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ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Economic Development Department (EDD) hereby gives notice that it will conduct a virtual public hearing on Thursday, September 9, 2021, from 10:00am to 11:00 am (MDT). The purpose of the public hearing is to receive public commentary on the proposed rulemaking to make emergency rule, 2.92.1 NMAC, Public Finance, LEDA Recovery Grant, permanent.

Rule Information: The New Mexico Economic Development Department (NMEDD) issued a temporary emergency rule on April 16, 2021, which was in response to the current state of public health emergency regarding COVID-19 and 2021 House Bill 11, adding a new section of the Local Economic Development Act establishing grants to reimburse rent, lease or mortgage payments for certain businesses deemed "recovery entities" under that Act. The rule was enacted to avoid causing an imminent peril to the public health, safety or welfare and only applies to the grant program established by 2021 House Bill 11. NMEDD proposes to adopt the emergency rule to make it permanent.

Statutory Authorization:
House Bill 11 of 1st Session of the 55th Legislature, Section 9-15-6 NMSA 1978.

Public comment: Interested individuals are strongly encouraged to submit written comments regarding the proposed rulemaking relating to the LEDA Recovery Grant to sara.gutierrez@state.nm.us or Sara Gutiérrez, Deputy Division Director, New Mexico Economic Development Department, P.O. Box 20003 Santa Fe, New Mexico 87504-5003. Written comments must be received no later than 12:00 pm on Thursday, September 9, 2021. The EDD encourages the early submission of written comments. Individuals may also testify at the public hearing.

A PDF of the proposed rule and meeting details may be accessed through EDD's website edd.newmexico.gov or from Sara Gutiérrez at the contact above on August 10, 2021.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact Sara Gutiérrez as soon as possible. The EDD requests at least ten days advanced notice to provide requested special accommodations.

REGULATION AND LICENSING DEPARTMENT

REAL ESTATE APPRAISERS BOARD

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Real Estate Appraisers Board (Board) will hold a rule hearing on Friday, September 10, 2021, at 9:00 a.m. Following the rule hearing, the Board will convene a board meeting to consider adoption of the rules and address regular business. The rule hearing and board meeting will be held at the Regulation & Licensing Department, 2550 Cerrillos Road, Santa Fe, New Mexico, in the Rio Grande Room. The hearing and meeting will also be accessible by virtual means, with the link to the livestream available on the Board's website at the following internet link:

https:/www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/real-estate-appraisers/real-estate-appraisers-board-information/

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

16.62.2 NMAC – Application for Trainee
16.62.3 NMAC – Application for Licensed Residential
16.62.4 NMAC – Application for Residential Certificate
16.62.5 NMAC – Application for General Certificate
16.62.13 NMAC – Disciplinary Proceedings
16.62.18 NMAC – Licensure for Military Members, Spouses and Veterans
16.65.2 NMAC – Registration Requirements
16.65.3 NMAC – Application for Registration
16.65.4 NMAC – Discipline

To obtain and review copies of the proposed changes you may go to the Board's website at: https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/real-estate-appraisers/ or contact the New Mexico Real Estate Appraisers Board at (505)476-4622 or by email at nm.reab@state.nm.us.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Theresa Montoya, Board Administrator, via electronic mail at nm.reab@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Friday, September 10, 2021. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board's website at: https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/real-estate-appraisers/, no more than three business days following receipt to allow for public viewing.

An individual with a disability who is in need of a reader, amplifier, qualified signed language interpreter,

or other form of auxiliary aid or service to attend or participate in the hearing, please contact Theresa Montoya, Board Administrator at (505) 476-4622.

Statutory Authority: Section 61-30-7(A) of the Real Estate Appraisers Act, NMSA 1978, Sections 61-30-1 through -24 (1990, as amended through 2021), authorizes the Board to "adopt rules necessary to implement the provisions of the Real Estate Appraisers Act." Section 47-14-23 of the Appraisal Management Company Registration Act, NMSA 1978, Sections 47-14-1 through -23 (2009, as amended through 2013), also authorizes the Board to "adopt rules that are reasonably necessary to implement, administer and enforce the provisions of the Appraisal Management Company Registration Act, including rules for obtaining copies of appraisals and other documents necessary to audit compliance with the Appraisal Management Company Registration Act." Finally, Section 61-1-36 of the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to -36 (1957, as amended through 2021), requires the Board to "promulgate and post on the board's website rules relating to licensing requirements to list the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction."

Purpose of the proposed rules: The proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees and registrants, and to generally satisfy the Board's statutory obligation to ensure "the protection of those persons relying upon real estate appraisals." NMSA 1978, Section 61-30-2(B). In addition, several of the proposed rule changes are intended to address recent statutory changes to the Uniform Licensing Act. See S.B. 2, 55th Leg., 1st S.S. (N.M. 2021), available at https://www.nmlegis.gov/Sessions/21%20Special/final/SB0002.pdf, and H.B. 120, 55th Leg., 1st Sess. (N.M. 2021), available at https://www.nmlegis.gov/Sessions/21%20Regular/final/HB0120.pdf.

Summary of Proposed Changes: The Board summarizes its proposed changes to its administrative rules as follows:

16.62.2 NMAC – Application for Trainee
As a general summary, the proposed changes to 16.62.2 NMAC clarify existing provisions (including those outlining the eligibility of appraisers to supervise trainees), add new language permitting the Board to accept experience logs from applicants submitted from jurisdictions outside of New Mexico, and requiring supervising appraisers to notify their trainees when notified by the board that a complaint has been filed against the supervising appraiser.

16.62.3 NMAC – Application for Licensed Residential
The proposed changes to 16.62.3 NMAC clarify that the licensed residential real estate appraiser classification applies to the appraisal of non-complex one to four residential units having a transaction value less than $1,000,000 and complex one to four residential units having a transaction value less than $400,000. The proposed changes also add new language permitting the Board to accept experience logs from applicants submitted from jurisdictions outside of New Mexico.

16.62.4 NMAC – Application for Residential Certificate
The proposed changes to 16.62.4 NMAC add new language permitting the Board to accept experience logs from applicants submitted from jurisdictions outside of New Mexico.

16.62.5 NMAC – Application for General Certificate
The proposed changes to 16.62.5 NMAC add new language permitting the Board to accept experience logs from applicants submitted from jurisdictions outside of New Mexico.

16.62.13 NMAC – Disciplinary Proceedings
The proposed changes to 16.62.13 NMAC generally clarify existing provisions and add new provisions outlining the procedures applicable to application denials, disciplinary proceedings, and administrative proceedings against unlicensed practitioners. In the area of investigations into complaints and applications, the proposed changes provide for the Board's utilization of an investigator, permit the issuance of investigative subpoenas, and limit those persons eligible to participate in investigations. The proposed changes would also clarify the procedures the Board must follow in referring cases for administrative prosecution, conducting evidentiary hearings, and considering proposed settlement agreements. Finally, the proposed changes to 16.62.13 NMAC add new language governing the Board's consideration of criminal convictions in applications and disciplinary matters, pursuant to Section 61-1-36 of the Uniform Licensing Act. This new language lists the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction and contains related limitations on the Board's consideration of such convictions.

16.62.18 NMAC – Licensure for Military Members, Spouses and Veterans
The proposed changes to 16.62.18 NMAC generally clarify existing provisions and update the Board's rules to reflect recent amendments to Section 61-1-34 of the Uniform Licensing Act. These changes would provide that the Board would issue the license as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check and any required fees.

16.65.2 NMAC – Registration Requirements
The proposed changes to 16.65.2 NMAC consist exclusively of adding

new language requiring Appraisal Management Companies registered in New Mexico to notify the Board within 30 days after the registrant is notified of any denial, revocation, or suspension of its designation, registration, certificate, or license under any law of any jurisdiction, other than New Mexico, regulating appraisal management companies, the imposition of any other form of discipline under any such law, or the commencement of a disciplinary or enforcement action against the registrant under any such law.

16.65.3 NMAC – Application for Registration
The proposed changes to 16.65.3 NMAC consist exclusively of adding new language requiring Appraisal Management Company applicants for registration to provide the Board documentation, as part of their applications for registration, showing any and all discipline imposed on the applicant in any jurisdiction under any law governing or regulating appraisers or appraisal management companies.

16.65.4 NMAC – Discipline
The proposed changes to 16.65.4 NMAC consist exclusively of adding new language providing that the Board may initiate disciplinary action upon receiving information that the applicant, registrant, exempt company, compliance person, or other key person is the subject of an order of the Board or any other state appraisal management company regulatory agency denying, suspending, or revoking the person or entity's privilege to operate as an appraisal management company, or information as to any other disciplinary action by an agency of another jurisdiction responsible for regulating appraisers.

Technical Information:
The proposed list of disqualifying criminal convictions, which is among the changes to 16.62.13 NMAC, is largely based on the Real Property Appraiser Qualification Criteria (effective January 1, 2021), and specifically the AQB Guide Note 9 (on pages 50-52). The public may obtain the full text of this document and information on the Appraisal Foundation's website currently at the following Internet link: https://www.appraisalfoundation.org/imis/TAF/Standards/Qualification_Criteria/Qualification_Criteria__RP_/TAF/AQB_RP AQC.aspx).

STATE LAND OFFICE

NOTICE OF PROPOSED RULEMAKING AND PUBLIC RULE HEARING

The New Mexico State Land Office ("SLO") will hold a public hearing on October 22, 2021, at 9:00 a.m., and continuing thereafter as necessary, in Morgan Hall, 310 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing will include a virtual/telephonic participation option, details of which will be provided on SLO's website (http://www.nmstatelands.org) at least 30 days prior to the public hearing. Any change to the date of the hearing will be posted on SLO's website at least 30 days prior to the public hearing. Any change to the location or time of the hearing will be posted on SLO's website at least 72 hours prior to the hearing.

The purpose of the hearing is to receive public comments on a new proposed rule to protect cultural properties on state trust lands. The Commissioner's authority to promulgate this rule is found in Section 19-1-1 and 19-1-2 NMSA 1978, Sections 18-6A-1 to 18-6A-6 NMSA 1978, and Sections 18-6-1 to 18-6-17 NMSA 1978.

The proposed rule is available on the SLO website and the Sunshine Portal (http://www.sunshineportalnm.com). To request a hard copy, please contact Alysha Shaw at (505) 827-5761 or slo-info@slo.state.nm.us.

Written comments may be submitted by mail to Alysha Shaw, New Mexico State Land Office, Attention: Cultural Properties Protection Rule, or by email to slo-info@slo.state.nm.us. Written comments (including comments submitted by email) will be accepted through October 21, 2021.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid (such as a sign language interpreter) to attend or participate in any aspect of the proposed rulemaking process or the public rule hearing are asked to contact Selena Romero at least 10 days prior to the hearing by phone at (505) 827-5790 or by email at sromero@slo.state.nm.us.

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.

ECONOMIC DEVELOPMENT DEPARTMENT

This is an emergency amendment to 2.92.1 NMAC, Section 4 and 9, effective 7/23/2021

Explanatory paragraph: The New Mexico Economic Development Department (NMEDD) issued a temporary emergency rule on April 16, 2021, which was in response to the current state of public health emergency regarding COVID-19 and 2021 House Bill 11, adding a new section of the Local Economic Development Act establishing grants to reimburse rent, lease or mortgage payments for certain businesses deemed "recovery entities" under that Act. The rule was enacted to avoid causing an imminent peril to the public health, safety or welfare and only applies to the grant program established by 2021 House Bill 11. The amendments to the emergency rule will extend the duration of the emergency rule from 120 to 180 days and will increase the base amounts of the grant per net new FTE job created depending on the revenue loss percentage, in order to better serve the small businesses applying for this grant.

2.92.1.4 DURATION: [~~120~~] 180 days.
[2.92.1.4 NMAC - N/E, 4/16/2021; A/E, 7/23/21]

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~~] $10,000;

B. If the recovery entity has a loss in revenue of at least twenty percent and less than forty percent: [~~$7,000~~] $12,000;

C. If the recovery entity has a loss in revenue of at least forty percent and less than sixty percent: [~~$9,000~~] $14,000;

D. If the recovery entity has a loss in revenue of at least sixty percent and less than eighty percent: [~~$11,000~~] $16,000; or

E. If the recovery entity has a loss in revenue equal to or in excess of eighty percent: [~~$13,000~~] $18,000.

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~~] $20,000.

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; A/E, 7/23/2021]

ENVIRONMENT DEPARTMENT

This is an amendment to 20.2.79 NMAC, Sections 5, 7, 9, 109, 115, 119 and 120, effective 8/21/2021.

20.2.79.5 EFFECTIVE DATE: November 30, 1995 except where a later date is cited at the end of a section [~~or paragraph~~].
[11/30/1995; A, 10/01/1997; 20.2.79.5 NMAC - Rn, 20 NMAC 2.79.104, 10/31/2002; A, 8/21/2021]
[The latest effective date of any section in this Part is 8/21/2021.]

20.2.79.7 DEFINITIONS: In addition to the terms defined in 20.2.2.7 NMAC (Definitions), as used in this part, the following terms apply.

A. "Actual emissions" means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined in accordance with the following, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plantwide applicability limit under 20.2.79.120 NMAC. Instead, Subsections E and AI of this section shall apply for those purposes.

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which

precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

B. "Administrator" means the administrator of the U.S. environmental protection agency (EPA) or an authorized representative.

C. "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the mandatory federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with:

(1) times of visitor use of the mandatory federal class I area; and

(2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 Definitions.

D. "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) the applicable standard set forth in 40 CFR Part 60 or 61;

(2) any applicable state implementation plan emissions limitation including those with a future compliance date; or

(3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

E. "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review pollutant, as determined in accordance with the following.

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraph (b) of Paragraph (1) of this subsection.

(2) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under this section or under a plan approved by the administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63,

the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of Subsection D of 20.2.79.115 NMAC.

(d) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs (b) and (c) of Paragraph (2) of this subsection.

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a plantwide applicability limit for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of this subsection, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of this subsection, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of this subsection.

F. "Begin actual construction" means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building support and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

G. "Best available control technology (BACT)" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated new source review pollutant which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 or 61. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

H. "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the standard industrial classification manual, 1972, as amended by the 1977 supplement (U.S. government printing office stock numbers 4101-0066 and 003-005-00176-0, respectively).

I. "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

J. "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

K. "Continuous emissions monitoring system" (CEMS) means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

L. "Continuous emissions rate monitoring system" (CERMS) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

M. "Continuous parameter monitoring system"

(CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, oxygen or carbon dioxide concentrations), and to record average operational parameter value(s) on a continuous basis.

N. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

O. "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant and includes an electric steam generating unit as defined in Subsection N of this section. For purposes of this section, there are two types of emissions units.

(1) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than [~~2~~] two years from the date such emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of this subsection. A replacement unit, as defined in this section, is an existing unit.

P. "Federal class I area" means any Federal land that is classified or reclassified "class I".

Q. "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

R. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

S. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

T. "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) the most stringent emissions limitation which is achieved in practice by such class or category of stationary source; this limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source; in no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

U. "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated new source review pollutant (as defined in this section); and a significant net emissions increase of that pollutant from the major stationary source. Any significant emissions increase (as defined in this section) from any emissions units or net emissions increase (as defined in this section) at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

(1) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

(b) use of an alternative fuel or raw material by reason of an order under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the federal Power Act;

(c) use of an alternative fuel by reason of an order or rule under Section 125 of the federal Clean Air Act;

(d) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) use of an alternative fuel or raw material by a stationary source which:

(i) the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or

(ii) the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

(g) any change in ownership at a stationary source; or

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the state implementation plan for the state in which is project is located, and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(2) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under 20.2.79.120 NMAC for a plantwide applicability limit for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.2.79.120 NMAC shall apply.

(3) For the purpose of applying the requirements of Subsection H of 20.2.79.109 NMAC to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to subpart 2, part D, title I of the federal Clean Air Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(4) Any physical change in, or change in the method of operation of a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the federal Clean Air Act.

V. "Major stationary source" means the following.

(1) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated new source review pollutant, except that lower emissions thresholds shall apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the federal Clean Air Act, according to Subparagraphs (a) through (f) of Paragraph (1) of Subsection V of 20.2.79.7 NMAC.

(a) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area.

(b) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.

(c) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area.

(d) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area.

(e) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the United States environmental protection agency administrator).

(f) 70 tons per year of PM10 in any serious nonattainment area for PM10.

(2) For the purposes of applying the requirements of Subsection H of 20.2.79.109 NMAC to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the emission thresholds in Subparagraphs (a) through (f) of Paragraph (1) of Subsection V of 20.2.79.7 NMAC shall apply in areas subject to subpart 2 of part D, title I of the federal Clean Air Act.

(a) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(b) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(c) 100 tons per year or more of nitrogen oxides in any area designated under section 107(D) if the federal Clean Air Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(d) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(e) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(f) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone; or

(3) Any physical change that would occur at a stationary source not qualifying under Paragraph (1) or (2) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

(4) A major stationary source that is major for volatile organic compounds or oxides of nitrogen shall be considered major for ozone.

(5) A stationary source shall not be a major stationary source due to fugitive emissions, to the extent they are quantifiable, unless the source belongs to:

(a) any category in Subsection B of 20.2.79.119 NMAC; or

(b) any other stationary source category which as of August 7, 1980 is being regulated under Section 111 or 112 of the federal Clean Air Act.

(6) A stationary source shall not be a major stationary source due to secondary emissions.

W. "Mandatory federal class I area" means those

federal lands that are international parks, national wilderness areas which exceed five thousand (5,000) acres in size, national memorial parks which exceed five thousand (5,000) acres in size, and national parks which exceed six thousand (6,000) acres in size, and which were in existence on August 7, 1977. These areas may not be redesignated.

X. "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

Y. "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable state implementation plan.

Z. "Net emissions increase"

(1) With respect to any regulated new source review pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(a) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection E of 20.2.79.109 NMAC; and

(b) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable; baseline actual emissions for calculating increases and decreases shall be determined as provided in Subsection E of this section, except that [~~Subparagraphs~~] Subparagraph (c) of Paragraph (1) and Subparagraph (d) of Paragraph (2) of Subsection E of this section shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

(a) it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs; and

(b) either the department or the administrator has not relied on it in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(5) A decrease in actual emissions is creditable only to the extent that:

(a) the old level of actual emissions or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(b) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(c) the department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress; and

(d) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(6) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(7) Paragraph (1) of Subsection A of this section shall not apply for determining creditable increases and decreases or after a change.

AA. "Nonattainment area" means, for any air pollutant an area which is [~~shown by monitored data or which is calculated by air quality modeling (or other methods determined by the administrator to be reliable) to exceed any national ambient air quality standard for such pollutant~~] designated "nonattainment" with respect to that pollutant within the meaning of Section 107(d) of the federal Clean Air Act. [~~Such term includes any area identified under Subparagraphs (A) through (C) of Section 107(d)(1) of the federal Clean Air Act.~~]

AB. "Nonattainment major new source review (NSR) program" means a major source preconstruction permit program that has been approved by the administrator and incorporated into the New Mexico state implementation plan to implement the requirements of 40 CFR 51.165, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI. Any permit issued under such a program is a major new source review permit.

AC. "Part" means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the board.

AD. "Portable stationary source" means a source which can be relocated to another operating site with limited dismantling and reassembly.

AE. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and

restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the PTE of a stationary source.

AF. "Predictive emissions monitoring system" (PEMS) means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, oxygen or carbon dioxide concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

AG. "Prevention of significant deterioration (PSD) permit" means any permit that is issued under 20.2.74 NMAC.

AH. "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

AI. "Projected actual emissions" means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any one of the [~~5~~] five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated new source review pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(1) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(2) shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

(3) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection E of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(4) in lieu of using the method set out in Paragraphs (1) through (3) of this subsection, may elect to use the emissions unit's potential to emit, in tons per year, as defined under Subsection AE of this section.

AJ. "Regulated new source review pollutant", for purposes of this section, means the following:

(1) nitrogen oxides or any volatile organic compounds;

(2) any pollutant for which a national ambient air quality standard has been promulgated;

(3) any pollutant that is identified under this paragraph (Paragraph (3) of Subsection AJ of 20.2.79.7 NMAC) as a constituent or precursor of a general pollutant listed in Paragraphs (1) or (2) of this subsection, provided that such constituent or precursor pollutant may only be regulated under new source review as part of regulation of the general pollutant; precursors identified by the administrator for purposes of NSR are the following:

(a) volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas;

(b) sulfur dioxide is a precursor to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas;

(c) nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations;

(d) volatile organic compounds and ammonia are presumed not to be precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations; or

(4) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures; on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in nonattainment major NSR permits; compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan; applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

AK. "Replacement unit" means an emission unit for which all of the following criteria are met. No creditable emission reductions shall be generated from

shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(2) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The replacement unit does not change the basic design parameter(s) of the process unit.

(4) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

AL. "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

AM. "Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates: carbon monoxide, 100 tons per year; nitrogen oxides, 40 tons per year; sulfur dioxide, 40 tons per year; PM_{10} emissions, 15 tons per year; ozone, 40 tons per year of volatile organic compounds or nitrogen oxides; lead, 0.6 tons per year, $PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a $PM_{2.5}$ precursor under Subsection AJ of 20.2.79.7 NMAC.

(2) Notwithstanding the significant emissions rate for ozone in Paragraph (1) of Subsection AM of 20.2.79.7 NMAC, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to subpart 2, part D, title I of the federal Clean Air Act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

(3) For the purposes of applying the requirements of Subsection H of 20.2.79.109 NMAC to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in Paragraphs (1), (2), and (5) of Subsection AM of 20.2.79.7 NMAC shall apply to nitrogen oxides emissions.

(4) Notwithstanding the significant emissions rate for carbon monoxide under Paragraph (1) of Subsection AM of 20.2.79.7 NMAC significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the U.S. environmental protection agency administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(5) Notwithstanding the significant emissions rates for ozone under Paragraphs (1) and (2) of Subsection AM of 20.2.79.7 NMAC, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the federal Clean Air Act shall be considered a significant net emissions increase.

AN. "Significant emissions increase" means, for a regulated new source review pollutant, an increase in emissions that is significant (as defined in Subsection AM of this Section) for that pollutant.

AO. "Stationary source" means any building, structure, facility, or installation which emits or may emit any regulated new source review pollutant.

AP. "Temporary source" means a stationary source which changes its location or ceases to exist within one year from the date of initial start of operations.

AQ. "Visibility impairment" means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

[11/30/1995; 20.2.79.7 NMAC - Rn, 20 NMAC 2.79.107, 10/31/2002; A, 1/22/2006; A, 8/31/2009; A, 6/3/2011; A, 8/21/2021]

20.2.79.9 DOCUMENTS: Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau [~~, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe,~~

~~NM 87505~~]].
[11/30/1995; 20.2.79.9 NMAC - Rn, 20 NMAC 2.79.108, 10/31/2002; A, 8/21/2021]
[As of April 2013, the Air Quality Bureau is located at 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico 87505.]

20.2.79.109 APPLICABILITY:

A. Any person constructing any new major stationary source or major modification shall obtain a permit from the department in accordance with the requirements of this part prior to the start of construction or modification if either of the following conditions apply:

(1) the major stationary source or major modification will be located within a nonattainment area so designated pursuant to Section 107 of the federal Clean Air Act and will emit a regulated pollutant for which it is major and which the area is designated nonattainment for; or

(2) the major stationary source or major modification will be located within an area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the federal Clean Air Act, when it would cause or contribute to a violation of any national ambient air quality standard. [~~and will emit a regulated pollutant for which it is major and the ambient impact of such pollutant~~] A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed any of the significance levels in Subsection A of 20.2.79.119 NMAC at any location that does not or would not meet [~~any national ambient air quality standard for the same pollutant~~] the applicable national standard. (See Subsection D of 20.2.79.109 NMAC).

B. The requirements of this part apply to each regulated pollutant meeting the criteria of either Paragraph (1) or Paragraph (2) of Subsection A of 20.2.79.109 NMAC.

C. For an area which is nonattainment for ozone, volatile organic compounds and oxides of nitrogen are the regulated pollutants which may make this part applicable under the provisions of Paragraph (1) of Subsection A of 20.2.79.109 NMAC.

D. Other requirements.

(1) A new major stationary source or major modification which meets the criteria of Paragraph (2) of Subsection A of 20.2.79.109 NMAC shall demonstrate that the source or modification will not cause or contribute to a violation of any national ambient air quality standard by meeting the following requirements and no others of this part:

(a) Paragraph (2) of Subsection C of 20.2.79.112 NMAC regarding emission offsets;

(b) Subsection D of 20.2.79.112 NMAC regarding a net air quality benefit;

(c) 20.2.79.114 NMAC - Emission Offset Baseline;

(d) 20.2.79.115 NMAC - Emission Offset; and

(e) 20.2.79.117 NMAC - Air Quality Benefit.

(2) In addition , a new source or modification which meets the criteria of Paragraph (2) of Subsection A of 20.2.79.109 NMAC and is also a major stationary source or major modification as defined in 20.2.74 NMAC (prevention of significant deterioration (PSD)), shall obtain a PSD permit under the provisions of 20.2.74 NMAC.

E. Applicability procedures.

(1) Except as otherwise provided in [~~Paragraphs (3) and (4)~~] Paragraph (6) of this subsection, and consistent with the definition of major modification, a project is a major modification for a regulated new source review pollutant if it causes two types of emissions increases - a significant emissions increase (as defined in Subsection AM of 20.2.79.7 NMAC), and a significant net emissions increase (as defined in Subsections Z and AM of 20.2.79.7 NMAC). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to Paragraphs (3), [~~and~~] (4) and (5) of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of net emissions increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) Actual-to-projected-actual applicability test for projects that involve existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions (as defined in Paragraphs (1) and (2) of Subsection E of 20.2.79.7 NMAC, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in Subsection AM of 20.2.79.7 NMAC).

(4) Actual-to-potential test for projects that involve construction of a new emissions unit(s). A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion

of the project and the baseline actual emissions (as defined in Paragraph (3) of Subsection E of 20.2.79.7 NMAC) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in Subsection AM of 20.2.79.7 NMAC).

(5) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Paragraphs (3) and (4) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant. For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in Paragraph (3) of this subsection for the existing unit and determined using the method specified in Paragraph (4) of this subsection for the new unit.

(6) For any major stationary source for a PAL for a regulated new source review pollutant, the major stationary source shall comply with requirements under 20.2.79.120 NMAC.

F. Except as otherwise provided in Paragraph (6) under this subsection (Subsection F of 20.2.79.109 NMAC), the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of Paragraph (6) under this subsection (Subsection F of 20.2.79.109 NMAC), that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection AI of 20.2.79.7 NMAC for calculating projected actual emissions.

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(a) a description of the project;

(b) identification of the emissions unit(s) whose emissions of a regulated new source review pollutant could be affected by the project; and

(c) a description of the applicability test used to determine that the project is not a major modification for any regulated new source review pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Paragraph (3) of Subsection AI of 20.2.79.7 NMAC and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Paragraph (1) of this subsection to the department. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the department; however, necessary preconstruction approvals [~~and/or~~] or permits, or both must be obtained before beginning actual construction.

(3) The owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project and that is emitted by any emissions units identified in Subparagraph (b) of Paragraph (1) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of [~~5~~] five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at such emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under Paragraph (3) of this subsection setting out the unit's annual emissions during the year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in Paragraph (1) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection, by a significant amount (as defined in Subsection AM of 20.2.79.7 NMAC) for that regulated new source review pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection. Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

(a) the name, address and telephone number of the major stationary source;

(b) the annual emissions as calculated pursuant to Paragraph (3) of this subsection; and

(c) any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(6) A "reasonable possibility" under this subsection (Subsection F of 20.2.79.109 NMAC) occurs when the owner or operator calculates the project to result in either:

(a) a projected actual emissions increase of at least 50 percent of the amount that

is a ''significant emissions increase,'' as defined under Subsection AN of 20.2.79.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(b) a projected actual emissions increase that, added to the amount of emissions excluded under Subparagraph (3) of Subsection AI of 20.2.79.7 NMAC, sums to at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under Subsection AN of 20.2.79.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; for a project for which a reasonable possibility occurs only within the meaning of Subparagraph (b) of Paragraph (6) of Subsection F of 20.2.79.109 NMAC, and not also within the meaning of Subparagraph (a) of Paragraph (6) of Subsection F of 20.2.79.109 NMAC, then provisions Paragraphs (2) through (5) under this subsection (Subsection F of 20.2.79.109 NMAC) do not apply to the project.

G. The owner or operator of the source shall make the information required to be documented and maintained pursuant to Subsection F of this section (20.2.79.109 NMAC) available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

H. The requirements of this section (20.2.79.109 NMAC) applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the U.S. environmental protection agency administrator has granted a NO_X waiver applying the standards set forth under section 182(f) of the federal Clean Air Act and the waiver continues to apply.

I. In meeting the emissions offset requirements of 20.2.79.115 NMAC, the ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in Subsections J through N of 20.2.79.109 NMAC.

J. In meeting the emissions offset requirements of 20.2.79.115 NMAC for ozone nonattainment areas that are subject to subpart 2, part D, title I of the federal Clean Air Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

(1) in any marginal nonattainment area for ozone, at least 1.1:1;

(2) in any moderate nonattainment area for ozone, at least 1.15:1;

(3) in any serious nonattainment area for ozone, at least 1.2:1;

(4) in any severe nonattainment area for ozone, at least 1.3:1 (except that the ratio may be at least 1.2:1 if the approved state implementation plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

(5) in any extreme nonattainment area for ozone, at least 1.5:1 (except that the ratio may be at least 1.2:1 if the approved state implementation plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC.

K. Notwithstanding the requirements of [~~Paragraph (1) of~~] Subsection J of 20.2.79.109 NMAC for meeting the requirements of 20.2.79.115 NMAC, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that is subject to subpart 2, part D title I of the federal Clean Air Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to subpart 2, part D, title I of the federal Clean Air Act.

L. [~~Meeting~~] In meeting the emissions offset requirements of 20.2.79.115 NMAC for ozone nonattainment areas that are subject to subpart 1, part D, title I of the federal Clean Air Act, (but are not subject to subpart 2, part D title I of the federal Clean Air Act including 8-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions increase of VOC shall be at least 1:1.

M. The requirements of 20.2.79.109 NMAC applicable to major stationary sources and major modifications of PM10 shall also apply to major stationary sources and major modifications of PM10 precursors except where the US. environmental protection agency administrator determines that such sources do not contribute significantly to PM10 levels that exceed the PM_{10} ambient standards in the area.

N. In meeting the emissions offset requirements of 20.2.79.115 NMAC, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this paragraph. The department may allow the offset requirements in 20.2.79.115 NMAC for direct $PM_{2.5}$ emissions or emissions of precursors of $PM_{2.5}$ to be satisfied by offsetting reductions in direct $PM_{2.5}$ emissions or emissions of any $PM_{2.5}$ precursor identified under Subsection AJ of 20.2.79.7 NMAC if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

[11/30/1995; 20.2.79.109 NMAC - Rn, 20 NMAC 2.79.109, 10/31/2002; A, 1/22/2006; A, 8/31/2009; A, 6/3/2011; A, 8/21/2021]

20.2.79.115 EMISSION OFFSETS: All emission offsets approved by the department shall meet the following criteria.

A. All emission reductions claimed as offset credit shall be from decreases of the same pollutant for which the offset is required.

B. All emission reductions claimed as offset credit shall occur prior to or concurrent with the start of operation of the proposed source. In addition, past reductions must have occurred later than the date upon which the area became nonattainment in order to be creditable.

C. For the case where emission reductions claimed as offset credit occur at the source subject to this part, such reductions shall be a condition required by a federally enforceable permit. For the case where emission reductions claimed as offset credit occur at a neighboring source, such reductions shall be incorporated as modifications to pertinent federally enforceable permits held by the neighboring source. If the neighboring source has no relevant permits, the reductions shall be approved as a revision to the state implementation plan by the board.

D. Offset credit for any emissions reduction can be claimed only to the extent that the department or U.S. EPA has not relied on it in previously issuing any permit or in demonstrating attainment or reasonable further progress.

E. No emissions reduction credit shall be allowed for replacing one volatile organic compound with another of lesser reactivity, except as approved by the U.S. EPA reactivity guidance found at 42 *federal register* 35314, (1977), and any amendments thereto.

F. Emission reduction credit may be allowed for a source permanently curtailing production or operating hours below baseline levels provided that the work force to be affected has been notified of the curtailment.

(1) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours below baseline levels may be generally credited for offsets if such reductions are surplus, permanent, quantifiable, and federally enforceable. In addition, the shutdown or curtailment is creditable only if it occurred after the date of the most recent emissions inventory used in the state implementation plan's demonstration of attainment. However, in no event may credit be given for shutdowns which occurred prior to August 7, 1977. For purposes of this paragraph, a permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the date of the base year inventory, if the projected inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units.

(2) Such reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new emission unit is a replacement for the shutdown or curtailed emission unit, and the provisions of Paragraph (1) of Subsection F of 20.2.79.7 NMAC are observed.

G. Where the most stringent emissions limit which is applicable allows greater emissions than the potential to emit of the offsetting source, emission offset credit will be allowed only for control below the potential to emit of the source.

H. The emission limit for determining emission offset credit involving an existing fuel combustion source shall be the most stringent emission standard which is applicable for this source for the type of fuel being burned at the time the permit application is filed. If the existing source commits to switch to a cleaner fuel, emission offset credit based on the difference between the allowable emissions of the fuels involved shall be acceptable only if an alternative control measure, which would achieve the same degree of emission reduction should the source switch back to a fuel which produces more pollution, is specified in a permit issued by the department.

I. The owner or operator desiring to utilize an emission reduction as an offset shall submit to the department the following information:

(1) a detailed description of the process to be controlled and the control technology to be used; and

(2) emission calculations showing the types and amounts of actual emissions to be reduced; and

(3) the effective date of the reduction.

J. Source shutdowns and curtailments in production or operating hours may be used for emission offset credit only if they occur after August 7, 1977, or less than one year prior to the date of permit application, whichever is earlier, and the proposed new source for which the offset is to apply is a replacement for the shutdown or curtailment.

K. The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit. [11/30/1995; 20.2.79.115 NMAC - Rn, 20 NMAC 2.79.115, 10/31/2002; A, 1/22/2006; A, 8/31/2009; A, 8/21/2021]

Continued Next Page

20.2.79.119 TABLES:

A. Significant ambient concentrations:

[Concentration in micrograms per cubic meter (µg/m³) or milligrams per cubic meter (mg/m³)]

Pollutant	Averaging Time				
	Annual	24-hr	8-hr	3-hr	1-hr
Sulfur dioxide	1.0 µg/m³	5 µg/m³	--	25 µg/m³	--
PM$_{10}$	1.0 µg/m³	5 µg/m³	--	--	--
PM$_{2.5}$	0.3 µg/m³	1.2 µg/m³			
Nitrogen dioxide	1.0 µg/m³	--	--	--	--
Carbon monoxide	--	--	0.5 mg/m³	--	2 mg/m³

B. Fugitive emissions source categories:

(1) carbon black plants (furnace process);

(2) charcoal production plants;

(3) chemical process plants;

(4) coal cleaning plants (with thermal dryers);

(5) coke oven batteries;

(6) fossil fuel-fired steam electric plants of more than 250 million Btu/hr heat input;

(7) fossil fuel boiler (or combination thereof) totaling more than [~~50~~] 250 million Btu/hr heat input;

(8) fuel conversion plants;

(9) glass fiber processing plants;

(10) hydrofluoric acid plants;

(11) iron and steel mill plants;

(12) kraft pulp mills;

(13) lime plants;

(14) municipal incinerators capable of charging more than 250 tons of refuse per day;

(15) nitric acid plants;

(16) petroleum refineries;

(17) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(18) phosphate rock processing plants;

(19) portland cement plant;

(20) primary lead smelters;

(21) primary zinc smelters;

(22) primary aluminum ore reduction plants;

(23) primary copper smelters;

(24) secondary metal production plants;

(25) sintering plants;

(26) sulfur recovery plants;

(27) sulfuric acid plants;

(28) taconite ore processing plants.

[11/30/1995; 20.2.79.119 NMAC - Rn, 20 NMAC 2.79.119, 10/31/2002; A, 6/3/2011; A, 8/21/2021]

20.2.79.120 ACTUALS PLANTWIDE APPLICABILITY LIMITS (PALs):

A. Applicability.

(1) The department may approve the use of an actuals PAL for any existing major stationary source (except as provided in Paragraph (2) of this subsection) if the PAL meets the requirements of this section. The term "PAL" shall mean "actuals PAL" throughout this section.

(2) Actuals PALs shall not be allowed for VOC or NOx for any major stationary source located in an extreme ozone nonattainment area.

(3) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

(a) is not a major modification for the PAL pollutant;

(b) does not have to be approved through the requirements of this part; and

(c) is not subject to the provisions in 20.2.79.110 NMAC (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major new source review program).

(4) Except as provided under Subparagraph (c) of Paragraph (3) of this subsection, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. Definitions. When a term is not defined in this subsection, it shall have the meaning given in 20.2.79.7 NMAC or in 20.2.2 NMAC.

(1) Actuals PAL for a major stationary source means a PAL based on the baseline actual emissions of all emissions units at the source, that emit or have the potential to emit the PAL pollutant.

(2) Allowable emissions means "allowable emissions" as defined in 20.2.79.7 NMAC, except as this definition is modified according to the following.

(a) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(b) An emissions unit's potential to emit shall be determined using the definition in this part, except that the words "or enforceable as a practical

matter" should be added after "federally enforceable".

(3) Small emissions unit means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Subsection AM of 20.2.79.7 NMAC or in the federal Clean Air Act, whichever is lower.

(4) Major emissions unit means:

(a) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(b) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the federal Clean Air Act for nonattainment areas; for example, in accordance with the definition of major stationary source in Section 182 (c) of the federal Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(5) Plantwide applicability limitation (PAL) means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this section.

(6) PAL effective date generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(7) PAL effective period means the period beginning with the PAL effective date and ending 10 years later.

(8) PAL major modification means, notwithstanding the definitions for major modification and net emissions increase in 20.2.79.7 NMAC, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(9) PAL permit means the major new source review permit, the minor NSR permit, or the state operating permit under the requirements of 20.2.72 NMAC, 20.2.74 NMAC, 20.2.79 NMAC, or the title V permit under the requirements of 20.2.70 NMAC issued by the department that establishes a PAL for a major stationary source.

(10) PAL pollutant means the pollutant for which a PAL is established at a major stationary source.

(11) Significant emissions unit means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in Subsection AM of 20.2.79.7 NMAC or in the federal Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in Paragraph (4) of Subsection B of this section.

C. Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval.

(1) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations or work practices apply to each unit.

(2) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection M of this section.

D. General requirements for establishing PALs.

(1) A PAL at a major stationary source may be allowed by the department, provided that at a minimum, the following requirements are met.

(a) The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in Subsection E of this section.

(c) The PAL permit shall contain all the requirements of Subsection G of this section.

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(e) Each PAL shall regulate emissions of only one pollutant.

(f) Each PAL shall have a PAL effective period of 10 years.

(g) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Subsections L through N of this section for each emissions unit under the PAL through the PAL effective period.

(2) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under 20.2.79.115 NMAC unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

E. Public participation requirement for PALs. PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 40 CFR 51.160 and 161. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department shall address all material comments before taking final action on the permit.

F. Setting the 10-year actuals PAL level.

(1) Except as provided in Paragraph (2) of this subsection, the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in 20.2.79.7 NMAC) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under 20.2.79.7 NMAC or under the act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(2) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in Paragraph (1) of this subsection, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

G. Contents of the PAL permit. The PAL permit shall contain, at a minimum, all of the following information.

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(2) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(3) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with Subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of Subsection I of this section.

(6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection M of this section.

(7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Subsection L of this section.

(8) A requirement to retain the records required under Subsection M of this section on site. Such records may be retained in an electronic format.

(9) A requirement to submit the reports required under Subsection N of this section by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

H. PAL effective period and reopening of the PAL permit.

(1) PAL effective period. The permit shall specify a PAL effective period of 10 years.

(2) Reopening of the PAL permit.

(a) During the PAL effective period, the department shall reopen the PAL permit to:

(i) correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(ii) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 20.2.79.115 NMAC; or

(iii) revise the PAL to reflect an increase in the PAL as provided under Subsection K of this section.

(b) The department may reopen the PAL permit for the following:

(i) to reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(ii) to reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the department may impose on the major stationary source under this part; or

(iii) to reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(c) Except for the permit reopening in Item (i) of Subparagraph (a) of this paragraph for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of Subsection E of this section.

I. Expiration of a PAL. Any PAL which is not renewed in accordance with the procedures in Subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply.

(1) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures.

(a) Within the time frame specified for PAL renewals in Paragraph (2) of Subsection J of this section, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Paragraph (5) of Subsection J of this section, such distribution shall be made as if the PAL had been adjusted.

(b) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(2) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(3) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Subparagraph (a) of Paragraph (1) of this subsection, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(4) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major new source review requirements if such change meets the definition of major modification in 20.2.79.7 NMAC.

(5) The major stationary source owner or operator shall continue to comply with any New Mexico or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to [~~20.2.79.109 NMAC~~] Subsection A of 20.2.79.110 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (3) of Subsection A of this section.

J. Renewal of a PAL.

(1) The department shall follow the procedures specified in Subsection E of this section in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

(2) Application deadline. A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least [6] six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(3) Application requirements. The application to renew a PAL permit shall contain the following information.

(a) The information required in Paragraphs (1) through (3) of Subsection C of this section.

(b) A proposed PAL level.

(c) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(d) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(4) PAL adjustment. In determining whether and how to adjust the PAL, the department shall consider the options outlined in Subparagraph (a) of this paragraph. However, in no case may any such adjustment fail to comply with Subparagraph (b) of this paragraph.

(a) If the emissions level calculated in accordance with Subsection F of this section is equal to or greater than 80 percent of the PAL level, the department may:

(i) renew the PAL at the same level without considering the factors set forth in Item (ii) of this subparagraph; or

(ii) set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

(b) Notwithstanding Subparagraph (a) of this paragraph:

(i) if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(ii) the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Subsection K of this section (increasing a PAL).

(5) If the compliance date for a New Mexico or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

K. Increasing a PAL during the PAL effective period.

(1) The department may increase a PAL emission limitation only if the major stationary source complies with the following provisions.

(a) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(b) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(c) The owner or operator shall obtain a major new source review permit for all emissions unit(s) identified in Subparagraph (a) of Paragraph (1) of Subsection K of this section, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

(d) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(2) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with Subparagraph (b) of Paragraph (1) of Subsection K of this section), plus the sum of the baseline actual emissions of the small emissions units.

(3) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Subsection E of this section.

L. Monitoring requirements for PALs.

(1) General Requirements.

(a) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality

and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Subparagraphs (a) through (d) of Paragraph (2) of this subsection and must be approved by the department.

(c) Notwithstanding Subparagraph (b) of this paragraph, the owner or operator may also employ an alternative monitoring approach that meets Subparagraph (a) of this paragraph if approved by the department.

(d) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(2) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Paragraphs (3) through (9) of this subsection:

(a) mass balance calculations for activities using coatings or solvents;

(b) CEMS;

(c) CPMS or PEMS; and

(d) emission factors.

(3) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(a) provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(b) assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(c) where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(4) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable performance specifications found in 40 CFR part 60, appendix B; and

(b) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

(5) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(b) each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(6) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(a) all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(b) the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(c) if technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within [~~6~~] six months of PAL permit issuance, unless the department determines that testing is not required.

(7) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(8) Notwithstanding the requirements in Paragraphs (3) through (7) of this subsection, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

(a) establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(b) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(9) Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every [~~5~~] five years after issuance of the PAL.

M. Recordkeeping requirements.

(1) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for [~~5~~] five years from the date of such record.

(2) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus [~~5~~] five years:

(a) a copy of the PAL permit application and any applications for revisions to the PAL; and

(b) each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

N. Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in accordance with the requirements of 20.2.70 NMAC. The reports shall meet the following requirements.

(1) Semi-Annual Report. The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the following information.

(a) The identification of owner and operator and the permit number.

(b) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Paragraph (1) of Subsection M of this section.

(c) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

(d) A list of any emissions units modified or added to the major stationary source during the preceding [~~6~~] six-month period.

(e) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(f) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Paragraph (7) of Subsection L of this section.

(g) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(2) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

(a) the identification of owner and operator and the permit number;

(b) the PAL requirement that experienced the deviation or that was exceeded;

(c) emissions resulting from the deviation or the exceedance; and

(d) a signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(3) Revalidation results. The owner or operator shall submit to the department the results of any revalidation test or method within [~~3~~] three months after completion of such test or method.

O. Transition requirements.

(1) The department shall not issue a PAL that does not comply with the requirements of this section after the administrator has approved these regulations.

(2) The department may supersede any PAL which was established prior to the date of approval of this part by the administrator with a PAL that complies with the requirements of this section.

[20.2.79.120 NMAC - N, 1/22/2006; A, 8/21/2021]

ENVIRONMENT DEPARTMENT

This is an amendment to 20.3.1 NMAC, Section 7, effective 8/10/2021.

20.3.1.7 DEFINITIONS: As used in these regulations, these terms have the definitions as set forth below.

A. "Accelerator" (See particle accelerator).

B. "Accelerator produced material" means any material made radioactive by exposure to radiation from a particle accelerator.

C. "Act" means the Radiation Protection Act (Sections 74-3-1 through 74-3-16, NMSA 1978).

D. "Agreement state" means any state with which the United States nuclear regulatory commission (NRC) or the United States atomic energy commission (AEC) has entered into an effective agreement under Section 274b of the Atomic Energy Act, as amended (73 Stat. 689).

E. "Board" means the environmental improvement board.

F. "Byproduct material" means:

(1) any radioactive material, (except special nuclear material), yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes; underground ore bodies depleted by these solution extraction operations do not constitute byproduct material within this definition;

(3) any discrete source of radium-226 that is produced, extracted or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical or research activity;

(4) any material that:

(a) has been made radioactive by use of a particle accelerator; and

(b) is produced, extracted or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical or research activity; or

(5) any discrete source of naturally occurring radioactive material, other than source material, that

(a) NRC, in consultation with the administrator of the environmental protection agency (EPA), the secretary of energy, the secretary of homeland security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(b) before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical or research activity.

G. "Calibration" means the quantitative evaluation and adjustment, as deemed necessary by the department, of radiation measuring instruments by a department approved laboratory. Calibration includes the determination of: [~~1~~]

(1) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument, or [~~2~~]

(2) the strength of a source of radiation relative to a standard using national institute of standards and technology (NIST) traceable sources and approved techniques.

H. "CFR" means code of federal regulations.

I. "Chelating agent" means amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid and polycarboxylic acids.

J. "Commercial waste disposal" means disposal of radioactive waste as a business enterprise.

K. "Consortium" means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution or a federal facility or a medical facility.

L. "Council" means the radiation technical advisory council (RTAC).

M. "Curie" means that amount of radioactive material which disintegrates at the rate of 37 billion atoms per second.

N. "Cyclotron" means a particle accelerator in which the charged particles travel in an outward spiral or circular path. A cyclotron accelerates charged particles at energies usually in excess of 10 megaelectron volts and is commonly used for production of short half-life radionuclides for medical use.

O. "Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

(1) release of the property for unrestricted use and termination of the license; or

(2) release of the property under restricted conditions and termination of the license.

P. "Department" means the environment department, its successors, or its predecessors, the environmental improvement agency, or the environmental protection [~~improvement~~] division of the [~~health and environment~~] environment department.

Q. "Depleted uranium" means the source material uranium which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

R. "Discrete source" means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical or research activities.

S. "DOE" means the United States department of energy established by the Department of Energy Organization Act (Public Law 95-91, 91 Stat. 565, 42 U.S.C. 7101 et. seq.) to the extent that the DOE, or its duly authorized representatives, exercises functions formerly vested in the United States atomic energy

commission (AEC), its chairman, members, officers and components and transferred to the United States energy research and development administration (ERDA) and to the administrator thereof pursuant to sections 104(b), (c) and (d) of the Energy Reorganization Act (Public Law 93-438, 88 Stat. 1233 at 1237, 42 U.S.C. 5814) and retransferred to the secretary of energy pursuant to section 301(a) of the Department of Energy Organization Act (Public Law 95-91, 91 Stat. 565 at 577-578, 42 U.S.C. 7151).

T. "DOT" means the United States department of transportation.

U. "EPA" means the United States environmental protection agency.

V. "FDA" means the United States food and drug administration.

W. "Former U.S. atomic energy commission (AEC) or NRC licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants or critical mass experimental facilities where AEC or NRC licenses have been terminated.

X. "Government agency" means any state or federal executive department, commission, independent establishment, corporation, wholly or partly owned by any state or the United States of America which is an instrumentality of the state or United States, or any board, bureau, division, service, office, officer, authority, administration or other establishment in the executive branch of the government.

Y. "Hazardous waste" means those wastes designated as hazardous by EPA regulations in 40 CFR Part 261.

Z. "Healing arts" means those professional disciplines authorized by the laws of this state to use x-rays or radioactive material in the diagnosis or treatment of human or animal disease.

AA. "Human use" means the internal or external administration of radiation or radioactive material to human beings for the purpose of medical diagnosis or therapy.

BB. "Individual" means any human being.

CC. "Inspection" means an official examination or observation including, but not limited to, tests, surveys and monitoring to determine compliance with rules, regulations, orders, requirements and license or registration conditions of the department.

DD. "License" means a license issued by the department in accordance with 20.3 NMAC.

EE. "Licensed material" means radioactive material received, possessed, used, transferred or disposed of under a general or specific license issued by the department.

FF. "Licensee" means the holder of a license.

