26, 2021, during the 1st Session of the 55th Legislature, the Governor signed into law House Bill 11 (hereafter, the “LEDA Recovery Grants Legislation”), whereby two hundred million dollars (\$200,000,000) was appropriated from the state of New Mexico general fund to the New Mexico economic development department (“department” or “NMEDD”) for expenditure in fiscal years 2021 through 2023 (“LEDA Grant Funds”) to provide grants, through the NMFA, for the reimbursement of rent, lease or mortgage payments. These rules govern the implementation and administration of the LEDA Recovery Grant Fund enacted under the LEDA Recovery Grants Legislation, and do not apply to other programs established by the economic development department. [2.92.1.6 NMAC – N/E, 4/16/2021]

2.92.1.7 DEFINITIONS:
A. “Full-time-equivalent employee or FTE” is defined as an employee who works an average of 40 hours or more per week from their qualifying date of hire throughout the quarterly qualification period. The hours of

employees who work fewer than 40 hours are calculated as proportions of a single FTE and aggregated. An FTE must be paid wages that are reported to the department of workforce solutions quarterly and subject to unemployment taxes. To qualify, the FTE must be “net new”, representing:

(1) a growth of FTE beyond the “baseline” FTE count, with “baseline” defined as the number of FTE reported on December 31, 2020 or any subsequent quarterly ES903A filed with the department of workforce solutions prior to application whichever is lower;

(2) a growth of FTE beyond the number for which the recovery entity received total or partial grant payments in prior quarters; and

(3) a growth of FTE beyond the number in the quarter immediately preceding the request for a subsequent quarterly payment and for which a quarterly unemployment insurance report was filed with the department of workforce solutions.

B. “Qualifying date of hire” is a date on or after April 1, 2021 and falling within a quarterly department of workforce solutions reporting period prior to application for a quarterly payment subsequent to the initial payment.

C. “Loss in revenue” is defined as a decline in revenue for one or more quarters in 2020 compared with the same quarter or quarters in 2019. If the recovery entity is required to submit gross receipts taxes for these revenues, the recovery entity must provide the tax documentation supplied to the taxation and revenue department demonstrating this decline. If the recovery entity is not subject to gross receipts taxes, the decline must be demonstrated through other documentation as provided through rule by the New Mexico finance authority. [2.92.1.7 NMAC - N/E, 4/16/2021]

2.92.1.8 MAXIMUM EMPLOYEE COUNT: The maximum employee count in House Bill 11 of “fewer than 75 people

employed at any of the business’s business locations” for a business to qualify as a recovery entity includes all employees, both full- and part-time employees.
[2.92.1.8 NMAC - N/E, 4/16/2021]

2.92.1.9 PER JOB CALCULATION: Pursuant to the Local Economic Development Act, the recovery grant shall be accompanied by net new FTE job creation. As part of the initial application, the recovery entity shall estimate the net new FTE to be created from the initial qualifying date of hire through March 31, 2022 and provide the job titles for those positions, the FTE calculations and the total average hourly wages. The maximum amount of the recovery grant to be provisionally awarded and set aside for disbursement shall be determined by the following calculation of funds per net new FTE job created:

- A. The base amount of the grant per net new FTE job created: \$5,000;
- B. If the recovery entity has a loss in revenue of at least twenty percent and less than forty percent: \$7,000;
- C. If the recovery entity has a loss in revenue of at least forty percent and less than sixty percent: \$9,000;
- D. If the recovery entity has a loss in revenue of at least sixty percent and less than eighty percent: \$11,000; or
- E. If the recovery entity has a loss in revenue equal to or in excess of eighty percent: \$13,000.
- F. Wage bonus:
 - (1) If the average wage of all the recovery entity’s net new FTE is over \$13 per hour, the recovery entity may receive a bonus of \$1,000 per net new FTE for which a base payment is calculated.
 - (2) If the average wage of the recovery entity’s net new FTE is over \$17 per hour, the recovery entity may receive an additional \$1,000 per net new FTE for which a base payment is calculated.

G. The maximum grant amount per net new FTE job created is \$15,000

H. The maximum number of FTE that may be included in the recovery entity’s estimates in the application is equal to the maximum number of FTE employed by the recovery entity in any quarterly period from January 1, 2019 to the date of application and documented through the ES903A filed with the department of workforce solutions.
[2.92.1.9 NMAC - N/E, 4/16/2021]

2.92.1.10 QUARTERLY PAYMENTS: Quarterly payments to recovery entities shall be determined by taking the initial per job calculation above and multiplying it by the number of FTE being claimed by the recovery entity for a given quarterly period. The per job amount may be reduced if the New Mexico finance authority and the economic development department determine the actual average wages paid fall below the thresholds for either or both of the \$1,000 bonuses to a degree that indicates a reasonable attempt was not made to pay the wages estimated by the recovery entity in its grant application.
[2.92.1.10 NMAC - N/E, 4/16/2021]

2.92.1.11 QUARTERLY PAYMENT LIMIT: Quarterly payments to recovery entities are limited to the lesser of twenty-five percent of the provisional grant award or the eligible amount under the requirements and calculations set forth in this rule. The maximum amount that may be distributed in total to a recovery entity under the LEDA Recovery Grant project is \$100,000.
[2.92.1.11 NMAC - N/E, 4/16/2021]

2.92.1.12 DOCUMENTATION REQUIRED FOR PROOF OF QUALIFYING NET NEW FTE JOBS CREATED:

- A. A recovery entity must provide its quarterly unemployment insurance filings with the department of workforce solutions (ES903A) at time of application for

the quarter ending March 31, 2021 and, if applicable, the most recent quarterly ES903A filed with the department of workforces solutions available at the time of application.

B. A recovery entity provided an initial quarterly payment must provide the most recent quarterly filing of the ES903A prior to additional funds being released for a subsequent quarterly payment. The recovery entity must also provide documentation, in a form and manner to be prescribed by the New Mexico finance authority, to list the net new FTE requested to qualify for additional funds with the associated average hourly wage, hours worked per week and the total average wage for all net new FTE.

C. Upon request, the recovery entity shall submit to the New Mexico finance authority and the economic development department additional payroll documentation to validate the calculations and request.
[2.92.1.12 NMAC - N/E, 4/16/2021]

2.92.1.13 DOCUMENTATION REQUIRED FOR PROOF OF PAYMENT OF RENT, LEASE OR MORTGAGE: To prove payment of rent, mortgage or lease, a recovery entity must complete the affirmation provided by the economic development department to the New Mexico finance authority for distribution to recovery entities, along with proof of payment including a bank statement, canceled check, credit card receipt, ACH transaction or other forms of proof generally accepted. The rent, lease or mortgage payments must be for the recovery entity’s place of business within New Mexico and must be payments related to land or buildings. Equipment rentals or leases do not qualify under the Local Economic Development Act.
[2.92.1.13 NMAC - N/E, 4/16/2021]

HISTORY OF 2.92.1 NMAC: [RESERVED]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.200.510 NMAC, Sections 11, 12, 13, 14 and 15, effective 4/1/2021.

**8.200.510.11 COMMUNITY
SPOUSE RESOURCE
ALLOWANCE (CSRA):**

The CSRA standard varies based on when the applicant or recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal MAP application. If institutionalization began:

A. Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000 and the federal maximum CSRA is \$60,000.

B. On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.

C. On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.

D. On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.

E. On or after January 1, 1993, the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.

F. On or after January 1, 1994, the state minimum is \$31,290 and the federal maximum CSRA is \$72,660.

G. On or after January 1, 1995, the state minimum is \$31,290 and the federal maximum CSRA is \$74,820.

H. On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.

I. On or after January 1, 1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.

J. On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.

K. On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.

L. On or after January 1, 2000, the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.

M. On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.

N. On or after January 1, 2002, the state minimum is \$31,290 and the federal maximum CSRA is \$89,280.

O. On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.

P. On or after January 1, 2004, the state minimum is \$31,290 and the federal maximum CSRA is \$92,760.

Q. On or after January 1, 2005, the state minimum is \$31,290 and the federal maximum CSRA is \$95,100.

R. On or after January 1, 2006, the state minimum is \$31,290 and the federal maximum CSRA is \$99,540.

S. On or after January 1, 2007, the state minimum is \$31,290 and the federal maximum CSRA is \$101,640.

T. On or after January 1, 2008, the state minimum is \$31,290 and the federal maximum CSRA is \$104,400.

U. On or after January 1, 2009, the state minimum is \$31,290 and the federal maximum CSRA is \$109,560.

V. On or after January 1, 2010, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

W. On or after January 1, 2011, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

X. On or after January 1, 2012, the state minimum is \$31,290

and the federal maximum CSRA is \$113,640.

Y. On or after January 1, 2013, the state minimum is \$31,290 and the federal maximum CSRA is \$115,920.

Z. On or after January 1, 2014, the state minimum is \$31,290 and the federal maximum CSRA is \$117,240.

AA. On or after January 1, 2015, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.

BB. On or after January 1, 2016, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.

CC. On or after January 1, 2017, the state minimum is \$31,290 and the federal maximum CSRA is \$120,900.

DD. On or after January 1, 2018, the state minimum is \$31,290 and the federal maximum CSRA is \$123,600.

EE. On or after January 1, 2019, the state minimum is \$31,290 and the federal maximum CSRA is \$126,420.

FF. On or after January 1, 2020, the state minimum is \$31,290 and the federal maximum CSRA is \$128,640.

GG. On or after January 1, 2021, the state minimum is \$31,290 and the federal maximum CSRA is \$130,380.

[8.200.510.11 NMAC - Rp, 8.200.510.11 NMAC, 7/1/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021]

**8.200.510.12 POST-
ELIGIBILITY CALCULATION
(MEDICAL CARE CREDIT):**

Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

DEDUCTION

AMOUNT

A. Personal needs allowance for institutionalized spouse:

[July 1, 2019] July

1, 2020

[§74] \$76

B. Minimum monthly maintenance needs allowance (MMMNA):

~~[July 1, 2019]~~ July 1, 2020

~~[\$2,114]~~ \$2,155

C. The community spouse monthly income allowance (CSMIA) is calculated by subtracting the community spouse's gross income from the MMMNA:

(1) If allowable shelter expenses of the community spouse exceeds the minimum allowance then deduct an excess shelter allowance from community spouse's income that includes: expenses for rent; mortgage (including interest and principal); taxes and insurance; any maintenance charge for a condominium or cooperative; and an amount for utilities (if not part of maintenance charge above); use the standard utility allowance (SUA) deduction used in the food stamp program for the utility allowance.