GG. "Licensing state" means any state with regulations equivalent to the suggested state regulations for control of radiation (SSRCR) relating to, and an effective program for, the regulatory control of NARM (as defined in 20.3.1.7 NMAC) and which has been granted final designation by the conference of radiation control program directors, incorporated (CRCPD).

HH. "Lost or missing licensed material" means licensed material whose location is unknown. This definition includes, but is not limited to, material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

II. "Major processor" means a user processing, handling or manufacturing radioactive material exceeding type A quantities as unsealed sources or material, or exceeding 4 times type B quantities as sealed sources, but does not include nuclear medicine programs, universities, industrial radiographers or small industrial programs. Type A and B quantities are defined in 10 CFR Part 71.4.

JJ. "Mixed waste" contains both hazardous waste (as defined by Resource Conservation and Recovery Act (RCRA) and its amendments) and radioactive waste (as defined by Atomic Energy Act (AEA) and its amendments). It is jointly regulated by NRC or NRC's agreement states and EPA or EPA's RCRA authorized states. The fundamental and most comprehensive statutory definition is found in the Federal Facilities Compliance Act (FFCA) where Section 1004(41) was added to RCRA: "The term 'mixed waste' means waste that contains both hazardous waste and source, special nuclear, or byproduct material subject to the Atomic Energy Act."

KK. "NARM" means any naturally occurring or accelerator-produced radioactive material. It does not include source or special nuclear material.

LL. "Natural radioactivity" means radioactivity of naturally occurring nuclides.

MM. "NRC" means the United States nuclear regulatory commission or its duly authorized representatives.

NN. "Ore refineries" means all processors of a radioactive material ore including uranium mills or other source material extraction facilities.

OO. "Particle accelerator" (accelerator) means any machine capable of accelerating electrons, protons, deuterons or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 megaelectron volt. For purposes of this definition, "accelerator" is an equivalent term. Particle accelerators which intentionally produce radioactive materials or produce radioactive materials incidental to the operation of an accelerator shall be subject to the licensing requirements in 20.3.3 NMAC. Particle accelerators which produce radiation for research, diagnostic or therapeutic purposes shall be subject to the registration requirements in 20.3.2 and 20.3.9 NMAC.

PP. "Person" means: [~~I~~]

(1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than NRC or DOE, any state or any political subdivision of or any political entity within a state, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and [~~2~~)]

(2) any legal successor, representative, agent or agency of the foregoing.

QQ. "PET" means positron emission tomography.

RR. "Qualified expert" means an individual having the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs; for example, individuals certified in the appropriate field by the American board of radiology (ABR), or the American board of health physics (ABHP), or the American board of medical physics (ABMP) or those having equivalent qualifications. With reference to the calibration of radiation therapy equipment, an individual having, in addition to the above qualifications, training and experience in the clinical applications of radiation physics to radiation therapy; for example, individuals certified in therapeutic radiological physics or x-ray and radium physics by the ABR, or those having equivalent qualifications. With reference to providing medical physics services to certified mammographic facilities, such individuals must meet the requirements as defined by the FDA.

SS. "Radiation" (ionizing radiation), as used in this chapter, means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons and other particles capable of producing ions. Radiation, as used in this chapter, does not include non-ionizing radiation, such as radiowaves or microwaves, visible, infrared or ultraviolet light.

TT. "Radiation machine" means any device capable of producing radiation except those devices with radioactive material as the only source of radiation.

UU. "Radiation safety officer" means one who has the knowledge and responsibility to apply appropriate radiation protection regulations.

VV. "Radioactive material" means any material in any physical or chemical form which emits radiation spontaneously.

WW. "Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

XX. "Radioisotope" (see radioactive material).

YY. "Radionuclide" (see radioactive material).

ZZ. "Registrant" means a holder of a registration and any person who is registered or legally obligated to register with the department pursuant to 20.3.2 NMAC or 20.3.9 NMAC.

AAA. "Registration" (certificate of registration) means a registration issued by the department pursuant to 20.3.2 NMAC or 20.3.9 NMAC.

BBB. "Regulation" means any rule adopted pursuant to the act.

CCC. "Regulations of the U.S. department of transportation" (DOT) means the regulations in 49 CFR Parts 100-185.

DDD. "Research and development" means: [~~1~~)]

(1) theoretical analysis, exploration or experimentation; or [~~2~~)]

(2) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

EEE. "Sealed source" means any radioactive material that is encased in a capsule designed to prevent leakage or escape of the radioactive material.

FFF. "Sealed source and device registry" means the national registry that contains all the registration certificates, generated by both NRC and the agreement states that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for the product.

GGG. "Secretary" means the secretary of the New Mexico environment department.

HHH. "SI" means the international system of units.

III. "Site boundary" means that line beyond which the land or property is not owned, leased or otherwise controlled by the licensee or registrant.

JJJ. "Source material" means:

(1) uranium or thorium, or any combination thereof, in any physical or chemical form; or

(2) ores that contain by weight one-twentieth of one percent (0.05 percent) or more of uranium, thorium or any combination thereof; source material does not include special nuclear material.

KKK. "Source material milling" means any activity which results in the production of byproduct as defined in Paragraph (2) of Subsection F of this section.

LLL. "Source of radiation" means any radioactive material, device or equipment emitting or capable of producing radiation.

MMM. "Special form radioactive material" means radioactive material that satisfies the conditions in 10 CFR 71.75

NNN. "Special nuclear material" means:

(1) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the NRC, pursuant to the provisions of Section 51 of the Atomic Energy Act determines to be special nuclear material, but does not include source material; or

(2) any material artificially enriched by any of the foregoing but does not include source material.

OOO. "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams or any combination of them in accordance with the following formula: for each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed 1 (i.e. unity). For example, the following quantities in combination would not exceed the limitation and are within the formula: 175 (grams contained U-235)/350 + 50 (grams U-233)/200 + 50 (grams Pu)/200 = 1.

PPP. "Test" means a method for determining the characteristics of conditions of sources of radiation or components thereof.

QQQ. "These regulations" means all parts of 20.3 NMAC.

RRR. "Unrefined and unprocessed ore" means ore in its natural form prior to any processing such as grinding, roasting, beneficiating or refining.

SSS. "Waste" (radioactive waste) means those low-level radioactive wastes containing radioactive material which is acceptable for disposal in a land disposal facility. For the purposes of this chapter, excluded from the definition of "waste" are:

(1) high-level radioactive waste or spent nuclear fuel as defined in section 2 of the Nuclear Waste Policy Act;

(2) transuranic waste as defined in section 11.(ee) of the Atomic Energy Act; or

(3) byproduct material as defined in Paragraphs (2), (3), (4) and (5) of the definition of *byproduct material* set forth in this section.

[20.3.1.7 NMAC - Rp, 20.3.1.7 NMAC, 4/30/2009; A, 6/13/2017; A, 8/10/2021]

ENVIRONMENT DEPARTMENT

This is an amendment to 20.3.3 NMAC, Sections 7, 301, 302, 304, 305, 306, 307, 310 and 315 effective 8/10/2021

20.3.3.7 DEFINITIONS:

A. "Alert" means events that may occur, are in progress, or have occurred that could lead to a release of radioactive material but that the release is not expected to require a response by offsite response organizations to protect persons offsite.

B. "Principal activities" means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

C. "Site area emergency" means events that may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by offsite response organizations to protect persons offsite.

D. "Indian [~~tribe~~] Tribe" means an Indian or Alaska native [~~tribe~~] Tribe, band, nation, pueblo, village, or community that the secretary of the interior acknowledges to exist as an Indian [~~tribe~~] Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

E. "Tribal official" means the highest ranking individual that represents [~~tribe~~] Tribe leadership, such as the chief, president, or [~~tribe~~] Tribe council leadership.

F. "Unrefined and unprocessed ore" means ore in its natural form prior to any processing, such as grinding, roasting or beneficiating, or refining. Processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

[20.3.3.7 NMAC - N, 4/30/2009; A, 6/13/2017; A, 8/10/2021]

20.3.3.301 EXEMPTIONS - UNIMPORTANT QUANTITIES OF SOURCE MATERIAL:

A. Any person is exempt from the requirements in this part to the extent that such person receives, possesses, uses, transfers or delivers source material in any chemical mixture, compound, solution or alloy in which the source material is by weight less than one twentieth of one percent of the mixture, compound, solution or alloy. The exemption contained in this subsection does not include *byproduct material* as defined in Paragraph (2) of Subsection F of 20.3.1.7 NMAC.

B. Any person is exempt from the requirements in this part to the extent that such person receives, possesses, uses or transfers unrefined and unprocessed ore containing source material; provided that, except as authorized in a specific license, such person shall not refine or process such ore.

C. Any person is exempt from the requirements for a license set forth in [~~section 62 of the Atomic Energy~~] the Radiation Protection Act, Sections 74-3-1 through 16 NMSA 1978 and from the regulations in this part and in 10 CFR Parts 19, 20, and 21 to the extent that such person receives, possesses, uses or transfers:

(1) any quantities of thorium contained in:

(a) incandescent gas mantles;

(b) vacuum tubes;

(c) welding rods;

(d) electric lamps for illuminating purposes; provided, that each lamp does not contain more than 50 milligrams of thorium;

(e) germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting; provided, that each lamp does not contain more than two grams of thorium;

(f) rare earth metals and compounds, mixtures and products containing not more than one fourth of one percent by weight, thorium, uranium or any combination of these; or

(g) personnel neutron dosimeters; provided, that each dosimeter does not contain more than 50 milligrams of thorium;

(2) source material contained in the following products:

(a) glazed ceramic tableware manufactured before August 27, 2013, provided that the glaze does not contain more than twenty percent by weight source material;

(b) glassware, containing not more than two percent by weight source material or, for glassware manufactured before August 27, 2013, ten percent by weight source material; but not including commercially manufactured glass brick, pane glass, ceramic tile or other glass, glass enamel or ceramic used in construction;

(c) glass enamel or glass enamel frit containing not more than ten percent by weight source material imported or ordered for importation into the United States, or initially distributed by manufacturers in the United States, before July 25, 1983 (On July 25, 1983, the exemption of glass enamel frit was suspended. The exemption was eliminated on September 11, 1984); or

(d) piezoelectric ceramic containing not more than two percent by weight source material;

(3) photographic film, negatives and prints containing uranium or thorium;

(4) any finished product or part fabricated of, or containing, tungsten or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed four percent by weight and that this exemption shall not be deemed to authorize the chemical, physical or metallurgical treatment or processing of any such product or part;

(5) uranium contained in counterweights installed in aircraft, rockets, projectiles and missiles, or stored or handled in connection with installation or removal of such counterweights; provided, that:

(a) each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "depleted uranium." (the requirements specified in Subparagraphs (a) and (b) of this paragraph need not be met by counterweights manufactured prior to December 31, 1969; provided, that such counterweights are impressed with the legend, "caution - radioactive material - uranium");

(b) each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "unauthorized alterations prohibited"; (the requirements specified in Subparagraphs (a) and (b) of this paragraph need not be met by counterweights manufactured prior to December 31, 1969; provided, that such counterweights are impressed with the legend, "caution - radioactive material - uranium");

(c) the exemption contained in this paragraph shall not be deemed to authorize the chemical, physical or metallurgical treatment or processing of such counterweights other than repair or restoration of any plating or other covering; and

(d) consistent with 10 CFR 40.56, the counterweights are not manufactured for military purpose using Australian-obligated source material;

(6) natural or depleted uranium metal used as shielding constituting part of any shipping container which is conspicuously and legibly impressed with the legend, "caution - radioactive shielding - uranium" and the uranium metal is encased in mild steel or equally fire resistant metal of minimum wall thickness of one-eighth of an inch (3.2 millimeters);

(7) thorium or uranium contained in or on finished optical lenses and mirrors, provided that each lens or mirror does not contain more than ten percent by weight of thorium or uranium or, for lenses manufactured before August 27, 2013, thirty percent by weight of thorium; and that the exemption contained in this paragraph does not authorize either:

(a) the shaping, grinding or polishing of such lens or mirror or manufacturing processes other than the assembly of such lens or mirror into optical systems and devices without any alternation of the lens; or

(b) the receipt, possession, use or transfer of uranium or thorium contained in contact lenses, spectacles, eyepieces in binoculars or other optical instruments;

(8) uranium contained in detector heads for use in fire detection units, provided that each detector head contains not more than 0.005 microcurie of uranium; or

(9) thorium contained in any finished aircraft engine part containing nickel-thoria alloy, provided, that:

(a) the thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium-dioxide); and

(b) the thorium content in the nickel-thoria alloy does not exceed four percent by weight.

D. No person may initially transfer for sale or distribution a product containing

source material to persons exempt in accordance with 10 CFR 40.13(c), or equivalent regulations of an agreement state, unless authorized by a license issued pursuant to 10 CFR 40.52 to initially transfer such products for sale or distribution.

(1) Persons initially distributing source material in products covered by the exemptions in this paragraph 10 CFR 40.13(c) before August 27, 2013, without specific authorization may continue such distribution for 1 year beyond this date. Initial distribution may also be continued until the NRC commission takes final action on a pending application for license or license amendment to specifically authorize distribution submitted no later than 1 year beyond this date.

(2) Persons authorized to manufacture, process, or produce these materials or products containing source material by an agreement state, and persons who import finished products of parts, for sale or distribution must be authorized by a license issued pursuant to 10 CFR 40.52 for distribution only and are exempt from the requirements of [~~20.3.3 NMAC and 20.3.4 NMAC~~] 10 CFR 19 and 10 CFR 20, and 10 CFR 40.32(b) and (c).

E. The exemptions in Subsection C of this section do not authorize the manufacture of any of the products described.

[20.3.3.301 NMAC - Rp, 20.3.3.301 NMAC, 4/30/2009; A, 8/10/2021]

20.3.3.302 EXEMPTIONS - RADIOACTIVE MATERIAL OTHER THAN SOURCE MATERIAL:

A. Exempt concentrations.

(1) Except as provided in Paragraphs (3) and (4) of this subsection, any person is exempt from the license requirements in this part to the extent that such person receives, possesses, uses, transfers, owns or acquires products or materials containing radioactive material in concentrations not in excess of those listed in 20.3.3.329 NMAC.

(2) This subsection shall not be deemed to authorize the import of radioactive material or products containing radioactive material.

(3) A manufacturer, processor or producer of a product or material is exempt from the license requirements in this part to the extent that they transfer radioactive material contained in a product or material in concentrations not in excess of those specified in 20.3.3.329 NMAC and introduced into the product or material by a licensee holding a specific license issued by the NRC expressly authorizing such introduction. This exemption does not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(4) No person may introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under this subsection or equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued pursuant to Paragraph (1) of Subsection A of 20.3.3.315 NMAC.

B. Exempt quantities.

(1) Except as provided in Paragraphs (3) through (5) of this subsection, any person is exempt from the license requirements in this part to the extent that such person receives, possesses, uses, transfers, owns or acquires radioactive material in individual quantities each of which does not exceed the applicable quantity set forth in 20.3.3.330 NMAC.

(2) Any person who possesses byproduct material received or acquired prior to September 25, 1971 under the general license then provided in 10 CFR 31.4 or similar general license of an agreement state, is exempt from the requirements for a license set forth in this part to the extent that such person possesses, uses, transfers or owns byproduct material.

(3) This subsection does not authorize for the purposes of commercial distribution the production, packaging, repackaging or transfer of radioactive material or the incorporation of radioactive material into products intended for commercial distribution.

(4) No person may, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in 20.3.3.330 NMAC, knowing or having reason to believe that such quantities of radioactive material will be transferred to persons exempt under this subsection or equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued by the NRC pursuant to 10 CFR 32.18 which license states that the radioactive material may be transferred by the licensee to persons exempt under this subsection or the equivalent regulations of the NRC or an agreement state.

(5) No person may, for purposes of producing an increased radiation level, combine quantities of radioactive material covered by this exemption so that the aggregate quantity exceed the limits set forth in 20.3.3.330 NMAC, except for radioactive material combined within a device placed in use before May 3, 1999, or as otherwise permitted by the rules in this chapter.

C. Exempt items.

(1) Certain items containing radioactive material. Any person who desires to apply byproduct material to, or to incorporate byproduct material into, the products exempted in this paragraph, or who desires to initially transfer for sale or distribution such products containing byproduct material, shall apply for a specific license to NRC pursuant to 10 CFR 32.14, which license states that the product may be distributed by the licensee to persons exempt from the regulations pursuant to this paragraph or equivalent NRC or agreement state regulations. Except for persons who apply radioactive material to, or persons who incorporate radioactive

material into, the following products, or persons who initially transfer for sale or distribution (specifically licensed by NRC pursuant to 10 CFR 32.14) the following products containing radioactive material, any person is exempt from the license requirements in this part to the extent that such person receives, possesses, uses, transfers, owns or acquires the following products:

(a)

timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

(i)

25 millicuries (925 megabecquerels) of tritium per timepiece;

(ii)

5 millicuries (185 megabecquerels) of tritium per hand;

(iii)

15 millicuries (555 megabecquerels) of tritium per dial (bezels when used shall be considered as part of the dial);

(iv)

100 microcuries (3.7 megabecquerels) of promethium-147 per watch hand or 200 microcuries (7.4 megabecquerels) of promethium-147 per any other timepiece;

(v)

20 microcuries (0.74 megabecquerel) of promethium-147 per watch hand or 40 microcuries (1.48 megabecquerels) of promethium-147 per other timepiece hand;

(vi)

60 microcuries (2.22 megabecquerels) of promethium-147 per watch dial or 120 microcuries (4.44 megabecquerels) of promethium-147 per other timepiece dial (bezels when used shall be considered as part of the dial);

(vii)

the levels of radiation from hands and dials containing promethium-147 shall not exceed, when measured through 50 milligrams per square centimeter of absorber: *1)* for wrist watches, 0.1 millirad (1 milligray) per hour at 10 centimeters from any surface; *2)* for pocket watches, 0.1 millirad (1 milligray) per hour at 1 centimeter from any surface; or *3)* for any other timepiece, 0.2 millirad (2 milligray) per hour at 10 centimeters from any surface; or

(viii)

1 microcurie (37 kilobecquerels) of radium-226 per timepiece in intact timepieces manufactured prior to November 30, 2007;

(b)

static elimination device. Devices designed for use as static eliminators which contain, as a sealed source or sources, byproduct material consisting of a total of not more than 500 microcuries (18.5 megabecquerels) of polonium-210 per device.

(c)

Ion generating tube. Devices designed for ionization of air which contain, as a sealed source or sources, byproduct material consisting of a total of not more than 500 microcuries (18.5 megabecquerels) of polonium-210 per device or a total of not more than 50 millicuries (1.85 gigabecquerels) of hydrogen-3 (tritium) per device.

[~~(c)~~] **(d)**

precision balances containing not more than 1 millicurie (37 megabecquerels) of tritium per balance or not more than 0.5 millicurie (18.5 megabecquerels) of tritium per balance part manufactured before December 17, 2007;

[~~(d)~~] (e)

[**RESERVED**];

[~~(e)~~] (f)

marine compasses containing not more than 750 millicuries (27.8 gigabecquerels) of tritium gas and other marine navigational instruments containing not more than 250 millicuries (9.25 gigabecquerels) of tritium gas manufactured before December 17, 2007;

[~~(f)~~] (g)

ionization chamber smoke detectors containing not more than 1 microcurie (37 kilobecquerels) of americium-241 per detector in the form of a foil and designed to protect life and property from fires;

[~~(g)~~] (h)

electron tubes; provided, that each tube does not contain more than one of the following specified quantities of radioactive material (for purposes of this exemption, "electron tubes" include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwaves tubes, indicator tubes, pick-up tubes, radiation detection tubes and any other completely sealed tube that is designed to conduct or control electrical currents):

(i)

150 millicuries (5.55 gigabecquerels) of tritium per microwave receiver protector tube or 10 millicuries (370 megabecquerels) of tritium per any other electron tube;

(ii)

1 microcurie (37 kilobecquerels) of cobalt-60;

(iii)

5 microcuries (185 kilobecquerels) of nickel-63;

(iv)

30 microcuries (1.11 megabecquerels) of krypton-85;

(v)

5 microcuries (185 kilobecquerels) of cesium-137;

(vi)

30 microcuries (1.11 megabecquerels) of promethium-147; and provided further, that the levels of radiation from each electron tube containing radioactive materials do not exceed 1 millirad (10 milligray) per hour at 1 centimeter from any surface when measured through 7 milligrams per square centimeter of absorber; and

[~~(h)~~] (i)

ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material; provided, that:

(i)

each source contains no more than one exempt quantity set forth in 20.3.3.330 NMAC;

(ii)

each instrument contains no more than ten exempt quantities; for this requirement, an instrument's source(s) may contain either one type or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of the exempt quantities in 20.3.3.330 NMAC provided that the

sum of such fractions shall not exceed unity; and

(iii) for purposes of this subparagraph, 0.05 microcurie (1.85 kilobecquerels) of americium-241 is considered an exempt quantity under 20.3.3.330 NMAC.

(2) Self-luminous products containing tritium, krypton-85, promethium-147 or radium-226.

(a) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, promethium-147 or radium-226, and except as provided in Subparagraph (c) of this paragraph, any person is exempt from the license requirements in this part to the extent that such person receives, possesses, uses, transfers, owns or acquires tritium, krypton-85, promethium-147 or radium-226 in self-luminous products manufactured, processed, produced or initially transferred in accordance with a specific license issued by the NRC pursuant to 10 CFR 32.22 which license authorizes the initial transfer of the product for use under this paragraph.

(b) Any person who desires to manufacture, process or produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85 or promethium-147 for use pursuant to Subparagraph (a) of this paragraph, shall apply to NRC for a license pursuant to 10 CFR 32.22, and for a certificate of registration in accordance with 10 CFR 32.210 [~~,– which license states that the product may be transferred by the licensee to persons exempt from the regulations pursuant to Subparagraph (a) of this paragraph or equivalent regulations of the NRC or an agreement state~~].

(c) The exemption in this paragraph does not apply to tritium, krypton-85, promethium-147 or radium-226 used in products primarily for frivolous purposes or in toys or adornments.

(3) Radium-226 acquired previously. Any person is exempt from the licensing requirements in this part to the extent that such person possesses, uses or transfers, articles containing less than 0.1 microcurie (3.7 kilobecquerels) of radium-226 which were acquired prior to May 3, 1995 (the date when these rules were codified).

(4) Gas and aerosol detectors containing radioactive material.

(a) Except for persons who manufacture, process, produce or initially transfer for sale or distribution gas and aerosol detectors containing byproduct material, any person is exempt from the licensing requirements in this part to the extent that such person receives, possesses, uses, transfers, owns or acquires byproduct material, in gas and aerosol detectors designed to protect life or property [~~from fires and airborne hazards~~], and manufactured, processed, produced or initially transferred in accordance with a specific license issued by the NRC, pursuant to 10 CFR 32.26, which license authorizes the initial transfer of the product for use under this paragraph. This exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007 in accordance with a specific license issued by the department, agreement state or non-agreement state under comparable provisions to 10 CFR 32.26 authorizing distribution to persons exempt from regulatory requirements.

(b) Any person who desires to manufacture, process or produce gas and aerosol detectors containing byproduct material, or to initially transfer such products for use pursuant to Subparagraph (a) of this paragraph, shall apply for a license to the NRC pursuant to 10 CFR 32.26 [~~, which license states that the product may be initially transferred by the licensee to persons exempt from the regulations pursuant to Subparagraph (a) of this paragraph~~] and for a certificate of registration in accordance with 10 CFR 32.210.

(5) Certain industrial devices.

(a) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing an ionized atmosphere, any person is exempt from the requirements for a license set forth in section 81 of the Atomic Energy Act of 1954, as amended and from the regulations in 10 CFR parts 19, 20, 21, 30 through 36, and 39 to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material, in these certain detecting, measuring, gauging, or controlling devices and certain devices for producing an ionized atmosphere, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued under 10 CFR 32.30 of this chapter, which license authorizes the initial transfer of the device for use under this section. This exemption does not cover sources not incorporated into a device, such as calibration and reference sources.

(b) Any person who desires to manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material for use under subparagraph (a) of this paragraph, should apply for a license under 10 CFR 32.30 and for a certificate of registration in accordance with 10 CFR 32.210.

D. Radioactive drug - capsules containing carbon-14 urea for "in vivo" diagnostic use for humans.

(1) Except as provided in Paragraphs (2) and (3) of this subsection, any person is exempt from the requirements for a license set forth in this part and 20.3.7 NMAC provided that such person receives, possesses, uses, transfers,

owns or acquires capsules containing 1microcurie (37 kilobecquerels) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in vivo" diagnostic use for humans.

(2) Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to 20.3.7 NMAC.

(3) Any person who desires to manufacture, prepare, process, produce, package, repackage or transfer for commercial distribution such capsules shall apply for and receive a specific license by NRC pursuant to 10 CFR 32.21.

(4) Nothing in this section relieves persons from complying with applicable FDA, other federal and state requirements governing receipt, administration and use of drugs.

[20.3.3.302 NMAC - Rp, 20.3.3.302 NMAC, 4/30/2009; A, 6/30/2011; A, 8/10/2021]

20.3.3.304 GENERAL LICENSES - SOURCE MATERIAL:

A. General license to receive title to source material or byproduct material (as defined in Paragraph (2) of Subsection F of 20.3.1.7 NMAC). A general license is hereby issued authorizing the receipt of title to source material or byproduct material (as defined in Paragraph (2) of Subsection F of 20.3.1.7 NMAC) without regard to quantity. This general license does not authorize any person to receive, possess, deliver, use or transfer source material or byproduct material (as defined in Paragraph (2) of Subsection F of 20.3.1.7 NMAC).

B. Small quantities of source material.

A general license is hereby issued authorizing commercial and industrial firms; research, educational, and medical institutions; and federal, state, and local government agencies to receive, possess, use, and transfer uranium and thorium, in their natural isotopic concentrations and in the form of depleted uranium, for research, development, educational, commercial, or operational purposes in the following forms and quantities:

(1) No more than 1.5 kg (3.3 lb) of uranium and thorium in dispersible forms (e.g., gaseous, liquid, powder, etc.) at any one time. Any material processed by the general licensee that alters the chemical or physical form of the material containing source material must be accounted for as a dispersible form. A person authorized to possess, use, and transfer source material under Subsection B of this section may not receive more than a total of 7 kg (15.4 lb) of uranium and thorium in any one calendar year. Persons possessing source material in excess of these limits as of August 27, 2013, may continue to possess up to 7 kg (15.4 lb) of uranium and thorium at any one time for one year beyond this date, or until the department takes final action on a pending application submitted on or before August 27, 2014, for a specific license for such material and receive up to 70 kg (154 lb) of uranium or thorium in any one calendar year until December 31, 2014, or until the department takes final action on a pending application submitted on or before August 27, 2014, for a specific license for such material; and

(2) no more than a total of 7 kg (15.4 lb) of uranium and thorium at any one time. A person authorized to possess, use, and transfer source material under Subsection B of this section may not receive more than a total of 70 kg (154 lb) of uranium and thorium in any one calendar year. A person may not alter the chemical or physical form of the source material possessed under this paragraph unless it is accounted for under the limits of Subsection B(1) of this section; or

(3) no more than 7 kg (15.4 lb) of uranium, removed during the treatment of drinking water, at any one time. A person may not remove more than 70 kg (154 lb) of uranium from drinking water during a calendar year under Subsection B of this section; or

(4) no more than 7 kg (15.4 lb) of uranium and thorium at laboratories for the purpose of determining the concentration of uranium and thorium contained within the material being analyzed at any one time. A person authorized to possess, use, and transfer source material under Subsection B of this section may not receive more than a total of 70 kg (154 lb) of source material in any one calendar year.

C. Any person who receives, possess, uses, or transfers source material pursuant to the general license in Subsection B of this section:

(1) is prohibited from administering source material, or the radiation therefrom, either externally or internally, to human beings except as may be authorized by the department in a specific license;

(2) shall not abandon such source material. Source material may be disposed of as follows:

(a) A cumulative total of 0.5 kg (1.1 lb) of source material in a solid, non-dispersible form may be transferred each calendar year, by a person authorized to receive, possess, use, and transfer source material under a general license to persons receiving the material for permanent disposal.

(b) The recipient of source material transferred under the provisions of this section is exempt from the requirements to obtain a license under this part to the extent the source material is permanently disposed. This provision does not apply to any person who is in possession of source material under a specific license issued under this chapter or in accordance with 20.3.4.433 NMAC.

(3) is subject to the provisions in accordance with 10 CFR 40.1 through 40.10, 10 CFR 40.41(a) through (e), 10 CFR 40.46, 10 CFR 40.51, 10 CFR 40.56, 10 CFR 40.60 through 40.63, 10 CFR 40.71, 10 CFR 40.81, and the equivalent regulations in 20.3.3 NMAC; and

(4) shall not export such source material except in accordance with 10 CFR 110.

D. Any person who receives, possesses, uses, or transfers source material in accordance with subsection B of this section shall conduct activities so as to minimize contamination of the facility and the environment. When activities involving such source material are permanently ceased at any site, if evidence of significant contamination is identified, the general licensee shall notify the department by an appropriate method listed in 20.3.1.116 NMAC about such contamination and may consult with the department as to the appropriateness of sampling and restoration activities to ensure that any contamination or residual source material remaining at the site where source material was used under this general license is not likely to result in exposures that exceed the limits in 20.3.4.426.B NMAC.

E. Any person who receives, possesses, uses, or transfers source material in accordance with the general license granted in Subsection B of this section is exempt from the provisions of 20.3.10 NMAC, and 20.3.4 NMAC to the extent that such receipt, possession, use, and transfer are within the terms of this general license, except that such person shall comply with the provisions of 20.3.4.426.A NMAC and 20.3.4.433 NMAC to the extent necessary to meet the provisions of 20.3.3.304.B NMAC. However, this exemption does not apply to any person who also holds a specific license issued under 20.3.3 NMAC.

F. No person may initially transfer or distribute source material to persons generally licensed under Paragraph (1) and (2) Subsection B [~~(1) and (2)~~] of this Section, or equivalent regulations of an agreement state, unless authorized by a specific license in accordance with 10 CFR 40.54 [~~and~~] or equivalent provisions of an agreement state [~~regulations under 20.3.3.307 NMAC~~]. This prohibition does not apply to analytical laboratories returning processed samples to the client who initially provided the sample. Initial distribution of source material to persons generally licensed by Subsection A of this section before August 27, 2013, without specific authorization may continue for 1 year beyond this date. Distribution may also be continued until the NRC takes final action on a pending application for a license or license amendment to specifically authorize distribution submitted on or before August 27, 2014.

G. Depleted uranium in industrial products and devices.

(1) A general license is hereby issued to receive, acquire, possess, use or transfer, in accordance with the provisions in Paragraphs (2), (3), (5) and (6) of this subsection, depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.

(2) The general license in Paragraph (1) of this subsection applies only to industrial products or devices which have been manufactured or initially transferred either in accordance with a specific license issued to the manufacturer of the products or devices pursuant to Subsection L of 20.3.3.315 NMAC or in accordance with a specific license issued by the NRC or an agreement state which authorizes manufacture of the products or devices for distribution to persons generally licensed by the NRC or an agreement state.

(3) Persons who receive, acquire, possess or use depleted uranium pursuant to the general license established by Paragraph (1) of this subsection shall file a form, *registration certificate - use of depleted uranium under general license*, with the department. The form shall be submitted within 30 days after the first receipt or acquisition of such depleted uranium. The general licensee shall furnish on the registration form the following information and such other information as may be required by that form:

(a) name and address of the general licensee;

(b) a statement that the general licensee has developed and will maintain procedures designed to establish physical control over the depleted uranium described in Paragraph (1) of this subsection and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and

(c) name and title, address and telephone number of the individual duly authorized to act for and on behalf of the general licensee in supervising the procedures identified in Subparagraph (b) of this paragraph.

(4) The general licensee possessing or using depleted uranium under the general license established by Paragraph (1) of this subsection shall report in writing to the department any changes in information furnished by them in the form *registration certificate-use of depleted uranium under general license*. The report shall be submitted within 30 days after the effective date of such change.

(5) A person, who receives, acquires, possesses or uses depleted uranium pursuant to the general license established by Paragraph (1) of this subsection:

(a) shall not introduce such depleted uranium, in any form, into a chemical, physical or metallurgical treatment or process, except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium;

(b) shall not abandon such depleted uranium;

(c) shall transfer or dispose of such depleted uranium only by transfer in accordance with the provisions of 20.3.3.323 NMAC; in the case where the transferee receives the depleted uranium pursuant to the general license established by Paragraph (1) of this subsection, the transferor

shall furnish the transferee a copy of this subsection and a copy of the registration form; in cases where the transferee receives the depleted uranium pursuant to a general license contained in the NRC or agreement state's regulation equivalent to this subsection, Subsection C of 20.3.3.304 NMAC, the transferor shall furnish the transferee a copy of this subsection and a copy of the registration form accompanied by a note explaining that use of the product or device is regulated by the NRC or agreement state under requirements substantially the same as those in this subsection;

(d) shall report in writing, within 30 days of any transfer, to the department the name and address of the person receiving the depleted uranium pursuant to such transfer; and

(e) shall not export such depleted uranium except in accordance with a license issued by the NRC pursuant to 10 CFR 110.

(6) Any person receiving, acquiring, possessing, using or transferring depleted uranium pursuant to the general license established by Paragraph (1) of this subsection is exempt from the requirements of 20.3.4 NMAC and 20.3.10 NMAC with respect to the depleted uranium covered by that general license.

[20.3.3.304 NMAC - Rp, 20.3.3.304 NMAC, 4/30/2009; A, 8/10/2021]

20.3.3.305 GENERAL LICENSES - RADIOACTIVE MATERIAL OTHER THAN SOURCE MATERIAL:

A. [~~**Certain devices and equipment.** A general license is hereby issued to transfer, receive, acquire, own, possess and use radioactive material incorporated in the following devices or equipment which have been manufactured, tested and labeled by the manufacturer in accordance with the specifications in a specific license issued to the manufacturer by the NRC.~~

~~**(1) Static elimination device.** Devices designed for use as static eliminators which contain, as a sealed source or sources, byproduct material consisting of a total of not more than 500 microcuries (18.5 megabecquerels) of polonium-210 per device.~~

~~**(2) Ion generating tube.** Devices designed for ionization of air which contain, as a sealed source or sources, byproduct material consisting of a total of not more than 500 microcuries (18.5 megabecquerels) of polonium-210 per device or a total of not more than 50 millicuries (1.85 gigabecquerels) of hydrogen-3 (tritium) per device.~~

~~**(3)** Devices authorized before October 23, 2012 for use under the general license provided in 10 CFR 31.3 and in this section and manufactured, tested, and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the NRC or an agreement state.~~]

[RESERVED]

B. Certain detecting, measuring, gauging or controlling devices and certain devices for producing light or an ionized atmosphere.

(1) A general license is hereby issued as required by Subparagraph (m) of Paragraph (3) of this Subsection to commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and federal, state or local government agencies to receive, acquire, possess, use or transfer, in accordance with the provisions of Paragraphs (2), (3), and (4) of this subsection, [~~radioactive~~] byproduct material contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere, and the device has been registered in the sealed source and device registry.

(2) The general license in Paragraph (1) of this subsection applies only to [~~radioactive~~] byproduct material contained in devices which have been manufactured or initially transferred and labeled in accordance with the specifications contained in:

(a) a specific license issued by the department pursuant to Subsection E of 20.3.3.315 NMAC; or

(b) an equivalent specific license issued by the NRC or an agreement state; or

(c) an equivalent specific license issued by a state with provisions comparable to Subsection E of 20.3.3.315 NMAC. The devices must have been received from one of the specific licensees described in this paragraph, or through a transfer made under Subparagraph (h) of Paragraph (3) of this subsection.

(3) Any person who receives, acquires, possesses, uses or transfers [~~radioactive~~] byproduct material in a device pursuant to the general license in Paragraph (1) of this subsection shall comply with the following.

(a) The general licensee shall assure that all labels affixed to the device at the time of receipt and bearing a statement that removal of the label is prohibited are maintained thereon and shall comply with all instructions and precautions provided by such labels.

(b) The general licensee shall assure that the device is tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at no longer than six month intervals or at such other intervals as are specified in the label; however:

(i) devices containing only krypton need not be tested for leakage of radioactive material; and

(ii) devices containing only tritium or not more than 100 microcuries (3.7 megabecquerels) of other beta or gamma emitting material or 10 microcuries (0.37 megabecquerel) of alpha emitting material and devices held in storage in the original

shipping container prior to initial installation need not be tested for any purpose.

(c) The general licensee shall assure that the test required by Subparagraph (b) of Paragraph (3) of this subsection and other testing, installation, servicing and removal from installation involving the radioactive materials, its shielding or containment are performed:

(i) in accordance with the instructions provided by the labels; or

(ii) by a person holding a specific license pursuant to this part from the department, the NRC, or an agreement state to perform such activities.

(d) The general licensee shall maintain records showing compliance with the requirements of Subparagraphs (b) and (c) of Paragraph (3) of this subsection. The records must show the results of tests. The records must also show the dates of performance of, and the names of persons performing, testing, installing, servicing and removing from the installation radioactive material and its shielding or containment. The licensee shall retain these records as follows:

(i) each record of a test for leakage or radioactive material required by Subparagraph (b) of Paragraph (3) of this subsection shall be retained for three years after the next required leak test is performed or until the sealed source is transferred or disposed of;

(ii) each record of a test of the on-off mechanism and indicator required by Subparagraph (b) of Paragraph (3) of this subsection shall be retained for three years after the next required test of the on-off mechanism and indicator is performed or until the sealed source is transferred or disposed of; and

(iii) each record that is required by Subparagraph (c) of Paragraph (3) of this subsection shall be retained for 3 years from the date of the recorded event or until the device is transferred or disposed of.

(e) The general licensee shall immediately suspend operation of the device if there is a failure of, or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 0.005 microcuries (185 becquerels) or more removable radioactive material. The device may not be operated until it has been repaired by the manufacturer or other person holding a specific license to repair such devices that was issued pursuant to this part by the department, the NRC or an agreement state. The device and any radioactive material from the device, shall only be disposed of by transfer to a person authorized by a specific license to receive the radioactive material in the device, or as otherwise approved by the department. A report shall be furnished to the department within 30 days containing a brief description of the event and the remedial action taken. In the case of detection of 0.005 microcurie or more removable radioactive material or failure of, or damage to, a source likely to result in contamination of the premises or the environs, the report shall include a plan for ensuring that the premises and environs are acceptable for unrestricted use. Under these circumstances, the criteria set out in Subsection B of 20.3.4.426 NMAC, *radiological criteria for unrestricted use*, shall be applicable, as determined by the department on a case-by-case basis.

(f) The general licensee shall not abandon the device containing radioactive material.

(g) The general licensee shall not export the device containing radioactive material except in accordance with 10 CFR 110.

(h) Device transfer requirements.

(i) The general licensee shall transfer or dispose of the device containing radioactive material only by export as provided by Subparagraph (g) of this paragraph, by transfer to another general licensee as authorized in Subparagraph (i) of this paragraph , or to a person authorized to receive the device by a specific license issued by the department pursuant under this part, or by a specific license issued by the department authorizing waste collection pursuant to this part, or equivalent provisions of the NRC or an agreement state, or as otherwise approved under Item (iii) of this subparagraph.

(ii) The general licensee shall within 30 days after the transfer of a device to a specific licensee or export, furnish a report to the department at the address indicated in 20.3.1.116 NMAC. The report shall contain the identification of the device by manufacturer's (or initial transferor's) name, model number and serial number; the name, address and license number of the person receiving the device (license number not applicable if exported); and the date of the transfer.

(iii) The general licensee shall obtain written department approval before transferring the device to any other specific licensee not specifically identified in Item (i) of this subparagraph. However, a holder of a specific license may transfer a device for possession and use under its own specific license without prior approval, if, the holder: verifies that the specific license authorizes the possession and use, or applies for and obtains amendment to the license authorizing the possession and use; removes, alters, covers, or clearly and unambiguously augments the existing label (otherwise required by Subparagraph (a) of this paragraph) so that the device is labeled in compliance with 20.3.4.430 NMAC, however, the manufacturer, model number, and serial number must be retained; obtains the manufacturer's or initial transferor's information concerning maintenance that would be applicable under the specific license (such as leak testing procedures); and reports the transfer under Item (ii) of this subparagraph.

(i)
The general licensee shall transfer the device to another general licensee only if:

(i)
the device remains in use at a particular location, in which case: *1)* the transferor shall give the transferee a copy of this subsection (Subsection B of 20.3.3.305 NMAC), a copy of Subsection F of 20.3.3.317 NMAC, a copy of 20.3.3.326 NMAC, a copy of 20.3.4.451 NMAC, a copy of 20.3.4.452 NMAC and any safety documents identified in the label of the device; *2)* within 30 days of the transfer, the transferor shall report to the department at the address indicated in 20.3.1.116 NMAC, stating the manufacturer's (or initial transferor's) name, the model number and the serial number of the device transferred, the transferee's name and mailing address for the location of use, and the name, title and phone number of the responsible individual identified by the transferee in accordance with Subparagraph (l) of this paragraph to have knowledge of and authority to take actions to ensure compliance with the appropriate regulations and requirements; or

(ii)
the device is held in storage by an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee.

(j)
The general licensee shall comply with the provisions of 20.3.4.451 NMAC and 20.3.4.452 NMAC for reporting radiation incidents, theft or loss of licensed material, but shall be exempt from the other requirements of 20.3.4 NMAC and 20.3.10 NMAC.

(k)
The general licensee shall respond to written requests from the department to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the department with a written justification for the request.

(l)
The general licensee shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in this regard.

(m)
Registration requirements.

(i)
The general licensee shall register on a department registration form, in accordance with Items (ii) and (iii) of this subparagraph, devices containing at least 10 millicuries (370 megabecquerels) of cesium-137, 0.1 millicuries (3.7 megabecquerels) of strontium-90, 1 millicurie (37 megabecquerels) of cobalt-60, 0.1 millicurie (3.7 megabecquerels) of radium-226, 1 millicurie (37 megabecquerels) of americium-241 or any other transuranic (i.e., element with atomic number greater than uranium (92)), based on the activity indicated on the label. Each address of a location of use, as described under Item (iii) of this subparagraph, represents a separate general licensee and requires a separate registration.

(ii)
If in possession of a device meeting the criteria of Item (i) of this subparagraph, the general licensee shall register these devices annually with the department. Registration shall be done by verifying, correcting or adding to the information provided in a request for registration received from the department. The registration information shall be submitted to the department within 30 days of the date of the request for registration or as otherwise indicated in the request. In addition, a general licensee holding devices meeting the criteria of Item (i) of this Subparagraph is subject to the bankruptcy notification requirement in Subsection E of 20.3.3.317 NMAC.

(iii)
In registering devices, the general licensee shall furnish the following information and any other information specifically requested by the department: *1)* name and mailing address of the general licensee; *2)* information about each device: the manufacturer (or initial transferor), model number, serial number, the radioisotope and activity (as indicated on the label); *3)* name, title and telephone number of the responsible person designated as a representative of the general licensee under Subparagraph (l) of this paragraph; *4)* address or location at which the device(s) are used or stored; for portable devices, the address of the primary place of storage; *5)* certification by the responsible representative of the general licensee that the information concerning the device(s) has been verified through a physical inventory and checking of label information; and *6)* certification by the responsible representative of the general licensee that they are aware of the requirements of the general license.

(iv)
Persons generally licensed by the NRC and an agreement state with respect to devices meeting the criteria in Item (i) of this Subparagraph are not subject to registration requirements if the devices are used in areas subject to department jurisdiction for a period less than 180 days in any calendar year. The department will not request registration information from such licensees.

(n)
The general licensee shall report changes to the mailing address for the location of use (including change in name of general licensee) to the department at the address indicated in 20.3.1.116 NMAC, within 30 days of the effective date of the change. For a portable device, a report of address change is only required for a change in the device's primary place of storage.

(o)
The general licensee shall not hold devices that are not in use for longer

than 2 years. If devices with shutters are not being used, the shutter shall be locked in the closed position. The testing required by Subparagraph (b) of Paragraph (3) of this Subsection need not be performed during the period of storage only. However, when devices are put back into service or transferred to another person, and have not been tested within the required test interval, they shall be tested for leakage before use or transfer and the shutter tested before use. Devices kept in standby for future use are excluded from the two-year time limit if the general licensee performs quarterly physical inventories of these devices while they are in standby.

(4) The general license in Paragraph (1) of this subsection does not authorize the manufacture or import of devices containing radioactive material.

C. Luminous safety devices for use in aircraft.

(1) A general license is hereby issued to own, receive, acquire, possess and use tritium or promethium-147 contained in luminous safety devices for use in aircraft, provided:

(a) each device contains not more than 10 curies (370 gigabecquerels) of tritium or 300 millicuries (11.1 gigabecquerels) of promethium-147;

(b) each device has been manufactured, assembled or initially transferred in accordance with a license issued under the provisions [~~in Subsection F of 20.3.3.315 NMAC~~] 10 CFR 32.53, or manufactured or assembled in accordance with a specific license issued by the NRC [~~or an agreement state which authorizes manufacture or assembly of the device for distribution to persons generally licensed by the NRC or an agreement state, and the device has been registered in the sealed source and device registry~~];

(c) quality assurance procedures are in place that are sufficient to ensure compliance with 10 CFR 32.55; and

(d) prototypes of the device have been subjected to and have satisfactorily passed the tests required in 10 CFR 32.53(e) and outlined in Subsection C(2) of this section.

(2) [~~Each person licensed under 10 CFR 32.53 or equivalent agreement state regulations~~] The applicant shall subject at least five prototypes of the device to [~~the required tests and satisfactorily pass the required tests~~] tests as follows:

(a) the devices are subjected to tests that adequately take into account the individual, aggregate, and cumulative effects of environmental conditions expected in service that could adversely affect the effective containment of tritium or promethium-147, such as temperature, moisture, absolute pressure, water immersion, vibration, shock, and weathering;

(b) the devices are inspected for evidence of physical damage and for loss of tritium or promethium-147, after each stage of testing, using methods of inspection adequate for determining compliance with the criteria in subparagraph C(2) of this section; and

(c) the device designs are rejected for which the following has been detected for any unit; a leak resulting in a loss of one tenth of one percent or more of the original amount of tritium or promethium-147 from the device; or surface contamination of tritium or promethium-147 on the device of more than 2,200 disintegrations per minute per 100 square centimeters of surface area; or any other evidence of physical damage.

(3) Each person licensed under 10 CFR 32.55 or [~~equivalent agreement state regulations~~] Subsection C of 20.3.3.305 NMAC shall visually inspect each device and shall reject any that has an observable physical defect that could adversely affect containment of the tritium or promethium-147.

(4) Each person licensed under 10 CFR 32.53 or [~~equivalent agreement state regulations~~] Subsection C of 20.3.3.305 NMAC shall:

(a) maintain quality assurance systems in the manufacture of the luminous safety device in a manner sufficient to provide reasonable assurance that the safety-related components of the distributed devices are capable of performing their intended functions; and

(b) subject inspection lots to acceptance sampling procedures, by procedures specified in Subparagraph C(2) of this section and in the license issued under 10 CFR 32.53 or [~~equivalent agreement state regulations~~] Subsection C of 20.3.3.305 NMAC to provide at least ninety-five percent confidence that the lot tolerance percent defective of five percent will not be exceeded.

(5) The licensee shall subject each inspection lot to:

(a) tests that adequately take into account the individual, aggregate, and cumulative effects of environmental conditions expected in service that could adversely affect the effective containment of tritium or promethium-147, such as absolute pressure and water immersion; and

(b) [~~inspect the inspection lot~~] inspection for evidence of physical damage, containment failure, or loss of tritium or promethium-147 after each stage of testing, [~~using the following methods of inspection~~] using methods of inspection adequate for applying the following criteria for defective:

(i) a leak resulting in a loss of one tenth of one percent or more of the original amount of tritium or promethium-147 from the device;

(ii) levels of radiation in excess of 5 microgray (0.5 millirad) per hour at 10 centimeters from any surface when measured through 50 milligrams per square centimeter of absorber, if the device contains promethium-147; and

(iii) any other criteria specified in

the license issued under 10 CFR 32.53 or [~~equivalent agreement state regulations~~] Subsection C of 20.3.3.305 NMAC.

(6) No person licensed under 10 CFR 32.53 or [~~equivalent agreement state regulations~~] Subsection C of 20.3.3.305 NMAC shall transfer [~~the following luminous safety devices~~] to persons generally licensed pursuant to 10 CFR 31.7 or under an equivalent general license of an agreement state:

(a) any luminous safety device tested and found defective under any condition of a license issued under Subsection C of this section, unless the defective luminous safety device has been repaired or reworked, retested, and determined by an independent inspector to meet the applicable acceptance criteria; or

(b) any luminous safety device contained within any lot that has been sampled and rejected as a result of the procedures in Subsection C (4)(b) of this section, unless a procedure for defining sub-lot size, independence, and additional testing procedures is contained in the license issued under 10 CFR 32.53 or [~~equivalent agreement state regulations~~] Subsection C of 20.3.3.305 NMAC and each individual sub-lot is sampled, tested, and accepted in accordance with Subsection C(2) of this section and any other criteria that may be required as a condition of the license issued under 10 CFR 32.53 or [~~equivalent agreement state regulations~~] Subsection C of 20.3.3.305 NMAC.

(7) Persons who own, receive, acquire, possess or use luminous safety devices pursuant to this general license are exempt from the requirements of 20.3.4 NMAC and 20.3.10 NMAC except that they shall comply with the reporting and notification provisions of 20.3.4.451 NMAC and 20.3.4.452 NMAC.