~~[July 1, 2019]~~ July 1, 2020

~~[\$635]~~ \$646

(2) Excess shelter allowance may not exceed the maximum:

	(a) _____
Jan. 1, 2020	\$1,103
	(b) _____
July 1, 2019	\$1,047
	(c) _____
Jan. 1, 2019	\$1,103
	(d) _____
July 1, 2018	\$1,032]
	(a) _____
Jan. 1, 2021	\$1,105
	(b) _____
July 1, 2020	\$1,062
	(c) _____
Jan. 1, 2020	\$1,103
	(d) _____
July 1, 2019	\$1,047

D. Any extra maintenance allowance ordered by a court of jurisdiction or a state administrative hearing officer.

E. Dependent family member income allowance (if applicable) calculated as follows: 1/3 X MMMNA - dependent member's income).

F. Non-covered medical expenses.

G. The maximum total of the community spouse monthly income allowance and excess shelter deduction may not exceed ~~[\$3,217]~~ \$3,260.

[8.200.510.12 NMAC - Rp, 8.200.510.12 NMAC, 7/1/2015; A/E, 3/1/2017; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 1/16/2020; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021]

8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS: Costs of care are based on the date of application registration.

	DATE
AVERAGE COST PER MONTH	
A.	July 1, 1988 - Dec. 31, 1989
	\$1,726 per month
B.	Jan. 1, 1990 - Dec. 31, 1991
	\$2,004 per month
C.	Jan. 1, 1992 - Dec. 31, 1992
	\$2,217 per month
D.	Effective July 1, 1993, for application register on or after Jan. 1, 1993
	\$2,377 per month
E.	Jan. 1, 1994 - Dec. 31, 1994
	\$2,513 per month
F.	Jan. 1, 1995 - Dec. 31, 1995
	\$2,592 per month
G.	Jan. 1, 1996 - Dec. 31, 1996
	\$2,738 per month

H.	Jan. 1, 1997 - Dec. 31, 1997
	\$2,889 per month
I.	Jan. 1, 1998 - Dec. 31, 1998
	\$3,119 per month
J.	Jan. 1, 1999 - Dec. 31, 1999
	\$3,429 per month
K.	Jan. 1, 2000 - Dec. 31, 2000
	\$3,494 per month
L.	Jan. 1, 2001 - Dec. 31, 2001
	\$3,550 per month
M.	Jan. 1, 2002 - Dec. 31, 2002
	\$3,643 per month
N.	Jan. 1, 2003 - Dec. 31, 2003
	\$4,188 per month
O.	Jan. 1, 2004 - Dec. 31, 2004
	\$3,899 per month
P.	Jan. 1, 2005 - Dec. 31, 2005
	\$4,277 per month
Q.	Jan. 1, 2006 - Dec. 31, 2006
	\$4,541 per month
R.	Jan. 1, 2007 - Dec. 31, 2007
	\$4,551 per month
S.	Jan. 1, 2008 - Dec. 31, 2008
	\$4,821 per month
T.	Jan. 1, 2009 - Dec. 31, 2009
	\$5,037 per month
U.	Jan. 1, 2010 - Dec. 31, 2010
	\$5,269 per month
V.	Jan. 1, 2011 - Dec. 31, 2011
	\$5,774 per month
W.	Jan. 1, 2012 - Dec. 31, 2012
	\$6,015 per month
X.	Jan. 1, 2013 - Dec. 31, 2013
	\$6,291 per month
Y.	Jan. 1, 2014 - Dec. 31, 2014
	\$6,229 per month
Z.	Jan. 1, 2015 - Dec. 31, 2015
	\$6,659 per month
AA.	Jan. 1, 2016 - Dec.

31, 2016
\$7,786 per month
BB. Jan. 1, 2017 - Dec.
31, 2017
\$7,485 per month
CC. Jan. 1, 2018 - Dec.
31, 2018
\$7,025 per month
DD. Jan. 1, 2019 - Dec.
31, 2019
\$7,285 per month
EE. Jan. 1, 2020 - Dec.
31, 2020
\$7,480 per month
FF. Jan. 1, 2021 -

\$7,590 per month
[8.200.510.13 NMAC - Rp,
8.200.510.13 NMAC, 7/1/2015;
A/E, 1/1/2016; A/E, 3/1/2017;
A/E, 8/30/2018; A/E, 4/11/2019;
A, 7/30/2019; A/E, 8/11/2020; A,
12/15/2020; A/E, 4/1/2021]

8.200.510.14 [RESOURCE-AMOUNTS FOR SUPPLEMENTAL SECURITY INCOME (SSI) RELATED-MEDICARE SAVINGS PROGRAMS (QMB, SLIMB/QH-AND QD): The following resource-standards are inclusive of the \$1,500-per-person burial exclusion.

A. Individual:
Jan. 1, 2020
\$9,360
B. Couple:
Jan. 1, 2020

\$14,800] **[RESERVED]**
[8.200.510.14 NMAC - Rp,
8.200.510.14 NMAC, 7/1/2015;
A/E, 8/30/2018; A/E, 4/11/2019;
A, 7/30/2019; A/E, 8/11/2020; A,
12/15/2020; Repealed, 4/1/2021]

8.200.510.15 EXCESS HOME EQUITY AMOUNT FOR LONG-TERM CARE SERVICES:
A. Jan. 2020
\$595,000
B. Jan. 2019
\$585,000
C. Jan. 2018
\$572,000
D. Oct. 2017
\$560,000
E. Jan. 2017
\$840,000

F. Jan. 2016
\$828,000
G. Jan. 2015
\$828,000
H. Jan. 2014
\$814,000
I. Jan. 2013
\$802,000
J. Jan. 2012
\$786,000
K. Jan. 2011
\$758,000
L. Jan. 2010
\$750,000
A. Jan. 2021
\$603,000
B. Jan. 2020
\$595,000
C. Jan. 2019
\$585,000
D. Jan. 2018
\$572,000
E. Oct. 2017
\$560,000
F. Jan. 2017
\$840,000
G. Jan. 2016
\$828,000
H. Jan. 2015
\$828,000
I. Jan. 2014
\$814,000
J. Jan. 2013
\$802,000
K. Jan. 2012
\$786,000
L. Jan. 2011
\$758,000
M. Jan. 2010
\$750,000

[8.200.510.15 NMAC - Rp,
8.200.510.15 NMAC, 7/1/2015; A/E,
1/1/2016; A/E, 3/1/2017; A, 3/1/18;
A/E, 8/30/2018; A/E, 4/11/2019;
A, 7/30/2019; A/E, 8/11/2020; A,
12/15/2020; A/E, 4/1/2021]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.520 NMAC, Sections 11, 12, 3, 15, 16 and 20, effective 4/1/2021.

8.200.520.11 FEDERAL POVERTY INCOME GUIDELINES:

A.	One hundred percent federal poverty limits (FPL): Size of budget group	FPL per month
1		
		[\$1,064] <u>\$1,074*</u>
2		[\$1,437] <u>\$1,452*</u>
3		[\$1,810] <u>\$1,830</u>
4		[\$2,184] <u>\$2,209</u>
5		[\$2,557] <u>\$2,587</u>
6		[\$2,930] <u>\$2,965</u>
7		[\$3,304] <u>\$3,344</u>
8		[\$3,677] <u>\$3,722</u>

Add [~~\$373~~]
\$378 for each additional person in the budget group.
[*Use only these two standards for the qualified medicare beneficiary (QMB) program.]
*FPL must be below 100% for an individual or couple for qualified medicare beneficiary (QMB) program.

B. One hundred twenty percent FPL: This income level is used only in the determination of the maximum income limit for specified low income medicare beneficiaries (SLIMB) applicants or eligible recipients.

Applicant or eligible recipient
Amount
1 Individual
At least [~~\$1,064~~] \$1,074 per month but no more than [~~\$1,276~~] \$1,288 per month.

2 Couple
At least [~~\$1,437~~] \$1,452 per month but no more than [~~\$1,724~~] \$1,742 per month.

For purposes of this eligibility calculation, "couple" means an applicant couple or an applicant with an ineligible spouse when income is deemed.

C. One hundred thirty-three percent FPL:

Size of budget group

	FPL per month
1	[<u>\$1,415</u>] <u>\$1,428</u>
2	[<u>\$1,911</u>] <u>\$1,931</u>
3	[<u>\$2,408</u>] <u>\$2,434</u>
4	[<u>\$2,904</u>] <u>\$2,938</u>
5	[<u>\$3,401</u>] <u>\$3,441</u>
6	[<u>\$3,897</u>] <u>\$3,944</u>
7	[<u>\$4,394</u>] <u>\$4,447</u>
8	[<u>\$4,890</u>] <u>\$4,950</u>
	Add [<u>\$496</u>] <u>\$503</u>

for each additional person in the budget group.

D. One hundred thirty-five percent FPL: This income level is used only in the determination of the maximum income limit for a qualified individual 1 (QI1) applicant or eligible recipient. For purposes of this eligibility calculation, “couple” means an applicant couple or an applicant with an ineligible spouse when income is deemed. The following income levels apply:

Applicant or eligible recipient	Amount
Individual	At least [<u>\$1,276</u>] <u>\$1,288</u> per month but no more than [<u>\$1,436</u>] <u>\$1,449</u> per month.
Couple	At least [<u>\$1,724</u>] <u>\$1,742</u> per month but no more than [<u>\$1,940</u>] <u>\$1,960</u> per month.

E. One hundred eighty-five percent FPL:

Size of budget group

	FPL per month
1	[<u>\$1,968</u>] <u>\$1,986</u>
2	[<u>\$2,658</u>] <u>\$2,686</u>
3	[<u>\$3,349</u>] <u>\$3,386</u>
4	[<u>\$4,040</u>] <u>\$4,086</u>
5	[<u>\$4,730</u>] <u>\$4,786</u>
6	[<u>\$5,421</u>] <u>\$5,486</u>

7	[<u>\$6,112</u>] <u>\$6,186</u>
8	[<u>\$6,802</u>] <u>\$6,886</u>
	Add [<u>\$690</u>] <u>\$700</u>
for each additional person in the budget group.	
F. Two hundred percent FPL:	
Size of budget group	
	FPL per month
1	[<u>\$2,127</u>] <u>\$2,147</u>
2	[<u>\$2,874</u>] <u>\$2,904</u>
3	[<u>\$3,620</u>] <u>\$3,660</u>
4	[<u>\$4,367</u>] <u>\$4,417</u>
5	[<u>\$5,114</u>] <u>\$5,174</u>
6	[<u>\$5,860</u>] <u>\$5,930</u>
7	[<u>\$6,607</u>] <u>\$6,687</u>
8	[<u>\$7,354</u>] <u>\$7,444</u>
	Add [<u>\$747</u>] <u>\$757</u>

for each additional person in the budget group.

G. Two hundred thirty-five percent FPL:

Size of budget group

	FPL per month
1	[<u>\$2,499</u>] <u>\$2,523</u>
2	[<u>\$3,377</u>] <u>\$3,412</u>
3	[<u>\$4,254</u>] <u>\$4,301</u>
4	[<u>\$5,131</u>] <u>\$5,190</u>
5	[<u>\$6,009</u>] <u>\$6,079</u>
6	[<u>\$6,886</u>] <u>\$6,968</u>
7	[<u>\$7,763</u>] <u>\$7,857</u>
8	[<u>\$8,641</u>] <u>\$8,746</u>
	Add [<u>\$878</u>] <u>\$889</u>

for each additional person in the budget group.