(8) This general license does not authorize the manufacture, assembly, repair or import of luminous safety containing tritium or promethium-147.

(9) This general license does not authorize the export of luminous safety devices containing tritium or promethium-147.

(10) This general license does not authorize the ownership, receipt, acquisition, possession or use of promethium-147 contained in instrument dials.

D. Calibration and reference sources.

(1) A general license is hereby issued to those persons listed in this paragraph to own, receive, acquire, possess, use and transfer, in accordance with the provisions of Paragraphs (4) and (5) of this subsection americium-241 in the form of calibration or reference sources.

(a) Any person who holds a specific license issued by the department which authorizes them to receive, possess, use and transfer radioactive material.

(b) Any government agency, as defined in 20.3.1.7 NMAC, which holds a specific license issued pursuant to this chapter which authorizes it to receive, possess, use and transfer radioactive material.

(2) A general license is hereby issued to those persons listed below to receive title to, own, acquire, deliver, receive, possess, use and transfer in accordance with the provisions of Paragraph (4) and (5) plutonium in the form of calibration or reference sources.

(a) Any person who holds a specific license issued by the department which authorizes them to receive, possess, use and transfer radioactive material.

(b) Any government agency, as defined in 20.3.1.7 NMAC, which holds a specific license issued pursuant to 20.3 NMAC which authorizes it to receive, possess, use and transfer radioactive material.

(c) Any person who holds a specific license issued by the NRC or an agreement state which authorizes them to receive, possess, use and transfer special nuclear material.

(3) A general license is hereby issued to receive, possess, use and transfer radium-226 in the form of calibration or reference sources in accordance with Paragraphs (4) and (5) of this subsection to any person who holds a specific license issued by the department which authorizes them to receive, possess, use and transfer radioactive material.

(4) The general licenses in Paragraphs (1), (2) and (3) of this subsection apply only to calibration or reference sources which have been manufactured or initially transferred in accordance with the specifications contained in a specific license issued the department pursuant to Subsection G of 20.3.3.315 NMAC or in accordance with the specifications contained in a specific license issued by the NRC or an agreement state pursuant to equivalent licensing requirements which authorizes the manufacturer of the sources for distribution to persons generally licensed by the NRC or an agreement state.

(5) The general licenses provided in Paragraphs (1), (2) and (3) of this subsection are subject to the provisions of Subsection F of 20.3.3.317 NMAC. In addition, persons who receive, acquire, possess, use or transfer one or more calibration or reference sources pursuant to these general licenses:

(a) shall not possess at any one time, at any one location of storage or use, more than 5 microcuries (185 kilobecquerels) of americium-241, 5 microcuries (185 kilobecquerels) of plutonium and 5 microcuries (185 kilobecquerels) of radium-226 in such sources;

(b) shall not receive, possess, use or transfer such source unless the source, or the storage container,

bears a label which includes the following statement or a substantially similar statement which contains the information called for in the following statement:

The receipt, possession, use and transfer of this source, model _____, serial number _____, are subject to a general license and the regulations of the United States nuclear regulatory commission or of a state with which the commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label. Caution - radioactive material - this source contains [describe one of the following radioactive materials americium-241, plutonium or radium-226 as appropriate]. Do not touch radioactive portion of this source.

_____

(name of manufacturer or initial transferor)

(c) shall not transfer, abandon or dispose of such source except by transfer to a person authorized by a license issued by the department, the NRC or an agreement state to receive the source;

(d) shall store such source, except when the source is being used, in a closed container adequately designated and constructed to contain americium-241, plutonium or radium-226 which might otherwise escape during storage; and

(e) shall not use such source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(6) These general licenses do not authorize the manufacture or import of calibration or reference sources containing americium-241, plutonium or radium-226.

E. General license to install devices generally licensed in Subsection B of 20.3.3.305 NMAC. Any person who holds a specific license issued by the NRC or an agreement state authorizing the holder to manufacture, install or service a device described in Subsection B of this section within such agreement state issuing the specific license or within a location subject to NRC jurisdiction, is hereby granted a general license to install and service such device in this state; provided, that:

(1) the device has been manufactured, labeled, installed and serviced in accordance with applicable provisions of the specific license issued to such person by the NRC or an agreement state; and

(2) such person assures that any labels required to be affixed to the device under regulations of the NRC or agreement state which licensed manufacture of the device bear a statement that removal of the label is prohibited.

F. General license for use of radioactive material for certain in-vitro clinical or laboratory testing.

(1) A general license is hereby issued to any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital to receive, acquire, possess, transfer or use, for any of the following stated tests, in accordance with the provisions of Paragraphs (2) through (6) of this subsection, the following radioactive materials in prepackaged units, each for use for in-vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals:

(a) iodine-125, in units not exceeding 10 microcuries (370 kilobecquerels) each;

(b) iodine-131, in units not exceeding 10 microcuries (370 kilobecquerels) each;

(c) carbon-14, in units not exceeding 10 microcuries (370 kilobecquerels) each;

(d) hydrogen-3, in units not exceeding 50 microcuries (1.85 megabecquerels) each;

(e) iron-59, in units not exceeding 20 microcuries (740 kilobecquerels) each;

(f) cobalt-57, in units not exceeding 10 microcuries (370 kilobecquerels) each;

(g) selenium-75, in units not exceeding 10 microcuries (370 kilobecquerels) each; and

(h) mock iodine-125 for use as reference or calibration sources not to exceed 0.05 microcurie (1.85 kilobecquerels) of iodine-129 and 0.005 microcurie (1.85 becquerels) of americium-241 each.

(2) No person shall receive, acquire, possess, use or transfer radioactive material pursuant to the general license established by Paragraph (1) of this subsection unless that person

(a) has filed a form, *registration certificate-in vitro testing with radioactive material under general license,* with the department and received from the department a validated copy of the registration certificate with a registration number assigned. The physician, clinical laboratory or hospital shall furnish on the registration certificate the following information and such other information as may be required by the form:

(i) name and address of the physician, clinical laboratory or hospital;

(ii) the location of use; and

(iii) a statement that the physician, veterinarian, clinical laboratory or hospital has appropriate radiation measuring instruments to carry out in vitro clinical or laboratory tests with radioactive material as authorized under the general license in Paragraph (1) of this subsection and that such tests will be performed only by personnel competent in the use of such instruments and in the handling of the radioactive material; or

(b) has a license that authorizes the

medical use of radioactive material that was issued under 20.3.7 NMAC.

(3) A person who receives, acquires, possesses or uses radioactive material pursuant to the general license established by Paragraph (1) of this subsection shall comply with the following:

(a) the general licensee shall not possess at any one time, pursuant to the general license in Paragraph (1) of this subsection at any one location of storage or use, a total amount of iodine-125, iodine-131, iron-59, cobalt-57 or selenium-75 in excess of 200 microcuries (7.4 megabecquerels);

(b) the general licensee shall store the radioactive material, until used, in the original shipping container or in a container providing equivalent radiation protection;

(c) the general licensee shall use the radioactive material only for the uses authorized by Paragraph (1) of this subsection;

(d) the general licensee shall neither transfer the radioactive material except by transfer to a person authorized to receive it pursuant to a license issued by the department, the NRC or an agreement state, nor transfer the radioactive material in any manner other than in the unopened, labeled shipping container as received from the supplier; and

(e) the general licensee shall dispose of mock iodine reference or calibration sources in accordance with 20.3.4.433 NMAC.

(4) The general licensee shall not receive, acquire, possess or use radioactive material pursuant to Paragraph (1) of this subsection:

(a) except as prepackaged units which are labeled in accordance with the provisions of a specific license issued under Subsection H of 20.3.3.315 NMAC, or in accordance with the provisions of a specific license issued by the NRC or an agreement state, or labeled before November 30, 2007 in accordance with the provisions of a specific license issued by a state with comparable provisions to Subsection H of 20.3.3.315 NMAC, which authorizes the manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3 (tritium), iron-59, cobalt-57, selenium-75, or mock iodine-125 for distribution to persons generally licensed by the NRC, the agreement state or the state with comparable provisions to Subsection H of 20.3.3.315 NMAC; and

(b) unless the following statement, or a substantially similar statement, which contains the information called for in the following statement appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:
This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians in the practice of veterinary medicine, clinical laboratories or hospitals and only for in-vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the U.S. nuclear regulatory commission or of a State with which the commission has entered into an agreement for the exercise of regulatory authority.

_____

___
(name of manufacturer)

(5) The general licensee possessing or using radioactive material under the general license of Paragraph (1) of this subsection shall report in writing to the department, any changes in the information furnished by them in the *certificate-in-vitro testing with radioactive material under general license* form. The report shall be furnished within 30 days after the effective date of such change.

(6) Any person using radioactive material pursuant to the general license of Paragraph (1) of this subsection is exempt from the requirements of 20.3.4 NMAC and 20.3.10 NMAC with respect to radioactive material covered by that general license except that such person using a mock iodine-125 shall comply with the provisions of 20.3.4.433 NMAC, 20.3.4.451 NMAC and 20.3.4.452 NMAC.

G. General license for strontium 90 in ice detection devices.

(1) A general license is hereby issued to own, receive, acquire, possess, use and transfer strontium-90 contained in ice detection devices, provided each device contains not more than 50 microcuries (1.85 megabecquerels) of strontium-90 and each device has been manufactured or initially transferred in accordance with a specific license issued by the department, the NRC or an agreement state, which authorizes manufacture of the ice detection devices for distribution to persons generally licensed by the department, NRC or an agreement state.

(2) Persons who own, receive, acquire, possess, use or transfer strontium-90 contained in ice detection devices pursuant to the general license in Paragraph (1) of this subsection:

(a) shall, upon occurrence of visually observable damage, such as a bend or crack or discoloration from overheating, to the device, discontinue use of the device until it has been inspected, tested for leakage and repaired by a person holding a specific license from the department, the NRC or an agreement state to manufacture or service such devices; or shall dispose of the device pursuant to the provisions of 20.3.4.433 NMAC;

(b) shall assure that all labels affixed to the device at the time of receipt, and which bear a statement which prohibits removal of the labels, are maintained thereof; and

(c) are exempt from the requirement of 20.3.4 NMAC and 20.3.10 NMAC except that such persons shall comply with the provisions of 20.3.4.433

NMAC, 20.3.4.451 NMAC and 20.3.4.452 NMAC.

(3) This general license does not authorize the manufacture, assembly, disassembly, repair or import of strontium-90 in ice detection devices.

H. General license for certain items and self-luminous products containing radium-226.

(1) A general license is hereby issued to any person to acquire, receive, possess, use or transfer, in accordance with the provisions of Paragraphs (2), (3) and (4) of this subsection, radium-226 contained in the following products manufactured prior to November 30, 2007.

(a) Antiquities originally intended for use by the general public. For the purposes of this paragraph, antiquities mean products originally intended for use by the general public and distributed in the late 19th and early 20th centuries, such as radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts and healing pads.

(b) Intact timepieces containing greater than 0.037 megabecquerel (1 microcurie), non-intact timepieces, and timepiece hands and dials no longer installed in timepieces.

(c) Luminous items installed in air, marine or land vehicles.

(d) All other luminous products, provided that no more than 100 items are used or stored at the same location at any one time.

(e) Small radium sources containing no more than 1 microcurie (0.037 megabecquerel) of radium-226. For the purposes of this paragraph, ‘‘small radium sources’’ means discrete survey instrument check sources, sources contained in radiation measuring instruments, sources used in educational demonstrations (such as cloud chambers and spinthariscopes), electron tubes, lightning rods, ionization sources, static eliminators or as designated by the department or NRC.

(2) Persons who acquire, receive, possess, use or transfer byproduct material under the general license issued in Paragraph (1) of this subsection are exempt from the provisions of 20.3.3.325 NMAC, 20.3.3.326 NMAC, 20.3.4 NMAC and 20.3.10 NMAC to the extent that the receipt, possession, use or transfer of radioactive material is within the terms of the general license; provided, however, that this exemption shall not be deemed to apply to any such person specifically licensed under this chapter.

(3) Any person who acquires, receives, possesses, uses or transfers radioactive material in accordance with the general license in Paragraph (1) of this section shall:

(a) notify the department should there be any indication of possible damage to the product so that it appears it could result in a loss of the radioactive material. A report containing a brief description of the event, and the remedial action taken, must be furnished to the department at the address specified in 20.3.1.116 NMAC within 30 days of the event;

(b) not abandon products containing radium-226; the product, and any radioactive material from the product, may only be disposed of according to 20.3.4.437 NMAC or by transfer to a person authorized by a specific license to receive the radium-226 in the product or as otherwise approved by the department;

(c) not export products containing radium-226 except in accordance with 10 CFR 110;

(d) dispose of products containing radium-226 at a disposal facility authorized to dispose of radioactive material in accordance with any federal or state solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act, by transfer to a person authorized to receive radium-226 by a specific license issued under this part, or equivalent regulations of the NRC, an agreement state or as otherwise approved by the department or NRC;

(e) respond to written requests from the department to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the department a written justification for the request.

(4) The general license in Paragraph (1) of this section does not authorize the manufacture, assembly, disassembly, repair or import of products containing radium-226, except when timepieces may be disassembled and repaired.

I. General license to own radioactive material. A general license is hereby issued to receive title to and own radioactive material without regard to quantity. Notwithstanding any other provision of this chapter, a general licensee under this subsection is not authorized to acquire, deliver, manufacture, produce, transfer, receive, possess, use, import or export radioactive material, except as authorized in a specific license.

[20.3.3.305 NMAC - Rp, 20.3.3.305 NMAC, 4/30/2009; A, 8/10/2021]

20.3.3.306 TRANSPORTATION OF RADIOACTIVE MATERIAL:

A. Except as specified in Subsection D of this section, the regulations of the United States NRC set forth in 10 CFR 71 are hereby incorporated by reference.

B. Shipment and transport of radioactive material shall be in accordance with the provisions of Subsection A of this section.

C. The following modifications are made to the incorporated federal regulations in this section:

(1) **“commission”** means the [~~department~~

~~or~~] NRC except a specified in subsection (4) below;

(2) "act" means the Radiation Protection Act, Sections 74-3-1 through 74-3-16 NMSA 1978; and

(3) "byproduct material" means radioactive material as defined in 20.3.1.7 NMAC.

(4) all reference in 10 CFR 71 to "commission" are changed to department as follows: 71.17(a), 71.17(b), 71.21, 71.91(b), 71.91(c), 71.91(d), 71.101(c)(1), 71.106(a), 71.106(a)(1), 71.106(b) and 71.106(b)(1).

(5) all reference in 10 CRF 71 to "certificate holder", "applicant" and "applicant for a certificate of compliance (COC)" apply to the NRC as follows 71.91(c), 71.91(d), 71.101(a), 71.101(b), 71.103(a) and 71.135.

D. The following provisions contained in 10 CFR 71 are applicable to the NRC and not incorporated in this section: 71.11, 71.14(b), 71.19, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.41, 71.43, 71.45, 71.51, 71.55, 71.59, 71.61, 71.63, 71.64, 71.65, 71.70,71.71, 71.73, 71.74, 71.75, 71.77, 71.85(a)-(c), 71.91(b),71.101(c)(2), (d), and (e), 71.107, 71.109, 71.111, 71.113, 71.115, 71.117, 71.119, 71.121, 71.123, and 71.125.

[20.3.3.306 NMAC - Rp, 20.3.3.306 NMAC & 20.3.3.325 NMAC, 4/30/2009; A, 6/30/2011; A, 8/10/2021]

20.3.3.307 FILING APPLICATION FOR SPECIFIC LICENSES:

A. Except where otherwise determined by the department, applications for specific licenses shall be filed in duplicate on a form prescribed by the department (*application for a radioactive material license*) in accordance with the instructions to the form. Additional copies of the application may be required by the department. Information contained in previous application, statements or reports filed with the department may be incorporated by reference, provided that the reference is clear and specific.

B. The department may at any time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the department to determine whether the application shall be granted or denied or whether a license shall be modified or revoked.

C. Each application shall be signed by the applicant or licensee or a person duly authorized to act for and on their behalf.

D. An application for a license may include a request for a license authorizing more than one activity, provided that the application specifies the additional activities for which licenses are requested and complies with the requirements in this chapter as to applications for such licenses. In such cases, annual fees for all types of activities authorized by the license may be charged as determined by 20.3.16 NMAC.

E. An application for a specific license of category 1 and category 2 quantities of radioactive material shall comply with 10 CFR 37. The licensee shall comply with 10 CFR 37 except as follows:

(1) any reference to the commission or NRC shall be deemed a reference to the department;

(2) 10 CFR 37.5 definitions of agreement state, byproduct material, commission and person shall not be applicable;

(3) 10 CFR 37.7, 10 CFR 37.9, 10 CFR 37.11(a) and (b), 10 CFR 37.13, 10 CFR 37.27(c), 10 CFR 37.105, and 10 CFR 37.107 shall not be applicable; and

(4) the license required report of events or notification in 10 CFR 37.45, 10 CFR 37.57, 10 CFR 37.77(a) through (d), and 10 CFR 37.81 shall use the following address: New Mexico Environment Department/RCB, P.O. Box 5469, Santa Fe, NM 87502-5469.

F. An application for a specific license to use radioactive material in the form of a sealed source or in a device that contains the sealed source must identify the source and (or) the device by manufacturer name and model number as registered with the *sealed source and device registry*.

(1) Except as provided in [~~Subsection (F)(2), (F)(3), and (F)(4) of this section~~] Paragraph (2), (3) and (4) of this subsection, an application for a specific license to use byproduct material in the form of a sealed source or in a device that contains the sealed source must either:

(a) identify the source or device by manufacturer and model number registered with the NRC pursuant to 10 CFR 32.210, with an agreement state, or for a source or a device containing radium-226 or accelerator-produced radioactive material with a state under provisions comparable to 10 CFR 32.210; or

(b) contain the information identified in 10 CFR 32.210(c).

(2) For sources or devices manufactured before October 23, 2012 that are not registered with the NRC under 10 CFR 32.210 or with an agreement state, and for which the applicant is unable to provide all categories of information specified in 10 CFR 32.210(c), the application must include:

(a) all available information identified in 10 CFR 32.210(c) concerning the source, and, if applicable, the device; and

(b) sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of a recent leak test.

(3) For sealed sources and devices allowed to be distributed without registration of safety information in accordance with 10 CFR 32.210(g)(1), the applicant may supply only the manufacturer,

model number, and radionuclide and quantity.

(4) If it is not feasible to identify each sealed source and device individually, the applicant may propose constraints on the number and type of sealed sources and devices to be used and the conditions under which they will be used, in lieu of identifying each sealed source and device.

G. As provided by 20.3.3.311 NMAC, certain applications for a new or renewal specific license must contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning.

H. An application for a license to receive and possess radioactive material for the conduct of any activity which the department has determined pursuant to Subpart A of 10 CFR 51 will significantly affect the quality of the environment shall be filed at least nine months prior to commencement of construction of the plant or facility in which the activity will be conducted and shall be accompanied by an environmental impact report required pursuant to Subpart A of 10 CFR 51.

I. None of the following applications shall be accepted for review unless it is accompanied by an environmental impact report, submitted by the applicant, that specifically addresses the short-term and long-term environmental, radiological and public health and safety aspects of the applications and alternatives to the proposed action:

(1) an initial application for a radioactive material license for a commercial radioactive waste disposal site license;

(2) the first renewal of any such license not previously accompanied by an environmental impact report;

(3) an application for an amendment to an existing license that may result in additional significant impacts from radiation on the environment or public health or safety beyond those impacts addressed in the existing license and accompanying documents; and

(4) any other application that the secretary determines may have significant impacts from radiation on the environment or public health or safety.

J. The application for a radioactive material license for a commercial radioactive waste disposal site, or for any renewal thereof, or for an amendment thereto as described in Paragraph (3) of Subsection H of this section, shall demonstrate that the activity for which such license is requested will comply with all laws and regulations enforceable by the department.

K. An application from a medical facility or educational institution to produce PET radioactive drugs for noncommercial transfer to licensees in its consortium authorized for medical use under 20.3.7 NMAC shall include:

(1) a request for authorization for the production of PET radionuclides or evidence of an existing license issued under 20.3.3 NMAC or under equivalent NRC or agreement state requirements for a PET radionuclide production facility within its consortium from which it receives PET radionuclides;

(2) evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in Subparagraph (b) of Paragraph (1) of Subsection J of 20.3.3.315 NMAC;

(3) identification of individual(s) authorized to prepare the PET radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in Subparagraph (b) of Paragraph (2) of Subsection J of 20.3.3.315 NMAC; and

(4) information identified in Subparagraph (c) of Paragraph (1) of Subsection J of 20.3.3.315 NMAC on the PET drugs to be non-commercially transferred to members of its consortium.

L. An application for a specific license to transfer source material under [~~10 CFR 40~~] this section.

(1) An application for a specific license to initially transfer source material for use under [~~10 CFR 40.22, and equivalent regulations 20.3.3.304.B~~] 20.3.3.307 NMAC, will be approved if:

(a) the applicant satisfies the general requirements specified in [~~10 CFR 40.32 and equivalent regulations 20.3.3.307 NMAC~~] this section; and

(b) the applicant submits adequate information on, and the [~~NRC~~] department approves the methods to be used for quality control, labeling, and providing safety instructions to recipients.

(2) Each person licensed under [~~10 CFR 40.54~~] this section shall label the immediate container of each quantity of source material with the type of source material and quantity of material and the words, "radioactive material."

(3) Each person licensed under [~~10 CFR 40.54~~] this section shall ensure that the quantities and concentrations of source material are as labeled and indicated in any transfer records.

(4) Each person licensed under [~~10 CFR 40.54~~] this section shall provide the information specified in this paragraph to each person to whom source material is transferred for use under [~~10 CFR 40.22 and 20.3.3.304.B NMAC~~] this section. This information must be transferred before the source material is transferred for the first time in each calendar year to the particular recipient. The required information includes:

(a) a copy of [~~10 CFR 40.22~~] Subsection B of 20.3.3.304 NMAC and 10 CFR 40.51 or equivalent regulations under [~~20.3.3.304~~] Subsection L of 20.3.3.307 NMAC; and

(b) appropriate radiation safety precautions and instructions relating to handling, use, storage, and disposal of the material.

(5) Each person licensed under [~~10 CFR 40.54~~] this section shall report transfers as follows:

(a) File a report with the department under 20.3.1.116 NMAC. The report shall include the following information:

(i) The name, address, and license number of the person who transferred the source material; and

(ii) For each general licensee under 10 CFR 40.22 [~~and~~] or [~~20.3.3.307~~] 20.3.3.304 NMAC to whom greater than 50 grams (0.11 lb) of source material has been transferred in a single calendar quarter, the name and address of the general licensee to whom source material is distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and

(iii) The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients.

(b) File a report with each responsible agreement state agency that identifies all persons, operating under the provisions equivalent to 10 CFR 40.22, to whom greater than 50 grams (0.11 lb) of source material has been transferred within a single calendar quarter. The report shall include the following information specific to those transfers made to the agreement state:

(i) The name, address, and license number of the person who transferred the source material;

(ii) The name and address of the general licensee to whom source material was distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and

(iii) The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients within the Agreement State.

(c) Submit each report by January 31 of each year covering all transfers for the previous calendar year. If no transfers were made to persons generally licensed under 10 CFR 40.22 or equivalent agreement state provisions during the current period, a report shall be submitted to the NRC indicating so. If no transfers have been made to general licensees in a particular agreement state during the reporting period, this information shall be reported to the responsible agreement state agency upon request of the agency.

(d) Each person licensed under [~~10 CFR 40.54~~] 20.3.3.304 NMAC shall maintain all information that supports the reports required by this section concerning each transfer to a general licensee for a period of one year after the event is included in a report to the NRC or to an agreement state agency. [20.3.3.307 NMAC - Rp, 20.3.3.307 NMAC, 4/30/2009; A, 8/10/2021]

20.3.3.310 PUBLIC NOTICE, PARTICIPATION AND HEARING:

A. Within 60 days following:

(1) initial receipt of a new license application, or each additional submission of information by the applicant, the secretary will either accept the application for a new license for a review and give notice pursuant to Subsection B of this section, or notify the applicant in writing of any deficiencies in the application that must be corrected in order for the application to be accepted for review;

(2) a license amendment or license renewal application requesting a change of the location where radioactive material will be stored or used, the secretary will issue notices pursuant to Subsection B of this section;

(3) a license amendment or license renewal application requesting a change of principal activity, the secretary will issue notices pursuant to Subsection B of this section.

B. Notices. The secretary shall give a notice of acceptance of a new application, license amendment or renewal license application described in Subsection A of this section:

(1) to the applicant, by certified mail; and

(2) to the public, by the publication of a notice in at least one newspaper of general circulation in the area of the proposed activity in the license application, and in other newspapers as deemed appropriate by the secretary;

(3) the secretary shall make a good faith effort to notify of acceptance of a new application, license amendment or renewal license application described in of Subsection A of this section by first-class mail:

(a) any local, state, Indian [~~tribal~~] Tribal government or federal government agency that the secretary determines may be significantly affected or interested; and

(b) any other person who, prior to such notice, has requested in writing such notices.

C. The notice specified in Paragraph (2) of Subsection B of this section shall include:

(1) the name and address of the applicant;

(2) the location of the proposed activity;

(3) a brief description of the procedures to be followed by the secretary in making a final determination;

(4) a brief description of the proposed activity;

(5) the time within which written comments and requests for public hearings will be accepted; and

(6) the means by which interested persons may obtain further information;

(7) the following sample notice satisfies the requirements of this section:

PUBLIC NOTICE

The New Mexico Environment Department (the Department) has received an application for a Radioactive Material License from_____ _____ __(company name and address) for _____ (proposed activity) to be located at _____ (location).

During the early part of the evaluation period, the Department will review and comment upon the application. The NMED may, at its discretion, retain consultants to assist it in its evaluation of the application. Relevant comments and questions received by the NMED from various agencies and interested parties will be forwarded to the applicant for its response. Correspondence associated with the application will be on file with the Radiation Control Bureau and will be available for inspection by the applicant and any other interested parties.

The Department has required the applicant to provide complete plans and other materials addressing, among other things, the public health, safety and environmental aspects of the proposed activity.

The Department will analyze the license application carefully. During this analysis, the application will be reviewed to ensure that there are no deficiencies, that the application meets all applicable requirements and that there is no reason to believe that the operation will violate any laws or regulations. If the Department is so satisfied, it will issue a Radioactive Material License, to expire in five years.

The activities of all licensees are inspected periodically to assure compliance with regulations and license conditions.

The application is available for review at NMED's offices of the Radiation Control Bureau in Santa Fe, New Mexico. It is anticipated that the review period will require about _____ months. Written comments and requests for public hearing will be accepted for _____ days after publication of this notice.

Written comments regarding this license application should be directed to Radiation Control Bureau, Environment Department, P.O. Box 5469, Santa Fe, New Mexico 87502-5469.

D. The department shall maintain all licensees' administrative record, which shall be available for public inspection at the department office in Santa Fe.

E. Public comment period.

(1) Following the notice pursuant to Subsections B and C of this section and prior to ruling on any new application, or amendment request or renewal license application of the type described in Subsection A of this section, the secretary shall allow for a period of at least 30 days during which written comments or questions about the license application may be submitted by any interested person. If the secretary determines that the questions are relevant to the requirements in 20.3.3.307 NMAC, 20.3.3.308 NMAC and any specific requirements for the type of license requested, the secretary shall require the applicant to answer them.

(2) Following the notice of acceptance of the license application pursuant to Subsections A through C of this section and prior to ruling on any application required to be accompanied by an environmental report pursuant to Subsection H of 20.3.3.307 NMAC, the secretary shall allow a period of at least 60 days during which written comments or questions may be submitted by any interested person. If the secretary determines that the questions are relevant to the considerations enumerated in Subsection H of 20.3.3.307 NMAC or 20.3.3.308 NMAC, the secretary shall require the applicant to answer them.

The secretary may allow an additional written comment period upon submission of additional information to the license application, amendment request or renewal license application described by Subsection A of this section by the applicant, or upon request by members of the public. A written request for a hearing may be made by the members of the public within the time period specified in the public notice described in Subsection C of this section.

F. If the secretary determines that there is significant public interest, or that there is a need to resolve issues not resolvable in writing, the secretary shall order a public hearing be held to provide guidance on any issue relevant to the license proceeding. Notice of the public hearing shall be given at least 30 days prior to the hearing to the persons and in the manner specified in Subsection C of 20.1.4.200 NMAC. Any such public hearing shall be conducted pursuant to the hearing procedures in 20.1.4 NMAC.

[20.3.3.310 NMAC - Rp, 20.3.3.310 NMAC, 4/30/2009; A, 6/13/2017, 8/10/2021]

20.3.3.315 SPECIAL REQUIREMENTS FOR A SPECIFIC LICENSE TO MANUFACTURE, ASSEMBLE, REPAIR OR DISTRIBUTE COMMODITIES, PRODUCTS OR DEVICES WHICH CONTAIN RADIOACTIVE MATERIAL:

A. Introduction of radioactive material in exempt concentrations into products or materials.

(1) Licensing. A specific license authorizing the introduction of radioactive material into a product or material owned by or in the possession of the licensee or another and the transfer of ownership or possession of the product or material containing the radioactive material to be transferred to persons exempt under Paragraph (1) of Subsection A of 20.3.3.302 NMAC will be issued by NRC pursuant to 10 CFR 32.11.

(2) Prohibition of introduction. No person may introduce radioactive material into a product or material

knowing or having reason to believe that it will be transferred to persons exempt under Subsection A of 20.3.3.302 NMAC or equivalent regulations of the NRC or an agreement state, except in accordance with a license issued by NRC pursuant to 10 CFR 32.11.

B. Radioactive material in exempt quantities or in certain items.

(1) Manufacture, distribution and transfer of exempt quantities of byproduct material. An application for a specific license to manufacture, process, produce, package, repackage or transfer exempt quantities of byproduct material for commercial distribution to persons exempt pursuant to Subsection B of 20.3.3.302 NMAC or the equivalent regulations of the NRC or an agreement state shall be issued by NRC pursuant to 10 CFR 32.18.

(2) Certain items containing byproduct material. An application for a specific license to apply byproduct material to, or to incorporate byproduct material into, the products specified in Paragraph (1) of Subsection C of 20.3.3.302 NMAC or to initially transfer for sale or distribution such products containing byproduct material for use pursuant to Paragraph (1) of Subsection C of 20.3.3.302 NMAC to persons exempt from 20.3 NMAC shall be submitted to NRC pursuant to 10 CFR 32.14.

(3) Except as specified in Paragraphs (1) and (2) of this subsection, in addition to the requirements set forth in 20.3.3.308 NMAC, an application for a specific license to manufacture, process, produce, package, repackage or initially transfer naturally occurring or accelerator produced radioactive material (NARM) in exempt quantities as specified in 20.3.3.330 NMAC of this part to persons exempt from licensing pursuant to Subsection B of 20.3.3.302 NMAC will be approved if:

(a) the radioactive material is not contained in any food, beverage, cosmetic, drug or other commodity designed for ingestion or inhalation by, or application to, a human being;

(b) the radioactive material is in the form of processed chemical elements, compounds, mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into any manufactured or assembled commodity, product or device intended for commercial distribution; and

(c) the applicant submits copies of prototype labels and brochures and the department approves such labels and brochures.

(4) The license issued under Paragraph (3) of Subsection B of this subsection is subject to the following conditions:

(a) no more than 10 exempt quantities shall be sold or transferred in any single transaction; however, an exempt quantity may be composed of fractional parts of one or more of the exempt quantity provided the sum of the fractions shall not exceed unity;

(b) each exempt quantity shall be separately and individually packaged; no more than 10 such packaged exempt quantities shall be contained in any outer package for transfer to persons exempt pursuant to Subsection B of 20.3.3.302 NMAC; the outer package shall be such that the dose rate at the external surface of the package does not exceed 0.5 millirem per hour;

(c) the immediate container of each quantity or separately packaged fractional quantity of radioactive material shall bear a durable and legible label which:

(i) identifies the radionuclide and the quantity of radioactivity; and

(ii) bears the words "*radioactive material*"; and

(d) in addition to the labeling information required by Subparagraph (c) of this paragraph, the label affixed to the immediate container, or an accompanying brochure shall

(i) state that the contents are exempt from these regulations;

(ii) bear the words "*radioactive material - not for human use - introduction into foods, beverages, cosmetics, drugs or medicinal product, or into products manufactured for commercial distribution is prohibited - exempt quantities shall not be combined*"; and

(iii) set forth appropriate additional radiation safety precautions and instructions relating to the handling, use, storage and disposal of the radioactive material.

(5) Each person licensed under Subsection B of 20.3.3.315 NMAC shall maintain records identifying, by name and address, each person to whom radioactive material is transferred for use under Subsection B of 20.3.3.302 NMAC and stating the kinds and quantities of radioactive material transferred. An annual summary report stating the total quantity of each radionuclide transferred under the specific license shall be filed with the department. Each report shall cover the year ending June 30 and shall be filed within 30 days thereafter. If no transfers of radioactive material have been made pursuant to Subsection B of 20.3.3.315 NMAC, during the report period, the report shall so indicate.

C. Licensing of byproduct material by NRC.

(1) Gas and aerosol detectors. An application for a specific license to manufacture, process or produce gas and aerosol detectors containing byproduct material and designed to protect life or property from fires and airborne hazards, or to initially transfer such products for use pursuant to Paragraph (4) of Subsection C of 20.3.3.302 NMAC or equivalent regulations of the NRC or an

agreement state, shall be submitted to NRC pursuant to 10 CFR 32.26.

(2) Self-luminous products. An application for a specific license to manufacture, process or produce self-luminous products containing tritium, krypton-85, promethium-147 or radium-226, or to initially transfer such products for use pursuant to Paragraph (2) of Subsection C of 20.3.3.302 NMAC or equivalent regulations of the NRC or an agreement state, shall be submitted to NRC pursuant to 10 CFR 32.22 and for distribution submit to the NRC pursuant to 10 CFR 32.53.

(3) Capsules containing carbon-14. An application for a specific license to manufacture, prepare, process, produce, package, repackage or transfer for commercial distribution capsules containing 1 microcurie (37 kilobecquerels) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each for *in vivo* diagnostic use, to persons exempt from licensing under Subsection D of 20.3.3.302 NMAC or the equivalent regulations of the NRC or an agreement state shall be submitted to NRC pursuant to 10 CFR 32.21.

D. [RESERVED]

E. Licensing the manufacture and distribution of devices to persons generally licensed under Subsection B of 20.3.3.305 NMAC.

(1) Requirements for approval of a license application. An application for a specific license to manufacture or initially transfer devices containing radioactive material to persons generally licensed under Subsection B of 20.3.3.305 NMAC or equivalent regulations of the NRC or an agreement state will be approved if:

(a) the applicant satisfies the general requirements of 20.3.3.308 NMAC;

(b) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions and potential hazards of the device to provide reasonable assurance that:

(i) the device can be safely operated by persons not having training in radiological protection;

(ii) under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive in one year a dose in excess of ten percent of the limits specified in Subsection A of 20.3.4.405 NMAC; and

(iii) under accident conditions (such as fire and explosion) associated with handling, storage and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the following organ doses: *1)* whole body, head and trunk, active blood-forming organs, gonads or lens of eye: 15 rems (150 millisieverts); *2)* hands and forearms, feet and ankles, and localized areas of skin averaged over areas no larger than 1 square centimeter: 200 rems (2 sieverts); and *3)* other organs: 50 rems (500 millisieverts);

(c) each device bears a durable, legible, clearly visible label or labels approved by the department, which contain in a clearly identified and separate statement:

(i) instructions and precautions necessary to assure safe installation, operation and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information);

(ii) the requirement, or lack of requirement, for leak testing, or for testing any on-off mechanism and indicator, including the maximum time interval for such testing, and the identification of radioactive material by isotope, quantity of radioactivity; and date of determination of the quantity; and

(iii) the information called for in the following statement in the same or substantially similar form:

The receipt, possession, use and transfer of this device model _____, serial number _____, are subject to general license or the equivalent and the regulations of the United States nuclear regulatory commission or a state with which the nuclear regulatory commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited. The model, serial number, and name of manufacturer or distributor may be omitted from this label provided this information is specified elsewhere in labeling affixed.

Caution-radioactive material _____;

(name of manufacturer or distributor)

(d) each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words, "*caution-radioactive material*," the radiation symbol described in 20.3.4.427 NMAC, and the name of the manufacturer or initial distributor; and

(e) each device meeting the criteria of Item (i) in Subparagraph (m) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC, bears a permanent (e.g., embossed, etched, stamped or engraved) label affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "*caution-radioactive material*," and, if practicable, the radiation symbol described in 20.3.4.427 NMAC.

(f) The device has been registered in the Sealed Source and Device Registry.

(2) Requests for lengthening of test intervals: In the event the applicant desires that the device be required to be tested at longer intervals than six months, either for proper operation of the on-off mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in its application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the on-off mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the department will consider information which includes, but is not limited to:

(a) primary containment (source capsule);

(b) protection of primary containment;

(c) method of sealing containment;

(d) containment construction materials;

(e) form of contained radioactive material;

(f) maximum temperature withstood during prototype test;

(g) maximum pressure withstood during prototype test;

(h) maximum quantity of contained radioactive material;

(i) radiotoxicity of contained radioactive material; and

(j) operating experience with identical devices or similarly designed and constructed devices.

(3) Authorizations for general licensees to perform certain activities. In the event the applicant desires that the general licensee under Subsection B of 20.3.3.305 NMAC, or under equivalent regulations of the NRC or an agreement state, be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the on-off mechanism and indicator or remove the device from installation, the applicant shall include in its application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with such activity or activities and the bases for such estimates. The submitted information must demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage and use of devices under the general license, is unlikely to cause that individual to receive a yearly dose in excess of ten percent of the limits specified in Subsection A of 20.3.4.405 NMAC.

(4) Transfer provisions:

(a) [~~If a device containing radioactive material is to be transferred for use under the general license contained in Subsection B of 20.3.3.305 NMAC, each person that is licensed under Paragraph (1) of Subsection D of 20.3.3.315 NMAC shall provide the information specified in this paragraph to each person to whom a device is to be transferred. This information shall be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information shall also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:~~

~~(i)~~ ~~a copy of the general license contained in Paragraph (1) of Subsection D of 20.3.3.315 NMAC; if Subparagraphs (b) through (d) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC or Subparagraph (m) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC do not apply to the particular device, those paragraphs may be omitted;~~

~~(ii)~~ ~~a copy of Subsection F of 20.3.3.317 NMAC, 20.3.3.326 NMAC, 20.3.4.451 NMAC and 20.3.4.452 NMAC;~~

~~(iii)~~ ~~a list of the services that can only be performed by a specific licensee;~~

~~(iv)~~ ~~information on acceptable disposal options including estimated costs of disposal; and~~

~~(v)~~ ~~a statement indicating that improper disposal of radioactive material is subject to civil and criminal penalties pursuant to 20.3.1 NMAC.~~]

[RESERVED]

(b) If radioactive material is to be transferred in a device for use under an equivalent general license of the NRC or an agreement state, each person that is licensed under this subsection shall provide the information specified in this subparagraph to each person to whom a device is to be transferred. This information shall be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information shall also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(i) a copy of the NRC's or agreement state's regulations equivalent to Subsection B of 20.3.3.305 NMAC, Subsection F of 20.3.3.317 NMAC, 20.3.3.326 NMAC, 20.3.4.451 NMAC, and 20.3.4.452 NMAC or a copy of 10 CFR Sections 31.5, 31.2, 30.51, 20.2201 and 20.2202; if a copy of the NRC regulations is provided to a prospective general licensee in lieu of the agreement state's regulations, it shall be accompanied by a note explaining that use of the device is regulated by the agreement state; if certain paragraphs of the regulations do not apply to the particular device, those paragraphs may be omitted;

(ii) a list of the services that can only be performed by a specific licensee;

(iii) information on acceptable disposal options including estimated costs of disposal; and

(iv)
the name or title, address and phone number of the contact at the agreement state regulatory agency from which additional information may be obtained.

(c)
An alternative approach to informing customers may be proposed by the licensee for approval by the department.

(d)
Each device shall meet the labeling requirements in Subparagraphs (c) through (e) of Paragraph (1) of this Subsection.

(e)
If a notification of bankruptcy [~~has been made~~] is submitted under Subsection E of 20.3.3.317 NMAC of this part and each specific licensee or the license is to be terminated, each person licensed under Paragraph (1) of this subsection shall provide, upon request, to the department, NRC and any agreement state, records of final disposition required under [~~Subparagraph (c) of Paragraph (5) of Subsection D of 20.3.3.315 NMAC~~] 10CFR30.34(h).

(5) Material transfer reports and records: Each person licensed under 20.3.3.305 NMAC of this subsection to initially transfer devices to generally licensed persons shall comply with the requirements of this section.

(a)
The person shall report to the department in accordance with 20.3.1.116 NMAC, all transfers of such devices to persons for use under the general license in Subsection B of 20.3.3.305 NMAC and all receipts of devices from persons licensed under Subsection B of 20.3.3.305 NMAC. The report shall be clear and legible, submitted on a quarterly basis containing all of the following data.

(i)
The required information for transfers to general licensees includes: *1)* the identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternate address for the general licensee shall be submitted along with information on the actual location of use; *2)* the name, title and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements; *3)* the date of transfer; *4)* the type, model number, and serial number of the device transferred; and *5)* the quantity and type of radioactive material contained in the device.

(ii)
If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report shall include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

(iii)
For devices received from a person licensed pursuant to Subsection B of 20.3.3.305 NMAC, the report shall include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(iv)
If the licensee makes changes to a device possessed by a person licensed pursuant to Subsection B of 20.3.3.305 NMAC, such that the label must be changed to update required information, the report shall identify the general licensee, the device and the changes to information on the device label.

(v)
The report shall cover each calendar quarter, shall be filed within 30 days of the end of the calendar quarter, and shall clearly indicate the period covered by the report.

(vi)
The report shall clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(vii)
If no transfers have been made to or from persons generally licensed under Subsection B of 20.3.3.305 NMAC during the reporting period, the report shall so indicate.

(b)
The person shall report all transfers of devices to persons for use under a general license under NRC's or an agreement state's regulations that are equivalent to Subsection B of 20.3.3.305 NMAC, and all receipts of devices from general licensees in the NRC's or agreement state's jurisdiction, to the responsible NRC or agreement state agency. The report shall be clear and legible, containing all of the data required as described below.

(i)
The required information for transfers to general licensees includes: *1)* the identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternate address for the general licensee shall be submitted along with information on the actual location of use; *2)* the name, title and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements; *3)* the date of transfer; *4)* the type, model number and serial number of the device transferred; and *5)* the quantity and type of radioactive material contained in the device.

(ii)
If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report shall include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

(iii)
For devices received from a general licensee, the report shall include the identity of the general licensee by name and address, the type, model number, serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(iv)
If the licensee makes changes to

a device possessed by a general licensee, such that the label must be changed to update required information, the report shall identify the general licensee, the device and the changes to information on the device label.

(v) The report shall cover each calendar quarter, shall be filed within 30 days of the end of the calendar quarter, and shall clearly indicate the period covered by the report.

(vi) The report shall clearly identify the specific licensee submitting the report and must include the license number of the specific licensee.

(vii) If no transfers have been made to or from NRC or a particular agreement state during the reporting period, this information shall be reported to NRC or the responsible agreement state agency upon request of the agency.

(c) The person shall maintain all information concerning transfers and receipts of devices that supports the reports required by Subparagraphs (a) and (b) of this paragraph. Records required by this paragraph shall be maintained for a period of three years following the date of the recorded event.

F. Special requirements for the manufacture, assembly, repair or initial transfer of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble, repair or initially transfer luminous safety devices containing tritium or promethium-147 for use in aircraft, for distribution to persons generally licensed under Subsection C of 20.3.3.305 NMAC will be approved subject to the following conditions:

(1) the applicant satisfies the general requirements specified in 20.3.3.308 NMAC;

(2) the applicant satisfies the requirements of 10 CFR 32.53, 10 CFR 32.54, 10 CFR 32.55 and 10 CFR 32.56 or their equivalent;

(3) each person licensed under 10 CFR 32.53 shall file an annual report with the director, office of [~~federal and state materials and environmental management programs~~] Nuclear Materials Safety and Safeguards, ATTN: document control desk/ GLTS by an appropriate method listed in 10 CFR 30.6(a) which must state the total quantity of tritium or promethium-147 transferred to persons generally licensed under 10 CFR 31.7. The report must identify each general licensee by name, state the kinds and number of luminous devices transferred, and specify the quantity of tritium or promethium-147 in each kind of device. Each report must cover the year ending June 30 and must be filed within 30 days thereafter. If no transfers have been made to persons generally licensed under 10 CFR 31.7 during the reporting period, the report must so indicate; and

(4) each person licensed under 10 CFR 32.53 shall report annually all transfers of devices to persons for use under a general license in an agreement state's regulations that are equivalent to 10 CFR 31.7 of this paragraph to the responsible agreement state agency. The report must state the total quantity of tritium or promethium-147 transferred, identify each general licensee by name, state the kinds and numbers of luminous devices transferred, and specify the quantity of tritium or promethium-147 in each kind of device. If no transfers have been made to a particular agreement state during the reporting period, this information must be reported to the responsible agreement state agency upon request of the agency.

G. Special requirements for license to manufacture or initially transfer calibration or reference sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection D of 20.3.3.305 NMAC. An application for a specific license to manufacture or initially transfer calibration or reference sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection D of 20.3.3.305 NMAC will be approved subject to the following conditions:

(1) the applicant satisfies the general requirements of 20.3.3.307 NMAC and 20.3.3.308 NMAC, and

(2) the applicant satisfies the requirements of 10 CFR 32.57, 10 CFR 32.58, 10 CFR 32.59 and 10 CFR 70.39 or their equivalent.

H. Manufacture and distribution of radioactive material for certain in-vitro clinical or laboratory testing under general license. An application for a specific license to manufacture or distribute radioactive material for use under the general license of Subsection F of 20.3.3.305 NMAC will be approved if:

(1) the applicant satisfies the general requirements specified in 20.3.3.307 NMAC and 20.3.3.308 NMAC;

(2) the radioactive material is to be prepared for distribution in prepackaged units of:

(a) iodine-125 in units not exceeding 10 microcuries (370 kilobecquerels) each;

(b) iodine-131 in units not exceeding 10 microcuries (370 kilobecquerels) each;

(c) carbon-14 in units not exceeding 10 microcuries (370 kilobecquerels) each;

(d) hydrogen-3 (tritium) in units not exceeding 50 microcuries (1.85 megabecquerels) each;

(e) iron-59 in units not exceeding 20 microcuries (740 kilobecquerels) each;

(f) cobalt-57 in units not exceeding 10 microcuries (370 kilobecquerels) each;

(g) selenium-75 in units not exceeding 10 microcuries (370 kilobecquerels) each; or

(h) mock iodine-125 reference or calibration sources in units not exceeding 0.05 microcurie (1.85 kilobecquerels) of iodine-129 and 0.005 microcurie (185 becquerels) of americium-241 each;

(3) each prepackaged unit bears a durable, clearly visible label:

(a) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 10 microcuries (370 kilobecquerels) of iodine-125, iodine-131, carbon-14, cobalt-57 or selenium-75; 50 microcuries (1.85 megabecquerels) of hydrogen-3 (tritium); 20 microcuries (740 kilobecquerels) of iron-59; or 0.05 microcurie (1.85 kilobecquerels) of iodine-129 and 0.005 microcurie (185 becquerels) of americium-241; and

(b) displaying the radiation caution symbol described in Paragraph (1) of Subsection A of 20.3.4.427 NMAC and the words, "*caution, radioactive material*" and "*not for internal or external use in humans or animals*";

(4) the following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package: *This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in-vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of the United States nuclear regulatory commission or of a state with which the NRC has entered into an agreement for the exercise of regulatory authority.*

_____

____ *(name of manufacturer)*; and

(5) the label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling, storing and disposal of such radioactive material; in the case of the mock iodine-125 reference or calibration source, the information accompanying the source must also contain directions to the licensee regarding the waste disposal requirements set out in 20.3.4.433 NMAC.

I. Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Subsection G of 20.3.3.305 NMAC will be approved subject to the following conditions:

(1) the applicant satisfies the general requirements of 20.3.3.307 NMAC and 20.3.3.308 NMAC; and

(2) the criteria of 10 CFR 32.61 and 32.62 are met.

J. Manufacture, preparation or transfer for commercial distribution of radioactive drugs containing radioactive material for medical use under 20.3.7 NMAC.

(1) An application for a specific license to manufacture, prepare or transfer for commercial distribution, radioactive material for use by persons authorized pursuant to 20.3.7 NMAC will be approved if the following conditions are met.

(a) The applicant satisfies the general requirements specified in 20.3.3.307 NMAC and 20.3.3.308 NMAC;

(b) The applicant submits evidence that the applicant is at least one of the following:

(i) registered with the FDA as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding or processing of a drug under 21 CFR 207.20(a);

(ii) registered or licensed with a state agency as a drug manufacturer;

(iii) licensed as a pharmacy by a state board of pharmacy;

(iv) operating as a nuclear pharmacy within a federal medical institution; or

(v) a PET drug production facility registered with a state agency.

(c) The applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees.

(d) The applicant satisfies the following labeling requirements.

(i) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic or other material, of a radioactive drug to be transferred for commercial distribution; the label must include the radiation symbol and the words "*caution, radioactive material*" or "*danger, radioactive material*"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half-life greater than 100 days, the time may be omitted; and

(ii) A label is affixed to each syringe, vial or other container used to hold a radioactive drug to be transferred for commercial distribution; the label must include the radiation symbol and the words "*caution, radioactive material*" or "*danger, radioactive material*" and an identifier that ensures that the syringe, vial or other container can be correlated with the

information on the transport radiation shield label.

(2) A licensee described by Items (iii) or (iv) of Subparagraph (b) of Paragraph (1) of this subsection:

(a) may prepare radioactive drugs for medical use, as defined in 20.3.7.7 NMAC, provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in Subparagraphs (b) and (d) of this paragraph, or an individual under the supervision of an authorized nuclear pharmacist as specified in Subsection F of 20.3.7.702 NMAC;

(b) may allow a pharmacist to work as an authorized nuclear pharmacist if:

(i) the individual qualifies as an authorized nuclear pharmacist as defined in 20.3.7.7 NMAC;

(ii) the individual meets the requirements specified in Subsection C of 20.3.7.714 NMAC, incorporating 10 CFR 35.55(b) and Subsection E of 20.3.7.714 NMAC, incorporating 10 CFR 35.59, and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(iii) the individual is designated as an authorized nuclear pharmacist in accordance with Subparagraph (d) of this paragraph;

(c) may conduct the actions authorized in Subparagraphs (a) and (b) of this paragraph in spite of more restrictive language in license conditions;

(d) may designate a pharmacist (as defined in 20.3.7.7 NMAC) as an authorized nuclear pharmacist if:

(i) the individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator-produced radioactive material, and

(ii) the individual practiced at a pharmacy at a government agency or federally recognized Indian [~~tribe~~] Tribe before November 30, 2007, or at all other pharmacies in non-licensing states, as defined in 20.3.1.7 NMAC, before August 8, 2009, or an earlier date as noticed by the NRC;

(e) may designate a pharmacist (as defined in 20.3.7.7 NMAC) as an authorized nuclear pharmacist if the individual is identified as of May 3, 1995, as an "authorized user" in a nuclear pharmacy license issued by the department under this part; and

(f) shall provide to the department a copy of

(i) each individual's certification by a specialty board whose certification process has been recognized by the department, NRC or agreement state as specified in Subsection C of 20.3.7.714 NMAC, incorporating 10 CFR 35.55(a), with the written attestation signed by a preceptor as required by Subsection C of 20.3.7.714 NMAC, incorporating 10 CFR 35.55(b)(2); or

(ii) the department, NRC or agreement state license, or

(iii) the permit issued by a NRC master material licensee, or

(iv) the permit issued by a department, NRC or agreement state licensee, or NRC master materials permittee of broad scope, or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist, or

(v) documentation that only accelerator-produced radioactive materials were used in the practice of nuclear pharmacy at a government agency or federally recognized Indian [~~tribe~~] Tribe before November 30, 2007, or at all other pharmacies in non-licensing states, as defined in 20.3.1.7 NMAC, before August 8, 2009, or an earlier date as noticed by the NRC; and

(vi) the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, under Items (i) and (iii) of Subparagraph (b) of this paragraph, the individual to work as an authorized nuclear pharmacist.

(3) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha, beta or photon emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(a) perform tests before initial use, periodically and following repair, on each instrument for accuracy, linearity and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(b) check each instrument for constancy and proper operation at the beginning of each day of use.

(4) Nothing in this section relieves the licensee from complying with applicable FDA, or other federal and state requirements governing radioactive drugs.

K. Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed pursuant to 20.3.7 NMAC for use as a calibration, transmission or reference source or for the uses listed in 20.3.7.710 NMAC, 20.3.7.711 NMAC and 20.3.7.712 NMAC will be approved if:

(1) the applicant satisfies the general requirements in 20.3.3.307 NMAC and 20.3.3.308 NMAC; and

(2) the applicant satisfies the requirements in 10 CFR 32.74.

L. Requirements for license to manufacture and

distribute industrial products containing depleted uranium for mass-volume applications.

(1) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection E of 20.3.3.304 NMAC or equivalent regulations of the NRC or an agreement state will be approved if:

(a) the applicant satisfies the general requirements specified in 20.3.3.307 NMAC and 20.3.3.308 NMAC;

(b) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling and marking, proposed uses, and potential hazards of the industrial product or device to provide reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive in one year a radiation dose in excess of ten percent of the limits specified in Subsection A of 20.3.4.405 NMAC; and

(c) the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(2) In the case of an industrial product or device whose unique benefits are questionable, the department will approve an application for a specific license under this subsection only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(3) The department may deny application for a specific license under this subsection if the end use of the industrial product or device cannot be reasonably foreseen.

(4) Each person licensed pursuant to this subsection shall:

(a) maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(b) label or mark each unit to:

(i) identify the manufacturer or initial transferor of the product or device and the number of the license under which the product or device was manufactured or initially transferred, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(ii) state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the NRC or of an agreement state;

(c) assure that the depleted uranium before being installed in each product or device has been impressed with the following legend clearly legible through any plating or other covering: "*depleted uranium*";

(d) furnish a copy of the general license contained in Subsection C of 20.3.3.304 NMAC and a copy of the department form to each person to whom they transfer depleted uranium in a product or device for use pursuant to the general license contained in Subsection C of 20.3.3.304 NMAC; or furnish a copy of the general license contained in the NRC or agreement state's regulation equivalent to Subsection C of 20.3.3.304 NMAC and a copy of the NRC or agreement state's certificate; or alternatively, furnish a copy of the general license contained in Subsection C of 20.3.3.304 NMAC and a copy of department form to each person to whom they transfer depleted uranium in a product or device for use pursuant to the general license of the NRC or an agreement state, with a note explaining that use of the product or device is regulated by the NRC or an agreement state under requirements substantially the same as those in Subsection C of 20.3.3.304 NMAC;

(e) report to the department all transfers of industrial products or devices to persons for use under the general license in Subsection C of 20.3.3.304 NMAC; such report shall identify each general licensee by name and address, an individual by name and (or) position who may constitute a point of contact between the department and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device; the report shall be submitted within 30 days after the end of each calendar quarter in which such a product or device is transferred to the generally licensed person; if no transfers have been made to persons generally licensed under Subsection C of 20.3.3.304 NMAC during the reporting period, the report shall so indicate;

(f) report to the director of the office of nuclear material safety and safeguards, by an appropriate method listed in 10 CFR 40.5 all transfers of industrial products or devices to persons for use under the U.S. nuclear regulatory commission general license in 10 CFR 40.25; the report shall contain all information described in Subparagraph (e) of this paragraph;

(g) report to the responsible state agency all transfers of devices manufactured and distributed pursuant to Subsection L of 20.3.3.315 NMAC for use under a general license in that agreement state's regulations equivalent to Subsection C of 20.3.3.304 NMAC; the report shall contain all information described in Subparagraph (e) of this paragraph;

(h) keep records showing the name, address and point of contact for each general licensee to whom they transfer depleted uranium in industrial products or devices for use pursuant

to the general license provided in Subsection C of 20.3.3.304 NMAC or equivalent regulations of the NRC or of an agreement state; the records shall be retained for three years and show the date of each transfer, the quantity of depleted uranium in each product or device transferred and compliance with the report requirements of this subsection.

M. Licensing the manufacture, assembly, repair or distribution of commodities, products or devices which contain radioactive material other than those enumerated above. The department shall require substantially the same information as required for licensing of similar items by 10 CFR Part 32 not specifically named in this section.

N. Serialization of nationally tracked sources. Each licensee who manufactures a nationally tracked source, as defined in 20.3.4.7 NMAC, after February 6, 2007 shall assign a unique serial number to each nationally tracked source. Serial numbers must be composed only of alpha-numeric characters.

[20.3.3.315 NMAC - Rp, 20.3.3.315 NMAC, 4/30/2009; A, 8/10/2021]

ENVIRONMENT DEPARTMENT

This is an amendment to 20.3.4 NMAC, Sections 425, 462 and 466, effective 8/10/2021.

20.3.4.425 SECURITY AND CONTROL OF LICENSED OR REGISTERED SOURCES OF RADIATION:

A. The licensee shall secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. The licensee possessing category 1 and category 2 quantities of radioactive materials shall comply with 10 CFR 37. The licensee shall comply with 10 CFR 37 except as follows:

(1) any reference to the commission or NRC shall be deemed a reference to the department;

(2) 10 CFR 37.5 definitions of agreement state, byproduct material, commission and person shall not be applicable;

(3) 10 CFR 37.7, 10 CFR 37.9, 10 CFR 37.11(a) and (b), 10 CFR 37.13, 10 CFR 37.27(c), 10 CFR 37.71, 10 CFR 37.105, and 10 CFR 37.107 shall not be applicable; and

(4) for any reporting or notification requirements that the licensee must follow in 10 CFR 37.45, 10 CFR 37.57, 10 CFR 37.77(a) through (d), and 10 CFR 37.81, the licensee shall use the following address when applicable: New Mexico environment department/RCB, P.O. Box 5469, Santa Fe, NM 87502-5469 address information.

B. The licensee shall control and maintain constant surveillance, and use devices or administrative procedures to prevent unauthorized access to licensed radioactive material that is in a controlled or unrestricted area and that is not in storage.

C. The registrant shall secure registered radiation machines from unauthorized removal.

D. The registrant shall use devices or administrative procedures to prevent unauthorized use of registered radiation machines.

[20.3.4.425 NMAC - Rp, 20.3.4.425 NMAC, 4/30/2009; A, 8/10/2021]

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20.3.4.462 APPENDIX C - QUANTITIES[1] OF LICENSED MATERIAL REQUIRING LABELING:

A. Table 462.1.

TABLE 462.1

Radionuclide	Quantity (microcuries[2])
Hydrogen-3	1,000
Beryllium-7	1,000
Beryllium-10	1
Carbon-11	1,000
Carbon-14	[~~1,000~~] 100
Fluorine-18	1,000
Sodium-22	100
Sodium-24	100
Magnesium-28	100
Aluminum-26	10
Silicon-31	1,000
Silicon-32	1
Phosphorus-32	10
Phosphorus-33	100
Sulfur-35	100
Chlorine-36	10
Chlorine-38	1,000
Chlorine-39	1,000
Argon-39	1,000
Argon-41	1,000
Potassium-40	100
Potassium-42	1,000
Potassium-43	1,000
Potassium-44	1,000
Potassium-45	1,000
Calcium-41	100
Calcium-45	100
Calcium-47	100
Scandium-43	1,000
Scandium-44m	100
Scandium-44	100
Scandium-46	10
Scandium-47	100
Scandium-48	100
Scandium-49	1,000
Titanium-44	1
Titanium-45	1,000
Vanadium-47	1,000
Vanadium-48	100
Vanadium-49	1,000

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TABLE 462.1	
Radionuclide	**Quantity (microcuries[2])**
Chromium-48	1,000
Chromium-49	1,000
Chromium-51	1,000
Manganese-51	1,000
Manganese-52m	1,000
Manganese-52	100
Manganese-53	1,000
Manganese-54	100
Manganese-56	1,000
Iron-52	100
Iron-55	100
Iron-59	10
Iron-60	1
Cobalt-55	100
Cobalt-56	10
Cobalt-57	100
Cobalt-58m	1,000
Cobalt-58	100
Cobalt-60m	1,000
Cobalt-60	1
Cobalt-61	1,000
Cobalt-62m	1,000
Nickel-56	100
Nickel-57	100
Nickel-59	100
Nickel-63	100
Nickel-65	1,000
Nickel-66	10
Copper-60	1,000
Copper-61	1,000
Copper-64	1,000
Copper-67	1,000
Zinc-62	100
Zinc-63	1,000
Zinc-65	10
Zinc-69m	100
Zinc-69	1,000
Zinc-71m	1,000
Zinc-72	100
Gallium-65	1,000
Gallium-66	100
Gallium-67	1,000
Gallium-68	1,000
Gallium-70	1,000
Gallium-72	100
Gallium-73	1,000
Germanium-66	1,000
Germanium-67	1,000
Germanium-68	10
Germanium-69	1,000
Germanium-71	1,000
Germanium-75	1,000
Germanium-77	1,000
Germanium-78	1,000

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TABLE 462.1	
Radionuclide	**Quantity (microcuries[2])**
Arsenic-69	1,000
Arsenic-70	1,000
Arsenic-71	100
Arsenic-72	100
Arsenic-73	100
Arsenic-74	100
Arsenic-76	100
Arsenic-77	100
Arsenic-78	1,000
Selenium-70	1,000
Selenium-73m	1,000
Selenium-73	100
Selenium-75	100
Selenium-79	100
Selenium-81m	1,000
Selenium-81	1,000
Selenium-83	1,000
Bromine-74m	1,000
Bromine-74	1,000
Bromine-75	1,000
Bromine-76	100
Bromine-77	1,000
Bromine-80m	1,000
Bromine-80	1,000
Bromine-82	100
Bromine-83	1,000
Bromine-84	1,000
Krypton-74	1,000
Krypton-76	1,000
Krypton-77	1,000
Krypton-79	1,000
Krypton-81	1,000
Krypton-83m	1,000
Krypton-85m	1,000
Krypton-85	1,000
Krypton-87	1,000
Krypton-88	1,000
Rubidium-79	1,000
Rubidium-81m	1,000
Rubidium-81	1,000
Rubidium-82m	1,000
Rubidium-83	100
Rubidium-84	100
Rubidium-86	100
Rubidium-87	100
Rubidium-88	1,000
Rubidium-89	1,000

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TABLE 462.1	
Radionuclide	**Quantity (microcuries[2])**
Strontium-80	100
Strontium-81	1,000
Strontium-83	100
Strontium-85m	1,000
Strontium-85	100
Strontium-87m	1,000
Strontium-89	10
Strontium-90	0.1
Strontium-91	100
Strontium-92	100
Yttrium-86m	1,000
Yttrium-86	100
Yttrium-87	100
Yttrium-88	10
Yttrium-90m	1,000
Yttrium-90	10
Yttrium-91m	1,000
Yttrium-91	10
Yttrium-92	100
Yttrium-93	100
Yttrium-94	1,000
Yttrium-95	1,000
Zirconium-86	100
Zirconium-88	10
Zirconium-89	100
Zirconium-93	1
Zirconium-95	10
Zirconium-97	100
Niobium-88	1,000
Niobium-89m (66 min.)	1,000
Niobium-89 (122 min.)	1,000
Niobium-90	100
Niobium-93m	10
Niobium-94	1
Niobium-95m	100
Niobium-95	100
Niobium-96	100
Niobium-97	1,000
Niobium-98	1,000
Molybdenum-90	100
Molybdenum-93m	100
Molybdenum-93	10
Molybdenum-99	100
Molybdenum-101	1,000
Technetium-93m	1,000
Technetium-93	1,000
Technetium-94m	1,000
Technetium-94	1,000
Technetium-96m	1,000
Technetium-96	100
Technetium-97m	100
Technetium-97	1,000
Technetium-98	10
Technetium-99m	1,000
Technetium-99	100
Technetium-101	1,000
Technetium-104	1,000

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TABLE 462.1	
Radionuclide	**Quantity (microcuries[2])**
Ruthenium-94	1,000
Ruthenium-97	1,000
Ruthenium-103	100
Ruthenium-105	1,000
Ruthenium-106	1
Rhodium-99m	1,000
Rhodium-99	100
Rhodium-100	100
Rhodium-101m	1,000
Rhodium-101	10
Rhodium-102m	10
Rhodium-102	10
Rhodium-103m	1,000
Rhodium-105	100
Rhodium-106m	1,000
Rhodium-107	1,000
Palladium-100	100
Palladium-101	1,000
Palladium-103	100
Palladium-107	10
Palladium-109	100
Silver-102	1,000
Silver-103	1,000
Silver-104m	1,000
Silver-104	1,000
Silver-105	100
Silver-106m	100
Silver-106	1,000
Silver-108m	1
Silver-110m	10
Silver-111	100
Silver-112	100
Silver-115	1,000
Cadmium-104	1,000
Cadmium-107	1,000
Cadmium-109	1
Cadmium-113m	0.1
Cadmium-113	100
Cadmium-115m	10
Cadmium-115	100
Cadmium-117m	1,000
Cadmium-117	1,000
Indium-109	1,000
Indium-110m (69.1 min)	1,000
Indium-110 (4.9 h)	1,000
Indium-111	100
Indium-112	1,000
Indium-113m	1,000
Indium-114m	10
Indium-115m	1,000
Indium-115	100
Indium-116m	1,000
Indium-117m	1,000
Indium-117	1,000
Indium-119m	1,000

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TABLE 462.1	
Radionuclide	**Quantity (microcuries[2])**
Tin-110	100
Tin-111	1,000
Tin-113	100
Tin-117m	100
Tin-119m	100
Tin-121m	100
Tin-121	1,000
Tin-123m	1,000
Tin-123	10
Tin-125	10
Tin-126	10
Tin-127	1,000
Tin-128	1,000
Antimony-115	1,000
Antimony-116m	1,000
Antimony-116	1,000
Antimony-117	1,000
Antimony-118m	1,000
Antimony-119	1,000
Antimony-120 (16 min.)	1,000
Antimony-120 (5.76 d)	100
Antimony-122	100
Antimony-124m	1,000
Antimony-124	10
Antimony-125	100
Antimony-126m	1,000
Antimony-126	100
Antimony-127	100
Antimony-128 (10.4 min)	1,000
Antimony-128 (9.01 h)	100
Antimony-129	100
Antimony-130	1,000
Antimony-131	1,000
Tellurium-116	1,000
Tellurium-121m	10
Tellurium-121	100
Tellurium-123m	10
Tellurium-123	100
Tellurium-125m	10
Tellurium-127m	10
Tellurium-127	1,000
Tellurium-129m	10
Tellurium-129	1,000
Tellurium-131m	10
Tellurium-131	100
Tellurium-132	10
Tellurium-133m	100
Tellurium-133	1,000
Tellurium-134	1,000
Iodine-120m	1,000
Iodine-120	100
Iodine-121	1,000
Iodine-123	100
Iodine-124	10
Iodine-125	1
Iodine-126	1
Iodine-128	1,000
Iodine-129	1
Iodine-130	10
Iodine-131	1
Iodine-132m	100
Iodine-132	100
Iodine-133	10
Iodine-134	1,000
Iodine-135	100

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TABLE 462.1	
Radionuclide	**Quantity (microcuries[2])**
Xenon-120	1,000
Xenon-121	1,000
Xenon-122	1,000
Xenon-123	1,000
Xenon-125	1,000
Xenon-127	1,000
Xenon-129m	1,000
Xenon-131m	1,000
Xenon-133m	1,000
Xenon-133	1,000
Xenon-135m	1,000
Xenon-135	1,000
Xenon-138	1,000
Cesium-125	1,000
Cesium-127	1,000
Cesium-129	1,000
Cesium-130	1,000
Cesium-131	1,000
Cesium-132	100
Cesium-134m	1,000
Cesium-134	10
Cesium-135m	1,000
Cesium-135	100
Cesium-136	10
Cesium-137	10
Cesium-138	1,000
Barium-126	1,000
Barium-128	100
Barium-131m	1,000
Barium-131	100
Barium-133m	100
Barium-133	100
Barium-135m	100
Barium-139	1,000
Barium-140	100
Barium-141	1,000
Barium-142	1,000
Lanthanum-131	1,000
Lanthanum-132	100
Lanthanum-135	1,000
Lanthanum-137	10
Lanthanum-138	100
Lanthanum-140	100
Lanthanum-141	100
Lanthanum-142	1,000
Lanthanum-143	1,000

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TABLE 462.1	
Radionuclide	**Quantity (microcuries[2])**
Cerium-134	100
Cerium-135	100
Cerium-137m	100
Cerium-137	1,000
Cerium-139	100
Cerium-141	100
Cerium-143	100
Cerium-144	1
Praseodymium-136	1,000
Praseodymium-137	1,000
Praseodymium-138m	1,000
Praseodymium-139	1,000
Praseodymium-142m	1,000
Praseodymium-142	100
Praseodymium-143	100
Praseodymium-144	1,000
Praseodymium-145	100
Praseodymium-147	1,000
Neodymium-136	1,000
Neodymium-138	100
Neodymium-139m	1,000
Neodymium-139	1,000
Neodymium-141	1,000
Neodymium-147	100
Neodymium-149	1,000
Neodymium-151	1,000
Promethium-141	1,000
Promethium-143	100
Promethium-144	10
Promethium-145	10
Promethium-146	1
Promethium-147	10
Promethium-148m	10
Promethium-149	100
Promethium-150	1,000
Promethium-151	100
Samarium-141m	1,000
Samarium-141	1,000
Samarium-142	1,000
Samarium-145	100
Samarium-146	1
Samarium-147	100
Samarium-151	10
Samarium-153	100
Samarium-155	1,000
Samarium-156	1,000
Europium-145	100
Europium-146	100
Europium-147	100
Europium-148	10
Europium-149	100

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TABLE 462.1	
Radionuclide	**Quantity (microcuries[2])**
Europium-150 (12.62 h)	100
Europium-150 (34.2 y)	1
Europium-152m	100
Europium-152	1
Europium-154	1
Europium-155	10
Europium-156	100
Europium-157	100
Europium-158	1,000
Gadolinium-145	1,000
Gadolinium-146	10
Gadolinium-147	100
Gadolinium-148	0.001
Gadolinium-149	100
Gadolinium-151	10
Gadolinium-152	100
Gadolinium-153	10
Gadolinium-159	100
Terbium-147	1,000
Terbium-149	100
Terbium-150	1,000
Terbium-151	100
Terbium-153	1,000
Terbium-154	100
Terbium-155	1,000
Terbium-156m (5.0 h)	1,000
Terbium-156m (24.4 h)	1,000
Terbium-156	100
Terbium-157	10
Terbium-158	1
Terbium-160	10
Terbium-161	100
Dysprosium-155	1,000
Dysprosium-157	1,000
Dysprosium-159	100
Dysprosium-165	1,000
Dysprosium-166	100
Holmium-155	1,000
Holmium-157	1,000
Holmium-159	1,000
Holmium-161	1,000
Holmium-162m	1,000
Holmium-162	1,000
Holmium-164m	1,000
Holmium-164	1,000
Holmium-166m	1
Holmium-166	100
Holmium-167	1,000

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TABLE 462.1	
Radionuclide	**Quantity (microcuries[2])**
Erbium-161	1,000
Erbium-165	1,000
Erbium-169	100
Erbium-171	100
Erbium-172	100
Thulium-162	1,000
Thulium-166	100
Thulium-167	100
Thulium-170	10
Thulium-171	10
Thulium-172	100
Thulium-173	100
Thulium-175	1,000
Ytterbium-162	1,000
Ytterbium-166	100
Ytterbium-167	1,000
Ytterbium-169	100
Ytterbium-175	100
Ytterbium-177	1,000
Ytterbium-178	1,000
Lutetium-169	100
Lutetium-170	100
Lutetium-171	100
Lutetium-172	100
Lutetium-173	10
Lutetium-174m	10
Lutetium-174	10
Lutetium-176m	1,000
Lutetium-176	100
Lutetium-177m	10
Lutetium-177	100
Lutetium-178m	1,000
Lutetium-178	1,000
Lutetium-179	1,000
Hafnium-170	100
Hafnium-172	1
Hafnium-173	1,000
Hafnium-175	100
Hafnium-177m	1,000
Hafnium-178m	0.1
Hafnium-179m	10
Hafnium-180m	1,000
Hafnium-181	10
Hafnium-182m	1,000
Hafnium-182	0.1
Hafnium-183	1,000
Hafnium-184	100

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TABLE 462.1	
Radionuclide	**Quantity (microcuries[2])**
Tantalum-172	1,000
Tantalum-173	1,000
Tantalum-174	1,000
Tantalum-175	1,000
Tantalum-176	100
Tantalum-177	1,000
Tantalum-178	1,000
Tantalum-179	100
Tantalum-180m	1,000
Tantalum-180	100
Tantalum-182m	1,000
Tantalum-182	10
Tantalum-183	100
Tantalum-184	100
Tantalum-185	1,000
Tantalum-186	1,000
Tungsten-176	1,000
Tungsten-177	1,000
Tungsten-178	1,000
Tungsten-179	1,000
Tungsten-181	1,000
Tungsten-185	100
Tungsten-187	100
Rhenium-177	1,000
Rhenium-178	1,000
Rhenium-181	1,000
Rhenium-182 (12.7 h)	1,000
Rhenium-182 (64.0 h)	100
Rhenium-184m	10
Rhenium-184	100
Rhenium-186m	10
Rhenium-186	100
Rhenium-187	1,000
Rhenium-188m	1,000
Rhenium-188	100
Rhenium-189	100
Osmium-180	1,000
Osmium-181	1,000
Osmium-182	100
Osmium-185	100
Osmium-189m	1,000
Osmium-191m	1,000
Osmium-191	100
Osmium-193	100
Osmium-194	1

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TABLE 462.1	
Radionuclide	**Quantity (microcuries[2])**
Iridium-182	1,000
Iridium-184	1,000
Iridium-185	1,000
Iridium-186	100
Iridium-187	1,000
Iridium-188	100
Iridium-189	100
Iridium-190m	1,000
Iridium-190	100
Iridium-192m (1.4 m)	10
Iridium-192 (73.8 d)	1
Iridium-194m	10
Iridium-194	100
Iridium-195m	1,000
Iridium-195	1,000
Platinum-186	1,000
Platinum-188	100
Platinum-189	1,000
Platinum-191	100
Platinum-193m	100
Platinum-193	1,000
Platinum-195m	100
Platinum-197m	1,000
Platinum-197	100
Platinum-199	1,000
Platinum-200	100
Gold-193	1,000
Gold-194	100
Gold-195	10
Gold-198m	100
Gold-198	100
Gold-199	100
Gold-200m	100
Gold-200	1,000
Gold-201	1,000
Mercury-193m	100
Mercury-193	1,000
Mercury-194	1
Mercury-195m	100
Mercury-195	1,000
Mercury-197m	100
Mercury-197	1,000
Mercury-199m	1,000
Mercury-203	100

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TABLE 462.1	
Radionuclide	**Quantity (microcuries[2])**
Thallium-194m	1,000
Thallium-194	1,000
Thallium-195	1,000
Thallium-197	1,000
Thallium-198m	1,000
Thallium-198	1,000
Thallium-199	1,000
Thallium-200	1,000
Thallium-201	1,000
Thallium-202	100
Thallium-204	100
Lead-195m	1,000
Lead-198	1,000
Lead-199	1,000
Lead-200	100
Lead-201	1,000
Lead-202m	1,000
Lead-202	10
Lead-203	1,000
Lead-205	100
Lead-209	1,000
Lead-210	0.01
Lead-211	100
Lead-212	1
Lead-214	100
Bismuth-200	1,000
Bismuth-201	1,000
Bismuth-202	1,000
Bismuth-203	100
Bismuth-205	100
Bismuth-206	100
Bismuth-207	10
Bismuth-210m	0.1
Bismuth-210	1
Bismuth-212	10
Bismuth-213	10
Bismuth-214	100
Polonium-203	1,000
Polonium-205	1,000
Polonium-207	1,000
Polonium-210	0.1
Astatine-207	100
Astatine-211	10
Radon-220	1
Radon-222	1

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TABLE 462.1	
Radionuclide	**Quantity (microcuries[2])**
Francium-222	100
Francium-223	100
Radium-223	0.1
Radium-224	0.1
Radium-225	0.1
Radium-226	0.1
Radium-227	1,000
Radium-228	0.1
Actinium-224	1
Actinium-225	0.01
Actinium-226	0.1
Actinium-227	0.001
Actinium-228	1
Thorium-226	10
Thorium-227	0.01
Thorium-228	0.001
Thorium-229	0.001
Thorium-230	0.001
Thorium-231	100
Thorium-232	100
Thorium-234	10
Thorium-natural	100
Protactinium-227	10
Protactinium-228	1
Protactinium-230	0.1
Protactinium-231	0.001
Protactinium-232	1
Protactinium-233	100
Protactinium-234	100
Uranium-230	0.01
Uranium-231	100
Uranium-232	0.001
Uranium-233	0.001
Uranium-234	0.001
Uranium-235	0.001
Uranium-236	0.001
Uranium-237	100
Uranium-238	100
Uranium-239	1,000
Uranium-240	100
Uranium-natural	100
Neptunium-232	100
Neptunium-233	1,000
Neptunium-234	100
Neptunium-235	100

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TABLE 462.1	
Radionuclide	**Quantity (microcuries[2])**
Neptunium-236 (1.15E+5 y)	0.001
Neptunium-236 (22.5 h)	1
Neptunium-237	0.001
Neptunium-238	10
Neptunium-239	100
Neptunium-240	1,000
Plutonium-234	10
Plutonium-235	1,000
Plutonium-236	0.001
Plutonium-237	100
Plutonium-238	0.001
Plutonium-239	0.001
Plutonium-240	0.001
Plutonium-241	0.001
Plutonium-242	0.001
Plutonium-243	1,000
Plutonium-244	0.001
Plutonium-245	100
Americium-237	1,000
Americium-238	100
Americium-239	1,000
Americium-240	100
Americium-241	0.001
Americium-242m	0.001
Americium-242	10
Americium-243	0.001
Americium-244m	100
Americium-244	10
Americium-245	1,000
Americium-246m	1,000
Americium-246	1,000
Curium-238	100
Curium-240	0.1
Curium-241	1
Curium-242	0.01
Curium-243	0.001
Curium-244	0.001
Curium-245	0.001
Curium-246	0.001
Curium-247	0.001
Curium-248	0.001
Curium-249	1,000
Berkelium-245	100
Berkelium-246	100
Berkelium-247	0.001
Berkelium-249	0.1
Berkelium-250	10
Californium-244	100
Californium-246	1
Californium-248	0.01
Californium-249	0.001

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TABLE 462.1	
Radionuclide	**Quantity (microcuries[2])**
Californium-250	0.001
Californium-251	0.001
Californium-252	0.001
Californium-253	0.1
Californium-254	0.001
Einsteinium-250	100
Einsteinium-251	100
Einsteinium-253	0.1
Einsteinium-254m	1
Einsteinium-254	0.01
Fermium-252	1
Fermium-253	1
Fermium-254	10
Fermium-255	1
Fermium-257	0.01
Mendelevium-257	10
Mendelevium-258	0.01
Any alpha-emitting radionuclide not listed above or mixtures of alpha emitters of unknown composition	0.001
Any radionuclide other than alpha-emitting radionuclides not listed above, or mixtures of beta emitters of unknown composition	0.01

Table 462.1 notes:

[1] the quantities listed above were derived by taking 1/10th of the most restrictive ALI listed in columns 1 and 2 of table I of 20.3.4.461 NMAC, rounding to the nearest factor of 10, and constraining the values listed between 0.001 and 1,000 microcuries (37 becquerels and 37 megabecquerels). Values of 100 microcuries (3.7 megabecquerels) have been assigned for radionuclides having a radioactive half-life in excess of E+9 years, except rhenium, 1,000 microcuries (37 megabecquerels) to take into account their low specific activity;

[2] to convert microcuries to kilobecquerels, multiply the microcurie value by 37.

B. Note. For purposes of Subsection E of 20.3.4.428 NMAC, Subsection A of 20.3.4.431 NMAC and Subsection A of 20.3.4.451 NMAC where there is involved a combination of radionuclides in known amounts, the limit for the combination shall be derived as follows: determine, for each radionuclide in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific radionuclide when not in combination. The sum of such ratios for all radionuclides in the combination may not exceed "1", that is, unity.

[20.3.4.462 NMAC - Rp, 20.3.4.462 NMAC, 4/30/2009; A, 8/10/2021]

20.3.4.466 APPENDIX G - REQUIREMENTS FOR TRANSFERS OF LOW-LEVEL RADIOACTIVE WASTE INTENDED FOR DISPOSAL AT LICENSED LAND DISPOSAL FACILITIES AND MANIFESTS: LLW means low-level radioactive waste as defined in the Low-Level Radioactive Waste Policy Act.

A. Manifest.

(1) A waste generator, collector or processor who transports, or offers for transportation LLW intended for ultimate disposal at a licensed low-level radioactive waste land disposal facility must prepare a manifest [NRC OMB Control Numbers 3150-0164, -0165 and -0166] reflecting information requested on applicable NRC forms 540 (*uniform low-level radioactive waste manifest* (shipping paper) and 541 (u*niform low-level radioactive waste manifest* (container and waste description)) and, if necessary, on an applicable NRC form 542 (u*niform low-level radioactive waste manifest* (manifest index and regional compact tabulation)). NRC forms 540 and 540A must be completed and must physically accompany the pertinent low-level waste shipment. Upon agreement between shipper and consignee, NRC forms 541, 541A, 542 and 542A may be completed, transmitted and stored in electronic media with the capability for producing legible, accurate and complete records on the respective forms. Licensees are not required by NRC to comply with the manifesting requirements of this part when they ship the following:

(a) LLW for processing and expect its return (i.e., for storage under their license) prior to disposal at a licensed land disposal facility;

(b) LLW that is being returned to the licensee who is the "waste generator" or "generator", as defined in this part; or

(c) radioactively contaminated material to a "waste processor" that becomes the processor's "residual waste" unless regulated by other applicable federal or state regulations;

(d) these exclusions from manifesting requirements do not, however, exempt the licensee from complying with applicable DOT requirements for shipments referencing 49 CFR,

including the preparation of shipping papers.

(2) For guidance in completing these forms, refer to the instructions that accompany the forms. Copies of manifests required by this section may be legible carbon copies, photocopies or computer printouts that reproduce the data in the format of the uniform manifest.

(3) NRC forms 540, 540A, 541, 541A, 542 and 542A, and the accompanying instructions, in hard copy, may be obtained by writing or calling the [~~office~~] Office of the [~~chief~~] Chief information [~~officer~~] Officer, United States nuclear regulatory commission, Washington, DC 20555-0001, telephone (301) 415-5877, or by visiting the NRC's web site at http://www.nrc.gov and selecting forms from the index found on the home page.

(4) This section includes information requirements of the DOT, as codified in 49 CFR Part 172. Additional 49 CFR requirements may be applicable. Information on hazardous, medical or other waste, required to meet EPA regulations, as codified in 40 CFR Parts 259, 261 or elsewhere, is not addressed in this section, and must be provided on the required EPA forms. However, any required EPA forms must accompany the *uniform low-level radioactive waste manifest* required by this chapter.

(5) As used in this section, the following definitions apply:

(a) **"chelating agent"** has the same meaning as that given in 20.3.13.7 NMAC;

(b) **"chemical description"** means a description of the principal chemical characteristics of a low-level radioactive waste;

(c) **"computer-readable medium"** means that the department's computer can transfer the information from the medium into its memory;

(d) **"consignee"** means the designated receiver of the shipment of low-level radioactive waste;

(e) **"decontamination facility"** means a facility operating under a department, NRC or agreement state license whose principal purpose is decontamination of equipment or materials to accomplish recycle, reuse or other waste management objectives, and, for purposes of this part, is not considered to be a consignee for LLW shipments;

(f) **"disposal container"** means a container principally used to confine low-level radioactive waste during disposal operations at a land disposal facility (also see "high integrity container"); note that for some shipments, the disposal container may be the transport package;

(g) **"EPA identification number"** means the number received by a transporter following application to the administrator of EPA as required by 40 CFR Part 263;

(h) **"generator"** means a licensee operating under a department, NRC or agreement state license who *(1)* is a waste generator as defined in this part, or *(2)* is the licensee to whom waste can be attributed within the context of the Low-Level Radioactive Waste Policy Amendments Act (e.g., waste generated as a result of decontamination or recycle activities);

(i) **"high integrity container"** (HIC) means a container commonly designed to meet the structural stability requirements of 20.3.13.1325 NMAC, and to meet DOT requirements for a type A package;

(j) **"land disposal facility"** has the same meaning as that given in 20.3.13.7 NMAC;

(k) **"NRC forms 540, 540A, 541, 541A, 542 and 542A"** are official NRC forms referenced in this section; licensees need not use originals of these NRC forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size and location of information; upon agreement between the shipper and consignee, NRC forms 541 (and 541A) and NRC forms 542 (and 542A) may be completed, transmitted and stored in electronic media; the electronic media must have the capability for producing legible, accurate and complete records in the format of the uniform manifest;

(l) **"package"** means the assembly of components necessary to ensure compliance with the packaging requirements of DOT regulations, together with its radioactive contents, as presented for transport;

(m) **"physical description"** means the items called for on NRC form 541 to describe a LLW;

(n) **"residual waste"** means LLW resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators; this waste is attributable to the processor or decontamination facility, provided that other federal laws or regulations, such as those of Resource Conservation and Recovery Act (RCRA), are not applicable;

(o) **"shipper"** means the licensed entity (i.e., the waste generator, waste collector or waste processor) who offers low-level radioactive waste for transportation, typically consigning this type of waste to a licensed waste collector, waste processor or land disposal facility operator;

(p) **"shipping paper"** means NRC form 540 and, if required, NRC form 540A which includes the information required by DOT in 49 CFR part 172;

(q) **"source material"** has the same meaning as that given in 20.3.3.7 NMAC;

(r) "**special nuclear material"** has the same meaning as that given in 20.3.3.7 NMAC;

(s) **"uniform low-level radioactive**

waste manifest" or **"uniform manifest"** means the combination of NRC forms 540, 541 and, if necessary, 542, and their respective continuation sheets as needed, or equivalent;

(t)

"waste collector," including "waste broker," means an entity, operating under a department, NRC or agreement state license, whose principal purpose is to collect and consolidate waste generated by others, and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor or licensed land disposal facility;

(u)

"waste description" means the physical, chemical and radiological description of a low-level radioactive waste as called for on NRC form 541;

(v)

"waste generator" means an entity, operating under a department, NRC or agreement state license, who *(1)* possesses any material or component that contains radioactivity or is radioactively contaminated for which the licensee foresees no further use, and *(2)* transfers this material or component to a licensed land disposal facility or to a licensed waste collector or processor for handling or treatment prior to disposal; a licensee performing processing or decontamination services may be a "waste generator" if the transfer of low-level radioactive waste from its facility is defined as "residual waste";

(w)

"waste processor" means an entity, operating under a department, NRC or agreement state license, whose principal purpose is to process, repackage or otherwise treat low-level radioactive material or waste generated by others prior to eventual transfer of waste to a licensed low-level radioactive waste land disposal facility; and

(x)

"waste type" means a waste within a disposal container having a unique physical description (i.e., a specific waste descriptor code or description; or a waste sorbed on or solidified in a specifically defined media).

(6)

Information requirements.

(a)

General information. The shipper of the radioactive waste shall provide the following information on the uniform manifest:

(i)

the name, facility address and telephone number of the licensee shipping the waste;

(ii)

an explicit declaration indicating whether the shipper is acting as a waste generator, collector, processor or a combination of these identifiers for purposes of the manifested shipment; and

(iii)

the name, address and telephone number, or the name and EPA identification number for the carrier transporting the waste.

(b)

Shipment information. The shipper of the radioactive waste shall provide the following information regarding the waste shipment on the uniform manifest:

(i)

the date of the waste shipment;

(ii)

the total number of packages or disposal containers;

(iii)

the total disposal volume and disposal weight in the shipment;

(iv)

the total radionuclide activity in the shipment;

(v)

the activity of each of the radionuclides H-3, C-14, Tc-99 and I-129 contained in the shipment; and

(vi)

the total masses of U-233, U-235 and plutonium in special nuclear material, and the total mass of uranium and thorium in source material.

(c)

Disposal container and waste information. The shipper of the radioactive waste shall provide the following information on the uniform manifest regarding the waste and each disposal container of waste in the shipment:

(i)

an alphabetic or numeric identification that uniquely identifies each disposal container in the shipment;

(ii)

a physical description of the disposal container, including the manufacturer and model of any high integrity container;

(iii)

the volume displaced by the disposal container;

(iv)

the gross weight of the disposal container, including the waste;

(v)

for waste consigned to a disposal facility, the maximum radiation level at the surface of each disposal container;

(vi)

a physical and chemical description of the waste;

(vii)

the total weight percentage of chelating agent for any waste containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent;

(viii)

the approximate volume of waste within a container;

(ix)

the sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name;

(x)

the identities and activities of individual radionuclides contained in each container, the masses of U-233, U-235 and plutonium in special nuclear material, and the masses of uranium and thorium in source material, including fissile category classification; for discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices and wastes in solidification/stabilization media), the identities and activities of individual radionuclides associated with or contained on these waste types within a disposal container shall be reported;

(xi)

the total radioactivity within each container;

(xii) for wastes consigned to a disposal facility, the classification of the waste pursuant to 20.3.13.1324 NMAC; waste not meeting the structural stability requirements of Subsection B of 20.3.13.1325 NMAC; and

(xiii) any other information required on a manifest or shipping paper by the DOT, the NRC or other regulatory agencies.

(d) Uncontainerized waste information. The shipper of the radioactive waste shall provide the following information on the uniform manifest regarding a waste shipment delivered without a disposal container:

(i) the approximate volume and weight of the waste;

(ii) a physical and chemical description of the waste;

(iii) the total weight percentage of chelating agent if the chelating agent exceeds 0.1% by weight, plus the identity of the principal chelating agent;

(iv) for waste consigned to a disposal facility, the classification of the waste pursuant to 20.3.13.1324 NMAC; waste not meeting the structural stability requirements of Subsection B of 20.3.13.1325 NMAC must be identified;

(v) the identities and activities of individual radionuclides contained in the waste, the masses of U-233, U-235 and plutonium in special nuclear material, and the masses of uranium and thorium in source material; and

(vi) for wastes consigned to a disposal facility, the maximum radiation levels at the surface of the waste.

(e) Multi-generator disposal container information. This section applies to disposal containers enclosing mixtures of waste originating from different generators. (Note: The origin of the LLW resulting from a processor's activities may be attributable to one or more "generators," including "waste generators," as defined in this section). It also applies to mixtures of wastes shipped in an uncontainerized form, for which portions of the mixture within the shipment originate from different generators.

(i) For homogeneous mixtures of waste, such as incinerator ash, provide the waste description applicable to the mixture and the volume of the waste attributed to each generator.

(ii) For heterogeneous mixtures of waste, such as the combined products from a large compactor, identify each generator contributing waste to the disposal container, and, for discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/ devices and wastes in solidification/ stabilization media), the identities and activities of individual radionuclides contained on these waste types within the disposal container. For each generator, provide the following: (1) the volume of waste within the disposal container; (2) a physical and chemical description of the waste, including the solidification agent, if any; (3) the total weight percentage of chelating agents for any disposal container containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent; (4) the sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name if the media is claimed to meet stability requirements in Subsection B of 20.3.13.1325 NMAC; and (5) radionuclide identities and activities contained in the waste, the masses of U-233, U-235 and plutonium in special nuclear material, and the masses of uranium and thorium in source material if contained in the waste.

B. Certification. An authorized representative of the waste generator, processor or collector shall certify by signing and dating the shipment manifest that the transported materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the department, the DOT and the NRC. A collector in signing the certification is certifying that nothing has been done to the collected waste which would invalidate the waste generator's certification.

C. Control and Tracking.

(1) Any licensee who transfers radioactive waste to a land disposal facility or a licensed waste collector shall comply with the requirements in Subparagraphs (a) through (i) of this paragraph. Any licensee who transfers waste to a licensed waste processor for waste treatment or repackaging shall comply with the requirements of Subparagraphs (d) through (i) of this paragraph. A licensee shall:

(a) prepare all wastes so that the waste is classified according to 20.3.13.1324 NMAC, and meets the waste characteristics requirements in 20.3.13.1325 NMAC;

(b) label each disposal container (or transport package if potential radiation hazards preclude labeling of the individual disposal container) of waste to identify whether it is class A waste, class B waste, class C waste or greater then class C waste, in accordance with 20.3.13.1324 NMAC;

(c) conduct a quality assurance program to assure compliance with 20.3.13.1324 NMAC and 20.3.13.1325 NMAC (the program must include management evaluation of audits);

(d) prepare the NRC *uniform low-level radioactive waste manifest* as required by Subsection A of this section;

(e) forward a copy or electronically transfer the *uniform low-level radioactive waste manifest* to the intended consignee so that either *(1)* receipt of the manifest precedes the LLW shipment or *(2)* the manifest

is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both delivery methods *(1)* and *(2)* is also acceptable;

(f) include NRC form 540 (and NRC form 540A, if required) with the shipment regardless of the option chosen in Subparagraph (e) of this paragraph;

(g) receive acknowledgment of the receipt of the shipment in the form of a signed copy of NRC form 540;

(h) retain a copy of or electronically store the *uniform low-level radioactive waste manifest* and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by 20.3.3 NMAC; and

(i) for any shipments or any part of a shipment for which acknowledgment of receipt has not been received within the times set forth in this section, conduct an investigation in accordance with Paragraph (5) of this subsection.

(2) Any waste collector licensee who handles only prepackaged waste shall:

(a) acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of NRC form 540;

(b) prepare a new manifest to reflect consolidated shipments that meet the requirements of this section; the waste collector shall ensure that, for each container of waste in the shipment, the manifest identifies the generator of that container of waste;

(c) forward a copy or electronically transfer the *uniform low-level radioactive waste manifest* to the intended consignee so that either *(1)* receipt of the manifest precedes the LLW shipment or *(2)* the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee; using both delivery methods *(1)* and *(2)* is also acceptable;

(d) include NRC form 540 (and NRC form 540A, if required) with the shipment regardless of the option chosen in Subparagraph (c) of this paragraph;

(e) receive acknowledgment of the receipt of the shipment in the form of a signed copy of NRC form 540;

(f) retain a copy of or electronically store the *uniform low-level radioactive waste manifest* and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by 20.3.3 NMAC;

(g) for any shipments or any part of a shipment for which acknowledgment of receipt has not been received within the times set forth in this section, conduct an investigation in accordance with Paragraph (5) of this subsection; and

(h) notify the shipper and the department when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been cancelled.

(3) Any licensed waste processor who treats or repackages waste shall:

(a) acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of NRC form 540;

(b) prepare a new manifest that meets the requirements of this section; preparation of the new manifest reflects that the processor is responsible for meeting these requirements; for each container of waste in the shipment, the manifest shall identify the waste generators, the preprocessed waste volume and the other information as required in Subparagraph (e) of Paragraph (6) of Subsection A of this section;

(c) prepare all wastes so that the waste is classified according to 20.3.13.1324 NMAC, and meets the waste characteristics requirements in 20.3.13.1325 NMAC;

(d) label each package of waste to identify whether it is class A waste, class B waste or class C waste, in accordance with 20.3.13.1324 NMAC and 20.3.13.1326 NMAC;

(e) conduct a quality assurance program to assure compliance with 20.3.13.1324 NMAC and 20.3.13.325 NMAC (the program shall include management evaluation of audits);

(f) forward a copy or electronically transfer the *uniform low-level radioactive waste manifest* to the intended consignee so that either *(1)* receipt of the manifest precedes the LLW shipment or *(2)* the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee; using both delivery methods *(1)* and *(2)* is also acceptable;

(g) include NRC form 540 (and NRC form 540A, if required) with the shipment regardless of the option chosen in paragraph Subparagraph (f) of this paragraph;

(h) receive acknowledgment of the receipt of the shipment in the form of a signed copy of NRC form 540;

(i) retain a copy of or electronically store the *uniform low-level radioactive waste manifest* and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by 20.3.3 NMAC;

(j) for any shipment or any part of a shipment for which acknowledgment of receipt has not been received within the times set forth in this section, conduct an investigation in accordance with Paragraph (5) of this subsection; and

(k) notify the shipper and the department when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been canceled.

(4) The land disposal facility operator shall:

(a) acknowledge receipt of the waste within one week of receipt by returning, as a minimum, a signed copy of NRC form 540 to the shipper; the shipper to be notified is the licensee who last possessed the waste and transferred the waste to the operator; if any discrepancy exists between materials listed on the *uniform low-level radioactive waste manifest* and materials received, copies or electronic transfer of the affected forms must be returned indicating the discrepancy;

(b) maintain copies of all completed manifests and electronically store the information required by 20.3.13.1334 NMAC until the department terminates the license; and

(c) notify the shipper and the department when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been canceled.

(5) Any shipment or part of a shipment for which acknowledgment is not received within the times set forth in this section must:

(a) be investigated by the shipper if the shipper has not received notification or receipt within 20 days after transfer; and

(b) be traced and reported; the investigation shall include tracing the shipment and filing a report with the department; each licensee who conducts a trace investigation shall file a written report with the department within 2 weeks of completion of the investigation.

[20.3.4.466 NMAC - Rp, 20.3.4.466 NMAC, 4/30/2009; A, 8/10/2021]

ENVIRONMENT DEPARTMENT

This is an amendment to 20.3.5 NMAC, Section 10, effective 8/10/2021.

20.3.5.10 SPECIFIC LICENSE FOR INDUSTRIAL RADIOGRAPHY: An application for a specific license for the use of licensed material in industrial radiography will be approved if the applicant meets the following requirements:

A. The applicant satisfies the general requirements specified in Part 3 of 20.3 NMAC for byproduct material, as appropriate, and any special requirements contained in this part.

B. An application for a specific license of category 1 and category 2 quantities of radioactive material shall comply with 10 CFR 37. The licensee shall comply with 10 CFR 37 except as follows:

(1) any reference to the commission or NRC shall be deemed a reference to the department;

(2) 10 CFR 37.5 definitions of agreement state, byproduct material, commission and person shall not be applicable;

(3) 10 CFR 37.7, 10 CFR 37.9, 10 CFR 37.11(a) and (b), 10 CFR 37.13, 10 CFR 37.27(c), 10 CFR 37.71, 10 CFR 37.105, and 10 CFR 37.107 shall not be applicable; and

(4) for any reporting or notification requirements that the licensee must follow in 10 CFR 37.45, 10 CFR 37.57, 10 CFR 37.77(a) through (d), and 10 CFR 37.81 the licensee shall use the following address: New Mexico environment department/RCB, P.O. Box 5469, Santa Fe, NM 87502-5469 address information.