H. Two hundred fifty percent FPL:

Size of budget group

	FPL per month
1	[<u>\$2,659</u>] <u>\$2,684</u>

2	[<u>\$3,592</u>] <u>\$3,630</u>
3	[<u>\$4,525</u>] <u>\$4,575</u>
4	[<u>\$5,459</u>] <u>\$5,521</u>
5	[<u>\$6,392</u>] <u>\$6,467</u>
6	[<u>\$7,325</u>] <u>\$7,413</u>
7	[<u>\$8,259</u>] <u>\$8,359</u>
8	[<u>\$9,192</u>] <u>\$9,305</u>
	Add [<u>\$933</u>] <u>\$946</u>
for each additional person in the budget group.	
[8.200.520.11 NMAC - Rp, 8.200.520.11 NMAC, 8/28/2015; A/E, 4/1/2016; A/E, 9/14/2017; A, 2/1/2018; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019, A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021]	

8.200.520.12 COST OF LIVING ADJUSTMENT (COLA) DISREGARD COMPUTATION:

The countable social security benefit without the COLA is calculated using the COLA increase table as follows:

- A.** divide the current gross social security benefit by the COLA increase in the most current year; the result is the social security benefit before the COLA increase;
- B.** divide the result from Subsection A above by the COLA increase from the previous period or year; the result is the social security benefit before the increase for that period or year; and
- C.** repeat Subsection B above for each year, through the year that the applicant or eligible recipient received both social security benefits and supplemental security income (SSI); the final result is the countable social security benefit.

(Continued Next Page)

COLA Increase and disregard table			
	Period and year	COLA increase	= benefit before
1	<u>2021 Jan - Dec</u>	<u>1.3</u>	<u>Jan 21</u>
[1] 2	2020 Jan - Dec	1.6	Jan 20
[2] 3	2019 Jan - Dec	2.8	Jan 19
[3] 4	2018 Jan - Dec	2.0	Jan 18
[4] 5	2017 Jan - Dec	0.3	Jan 17
[5] 6	2016 Jan - Dec	0	Jan 16
[6] 7	2015 Jan - Dec	1.017	Jan 15
[7] 8	2014 Jan - Dec	1.015	Jan 14
[8] 9	2013 Jan - Dec	1.017	Jan 13
[9] 10	2012 Jan - Dec	1.037	Jan 12
[10] 11	2011 Jan - Dec	0	Jan 11
[11] 12	2010 Jan - Dec	1	Jan 10
[12] 13	2009 Jan - Dec	1	Jan 09
[13] 14	2008 Jan - Dec	1.058	Jan 08
[14] 15	2007 Jan - Dec	1.023	Jan 07
[15] 16	2006 Jan - Dec	1.033	Jan 06
[16] 17	2005 Jan - Dec	1.041	Jan 05
[17] 18	2004 Jan - Dec	1.027	Jan 04
[18] 19	2003 Jan - Dec	1.021	Jan 03
[19] 20	2002 Jan - Dec	1.014	Jan 02
[20] 21	2001 Jan - Dec	1.026	Jan 01
[21] 22	2000 Jan - Dec	1.035	Jan 00
[22] 23	1999 Jan - Dec	1.025	Jan 99
[23] 24	1998 Jan - Dec	1.013	Jan 98
[24] 25	1997 Jan - Dec	1.021	Jan 97
[25] 26	1996 Jan - Dec	1.029	Jan 96
[26] 27	1995 Jan - Dec	1.026	Jan 95
[27] 28	1994 Jan - Dec	1.028	Jan 94
[28] 29	1993 Jan - Dec	1.026	Jan 93
[29] 30	1992 Jan - Dec	1.03	Jan 92
[30] 31	1991 Jan - Dec	1.037	Jan 91
[31] 32	1990 Jan - Dec	1.054	Jan 90
[32] 33	1989 Jan - Dec	1.047	Jan 89

[33] 34	1988 Jan - Dec	1.04	Jan 88
[34] 35	1987 Jan - Dec	1.042	Jan 87
[35] 36	1986 Jan - Dec	1.013	Jan 86
[36] 37	1985 Jan - Dec	1.031	Jan 85
[37] 38	1984 Jan - Dec	1.035	Jan 84
[38] 39	1982 Jul - 1983 Dec	1.035	Jul 82
[39] 40	1981 Jul - 1982 Jun	1.074	Jul 81
[40] 41	1980 Jul - 1981 Jun	1.112	Jul 80
[41] 42	1979 Jul - 1980 Jun	1.143	Jul 79
[42] 43	1978 Jul - 1979 Jun	1.099	Jul 78
[43] 44	1977 Jul - 1978 Jun	1.065	Jul 77
[44] 45	1977 Apr - 1977 Jun	1.059	Apr 77

[8.200.520.12 NMAC - Rp, 8.200.520.12 NMAC, 8/28/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021]

8.200.520.13 FEDERAL BENEFIT RATES (FBR) AND VALUE OF ONE-THIRD REDUCTION (VTR):

Year	Individual FBR	Institution FBR	Individual VTR	Couple FBR	Institution FBR	Couple VTR
1/89 to 1/90	\$368	\$30	\$122.66	\$553	\$60	\$184.33
1/90 to 1/91	\$386	\$30	\$128.66	\$579	\$60	\$193.00
1/91 to 1/92	\$407	\$30	\$135.66	\$610	\$60	\$203.33
1/92 to 1/93	\$422	\$30	\$140.66	\$633	\$60	\$211.00
1/93 to 1/94	\$434	\$30	\$144.66	\$652	\$60	\$217.33
1/94 to 1/95	\$446	\$30	\$148.66	\$669	\$60	\$223.00
1/95 to 1/96	\$458	\$30	\$152.66	\$687	\$60	\$229.00
1/96 to 1/97	\$470	\$30	\$156.66	\$705	\$60	\$235.00
1/97 to 1/98	\$484	\$30	\$161.33	\$726	\$60	\$242.00
1/98 to 1/99	\$494	\$30	\$164.66	\$741	\$60	\$247.00
1/99 to 1/00	\$500	\$30	\$166.66	\$751	\$60	\$250.33
1/00 to 1/01	\$512	\$30	\$170.66	\$769	\$60	\$256.33
1/01 to 1/02	\$530	\$30	\$176.66	\$796	\$60	\$265.33
1/02 to 1/03	\$545	\$30	\$181.66	\$817	\$60	\$272.33
1/03 to 1/04	\$552	\$30	\$184.00	\$829	\$60	\$276.33
1/04 to 1/05	\$564	\$30	\$188	\$846	\$60	\$282.00
1/05 to 1/06	\$579	\$30	\$193	\$869	\$60	\$289.66
1/06 to 1/07	\$603	\$30	\$201	\$904	\$60	\$301.33
1/07 to 1/08	\$623	\$30	\$207.66	\$934	\$60	\$311.33
1/08 to 1/09	\$637	\$30	\$212.33	\$956	\$60	\$318.66
1/09 to 1/10	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/10 to 1/11	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/11 to 1/12	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/12 to 1/13	\$698	\$30	\$232.66	\$1,048	\$60	\$349.33
1/13 to 1/14	\$710	\$30	\$237	\$1,066	\$60	\$355
1/14 to 1/15	\$721	\$30	\$240	\$1082	\$60	\$361

1/15 to 12/15	\$733	\$30	\$244	\$1,100	\$60	\$367
1/16 to 12/16	\$733	\$30	\$244	\$1,100	\$60	\$367
1/17 to 12/17	\$735	\$30	\$245	\$1,103	\$60	\$368
1/18 to 12/18	\$750	\$30	\$250	\$1,125	\$60	\$375
1/19 to 12/19	\$771	\$30	\$257	\$1,157	\$60	\$386
1/20 to 12/20	\$783	\$30	\$261	\$1,175	\$60	\$392
1/21 to 12/21	\$794	\$30	\$264.66	\$1,191	\$60	\$397

A. Ineligible child deeming allocation is [~~\$392~~] \$397.

B. Part B premium is [~~\$144.60~~] \$148.50 per month.

C. VTR (value of one third reduction) is used when an individual or a couple lives in the household of another and receives food and shelter from the household or when the individual or the couple is living on his or her own household but receiving support and maintenance from others.

D. The SSI resource standard is \$2000 for an individual and \$3000 for a couple.

[8.200.520.13 NMAC - Rp, 8.200.520.13 NMAC, 8/28/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021]

8.200.520.15 SUPPLEMENTAL SECURITY INCOME (SSI) LIVING ARRANGEMENTS:

A. Individual living in his or her own household who own or rent:

Payment amount: [~~\$783~~] \$794 Individual
 [~~\$1,175~~] \$1,191 Couple

B. Individual receiving support and maintenance payments: For an individual or couple living in his or her own household, but receiving support and maintenance from others (such as food, shelter or clothing), subtract the value of one third reduction (VTR).

Payment amount: [~~\$783~~] \$794 - [~~\$261~~] \$264.66 = [~~\$522~~] \$529.34 Individual
 [~~\$1,175~~] \$1,191 - [~~\$392~~] \$397 = [~~\$783~~] \$794 Couple

C. Individual or couple living household of another: For an individual or couple living in another person's household and not contributing his or her pro-rata share of household expenses, subtract the VTR.

Payment amount: [~~\$783~~] \$794 - [~~\$261~~] \$264.66 = [~~\$522~~] \$529.34 Individual
 [~~\$1,175~~] \$1,191 - [~~\$392~~] \$397 = [~~\$783~~] \$794 Couple

D. Child living in home with his or her parent:

Payment amount: [~~\$783~~] \$794

E. Individual in institution:

Payment amount: \$30.00

[8.200.520.15 NMAC - Rp, 8.200.520.15 NMAC, 8/28/2015; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021]

8.200.520.16 MAXIMUM COUNTABLE INCOME FOR INSTITUTIONAL CARE MEDICAID AND HOME AND COMMUNITY BASED WAIVER SERVICES (HCBS) CATEGORIES: Effective [~~January 1, 2020~~] January 1, 2021, the maximum countable monthly income standard for institutional care medicaid and the home and community based waiver categories is [~~\$2,349~~] \$2,382.