C. The applicant submits an adequate program for training radiographers and radiographers' assistants that meets the requirements of Paragraph (1) of Subsection A of 20.3.5.11 NMAC. License applicants need not describe the initial training and examination program for radiographers in the subjects outlined in Paragraph (1) of Subsection A of 20.3.5.11 NMAC.

D. The applicant submits procedures for verifying and documenting the certification status of radiographers and for ensuring that the certification of individuals acting as radiographers remains valid.

E. The applicant submits written operating and emergency procedures as described in 20.3.5.29 NMAC.

F. The applicant submits a description of a program for inspections of the job performance of each radiographer and radiographers' assistant. The intervals for these performance inspections are not to exceed six months as described in Subsection B of 20.3.5.13 NMAC.

G. The applicant submits a description of the applicant's overall organizational structure as it applies to the radiation safety responsibilities in industrial radiography, including specified delegation of authority and responsibility.

H. The applicant identifies and lists the qualifications of the individual(s) designated as the RSO and potential designees responsible for ensuring that the licensee's radiation safety program is implemented in accordance with approved procedures. Refer to Subsection C of 20.3.5.11 NMAC for RSO qualification requirements.

I. If an applicant intends to perform leak testing of sealed sources or exposure devices containing depleted uranium (DU) shielding, the applicant must describe the procedures for performing and the qualifications of the person(s) authorized to do the leak testing. If the applicant intends to analyze its own wipe samples, the application must include a description of the procedures to be followed. The description must include the:

(1) instruments to be used;

(2) methods of performing the analysis; and

(3) pertinent experience of the person who will analyze the wipe samples.

J. If the applicant intends to perform "in-house" calibrations of survey instruments the applicant must describe methods to be used and the relevant experience of the person(s) who will perform the calibrations. All calibrations must be performed according to the procedures described and at the intervals prescribed in 20.3.5.16 NMAC.

K. The applicant identifies and describes the location(s) of all field stations and permanent radiographic installations.

L. The applicant identifies the location(s) where all records required by this part and other parts of 20.3 NMAC will be maintained. If a license is issued to the applicant, the licensee shall maintain copies of records required by this Part and other applicable Parts of 20.3 NMAC at the specified location(s).

[20.3.5.12 NMAC - N, 5/19/2002; A, 8/10/2021]

ENVIRONMENT DEPARTMENT

This is an amendment to 20.3.7 NMAC, Section 700, effective 8/10/2021.

20.3.7.700 GENERAL REGULATORY REQUIREMENTS:

A. Provisions for research involving human subjects.

(1) A licensee may conduct research involving human research subjects only if it uses the radioactive materials specified on its license for the uses authorized on the license.

(2) If the research is conducted, funded, supported or regulated by a federal agency that has implemented the *federal policy for the protection of human subjects* (45 CFR Part 46), the licensee shall, before conducting research:

(a) obtain review and approval of the research from an "institutional review board," as defined and described in the *federal policy for the protection of human subjects*; and

(b) obtain "informed consent," as defined and described in the *federal policy for the protection of human subjects*, from the human research subject.

(3) If the research will not be conducted, funded, supported or regulated by a federal agency that has implemented the *federal policy for the protection of human subjects*, the licensee shall, before conducting research, apply for and receive a specific amendment to its medical use license issued by the department. The amendment request must include a written commitment that the licensee will, before conducting research:

(a) obtain review and approval of the research from an "institutional review board," as defined and described in the *federal policy for the protection of human subjects*; and

(b) obtain "informed consent," as defined and described in the *federal policy for the protection of human subjects*, from the human research subject.

(4) Nothing in this subsection relieves licensees from complying with the other requirements in this part.

B. FDA, federal and state requirements. Nothing in this part relieves the licensee from complying with applicable FDA, other federal and state requirements governing radioactive drugs or devices.

C. Implementation.

(1) When a requirement in this part differs from the requirement in an existing license condition, the requirement in this part shall govern.

(2) A licensee shall continue to comply with any license condition that requires it to implement procedures required by Subsections D, J, K and L of 20.3.7.711 NMAC until there is a license amendment or renewal that modifies the license condition.

D. License required.

(1) A person may manufacture, produce, acquire, receive, possess, prepare, use or transfer radioactive material for medical use only in accordance with a specific license issued by the department or as allowed in Paragraph (2) of this subsection.

(2) A specific license is not needed for an individual who:

(a) receives, possesses, uses or transfers radioactive material in accordance with the requirements in this chapter under the supervision of an authorized user as provided in Subsection F of 20.3.7.702 NMAC unless prohibited by license condition; or

(b) prepares unsealed radioactive material for medical use in accordance with the requirements in this chapter under the supervision of an authorized nuclear pharmacist or authorized user as provided in Subsection F of 20.3.7.702 NMAC unless prohibited by license condition.

E. Application for license, amendment or renewal.

(1) An application must be signed by the applicant or licensee, or a person duly authorized to act for or on their behalf.

(2) An application for a license for medical use of radioactive material as described in 20.3.7.704 NMAC, 20.3.7.705 NMAC, 20.3.7.708 NMAC, 20.3.7.710 NMAC, 20.3.7.711 NMAC, 20.3.7.712 NMAC and 20.3.7.713 NMAC must be made by:

(a) filing in duplicate of a department form, *application for radioactive material license*, completed according to the instructions in the form; and

(b) submitting written procedures required by Subsections D, J, K and L of 20.3.7.711 NMAC, as applicable.

(3) An application for a specific license of

category 1 and category 2 quantities of radioactive material shall comply with 10 CFR 37. The licensee shall comply with 10 CFR 37 except as follows:

(a) any reference to the commission or NRC shall be deemed a reference to the department;

(b) 10 CFR 37.5 Definitions of: agreement state, byproduct material, commission and person shall not be applicable,

(c) 10 CFR 37.7, 10 CFR 37.9, 10 CFR 37.11(a) and (b), 10 CFR 37.13, 10 CFR 37.27(c), 10 CFR 37.71, 10 CFR 37.105, and 10 CFR 37.107 shall not be applicable;

(d) for any reporting or notification requirements that the licensee must follow in 10 CFR 37.45, 10 CFR 37.57, 10 CFR 37.77(a) through (d), and 10 CFR 37.81, the licensee shall use the following address: New Mexico environment department/ RCB, P.O. Box 5469, Santa Fe, NM 87502-5469 address information.

(4) A request for a license amendment or renewal must be made by:

(a) filing in duplicate of a department form, *application for radioactive material license*, as described in Paragraph (2) of this subsection; and

(b) submitting procedures required by Subsections D, J, K and L of 20.3.7.711 NMAC, as applicable.

(5) In addition to the requirements in Paragraphs (2) and (3) of this subsection, an application for a license or amendment for medical use of radioactive material described in 20.3.7.713 NMAC must also include information regarding any radiation safety aspects of the medical use of the material that are not addressed in sections 20.3.7.702 NMAC and 20.3.7.703 NMAC. The applicant shall also provide specific information on:

(a) radiation safety precautions and instructions;

(b) methodology for measurement of dosages or doses to be administered to patients or human research subjects; and

(c) calibration, maintenance and repair of instruments and equipment necessary for radiation safety.

(6) The applicant or licensee shall also provide any other additional information requested by the department in its review of the application, license renewal or amendment, within 30 days of the request or other time as may be specified in the request.

(7) An applicant that satisfies the requirements specified in Subsection B of 20.3.3.314 NMAC may apply for a type "A" specific license of broad scope.

F. License amendments. A licensee shall apply for and must receive a license amendment:

(1) before it receives, prepares or uses radioactive material for a type of use that is permitted under 20.3.7 NMAC but that is not authorized on the licensee's current license issued under this part;

(2) before it permits anyone to work as an authorized user, authorized nuclear pharmacist or authorized medical physicist under the license, except:

(a) for an authorized user, an individual who meets the definition of an *authorized user* as defined in 20.3.7.7 NMAC;

(b) for an authorized nuclear pharmacist, an individual who meets the definition of an *authorized nuclear pharmacist* as defined in 20.3.7.7 NMAC;

(c) for an authorized medical physicist, an individual who meets the definition of an *authorized medical physicist* as defined in 20.3.7.7 NMAC; or

(d) a physician, podiatrist or dentist who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses or a nuclear pharmacist who used only accelerator-produced radioactive materials in the practice of nuclear pharmacy at a government agency or federally recognized Indian tribe before November 30, 2007 or at all other locations of use in non-licensing state (as defined in 20.3.1.7 NMAC) before August 8, 2009, or an earlier date as noticed by the NRC, and for only those materials and uses performed before these dates;

(3) before it changes radiation safety officers, except as provided in Paragraph (4) of Subsection A of 20.3.7.702 NMAC;

(4) before it receives radioactive material in excess of the amount or in a different form, or receives a different radioactive material than is authorized on the license;

(5) before it adds to or changes the areas of use identified in the application or on the license, including areas used in accordance with either 20.3.7.704 NMAC or 20.3.7.705 NMAC if the change includes the addition or relocation of either an area where PET radionuclides are produced or a PET radioactive drug delivery line from the PET radionuclide/PET radioactive drug production area; other areas of use where radioactive material is used only in accordance with either 20.3.7.704 NMAC or 20.3.7.705 NMAC are exempt;

(6) before it changes the address(es) of use identified in the application or on the license; and

(7) before it revises procedures required by Subsections D, J, K and L of 20.3.7.711 NMAC, as applicable, where such revision reduces radiation safety.

G. Notifications.

(1) For each individual, no later than 30 days after the date that the licensee permits the individual to work as an authorized user, an authorized nuclear pharmacist or an authorized medical physicist under Paragraph (2) of Subsection F of this section: [~~I~~)]

(a) the licensee shall verify the training and experience and provide the department with a copy the documentation demonstrating the training and experience as listed in the definitions of authorized user, authorized nuclear pharmacist or authorized medical physicist in 20.3.7.7 NMAC; or [~~2~~)]

(b) the licensee shall verify the training and experience and provide the department of a copy of the documentation demonstrating that only accelerator-produced radioactive materials, discrete sources, or both, were used for medical use or in the practice of nuclear pharmacy at a government agency or federally recognized Indian tribe before November 30, 2007 or at all other locations of use in non-licensing states (as defined in 20.3.1.7 NMAC) before August 8, 2009, or an earlier date as noticed by the NRC.

(2) A licensee shall notify the department by letter no later than 30 days after:

(a) an authorized user, an authorized nuclear pharmacist, radiation safety officer or an authorized medical physicist permanently discontinues performance of duties under the license or has a name change;

(b) the licensee permits an authorized user or an individual qualified to be a radiation safety officer, under Subsection A of 20.3.7.714 NMAC, incorporating 10 CFR 35.50 and Subsection E of 20.3.7.714 NMAC, to function as a temporary radiation safety officer and to perform the functions of a radiation safety officer in accordance with Paragraph (4) of Subsection A of 20.3.7.702 NMAC.

(c) the licensee's mailing address changes;

(d) the licensee's name changes, but the name change does not constitute a transfer of control of the license as described in Subsection B of 20.3.3.317 NMAC; or

(e) the licensee has added to or changed the areas of use identified in the application or on the license where radioactive material is used in accordance with either 20.3.7.704 NMAC or 20.3.7.705 NMAC if the change does not include addition or relocation of either an area where PET radionuclides are produced or a PET radioactive drug delivery line from the PET radionuclide or PET radioactive drug production area.

(3) A licensee shall notify the department by letter no later than 30 days after a calibration, transmission or reference source under Subsection E of 20.3.7.703 NMAC is acquired. The notification shall contain a description of the source, manufacturer name, model and serial number of the source, and the license number of the manufacturer of the specific license issued by the department, NRC or an agreement state under Subsection K of 20.3.3.315 NMAC or equivalent NRC or agreement state requirements.

(4) The licensee shall send the documents required in this subsection to the appropriate address identified in 20.3.1.116 NMAC.

H. Exemptions regarding type A specific licenses of broad scope. A licensee possessing a type "A" specific license of broad scope for medical use, issued under 20.3.3.314 NMAC, is exempt from:

(1) the provisions of Paragraph 4 of Subsection E of 20.3.7.700 NMAC regarding the need to file an amendment to the license for medical use of radioactive materials, for use described in 20.3.7.713 NMAC;

(2) the provisions of Paragraph (2) of Subsection F of 20.3.7.700 NMAC;

(3) the provisions of Paragraph (5) of Subsection F of 20.3.7.700 NMAC regarding additions to or changes in the areas of use at the addresses specified in the application or on the license;

(4) the provisions of Paragraph (1) of Subsection G of 20.3.7.700 NMAC;

(5) the provisions of Subparagraph (a) of Paragraph (2) of Subsection G of 20.3.7.700 NMAC for an authorized user, an authorized nuclear pharmacist or an authorized medical physicist;

(6) the provisions of Subparagraph (e) of Paragraph (2) of Subsection G of 20.3.7.700 NMAC regarding additions to or changes in the areas of use identified in the application or on the license where radioactive material is used in accordance with either 20.3.7.704 NMAC or 20.3.7.705 NMAC;

(7) the provisions in Paragraph (3) of Subsection G of 20.3.7.700 NMAC; and

(8) the provisions of Paragraph (1) of Subsection I of 20.3.7.702 NMAC.

[20.3.7.700 NMAC - Rp, 20 NMAC 3.1.7.700, 4/30/2009; A, 8/10/2021]

ENVIRONMENT DEPARTMENT

This is an amendment to 20.3.12 NMAC, Section 9, effective 8/10/2021.

20.3.12.9 SPECIFIC LICENSES FOR WELL LOGGING: The department will approve an application for a specific license for the use of licensed material in well logging if the applicant meets the following requirements.

A. The applicant shall satisfy the general requirements specified in 10 CFR 30.33 for byproduct material, 10 CFR 40.32 for source material and in 10 CFR 70.23 for special nuclear material and in 20.3.3.308 NMAC and any special requirements contained in this part.

B. An application for a specific license of category 1 and category 2 quantities of radioactive material shall comply with 10 CFR 37. The licensee shall comply with 10 CFR 37 except as follows:

(1) any reference to the commission or NRC

shall be deemed a reference to the department;

(2) 10 CFR 37.5 definitions of agreement state, byproduct material, commission and person shall not be applicable;

(3) 10 CFR 37.7, 10 CFR 37.9, 37.11(a) and (b), 10 CFR 37.13, 10 CFR 37.27(c), 10 CFR 37.71, 10 CFR 37.105, and 10 CFR 37.107 shall not be applicable;

(4) for any reporting or notification requirements that the licensee must follow in 10 CFR 37.45, 10 CFR 37.57, 10 CFR 37.77(a) through (d), and 10 CFR 37.81, the licensee shall use the following address: New Mexico environment department/RCB, P.O. Box 5469, Santa Fe, NM 87502-5469 address information.

C. The applicant shall develop a program for training logging supervisors and logging assistants and submit to the department a description of this program which specifies the:

(1) initial training;

(2) on-the-job training;

(3) annual safety reviews provided by the licensee;

(4) means the applicant will use to demonstrate the logging supervisor's knowledge and understanding of and ability to comply with the department's regulations and licensing requirements and the applicant's operating and emergency procedures; and

(5) means the applicant will use to demonstrate the logging assistant's knowledge and understanding of and ability to comply with the applicant's operating and emergency procedures.

D. The applicant shall submit to the department written operating and emergency procedures as described in 20.3.12.12 NMAC or an outline or summary of the procedures that includes the important radiation safety aspects of the procedures.

E. The applicant shall establish and submit to the department its program for annual inspections of the job performance of each logging supervisor to ensure that the department's regulations, license requirements and the applicant's operating and emergency procedures are followed. Inspection records must be retained for three years after each internal inspection.

F. The applicant shall submit a description of its overall organizational structure as it applies to the radiation safety responsibilities in well logging, including specified delegations of authority and responsibility.

G. If an applicant wants to perform leak testing of sealed sources, the applicant shall identify the manufacturers and the model numbers of the leak test kits to be used. If the applicant wants to analyze its own wipe samples, the applicant shall establish procedures to be followed and submit a description of these procedures to the department. The description must include the:

(1) instruments to be used;

(2) methods of performing the analysis; and

(3) pertinent experience of the person who will analyze the wipe samples.

[20.3.12.9 NMAC- N, 6/30/2011; A, 8/10/2021]

ENVIRONMENT DEPARTMENT

This is an amendment to 20.3.15 NMAC, Section 1502 effective 8/10/2021.

20.3.15.1502 SPECIFIC LICENSES FOR IRRADIATORS: The department will approve an application for a specific license for the use of licensed material in an irradiator if the applicant meets the requirements contained in this section.

A. The applicant shall satisfy the general requirements specified in 20.3.3 NMAC and the requirements contained in this part (20.3.15 NMAC).

B. An application for a specific license of category 1 and category 2 quantities of radioactive material shall comply with 10 CFR 37. The licensee shall comply with 10 CFR 37 except as follows:

(1) any reference to the commission or NRC shall be deemed a reference to the department;

(2) 10 CFR 37.5 definitions of agreement state, byproduct material, commission and person shall not be applicable;

(3) 10 CFR 37.7, 10 CFR 37.9, 10 CFR 37.11(a) and (b), 10 CFR 37.13, 10 CFR 37.27(c), 10 CFR 37.71, 10 CFR 37.105, and 10 CFR 37.107 shall not be applicable;

(4) for any reporting or notification requirements that the licensee must follow in 10 CFR 37.45, 10 CFR 37.57, 10 CFR 37.77(a) through (d), 10 CFR 37.81, the licensee shall use, when applicable, New Mexico environment department/RCB, P.O. Box 5469, Santa Fe, NM 87502-5469 address information.

C. The application must describe the training provided to irradiator operators including:

(1) classroom training;

(2) on-the-job or simulator training;

(3) safety reviews;

(4) means employed by the applicant to test each operator's understanding of these regulations and licensing requirements, and the irradiator operating and emergency procedures; and

(5) minimum training and experience of personnel who may provide training.

D. The application must include an outline of the written operating and emergency procedures listed in 20.3.15.1518 NMAC that describes the radiation safety aspects of the procedures.

E. The application must describe the organizational structure for managing the irradiator, specifically the radiation safety

responsibilities and authorities of the radiation safety officer, and those management personnel who have important radiation safety responsibilities or authorities. In particular, the application must specify who within the management structure has the authority to stop unsafe operations. The application must also describe the training and experience required for the position of radiation safety officer.

F. The application must include a description of the access control system required by 20.3.15.1507 NMAC, the radiation monitors required by 20.3.15.1510 NMAC, the method of detecting leaking sources required by 20.3.15.1521 NMAC including the sensitivity of the method, and a diagram of the facility that shows the locations of all required interlocks and radiation monitors.

G. If the applicant intends to perform leak testing of dry-source-storage sealed sources, the applicant shall establish procedures for leak testing and submit a description of these procedures to the department. The description must include the:

(1) instruments to be used;

(2) methods of performing the analysis; and

(3) pertinent experience of the individual who analyzes the samples.

H. If licensee personnel are to load or unload sources, the applicant shall describe the qualifications and training of the personnel and the procedures to be used. If the applicant intends to contract for source loading or unloading at its facility, the loading or unloading must be done by an organization specifically authorized by the department to load or unload irradiator sources.

I. The applicant shall describe the inspection and maintenance checks, including the frequency of the checks required by 20.3.15.1522 NMAC.

[5/3/1995; 20.3.15.1502 NMAC - Rn, 20 NMAC 3.1.15.1502, 4/15/2004; A, 6/13/2017; A, 8/10/2021]

HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.20 NMAC Sections 7 and 8 effective 8/10/2021.

5.7.20.7 DEFINITIONS:

A. "Academic year" means any consecutive period of two semesters (or three semesters for accelerated programs), three quarters or other comparable units commencing with the fall term each year.

B. "Accelerated program" means one in which a summer semester is a program requirement and not a student choice; a cohort that requires sequence of courses taken in summer semester.

C. "Community college" means a branch community college of a four-year state educational institution, a two-year state educational institution or a community college or technical and vocational institute established pursuant to Chapter 21, Article 13 or 16 NMSA 1978, respectively.

D. "Comprehensive institution" means eastern New Mexico university, New Mexico Highlands university, northern New Mexico college or western New Mexico university.

E. "Consortium" means a written agreement between a home institution and one or more host institutions for consideration of combined enrollment for eligibility:

(1) home institution is the institution where the student is enrolled in a degree or certificate seeking program and is receiving lottery scholarship funds;

(2) host institution is the secondary institution where the student is taking part of their program requirements.

F. "Department" means the New Mexico higher education department (NMHED).

G. "Full-time" means 15 or more credit hours completed each program semester of the regular academic year at a research institution, comprehensive institution or tribal college; or 12 or more credit hours completed for each program semester at community colleges; or through a consortium agreement between the home and host institutions. For students enrolled through a consortium agreement the minimum credit hour eligibility requirement shall be based on the student's home institution. Qualified students in their graduating semester are only required to take the number of credit hours required to graduate.

H. "GPA" means grade point average.

I. "Legislative lottery scholarship" means a scholarship awarded from proceeds of the New Mexico lottery tuition fund, to defray all or part of the cost of tuition.

J. "Non-enrollment" means a student is not enrolled in a public post-secondary educational institution.

K. "Probation" means a period of time that a student fails to meet continuing eligibility for exceptional mitigating circumstances as determined by the lead financial aid officer at the institution; as described in Subsection D of 5.7.20.8 NMAC.

L. "Program semesters" means those semesters for which a qualified student may receive a tuition scholarship and excludes the first semester of full-time attendance at a public post-secondary educational institution or tribal college.

M. "Public post-secondary educational institution" means a four-year state educational institution or a community college.

N. "Qualified student" means a full-time student who completed high school at a public or accredited private New Mexico high school, graduated from a public or accredited private New Mexico high school, a student who registered with the New Mexico public education department and completed the requirements of a home-based or non-public-school primary educational program in the

state, or who received a high school equivalency credential recognized by the state of New Mexico while maintaining residency in New Mexico and who either:

(1) within 16 months of graduation, completion of the requirements of a home-based or non-public-school primary educational program, or receipt of a high school equivalency credential recognized by the State of New Mexico, was accepted for entrance to and subsequently enrolled full-time at a public post-secondary educational institution or tribal college without having previously enrolled at a non-qualifying post-secondary institution; or

(2) within four months of graduation, completion of the requirements of a home-based or non-public-school primary educational program, or receipt of a high school equivalency credential recognized by the state of New Mexico, began service in the United States armed forces and within 16 months of completion of honorable service or medical discharge from the service, subsequently enrolled full-time at a public post-secondary educational institution or tribal college without having previously enrolled at a non-qualifying post-secondary institution; and

(3) successfully completed the qualifying semester at a public post-secondary educational institution or tribal college with a grade point average of 2.5 or higher on a 4.0 scale during the first semester of full time enrollment.

O. "Research institution" means New Mexico institute of mining and technology, New Mexico state university and the university of New Mexico.

P. "State educational institution" means an institution of higher education enumerated in Article 12, Section 11 of the Constitution of New Mexico.

Q. "Summer semester" means a semester equal to fall and spring semester in duration and intensity that is required as part of an accelerated program.

R. "Tribal college" means a tribally, federally or congressionally chartered post-secondary educational institution with a physical campus in New Mexico that is accredited by the higher learning commission.

S. "Tuition scholarship" means the scholarship that provides tuition assistance per semester for qualified students.

[5.7.20.7 NMAC - Rp, 5.7.20.7 NMAC, 8/15/2014; A/E, 8/15/2014; A, 11/15/2016; A, 10/31/2017; A, 7/24/2018; A, 7/30/2019; A, 8/10/2021]

5.7.20.8 STUDENT ELIGIBILITY:

A. A scholarship may be awarded to a student in their second semester who has met first semester eligibility requirements as follows:

(1) has established and maintained New Mexico residency as defined in 5.7.18.9 NMAC or is eligible for a nondiscrimination waiver as defined in Subsection K of 5.7.18.10 NMAC. All residency requirements must be met upon completion of high school, graduation, or receipt of a high school equivalency credential recognized by the State of New Mexico;

(2) has been determined to be a qualified student pursuant to Subsection N of 5.7.20.7 NMAC;

(3) has met the requirements in Subsection G of 5.7.20.7 NMAC;

(4) has met requirements in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC or students with exceptional mitigating circumstances as determined by the institution's lead financial aid officer; students who are incapable of meeting the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC due to a documented exceptional mitigating circumstance do not forfeit eligibility for the legislative lottery scholarship; however, the following requirements shall apply:

(a) the student shall provide documents certifying the nature of the students exceptional mitigating circumstance to the institution's lead financial aid officer at the post-secondary educational institution at which the student is enrolling or will enroll; the institution's lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC;

(b) if, in the professional judgment of the institution's lead financial aid officer, the student's exceptional mitigating circumstance is recognized as a valid reason for the student's inability to meet the requirements specified in Paragraphs (1) through (3) of Subsection A of 5.7.20.8 NMAC the student's initial eligibility for the legislative lottery scholarship shall be suspended or deferred unless and until such time that the student is capable of meeting the requirements of Paragraph (4) of Subsection A of 5.7.20.8 NMAC; and

(5) has not been awarded a New Mexico scholars' scholarship or other state scholarships which are designated for one hundred percent tuition.

B. Other provisions regarding initial eligibility.

(1) Students with disabilities shall obtain a referral from the student services division of the post-secondary educational institution where the student is enrolled that oversees students with special needs' requests to reduce the credit hours to be considered full-time for scholarship eligibility; referrals and any sufficient documentation shall be received within 30 days of the start of the student's first semester.

(2) Students are encouraged, but are not required, to complete a free application for student aid (FAFSA) for lottery scholarship eligibility.

(3) During the 16 months after graduation, completion of the requirements of a home-based or non-public-school primary educational program, or receipt of a high school equivalency credential recognized by the State of New Mexico a student may attend a public post-secondary educational institution or tribal college prior to their qualifying semester less than-full time without affecting future program eligibility. Once a student is enrolled and attends a public post-secondary educational institution or tribal college full-time during the 16 months after graduation, completion of the requirements of a home-based or non-public-school primary educational program, or receipt of high school equivalency credential recognized by the State of New Mexico, the student shall be considered to have commenced the qualifying semester and must meet the qualifying semester eligibility requirements within Subsection N of 5.7.20.7 NMAC.

C. Continuing eligibility. Upon satisfaction of the qualifying semester eligibility requirements, the scholarship will be awarded to the student beginning with their second semester of enrollment. A student's continuing eligibility shall be determined on a semester basis.

(1) A legislative lottery scholarship award may be re-awarded to a student who:

(a) maintains a minimum of a 2.5 cumulative GPA; a student has the right to request use of the student's cumulative GPA earned at all New Mexico public post-secondary educational institutions and tribal colleges; and

(b) maintains full time enrollment as provided in Subsection G of 5.7.20.7 NMAC; when a qualified student transfers after completion of the first semester from a two year institution to a four year institution for enrollment during the second or subsequent program semester, a student will have met eligibility requirements, but said student must enroll in 15 credit hours upon transfer to maintain eligibility;

(i) receipt of a transfer transcript for sufficient documentation for eligibility;

(ii) student transfers shall defer to the receiving institution to determine eligibility.

(2) Students with disabilities may be re-awarded the legislative scholarship under the following conditions:

(a) a referral is obtained for each semester in which a reduction in credit hours is requested;

(b) maintains a minimum of a 2.5 cumulative GPA; and

(c) in no case shall eligibility extend beyond 14 consecutive semesters at a four year institution and seven consecutive semesters at a two year institution.

(3) An eligible student that transfers shall continue to be eligible at the receiving institution after receipt of the student's transfer transcript containing eligibility confirmation.

D. Probation. Students who have been determined eligible and subsequently have exceptional mitigating circumstances as determined by the institution's lead financial aid officer may be placed on a probationary status under the following conditions:

(1) the student shall provide documents certifying the nature of their exceptional mitigating circumstance to the lead financial aid officer at the post-secondary institution at which the student is enrolling or will enroll;

(2) the lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Paragraph (4) of Subsection A of 5.7.20.8 NMAC; and

(3) a student may receive scholarship funding while on probationary status, however under no circumstances shall the student receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.9 NMAC.

[5.7.20.8 NMAC -Rp, 5.7.20.8 NMAC, 8/15/2014; A/E, 8/15/2014; A, 9/30/2014; A, 11/15/2016; A, 10/31/2017; A, 7/30/2019; A, 8/10/2021]

HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.35 NMAC Sections 6, 7, 8, 9 and 10 effective 8/10/2021.

5.7.35.6 OBJECTIVE: The objective of 5.7.35 NMAC is to provide a guideline for implementing the grow your own teachers program created by the Grow Your Own Teachers Act (the Act). The purpose of the program is to encourage [~~educational assistants employed~~] school employees at public schools in New Mexico to complete a public education department approved teacher preparation program at a New Mexico public post-secondary educational institution or a tribal college. The program provides for professional leave and scholarship awards to qualified [~~educational assistants~~] school employees. The scholarship is intended to help defray the educational expenses charged by the institution including tuition, fees, books and course supplies.

[5.7.35.6 NMAC - N, 8/13/2019; A, 8/10/2021]

5.7.35.7 DEFINITIONS:

A. "Academic year" means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year.

B. "Award recipient" means [~~an educational assistant~~] a school employee awarded a scholarship.

C. "Department" means the New Mexico higher education department.

[~~**D. "Educational assistant"** means a United States~~

~~citizen and resident of New Mexico who has worked as an educational assistant in a public school for at least two years and is in good standing with the public school and who is enrolled in or accepted by an undergraduate teacher preparation program at a regionally accredited public post-secondary educational institution in New Mexico.~~]

[~~E.~~] **D. "FAFSA"** means the free application for federal student aid.

[~~F.~~] **E. "Half-time"** means a student is meeting the institution's criteria of half-time enrollment in its teacher preparation program. The institution's determination may take into account the student's average enrollment for the academic year and the completion of the public education department's licensure requirements.

[~~G.~~] **F. "Institution"** means a regionally accredited New Mexico public post-secondary institution or regionally accredited tribal college.

[~~H.~~] G. "Public post-secondary educational institution" means a research or comprehensive institution, as defined in Article XII, Section 11 of the Constitution of the State of New Mexico, and branch community colleges or community college or technical and vocational institute as defined by Section 21-13, 14 and 16 NMSA 1978.

[~~I.~~] H. "Public school" means a school operating under Article XII of the Constitution of the State of New Mexico and includes constitutional special schools, state institutions and state, federal, or tribal agencies that educate children [~~and employ educational assistants~~].

[~~J.~~] **I. "Satisfactory academic progress"** means maintaining the required academic progress toward program completion as determined by the institution.

[~~K.~~] **J. "Scholarship"** means a grow your own teachers program award.

K. "School employee" means a resident of New Mexico who is authorized to work in the United States and who has been employed by a public school in a position that works directly with students for at least two years and is in good standing with the school district and who is enrolled in or accepted by an undergraduate teacher preparation program at a regionally accredited public post-secondary educational institution in New Mexico.

L. "Teacher preparation program" means a program that has been formally approved as meeting the requirements of the public education department and that leads to level one teacher licensure, including a program in a two-year post-secondary educational institution that meets the requirements for a teacher education transfer module established pursuant to Subsection C of Section 21-1B-4 NMSA 1978.

M. "Tribal college" means a tribally, federally or congressionally chartered post-secondary educational institution with a physical campus in New Mexico that is accredited by the higher learning commission.

[5.7.35.7 NMAC - N, 8/13/2019; A, 8/10/2021]

5.7.35.8 STUDENT ELIGIBILITY AND AWARD PROCESS:

A. A scholarship may be granted to [~~an educational assistant~~] a school employee who:

(1) is [~~a U.S. citizen~~] authorized to work in the United States and resident of New Mexico as defined in 5.7.18.9 NMAC;

(2) is accepted into an accredited public education department approved teacher preparation program at an eligible institution;

(3) has not earned appropriate educational credentials to be licensed as a teacher by the public education department;

(4) has demonstrated financial need as determined by the institution [~~and~~] or the student's FAFSA; and

(5) is in good standing with the public school.

B. The teacher preparation program at the institution shall make awards to students who meet the provisions of Subsection A of 5.7.35.8 NMAC, based on the recommendations of a committee appointed for that purpose. The committee shall prioritize awards to [~~educational assistants~~] school employees that:

(1) are closest to overall completion of the teacher preparation program;

(2) serve in a bilingual education setting;

(3) serve in an early childhood education setting;

(4) serve in a special education setting; or

(5) serve in a high-need teacher position as defined by the public education department.

C. Award recipients shall petition the public school in which they are employed to grant paid professional leave for college classes, examinations and practice teaching as needed. The form to petition paid professional leave shall be promulgated by the department and made available at the institution. It is the award recipient's responsibility to ensure the petition form is submitted and approved by the public school.

[5.7.35.8 NMAC - N, 8/13/2019; A, 8/10/2021]

5.7.35.9 AMOUNT OF SCHOLARSHIP AND DURATION:

A. Institutions shall make awards to qualifying [~~educational assistants~~] school employees based on financial need. The following provisions shall also apply to the scholarship:

(1) each scholarship award is for a period of one semester;

(2) the scholarship may apply to educational expenses including tuition, fees, books and course supplies; and

(3) awards shall not exceed six thousand dollars ($6,000) per academic year.

B. An award recipient may not receive more than five academic years of the scholarship. A scholarship may be renewed as long

as the student continues to meet the conditions of eligibility in Subsection A of 5.7.35.8 NMAC and maintains satisfactory academic progress or until the student graduates from an eligible institution.
[5.7.35.9 NMAC - N, 8/13/2019; A, 8/10/2021]

5.7.35.10 ADMINISTRATION OF THE PROGRAM:

A. Institutions shall:

(1) determine initial and continuing student eligibility for the scholarship based on the provisions in Section 8 and Section 9 of 5.7.35 NMAC;

(2) distribute awards to qualifying eligible students; and

(3) provide information to the department on an annual basis to be used by the department for calculation of the allocation to the institution. Required information shall include:

(a) income reported on the FAFSA; and

(b) the number of students enrolled in a public education department approved teacher preparation program at the public post-secondary institution or tribal college.

(4) annually report the number of students awarded a scholarship who meet the provisions of Subsection B of 5.7.35.8 NMAC.

B. The department shall allocate money to public post-secondary educational institutions or tribal colleges based on a student need formula calculated according to:

(1) income reported on the FAFSA; and

(2) the number of students enrolled in a public education department approved teacher preparation program at the institution.

C. The public school shall:

(1) grant paid professional leave if the [~~educational assistant~~] school employee is a recipient of a scholarship pursuant to the Act and [~~requires release time to complete teacher preparation program requirements;~~] the professional leave minimizes disruption to the school day. The public school may require school employees to make up hours in exchange for hours missed during the school day; and

(2) allow the [~~educational assistant~~] school employee to use the distance education resources of the school district to take classes if an educational assistant who is accepted into or enrolled in a teacher preparation program offered by an eligible institution does not live within a reasonable distance of the institution's campus.
[5.7.35.10 NMAC - N, 8/13/2019; A, 8/10/2021]

HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.100.5 NMAC Section 6 effective 8/10/2021.

5.100.5.6 OBJECTIVE:

A. Each private post-secondary institution with a physical presence in New Mexico shall be classified by the department as either subject to or exempt from provisions of the Post-Secondary Educational Institution Act ("the act").

(1) Engaging in one or more of the following activities constitutes a physical presence in New Mexico:

(a) ongoing occupation of a physical location in the state;

(b) maintenance of an administrative office to support the provision of higher education instruction;

(c) establishing a physical location for instruction which is synchronous (instruction in which a group of students engage in learning at the same time) or asynchronous (instruction that does not occur in the same place or at the same time);

(d) requiring students to physically meet in a location for instructional purposes more than twice per full-term (quarter or semester) course for a total of more than six hours;

(e) establishing an administrative office;

(f) providing student support services to enrolled students, from a physical site operated by or on behalf of the institution in the state;

(g) obtaining office space for instructional or non-instructional staff;

(h) maintaining a mailing address or phone exchange in New Mexico;

(i) holding proctored exams on behalf of the institution in New Mexico more than twice per full-term (quarter or semester); or

(j) facilitating student participation in off-campus field trips in New Mexico for academic purposes in excess of 20 classroom hours in one six-month period or in which the institution establishes a residential or instructional facility in New Mexico.

(2) The following is a non-exhaustive list of activities, which if conducted by the institution, will not trigger a physical presence in New Mexico:

(a) advertising to students whether through print, billboard, direct mail, internet, radio, television or other medium;

(b) maintaining a server, router or similar electronic service device housed in a facility that otherwise would not constitute physical presence (the presence of a server or similar pass-through switching device does not by itself constitute the offering of a course or program in the state);

(c) having faculty, adjunct faculty, mentors, tutors, recruiters or other academic personnel residing in New Mexico and working from their homes or another private, non-institutional site, provided that such staff is not engaged in activities that would otherwise constitute physical presence;

(d) using recruiters in New Mexico if the recruiter has registered as an agent pursuant to Section 21-24-1 through Section 21-21-9 NMSA 1978;

(e) independent off-campus study or research by students including, independent fieldwork for a thesis or dissertation, by individual students not engaged in a supervised field experience under 5.99.1 NMAC and with no supervision or control by the student's institution; or

(f) facilitating student participation in off-campus field trips in New Mexico for academic purposes, so long as the field trip does not exceed more than 20 classroom hours in one six-month period, or the establishment of a residential or instructional facility by the institution in New Mexico.

(3) The Post-Secondary Educational Institution Act does not apply to or affect:

(a) a post-secondary educational institution that is established by name as an educational institution by the state through a charter, constitutional provision or other action and is supported in whole or in part by state or local taxation;

(b) an occupational, trade or professional school operating pursuant to any New Mexico occupational licensing law;

(c) a course of instruction provided by an employer to its own employees for training purposes;

(d) institutions that exclusively offer education that is solely avocational or recreational in nature;

(e) a course of instruction or study sponsored by a recognized fraternal, trade, business or professional organization or labor union for the instruction of its members;

(f) chartered, nonprofit religious non-degree and degree granting institutions whose sole purpose is to train students in religious disciplines to prepare them to assume a vocational objective relating primarily to religion;

(g) institutions that exclusively offer instruction at any level from preschool through the twelfth grade;

(h) an institution funded in full or in part by an Indian tribe or pueblo in the state of New Mexico; or

(i) an organization that provides only brief courses of instruction designed to teach specific skills that may be applicable in a work setting but are not sufficient in themselves to be a program of training in employment.

B. A post-secondary educational institution is subject to the act unless expressly exempted by the department. Post-secondary educational institutions or programs shall apply to the department to receive formal exemption status. Exempt institutions may use the term "exempt" but may not refer to their status with the department using terms such as "authorized," "accredited," "licensed," "approved," or "endorsed."

C. Post-secondary educational institutions that do not have state authorization or have not been granted express exemption by the department, and meet the definition of physical presence in New Mexico, shall be notified by certified mail that they shall cease immediately to offer instruction until they obtain a state authorization or exemption from the department; the department shall initiate appropriate legal action if post-secondary educational institutions fail to comply; whoever violates any provision of Sections 21-23-1 et seq. NMSA 1978 of the Post-Secondary Educational Institution Act may be assessed a civil penalty not to exceed five hundred dollars ($500) per day per violation.

D. An exemption status shall in no way constitute state authorization. Therefore, references to the department shall not be used in any advertisements, brochures, etc. without written consent of the department.

E. Non-accredited private post-secondary educational institutions that offer a degree program shall not be granted exemption unless they meet the criteria for exemption pursuant to Section 21-23-4 NMSA 1978.

[5.100.5.6 NMAC - N, 12/26/2017; A, 12/11/2018; A, 8/10/2021]

HEALTH, DEPARTMENT OF

This is an amendment to 7.27.2 NMAC, Sections 11, 12, 14 and 16 effective 8/10/2021.

7.27.2.11 LICENSURE RENEWAL: All licensed New Mexico EMS providers are required to renew their license every two years. Current renewal documents and information may be obtained from the bureau, website, or by requesting them from the bureau. Individuals renewing their New Mexico EMS provider's license shall submit verification of the required number of continuing education (CE) hours, as described for each licensure level. Required certification or education, such as *advanced cardiac life support* (ACLS) or cardiopulmonary resuscitation (CPR), may each be used once to fulfill a portion of the CE hour requirement during each two year renewal period. Additional cards may not be used for additional CEs. New Mexico license renewal requirements may not match those of national registry or other states; it is the individual's responsibility to assure their completed CE meets the requirements of other states or the national registry if they want to renew those certifications and licensures. A maximum of one-half of the required number of CEs necessary for renewal for each level may come from asynchronous distance/distributive learning programs as defined later in this rule. This may differ from the requirement for maintaining national registry certification.

A. Receipt of licensure renewal from the EMS bureau: Licensing renewal is the

responsibility of each individual licensee. A renewal applicant shall provide a valid personal (i.e., non-service or business) address in the application materials. If an individual licensee fails to notify the bureau of a change of address within one-year from the date of relocation, as determined by the bureau, a bad address fee may be assessed by the bureau. For individuals who have submitted their complete licensure renewal packet to the bureau in a timely manner, the bureau will review the renewal requests in the order they are received.

(1) If there is a delay in notification from the bureau about the status of the licensure renewal beyond the expiration of the license, the individual shall remain licensed until:

(a) notified by the bureau that the license application has been denied or the license expired without renewal; or

(b) they receive their license from the bureau or the bureau website lists the individual as licensed.

(2) If an individual's renewal packet is incomplete, the individual shall be notified by the bureau by U.S. postal mail or by electronic mail.

(3) If an individual licensee is notified that a renewal problem exists with their license, and the license has expired, the individual shall not remain licensed, and their name will be removed from the list of those licensed on the bureau website.

B. Renewal deadlines: Specific renewal requirements must be completed no later than the December 31st that occurs prior to licensure expiration. Required CPR and ACLS certifications and education are exempt from the December 31st deadline and must be current at the time of renewal, unless the renewal applicant is also using the ACLS or CPR certification(s) for CE, at which time the course(s) must have been completed prior to December 31. In order to pay the standard renewal fees, renewal applications must be postmarked or received by the bureau by the last day of February prior to expiration of licensure. Renewal applications postmarked or received after the last day of February, but before March 31, will be accepted but require a higher fee as described later in this rule.

(1) The applicant may submit the complete renewal application to the bureau as soon as requirements are complete; the complete renewal application shall be postmarked no later than the final month of licensure. A normal renewal fee is assessed for renewal applications postmarked prior to the final month of licensure.

(2) Renewal applications received during the final month of licensure will be accepted, but will be assessed a higher renewal fee due to the requirement for speedier processing.

(3) Applications for renewal of licensure shall be postmarked or received no later than the last day of licensure (March 31st).

C. Mandatory updates: The bureau may require mandatory updates to education in any given year of licensure. Mandatory updates may include required content hours during specific continuing education courses or other mandatory classes.

D. Audits: The bureau may require full documentation of continuing education, including copies of certification cards, course completion certificates, and any other relevant documents from any individual applying for renewal of their license.

E. Waivers: The licensing commission may, for good cause shown, waive portions of these rules pertaining to licensure renewal pursuant to 7.27.2.14 NMAC of these rules. Persons requesting waivers for licensure renewal shall submit requests in writing to the EMS licensing commission, in care of the bureau.

F. Licensed emergency medical dispatcher (EMD): Renewal for a licensed EMD is required within each licensure period. Documentation must show that all renewal requirements have been completed before the December 31st that occurs prior to expiration of licensure. Cardiopulmonary resuscitation (CPR) education/ certification is exempt from the December 31st deadline and must be current at the time of renewal, unless the renewal applicant is also using the CPR certification for CE, at which time the course must have been completed prior to December 31. If the EMD is concurrently licensed as an EMT-B, EMT-I, or EMT-P, the renewal dates for EMD licensure may be adjusted by the bureau to match the renewal dates for the EMT-B, EMT-I, or EMT-P license. The following requirements are necessary for a person to renew their EMD license:

(1) submit copies of course completion certificates or verification showing a minimum of 20 contact hours of CE activity; of which at least 10 hours shall be medical subjects/skills of bureau approved CE activity and 10 hours of dispatch related subjects/ skills, unless the EMD is also licensed at the EMT-B, EMT-I, or EMT-P level; the EMD may then use those contact hours of CE activity obtained during the renewal period for the EMT-B, EMT-I, or EMT-P licensure toward the medical renewal requirements;

(2) provide evidence of current bureau approved CPR certification and education; or, if physically unable to be certified for CPR, provide written documentation of current knowledge and practical applications of CPR; and

(3) submit required application and payment of all license renewal fees as required by these rules.

G. Licensed emergency medical dispatcher-instructor: Renewal of a licensed EMD-instructor is required within each licensure period. Documentation must show that all renewal requirements have been completed before the December 31st that occurs prior to expiration of licensure.

Cardiopulmonary resuscitation (CPR) education/certification is exempt from the December 31st deadline and must be current at the time of renewal, unless the renewal applicant is also using the CPR certification for CE, at which time the course must have been completed prior to December 31. The following requirements are necessary for a person to renew their EMD-I license:

(1) submit verification from a bureau approved EMD education program showing that the EMD- instructor is current and in good standing with the approved EMD education program;

(2) submit verification of completion of all EMD CE renewal requirements;

(3) submit a copy of current licensure at the EMT-B or higher level;

(4) provide evidence of current bureau approved cardiopulmonary resuscitation (CPR) education or certification; or, if physically unable to be certified for CPR, provide written documentation of current knowledge and practical applications of CPR; and

(5) submit the required application and payment of all licensure renewal fees as required by these rules.

H. Emergency medical services first responder: Renewal of the EMSFR license is required within each licensure period. Documentation must show that all renewal requirements have been completed on or before the December 31st that occurs prior to expiration of licensure. Cardiopulmonary resuscitation (CPR) education/ certification is exempt from the December 31st deadline and shall be current at the time of renewal, unless the renewal applicant is also using the CPR certification for CE, at which time the course must have been completed prior to December 31. The following requirements are necessary for a person to renew their license:

(1) submit a completed renewal application;

(2) submit verification of a minimum of twenty contact hours of bureau approved CE activity consisting of the following subjects and minimum hours per subject:

(a) preparatory/operations, two hours;

(b) airway and ventilation, three hours;

(c) cardiovascular emergencies, two hours;

(d) medical emergencies, four hours;

(e) trauma emergencies, four hours;

(f) special considerations, five hours, two of which must consist of pediatric content.

(3) provide evidence of current bureau approved cardiopulmonary resuscitation education or certification;

(4) provide a statement of verification, signed by the service medical director, that the applicant is competent in all EMSFR skills listed in the current scopes of practice that require medical direction; and

(5) submit payment of all licensure renewal fees as required by these rules.

I. Emergency medical technician basic (EMT-B): Renewal of the EMT-B license is required within each licensure period. Documentation must show that all renewal requirements have been completed on or before the December 31st that occurs prior to expiration of licensure. Cardiopulmonary resuscitation (CPR) education/ certification is exempt from the December 31st deadline and shall be current at the time of renewal, unless the renewal applicant is also using the CPR certification for CE, at which time the course must have been completed prior to December 31. The following requirements are necessary for an EMT-B to renew their license:

(1) submit a completed renewal application;

(2) submit verification of a minimum of 40 contact hours of bureau approved CE activity, consisting of the following subjects and minimum hours per subject:

(a) preparatory/operations, four hours;

(b) airway and ventilation, six hours;

(c) cardiovascular emergencies, six hours;

(d) medical emergencies, eight hours;

(e) trauma emergencies, eight hours;

(f) special considerations, eight hours, four of which must consist of pediatric content.

(3) provide evidence of current bureau approved cardiopulmonary resuscitation (CPR) education or certification;

(4) provide a statement of verification, signed by the service medical director, that the applicant is competent in all EMT-basic skills listed in the current scopes of practice that require medical direction;

(5) submit payment of all licensure renewal fees as required by these rules; and

(6) applicants who have completed a bureau approved EMT-I or EMT-P course or completed appropriate sections of the EMT-I or EMT-P course, as determined by the bureau, may fulfill the CE requirement.

J. Emergency medical technician intermediate (EMT-I): Renewal of the EMT-I license is required within each licensure period. Documentation must show that all renewal requirements have been met on or before the December 31st that occurs prior to expiration of licensure. Cardiopulmonary resuscitation (CPR) education/certification is exempt from the December 31st deadline and shall be current at the time of renewal, unless the renewal applicant is also using the CPR certification for CE, at which time the course must have been completed prior to December 31. The following requirements are necessary for an EMT-I to renew their license:

(1) submit a completed renewal application;

(2) submit verification of a minimum of 50 contact hours of bureau approved CE activity, consisting of the following subjects and minimum hours per subject:

(a) preparatory/operations, four hours;

(b) airway and ventilation, [~~six~~] eight hours;

(c) cardiovascular emergencies, six hours;

(d) medical emergencies, 12 hours;

(e) trauma emergencies, [~~twelve~~] 10 hours;

(f) special considerations, 10 hours, five of which must consist of pediatric content.

(3) provide evidence of current bureau approved cardiopulmonary resuscitation (CPR) education or certification;

(4) provide a statement of verification, signed by the service medical director, that the applicant is competent in all EMT-intermediate skills listed in the current scopes of practice that require medical direction. Persons who are not currently providing care through an EMS provider service and do not have a service medical director may for good cause petition the bureau for designation of inactive status, which will remain in effect until the bureau is notified of the applicant obtaining medical direction. No patient care should be performed until the inactive status is removed;

(5) submit payment of all licensure renewal fees as required by 7.27.2.13 NMAC of these rules; and

(6) applicants who have completed a bureau approved EMT-P course or completed appropriate sections of the EMT-P course, as determined by the bureau, may fulfill the continuing education requirement.