[8.200.520.16 NMAC - Rp, 8.200.520.16 NMAC, 8/28/2015; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021]

8.200.520.20 COVERED QUARTER INCOME STANDARD:

Date	Calendar Quarter Amount
<u>Jan. 2021 – Dec. 2021</u>	<u>\$1,470 per calendar quarter</u>
Jan. 2020 - Dec. 2020	\$1,410 per calendar quarter
Jan. 2019 - Dec. 2019	\$1,360 per calendar quarter
Jan. 2018 - Dec. 2018	\$1,320 per calendar quarter
Jan. 2017 - Dec. 2017	\$1,300 per calendar quarter
Jan. 2016 - Dec. 2016	\$1,260 per calendar quarter
Jan. 2015 - Dec. 2015	\$1,220 per calendar quarter
Jan. 2014 - Dec. 2014	\$1,200 per calendar quarter
Jan. 2013 - Dec. 2013	\$1,160 per calendar quarter
Jan. 2012 - Dec. 2012	\$1,130 per calendar quarter
Jan. 2011 - Dec. 2011	\$1,120 per calendar quarter

Jan. 2010 - Dec. 2010	\$1,120 per calendar quarter
Jan. 2009 - Dec. 2009	\$1,090 per calendar quarter
Jan. 2008 - Dec. 2008	\$1,050 per calendar quarter
Jan. 2007 - Dec. 2007	\$1,000 per calendar quarter
Jan. 2006 - Dec. 2006	\$970 per calendar quarter
Jan. 2005 - Dec. 2005	\$920 per calendar quarter
Jan. 2004 - Dec. 2004	\$900 per calendar quarter
Jan. 2003 - Dec. 2003	\$890 per calendar quarter
Jan. 2002 - Dec. 2002	\$870 per calendar quarter

[8.200.520.20 NMAC - Rp, 8.200.520.20 NMAC, 8/28/2015; A/E, 1/1/2016; A/E, 03/01/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.291.430 NMAC, Section 10, effective 4/1/2021.

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

HOUSEHOLD SIZE	100%	133%	138%	190%	240%	250%	300%
1	[\$1,064] \$1,074	[\$1,415] \$1,428	[\$1,468] \$1,482	[\$2,021] \$2,040	[\$2,552] \$2,576	[\$2,659] \$2,684	[\$3,190] \$3,220
2	[\$1,437] \$1,452	[\$1,911] \$1,931	[\$1,983] \$2,004	[\$2,730] \$2,759	[\$3,449] \$3,484	[\$3,592] \$3,630	[\$4,311] \$4,355
3	[\$1,810] \$1,830	[\$2,408] \$2,434	[\$2,498] \$2,526	[\$3,439] \$3,477	[\$4,344] \$4,392	[\$4,525] \$4,575	[\$5,430] \$5,490
4	[\$2,184] \$2,209	[\$2,904] \$2,938	[\$3,013] \$3,048	[\$4,149] \$4,196	[\$5,240] \$5,300	[\$5,459] \$5,521	[\$6,550] \$6,625
5	[\$2,557] \$2,587	[\$3,401] \$3,441	[\$3,529] \$3,570	[\$4,858] \$4,915	[\$6,137] \$6,208	[\$6,392] \$6,467	[\$7,671] \$7,760
6	[\$2,930] \$2,965	[\$3,897] \$3,944	[\$4,044] \$4,092	[\$5,567] \$5,634	[\$7,032] \$7,116	[\$7,325] \$7,413	[\$8,790] \$8,895
7	[\$3,304] \$3,344	[\$4,394] \$4,447	[\$4,559] \$4,614	[\$6,277] \$6,353	[\$7,928] \$8,024	[\$8,259] \$8,359	[\$9,910] \$10,030
8	[\$3,677] \$3,722	[\$4,890] \$4,950	[\$5,074] \$5,136	[\$6,986] \$7,072	[\$8,825] \$8,932	[\$9,192] \$9,305	[\$11,031] \$11,165
+1	[\$373] \$378	[\$496] \$503	[\$515] \$522	[\$709] \$719	[\$897] \$908	[\$933] \$946	[\$1,121] \$1,135

[8.291.430.10 NMAC - Rp, 8.291.430.10 NMAC, 11/16/2015; A/E, 4/1/2016; A/E, 9/14/2017; A, 2/1/2018; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A, 12/1/2020; A/E, 4/1/2021]

(Continued Next Page)

**OSTEOPATHIC
MEDICINE, BOARD OF**

This is an amendment to 16.17.2 NMAC, Sections 3, 7, 8 and 15 effective 05/16/2021.

16.17.2.3 STATUTORY AUTHORITY: These rules of practice and procedure govern the practice of osteopathic medicine in New Mexico and are promulgated pursuant to and in accordance with the Osteopathic Medicine Act, Sections 61-10- 5, 61-10-6, 61-10-6.1, 61-10-11.1, 61-10-12, 61-10-15.1 NMSA 1978 and Sections 12-12A-1 through 12-12A-13 NMSA 1978. [16.17.2.3 NMAC - Rp, 6/11/2018; A, 5/16/2021]

16.17.2.7 DEFINITIONS: Categories of licenses. Individuals holding one of the following categories of medical license are eligible to practice medicine and surgery in New Mexico.

A. Osteopathic medical: An unrestricted license to practice osteopathic medicine and surgery.

B. Telemedicine: A limited medical license that allows an osteopathic physician located outside New Mexico to practice osteopathic medicine on patients located in New Mexico.

C. Post-graduate: A limited training license issued by the board to osteopathic physicians who are enrolled in an AOA or ACGME [or AACOM] approved training program.

D. Temporary: A limited license that allows a osteopathic physician to practice osteopathic medicine for a limited time up to three months from the date of issuance that meets certain specific conditions in accordance with Osteopathic Medicine Act, Section 61-10-7 NMSA 1978.

E. Federal emergency: An unrestricted license to practice osteopathic medicine and surgery issued without receipt of all documentation required for an osteopathic medical license because

of a major disaster. [16.17.2.7 NMAC - Rp, 6/11/2018; A, 5/16/2021]

16.17.2.8 FEES: All fees are non-refundable

A.	Initial application for licensure:	
(1)	Osteopathic physician	\$400.00
(2)	Post graduate osteopathic physician	\$50.00
(3)	Osteopathic physician assistants	\$150.00
(4)	Telemedicine	\$100.00
(5)	Temporary, teaching, research, specialized diagnostic and treatment	\$100.00
(6)	Federal emergency	\$ 0.00
B.	Renewal application fee for licensure:	
(1)	Triennial for osteopathic physician	\$600.00
(2)	Biennial for osteopathic physician assistant	\$150.00
(3)	Biennial for osteopathic physicians supervising pharmacist clinicians	\$100.00
(4)	Annual for telemedicine	\$100.00

C. Late Fees:

(1)	Osteopathic physician renewal between July 2nd & September 29th the year of the renewal	\$200.00
(2)	Osteopathic physician renewal after September 29th the year of the renewal	\$400.00
(3)	Osteopathic physician assistant renewal after July 1st the year of the biennial renewal	\$25.00
(4)	Reinstatement of osteopathic physician license	\$500.00

(5)
Reinstatement of osteopathic physician assistant license
\$500.00

(6)
Osteopathic physicians supervising pharmacist clinician renewal after July 1st the year of the renewal
\$25.00

D. Miscellaneous Fees:

(1)	Verification of license	\$25.00
(2)	Change of supervising physician fee for physicians supervising pharmacist clinicians	\$25.00
(3)	List of licensees	\$55.00
(4)	Duplicate license	\$25.00
(5)	Copy fee per page	\$0.25

(6)
Osteopathic physician on inactive status
\$75.00

(7)
Osteopathic physician assistant license on inactive status
\$75.00

(8)
Registration of an osteopathic physician assistant with a new supervising osteopathic physician
\$25.00
[16.17.2.8 NMAC - N, 6/11/2018; A, 5/16/2021]

16.17.2.15 POSTGRADUATE TRAINING LICENSE: A

postgraduate training license is required for all interns, residents, and fellows enrolled in board approved training programs within the state.

A. Prerequisites for licensure. Each applicant for a postgraduate training license must possess the following qualifications:

(1) graduated from a college of osteopathic medicine accredited by the American osteopathic association;

(2) passed step 1 [and 2] of USMLE or COMLEX-USA; and

(3) be of good moral character.

B. Required documentation. Each applicant shall submit the required fee as specified in 16.17.2.8 NMAC, a copy of the official examination results, and a completed application.

C. Licensure process. Upon receipt of a completed signed application and fee, a member or agent of the board will review the application and may approve the license. The applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board.

D. License expiration. Postgraduate training licenses are valid for no longer than one year, but may be renewed for a period not to exceed eight years or completion of the residency, whichever is shorter, and as long as the license holder is enrolled in a board approved training program. Postgraduate training licenses may be renewed prior to expiration. [16.17.2.15 NMAC - N, 6/11/2018; A, 5/16/2021]

PUBLIC REGULATION COMMISSION

The New Mexico Public Regulation Commission, approved at its 4/14/2021 open meeting, to repeal its rule 17.9.572 NMAC - Renewable Energy for Electric Utilities (filed 5/10/2013) and replace it with 17.9.572 NMAC - Renewable Energy for Electric Utilities, effective 5/4/2021.

PUBLIC REGULATION COMMISSION

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 9 ELECTRIC SERVICES
PART 572 RENEWABLE ENERGY FOR ELECTRIC UTILITIES**

17.9.572.1 ISSUING AGENCY: New Mexico Public Regulation Commission. [17.9.572.1 NMAC - Rp. 17.9.572.1 NMAC, 5/4/2021]

17.9.572.2 SCOPE: This rule applies to all electric investor-owned public utilities under the commission’s jurisdiction. [17.9.572.2 NMAC - Rp, 17.9.572.2 NMAC, 5/4/2021]

17.9.572.3 STATUTORY AUTHORITY: Sections 62-13-13.1, 62-16-3, 62-16-4, 62-16-5, 62-16-6, 62-16-7, 62-16-8 and 62-16-9 NMSA 1978. [17.9.572.3 NMAC - Rp, 17.9.572.3 NMAC, 5/4/2021]

17.9.572.4 DURATION: Permanent. [17.9.572.4 NMAC - Rp, 17.9.572.4 NMAC, 5/4/2021]

17.9.572.5 EFFECTIVE DATE: May 4, 2021, unless a later date is cited at the end of a section. [17.9.572.5 NMAC - Rp, 17.9.572.5 NMAC, 5/4/2021]

17.9.572.6 OBJECTIVE: The purpose of this rule is to implement the Renewable Energy Act Section 62-16-1, et seq. NMSA 1978 (2019), and to bring significant economic development and environmental benefits to New Mexico. [17.9.572.6 NMAC - Rp, 17.9.572.6 NMAC, 5/4/2021]

17.9.572.7 DEFINITIONS: Unless otherwise specified, as used in this rule:

- A. Definitions beginning with “A”:** [RESERVED]
- B. Definitions beginning with “B”:** [RESERVED]
- C. Definitions beginning with “C”:** [RESERVED]
- D. Definitions beginning with “D”:** [RESERVED]
- E. Definitions beginning with “E”:** **emissions** means all emissions regulated by state or federal authorities, including but not limited to all criteria pollutants and hazardous air pollutants; methane; mercury; and carbon dioxide (CO2).
- F. Definitions beginning with “F”:** **financial incentive** means money or additional earnings that a public utility is authorized to collect from ratepayers by the commission or capital investment opportunities to encourage certain behaviors or actions that would not otherwise have occurred in order to further the outcomes described Section 62-16-4 NMSA 1978 (2019). The financial incentive, or monetary benefit, motivates certain behaviors or actions.
- G. Definitions beginning with “G”:** **greenhouse gas emissions** means emissions of gases including carbon dioxide, methane, nitrous oxide, fluorinated gases, or other gases that trap heat in the atmosphere.
- H. Definitions beginning with “H”:** [RESERVED]
- I. Definitions beginning with “I”:** **IRP** means integrated resource plan.
- J. Definitions beginning with “J”:** [RESERVED]
- K. Definitions beginning with “K”:** [RESERVED]
- L. Definitions beginning with “L”:** [RESERVED]
- M. Definitions beginning with “M”:** [RESERVED]
- N. Definitions beginning with “N”:** [RESERVED]
- O. Definitions beginning with “O”:** [RESERVED]
- P. Definitions beginning with “P”:**
 - (1) plan year** means the calendar year for which approval is being sought;

(2) **plan year total retail energy sales** means retail energy sales in kWh projected for the plan year adjusted for projected energy efficiency reductions based on approved energy efficiency and load management programs in effect at the time of the filing, less energy sales to voluntary program participants under Section 62-16-7 NMSA 1978;

(3) **political subdivision of the state** means a division of the state made by proper authorities thereof, acting within their constitutional powers, for purpose of carrying out a portion of those functions of the state which by long usage and inherent necessities of government have always been regarded as public;

(4) **procure or procurement** means a competitive process conducted by an investor-owned electric utility for soliciting and evaluating purchased power, facility self-build or facility build-transfer options as proposals for any new, additional or amended renewable energy resource, including but not limited to, instructions to bidders, bid specifications, conditions, forms or other requirements included in a request for proposals and all methods, practices and assumptions used by an investor-owned electric utility to model or evaluate such proposals or to negotiate with bidders, in order to generate or purchase any renewable energy resource or to commit to generate or purchase any renewable energy resource;

(5) **public utility** means investor-owned electric utility certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act and does not include rural electric cooperatives or municipalities.

Q. Definitions

beginning with "Q.":
[RESERVED]

R. Definitions

beginning with "R.":

(1) **reasonable cost threshold (RCT)** means an average annual levelized cost of \$60.00 per megawatt-hour at the point of interconnection of the renewable

energy resource with the transmission systems, adjusted for inflation after 2020;

(2) **renewable energy** means electric energy generated by use of renewable energy resources and delivered to a public utility;

(3) **renewable energy certificate (REC)** means a certificate or other record, in a format approved by the commission, that represents all the environmental attributes from one megawatt-hour of electricity generated from renewable energy delivered to a public utility and assigned to its New Mexico customers;

(4) **renewable energy resource** means the following energy resources with or without energy storage:

(a) solar, wind, and geothermal;

(b) hydropower facilities brought in service on or after July 1, 2007;

(c) biomass resources, limited to agriculture of animal waste, small diameter timber, not to exceed eight inches, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico: provided that these resources are from facilities certified by the energy, minerals and natural resources department to:

(i) be of appropriate scale to have sustainable feedstock in the near vicinity;

(ii) have zero life cycle carbon emissions; and

(iii) meet scientifically determined restoration, sustainability and soil nutrient principles;

(d) fuel cells that do not use fossil fuels to create electricity; and

(e) landfill gas and anaerobically digested waste biogas.

(5) **renewable portfolio standard (RPS)** means the minimum percentage of retail sales

of electricity by a public utility to electric consumers in New Mexico that is required by the Renewable Energy Act to be from renewable energy.

(6) **renewable purchased power agreement** means an agreement that binds an entity generating power from renewable energy resources to provide power at a specified price, for a specified term, and binds the purchaser to that price.

S. Definitions

beginning with "S": [RESERVED]

T. Definitions

beginning with "T": [RESERVED]

U. Definitions

beginning with "U": [RESERVED]

V. Definitions

beginning with "V": [RESERVED]

W. Definitions

beginning with "W": WREGIS

means the western renewable energy generation information system.

X. Definitions

beginning with "X": [RESERVED]

Y. Definitions

beginning with "Y": [RESERVED]

Z. Definitions

beginning with "Z":

(1) **zero**

carbon resource means an electricity generation resource that emits no carbon dioxide into the atmosphere, or that reduces methane emitted into the atmosphere in an amount equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere, as a result of electricity production;

(2) **zero**

carbon resource standard means providing New Mexico public utility customers with electricity generated from one hundred percent zero carbon resources.

[17.9.572.7 NMAC - Rp, 17.9.572.7 NMAC, 5/4/2021]

17.9.572.8 LIBERAL

CONSTRUCTION: This rule shall be liberally construed to carry out its intended purposes. If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, the remainder of the rule, or the application of such provision to other persons or circumstances, shall

not be affected thereby.

[17.9.572.8 NMAC - Rp, 17.9.572.8 NMAC, 5/4/2021]

17.9.572.9 RELATIONSHIP TO OTHER COMMISSION

RULES: Unless otherwise specified, this rule does not supersede any other rule of the commission but supplements rules applying to public utilities.

[17.9.572.9 NMAC - Rp, 17.9.572.9 NMAC, 5/4/2021]

17.9.572.10 RENEWABLE PORTFOLIO STANDARD:

A. Each public utility must develop an annual Renewable Energy Act plan to comply with the renewable portfolio standard during the plan year. The plan shall demonstrate reasonable and consistent progress toward meeting the renewable portfolio standard to be effective following the end of the plan year. Renewable energy resources that are in a public utility's electric energy supply portfolio on July 1, 2004 shall be counted in determining compliance with this rule. However, renewable energy sold to customers through a voluntary renewable energy program tariff approved by the commission shall not be counted in determining compliance with this rule. Other factors being equal, preference shall be given to renewable energy generated in New Mexico.

B. Renewable portfolio standards: For public utilities other than rural electric cooperatives and municipalities, requirements of the renewable portfolio standard are:

(1) no later than January 1, 2015, renewable energy shall comprise no less than fifteen percent of each public utility's total retail sales to New Mexico customers;

(2) no later than January 1, 2020, renewable energy shall comprise no less than twenty percent of each public total retail sales to New Mexico customers;

(3) no later than January 1, 2025, renewable energy shall comprise no less than

forty percent of each public utility's total retail sales to New Mexico customers;

(4) no later than January 1, 2030, renewable energy shall comprise no less than fifty percent of each public utility's total retail sales to New Mexico customers;

(5) no later than January 1, 2040, renewable energy resources shall supply no less than eighty percent of all retail sales of electricity in New Mexico, provided that compliance with this standard until December 31, 2047 shall not require the public utility to displace zero carbon resources in the utility's generation portfolio as of June 14, 2019; and

(6) no later than January 1, 2045, zero carbon resources shall supply one hundred percent of all retail sales of electricity in New Mexico. Reasonable and consistent progress shall be made over time toward this requirement.

C. Demonstration of compliance: In accordance with Section 62-16-5 NMSA 1978 (2019):

(1) compliance with the renewable portfolio standard is demonstrated by the retirement of renewable energy certificates, provided that the associated renewable energy is delivered to the public utility and assigned to the public utility's New Mexico customers; and

(2) a public utility shall not retire renewable energy certificates associated with renewable energy from generation resources for which it has traded, sold or transferred the associated renewable energy certificate for purposes of compliance with the renewable portfolio standard.

[17.9.572.10 NMAC - Rp, 17.9.572.10 NMAC, 5/4/2021]

17.9.572.11 COMMISSION ADMINISTRATION OF RPS AND ZERO CARBON STANDARDS:

After consultation with the department of environment, the commission may not approve a public utility's annual Renewable Energy Act

plan that result in material increases to greenhouse gas emissions from entities not subject to commission oversight and regulation.

[17.9.572.11 NMAC - Rp, 17.9.572.11 NMAC, 5/4/2021]

17.9.572.12 REASONABLE COST THRESHOLD:

A. The reasonable cost threshold is a customer protection mechanism that limits the customer bill impact resulting from annual Renewable Energy Act plans.

B. The reasonable cost threshold in any plan year is an annual average levelized cost of \$60.00 per megawatt-hour at the point of interconnection of the renewable energy resource with the transmission system, adjusted for inflation starting in 2021 by the amount of the cumulative increase change in the consumer price index, urban, all items, published by the bureau of labor statistics between January 1 of the year prior to the procurement plan year and January 1 of the procurement plan year. Each public utility shall include in its annual Renewable Energy Act plan a reasonable cost threshold analysis by procurement, existing or proposed, for the plan year for which it seeks commission approval. This analysis should show how each procurement compares for that plan year with the inflation adjusted reasonable cost threshold.

C. If, in any given year, a public utility determines that the average annual levelized cost of renewable energy that would need to be procured or generated for purposes of compliance with the renewable portfolio standard would be greater than the reasonable cost threshold, the public utility shall not be required to incur that excess cost; provided that the existence of this condition excusing performance under the renewable portfolio standard in any given year shall not operate to delay compliance with the renewable portfolio standard in subsequent years. The provisions of this rule do preclude a public utility from accepting a project with a cost that would exceed the reasonable cost

threshold. When a public utility can generate or procure renewable energy resources at or below the reasonable cost threshold, it shall be required to do so to the extent necessary to meet the applicable renewable portfolio standard. To the extent a procurement is greater than the reasonable cost threshold and results in excess costs, the public utility shall explain in detail why the public utility cannot procure renewable energy resources at a cost less than or equal to the reasonable cost threshold along with a demonstration of the public utility's efforts to obtain to procure renewable energy resources at or below the reasonable cost threshold.

D. A public utility that believes its procurement will exceed the reasonable cost threshold may file with the commission a request for waiver of the renewable portfolio standard for the applicable plan year. The waiver request shall:

(1) explain in detail why the public utility cannot procure resources at a cost less than the reasonable cost threshold;

(2) include an explanation and evidence of all efforts the public utility undertook to procure resources at a cost within the reasonable cost threshold; and

(3) be deemed granted if not acted upon within 60 days of the date the waiver request was filed.

[17.9.572.12 NMAC - Rp,
17.9.572.12 NMAC, 5/4/2021]

17.9.572.13 RESOURCE SELECTION: The utility shall select resources to satisfy the renewable portfolio standard through a competitive resource selection process that includes opportunities for bidders to propose purchased power, facility self-build or facility build-transfer options. The utility shall determine all commercially available resources available through a competitive procurement process that are necessary to make reasonable and consistent progress toward the renewable portfolio standards and the zero-carbon standard. The utility shall, at a minimum, use the net

present value methodology to identify the costs of a proposed new renewable energy resource necessary to satisfy the renewable portfolio standard.

The utility may propose additional methodologies to identify the costs of a proposed new renewable energy resource.