K. Emergency medical technician paramedic (EMT-P): Renewal of the EMT-P license is required within each licensure period. Documentation must show that all renewal requirements have been completed on or before the December 31st that occurs prior to the expiration of licensure. Cardiopulmonary resuscitation (CPR) education/ certification and advanced emergency cardiac care education/advanced cardiac life support (ACLS) certifications are exempt from the December 31st deadline and shall be current at the time of renewal, unless the renewal applicant is also using the ACLS or CPR certification(s) for CE, at which time the course(s) must have been completed prior to December 31. The following requirements are necessary for an EMT-P to renew their license:

(1) submit a completed renewal application;

(2) submit verification of a minimum of 60 contact hours of bureau approved CE activity at any level, consisting of the following subjects and minimum hours per subject:

(a) preparatory/operations, six hours;

(b) airway and ventilation, eight hours;

(c) cardiovascular emergencies, 10 hours;

(d) medical emergencies, 14 hours;

(e) trauma emergencies, 10 hours;

(f) special considerations, 12 hours, six of which must consist of pediatric content.

(3) provide a statement of verification, signed by the service medical director, that the applicant is competent in all EMT-paramedic skills listed in the current scopes of practice that require medical direction. Persons who are not currently providing care through an EMS provider service and do not have a service medical director may for good cause petition the bureau for designation of inactive status, which will remain in effect until the bureau is notified of the applicant obtaining medical direction. No patient care should be performed until the inactive status is removed;

(4) submit proof of current bureau approved education which meets or exceeds the current national standards for advanced emergency cardiac care education, or advanced cardiac life support (ACLS) certification;

(5) provide evidence of current bureau approved cardiopulmonary resuscitation (CPR) education or certification; and

(6) submit payment of all licensure renewal fees as required by 7.27.2.13 NMAC of these rules.

L. Re-attaining a license after expiration for all categories: The bureau provides three methods for expired licensees to regain their licensure; reinstatement, re-entry, and re-licensure.

(1) Reinstatement: Those persons who have completed the renewal requirements on or before the December 31st cutoff, but failed to renew licensure by March 31st, may renew between April 1st and May 31st of the expiration year. A complete renewal application for reinstatement must be received at the bureau by May 31st. Paperwork postmarked after March 31st will be assessed with an additional late fee (see fees, 7.27.2.13 NMAC).

(2) Re-entry: A person whose license is expired, who does not meet the circumstances of Paragraph (1) of Subsection L of 7.27.2.11 NMAC above, but whose date of expiration of the previously held license is less than two years, may re-enter EMS at the previously held or lower level if the person left EMS in good standing and successfully completes the following:

(a) for basic, intermediate and paramedic, complete a minimum of half of the number of hours of bureau approved continuing education at the appropriate level within the twelve months preceding the date of

application for re-entry; the number and subjects of CEs must equal a minimum of half of the requirements for renewal of the level for which the individual is applying for, as described herein;

(b) for first responder, complete a minimum of 10 hours of bureau approved continuing education within the twelve months preceding the request for re-entry; the number and subjects of CEs must equal a minimum of half of the requirements for renewal of the first responder level as described herein;

(c) provide evidence of current bureau approved cardiopulmonary resuscitation (CPR) education or education, which may not be used as part of the CE hour requirement;

(d) successfully complete an approved New Mexico licensing examination and other practical examinations, as determined by the bureau, at the appropriate provider licensure level (maximum of two examination attempts allowed), if applicable;

(e) if EMD or EMD-I applicant, provide verification of a minimum of 10 contact hours of bureau approved CE activity, of which 5 hours shall be medical subjects/skills and 5 hours shall be dispatch related subjects/ skills of bureau approved CE activity;

(f) if an EMT-P applicant, provide evidence of bureau approved advanced emergency cardiac care education/ advanced cardiac life support (ACLS) certification education which may not be used as part of the CE hour requirement; and

(g) submit required application and payment of licensure fees as identified for the appropriate level in 7.2.27.13 NMAC of these rules;

(h) the re-entry process may only be attempted once; if a candidate for re-entry does not successfully complete the exam within two testing attempts, the re-entry candidate must complete a full licensure course at the appropriate licensure level to be eligible for NM EMS licensure.

(3) Re-licensure: A person whose license has been expired for more than two years from the date of expiration shall be considered an initial licensure applicant. To become licensed, a person must complete the requirements of 7.27.2.9 NMAC of these rules.

M. Expiration of licensure: All New Mexico EMS personnel, whose licensure expires on March 31st of any given year, will receive notification of EMS license expiration, and that they are no longer authorized to perform patient care. The bureau will send this notice to the address of record notifying the former licensee of expiration during the first week of April, will remove the former licensee from the bureau website list of licensed personnel, and will notify the national registry of EMTs if applicable.

N. Bureau approved continuing education: Continuing education (CE) credit may be granted for any education that has been approved in advance by the bureau. All individuals or EMS services wishing to grant CE credit to licensed EMDs, EMD-Is, EMSFRs, EMTs, and paramedics in New Mexico shall submit the appropriate documentation to the bureau at least 30 days in advance. Bureau approved CEs must include information that addresses the New Mexico scope of practice. CEs submitted to the bureau for approval after education has been completed may be denied, and will be reviewed for approval or disapproval on a case-by-case basis. Application for CE approval shall be made utilizing the bureau's "notification of intent to conduct a CE program" application form available from the bureau. Information regarding CEs may be found on the bureau website.

(1) Purpose: Continuing education is designed to meet three main objectives:

(a) to provide exposure to new and current trends in the area of patient care;

(b) to review areas of patient assessment and management that are not used on a frequent basis;

(c) to meet licensure renewal requirements.

(2) Continuing education categories: The EMS bureau has adopted the CE category designations similar to those published by many states and national EMS organizations. A more detailed explanation of these categories can be found in the "EMS CE user's guide" available from the bureau. The CE categories are:

(a) preparatory and operations topics: preparatory topics include roles and responsibilities, well-being of the EMT, injury prevention, medical/legal issues, ethics, anatomy/physiology, principles of pathophysiology, principles of pharmacology, IV therapy and medication administration, therapeutic communications; operations topics include ambulance operations, medical incident command, rescue awareness and operations, hazardous materials incidents, crime scene awareness;

(b) airway and ventilation;

(c) cardiovascular emergencies: general topics include treatment of cardiac arrest, post resuscitation care, congestive heart failure, ventricle assist devices, acute coronary syndrome, multi-lead ECG, myocardial infarction, general cardiology, stroke (stroke may also be considered neurology/medical emergency);

(d) medical emergencies: general topics include pulmonary, neurology, endocrinology, allergies and anaphylaxis, gastroenterology, urology/renal, toxicology, hematology, environmental conditions, infectious and communicable diseases, behavioral and psychiatric disorders, gynecology, obstetrics;

(e) trauma emergencies: general topics

include kinematics, blunt trauma, penetrating trauma, hemorrhage and shock, soft tissue trauma, burns, head and facial trauma, spinal trauma, thoracic trauma, abdominal trauma, musculoskeletal trauma; and

(f) special considerations: general topics include neonatology, pediatrics, geriatrics, abuse and neglect, patients with special challenges, acute interventions for the home health care patient.

(3) Forms of CE: The following forms of CE are currently recognized by the bureau. The bureau reserves the right to approve additional forms of CE as necessary. More detailed information may be found in the "EMS CE user's guide" available from the bureau.

(a) Classroom instruction: Standard instructor-student relationship in the classroom or field setting.

(b) Pre-approved courses: A list of national and statewide recognized certification courses that are pre-approved for CE credit is found in the CE guide available online and from the bureau. Individuals completing any of these courses need only to submit their course completion certificate or card when renewing their licenses. Courses that are approved by a bureau approved nationally recognized CE course approval entity are, at the discretion of the bureau, pre-approved for credit in New Mexico.

(c) EMS related college courses: Credit may be awarded to individuals who are attending college courses relevant to EMS. Individuals who are interested in receiving credit should submit a copy of their unofficial student transcript and course syllabus. The EMS bureau will determine relevance and the number of CE hours allowed.

(d) Teaching bureau approved courses: Licensed individuals who teach bureau approved courses may receive the same number of CE hours as students who are taking the program; refer to the "EMS CE user's guide" for a more complete description.

(e) Field or clinical preceptorship: A maximum of 20 hours of CE may be allowed for EMS preceptor activities; documentation of preceptor activities must be on letterhead from an approved New Mexico EMS education institution or EMS service director.

(f) Asynchronous distance/distributive education learning programs: This is a method of delivering training and education that does not require an educator and student to interact in real time. This may include EMS videos, computer-based-education, self-study modules, recorded broadcasts via satellite, internet, or other media, and other methods of out-of-classroom didactic education that includes a student evaluation component (i.e.: post course test/quiz). A maximum of one-half of the required number of CEs necessary for renewal for each level may come from asynchronous distance/distributive learning programs. Please note, this may differ from the requirement for maintaining national registry certification.

(g) Synchronous distance education learning programs: This is a method of delivering training and education via electronic media that links an educator and students, allowing them to interact in real time despite being in different places. This includes live, instructor interactive satellite broadcasts or webcasts that allow for live video, audio, or other immediate feedback and communication between the instructor and the students. There is no limit to the number of CE hours a licensed individual may obtain through this method. The CE certification must document that the offering was provided and completed via a live broadcast. The decision regarding a CE being accepted as synchronous distance learning is discretionary and rests with the EMS bureau alone.

(h) EMS agency/fire department medical director courses: The medical director may conduct CE courses without a bureau approved CE number. All other requirements for conducting an EMS CE course must be followed, and records must be maintained by the agency/department CE coordinator, including class roster and teaching outlines. CEs submitted as medical director courses must include the physician's signature.

(i) On-the-job education/staff meetings: A maximum of eight hours of CE will be accepted for agency/department staff meetings, job orientation classes, take home work sheets, etc., for each renewal period

(j) Meetings/Committees: A maximum of eight hours of CE will be accepted for attending EMS related committees/meetings for each renewal period.

(k) Unacceptable CE: CEs obtained for completing evaluations for any EMS classes or conferences, participating in EMS related surveys, etc., will not be accepted.

(4) Record keeping: Once approval of a CE program is obtained and the course is presented, records of attendance must be maintained. The bureau may audit the CE records of an approved CE program. Attendance records with original signatures of course participants and a copy of any course presentation material must be kept for a minimum of 36 months by the service, for bureau audit purposes.

(a) In order for participating EMS personnel to receive credit, each individual shall be given a certificate, letter of attendance/completion, or copy of course attendance roster and advised to retain it until their licensure renewal. Many EMD Agencies (EMDA) and EMS services have computerized records of their personnel concerning CE. The EMS bureau will recognize CE summary documentation, on letterhead, from EMDA or EMS service directors, education coordinators, medical directors, or CE coordinators with appropriate original signatures.

(b) Course completion letters, certificates, and course rosters shall contain the following information:

(i) location and date of the CE program;

(ii) title and short description of the class or course;

(iii) number of actual contact hours (half hour increments are acceptable);

(iv) CE category;

(v) name of participant;

(vi) CE coordinator's name with designation "CE coordinator" placed after the name;

(vii) signature of CE coordinator;

(viii) the statement: "reviewed and approved by the New Mexico EMS bureau for CE"; and

(ix) method of delivery (classroom, asynchronous, or synchronous distance program); and

(x) EMS bureau approval number.

(5) CE audits for EMS services and personnel: The bureau may periodically perform audits of CE programs. These audits are usually provided as a way for services to evaluate their current program, identify areas in which the program excels, as well as areas that may be problematic. The following types of CE audits may be conducted by the bureau:

(a) **CE course audit:** this audit evaluates the actual class or course being conducted; the purpose of this audit is to provide written feedback to the instructor on presentation, content, and participant evaluations conducted at the end of the class; this audit is usually unannounced;

(b) **CE recordkeeping audit:** this audit evaluates the CE program sponsor recordkeeping process; records of prior classes or courses conducted are inspected for completeness and feedback is provided to the CE program sponsor that identify areas for improvement; CE program sponsors will be given at least five days advance notification of these audits; records that will be inspected include:

(i) original copies of attendance rosters with the signatures of course participants;

(ii) course presentation materials/outlines or learning objectives;

(iii) handouts that were given to participants;

(iv) any evaluation tools, including written exams or practical skill forms; and

(v) CE approval letter or approval numbers;

(c) CE complaint audit: this audit is a preliminary investigation conducted by the EMS bureau based on a complaint concerning falsification of the CE process.

(6) Refreshers: The EMS bureau does not require a refresher certificate for renewal, but refresher certificates from approved New Mexico EMS education institutions may be used to satisfy an equivalent number of hours for the CE requirement. The refresher documentation submitted must describe the number of CE hours for each CE category, and the number of synchronous and asynchronous hours that were delivered in the class. If a portion of the refresher was completed in an online or other asynchronous distance/distributive education format, the CE hours will be categorized as asynchronous CE by the bureau, and will count towards the maximum number of asynchronous education. For a formal refresher certificate from entities other than New Mexico approved institutions to be accepted for CEs, the course curriculum must be approved prior to an applicant completing the refresher.

[7.27.2.11 NMAC - Rp, 7.27.2.11 NMAC, 12/12/2017; A, 8/10/2021]

7.27.2.12 IDENTIFICATION OF EMS PERSONNEL: Licensed EMDs, EMD- Is, EMSFRs, EMTs, and paramedics will be issued: one license certificate, [~~one license wallet card,~~] and one uniform patch (if available).

A. The bureau shall charge a reasonable fee for replacement of lost [~~cards or certificates~~] documents. The bureau shall also charge a reasonable fee for additional uniform patches, pursuant to 7.27.2.12 NMAC of these rules.

B. Licensed EMDs, EMD-Is, EMSFRs, EMTs, and paramedics shall [~~carry their current New Mexico state license wallet card, or bureau approved equivalent form of identification, while participating in a patient care situation. All EMS personnel must present, upon demand, proof of licensure~~] be listed as fully licensed on the bureau's list of licensed personnel, and upon demand, present proof of this listing and licensure status.

C. Licensed EMDs, EMD-Is, EMSFRs, EMTs, and paramedics shall promptly notify the bureau of any changes of name, address or EMS employment/ affiliation status.

D. All volunteer, paid, and career EMS agencies regulated by the PRC or the EMS bureau utilizing EMS caregivers to perform patient care are required to verify the license of any volunteer or career EMS caregiver via direct contact with the EMS bureau or by accessing the bureau's license verification list. National Registry certification does not constitute licensure. Any other organization, business, or individual that employs or otherwise utilizes licensed EMS caregivers to provide medical care utilizing emergency medical dispatchers or emergency medical technicians including paramedics is strongly advised to verify the New Mexico license of the emergency medical dispatchers or emergency medical technicians via direct contact with the bureau or by accessing the bureau's license verification list.

[7.27.2.12 NMAC - Rp, 7.27.2.12 NMAC, 12/12/2017; A, 8/10/2021]

7.27.2.14 ENFORCEMENT:

A. EMS licensing commission:

(1) Statutory basis: The emergency medical services licensing commission is established pursuant to Section 24-10B-5.1 NMSA 1978 of the act.

(2) Duties: The duties of the commission are to:

(a) provide a forum for the receipt of public comment regarding emergency medical services licensing matters;

(b) oversee the bureau's licensing and enforcement functions;

(c) receive complaints, direct investigations, and authorize the initiation of actions by the bureau regarding contemplated refusal to grant initial licensure and for disciplinary actions against licensees; and

(d) grant waivers, for good cause shown, of regulations pertaining to licensure renewal.

(3) Organization: Members of the commission are appointed by the secretary as provided by law.

(a) Commission members shall serve until their successors have been appointed by the secretary.

(b) In the event of a vacancy on the commission by resignation or removal, the bureau shall immediately notify the secretary so as to expedite the appointment of a new commission member. The secretary shall appoint such vacancies.

(c) The commission may recommend to the secretary removal of any commission member for the following reasons:

(i) failing to attend or otherwise participate in two consecutive meetings without a valid reason; or

(ii) any other good cause.

(d) The commission shall elect a chair and vice-chair annually. The term of office begins with the meeting at which the officer is elected.

(e) The bureau shall serve as staff for the commission.

(4) Commission meetings: The commission shall meet as needed, but not less than semi-annually.

(a) Commission meetings for receipt of public comment regarding emergency medical services licensing functions and oversight of the bureau's licensure function shall be subject to the Open Meetings Act, Section 10-15-1, *et seq*., NMSA 1978.

(b) Meetings pertaining to the issuance, suspension, renewal or revocation of a license, or other personnel matters, are closed meetings as provided by the Open Meetings Act.

(c) A meeting notice resolution, consistent with the provisions of the Open Meetings Act, shall be adopted by the commission and shall be reviewed in November of each year at a regularly scheduled meeting of the commission.

(d) Minutes of meetings shall be taken and maintained in accordance with the Open Meetings Act.

(e) A commission member may attend a meeting of the commission via telephone or other teleconferencing technology, if it otherwise difficult or impossible for the member to attend in person.

(5) Receipt of public comment: There shall be an opportunity for receipt of public comment regarding licensure matters, in writing or orally, at each open commission meeting.

(a) Written public comment intended for consideration by the commission shall be mailed to the bureau. The comments must include the person's name, address, and telephone number, if available. Unidentified comments may or may not be considered by the commission.

(b) The commission, upon receipt of public comments, may make an appropriate recommendation to the bureau to take action based on those comments.

(6) Oversight: During each regularly scheduled meeting, the bureau will provide a report of its licensure functions to the commission. Commission members may, at any time, request information about licensure functions from the bureau.

B. Complaint/ incident procedures: Any person may communicate a written complaint or knowledge of an incident to the bureau or the commission.

(1) When the bureau has knowledge of a complaint that may affect a person's license, it shall notify the chair of the commission as soon as practicable.

(2) Similarly, when the commission has knowledge of a complaint or incident affecting licensure, it shall notify the bureau.

(3) Other complaints, which would not affect licensure, will be directed to, and examined by the bureau.

(4) The bureau shall communicate to the chair or designee its opinion as to whether or not an investigation of the complaint should be initiated.

(5) Upon knowledge of a complaint, the chair, or designee, after consultation with other members of the commission, as feasible, shall authorize that an investigation be conducted.

(6) The chair or designee shall direct the course of the investigation through periodic communication with the bureau as necessary.

(7) If an investigation indicates that the complaint may affect a person's license, the licensee shall be notified that the bureau is conducting an investigation, unless extenuating circumstances reasonably preclude notification.

(a) At the conclusion of the bureau's investigation, the bureau shall report its findings to the commission in a closed meeting at which a majority of commission members participate, either in person or by means of a conference telephone or other similar communications equipment.

(b) The commission, after consideration of the bureau's report, may authorize the initiation of an action by the bureau regarding contemplated refusal to grant initial licensure, or for disciplinary action against a licensee, by a majority vote of commission members participating in the closed meeting. The commission may immediately authorize a cease and desist order or other immediate action, including but not limited to suspension, subject to expedited hearing rights as outlined in Paragraph **(**5**)** of Subsection G of 7.27.2.14 NMAC, if it determines that the health and safety of the public would be jeopardized unless the bureau takes action as soon as possible.

(c) The chair of the commission may immediately authorize the initiation of an action by the bureau regarding contemplated refusal to grant initial licensure, or for disciplinary action against a licensee, without consulting the other members of the commission. This immediate action may be used if the chair makes a good faith judgment that the health and safety of the public would be jeopardized unless the bureau takes action as soon as possible. Actions may include cease and desist orders or immediate suspension, subject to expedited hearing rights pursuant to Paragraph **(**5**)** of Subsection G of 7.27.2.14 NMAC of these rules. If the chair authorizes the initiation of an action by the bureau, the bureau shall notify each commission member in writing of such action within 10 working days of the initiation of the action.

(d) Upon receipt of authorization from the commission to initiate an action, the bureau may deny, suspend or revoke licensure or take other disciplinary action, in accordance with the provisions of the act, Paragraph (2) of Subsection B of Section 24-10B-5 NMSA 1978 and the Uniform Licensing Act, Sections 61-1-1, *et seq*., NMSA 1978.

C. Conduct of investigations: Investigations shall normally be conducted by the bureau.

(1) Preliminary investigations: When the bureau receives information that might form the basis for disciplinary action against a person, it shall begin a preliminary investigation. This is a fact finding, information gathering investigation that will attempt to determine for the commission whether justification exists for the commission to authorize the bureau to initiate an action or to conduct a formal investigation. The results of the preliminary investigation will be presented to the commission.

(2) Formal investigations: Formal investigations are authorized by the commission for the purpose of obtaining additional information to allow the commission to determine if it will authorize the bureau to initiate an action. The results of the formal investigation will be presented to the commission. Notice will be given to the person who is the subject of the formal investigation unless extenuating circumstances exist which would reasonably preclude notification.

D. Subpoena authority: In accordance with Subsection C of Section 24-10B-5.1 NMSA 1978 of the EMS Act and Subsection A of Section 61-1-4 NMSA 1978 of the Uniform Licensing Act, the EMS licensing commission or the bureau, pursuant to the commissions authorization may, subject to the rules of privilege and confidentiality recognized by law, require the furnishing of information, the attendance of witnesses, and the production of books, records, papers or other objects necessary and proper for the purposes before it, and may take sworn statements of witnesses, including parties.

E. Waivers: The commission, upon good cause or for extenuating circumstances shown by a licensee, may grant a waiver of a specific regulation or regulations pertaining to licensure renewal for that licensee.

(1) A licensee shall demonstrate good cause to the commission by submitting written justification that identifies any extenuating circumstances, to the bureau. The licensee shall include any reasonable supporting documentation to relevant to the request.

(2) The bureau shall distribute the submitted written justification and supporting documentation to the members of the commission prior to their next meeting.

(3) The commission, as soon as practicable, shall determine if good cause exists to grant a waiver by a majority vote of commission members meeting in a closed meeting. To accomplish this, the commission shall evaluate the documentation and, if necessary, review other pertinent documentation requested from the licensee.

(4) The commission may also meet with the licensee at a closed meeting of the commission prior to rendering its decision as to whether good cause exists to grant a waiver.

(5) If the commission grants the waiver to the licensee, it shall direct the bureau to take appropriate action to implement the terms and conditions of the waiver.

(6) A licensee applying for a waiver shall be notified by the bureau of the commission's decision in writing within 20 calendar days of receipt of the commission's decision.

(7) The chair or his designee, with a recommendation from the bureau, may authorize a temporary waiver for licensure renewal, where they feel it may be justified, i.e., loss of employment, pecuniary interests, etc., subject to subsequent commission review and approval.

F. Impaired practitioner program: An EMT who voluntarily self-identifies to the bureau or the impaired practitioner committee that he is experiencing a physical or mental impairment shall be considered for the impaired practitioner program ("diversion program"). Consideration may not result in participation in the diversion program. Also, any impaired-EMT who the bureau, with the advice of the commission, determines may benefit from the impaired practitioner program may be compelled to attend the impaired practitioner committee.

(1) The bureau, with the advice of the commission, may appoint an impaired-EMT rehabilitation committee to organize and administer a program that will:

(a) serve as a diversion program to which the bureau may refer licensees in lieu of, or in addition to, other disciplinary action taken by the bureau under these regulations; and

(b) be a source of referral for EMTs who, on a voluntary basis, desire to avail themselves of treatment for behavioral health based or chemical-dependence impairments.

(2) The impaired practitioner committee shall be composed as a minimum of:

(a) one bureau staff member;

(b) one commission member;

(c) one mental health specialist; and

(d) one physician.

(3) The impaired practitioner committee shall:

(a) arrange evaluations for EMTs who request participation in the diversion program;

(b) review and designate treatment facilities and services to which EMTs in the diversion program may be referred;

(c) receive and review information concerning the status and progress of participants in the diversion program;

(d) publicize the diversion program in coordination with EMS professional organizations and the bureau; and

(e) prepare and provide reports as needed to the bureau and the commission.

(4) Each EMT entering the diversion program shall be informed of the procedures applicable to the diversion program, of the rights and responsibilities associated with participation in the diversion program and of the possible consequences of failure to participate in the diversion program. Failure to comply with any treatment requirement of the diversion program may result in termination of the diversion program participation. The bureau shall report termination of diversion program participation to the commission. Participation in the diversion program shall not be a defense against, but may be considered in mitigating any disciplinary action authorized by the commission and taken by the bureau. The commission is not precluded from authorizing the bureau to commence a disciplinary action against an EMT who is participating in the diversion program or has been terminated from the diversion program.

G. Denial, suspension, and revocation: A license may be denied, suspended, or revoked, or may be subject to any lesser disciplinary action, in accordance with the following:

(1) upon authorization by the commission, the bureau may suspend, revoke, or refuse to issue any license, or take other disciplinary action, in accordance with the provisions of the EMS Act, Subsection B of Section 24-10B-5, NMSA 1978 and the Uniform Licensing Act, Section 61-1-1, *et seq*., NMSA 1978, for any of the reasons outlined below;

(2) if final disciplinary action is taken against a licensed EMS provider by the bureau, upon authorization from the commission, the bureau may publish the action in a periodical or other medium that has statewide distribution, and will notify the national registry of EMTs of the disciplinary action;

(3) grounds for denial, suspension, revocation or other disciplinary action are:

(a) misconduct in obtaining licensure;

(b) fraud, deceit, misrepresentation in obtaining licensure, including, but not limited to, cheating on an examination or attempting to subvert the initial or renewal licensing process;

(c) unprofessional conduct, whether committed while on duty or off duty, to include but not limited to, the following:

(i) dissemination of a patient's health information to individuals not entitled to such information and where such information is protected by law from disclosure;

(ii) falsifying or altering patient records or personnel records;

(iii) misappropriation of money, drugs or property;

(iv) obtaining or attempting to obtain any fee for patient services for one's self or for another through fraud, misrepresentation, or deceit;

(v) aiding, abetting, assisting or hiring an individual to violate the EMS Act or these duly promulgated rules;

(vi) failure to follow established procedure and documentation regarding controlled substances;

(vii) failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of pre-hospital emergency care;

(viii) failure to report an EMS provider who is suspected of violating the New Mexico Emergency Medical Services Act or these rules;

(ix) intentionally engaging in sexual contact with or toward a patient.

(d) conviction of a felony [~~or a misdemeanor involving moral turpitude, as shown by a record of the court conviction~~], when the conviction relates directly to the profession or the practice of emergency medical services;

(e) negligence in the delivery of emergency medical services to include, but not limited to:

(i) practicing outside the standard of care, scope of licensure or without appropriate medical direction;

(ii) malpractice;

(iii) incompetence, in performance of pre-hospital emergency medical functions, whether direct patient care or the administration or management of that care. An EMS provider is under legal duty to possess and to apply the knowledge, skill and care that is ordinarily possessed and exercised by other EMS providers of the same licensure status and required by the generally accepted standards of the profession; the failure to possess or to apply to a substantial degree such knowledge, skill and care constitutes incompetence for purposes of disciplinary proceedings. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions, so long as the conduct is of such a character that harm could have resulted to the patient or to the public;

(iv) patient abandonment: patient abandonment occurs when the EMS provider has accepted the patient assignment thus establishing a provider-patient relationship and then severs the relationship without giving reasonable notice to a qualified person who can make arrangements for the continuation of care.

(f) unauthorized disclosure of medical or other confidential information;

(g) physical or mental incapacity which could result or has resulted in performance of emergency medical service duties in a manner which endangers the health and safety of the patient or others;

(h) any demonstrated pattern of alcohol or other substance abuse; or any single instance of alcohol or substance abuse in the performance of emergency medical services duties;

(i) failure to successfully complete the impaired practitioner program; or failure to meet the terms and conditions of an impaired practitioner agreement;

(j) failure to meet licensure requirements;

(k) dispensing, administering, distributing or diversion of controlled substances, other than those authorized in the scope of practice, as defined in the New Mexico Controlled Substance Act, Section 30-31-1, *et seq*., NMSA 1978;

(l) failure to report revocation, suspension, denial, or other adverse actions taken in any other state or jurisdiction affecting the ability to practice emergency medical services;

(m) misrepresentation of the level of licensure or certification;

(n) performing duties as a licensed EMT without being licensed by the bureau to perform the authorized scope of practice for a level of licensure, including practicing after expiration of a license;

(o) any false, fraudulent, or deceptive statement in any document connected with the practice of emergency medical services, including, but not limited to, documents associated with:

(i) initial licensure;

(ii) renewal licensure;

(iii) licensure certificates, wallet cards; or

(iv) continuing education.

(p) failure to cooperate with an investigation, including but not limited to, failure to furnish the commission or bureau with information requested, or to appear for an interview as requested;

(q) inappropriate conduct or negligence by a licensed EMT who is also a registered instructor-coordinator;

(r) failure to comply with a judgment and order for child support or a warrant relating to paternity or child support proceedings issued by a district or tribal court, as provided in the Parental Responsibility Act, Section 40-5A-1 *et seq*., NMSA 1978;

(s) failure to notify the bureau in writing of the entry against the licensee or applicant, at any time in any state or jurisdiction, of either a felony conviction, or a misdemeanor conviction involving the use, dispensation, administration or distribution of a drug, the use of alcohol, sexual contact, or the possession or use of a weapon, within 10 calendar days of the conviction;

(t) intimidating, threatening, or taking any adverse action against a person for providing information to the bureau or commission, either directly or through an agent;

(u) impersonating an agent or employee of the bureau; and

(v) issuing non-sufficient funds check for the payment of licensing related fees.

(4) the provisions of the New Mexico Criminal Offender Employment Act, Section 28-2-1 *et seq*., NMSA 1978, shall apply to disciplinary actions proposed pursuant to this rule;

(5) procedures for enforcement of the Parental Responsibility Act:

(a) the New Mexico human services department (HSD) shall issue to the bureau a certified list of obligors

(meaning persons who have been ordered to pay child support pursuant to a judgment and order for support issued by a district or tribal court) not in compliance with their judgment and order of support;

(b) upon determination by the bureau that the name and social security number of an applicant for licensure, a licensed person, or licensee, appears on the certified list, the bureau shall require that applicants for licensure:

(i) provide a statement of compliance from HSD to the bureau no later than 48 hours prior to scheduled attendance at a state EMS examination site; or

(ii) provide a statement of compliance from HSD to the bureau no later than the close of business, 60 days from the date of the letter of notification; or

(iii) if the applicant fails to provide a statement of compliance, the bureau shall be authorized by the commission to issue a notice of contemplated action to deny the application;

(iv) that persons currently licensed shall provide the bureau with a statement of compliance from HSD by the earlier of the application for licensure renewal or a specified date not to exceed 60 days;

(v) if the licensed person fails to provide the statement of compliance, the bureau shall be authorized by the commission to issue a notice of contemplated action to take appropriate action.

(c) upon authorization by the commission to issue a notice of contemplated action concerning violation of the Parental Enforcement Act, the bureau shall serve upon an applicant for licensure or licensee a notice of contemplated action in accordance with the Uniform Licensing Act stating that the bureau has grounds to take such action, and that the bureau shall take such action unless the applicant or licensed person mails a letter (certified mail, return receipt requested) within 20 days after service of the notice requesting a hearing, or provides the bureau, within 30 days of receipt of the notice of contemplated action, a statement of compliance from HSD; if the applicant or licensed person disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensed person shall contact the HSD child support enforcement division;

(d) in any hearing under this subparagraph, the following standards shall apply:

(i) a statement of non-compliance is conclusive evidence that requires the bureau to take appropriate action, unless the applicant or licensee provides the bureau with a subsequent statement of compliance, which shall preclude the bureau from taking any further action under this section;

(ii) when an action is taken against an applicant or licensee solely because the applicant or licensed person is not in compliance with a judgment and order for support, the order shall state that the application, license shall be reinstated upon presentation to the bureau of a subsequent statement of compliance.

(e) the secretary may also include in the order any other conditions necessary to comply with requirements for reapplication and re-issuance of licensure, including, but not limited to, requiring a surcharge fee of $50, in addition to any other applicable fees.

(6) right to a hearing: in accordance with the provisions of the Uniform Licensing Act, Sections 61- 1-1, *et seq*., NMSA 1978, every applicant or person licensed, shall be afforded notice and opportunity for a hearing, before the department shall have authority to take action, the effect of which would be to deny permission to take an examination for licensure for which application has been duly made, or to deny, suspend, or revoke a certification or license, or take other disciplinary action; exception:

(a) right to expedited hearing for an immediate suspension of a person's license: the person whose license is immediately suspended may request a hearing before a hearing officer appointed by the secretary to contest the action, by mailing a certified return receipt letter addressed to the bureau within 20 days after service of the notice;

(b) expedited hearing for a person whose license has been immediately suspended upon receipt of a timely request for a hearing, the department shall appoint a hearing officer and schedule a hearing, in accordance with the hearings portion of this rule.

(7) records management: a licensing record is maintained for every licensed EMT in New Mexico; any request for records maintained by the bureau will be processed in accordance with the Inspection of Public Records Act; if the bureau begins a preliminary or formal investigation, a separate confidential record will be created containing all investigatory material;

(a) confidentiality: the commission and the bureau will take every precaution to insure that preliminary and formal investigations are conducted in a confidential manner; if the commission authorizes the bureau to initiate an action, all records not exempt from disclosure under the Inspection of Public Records Act, Sections 14-2-1, *et seq*., NMSA 1978, will be placed in the licensee's licensing record, if one exists;

(b) records confidentiality: any files or records in the possession of the bureau, a regional office or a provider containing identifying information about individuals requesting or receiving treatment or other health services and any unsubstantiated complaints received by the bureau regarding any provider shall be confidential and not subject to public inspection; such files, records and complaints may be subject to subpoena for use in any

pending cause, in any administrative proceeding, or in any of the courts of this state, unless otherwise provided by state or federal law.

H. Enforcement of education standards:

(1) Process for non-compliance: The bureau will make every attempt to resolve non-compliance of education standards at the lowest level possible. The following process shall be utilized:

(a)
the bureau will notify the approved New Mexico education program, in writing, of any suspected or reported non-compliance of education standards received by complaint, report or course trends;

(b)
the approved New Mexico education program will provide a plan to correct items of noncompliance and will submit the plan to the bureau in writing within 30 days;

(c)
the bureau will re-evaluate the plan and progress reports for compliance of the education standards in three month increments until the problem is resolved; and

(d)
if the bureau determines that non-compliance has not been adequately resolved, the bureau may initiate an enforcement action against the education program or the licensed EMT who is an instructor-coordinator.

(2)
Complaint/incident procedures: Any person may communicate a complaint or knowledge of an incident to the bureau. Complaints shall be submitted in signed written form to the bureau. The bureau may begin an investigation if there is sufficient cause.

(a)
When a complaint is received by the bureau, written acknowledgment shall be made within 10 working days and the bureau staff shall decide whether or not a preliminary or formal investigation of the complaint shall be initiated.

(b)
Approved New Mexico EMS education programs being formally investigated shall receive written notification within 10 working days after a decision is made to begin a formal investigation.

(c)
At the conclusion of the bureau's formal investigation, the bureau may report its findings to the investigated education program in written form. If the bureau investigation warrants an enforcement action, the education program will be given a notice of contemplated action.

(d)
If no investigation is warranted, the education program or person filing a complaint will be notified, as determined by the bureau.

(3)
Investigations: The bureau shall normally conduct preliminary and formal investigations.

(a)
Preliminary investigations: When the bureau receives information that forms the basis for an enforcement action, it shall begin a preliminary investigation. This is a fact finding, information gathering investigation that will attempt to determine for the bureau whether justification exists to initiate an action or to conduct a formal investigation.

(b)
Formal investigations: Formal investigations are for the purpose of obtaining additional information to allow the bureau to determine if it will initiate an action. Notice will be given of the formal investigation, unless extenuating circumstances exist which would reasonably preclude notification.

(c)
Confidentiality: The bureau will take every precaution to insure that preliminary and formal investigations are conducted in a confidential manner.

(d)
Records: An official record is maintained for every approved New Mexico EMS education program. If the bureau begins a preliminary or formal investigation, a separate confidential record will be created containing all investigation material. If the bureau initiates an action, all records not exempt from disclosure under the Inspection of Public Records Act, Sections 14-2-1, *et seq*., NMSA 1978, will be placed in the education program's official record. Any request for records maintained by the bureau will be processed in accordance with the Inspection of Public Records Act.

(4)
Grounds for enforcement actions: Enforcement actions may result in an action taken against an approved New Mexico EMS education program or an instructor-coordinator affiliated with the education program. These enforcement actions may result in the following actions:

(a)
probation or suspension of the education program for a specified period of time;

(b)
non-recognition of a education program course;

(c)
withdrawal of approval status of a education program by the bureau;

(d)
under 7.27.2.14 NMAC, a licensing action may be initiated against an instructor-coordinator when the bureau determines that there may be inappropriate conduct or negligence; grounds for enforcement actions include, but are not limited to the following:

(i)
failure to comply with law or rules including but not limited to the failure to properly educate students on the licensure process; failure to comply with the education standards or non-compliance with a education standard found in these rules;

(ii)
falsifying documents to include use of any false, fraudulent, or deceptive statement in any document;

(iii)
failure to cooperate with an investigation to include failure to furnish the bureau with requested information, as provided by law;

(iv)
failure of students or instructors to function within the approved New

Mexico scopes of practice, New Mexico treatment guidelines and the drug formulary, as approved by the medical direction committee;

(v) failure to report required documentation including patient care data and annual education reports.

(5) Right to appeal: Any approved New Mexico EMS education program may appeal a decision by the bureau to take an enforcement action.

(6) Notice of contemplated action: When the bureau contemplates taking any action specified in this section, it shall serve upon the approved New Mexico EMS education program a written notice containing a statement of the grounds or subject upon which the proposed action is based and the rule(s) violated.

(7) Right to hearing: The approved New Mexico EMS education program may request a hearing before a hearing officer appointed by the secretary to contest the proposed enforcement action, by mailing a certified return receipt letter addressed to the bureau within 20 days after service of the notice.

(8) Hearing: Upon receipt of a timely request for a hearing, the department of health shall appoint a hearing officer and schedule a hearing, to be held in Santa Fe, New Mexico, within 45 working days of receipt of the timely request for a hearing.

(9) Notice of hearing: The department shall notify the approved New Mexico EMS education program of the date, time, and place of the hearing, the identity of the hearing officer, and the subject matter of the hearing, not less than 30 days prior to the date of the hearing.

(10) Hearing officer duties: The hearing officer shall preside over the hearing, administer oaths, take evidence, decide evidentiary objections, and rule on any motions or other matters that arise prior to the hearing.

(11) Discovery: Upon written request to another party, any party is entitled to: obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and inspect and copy any documents or items, which the other party will or may introduce in evidence at the hearing.

(12) Conduct of hearing: Hearings are open to the public unless either party makes a request for closed meeting.

(13) Hearing officer written report and recommendation(s): The hearing officer shall make a written report and recommendation(s) to the secretary containing a statement of the issues raised at the hearing proposed findings of fact and conclusions of law, and a recommended determination. The hearing officer or designee shall record the hearing by means of a mechanical sound recording device provided by the department for a record of the hearing. The hearing officer written report shall be submitted to the secretary no later than 30 working days after the close of the hearing.

(14) Secretary's determination: The secretary shall render a final determination within 45 calendar days of the submission of the hearing officer's written report. A copy of the final decision shall be mailed to the appealing party by certified mail, return receipt requested. A copy shall be provided to legal counsel for the bureau.

[7.27.2.14 NMAC - Rp, 7.27.2.14 NMAC, 12/12/2017; A, 8/10/2021]

7.27.2.16 CRIMINAL HISTORY SCREENING:

A. Authority; use of criminal history information: The emergency medical services (EMS) bureau is authorized to obtain the criminal history records of applicants and licensees, and to exchange fingerprint data directly with the federal bureau of investigation, department of public safety (DPS) and any other law enforcement agency or organization. The EMS bureau shall require fingerprinting of applicants and licensees for the purposes of this section. Information regarding felonies [~~and misdemeanors involving moral turpitude~~] may form the basis of a denial, suspension or revocation of licensure, and other disciplinary action when the conviction relates directly to the profession or the practice of emergency medical services.

B. Procedure for applicants and licensees:

(1) If an applicant or licensee otherwise meets the application and eligibility requirements, then the bureau shall require the applicant or licensee to submit a request to the federal bureau of investigation, DPS or a DPS designated vendor for a current criminal history screening through the national crime information center ("NCIC"). The applicant or licensee shall undergo the criminal history screening when first applying for either initial or renewal licensure after the effective date of this rule, and every four years thereafter.

(2) The department shall provide applicants and licensees with the department's originating agency identification (ORI) number for the purposes of criminal history screening.

(3) An applicant or licensee shall provide to DPS or a DPS designated vendor a criminal background screening request, fingerprints, and supporting documentation including an authorization for release of information to the department in accordance with the procedures of DPS or the DPS designated vendor.

(4) DPS or the DPS designated vendor will review state records and also transmit the fingerprints to the federal bureau of investigation for a national screening. The results of the screening will be made available to the department for review.

(5) Applicants and licensees shall bear any costs associated with ordering or conducting criminal history screening. Fees are determined by and payable to DPS or a DPS designated vendor. Fees cannot be waived by the department.

(6) The EMS bureau may, within its discretion, waive the criminal history screening requirements of this section for an applicant or licensee who has submitted to, and provided proof of, an equivalent criminal history screening through DPS or through the DPS designated vendor within the previous nine months and was found to have no criminal convictions.

(7) The EMS bureau shall comply with applicable confidentiality requirements of the DPS and the federal bureau of investigation regarding the handling and dissemination of criminal history information.

C. EMS bureau review of criminal history screening information:

(1) The EMS bureau shall conduct a review of applicants and licensees with an associated history of felonies [~~or misdemeanors involving moral turpitude~~]. The bureau may require the submission of additional information in writing from the applicant or licensee in order to determine whether to pursue disciplinary action. Such information may include (but not be limited to) evidence of acquittal or dismissal, information concerning conviction of a lesser included crime, or evidence of rehabilitation.

(2) The Criminal Offender Employment Act, Section 28-2-1 *et seq*., NMSA 1978 shall govern any consideration of criminal records required or permitted by this section. In accordance with Section 28-2-4 NMSA 1978 of that act, the following provisions shall apply:

[~~**(a) For convictions directly relating to the EMS profession or practice:**~~] If an applicant or licensee has been convicted of a felony [~~or misdemeanor involving moral turpitude~~], and if that conviction relates directly to the profession or the practice of emergency medical services, the department may deny, suspend, or revoke licensure, or take other disciplinary action, on the basis of the conviction(s). The burden of proof shall rest with the applicant or licensee to prove that he or she has been sufficiently rehabilitated.

[~~**(b) For convictions not directly relating to the EMS profession or practice:** If an applicant or licensee has been convicted of a felony or misdemeanor involving moral turpitude, and if that conviction does not relate directly to the profession or the practice of emergency medical services, the department may deny, suspend, or revoke licensure, or take other disciplinary action, if the person so convicted has not been sufficiently rehabilitated to warrant the public trust. For purposes of this provision: the burden of proof shall rest with the department to demonstrate non-rehabilitation; and there shall be a rebuttable presumption of sufficient rehabilitation if the applicant or licensee has completed probation or parole supervision, or a period of at least three years has lapsed after final discharge or release from any term of imprisonment without subsequent conviction.~~]

(3) Factors that may be considered by the EMS bureau in determining whether to pursue disciplinary action against a licensee or applicant on the basis of the individual's criminal history may include, but shall not be limited to:

(a) the total number of convictions;

(b) the time elapsed since the most recent conviction;

(c) the circumstances and severity of the crime(s), including whether drugs or violence were involved;

(d) activities evidencing rehabilitation, including but not limited to completion of probation and completion of drug or alcohol rehabilitation programs;

(e) any false or misleading statements made by the applicant or licensee in an application or other materials; and

(f) evidence concerning whether an applicant or licensee poses a risk of harm to the health and safety of patients or the public.

(4) An applicant or licensee whose license is denied, suspended, or revoked, or who is otherwise made the subject of a contemplated disciplinary action based on information obtained in a criminal history background screening, shall be entitled to review the information obtained pursuant to this section and to appeal the decision pursuant to the Uniform Licensing Act, Section 61-1-1 *et seq*., NMSA 1978, in accordance with department rules.

[7.27.2.16 NMAC - Rp, 7.27.2.16 NMAC, 12/12/2017; A, 8/10/2021]

HEALTH, DEPARTMENT OF

This is an amendment to 7.27.11 NMAC, Sections 2, 8, 9 and 10 effective 8/10/2021.

7.27.11.2 SCOPE: These rules apply to New Mexico emergency medical services (EMS), including mobile integrated health, community EMS, critical care EMS, special event, healthcare facilities, and other entities that employee and utilize New Mexico licensed EMS personnel. These rules also apply to the service directors and medical directors of those services; approved New Mexico emergency medical service (EMS) training programs and graduates of approved New Mexico EMS training programs; New Mexico licensed EMS personnel including those previously licensed; persons trained, certified or licensed in another state or territory, or certified by the national registry of emergency medical technicians, seeking to acquire licensure in New Mexico; EMS licensing commission; and any other entity associated with the licensing of emergency medical services personnel in New Mexico. In the event of a public health emergency that stresses the emergency medical service system and disrupts delivery of

medical services, the New Mexico department of health, working with the emergency medical systems bureau, may limit or expand these rules, and may institute certain crisis standards of care, through emergency rulemaking.

[7.27.11.2 NMAC - Rp, 7.27.11.2 NMAC, 12/12/2017; A, 8/10/2021]

7.27.11.8 SCOPES OF PRACTICE FOR LICENSED EMERGENCY MEDICAL SERVICES PERSONNEL:

A. Medical director means a physician functioning as the service EMS medical director as defined and described in 7.27.3 NMAC, medical direction for emergency medical services. Medical control means supervision provided by or under the direction of a physician.

B. Prior to approving a new skill, technique, medication, or procedure, it shall be documented by the service director, medical director, or approved EMS training institution that the EMS provider has been appropriately trained to perform those new skills, techniques, medications, or procedures.

C. Service medical director approved: All service medical director approved skills, techniques, medications, or procedures are considered advanced life support. Prior to utilizing any skill, technique, medication or procedure designated as service medical director approved, it shall be documented by the service director, medical director, or approved EMS training institution that the EMS provider has been appropriately trained to administer the medications or perform the skills, techniques, medications or procedures. Additionally, each EMS provider must have a signed authorization from the service's medical director on file at the EMS service's headquarters or administrative offices.

D. Any device in an EMS agency's treatment guideline/ protocol designed and utilized to facilitate successful completion of a skill or other treatment modality, including but not limited to cardiopulmonary resuscitation (CPR) devices, intraosseous placement devices, and positive pressure ventilation devices, must be approved by the service medical director.

E. Wilderness protocols: The following skills shall only be used by providers who have a current wilderness certification from a bureau approved wilderness caregiver course, who are functioning in a wilderness environment as a wilderness provider (an environment in which time to a hospital is expected to exceed two hours, except in the case of an anaphylactic reaction, in which no minimum transport time is required), and are authorized by their medical director to provide the treatment:

(1) minor wound cleaning and management;

(2) cessation of CPR;

(3) field clearance of the cervical-spine;

(4) reduction of dislocations resulting from indirect force of the patella, digit, and anterior shoulder.

F. Community emergency medical services and mobile integrated health programs: Community EMS (CEMS) and mobile integrated health (MIH) programs shall be provided by EMS caregivers who, after completing a bureau approved [~~community EMS~~] CEMS/ MIH caregiver course, are functioning as part of a [~~community emergency medical services~~] program that has been reviewed and approved by the EMS bureau. The providers must be authorized by their medical director to perform the skills listed in their application as part of the [~~community EMS~~] program. These programs may include referrals that involve transport to non-hospital locations, and for non-transport decisions. Skills and interventions may include any of the approved skills and interventions for the appropriate level; any skill that exceeds the scope of practice must be approved through the special skill process. Skills may include, but are not limited to:

(1) education of patients in self-medication administration, and assessment of compliance with physician recommendations for health conditions;

(2) assessments for preventing falls and other sources of injury by identifying risks in patient homes;

(3) provide education on disease prevention;

(4) administering immunizations;

(5) in collaboration with a healthcare team, assist in developing a care plan, and educate the patient in following the care plan;

(6) perform in home patient assessments commensurate with level of education and licensure and facilitate telemedicine clinician contact if available in order to provide information to a care team as to the progress or condition of a patient receiving therapies for medical conditions;

(7) provide assistance in locating and contacting appropriate providers of needed social services;

(8) treat discovered acute healthcare issues, transporting to emergency department if necessary;

(9) for chronic and non-acute issues, confirmed with online medical direction and agreed to by the patient, options other than EMS transport may be considered, including:

(a) arrange for non-emergent and non-EMS transportation to and care at an appropriate facility, such as a physician's office or urgent care center;

(b) provide referral information and arrange for follow up by appropriate care team members or social service personnel.

(10) assist with ongoing prescribed wound care.