[17.9.572.13 NMAC - Rp,
17.9.572.13 NMAC, 5/4/2021]

17.9.572.14 ANNUAL RENEWABLE ENERGY ACT PLAN:

An annual Renewable Energy Act plan shall include plan year and next plan year data. The plan year shall be presented for commission approval and the next plan year shall be presented for informational purposes.

A. On or before July 1 of each year, each public utility must file with the commission an annual Renewable Energy Act plan. The filing schedule shall be staggered, as follows, with each of the investor-owned utility filings occurring one month apart, the last filing to be made July 1 of each year. The utilities shall file alphabetically each year (el paso electric company shall file on May 1; public service company of New Mexico shall file on June 1; and southwestern public service company shall file on July 1 each year).

B. The annual Renewable Energy Act plan is to include:

(1) testimony and exhibits providing a full explanation of the utility's determination of the plan year and next plan year renewable portfolio standard and reasonable cost threshold;

(2) the cost of procurement in the plan year and the next plan year for all new renewable energy resources required to comply with the renewable portfolio standard selected by the utility pursuant to 17.9.572.10 NMAC;

(3) the amount of renewable energy the public utility plans to provide in the plan year and the next plan year required to comply with the renewable portfolio standard;

(4) testimony and exhibits demonstrating how the cost and amount specified in Paragraphs (2) and (3) of this subsection were determined;

(5) testimony and exhibits demonstrating the plan year and next plan year procurement amounts and costs expected to be recovered by the utility;

(6) the capital, operating and fuel costs on a per-megawatt-hour basis during the preceding calendar year of each nonrenewable generation resource rate-base by the utility, or dedicated to the utility through a power purchase agreement of one year or longer, and the nonrenewable generation resources' carbon dioxide emissions on a per-megawatt-hour basis during that same year;

(7) testimony and exhibits demonstrating the plan year and next plan year procurement amounts and costs expected to be recovered by the utility if limited by the reasonable cost threshold;

(8) testimony demonstrating that the cost of the proposed procurement is reasonable compared with the price of electricity from renewable resources in the bids received by the public utility to recent prices for comparable energy resources elsewhere in the southwestern united states;

(9) testimony regarding strategies used to minimize costs of renewable energy integration, including location, diversity, balancing area activity, demand-side management, rate design and load management;

(10) testimony demonstrating that the portfolio procurement plan is consistent with the integrated resource plan and explaining any material differences;

(11) testimony demonstrating that acceptable system reliability will be maintained with the proposed new renewable resource additions;

(12) information, including exhibits, as applicable, that demonstrates that the proposed procurement was the result

of a competitive procurement that included opportunities for bidders to propose purchased power, facility self-build or facility build-transfer options;

(13)

demonstration that the plan is otherwise in the public interest, considering factors such as overall cost and economic development opportunities;

(14) testimony

demonstrating consistency with the last filed IRP and if not explain why it is inconsistent; and

(15) any other

information the commission may deem necessary.

C. In addition to electronically filing and serving in accordance with 1.2.2 NMAC, a public utility shall serve notice and a copy of its annual renewable energy plan filing by first class mail on renewable resource providers requesting such notice from the commission, the New Mexico attorney general, and the intervenors in the public utility's most recent rate case. A public utility shall also post on its website the most recent and the pending annual Renewable Energy Act plans.

[17.9.572.14 NMAC - Rp,
17.9.572.14 NMAC, 5/4/2021]

17.9.572.15 COST RECOVERY FOR RENEWABLE ENERGY AND EMISSIONS REDUCTIONS:

A. A public utility shall recover the reasonable costs of complying with this rule through the rate making process, including its reasonable interconnection and transmission costs, costs to comply with electric industry reliability standards and other costs attributable to acquisition and delivery of renewable energy and zero carbon energy to retail New Mexico customers.

B. Costs that are consistent with commission-approved annual Renewable Energy Act plans are deemed to be reasonable.

C. A public utility that is permitted to defer the recovery of

renewable energy costs pursuant to commission order may, through the ratemaking process, recover from customers that are not subject to the rate impact limitations of Subsection C of Section 62-16-4 NMSA 1978 the cumulative sum of those deferred amounts, plus a carrying charge on those amounts.

D. Any financial benefits resulting to customer's qualified pursuant Subsection C of Section 62-16-4 NMSA 1978 shall accrue to the customer immediately as of June 14, 2019 and shall be reflected in customer bills each month, subject to annual true-up and reconciliation.

E. The financial incentive established pursuant to 17.9.572.22 NMAC shall be recovered or credited through a separate rider during the calendar year following the determination of the financial incentive, and subject to reconciliation for under- or over-recovery in a subsequent calendar year.

F. Any renewable energy procurement costs recovered through the utility's fuel clause shall be separately identified in its monthly and annual fuel and purchased power clause adjustment filings and its continuation filings.

G. The commission shall not disallow the cost associated with any expired renewable energy certificate.

H. If a public utility has been granted a certificate of public convenience and necessity prior to January 1, 2015 to construct or operate an electric generation facility and the investment in that facility has been allowed recovery as part of the utility's rate-base, the commission may require the facility to discontinue serving customers within New Mexico if the replacement has less or zero carbon dioxide emissions into the atmosphere; provided that no order of the commission shall disallow recovery of any undepreciated investments or decommissioning costs associated with the facility.

[17.9.572.15 NMAC - Rp,
17.9.572.15 NMAC, 5/4/2021]

17.9.572.16 CUSTOMERS QUALIFIED PURSUANT TO SUBSECTION C OF SECTION 62-16-4 NMSA 1978: Any customer that is a political subdivision of the state, or any educational institution designated in Article 12, Section 11 of the constitution of New Mexico with an enrollment of 20 thousand students or more during the fall semester on its main campus, with consumption exceeding 20 million kilowatt-hours per year at any single location or facility, and that owns renewable energy generation or hosts such facilities through a renewable purchased power agreement, shall not be charged by the utility for power purchases of one year or less or fuel on the amount of electricity purchased from the utility equal to the amount of renewable energy produced or hosted by the customer. The customer shall annually certify to the state auditor and notify the commission and the customer's serving electric utility of the amount of renewable energy produced at the customer-owned or customer-hosted facilities that generate renewable energy. The customer shall also certify to the state auditor and notify the commission that the customer will retire all renewable energy certificates associated with the renewable energy produced by those facilities. Any financial benefits as a result of the provisions of this subsection shall accrue to the customer immediately upon June 14, 2019 and shall be reflected in customer bills each month subject to annual true-up and reconciliation. The provisions of this rule shall not prevent the utility from recovering all of its reasonable and prudent fuel and purchased power costs. That customer shall also certify that it will retire all renewable energy certificates associated with the energy produced by those facilities.

A. The notice to the commission and the customer's serving utility shall:

(1) be timely;

(2) state the

plan year during which the renewable energy is expected to be produced or hosted;

(3) quantify the amount of renewable energy expected to be produced or hosted; and

(4) shall include a copy of the customer's certification to the state auditor.

B. This section only exempts customers from charges for power purchases of one year or less or fuel on the amount of electricity purchased from the utility equal to the amount of renewable energy produced or hosted by the customer. This section shall not prevent the utility from recovering all of its reasonable and prudent fuel and purchased power costs.

C. A public utility shall not retire any RECs retired per the certification of a customer made pursuant to Subsection C of Section 62-16-4 NMSA 1978 for the renewable portfolio standard or voluntary renewable energy program compliance.

[17.9.572.16 NMAC - Rp,
17.9.572.16 NMAC, 5/4/2021]

17.9.572.17 RENEWABLE ENERGY CERTIFICATES:

A. Each public utility shall annually establish its compliance with the renewable portfolio standard through the filing of an annual report, as provided in 17.9.572.19 NMAC, documenting the retirement of renewable energy certificates.

B. Non-WREGIS registered RECs shall contain the following information:

(1) the name and contact information of the renewable energy generating facility owner or operator;

(2) the name and contact information of the public utility or rural electric distribution cooperative purchasing the renewable energy certificate;

(3) the type of generator technology and fuel type;

(4) the generating facility's physical location, nameplate capacity in MW, location and ID number of revenue meter and date of commencement of commercial generation;

(5) the public utility to which the generating facility is interconnected;

(6) the control area operator for the generating facility; and

(7) the quantity in kWh and the date of the renewable energy certificate creation.

C. Renewable energy certificates:

(1) are owned by the generator of the renewable energy unless:

(a) the renewable energy certificates are transferred to the purchaser of the energy through specific agreement with the generator;

(b) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certificates are owned by the public utility purchaser of the renewable energy unless retained by the generator through specific agreement with the public utility purchaser of the energy; or

(c) a contract for the purchase of renewable energy is in effect prior to January 1, 2019, in which case the purchaser of the energy owns the renewable energy certificates for the term of such contract; and

(2) may be traded, sold or otherwise transferred by their owner, unless the certificates are from a rate-based public utility plant, in which case the entirety of the renewable energy certificates from that plant shall be retired by the utility on behalf of itself or its customers.

Any contract to purchase renewable energy entered into by a public utility on or after July 1, 2019 shall include conveyance to the purchasing utility of all renewable energy certificates, and the entirety of those certificates shall be retired by that utility on behalf of itself or its customers or subsequently transferred to a retail customer for retirement under a voluntary program for purchasing renewable energy approved by the commission;

(3) that are used once by a public utility to satisfy the renewable portfolio standard and are retired shall not be further used by the public utility; and

(4) that are not used by a public utility to satisfy the renewable portfolio standard may be carried forward for up to four years from the date of creation and, if not used by that time, shall be retired by the public utility.

D. Public utilities are responsible for demonstrating that a renewable energy certificate used for compliance with the renewable portfolio standard is derived from eligible renewable energy resources and has not been retired, traded, sold or otherwise transferred to another party. Public utilities shall maintain records sufficient to meet the demonstration requirement of this subsection.

E. The acquisition, sale or transfer, and retirement of any renewable energy certificates used to meet renewable portfolio standards on or after January 1, 2008 shall be registered with the western renewable energy generation information system (WREGIS) or its direct successor(s), except as provided in Subsection F of this section. Certificates whose retirement has been registered by the public utility with WREGIS shall be deemed to meet the requirements of Subsection D of this section.

F. Renewable energy certificates representing electricity delivered to the public utility and assigned to the public utility's New Mexico customers and registered with a tracking system other than WREGIS may be used to meet renewable portfolio standards so long as WREGIS lacks the capability to import certificates from that other tracking system.

[17.9.572.17 NMAC - Rp,
17.9.572.17 NMAC, 5/4/2021]

17.9.572.18 VOLUNTARY RENEWABLE TARIFFS:

A. The commission may require that a public utility offer its retail customers a voluntary program for purchasing renewable

energy that is in addition to electricity provided by the public utility pursuant to the renewable portfolio standard, under rates and terms that are approved by the commission.

B. The voluntary renewable tariff may also include provisions to enable consumers to purchase renewable energy within certain energy blocks and by source of renewable energy. Additionally, each public utility must develop an educational program on the benefits and availability of its voluntary renewable energy program. The tariff, along with the details of the consumer education program, shall be on file with the commission.

C. All renewable energy purchased by a retail customer through an approved voluntary program shall:

(1) have all associated renewable energy certificates retired by the retail customer, or on that customer’s behalf, by the public utility, and the certificates shall not be used to meet the public utility’s renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978;

(2) be excluded from the total retail sales to New Mexico customers used to determine the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978; and

(3) not be subject to charges by the public utility to recover costs of complying with the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978. [17.9.572.18 NMAC - Rp, 17.9.572.18 NMAC, 5/4/2021]

17.9.572.19 ANNUAL RENEWABLE ENERGY PORTFOLIO REPORT:

Concurrent with the filing of an annual renewable energy plan, each public utility must file with the commission a report on its renewable energy generation or purchases of renewable energy during the prior plan year. This report shall:

A. itemize all renewable energy generation or renewable energy certificate purchases and sales;

B. list, and include copies of, all renewable energy certificates, including acquired, issued or retired certificates;

C. document from WREGIS or its successor the renewable energy certificates acquired, sold, retired, transferred, or expired; such documentation shall include reports from WREGIS or its successor which allow the commission to determine, by fuel type, the number of RECs in each calendar year:

- (1) acquired;
- (2) sold;
- (3) retired;
- (4) transferred;

and

- (5) expired.

D. describe the retirements made to meet renewable portfolio standard compliance based on actual retail sales and procurement costs, for the most recent reporting period including, the reductions, if any, to the RPS for:

- (1) purchases by retail customers through an approved voluntary program; or
- (2) due to the reasonable cost threshold;
- (3) explain and demonstrate how the reduction was determined; and
- (4) quantity of renewable energy certificates banked for future compliance use.

E. describe and quantify the implementation of the voluntary renewable tariff requirements in 17.9.572.18 NMAC; and

F. present a full explanation of approved recovery mechanisms for approved annual renewable energy plan costs and a complete accounting of all collected and deferred amounts.

G. Describe and tabulate the utility’s compliance with its renewable portfolio standard for a given report year and describe how the compliance relates to the first year

a new renewable portfolio standard becomes effective as established in Subsection A of Section 62-16-4 NMSA 1978 (2019) and Subsection A of 17.9.572.10 NMAC and describe how the compliance relates the first year of the next new renewable portfolio standard. The report shall include the following to demonstrate compliance with the renewable portfolio standard:

(1) report year total utility renewable portfolio standard requirement in megawatt-hours;

(2) report year total utility renewable portfolio standard compliance in megawatt-hours;

(3) report year total utility renewable portfolio standard provided by eligible renewable energy resources in megawatt-hours listed by resource and totaled;

(4) percentage of report year total utility renewable portfolio standard megawatt-hours provided by eligible renewable energy resources; and

(5) report Year kWh generation by facility from coal-fired generating facilities allocated to New Mexico retail customers. [17.9.572.19 NMAC - Rp, 17.9.572.19 NMAC, 5/4/2021]

17.9.572.20 REVIEW BY COMMISSION:

A. Interested parties wishing to protest an annual Renewable Energy Act plan shall do so by stating the bases for the protest within 30 days after the filing of the utility’s annual renewable energy plan.

B. The commission shall approve or modify annual Renewable Energy Act plans within 90 days and may approve such plans without a hearing, unless a protest is filed that demonstrates to the commission’s reasonable satisfaction that a hearing is necessary.

C. The commission may modify a plan after notice and hearing, and may, for good cause, extend the time to approve an annual

Renewable Energy Act plan for an additional 90 days.

D. If the commission has not acted within the 90 day period, a plan is deemed approved.

E. The commission may reject a plan, within 40 days of filing, if the commission finds that the plan does not contain the required information; upon such rejection the public utility's obligation to procure additional resources will be suspended for the time necessary to file a revised plan. In such instances, the total amount of renewable energy to be procured by the public utility will not change.

[17.9.572.20 NMAC - Rp,
17.9.572.20 NMAC, 5/4/2021]

17.9.572.21 EXEMPTION AND VARIANCE:

The commission, upon its own motion, and any interested person may file an application for an exemption or a variance from the requirements of this rule. Such motion or application shall:

A. identify the section of this rule for which the exemption or variance is requested;

B. describe the situation that necessitates the exemption or variance;

C. set out the effect of complying with this rule on the public utility and its customers if the exemption or variance is not granted;

D. define the result the request will have if granted;

E. state how the exemption or variance will be consistent with the purposes of this rule;

F. state why no other reasonable alternative is preferable; and

G. state why the proposed alternative is in the public interest.

[17.9.572.21 NMAC - Rp,
17.9.572.21 NMAC, 5/4/2021]

17.9.527.22 FINANCIAL INCENTIVE:

A. In accordance with Subsection D of Section 62-16-4 NMSA 1978 (2019), a public utility

or any other person, may apply by a motion or application, requesting that the commission provide the public utility with a financial or other incentives to encourage public utilities to produce or acquire renewable energy that exceeds the applicable annual renewable portfolio standard set forth in Section 62-16-4 NMSA 1978 (2019); results in reductions in carbon dioxide emissions earlier than required by Subsection A of Section 62-16-4 NMSA 1978 (2019); or causes a reduction in the generation of electricity by coal-fired generating facilities, including coal-fired generating facilities located outside of New Mexico. Public utilities shall file any motion or application under this section concurrently with their annual Renewable Energy Act plan.

B. A financial or other incentive proposed under this section must be related to measures implemented by the utility after the effective date of this rule to accomplish at least one of the following purposes:

(1) exceeding the public utility's annual RPS requirements;

(2) reducing carbon dioxide emissions earlier than required by Subsection A of Section 62-16-4 NMSA 1978; or

(3) reducing the generation of electricity by coal-fired generating facilities, including coal-fired generating facilities located outside of New Mexico that serve the utility's customers.

C. The public utility or other person requesting a financial or other incentive has the burden to prove by a preponderance of evidence that the terms and duration of the proposed incentive meet the requirements of this rule and are just and reasonable in light of the utility's costs, its authorized return, and the magnitude of any other incentives that have been authorized by the commission. Any application or motion requesting a financial or other incentive shall be supported by written testimony and exhibits.

D. No incentive will be awarded under this section with

respect to a particular investment if the cost of that investment exceeds the demonstrable value of the corresponding reduction in carbon dioxide or other emissions. A utility requesting a financial or other incentive under this rule must establish that the benefits of achieving the goals set out in Subsection B of this section above are not exceeded by the costs it incurred to achieve them. To establish this, the utility must provide detailed analysis for each applicable period, including but not limited to:

(1) the utility's total carbon dioxide emissions;

(2) the reduction in the utility's carbon dioxide emissions attributable to the measures described in Subsection B of this section;

(3) the estimated value of the reduction in carbon dioxide emissions described in Paragraph (2) of this subsection based on an analysis of relevant carbon dioxide markets;

(4) the cost of the measures implemented by the utility that resulted in the lower carbon dioxide emissions identified in Paragraph (2) of this subsection and the dates when each measure was implemented; and

(5) any other costs necessary to implement each of the measures identified in Subsection B of this section.

E. The total financial incentive authorized for recovery in rates pursuant to this section shall not exceed the product (expressed in dollars) of:

(1) the utility's annual weighted average cost of capital (expressed as a percent); and

(2) the cost of the measures described in Subsection B of this section.

[17.9.527.22 NMAC - N, 5/4/2021]

17.9.527.23 [RESERVED]

[17.9.527.23 NMAC - Repealed,
5/4/2021]

HISTORY OF 17.9.572 NMAC:
Pre-NMAC History: None.

History of Repealed Material:

17 NMAC 10.572, Renewable Energy Development Program (filed 11/30/1998) repealed 7/1/2003.

17.9.572 NMAC, Renewable Energy as a Source of Electricity (filed 6/16/2003) repealed 1/14/2005.

17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 12/29/2004) repealed 8/30/2007.

17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 8/15/2007) repealed 5/31/2013.

17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 5/10/2013) repealed 5/4/2021.

Other History:

17 NMAC 10.572, Renewable Energy Development Program (filed 11-30-98) replaced by 17.9.572 NMAC, Renewable Energy as a Source of Electricity, effective 7/1/2003, 17.9.572 NMAC, Renewable Energy as a Source of Electricity (filed 6/16/2003) replaced by 17.9.572, Renewable Energy for Electric Utilities, effective 1/14/2005.

17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 12/29/2004) replaced by 17.9.572

NMAC, Renewable Energy for Electric Utilities (filed 8/15/2007) replaced by 17.9.572 NMAC,

Renewable Energy for Electric Utilities effective 5/31/2013.

Renewable Energy for Electric Utilities (filed 5/10/2013) replaced by 17.9.572 NMAC, Renewable Energy for Electric Utilities effective 5/4/2021.

End of Adopted Rules

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Other Material Related to Administrative Law

**HEALTH,
DEPARTMENT OF**

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH
SECRETARY TRACIE C.
COLLINS, M.D.**

APRIL 23, 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;

- D. April 5, 2021 Amended Public Health Emergency Order Temporarily Limiting Long-Term Care Facilities Visitation Due to COVID-19; and

- E. 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.

3. The April 9, 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 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 April 30, 2021;

WHEREAS, confirmed cases in the United States have risen to more than 31.9 million and confirmed COVID-19 infections in New Mexico have risen to over 196,000;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 569,000 Americans and over 4,022 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, vaccination, 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) "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.

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

(3) "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/>.

(4) "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.

(5) “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.

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

(7) “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.

(8) “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 gathering” does not include the presence of any number of individuals where those individuals regularly reside or individuals who are public officials or public employees in the course and scope of their employment.

(9) “Maximum capacity” means the maximum number of individuals allowed within a specified location, as determined by the relevant fire marshal or fire department. If the relevant fire marshal or fire department does not make such a determination, maximum capacity shall be determined by dividing the total square footage of floor space unoccupied by obstructions such as equipment and displays by thirty-six (36).

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

(11) “Recreational facilities” 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, gokart 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.

(12) “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.

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 14-day 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 14-day 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.

(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 up to 75% of the maximum occupancy of any enclosed space on the premises and up to 100% capacity of any outdoor space on the premises.

c. “Houses of worship” may hold religious services up to 100% of the maximum occupancy of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services to 75% capacity.

d. “Large entertainment venues” may operate up to 33% of the maximum occupancy of any enclosed space on the premises and 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 and 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 and up to 75% capacity of any outdoor space on the premises. “Bars and clubs” shall comply with all other requirements applicable to “food and drink establishments.”

g. “Food and drink establishments” may not provide indoor 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 capacity of any outdoor seating area. 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.

i. Any entity not identified above may operate up to 75% of the maximum occupancy of any enclosed space on the premises and 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.