G. Critical Care Transport services skills: Paramedic

critical care transport skills shall be used only by paramedic providers who have successfully completed a bureau approved critical care transport paramedic or critical care flight paramedic course. Subsequent to completing the approved course, the critical care paramedic must successfully complete a bureau administered or approved third party exam within one year. Additionally, the paramedics shall be functioning as part of a ground or air EMS agency with an approved critical care transport special skill and authorized by the agency medical director to utilize these skills. Critical care transport program skills are only authorized for use during inter-facility critical care transport activities, with the exception of air ambulance agencies providing emergency scene response; or ground critical care agencies requested to a scene by the local authorized and certified 911 response and transport agencies. Critical care transport special skills and medications that may be administered include, but are not limited to any of the below skills and medications; service specific skills and medication requests must be listed on the EMS agency critical care transport special skill application completed per 7.27.11.10 NMAC:

(1) monitoring of infusions including but not limited to anti-arrhythmics, nitrates, vasopressors, blood products, thrombolytics, sedation, pain management and antihypertensive medications that have required titration within the past two hours and may need to have their dosages adjusted during transport;

(2) performance of skills not listed in the paramedic scope of practice, such as but not limited to escharotomy, fasciotomy, insertion of chest tubes, pericardiocentesis, blood administration, and nerve blocks; administration of medications, initiation of infusions, and utilization of routes, not listed on the paramedic scope but requested in the EMS agency's special skill application and approved by the medical direction committee and EMS bureau;

(3) utilization of advanced patient monitoring, such as invasive hemodynamic monitoring via monitoring of central venous pressure, pulmonary artery pressure, intracranial pressure monitoring, Swan-Ganz catheters, arterial lines, fetal monitoring, point of care lab values, and other monitoring or tests not listed in the paramedic scope, but requested in the EMS agency's special skill application and approved by the medical direction committee and EMS Bureau;

(4) utilization of intensive care unit (ICU) level ventilator support, to include ventilators delivering positive end expiratory pressure, with multiple adjustable mode and setting parameters that include inspiratory plateau pressures, pressure regulated volume control, pressure support ventilation, pressure control ventilation, airway pressure release ventilation and others; also, any ventilator delivering a mixture of nitric oxide or other beneficial gas mixtures;

(5) transport of patients with intra-aortic balloon pump, temporary internal cardiac pacing, left ventricular assist device or a bi-ventricular assist device and other appropriate devices to address hemodynamic instability as requested in the EMS agency's special skill application and approved by the medical direction committee and EMS bureau;

(6) administer paralytics and sedatives to maintain airway control previously initiated, and administer and perform rapid sequence airway pharmacology and techniques in order to secure an airway in response to patient condition, as requested in the EMS agency's special skill application and approved by the medical direction committee and EMS bureau;

(7) pediatric intubation or endotracheal tube management as requested in the EMS agency's special skill application and approved by the medical direction committee and EMS bureau.

H. Utilization of pharmacological agents for the primary purpose of sedation, induction, or muscle relaxation to facilitate placement of an advanced airway requires medical direction committee special skills approval.

I. Over the counter (OTC) medications and products: A physician medical director may approve a list of over the counter (OTC) medications and products (i.e. NSAID's, antihistamines, anti-diarrheal**,** laxatives, antacids, vitamin supplements, hygiene products and other products) for distribution by an EMS caregiver working under medical direction to a requesting individual during scheduled stand-by situations. Examples are long-term wildfire responses, public events (concerts, rodeos, etc), various industry situations such as movie production and ski patrol, long-term construction & manufacturing projects, long-term search and rescue or tactical operations, and other situations where scheduled stand-by EMS is provided.

(1) The OTC medication/product must be properly labeled in individual dose packaging when distributed to the patient. Distribution from a bulk or multi-dose container is not permitted by this scope of practice, as well as other state and federal laws and regulations; medications will be distributed per manufacturer recommendations and labeling directions.

(2) The agency/EMS caregiver will maintain a written guideline that contains the list of physician approved OTC medications/products and the conditions for which they may be distributed. Specific dosing information and indications for pediatric patients must be included.

(3) The EMS agency/EMS caregiver must develop a method of documentation for the appropriate distribution of the OTC medications/products. This documentation shall include the OTC medication documentation and appropriate patient care report, per 7.27.10.12 NMAC (records and data

collection) and 7.27.11.11 NMAC. Public regulation commission (PRC) certified ambulance agencies shall complete patient care documentation per 18.3.14.24 NMAC.

(4) OTC medications/products are distributed for the patient's self-administration and use. EMS caregivers will not administer OTC medications/ products, unless approved elsewhere in the scope of practice for specific EMS patient care situations.

J. Licensed emergency medical dispatcher (EMD):

(1) Medical direction is required for all items in the EMD scope of practice.

(2) The following allowable skills may be performed by EMDs who are licensed by the EMS bureau and functioning with an EMS bureau certified New Mexico emergency medical dispatch agency utilizing protocols and any EMD priority reference system approved by the EMS bureau and service medical director.

(a) Process calls for medical assistance in a standardized manner, eliciting required information for evaluating, advising, and treating sick or injured individuals, and dispatching an appropriate EMS response.

(b) Provide pre-arrival instructions to the patient through the caller when possible and appropriate to do so while functioning in compliance with an emergency medical dispatch priority reference system (EMDPRS).

K. EMS first responders (EMSFR):

(1) The following allowed drugs may be administered and skills and procedures may be performed without medical direction:

(a) basic airway management;

(b) use of basic adjunctive airway equipment;

(c) suctioning;

(d) cardiopulmonary resuscitation, according to current ECC guidelines;

(e) obstructed airway management;

(f) bleeding control via direct pressure and appropriate tourniquet use;

(g) [~~spine immobilization~~] spinal motion restriction;

(h) splinting (does not include femoral traction splinting);

(i) scene assessment, triage, scene safety;

(j) use of statewide EMS communications system;

(k) emergency childbirth;

(l) glucometry;

(m) oxygen;

(n) other non-invasive procedures as taught in first responder courses adhering to United States Department of Transportation curricula.

(2) The following require service medical director approval:

(a) allowable skills:

(i) mechanical positive pressure ventilation utilizing a device that may have controls for rate, tidal volume, FiO2, and pressure relief/alarm and does not have multiple automatic ventilation modes; this skill includes devices that provide non-invasive positive pressure ventilation via continuous positive airway pressure (CPAP);

(ii) application and use of semi-automatic defibrillators, including cardiac rhythm acquisition for ALS caregiver interpretation or transmission to a care facility; this includes multi-lead documentation;

(iii) hemostatic dressings for control of bleeding;

(iv) insertion of laryngeal and supraglottic airway devices (examples: king airway, LMA), excluding multi-lumen airways).

(b) administration of approved medications via the following routes:

(i) nebulized inhalation;

(ii) nasal mucosal atomization (MA);

(iii) intramuscular or subcutaneous;

(iv) oral (PO).

(c) allowable drugs:

(i) oral glucose preparations;

(ii) aspirin PO for adults with suspected cardiac chest pain;

(iii) atropine and pralidoxime via IM auto-injection for treatment of chemical or nerve agent exposure;

(iv) albuterol (including isomers) via inhaled administration;

(v) naloxone via nasal mucosal atomizer;

(vi) epinephrine [~~via auto-injection device~~], 1:1000, no single dose greater than 0.3 ml, subcutaneous or intramuscular injection with a pre-measured syringe (including autoinjector) or 0.3 ml TB syringe for anaphylaxis or status asthmaticus refractory to other treatments.

(d) patient's own medication that may be administered:

(i) bronchodilators using pre-measured or metered dose inhalation device;

(ii) naloxone, if provided with a nasal MA or IM delivery system.

L. EMT-BASIC (EMT-B):

(1) The following allowed drugs may be administered and skills and procedures may be performed without medical direction:

(a) basic airway management;

(b)
use of basic adjunctive airway equipment;

(c)
suctioning;

(d)
cardiopulmonary resuscitation, according to current ECC guidelines;

(e)
obstructed airway management;

(f)
bleeding control to include appropriate tourniquet usage;

(g)
[~~spine immobilization~~] spinal motion restriction;

(h)
splinting;

(i)
scene assessment, triage, scene safety;

(j)
use of statewide EMS communications system;

(k)
childbirth (imminent delivery);

(l)
glucometry;

(m)
oxygen;

(n)
other non-invasive procedures as taught in EMT-B courses adhering to DOT curricula;

(o)
wound management.

(2) The following require service medical director approval:

(a)
allowable skills:

(i)
mechanical positive pressure ventilation utilizing a device that may have controls for rate, tidal volume, fraction of inspired oxygen (FiO_2) and pressure relief/alarm and does not have multiple automatic ventilation modes; this skill includes devices that provide non-invasive positive pressure ventilation via continuous positive airway pressure (CPAP);

(ii)
use of multi-lumen, supraglottic, and laryngeal airway devices (examples: PTLA, combi-tube, king airway, LMA) to include gastric suctioning;

(iii)
application and use of semi-automatic defibrillators, including cardiac rhythm acquisition for ALS caregiver interpretation or transmission to a care facility; this includes multi-lead documentation;

(iv)
acupressure;

(v)
transport of patients with [~~naso~~]gastric tubes, urinary catheters, heparin/saline locks, PEG tubes, or vascular access devices intended for outpatient use;

(vi)
performing point of care testing; examples include serum lactate values, cardiac enzymes, electrolytes, and other diagnostic values;

(vii)
hemostatic dressings for control of bleeding.

(b)
administration of approved medications via the following routes:

(i)
nebulized inhalation;

(ii)
subcutaneous;

(iii)
intramuscular;

(iv)
nasal mucosal atomization (MA);

(v)
oral (PO);

(vi)
intradermal.

(c)
allowable drugs:

(i)
oral glucose preparations;

(ii)
aspirin PO for adults with suspected cardiac chest pain;

(iii)
activated charcoal PO;

(iv)
acetaminophen PO [~~in pediatric patients with fever~~];

(v)
atropine and pralidoxime via IM autoinjection for treatment of chemical or nerve agent exposure.

(vi)
albuterol (including isomers), via inhaled administration;

(vii)
ibuprofen PO in pediatric or adults to treat fever or pain;

(viii)
ipratropium, via inhaled administration, in combination with or after albuterol administration;

(ix)
naloxone by SQ, IM, or IN route;

(x)
epinephrine, 1:1000, no single dose greater than 0.3 ml, subcutaneous or intramuscular injection with a pre-measured syringe (including autoinjector) or 0.3 ml TB syringe for anaphylaxis or status asthmaticus refractory to other treatments.

(d)
patient's own medication that may be administered:

(i)
bronchodilators using pre-measured or metered dose inhalation device;

(ii)
sublingual nitroglycerin for unrelieved chest pain, with on line medical control only;

(iii)
situations may arise involving patients with uncommon conditions requiring specific out of hospital administered medications or procedures; family members or the designated caregiver trained and knowledgeable of the special needs of the patient should be recognized as the expert regarding the care of the patient; EMS can offer assistance in airway management appropriate to their level of licensure, and administer the patient's prescribed medications where appropriate only if the medication is in the EMS provider's scope of practice; EMS services are not expected to provide the prescribed medications for these special needs patients.

(3) Immunizations and biologicals: Administration of immunizations, vaccines, biologicals, and TB skin testing is authorized under the following circumstances:

(a)
to the general public as part of a department of health initiative or emergency response, utilizing department of health protocols; the administration of immunizations is to be under the supervision of a physician, nurse, or other authorized health provider;

(b) TB skin tests may be applied and interpreted if the licensed provider has successfully completed required department of health training;

(c) in the event of a disaster or emergency, the state EMS medical director or chief medical officer of the department of health may temporarily authorize the administration of pharmaceuticals or tests not listed above.

M. EMT-INTERMEDIATE (EMT-I):

(1) The following allowed drugs may be administered and skills and procedures may be performed without medical direction:

(a) basic airway management;

(b) use of basic adjunctive airway equipment;

(c) suctioning;

(d) cardiopulmonary resuscitation, according to ECC guidelines;

(e) obstructed airway management;

(f) bleeding control including appropriate use of tourniquet;

(g) [~~spine immobilization~~] spinal motion restriction;

(h) splinting;

(i) scene assessment, triage, scene safety;

(j) use of statewide EMS communications system;

(k) childbirth (imminent delivery);

(l) glucometry;

(m) oxygen;

(n) wound management.

(2) The following require service medical director approval:

(a) allowable skills:

(i) mechanical positive pressure ventilation utilizing a device that may have controls for rate, tidal volume, FiO2, and pressure relief/ alarm and does not have multiple automatic ventilation modes; this skill includes devices that provide non-invasive positive pressure ventilation via continuous positive airway pressure (CPAP);

(ii) use of multi-lumen, supraglottic, and laryngeal airway devices (examples: PTLA, combi-tube, king airway, LMA) to include gastric suctioning;

(iii) application and use of semi-automatic defibrillators, including cardiac rhythm acquisition for ALS caregiver interpretation or transmission to a care facility; this includes multi-lead documentation;

(iv) acupressure;

(v) transport of patients with [~~naso~~]gastric tubes, urinary catheters, heparin/saline locks, PEG tubes, or vascular access devices intended for outpatient use;

(vi) peripheral venous puncture/access;

(vii) blood drawing;

(viii) pediatric intraosseous tibial access;

(ix) adult intraosseous access;

(x) point of care testing; examples include serum lactate values, cardiac enzymes, electrolytes, and other diagnostic values;

(xi) hemostatic dressings for control of bleeding.

(b) administration of approved medications via the following routes:

(i) intravenous;

(ii) nasal mucosal atomization (MA);

(iii) nebulized inhalation;

(iv) sublingual;

(v) intradermal;

(vi) intraosseous;

(vii) endotracheal (for administration of epinephrine only, under the direct supervision of an EMT-paramedic, or if the EMS service has an approved special skill for endotracheal intubation);

(viii) oral (PO);

(ix) intramuscular;

(x) subcutaneous.

(c) allowable drugs:

(i) oral glucose preparations;

(ii) aspirin PO for adults with suspected cardiac chest pain;

(iii) activated charcoal PO;

(iv) acetaminophen [~~PO in pediatric patients with fever~~];

(v) ibuprofen PO to pediatrics and adults for pain or fever; IV or IM [~~with online medical direction only~~] ketorolac for pain;

(vi) IM autoinjection of the following agents for treatment of chemical or nerve agent exposure: atropine, pralidoxime;

(vii) albuterol (including isomers) via inhaled administration;

(viii) ipratropium, via inhaled administration in combination with or after albuterol administration;

(ix) naloxone;

(x) I.V. fluid therapy (except blood or blood products);

(xi) dextrose;

(xii) epinephrine (1:1000), SQ or IM (including autoinjector) for anaphylaxis and known asthmatics in severe respiratory distress (no single

dose greater than 0.3 cc);

(xiii) epinephrine (1:10,000) in pulseless cardiac arrest for both adult and pediatric patients; epinephrine may be administered via the endotracheal tube in accordance with most current ACLS and PALS guidelines;

(xiv) nitroglycerin (sublingual); must have intravenous access established prior to administration or approval of online medical control if IV access is unavailable;

(xv) morphine, fentanyl, or dilaudid for use in pain control with approval of on-line or off-line (written protocol) medical control;

(xvi) diphenhydramine for allergic reactions or dystonic reactions;

(xvii) glucagon, to treat hypoglycemia in diabetic patients when intravenous access is not obtainable;

(xviii) anti-emetic agents, for use as an anti-emetic only;

(xix) corticosteroids for respiratory illness or allergic reaction;

(xx) hydroxycobalamine;

(xxi) lidocaine two percent, preservative and epinephrine free for IV use) for administration into the intraosseous space on pain responsive adult patients while receiving intraosseous fluids or medications.

(d) patient's own medication that may be administered:

(i) bronchodilators using pre-measured or metered dose inhalation device;

(ii) sublingual nitroglycerin for unrelieved chest pain; must have intravenous access established prior to administration or approval of online medical control if IV access is unavailable;

(iii) glucagon;

(iv) situations may arise involving patients with uncommon conditions requiring specific out of hospital administered medications or procedures; family members or the designated caregiver trained and knowledgeable of the special needs of the patient should be recognized as the expert regarding the care of the patient; EMS can offer assistance in airway management appropriate to their level of licensure, IV access, and the administration of the patient's prescribed medications where appropriate only if the medication is in the EMS provider's scope of practice; online (direct contact) medical control communication must be established with the medical control physician approving the intervention; EMS services are not expected to provide the prescribed medications for these special needs patients.

(e) drugs allowed for monitoring during interfacility transport:

(i) potassium; intermediate EMT's may monitor IV solutions that contain potassium during transport (not to exceed 20 mEq/1000cc or more than 10 mEq/hour);

(ii) antibiotics and other anti-infectives utilizing an infusion pump; intermediate EMT's may monitor antibiotic or other anti-infective agents, provided a hospital initiated infusion has been running for a minimum of 30 minutes prior to the intermediate initiating the transfer, and the intermediate EMT is aware of reactions for which to monitor and the appropriate action to take before assuming responsibility for patient care.

(f) immunizations and biologicals: administration of immunizations, vaccines, biologicals, and TB skin testing is authorized under the following circumstances:

(i) to the general public as part of a department of health initiative or emergency response, utilizing department of health protocols; the administration of immunizations is to be under the supervision of a physician, nurse, or other authorized health provider;

(ii) administer vaccines to EMS and public safety personnel;

(iii) TB skin tests may be applied and interpreted if the licensed provider has successfully completed required department of health training;

(iv) in the event of a disaster or emergency, the state EMS medical director or chief medical officer of the department of health may temporarily authorize the administration of pharmaceuticals or tests not listed above.

N. EMT-PARAMEDIC (EMT-P):

(1) The following allowed drugs may be administered and skills and procedures may be performed without medical direction:

(a) basic airway management;

(b) use of basic adjunctive airway equipment;

(c) suctioning;

(d) cardiopulmonary resuscitation, according to current ECC guidelines;

(e) obstructed airway management;

(f) bleeding control including the appropriate use of tourniquet;

(g) [~~spine immobilization~~] spinal motion restriction;

(h) splinting;

(i) scene assessment, triage, scene safety;

(j) use of statewide EMS communications system;

(k) childbirth (imminent delivery);

(l) glucometry;

(m) oxygen;

(n) wound management.

(2) The following require service medical director approval:

(a) allowable skills:

(i) mechanical positive pressure ventilation utilizing a device that may have controls for rate, tidal volume, $_{FiO2,}$ and pressure relief/alarm and has multiple automatic ventilation modes; this skill includes devices that provide non-invasive positive pressure ventilation (including continuous positive airway pressure (CPAP) and bi-level positive airway pressure (BPAP);

(ii) use of multi-lumen, supraglottic, and laryngeal airway devices (examples: PTLA, combi-tube, king airway, LMA) to include gastric suctioning;

(iii) transport of patients with [~~naso~~] gastric tubes, urinary catheters, heparin/saline locks, PEG tubes, or vascular access devices [~~intended for outpatient use~~];

(iv) application and use of semi-automatic defibrillators;

(v) acupressure;

(vi) peripheral venous puncture/access;

(vii) blood drawing;

(viii) I.V. fluid therapy;

(ix) direct laryngoscopy for endotracheal intubation and removal of foreign body in patients 13 and older; for patients 12 and under, for removal of foreign body only;

(x) endotracheal intubation for patients over the age of 12;

(xi) thoracic decompression (needle thoracostomy);

(xii) surgical cricothyroidotomy;

(xiii) insertion of [~~naso~~] gastric tubes;

(xiv) cardioversion and manual defibrillation;

(xv) external cardiac pacing;

(xvi) cardiac monitoring;

(xvii) use of infusion pumps;

(xviii) initiation of blood and blood products with on-line medical control;

(xix) intraosseous access;

(xx) performing point of care testing; examples include serum lactate values, cardiac enzymes, electrolytes, and other diagnostic values;

(xxi) hemostatic dressings for control of bleeding;

(xxii) vagal maneuvers.

(b) administration of approved medications via the following routes:

(i) intravenous;

(ii) nasal mucosal atomization (MA);

(iii) nebulized inhalation;

(iv) sublingual;

(v) intradermal;

(vi) intraosseous;

(vii) endotracheal;

(viii) oral (PO);

(ix) intramuscular;

(x) topical;

(xi) rectal;

(xii) IV drip;

(xiii) subcutaneous.

(c) allowable drugs:

(i) acetaminophen;

(ii) activated charcoal;

(iii) adenosine;

(iv) albuterol (including isomers);

(v) amiodarone;

(vi) aspirin;

(vii) atropine sulfate;

(viii) benzodiazepines;

(ix) blood and blood products;

[~~(ix)~~] **(x)** calcium preparations;

[~~(x)~~] **(xi)** corticosteroids;

[~~(xi)~~] **(xii)** dextrose;

(xiii) diphenhydramine;

(xiv) epinephrine;

(xv) furosemide;

(xvi) glucagon;

(xvii) hydroxycobalamine;

(xviii) ipratropium;

(xix) lidocaine;

(xx) magnesium sulfate;

(xxi) naloxone;

(xxii) narcotic analgesics;

(xxiii) nitroglycerin;

(xxiv) nonsteroidal anti-inflammatory drugs (NSAIDS) to pediatric or adult patients with pain or fever;

(xxv) oral glucose preparations;

(xxvi) oxytocin;

(xxvii) phenylephrine nasal spray;

(xxviii) pralidoxime, IM auto-injection for treatment of chemical and nerve agent exposure;

(xxix) anti-emetic agents, for use as an anti-emetic only;

(xxx) sodium bicarbonate;

(xxxi) thiamine;

(xxxii) topical anesthetic ophthalmic solutions;

(xxxiii) tranexamic acid; for patients >15 years of age;

[~~(xxxiii)~~] **(xxxiv)** vasopressor agents;

[~~(xxxiv)~~] **(xxxv)** intravenous fluids.

(3) Drugs allowed for monitoring during inter-facility transports: (initiated and administered by the sending facility with defined dosing parameters and requiring an infusion pump when given by continuous infusion unless otherwise specified); [~~the infusion may be terminated by the paramedic if appropriate, but if further adjustments are anticipated, appropriate hospital personnel should accompany the patient, or a critical care transport unit should be utilized~~] any titration of one of these medications outside of the predefined dosing parameters requires online physician medical control:

(a) potassium (no infusion pump needed if concentration not greater than 20mEq/1000cc;

(b) anticoagulation type blood modifying agents (such as fibrolytic drugs, heparin, glycoprotein IIb-IIIa inhibitors/antagonists);

[~~**(c)** tranexamic acid (txa);~~]

[~~**(d)**~~] **(c)** procainamide;

[~~**(e)**~~] **(d)** mannitol;

[~~**(f)** blood and blood products (no pump required);~~]

[~~**(g)**~~] **(e)** aminophylline;

[~~**(h)**~~] **(f)** antibiotics and other anti-infective agents;

[~~**(i)**~~] **(g)** sodium nitroprusside;

[~~**(j)**~~] **(h)** insulin;

[~~**(k)**~~] **(i)** terbutaline;

[~~**(l)**~~] **(j)** octreotide;

[~~**(m)**~~] **(k)** nutritional supplements;

[~~**(n)**~~] **(l)** beta blockers;

[~~**(o)**~~] **(m)** calcium channel blockers;

(n) dobutamine

[~~**(p)**~~] **(o)** nesiritide;

[~~**(q)**~~] **(p)** propofol in patients that are intubated prior to transport;

[~~**(r)**~~] **(q)** proton pump inhibitors and H2 antagonists;

[~~**(s)**~~] **(r)** crotalidae polyvalent immune fab (ovine) ("crofab") [~~crofab~~] or anavip (crotalidae immune fab2 (equine)); either may be monitored during inter-facility transport provided the [~~physician~~] facility initiated [~~crofab~~] infusion has been running for a minimum of 30 minutes prior to the paramedic initiating the transfer and assuming responsibility for patient care.

(4) Immunizations and biologicals: administration of immunizations, vaccines, biologicals, and TB skin testing is authorized under the following circumstances:

(a) to the general public as part of a department of health initiative or emergency response, utilizing department of health protocols; the administration of immunizations is to be under the supervision of a physician, nurse, or other authorized health provider;

(b) administer vaccines to EMS and public safety personnel;

(c) TB skin tests may be applied and interpreted if the licensed provider has successfully completed required department of health training;

(d) in the event of a disaster or emergency, the state EMS medical director or chief medical officer of the department of health may temporarily authorize the administration of other pharmaceuticals or tests not listed above.

(5) Skills approved for monitoring in transport:

(a) internal cardiac pacing;

(b) chest tubes.

(6) Medications for administration during patient transfer:

(a) retavase (second dose only);

(b) protamine sulfate;

(c) non-depolarizing neuromuscular blocking agents in patients that are intubated prior to transport;

(d) acetylcysteine.

(7) Patient's own medication that may be administered:

(a) epoprostenol sodium, treprostinil sodium, or other medications utilized for certain types of pulmonary hypertension;

(b) bronchodilators using pre-measured or metered dose inhalation device;

(c) sublingual nitroglycerin for unrelieved chest pain; must have intravenous access established prior to administration;

(d) glucagon;

(e) situations may arise involving patients with uncommon conditions requiring specific out of hospital administered medications or procedures; family members or the designated caregiver trained and knowledgeable of the special needs of the patient should be recognized as the expert regarding the care of the patient; EMS can offer assistance in airway management appropriate to their level of licensure,

IV access, and the administration of the patient's prescribed medications where appropriate only if the medication is in the EMS provider's scope of practice; online (direct contact) medical control communication must be established with the medical control physician approving the intervention; EMS services are not expected to provide the prescribed medications for these special needs patients.
[7.27.11.8 NMAC - Rp, 7.27.11.8 NMAC, 12/12/2017; A, 8/10/2021]

7.27.11.9 APPROVED TRAINING PROGRAMS:
"Approved emergency medical services training program" means a New Mexico emergency medical services training program that is sponsored by a post-secondary educational institution, is accredited by [~~the~~] a bureau approved national accrediting organization for emergency medical services or active in the accreditation process, and is approved by the joint organization on education (JOE) and participates in the joint organization on education. Currently, there are [~~five~~] six approved EMS training programs.

A. Emergency medical services academy. University of New Mexico, (700 Camino De Salud NE., Albuquerque, New Mexico 87106, Tel: 505-272-5757). The EMS academy is designated as the lead training agency for providers in New Mexico as stated in Section 24-10B-12 NMSA 1978. The EMS academy teaches formal EMS education courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic.

B. Dona Ana community college. New Mexico state university, (Box 30001, Las Cruces, NM 88003-000 1 ,Tel: 505-527-7530). Dona Ana community college teaches formal EMS education courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic.

C. Eastern New Mexico university. EMS program, (Box 6000, Roswell, NM 88202-6000, Tel: 505- 624-7000). The eastern New Mexico university teaches formal EMS education courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic.

D. Central New Mexico community college. EMS program, (525 Buena Vista Rd. SE, Albuquerque, NM 87106, Tel: 505-224-4000). Central New Mexico community college teaches formal EMS education courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic.

E. San Juan college EMS program. (4601 College Blvd; Farmington, NM 87402; 505-566-3857). San Juan College conducts formal EMS education courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic.

F. Santa Fe community college. EMS Program, (6401 Richards Ave, Santa Fe, NM 87508, 505-428-1820) SFCC conducts formal EMS education courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic.
[7.27.11.9 NMAC - Rp, 7.27.11.9 NMAC, 12/12/2017; A, 8/10/2021]

7.27.11.10 SPECIAL SKILLS APPLICATION AND REPORTING PROCEDURES:

A. Purpose: Special skills are those skills, procedures, and medications that are requested by an EMS service to enhance emergency treatment capabilities beyond the normal scope of practice, as defined in the Emergency Medical Services Act. Use the enclosed procedures for application, reporting and renewal for special skills. Applications are reviewed and approved or disapproved by the medical direction committee, and once approved, become a legally recognized addition to the service capabilities.

B. General: All levels of EMS personnel, including licensed EMS first responders and all levels of licensed EMTs are eligible for special skills consideration for any procedure, skill or medication.

C. Application procedure: The EMS service medical director, or his designee, shall coordinate with the EMS service director, and shall apply for special skills to the EMS medical direction committee.

D. Application document: The application document for a special skill must be tailored to the level of the request. While the degree of detail in each section may vary to match the nature of the skill requested, all applications should include the following elements, in order:

(1) application cover page: titled to state the requested special skill, date of application, name of service, service director name and medical director name;

(2) contact information page: must include address and contact information for the service, service director and medical director;

(3) letters of support: must include individual letters of support from the service director and medical director; additional letters of support from the local medical community or evidence of notification of the local medical community may be required; the need for letters of notification and support from the local medical community and who provides the letters must be adjusted to match the nature of the special skill requested;

(4) service description: provide a concise description of the EMS service; this includes such items as basic call demographics relevant to the applicant, level of licensure of providers and names and locations of the primary receiving medical facilities;

(5) description of the special skill: provide a description of the procedure, medication or requested skill; include information on risks, benefits, indications and contraindications;

(6) justification and statement of need: provide a statement explaining why

the special skill is needed; this should include a description of the current medical intervention or alternative practice to the special skill and a risk or benefit analysis that supports the special skill requested; the estimated number of potential interventions per year, other relevant statistical data and a statement indicating the level of current scientific information/studies to support the requested special skill; the level of scientific justification can be adjusted to match the level of the special skill requested;

(7) protocol: provide a copy of the treatment protocol; include other operational protocols relevant to the special skill, if applicable;

(8) training: provide a training syllabus; this must include learning objectives and the training hours for initial and continuing education; this section should also include a description of the instructors, how training will be completed, and a description of the method used to initially evaluate the skill; once initial training is completed, a list of trained and approved personnel shall be provided to the medical direction committee; these special skill authorized licensed EMS personnel must appear on the service's personnel list on the *New Mexico EMS tracking and reporting system database*.

(9) QA/QI program: provide a description of the QA/QI process for the special skill, including frequency of evaluation, names and qualifications of the personnel involved in the process; include a copy of the evaluation tool or forms that will be used, if applicable; and

(10) the application and all supporting documentation shall be submitted to the EMS bureau, attn: [~~state~~] EMS [~~training coordinator~~] program manager.

E. Applicants may involve the EMS regional offices when preparing a special skill request and include a letter evidencing regional review. Applicants shall forward a copy of their application to their EMS regional office when completed.

F. Upon receipt, the state EMS medical director and state EMS [~~training coordinator~~] program manager will review the application. The service will be notified if the application is found to be incomplete or to contain significant errors.

G. Applications must be received at the bureau at least [~~45~~] 30 days prior to the next regularly scheduled medical direction committee meeting to be placed on the agenda of that meeting for consideration by the medical direction committee.

H. The medical direction committee shall take action on all special skills applications on the agenda at their regularly scheduled meeting. The medical direction committee may take the following actions on the application: approved with limitations or restrictions, denied or tabled with a request for a formal presentation or additional information by the requesting service medical director or their designee.

I. The medical direction committee may give an approval subject to specific conditions, limitations or restrictions. This may include a written and practical examination.

J. Within 10 working days following the decision of the medical direction committee, the state EMS [~~training coordinator~~] program manager shall provide a written or email response to the applicant regarding the action of the medical direction committee.

K. Special skills may not be utilized until receipt of the special skill approval letter from the bureau any specific conditions or limitations will be evidenced in the approval letter from the bureau.

L. Monitoring: It is expected that EMS services with approved special skills will continuously comply with the requirements of their application and approval letter. This includes, but is not limited to, such items as training curricula, approved instructors, quality assurance, protocols and data collection. Any changes to the approved application shall be sent to the state EMS [~~training coordinator~~] program manager for concurrence/ coordination with the medical direction committee.

M. The medical direction committee may immediately suspend or revoke special skill privileges for an individual or service that loses medical direction, or fails to comply with the stated requirements, or for any other reason to protect the health and welfare of the people of New Mexico.

N. If a new medical director assumes control of a service with an active special skill program, the bureau shall receive a letter of support from the new medical director within 30 days or the special skill approval may be withdrawn.

O. The service shall maintain a current list of all providers trained and approved to utilize the special skill. This list must be provided to the bureau upon request.

P. Reporting: The service shall provide to the [~~state EMS training coordinator~~] EMS program manager periodic written special skill reports. During the first year, the [~~report shall be due semi-annually, occurring on June 1 and December 1.~~] EMS bureau or medical direction committee may request a semi-annual report; [~~Subsequent~~] subsequent reports shall be due [~~annually on June 1~~] one year from date of initial approval, and annually on the approval anniversary date thereafter. The EMS bureau or medical direction committee may request a report at any time. The medical direction committee may excuse an agency from the yearly report based on adequate surveillance being available from the state patient care report database.

Q. Report document: The written special skill report shall include the following minimum elements:

(1) report cover page: titled to state the special skill reported, date, name of service, service director and medical director;

(2) contact information page: shall include address and contact information for the service, service director and medical director;

(3) letters of support: must include individual letters of continued support from the service director and service medical director;

(4) statistics and outcome data: provide data on the utilization and patient outcomes involving the special skill; do not include patient identifiers; all adverse outcomes related to the special skill must be reported;

(5) continuing education: provide evidence of the continuing education program and refresher program;

(6) personnel list: provide a list of all personnel authorized to perform the special skill; these special skill authorized licensed EMS personnel must appear on the service's personnel list required for the *New Mexico EMS tracking and reporting system database*.

(7) QA/QI program: provide evidence of the ongoing QA/QI program;

(8) renewal: during a regularly scheduled meeting, the medical direction committee shall review all ongoing individual special skills programs on their three year anniversary and make a determination on renewal;

(9) if the medical direction committee determines not to provide automatic renewal on an ongoing special skill program, the state EMS [~~training coordinator~~] program manager shall provide a written notification to the service director and the service medical director within 10 working days; and

(10) the special skills program will be placed on the agenda of the next, or subsequent, regularly scheduled meeting of the medical direction committee and final determination regarding renewal will be made.

R. Special skills programs will remain active until a final determination regarding renewal has been made.

S. Special skills application:

(1) general section;

(2) EMS service name;

(3) address;

(4) service chief/director;

(5) contact phone number;

(6) physician medical director;

(7) physician/ medical director contact phone number;

(8) special skill proposed;

(9) level of licensure necessary for special skill;

(10) estimated number of personnel to be trained;

(11) estimated date of initial training;

(12) training/ quality assurance;

(13) describe or identify the curriculum, including learning objectives, training hours, etc.;

(14) please identify the lead instructor and provide a brief summary of their qualifications or attach a resume;

(15) resumes required for new instructors;

(16) if training/ experience is required, provide a letter of commitment from the supporting institution;

(17) describe or attach a proposed continuing education plan;

(18) attach a description of quality assurance plan, including periodic case reviews and ongoing problems;

(19) identification and steps for remedial action if necessary;

(20) signatures; person completing the application, service chief/service director and medical director;

(21) submit [~~10~~] digital copies of the application in its entirety to: EMS bureau, state EMS [~~training coordinator~~] program manager, (1301 Siler Rd., Building F, Santa Fe, NM 87507) or as directed by the EMS bureau;

(22) submit one copy to the regional office.

[7.27.11.10 NMAC - Rp, 7.27.11.10 NMAC, 12/12/2017; A, 8/10/2021]

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

The Human Services Department - Medical Assistance Division reviewed at its 4/8/2021 hearing, 8.321.2 NMAC, Specialized Behavioral Health Provider Enrollment and Reimbursement filed 12/3/2019. The Department has decided to repeal 8.321.2 NMAC, Specialized Behavioral Health Provider Enrollment and Reimbursement filed 12/3/2019 and replace it with 8.321.2 NMAC, Specialized Behavioral Health Provider Enrollment and Reimbursement, adopted 6/28/2021 and effective 8/10/2021.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 321 SPECIALIZED BEHAVIORAL HEALTH SERVICES
PART 2 SPECIALIZED BEHAVIORAL HEALTH PROVIDER ENROLLMENT AND REIMBURSEMENT

8.321.2.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.321.2.1 NMAC - Rp, 8.321.2.1 NMAC, 8/10/2021]

8.321.2.2 SCOPE: The rule applies to the general public.
[8.321.2.2 NMAC - Rp, 8.321.2.2 NMAC, 8/10/2021]

8.321.2.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-2-12 et seq., NMSA 1978.
[8.321.2.3 NMAC - Rp, 8.321.2.3 NMAC, 8/10/2021]

8.321.2.4 DURATION: Permanent.
[8.321.2.4 NMAC - Rp, 8.321.2.4 NMAC, 8/10/2021]

8.321.2.5 EFFECTIVE DATE: August 10, 2021, unless a later date is cited at the end of a section.
[8.321.2.5 NMAC - Rp, 8.321.2.5 NMAC, 8/10/2021]

8.321.2.6 OBJECTIVE: The objective of these rules is to provide instruction for the service portion of the New Mexico medical assistance programs (MAP).
[8.321.2.6 NMAC - Rp, 8.321.2.6 NMAC, 8/10/2021]

8.321.2.7 DEFINITIONS: [**RESERVED**]

8.321.2.8 MISSION STATEMENT: To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.
[8.321.2.8 NMAC - Rp, 8.321.2.8 NMAC, 8/10/2021]

8.321.2.9 GENERAL PROVIDER INSTRUCTION:

A. Health care to New Mexico eligible recipients is furnished by a variety of providers and provider groups. The reimbursement for these services is administered by the HSD medical assistance division (MAD). Upon approval of a New Mexico MAD provider participation agreement (PPA) a licensed practitioner, a facility or other providers of services that meet applicable requirements are eligible to be reimbursed for furnishing MAD covered services to an eligible recipient. A provider must be approved before submitting a claim for payment to the MAD claims processing contractors. Information necessary to participate in health care programs administered by HSD or its authorized agents, including New Mexico administrative code (NMAC) program rules, program policy manuals, billing instructions, supplements, utilization review (UR) instructions, and other pertinent materials is available on the HSD website, on other program specific websites or in hard copy format. When approved, a provider receives instructions on how to access these documents. It is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to obtain answers to questions related to the material or not covered by the material. To be eligible for reimbursement, providers and practitioners must adhere to the provisions of his or her MAD PPA and all applicable statutes, regulations, rules, and executive orders. MAD or its selected claims processing contractor issues payment to a provider using the electronic funds transfer (EFT) only. Providers must supply necessary information as outlined in the PPA for payment to be made.

B. Services must be provided within the licensure for each facility and scope of practice for each provider and supervising or rendering practitioner. Services must be in compliance with the statutes, rules and regulations of the applicable practice act. Providers must be eligible for reimbursement as described in 8.310.2 NMAC and 8.310.3 NMAC.

C. The following independent providers with active licenses (not provisional or temporary) are eligible to be reimbursed directly for providing MAD behavioral health professional services unless otherwise restricted or limited by NMAC rules:

(1) a physician licensed by the board of medical examiners or board of osteopathy who is board eligible or board certified in psychiatry, to include the groups they form;

(2) a psychologist (Ph.D., Psy.D. or Ed.D.) licensed as a clinical psychologist by the New Mexico regulation and licensing department's (RLD) board of psychologist examiners, to include the groups they form;

(3) a licensed independent social worker (LISW) or a licensed clinical social worker (LCSW) licensed by RLD's board of social work examiners, to include the groups they form;

(4) a licensed professional clinical counselor (LPCC) licensed by RLD's counseling and therapy practice board, to include the groups they form;

(5) a licensed marriage and family therapist (LMFT) licensed by RLD's counseling and therapy practice board, to include the groups they form;

(6) a licensed alcohol and drug abuse counselor (LADAC) licensed by RLD's counseling and therapy practice board or a certified alcohol and drug abuse counselor (CADC) certified by the New Mexico credentialing board for behavioral health professionals (CBBHP). Independent practice is for alcohol and drug abuse diagnoses only. The LADAC or CADC may provide therapeutic services that may include treatment of clients with co-occurring disorders or dual diagnoses in an integrated behavioral health setting in which an interdisciplinary team has developed an interdisciplinary treatment plan that is co-authorized by an independently licensed counselor or therapist. The treatment of a mental health disorder must be supervised by an independently licensed counselor or therapist; or

(7) a clinical nurse specialist (CNS) or a certified nurse practitioner (CNP) licensed by the New Mexico board of nursing and certified in psychiatric nursing by a national nursing organization, to include the groups they form, who can furnish services to adults or children as his or her certification permits; or

(8) a licensed professional art therapist (LPAT) licensed by RLD's counseling and therapy practice board, and certified for independent practice by the art therapy credentials board (ATCB); or

(9) an out-of-state provider rendering a service from out-of-state must meet his or her state's licensing and certification requirements which are acceptable when deemed by MAD to be substantially equivalent to the license.

D. The following agencies are eligible to be reimbursed for providing behavioral health professional services when all conditions for providing services are met:

(1) a community mental health center (CMHC);

(2) a federally qualified health center (FQHC);

(3) an Indian health service (IHS) hospital, clinic or FQHC;

(4) a PL 93-638 tribally operated hospital, clinic or FQHC;

(5) to the extent not covered by Paragraphs (3) and (4) of Subsection D of 8.321.2.9 NMAC above, an "Indian Health Care Provider (IHCP)" defined in 42 Code of Federal Regulations §438.14(a).

(6) a children, youth and families department (CYFD) facility;

(7) a hospital and its outpatient facility;

(8) a core service agency (CSA);

(9) a CareLink NM health home (CLNM HH);

(10) a crisis triage center licensed by the department of health (DOH);

(11) a behavioral health agency (BHA);

(12) an opioid treatment program in a methadone clinic;

(13) a political subdivision of the state of New Mexico; and

(14) a crisis services community provider as a BHA.

(15) a school based health center with behavioral health supervisory certification.

E. A behavioral health service rendered by a licensed practitioner listed in Paragraph (2) of Subsection E of 8.321.2.9 NMAC whose scope of licensure does not allow him or her to practice independently or a non-licensed practitioner listed in Paragraph (3) of Subsection E of 8.321.2.9 NMAC is covered to the same extent as if rendered by a practitioner licensed for independent practice, when the supervisory requirements are met consistent with the practitioner's licensing board within his or her scope of practice and the service is provided through and billed by one of the provider's agencies listed in numbers one through nine of Subsection D of 8.321.2.9 NMAC, when the agency has a behavioral health services division (BHSD) supervisory certificate, and Paragraphs (10) through (15) of Subsection D of 8.321.2.9 NMAC. All services must be delivered according to the medicaid regulation and current version of the behavioral health policy and billing manual. If the service is an evaluation, assessment, or therapy service rendered by the practitioner and supervised by an independently licensed practitioner, the independently licensed practitioner's practice board must specifically allow him or her to supervise the non-independent practitioner.

(1) Specialized behavioral health services, other than evaluation, assessment, or therapy services, may have specific rendering practitioner requirements which are detailed in each behavioral health services section of 8.321.2.9 NMAC.

(2) The non-independently licensed rendering practitioner with an active license which is not provisional or temporary must be one of the following:

(a) a licensed master of social work (LMSW) licensed by RLD's board of social work examiners;

(b) a licensed mental health counselor (LMHC) licensed by RLD's counseling and therapy practice board;

(c) a licensed professional mental health counselor (LPC) licensed by RLD's examiner board;

(d) a licensed associate marriage and family therapist (LAMFT) licensed by RLD's examiner board;

(e) a psychologist associate licensed by the RLD's psychologist examiners board;

(f) a licensed substance abuse associate (LSAA) licensed by RLD's counseling and therapy practice board will be eligible for reimbursement aligned with each tier level of designated scope of practice determined by the board;

(g) a registered nurse (RN) licensed by the New Mexico board of nursing under the supervision of a certified nurse practitioner, clinical nurse specialist or physician; or

(h) a licensed physician assistant certified by the state of New Mexico if supervised by a behavioral health physician or DO licensed by RLD's examiner board.

(3) Non-licensed practitioners must be one of the following:

(a) a master's level behavioral health intern;

(b) a psychology intern including psychology practicum students, pre-doctoral internship;

(c) a pre-licensure psychology post doctorate student;

(d) a certified peer support worker;

(e) a certified family peer support worker; or

(f) a provisional or temporarily licensed masters level behavioral health professional.

(4) The rendering practitioner must be enrolled as a MAD provider.

F. An eligible recipient under 21 years of age may be identified through a tot to teen health check, self-referral, referral from an agency (such as a public school, child care provider or other practitioner) when he or she is experiencing behavioral health concerns.

G. Either as a separate service or a component of a treatment plan or a bundled service, the following services are not MAD covered benefits:

(1) hypnotherapy;

(2) biofeedback;

(3) conditions that do not meet the standard of medical necessity as defined in NMAC MAD rules;

(4) educational or vocational services related to traditional academic subjects or vocational training;

(5) experimental or investigational procedures, technologies or non-drug therapies and related services;

(6) activity therapy, group activities and other services which are primarily recreational or diversional in nature;

(7) electroconvulsive therapy;

(8) services provided by a behavioral health practitioner who is not in compliance with the statutes, regulations, rules or renders services outside his or her scope of practice;

(9) treatment of intellectual disabilities alone;

(10) services not considered medically necessary for the condition of the eligible recipient;

(11) services for which prior authorization is required but was not obtained; and

(12) milieu therapy.

H. All behavioral health services must meet with the current MAD definition of medical necessity found in 8.302.1 NMAC. Performance of a MAD behavioral health service cannot be delegated to a provider or practitioner not licensed for independent practice except as specified within this rule, within his or her practice board's scope and practice and in accordance with applicable federal, state, and local statutes, laws and rules. When a service is performed by a supervised practitioner, the supervision of the service cannot be billed separately or additionally. Other than agencies as allowed in Subsections D and E of 8.321.2.9 NMAC, a behavioral health provider cannot himself or herself as a rendering provider bill for a service for which he or she was providing supervision and the service was in part or wholly performed by a different individual. Behavioral health services are reimbursed as follows, except when otherwise described within a particular specialized service's reimbursement section.

(1) Once enrolled, a provider receives instructions on how to access documentation, billing, and claims processing information. Reimbursement is made to a provider for covered services at the lesser of the following:

(a) the MAD fee schedule for the specific service or procedure; or

(b) the provider's billed charge. The provider's billed charge must be its usual and customary charge for services ("usual and customary charge" refers to the amount that the individual provider charges the general public in the majority of cases for a specific procedure or service).

(2) Reimbursement is made for an Indian health service (IHS) agency, a PL 93-638 tribal health facility, a federally qualified health center (FQHC), any other "Indian Health Care Provider (IHCP)" as defined in 42 Code of Federal Regulations §438.14(a), rural health clinic, or hospital-based rural health clinic by following its federal guidelines and special provisions as detailed in 8.310.4 and 8.310.12 NMAC.

I. All behavioral health services are subject to utilization review for medical necessity and program compliance. Reviews can be performed before services are furnished, after service is furnished but before a payment is made, or after the payment is made; see 8.310.2 NMAC. The provider must contact HSD or its authorized agents to request UR instructions. It is the provider's and practitioner's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided, to comply with the requirements, and to obtain answers to questions not covered by these materials. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor's instructions for authorization of services. A specialized behavioral health service may have additional prior authorization requirements listed in that service's prior authorization subsection. All prior authorization procedures must follow federal parity law.

J. For an eligible recipient to access behavioral health services, a practitioner must complete a diagnostic evaluation, progress and treatment notes and teaming notes, if indicated. Exceptions to this whereby a treatment or set of treatments may be performed before a diagnostic evaluation has been done, utilizing a provisional diagnosis based on screening results are outlined in 8.321.2.14, 8.321.2.18 and 8.321.2.34 NMAC and in the behavioral health (BH) policy and billing manual. For a limited set of treatments, (i.e. four or less), no treatment plan is required. All documentation must be signed,

dated and placed in the eligible recipient's file. All documentation must be made available for review by HSD or its designees in the eligible recipient's file (see the BH policy and billing manual for specific instructions).

K. For recipients meeting the NM state definition of serious mental illness (SMI) for adults or severe emotional disturbances (SED) for recipients under 18 years of age or a substance use disorder (SUD) for any age, a comprehensive assessment or diagnostic evaluation and service plan must be completed (see the BH policy and billing manual for specific instructions).

(1) Comprehensive assessment and service plan can only be billed by the agencies listed in Subsection D of 8.321.2.9 NMAC.

(2) Behavioral health service plans can be developed by individuals employed by the agency who have Health Insurance Portability and Accountability Act (HIPAA) training, are working within their scope of practice, and are working under the supervision of the rendering provider who must be a NM independently licensed clinician.

(3) A comprehensive assessment and service plan cannot be billed if care coordination is being billed through bundled service packages such as case rates, value based purchasing agreements, high fidelity wraparound or CareLink NM (CLNM) health homes.

L. For out-patient, non-residential recipients meeting the NM state definition of serious mental illness (SMI) for adults or severe emotional disturbance (SED) for recipients under 18 years of age or a moderate to severe substance use disorder (SUD) for any age, where multiple provider disciplines are required and engaged either for co-occurring conditions, or other social determinants of health, an update to the service plan may be made using interdisciplinary teaming. MAD covers service plan updates through the participation of interdisciplinary teams.

(1) Coverage, purpose and frequency of interdisciplinary team meetings:

(a) provides the central learning, decision-making, and service integrating elements that weave practice functions together into a coherent effort for helping a recipient meet needs and achieve life goals; and

(b) covered team meetings resulting in service plan changes or updates are limited to an annual review, when recipient conditions change, or at critical decision points in the recipient's progress to recovery.

(2) The team consists of:

(a) a lead agency, which must be one of the agencies listed in Subsection D of 8.321.2.9 NMAC. This agency has a designated and qualified team lead who prepares team members, convenes and organizes meetings, facilitates the team decision-making process, and follows up on commitments made;

(b) a participating provider that is a MAD enrolled provider that is either already treating the recipient or is new to the case and has the expertise pertinent to the needs of the individual. This provider may practice within the same agency but in a differing discipline, or outside of the lead agency;

(c) other participating providers not enrolled with MAD, other subject matter experts, and relevant family and natural supports may be part of the team, but are not reimbursed through MAD; and

(d) the recipient, who is the subject of this service plan update, must be a participating member of every teaming meeting.

(3) Reimbursement:

(a) only the team lead and two other MAD enrolled participating providers or agencies may bill for the interdisciplinary team update. When more than three MAD enrolled providers are engaged within the session, the team decides who will bill based on the level of effort or change within their own discipline.

(b) when the team lead and only one other provider meet to update the service plan, the definition of teaming is not met and the service plan update may not be billed using the interdisciplinary teaming codes.