(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 capacity 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 up to 50% of the maximum capacity of any outdoor or enclosed space on the premises.

c. “Houses of worship” may hold religious services up to 100% of the maximum occupancy of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services to 50% capacity.

d. “Large entertainment venues” may operate up to 25% of the maximum capacity of any enclosed space on the premises and up to 50% capacity of any outdoor space on the premises.

e. “Recreational facilities” may operate up to 25% of the maximum capacity of any enclosed space on the premises and 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 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 capacity of any enclosed space on the premises. All “food and drink establishments,” regardless of compliance with the NM Safe Certified requirements, may operate up to 75% of the maximum capacity of any outdoor seating area. 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://mnsafecertified.org> may operate up to 75% of maximum occupancy. All other “places of lodging” shall not operate at more than 40% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed ten (10) guests.

Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

i. Any entity not identified above may operate up to 50% of the maximum capacity of any outdoor or enclosed space on the premises.

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.

(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 capacity 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 up to 33% of the maximum capacity of any outdoor or enclosed space on the premises.

c. “Houses of worship” may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services up to 33% capacity.

d. “Large entertainment venues” may operate up to 25% of the maximum 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 capacity of any enclosed space on the premises 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. Notwithstanding the foregoing, pools may operate up to 33% of the maximum capacity of any enclosed space on the premises so long as they are only used for physical therapy and socially distanced exercise.

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 operate up to 33% of the maximum capacity of any enclosed space on the premises. All “food and drink establishments,” regardless of compliance with the NM Safe Certified requirements,

may operate up to 75% of the maximum capacity of any outdoor seating area. 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 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 capacity of any outdoor or enclosed space on the premises or twenty (20) customers inside the building at any given time.

j. Any entity not identified above may operate but may operate up to 33% of the maximum occupancy of any enclosed space on the premises.

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.

(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 capacity 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 up to 25% of the maximum capacity of any outdoor or enclosed space on the premises.

c. “Houses of worship” may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services to 25% capacity.

d. “Large entertainment venues” may not operate.

e. “Recreational facilities” may operate up to 25% of the maximum 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. Further, pools may operate up to 25% of the maximum capacity of any enclosed space on the premises so long as they are only used for physical therapy and socially distanced exercise.

f. “Bars and clubs” may not operate.

g. “Food and drink establishments” may operate up to 25% of the maximum capacity of any outdoor seating areas 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 capacity of any outdoor or enclosed space on the premises

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 capacity of any outdoor or enclosed space on the premises.

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) 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.

(3) 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.

(4) 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 contained in the New Mexico’s Public Education Department’s “Reentry Guidance” and “COVID-19 Response Toolkit for New Mexico’s Public Schools”, available at <https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>, and may operate up to maximum capacity. 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.

(5) State museums may operate subject to the capacity 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 April 23, 2021 and remain in effect through May 21, 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.**

-- Avoid crowds.

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

DONE AT THE EXECUTIVE OFFICE THIS 23RD DAY OF APRIL 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.**

APRIL 28, 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;

D. April 5, 2021 Amended Public Health Emergency Order Temporarily Limiting Long-Term Care Facilities Visitation Due to COVID-19; and

E. 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.

3. The April 23, 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 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 April 30, 2021;

WHEREAS, confirmed cases in the United States have risen to more than 32.2 million and confirmed COVID-19 infections in New Mexico have risen to over 197,000;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 572,000 Americans and over 4,029 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, vaccination,

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) “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.

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

(3) “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/covidsafe-practices/>.

(4) “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.

(5) "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.

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

(7) "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.

(8) "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 gathering" does not include the presence of any number of individuals where those individuals regularly reside or individuals who are public officials or public employees in the course and scope of their employment.

(9) "Maximum capacity" means the maximum number of individuals allowed within a specified location, as determined by the relevant fire marshal or fire department. If the relevant fire marshal or fire department does not make such a determination, maximum capacity shall be determined by dividing the total square footage of floor space unoccupied by obstructions such as equipment and displays by thirty-six (36).

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

(11) "Recreational facilities" 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, gokart 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.

(12) “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.

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. 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. A county shall remain at a given operating level so long as it continues to satisfy the specified metrics for that level. 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. Notwithstanding the foregoing, counties which have reached Turquoise Level may operate at that level’s restrictions for a minimum of four weeks, and their map status shall only be updated once every four-week period.

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 satisfy ALL of the following metrics for the most recent 14-day reporting period or TWO of the metrics for the TWO previous 14-day reporting periods:

(a) A new COVID-19 case incidence rate of no greater than 10 cases per 100,000 inhabitants during the most recent 14-day period;

(b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 7.5%; and

(c) A percentage of total vaccine-eligible residents fully vaccinated greater than or equal to 35% beginning on the date of this Order, 40% beginning the week of May 3, 2021, and increased by 5% every other week thereafter.

(2) Green Level -Counties seeking to operate at this level must satisfy TWO of the following metrics for the most recent 14-day reporting period:

(a) A new COVID-19 case incidence rate of no greater than 10 cases per 100,000 inhabitants during the most recent 14-day period;

(b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 7.5%; and

(c) A percentage of total vaccine-eligible residents fully vaccinated greater than or equal to 35% beginning on the date of this Order, 40% beginning the week of May 3, 2021, and increased by 5% every other week thereafter.

(3) Yellow Level - Counties seeking to operate at this level must meet ONE of the following metrics for the most recent 14-day reporting period:

(a) A new COVID-19 case incidence rate of no greater than 10 cases per 100,000 inhabitants during the most recent 14-day period;

(b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 7.5%; and

(c) A percentage of total vaccine-eligible residents fully vaccinated greater than or equal to 35% beginning on the date of this Order, 40% beginning the week of May 3, 2021, and increased by 5% every other week thereafter.

(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.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following capacity limits and restrictions:

a. All “essential businesses,” excluding those defined as a “retail space,” may operate without capacity 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 up to 75% of the maximum capacity of any enclosed space on the premises and up to 100% capacity of any outdoor space on the premises.

c. “Houses of worship” may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services to 75% capacity.

d. “Large entertainment venues” may operate up to 33% of the maximum capacity of any enclosed space on the premises and up to 75% capacity of any outdoor space on the premises.

e. “Recreational facilities” may operate up to 50% of the maximum capacity of any enclosed space on the premises and up to 75% capacity of any outdoor space on the premises.

f. “Bars and clubs” may operate up to 33% of the maximum capacity of any enclosed space on the premises and up to 75% capacity of any outdoor space on the premises. “Bars and clubs” shall comply with all other requirements applicable to “food and drink establishments.”

g. “Food and drink establishments” may not provide indoor 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 capacity of any outdoor seating area. All “food and drink establishments,” regardless of compliance with the NM Safe Certified requirements, may operate up to 75% of the maximum capacity of any outdoor seating area. 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.

i. Any entity not identified above may operate up to 75% of the maximum capacity of any enclosed space on the premises and 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.

(2) All businesses, houses of worship, and other non-profit entities may operate subject

to the following capacity limits and restrictions:

a. All “essential businesses,” excluding those defined as a “retail space,” may operate without capacity 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 up to 50% of the maximum capacity of any outdoor or enclosed space on the premises.

c. “Houses of worship” may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services to 50% capacity.

d. “Large entertainment venues” may operate up to 25% of the maximum capacity of any enclosed space on the premises and up to 50% capacity of any outdoor space on the premises.

e. “Recreational facilities” may operate up to 25% of the maximum capacity of any enclosed space on the premises and 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 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 capacity of any enclosed space on the premises. All “food and drink establishments,” regardless of compliance with the NM Safe Certified requirements, may operate up to 75% of the maximum capacity of any outdoor seating area. 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 up to 50% of the maximum capacity of any outdoor or enclosed space on the premises.

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.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following capacity limits and restrictions:

a. All “essential businesses,” excluding those defined as a “retail space,” may operate without capacity 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 up to 33% of the maximum capacity of any outdoor or enclosed space on the premises.

c. “Houses of worship” may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services up to 33% capacity.

d. “Large entertainment venues” may operate up to 25% of the maximum 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 capacity of any enclosed space on the premises 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% of the maximum 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, pools may operate up to 33% of the maximum capacity of any enclosed space on the premises so long as they are only used for physical therapy and socially distanced exercise.

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 operate up to 33% of the maximum capacity of any enclosed space on the premises. All “food and drink establishments,” regardless of compliance with the NM Safe Certified requirements, may operate up to 75% of the maximum capacity of any outdoor seating area. 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 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 capacity of any outdoor or enclosed space on the premises or twenty (20) customers inside the building at any given time.

j. Any entity not identified above may operate but may operate up to 33% of the maximum capacity of any enclosed space on the premises.

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.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following capacity limits and restrictions:

a. All "essential businesses," excluding those defined as a "retail space,"

may operate without capacity 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 up to 25% of the maximum capacity of any outdoor or enclosed space on the premises.

c. "Houses of worship" may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services to 25% capacity.

d. "Large entertainment venues" may not operate.

e. "Recreational facilities" may operate up to 25% of the maximum 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. Further, pools may operate up to 25% of the maximum capacity of any enclosed space on the premises so long as they are only used for physical therapy and socially distanced exercise.

f. "Bars and clubs" may not operate.

g. "Food and drink establishments" may operate up to 25% of the maximum capacity of any outdoor seating areas 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 capacity of any outdoor or enclosed space on the premises 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 capacity of any outdoor or enclosed space on the premises.

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, exercising outdoors alone or with members of the same household; or attending a small, outdoor gathering of fully vaccinated individuals no larger than the applicable mass gathering limit for the county or twenty (20) individuals, whichever is less. Notwithstanding the foregoing, fully vaccinated individuals are not required to wear a mask when attending small, outdoor gatherings of vaccinated or unvaccinated individuals no larger than the applicable mass gathering limit for the county or twenty (20) individuals, whichever is less. "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. Masks with vents do not satisfy this requirement.

(2) 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; provided that fully vaccinated employees, other than those working in congregate care settings such as correctional facilities and long-term care facilities, shall not be required to be tested every two weeks.

(3) 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 capacity limit, the CSP's limit shall control.

(4) 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 contained in the New Mexico's Public Education Department's "Reentry Guidance" and "COVID-19 Response Toolkit for New Mexico's Public Schools", available at <https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>, and may operate up to maximum capacity. 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.

(5) State museums may operate subject to the capacity 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 April 30, 2021, at 8:00 a.m. and remain in effect through May 28, 2021, provided that paragraph (1) of the Baseline Directives shall be effective immediately and all other provisions of the previous Order shall remain in effect until the remainder of this Order becomes effective.

(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.

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

**DONE AT THE EXECUTIVE
OFFICE THIS 28TH DAY OF
APRIL 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**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Department of Health gives Notice of a Minor, Nonsubstantive Correction to 7.1.31 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

In Section 10, there was a Subsection A, without a subsection B. Accordingly, on the electronic copy of this rule on NMAC site, the errant subsection A was removed and the remaining section was reformatted accordingly.

A copy of this Notification will be filed with the official version of each of the above rules.

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

2021 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXII, Issues 1-24

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

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

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