(c) the six elements of teaming may be performed by using a variety of media (with the person's knowledge and consent) e.g., texting members to update them on an emergent event; using email communications to ask or answer questions; sharing assessments, plans and reports; conducting conference calls via telephone; using telehealth platforms conferences; and, conducting face-to-face meetings with the person present when key decisions are made. Only the last element, that is, conducting the final face-to-face meeting with the recipient present when key decisions that result in the updates to the service plan, is a billable event.

(d) when the service plan updates to the original plan, that was developed within the comprehensive assessment, are developed using the interdisciplinary teaming model described in the BH policy and billing manual, service codes specific for interdisciplinary teaming may be billed. If the teaming model is not used, only the standard codes for updating the service plan can be billed. An update to the service plan using a teaming method approach and an update to the service plan not using the teaming method approach, cannot both be billed.

(e) billing instructions are found in the BH policy and billing manual.

M. For recipients with behavioral health diagnoses and other co-occurring conditions, or other social determinants of health meeting medical necessity, and for whom multiple provider disciplines are engaged, MAD covers service plan development and one

subsequent update per year for an interdisciplinary team.

(1) The team consists of:

(a) a lead MAD enrolled provider that has primary responsibility for coordinating the interdisciplinary team, convenes and organizes meetings, facilitates the team decision-making process, and follows up on commitments made;

(b) a participating MAD enrolled provider from a different discipline;

(c) other participating providers not enrolled with MAD, other subject matter experts, and relevant family and natural supports may be part of the team, but are not reimbursed through MAD; and

(d) the recipient, who is the subject of this service plan development and update, must be a participating member of each team meeting.

(2) Reimbursement:

(a) only the team lead and one other MAD enrolled participating provider may bill for a single session. When more than two MAD enrolled providers are engaged with the session, the team decides who will bill based on the level of effort or change within their own discipline;

(b) this service plan development and subsequent update to the original plan can only be billed twice within one year; and

(c) billing instructions are found in the BH policy and billing manual.

N. All specialized behavioral health services should be delivered in the least restrictive setting. Least restrictive settings will differ between services and facilities, and are generally defined as a physical setting which places the least restraint on the client's freedom of movement and opportunity for independence and enables an individual to function with as much choice and self-direction as safely appropriate. In addition, access to or receipt of one service may not be contingent on requiring an individual to obtain or utilize any other service; for example, a housing service may not require a treatment component, nor may an outpatient treatment service require participation in housing. Multiple services may be encouraged, under appropriate circumstances, but may not be required.

[8.321.2.9 NMAC - Rp, 8.321.2.9 NMAC, 8/10/2021]

8.321.2.10 ADULT ACCREDITED RESIDENTIAL TREATMENT CENTER (AARTC) FOR ADULTS WITH SUBSTANCE USE DISORDERS: To help an eligible recipient 18 years of age and older, who has been diagnosed as having a substance use disorder (SUD), and the need for AARTC has been identified in the eligible recipient's diagnostic evaluation as meeting criteria of the American society of addiction medicine (ASAM) level of care three for whom a less restrictive setting is not appropriate, MAD pays for services furnished to him or her by an AARTC accredited by the joint commission (JC), the commission on accreditation of rehabilitation facilities (CARF) or the council on accreditation (COA).

A. Eligible facilities:

(1) To be eligible to be reimbursed for providing AARTC services to an eligible recipient, an AARTC facility:

(a) must be accredited by JC, COA, or CARF as an adult (18 and older) residential treatment facility;

(b) must be certified through an application process with the behavioral health services division which includes a supervisory certificate (see BH policy and billing manual for details on the supervisory certificate);

(c) must have written policies and procedures specifying ASAM level of care three criteria as the basis for accepting eligible recipients into the sub-level treatment program;

(d) must meet ASAM treatment service requirements for the ASAM level of care three recipients it admits into each sub-level of care;

(e) must provide medication assisted treatment (MAT) for SUD, as indicated; and

(f) all practitioners shall be trained in ASAM principles and levels of care.

(2) An out-of-state or MAD border AARTC must have JC, CARF or COA accreditation, use ASAM level three criteria for accepting recipients, and be licensed in its own state as an AARTC residential treatment facility.

B. Coverage criteria:

(1) Treatment must be provided under the direction of an independently licensed clinician/practitioner as defined by ASAM criteria level three for the sub-level of treatment being rendered.

(2) Treatment shall be based on the eligible recipient's individualized treatment plans rendered by the AARTC facility's practitioners, within the scope and practice of their professions as defined by state law, rule or regulation. See Subsection B of 8.321.2.9 NMAC for general behavioral health professional requirements.

(3) The following services shall be performed by the AARTC agency to receive reimbursement from MAD:

(a) diagnostic evaluation, necessary psychological testing, and development of the eligible recipient's treatment plan, while ensuring that evaluations already performed are not repeated;

(b) provision of regularly scheduled counseling and therapy sessions in an individual, family or group setting following the eligible recipient's treatment plan, and according to ASAM guidelines for level three, residential care, and the specific sub-level of care for which that client meets admission criteria;

(c) facilitation of age-appropriate life skills development;

(d) assistance to the eligible recipient in his or her self-administration of medication in compliance with state statute, regulation and rules;

(e) maintain appropriate staff available on a 24-hour basis to respond to crisis situations, determine the severity of the situation, stabilize the eligible recipient, make referrals as necessary, and provide follow-up to the eligible recipient; and

(f) consultation with other professionals or allied caregivers regarding the needs of the eligible recipient, as applicable.

(4) Admission and treatment criteria based on the sub-levels of ASAM level three criteria must be met. The differing sub-levels of ASAM three are based on the intensity of clinical services, particularly as demonstrated by the degree of involvement of medical and nursing professionals. The defining characteristic of level three ASAM criteria is that they serve recipients who need safe and stable living environments to develop their recovery skills. They are transferred to lower levels of care when they have established sufficient skills to safely continue treatment without the immediate risk of relapse, continued use, or other continued problems, and are no longer in imminent danger of harm to themselves or others.

(5) Levels of care without withdrawal management:

(a) clinically managed low-intensity residential services as specified in ASAM level of care 3.1 are covered for recipients whose condition meets the criteria for ASAM 3.1:

(i) is often a step down from a higher level of care and prepares the recipient for transition to the community and outpatient services; and

(ii) requires a minimum of five hours per week of recovery skills development.

(b) clinically managed population-specific high-intensity residential services as specified in ASAM levels of care 3.3 and 3.5 are covered for recipients whose condition meets the criteria of ASAM level 3.3 or 3.5:

(i) level 3.3 meets the needs of recipients with cognitive difficulties needing more specialized individualized services. The cognitive impairments can be due to aging, traumatic brain injury, acute but lasting injury, or illness. These recipients need a slower pace and lower intensity of services;

(ii) level 3.5 offers a higher intensity of service not requiring medical monitoring.

(c) medically monitored intensive inpatient services as specified in ASAM level of care 3.7 are covered for recipients whose condition meets the criteria for ASAM level 3.7:

(i) 3.7 level is an organized service delivered by medical and nursing professionals which provides 24-hour evaluation and monitoring services under the direction of a physician or clinical nurse practitioner who is available by phone 24-hours a day;

(ii) nursing staff is on-site 24-hours a day;

(iii) other interdisciplinary staff of trained clinicians may include counselors, social workers, emergency medical technicians with documentation of three hours of annual training in substance use disorder, and psychologists available to assess and treat the recipient and to obtain and interpret information regarding recipient needs.

(6) Withdrawal management (WM) levels of care:

(a) clinically managed residential withdrawal management services as specified in ASAM level of care 3.2WM for recipients whose condition meets the criteria for ASAM 3.2WM:

(i) managed by behavioral health professionals, with protocols in place should a patient's condition deteriorate and appear to need medical or nursing interventions;

(ii) ability to arrange for appropriate laboratory and toxicology tests;

(iii) a range of cognitive, behavioral, medical, mental health and other therapies administered on an individual or group basis to enhance the recipient's understanding of addiction, the completion of the withdrawal management process, and referral to an appropriate level of care for continuing treatment;

(iv) the recipient remains in a level 3.2WM program until withdrawal signs and symptoms are sufficiently resolved that he or she can be safely managed at a less intensive level of care; or the recipient's signs and symptoms of withdrawal have failed to respond to treatment and have intensified such that transfer to a more intensive level of withdrawal management services is indicated; and

(v) 3.2WM's length of stay is typically 3 - 5 days, after which transfer to another level of care is indicated.

(b) medically monitored residential withdrawal management services as specified in ASAM level of care 3.7WM for recipients whose condition meets the criteria for ASAM 3.7WM:

(i) services are provided by an interdisciplinary staff of nurses, counselors, social workers, addiction specialists, peer support workers, emergency medical technicians with documentation of three (3) hours of annual training in substance use disorder, or other health and technical personnel under the direction of a licensed physician;

(ii) monitored by medical or nursing

professionals, with 24-hour nursing care and physician visits as needed, with protocols in place should a patient's condition deteriorate and appear to need intensive inpatient withdrawal management interventions;

(iii) ability to arrange for appropriate laboratory and toxicology tests;

(iv) a range of cognitive, behavioral, medical, mental health and other therapies administered on an individual or group basis to enhance the recipient's understanding of addiction, the completion of the withdrawal management process, and referral to an appropriate level of care for continuing treatment; and

(v) the recipient remains in a level 3.7WM program until withdrawal signs and symptoms are sufficiently resolved that he or she can be safely managed at a less intensive level of care; or the recipient's signs and symptoms of withdrawal have failed to respond to treatment and have intensified such that transfer to a more intensive level of withdrawal management service is indicated;

(vi) 3.7WM typically last for no more than seven days.

C. Covered services: AARTCs treating all recipients meeting ASAM level three criteria. MAD covers residential treatment services which are medically necessary for the diagnosis and treatment of an eligible recipient's condition. A clinically-managed AARTC facility must provide 24-hour care with trained staff.

D. Non-covered services: AARTC services are subject to the limitations and coverage restrictions that exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for general MAD behavioral health non-covered services or activities. MAD does not cover the following specific services billed in conjunction with AARTC services to an eligible recipient:

(1) comprehensive community support services (CCSS), except when provided by a CCSS agency in discharge planning for the eligible recipient from the facility;

(2) services for which prior approval was not requested and approved;

(3) services furnished to ineligible individuals;

(4) formal educational and vocational services which relate to traditional academic subjects or vocational training; and

(5) activity therapy, group activities, and other services primarily recreational or diversional in nature.

E. Treatment plan: The treatment plan must be developed by a team of professionals in consultation with the eligible recipient and in accordance with ASAM and accreditation standards. The interdisciplinary team must review the treatment plan at least every 15 days.

F. Prior authorization: Prior authorization is not required for up to five days for eligible recipients meeting ASAM level three criteria to facilitate immediate admission and treatment to the appropriate level of care. Within that five day period, the provider must furnish notification of the admission and if the provider believes that continued care beyond the initial five days is medically necessary, prior authorization must be obtained from MAD or its designee. For out-of-state AARTCs prior authorization is required prior to admission. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process. All MAD services are subject to utilization review for medical necessity, inspection of care, and program compliance. Follow up auditing is done by the accrediting agency per their standards.

G. Reimbursement: An AARTC agency must submit claims for reimbursement on the UB-04 form or its successor. See Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements and see 8.302.2 NMAC. Once enrolled, the agency receives instructions on how to access documentation, billing, and claims processing information.

(1) MAD reimbursement covers services considered routine in the residential setting. Routine services include, but are not limited to, counseling, therapy, activities of daily living, medical management, crisis intervention, professional consultation, transportation, rehabilitative services and administration.

(2) Services which are not covered in routine services include other MAD services that an eligible recipient might require that are not furnished by the facility, such as pharmacy services, primary care visits, laboratory or radiology services. These services are billed directly by the applicable providers and are governed by the applicable sections of NMAC rules.

(3) MAD does not cover room and board.

(4) Detailed billing instructions can be accessed in the BH policy and billing manual. [8.321.2.10 NMAC - Rp, 8.321.2.10 NMAC, 8/10/2021]

8.321.2.11 ACCREDITED RESIDENTIAL TREATMENT CENTER (ARTC) FOR YOUTH: To help an eligible recipient under 21 years of age when the need for ARTC has been identified in the eligible recipient's tot to teen health check screen (EPSDT) program (42 CFR section 441.57) or other diagnostic evaluation, and for whom a less restrictive setting is not appropriate, MAD pays for services furnished to him or her by an ARTC accredited by the joint commission (JC), the commission on accreditation of rehabilitation facilities (CARF) or the council on accreditation (COA). A determination must be made that the eligible recipient needs the level of care (LOC) for services furnished in an ARTC. This determination must have considered all environments which are least restrictive, meaning a supervised community placement, preferably a placement with the juvenile's parent, guardian or relative.

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

A. Eligible facilities:

(1) In addition to the requirements of Subsections A and B of 8.321.2.9 NMAC, in order to be eligible to be reimbursed for providing ARTC services to an eligible recipient, an ARTC facility:

(a) must provide a copy of its JC, COA, or CARF accreditation as a children's residential treatment facility;

(b) must provide a copy of its CYFD ARTC facility license and certification; and

(c) must have written utilization review (UR) plans in effect which provide for review of the eligible recipient's need for the ARTC that meet federal requirements; see 42 CFR Section 456.201 through 456.245;

(2) If the ARTC is operated by IHS or by a federally recognized tribal government, the youth based facility must meet CYFD ARTC licensing requirements, but is not required to be licensed or certified by CYFD. In lieu of receiving a license and certification, CYFD will provide MAD copies of its facility findings and recommendations. MAD will work with the facility to address recommendations. Details related to findings and recommendations for an IHS or federally recognized tribal government's ARTC are detailed in the BH policy and billing manual; and

(3) In lieu of New Mexico CYFD licensure, an out-of-state or MAD border ARTC facility must have JC, COA or CARF accreditation and be licensed in its own state as an ARTC residential treatment facility.

B. Covered services: MAD covers accommodation and residential treatment services which are medically necessary for the diagnosis and treatment of an eligible recipient's condition. An ARTC facility must provide an interdisciplinary psychotherapeutic treatment program on a 24-hour basis to the eligible recipient. The ARTC will coordinate with the educational program of the recipient, if applicable.

(1) Treatment must be furnished under the direction of a MAD board eligible or certified psychiatrist.

(2) Treatment must be based on the eligible recipient's individualized treatment plans rendered by the ARTC facility's practitioners, within the scope and practice of their professions as defined by state law, rule or regulation. See Subsection B of 8.321.2.9 NMAC for general behavioral health professional requirements.

(3) Treatment must be reasonably expected to improve the eligible recipient's condition. The treatment must be designed to reduce or control symptoms or maintain levels of functioning and avoid hospitalization or further deterioration is acceptable expectations of improvement.

(4) The following services must be performed by the ARTC agency to receive reimbursement from MAD:

(a) performance of necessary evaluations, psychological testing and development of the eligible recipient's treatment plans, while ensuring that evaluations already performed are not repeated;

(b) provide regularly scheduled counseling and therapy sessions in an individual, family or group setting following the eligible recipient's treatment plan;

(c) facilitation of age-appropriate skills development in the areas of household management, nutrition, personal care, physical and emotional health, basic life skills, time management, school attendance and money management to the eligible recipient;

(d) assistance to the eligible recipient in his or her self-administration of medication in compliance with state statute, regulation and rules;

(e) maintain appropriate staff available on a 24-hour basis to respond to crisis situations, determine the severity of the situation, stabilize the eligible recipient, make referrals, as necessary, and provide follow-up to the eligible recipient;

(f) consultation with other professionals or allied caregivers regarding the needs of the eligible recipient, as applicable;

(g) non-medical transportation services needed to accomplish the eligible recipient's treatment objective; and

(h) therapeutic services to meet the physical, social, cultural, recreational, health maintenance and rehabilitation needs of the eligible recipients.

C. Non-covered services: ARTC services are subject to the limitations and coverage restrictions that exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for general MAD behavioral health non-covered services or activities. MAD does not cover the following specific services billed in conjunction with ARTC services to an eligible recipient:

(1) CCSS, except when provided by a CCSS agency in discharge planning for the eligible recipient from the facility;

(2) services for which prior approval was not requested and approved;

(3) services furnished to ineligible individuals; ARTC and group services are covered only for eligible recipients under 21 years of age;

(4) formal educational and vocational services which relate to traditional academic subjects or vocation training; and

(5) activity therapy, group activities, and other services primarily recreational or diversional in nature.

D. Treatment plan: The treatment plan must be developed by a team of professionals in consultation with the eligible recipient, his or her parent, legal

guardian and others in whose care he or she will be released after discharge. The plan must be developed within 14 calendar days of the eligible recipient's admission to an ARTC facility. The interdisciplinary team must review the treatment plan at least every 30 calendar days. In addition to the requirements of Subsection K of 8.321.2.9 NMAC, all supporting documentation must be available for review in the eligible recipient's file. The treatment plan must also include a statement of the eligible recipient's cultural needs and provision for access to cultural practices.

E. Prior authorization: Before any ARTC services are furnished to an eligible recipient, prior authorization is required from MAD or its designee. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

F. Reimbursement: An ARTC agency must submit claims for reimbursement on the UB-04 form or its successor. See Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements and see 8.302.2 NMAC. Once enrolled, the agency receives instructions on how to access documentation, billing, and claims processing information.

(1) The MAD fee schedule is based on actual cost data submitted by the ARTC agency. Cost data is grouped into various cost categories for purposes of analysis and rate setting. These include direct service, direct service supervision, therapy, admission and discharge planning, clinical support, non-personnel operating, administration and consultation.

(a) The MAD fee schedule reimbursement covers those services considered routine in the residential setting. Routine services include, but are not limited to: counseling, therapy, activities of daily living, medical management, crisis intervention, professional consultation, transportation, rehabilitative services and administration.

(b) Services which are not covered in routine services include other MAD services that an eligible recipient might require that are not furnished by the facility, such as pharmacy services, primary care visits, laboratory or radiology services, are billed directly by the applicable providers and are governed by applicable sections of NMAC rules.

(c) Services which are not covered in the routine rate and are not a MAD covered service include services not related to medical necessity, clinical treatment, and patient care.

(2) A vacancy factor of 24 days annually for each eligible recipient is built in for therapeutic leave and trial community placement. Since the vacancy factor is built into the rate, an ARTC agency cannot bill nor be reimbursed for days when the eligible recipient is absent from the facility.

(3) An ARTC agency must submit annual cost reports in a form prescribed by MAD. Cost reports are due 90 calendar days after the close of the agency's fiscal year end.

(a) If an agency cannot meet this due date, it can request a 30 calendar day extension for submission. This request must be made in writing and received by MAD prior to the original due date.

(b) Failure to submit a cost report by the due date or the extended due date, when applicable, will result in suspension of all MAD payments until the cost report is received.

(4) Reimbursement rates for an ARTC out-of-state provider located more than 100 miles from the New Mexico border (Mexico excluded) are at the fee schedule unless a separate rate is negotiated.

[8.321.2.11 NMAC - Rp, 8.321.2.11 NMAC, 8/10/2021]

8.321.2.12 APPLIED BEHAVIOR ANALYSIS (ABA): MAD pays for medically necessary, empirically supported, applied behavior analysis (ABA) services for eligible recipients who have a well-documented medical diagnosis of autism spectrum disorder (ASD), and for eligible recipients who have well-documented risk for the development of ASD. As part of a three-stage comprehensive approach consisting of evaluation, assessment, and treatment, ABA services may be provided in coordination with other medically necessary services (e.g., family infant toddler program (FIT) services, occupational therapy, speech language therapy, medication management, developmentally disabled waiver services, etc.). ABA services are part of the early periodic screening, diagnosis and treatment (EPSDT) program (CFR 42 section 441.57). There is no age requirement to receive ABA services and ABA is a covered benefit for medicaid-enrolled adults.

A. Coverage Criteria:

(1) Confirmation of the presence or risk of ASD must occur through an approved autism evaluation provider (AEP) through a comprehensive diagnostic evaluation (CDE) used to determine the presence of and a diagnosis of ASD. A targeted evaluation is used when the eligible recipient who has a full diagnosis of ASD presents with behaviors that are changed from the last CDE. An ASD risk evaluation is used when an eligible recipient meets the at-risk criteria found in Subsection C of 8.321.2.12 NMAC.

(2) An integrated service plan (ISP) must be developed by the AEP together with a referral to an approved ABA provider (AP) agency (stage one).

(3) The AP agency completes a behavior or functional analytic assessment. The assessment results determine if a focused or comprehensive model is selected and a treatment plan is completed (stage two).

(4) ABA stage two and three services are then rendered by a behavior analyst certification board (BACB) approved behavior analyst (BA), a

board certified assistant behavior analyst (BCaBA) or a behavior technician (BT), in accordance with the treatment plan (stage three). A BCaBA is referred to 8.321.2 NMAC as a behavior analyst assistant (BAA).

B. Eligible providers: ABA services are rendered by a number of providers and practitioners: an AEP; a behavior analyst (BA) and a behavior technician (BT) through an ABA provider (AP); and an ABA specialty care provider. Each ABA provider and practitioner has corresponding enrollment requirements and renders unique services according to his or her provider type and specialty. All providers must successfully complete a criminal background registry check. See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

(1) Stage 1: Autism Evaluation Provider (AEP): Completes the CDE, ASD risk evaluation or targeted evaluation and develops the ISP for an eligible recipient.

(2) Behavior Analyst (BA): a BA who is a board certified behavior analyst (BCBA® or BCBA-D®) by the behavior analyst certification board (BACB®) or a psychologist who is certified by the American board of professional psychology in behavior and cognitive psychology and who was tested in the ABA part of his or her certification, may render ABA stage two-behavior analytic assessment, service model determination and treatment plan development and stage three services-implementation of an ABA treatment plan. MAD refers to this practitioner in rule and on the fee schedule as a BA.

(3) Stage two and three BAA: A BAA who is a board certified assistant behavior analyst (BCaBA®) by the BACB® may assist his or her supervising BA in rendering a ABA stage two-behavior or functional analytic assessment, service model determination and ABA treatment plans development and stage three services implementation of the ABA treatment plans, when the BAA's supervising BA determines he or she has the skills and knowledge to render such services. This is determined in the contract the BAA has agreed to with his or her supervising BA.

(4) Stage three Behavioral Technician (BT): A BT, under supervision of a BA, may assist stage two and implement stage three ABA treatment plan interventions and services.

(5) Stage three ABA specialty care provider eligibility requirements: practitioners who are enrolled as BAs must provide additional documentation that demonstrates the practitioner has the skills, training and clinical experience to oversee and render ABA services to highly complex eligible recipients who require specialized ABA services.

(6) Additional provider types: To avoid a delay in receiving stage two services, a recipient may be referred for ABA services with a diagnosis of ASD by other medical provider types. While the practitioners listed below may not meet the requirements to be approved as AEPs and therefore are not considered AEPs, until further notice, MAD is recognizing the diagnosis of ASD of a recipient by the following provider types to expedite a recipient's access to ABA stage two services:

(a) A New Mexico regulation and licensing department (RLD) licensed psychologist.

(b) A New Mexico board of nursing licensed:

(i) psychiatric clinical nurse specialist; or

(ii) certified nurse practitioner with a specialty of pediatrics or psychiatry.

(c) A New Mexico MD or DO board licensed:

(i) psychiatrist who is board certified in child and adolescent; or

(ii) pediatrician.

(d) A New Mexico behavioral health credentialing board credentialed certified family peer support worker under the supervision of an approved ABA supervisor.

C. Identified population: The admission criteria are separated into two types: at-risk for ASD and diagnosed with ASD.

(1) At-risk for ASD: an eligible recipient may be considered 'at-risk' for ASD and therefore eligible for time-limited ABA services, if he or she does not meet full criteria for ASD per the latest version of the diagnostic statistical manual (DSM) or international classification of diseases (ICD). To be qualified for the ABA criteria of at-risk, the eligible recipient must meet all the following requirements:

(a) is between 12 and 36 months of age;

(b) presents with developmental differences and delays as measured by standardized assessments;

(c) demonstrates some characteristics of the disorder (e.g., impairment in social communication and early indicators for the development of restricted and repetitive behavior); and

(d) presents with at least one genetic risk factor (e.g., genetic risk due to having an older sibling with a well-documented ASD diagnosis; eligible recipient has a diagnosis of Fragile X syndrome).

(2) Diagnosed with ASD: an eligible recipient who has a documented medical diagnosis of ASD according to the latest version of the DSM or the ICD is eligible for ABA services if he or she presents with a CDE or targeted evaluation.

D. Covered services:

(1) Stage one: An eligible recipient is referred to an AEP after screening positive for ASD. The AEP conducts a diagnostic evaluation (CDE or targeted evaluation), develops the ISP, and recommends ABA stage 2 services.

For an eligible recipient who has an existing ASD diagnosis, diagnostic re-evaluation is not necessary, but the development of an ISP and the determination of the medical necessity for ABA services are required.

(2) Stage two BA: For all eligible recipients, stage two services include a behavior or functional analytic assessment, ABA service model determination, and treatment plan development. The family, eligible recipient (as appropriate for age and developmental level), and the AP's supervising BA work collaboratively to make a final determination regarding the clinically appropriate ABA service model, with consultative input from the AEP as needed. A behavior or functional analytic assessment addressing needs associated with both skill acquisition and behavior reduction is conducted, and an individualized ABA treatment plan, as appropriate for the ABA service model, is developed by the supervising BA. The BA is responsible for completing all of the following services:

(a) the recipient's assessment;

(b) selection and measurement of goals; and

(c) treatment plan formulation and documentation.

(3) Stage three - treatment: Most ABA stage three services require prior authorization and may vary in terms of intensity, frequency and duration, the complexity and range of treatment goals, and the extent of direct treatment provided.

(4) Stage three - clinical management and case supervision: All stage three services require clinical management. If a BAA or a BT is implementing the treatment plan, the BAA or BT requires frequent, ongoing case supervision from his or her BA or supervising BAA. The BH policy and billing manual provides a detailed description of the requirements for rendering clinical management and case supervision.

(5) Stage three - ABA specialty care services: Specialty care services require prior authorization. In cases where the needs of the eligible recipient exceed the expertise of the AP and the logistical or practical ability of the AP to fully support the eligible recipient MAD covers the eligible recipient for a referral to a MAD enrolled ABA specialty care practitioner (SCP).

(6) If the eligible recipient is in a residential facility or institutional setting that either specializes in or has as part of its treatment modalities MAD ABA services, and the residential facility is not an AP for ABA stage two and three services, and the eligible recipient has a MAD recognized CDE or targeted evaluation which recommends ABA stage two services, the residential facility is responsible to locate a MAD enrolled ABA stage two and three AP and develop an agreement allowing the AP to render stage two and three services at the residential facility. Reimbursement for ABA stage two and three services is made to the MAD enrolled AP, not the residential facility.

(7) For an eligible recipient who meets the criteria for ABA services and who is in a treatment foster care (TFC) placement, he or she is not considered to be in a residential facility and may receive ABA services outside of the TFC agency. An eligible recipient who meets the criteria for ABA services who is in a residential treatment center, accredited residential treatment center, or a group home may receive ABA services to the extent that the residential provider is able to provide the services.

(8) See the BH policy and billing manual for specific instructions concerning stages one through three services.

E. Prior authorization - general information stage three services:

(1) Prior authorization to continue ABA stage three services must be secured every six months. At each six month authorization point, a UR contractor will assess, with input from the family and AP's BA, whether or not changes are needed in the eligible recipient's ISP or treatment plan. Additionally, the family or AP may request ISP modifications prior to the UR contractor's six-month authorization point if immediate changes are warranted to preserve the health and wellbeing of the eligible recipient.

(2) To secure the initial and ongoing prior authorization for stage three services, the AP must submit the prior authorization request, specifically noting:

(a) the CDE or targeted evaluation and the ISP from the AEP (developed in stage one) along with the ABA treatment plan (developed in stage two);

(b) the requested treatment model (focused or comprehensive), maximum hours of service requested per week;

(c) the number of hours of case supervision requested per week, if more than two hours of supervision per 10 hours of intervention is requested; the BH policy and billing manual provides detailed requirements for case supervision;

(d) the number of hours of clinical management requested per week, if more than two hours of clinical management per 10 hours of intervention is requested; and

(e) the need for collaboration with an ABA specialty care provider, if such a need has been identified through initial assessment and treatment planning; after services have begun, the AP agency may refer the eligible recipient to a SCP for a focused behavior or functional analytic assessment focusing on the specific care needs of the eligible recipient. The SCP will then request a prior authorization for specialty care services to the eligible recipient's UR contractor.

(3) The request must document hours

allocated to other services (e.g., early intervention through FIT, physical therapy, speech and language therapy) that are in the eligible recipient's ISP in order for the eligible recipient's UR to determine if the requested intensity (i.e., hours per week) is feasible and appropriate.

(4) When an eligible recipient's behavior exceeds the expertise of the AP and logistical or practical ability of the AP to fully support him or her, MAD allows the AP to refer the eligible recipient to his or her UR contractor for prior authorization to allow an ABA specialty care provider to intervene. The UR contractor will approve a prior authorization to the ABA specialty care provider to complete a targeted assessment including a functional assessment and provide the primary AP with, or to implement his or herself, individualized interventions to address the behavioral concerns for which the referral is based on medical documentation.

(5) Services may continue until the eligible recipient no longer meets service criteria for ABA services as described in the BH policy and billing manual.

(6) See the BH policy and billing manual for specific instructions on prior authorizations.

F. Non-covered services:

(1) The eligible recipient's comprehensive or targeted diagnostic evaluation or the ISP and treatment plan updates recommend placement in a higher, more intensive, or more restrictive level of care (LOC) and no longer recommends ABA services.

(2) Activities that are not designed to accomplish the objectives delineated in covered services and that are not included in the ABA treatment plan.

(3) Activities that are not based on the principles and application of applied behavior analysis.

(4) Activities that take place in school settings and have the potential to supplant educational services.

(5) Activities that are better described as another therapeutic service (e.g., speech language therapy, occupational therapy, physical therapy, counseling, etc.), even if the practitioner has expertise in the provision of ABA.

(6) Activities which are better characterized as staff training certification or licensure or certification supervision requirements, rather than ABA case supervision.

G. Reimbursement: Billing instructions for ABA services are detailed in the BH policy and billing manual.

[8.321.2.12 NMAC - Rp, 8.321.2.12 NMAC, 8/10/2021]

8.321.2.13 ASSERTIVE COMMUNITY TREATMENT SERVICES: To help an eligible recipient with medically necessary services MAD pays for covered assertive community treatment services (ACT). See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

A. Eligible providers:

(1) An ACT agency must demonstrate compliance with administrative, financial, clinical, quality improvement and information services infrastructure standards established by MAD or its designee, including compliance and outcomes consistent with the ACT fidelity model. See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

(2) An ACT agency providing coordinated specialty care for an individual with first episode psychosis must provide services consistent with the coordinated specialty care (CSC) model.

(3) ACT services must be provided by an agency designated team of 10 to 12 members; see Paragraph (5) of Subsection A of 8.321.2.13 NMAC for the required composition. Lower number of team member compositions may be considered by BHSD for a waiver request dependent on the nature of the clinical severity and rural vs. urban environment pending BHSD approval. Each team must have a designated team leader. Practitioners on this team shall have sufficient individual competence, professional qualifications and experience to provide service coordination; crisis assessment and intervention; symptom assessment and management; individual counseling and psychotherapy; prescription, administration, monitoring and documentation of medications; substance abuse treatment; work-related services; activities of daily living services; support services or direct assistance to ensure that the eligible recipient obtains the basic necessities of daily life; and coordination, support and consultation to the eligible recipient's family and other major supports. The agency must coordinate its ACT services with local hospitals, local crisis units, local law enforcement agencies, local behavioral health agencies, and consider referrals from social service agencies.

(4) Each ACT team staff member must be successfully and currently certified or trained according to ACT fidelity model standards. The training standards focus on developing staff competencies for delivering ACT services according to the most recent ACT evidenced-based practices and ACT fidelity model. Each ACT team shall have sufficient numbers of qualified staff to provide treatment, rehabilitation, crisis and support services 24-hours a day, seven days a week.

(5) Each ACT team shall have a staff-to eligible recipient ratio dependent on the nature of the team based on clinical severity and rural vs. urban environment pending BHSD approval to ensure fidelity with current model.

(6) Each ACT team must comply with 8.321.2.9 NMAC for specific licensing requirements for ACT staff team members as appropriate, and must include:

(a) one team leader who is an independently licensed behavioral

health practitioner (LPCC, LMFT, LISW, LCSW, LPAT, psychologist);

(b) medical director/prescriber:

(i) board certified or board eligible psychiatrist; or

(ii) NM licensed psychiatric certified nurse practitioner; or

(iii) NM licensed psychiatric clinical nurse specialist; or

(iv) prescribing psychologist under the supervision or consultation of an MD; or

(c) two licensed nurses, one of whom shall be a RN, or other allied medical professionals may be used in place of one nurse;

(d) at least one other MAD recognized licensed behavioral health professional;

(e) at least one MAD recognized licensed behavioral health practitioner with expertise in substance use disorders;

(f) at least one employment specialist;

(g) at least one New Mexico certified peer support worker (CPSW) through the approved state of New Mexico certification program; or certified family peer support worker (CFPSW);

(h) one administrative staff person; and

(i) the eligible recipient shall be considered a part of the team for decisions impacting his or her ACT services.

(7) The agency must have a HSD ACT approval letter to render ACT services to an eligible recipient. The approval letter will authorize an agency also delivering CSC services.

(8) Any adaptations to the model require an approved variance from BHSD.

B. Coverage criteria:

(1) MAD covers medically necessary ACT services required by the condition of the eligible recipient.

(2) The ACT program provides four levels of interaction with the participating individuals:

(a) Face-to-face encounters.

(b) Collateral encounters designated as members of the recipient's family or household, or significant others who regularly interact with the recipient and are directly affected by or have the capability of affecting his or her condition, and are identified in the service plan as having a role in treatment.

(c) Assertive outreach defined as the ACT team having knowledge of what is happening with an individual. This occurs in either locating the individual or acting quickly and decisively when action is called for, while increasing client independence. This is done on behalf of the client, and can comprise only five percent per individual of total service time per month.

(d) Group encounters defined by the following types:

(i) Basic living skills development;

(ii) Psychosocial skills training;

(iii) Peer groups; or

(iv) Wellness and recovery groups.

(3) The ACT therapy model is based on empirical data and evidence-based interventions that target specific behaviors with an individualized treatment plan for the eligible recipient. Specialized therapeutic and rehabilitative interventions falling within the fidelity of the ACT model are used to address specific areas of need, such as experiences of repeated hospitalization or incarcerations, severe problems completing activities of daily living and individuals who have a significant history of involvement in behavioral health services.

C. Identified population:

(1) ACT services are provided to an eligible recipient aged 18 and older whose diagnosis or diagnoses meet the criteria of serious mental illness (SMI) with a special emphasis on psychiatric disorders, including schizophrenia, schizoaffective disorder, bipolar disorder or psychotic depression for individuals who have severe problems completing activities of daily living, who have a significant history of involvement in behavioral health services and who have experienced repeated hospitalizations or incarcerations due to mental illness.

(2) ACT services can also be provided to eligible individuals 15 to 30 years of age who are within the first two years of their first episode of psychosis.

(3) A co-occurring diagnosis of substance abuse shall not exclude an eligible recipient from ACT services.

D. Covered services:– ACT is a voluntary medical, comprehensive case management and psychosocial intervention program provided on the basis of principles covered in the BH policy and billing manual. **E. Non-covered services:** ACT services are subject to the limitations and coverage restrictions that exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for MAD general non-covered behavioral health services. MAD does not cover other psychiatric, mental health nursing, therapeutic, non-intensive outpatient substance abuse or crisis services when billed in conjunction with ACT services to an eligible recipient, except for medically necessary medications and hospitalizations. Psychosocial rehabilitation services can be billed for a six-month period for transitioning levels of care, but must be identified as a component of the treatment plan.

F. Reimbursement: ACT agencies must submit claims for reimbursement on the CMS-1500 claim form or its successor. See Subsection H of 8.321.2.9 for MAD general reimbursement requirements. [8.321.2.13 NMAC - Rp 8.321.2.13 NMAC, 8/10/2021]

8.321.2.14 BEHAVIORAL HEALTH PROFESSIONAL SERVICES FOR SCREENINGS, EVALUATIONS, ASSESSMENTS AND THERAPY: MAD covers validated screenings for high risk conditions in order to provide prevention or early intervention. Brief interventions or the use of the treat first clinical model may be billed with a provisional diagnosis for up to four encounters. After four encounters, if continuing treatment is required, a diagnostic evaluation must be performed, and subsequent reimbursement is based on the diagnosis and resulting service and treatment plan. See the BH policy and billing manual for a description of the treat first clinical model.

A. Psychological, counseling and social work: These services are diagnostic or active treatments with the intent to reasonably improve an eligible recipient's physical, social, emotional and behavioral health or substance abuse condition. Services are provided to an eligible recipient whose condition or functioning can be expected to improve with these interventions. Psychological, counseling and social work services are performed by licensed psychological, counseling and social work practitioners acting within their scope of practice and licensure (see Subsections B through E of 8.321.2.9 NMAC). These services include, but are not limited to assessments that appraise cognitive, emotional and social functioning and self-concept. Therapy includes planning, managing and providing a program of psychological services to the eligible recipient meeting a current DSM, ICD, or DC:0-5 behavioral health diagnosis and may include therapy with her or his family or parent/caretaker, and consultation with his or her family and other professional staff.

B. An assessment as described in the BH policy and billing manual, must be signed by the practitioner operating within his or her scope of licensure (see Subsection B of 8.321.2.9 NMAC). A non-independently licensed behavioral health practitioner must have an independently licensed behavioral health practitioner review and sign the assessment with a diagnosis. Based on the eligible recipient's current assessment, his or her treatment file must document the extent to which his or her treatment goals are being met and whether changes in direction or emphasis of the treatment are needed. See Subsection K of 8.321.2.9 NMAC for detailed description of the required eligible recipient file documentation.

C. Outpatient therapy services (individual, family and group) includes planning, managing, and providing a program of psychological services to the eligible recipient with a diagnosed behavioral health disorder, and may include consultation with his or her family and other professional staff with or without the eligible recipient present when the service is on behalf of the recipient. See the BH policy and billing manual for detailed requirements of service plans and treatment plans.

[8.321.2.14 NMAC - Rp, 8.321.2.14 NMAC, 8/10/2021]

8.321.2.15 BEHAVIORAL HEALTH RESPITE CARE (Managed Care Organization (MCO)): As part of centennial care's comprehensive service system, behavioral health (BH) respite service is for short-term direct care and supervision of the eligible recipient in order to afford the parent(s) or caregiver a respite for their care of the recipient and takes place in the recipient's home or another setting. See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

A. Eligible practitioners:

(1) Supervisor:

(a) bachelor's degree and three years' experience working with the target population;

(b) supervision activities include a minimum of two hours per month individual supervision covering administrative and case specific issues, and two additional hours per month of continuing education in behavioral health respite care issues, or annualized respite provider training;

(c) access to on call crisis support available 24-hours a day; and

(d) supervision by licensed practitioners must be in accordance with their respective licensing board regulations.

(2) Respite care staff:

(a) minimum three years' experience working with the target population;

(b) pass all criminal records and background checks for all persons residing in the home over 18;

(c) possess a valid driver's license, vehicle registration and insurance, if transporting member;

(d) CPR and first aid; and

(e) documentation of behavioral health orientation, training and supervision as defined in the BH policy and billing manual.

B. Coverage criteria: The provider agency will assess the situation and, with the caregiver, recommend the appropriate setting for respite. BH respite services may include a range of activities to meet the social, emotional and physical needs identified through the service or treatment plan, and documented in the treatment record. These services may be provided for a few hours during the day or for longer periods of time involving overnight stays. BH respite, while usually planned, can also be provided in an emergency or unplanned basis.

C. Identified population:

(1) Members up to 21 years of age diagnosed with a severe emotional disturbance (SED), as defined by the state of New Mexico who reside with the same primary caregivers on a daily basis; or

(2) Youth in protective services custody whose placement may be at risk whether or not they are diagnosed with SED.

D. Non-covered services:

(1) 30 days or 720 hours per year at which time prior authorization must be acquired for additional respite care;

(2) May not be billed in conjunction with the following medicaid services:

(a) treatment foster care;

(b) group home;

(c) residential services;

(d) inpatient treatment.

(3) Non-enrolled siblings of a child receiving BH respite services are not eligible for BH respite benefits; and

(4) Cost of room and board are not included as part of respite care.

[8.321.2.15 NMAC - Rp, 8.321.2.15 NMAC, 8/10/2021]

8.321.2.16 BEHAVIOR MANAGEMENT SKILLS DEVELOPMENT SERVICES: To help an eligible recipient under 21 years of age who is in need of behavior management intervention receive services, MAD pays for behavior management services (BMS) as part of the EPSDT program and when the need for BMS is identified in a tot to teen health check screen or other diagnostic evaluation (see 42 CFR Section 441.57). BMS services are designed to provide highly supportive and structured therapeutic behavioral interventions to maintain the eligible recipient in his or her home or community. BMS assists in reducing or preventing inpatient hospitalizations or out-of-home residential placement of the eligible recipient through use of teaching, training and coaching activities designed to assist him or her in acquiring, enhancing and maintaining the life, social and behavioral skills needed to function successfully within his or her home and community settings. BMS is provided as part of a comprehensive approach to treatment and in conjunction with other services as indicated in the eligible recipient's comprehensive behavioral health treatment or service plan. BMS is not provided as a stand-alone service, but delivered as part of an integrated plan of services to maintain eligible recipients in their communities as an alternative to out-of-home services.

A. Eligible providers: An agency must be certified by CYFD to provide BMS services. See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

B. Coverage criteria: MAD reimburses for behavior management services specified in the eligible recipient's individualized treatment plan which are designed to improve his or her performance in targeted behaviors, reduce emotional and behavioral episodic events, increase social skills and enhance behavioral skills through a regimen of positive intervention and reinforcement.

(1) Implementation of the eligible recipient's BMS treatment plan, which includes crisis planning, must be based on a clinical assessment that includes identification of skills deficits that will benefit from an integrated program of therapeutic services. A detailed description of required elements of the assessment and treatment plan are found in the BH policy and billing manual.

(2) 24-hour availability of appropriate staff or implementation of crisis plan, which may include referral, to respond to the eligible recipient's crisis situations.

(3) Supervision of behavioral management staff by an independent level practitioner is required for this service (8.321.2.9 NMAC). Policies governing supervisory responsibilities are detailed in the BH policy and billing manual. The supervisor must ensure that:

(a) a clinical assessment of the eligible recipient is completed upon admission into BMS. The clinical assessment identifies the need for BMS as medically necessary to prevent inpatient hospitalizations or out-of-home residential placement of the eligible recipient;

(b) the assessment is signed by the recipient or his or her parent or legal guardian; and

(c) the BMS worker receives documented supervision for a minimum of two hours per month dependent on the complexity of the needs presented by recipients and the supervisory needs of the BMS worker.

(4) An eligible recipient's treatment plan must be reviewed at least every 30 calendar days after implementation of the comprehensive service plan. The BMS, in partnership with the client and family as well as all other relevant treatment team members such as school personnel, juvenile probation officer (JPO), and guardian ad litem (GAL), shall discuss progress made over time relating to the BMS service goals. If the BMS treatment team assesses the recipient's lack of progress over the last 30 days, the treatment plan will be amended as agreed upon during the treatment team meeting. Revised BMS treatment plans will be reviewed and approved by the BMS supervisor, which must be documented in the recipient's file.

C. Identified population: In order to receive BMS services, an eligible recipient must be under the age of 21 years, be diagnosed with a behavioral health condition and:

(1) be at-risk for out-of-home residential placement due to unmanageable behavior at home or within the community;

(2) need behavior management intervention to avoid inpatient hospitalizations or residential treatment; or

(3) require behavior management support following an institutional or other out-of-home placement as a transition to

maintain the eligible recipient in his or her home and community.

(4) either the need for BMS is NOT listed on an individualized education plan (IEP), or it is listed in the supplementary aid & service section of the IEP.

D. Non-covered services: BMS services are subject to the limitations and coverage restrictions which exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for general non-covered MAD behavioral health services or activities. MAD does not cover the following specific services billed in conjunction with BMS services:

(1) activities which are not designed to accomplish the objectives in the BMS treatment plan;

(2) services provided in residential treatment facilities; and

(3) services provided in lieu of services that should be provided as part of the eligible recipient's individual educational plan (IEP) or individual family service plan (IFSP).

(4) BMS is not a reimbursable service through the medicaid school based service program.

E. Reimbursement: A BMS agency must submit claims for reimbursement on the CMS-1500 claim form or its successor. See Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements and 8.302.2 NMAC. [8.321.2.16 NMAC - Rp 8.321.2.16 NMAC, 8/10/2021]

8.321.2.17 COGNITIVE ENHANCEMENT THERAPY (CET): CET services provide treatment service for an eligible recipient 18 years of age or older with cognitive impairment associated with the following serious mental illnesses: schizophrenia, bipolar disorder, major depression, recurrent schizoaffective disorder, or autism spectrum disorder. CET uses an evidence-based model to help eligible recipients with these conditions improve their processing speed, cognition, and social cognition. Any CET program must be approved by the behavioral health services division (BHSD) and ensure that treatment is delivered with fidelity to the evidence-based model.

A. Eligible providers: Services may only be delivered through a MAD approved agency after demonstrating that the agency meets all the requirements of CET program services and supervision. See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

(1) CET services are provided through an integrated interdisciplinary approach by staff with expertise in the mental health condition being addressed and have received training from a state approved trainer. Staff can include independently licensed behavioral health practitioners, non-independently licensed behavioral health practitioners, RNs, or CSWs. For every CET cohort of eligible recipients, there must be two practitioners who have been certified in the evidence-based practice by a state approved trainer or training center. The agency shall retain documentation of the staff that has been trained. The size of each cohort who receives CET must conform to the evidence-based practice (EBP) model in use.

(2) The agency must hold an approval letter issued by BHSD certifying that the staff have participated in an approved training or have arranged to participate in training and have supervision by an approved trainer prior to commencing services.

(3) Weekly required participation in hourly fidelity monitoring sessions with a certified CET trainer for all providers delivering CET who have not yet received certification.

B. Covered services:

(1) CET services include:

(a) weekly social cognition groups with enrollment according to model fidelity;

(b) weekly computer skills groups with enrollment according to model fidelity;

(c) weekly individual face-to-face coaching sessions to clarify questions and to work on homework assignments;

(d) initial and final standardized assessments to quantify social-cognitive impairment, processing speed, cognitive style; and

(e) individual treatment planning.

(2) The duration of an eligible recipient's CET intervention is based on model fidelity. Each individual participating in CET receives up to three hours of group treatment and up to one hour of individual face-to-face coaching.

C. Identified population: CET services are provided to an eligible adult recipient 18 years of age and older with cognitive impairment associated with the following serious mental illnesses:

(1) schizophrenia;

(2) bipolar disorder;

(3) major depression, recurrent;

(4) schizoaffective disorder; or

(5) autism spectrum disorder.

D. Non-covered services:

(1) CET services are subject to the limitation and coverage restrictions which exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for general non-covered MAD behavioral health services and 8.310.2 NMAC for MAD general non-covered services.

(2) MAD does not cover the CET during an acute inpatient stay.

E. Reimbursement: See subsection H of 8.321.2.9 NMAC for MAD behavioral health general reimbursement.

(1) For CET services, the agency must submit claims for reimbursement on the CMS-1500 claim form or its successor.

(2) Core CET services are reimbursed through a bundled rate. Medications and other mental health therapies are billed and reimbursed separately from the bundled rate.

(3) CET services furnished by a CET team member are billed by and reimbursed to a MAD CET agency whether the team member is under contract with or employed by the CET agency.

(4) CET services not provided in accordance with the conditions for coverage as specified in 8.321.2.9 NMAC are not a MAD covered service and are subject to recoupments.

(5) Billing instructions for CET services are detailed in the BH policy and billing manual.

[8.321.2.17 NMAC - Rp, 8.321.2.17 NMAC, 8/10/2021]

8.321.2.18 COMPREHENSIVE COMMUNITY SUPPORT SERVICES (CCSS): To help a New Mexico eligible recipient receive medically necessary services, MAD pays for covered CCSS. This culturally sensitive service coordinates and provides services and resources to an eligible recipient and his or her family necessary to promote recovery, rehabilitation and resiliency. CCSS identifies and addresses the barriers that impede the development of skills necessary for independent functioning in the eligible recipient's community, as well as strengths that may aid the eligible recipient and family in the recovery or resiliency process.

A. Eligible providers and practitioners:

(1) See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements. To provide CCSS services, a provider must receive CCSS training through the state or state approved trainer and attest that they have received this training when contacting the state's fiscal agent to add the specialty service 107, CCSS to their existing enrollment in medicaid. The children, youth and families department (CYFD) will provide background checks for CCSS direct service and clinical staff for child/youth CCSS programs.

(2) Clinical services and supervision by licensed behavioral health practitioners must be in accord with their respective licensing board regulations:

(a) Minimum staff qualifications for the community support worker (CSW):

(i) must be at least 18 years of age; and

(ii) hold a bachelor's degree in a human services field from an accredited university and have one year of relevant experience with the target population; or

(iii) hold an associate's degree and a minimum of two years of experience working with the target population; or

(iv) hold an associate's degree in approved curriculum in behavioral health coaching; no experience necessary; or

(v) have a high school diploma or equivalent and a minimum of three years of experience working with the target population; or

(vi) hold a certification from the New Mexico credentialing board for behavioral health professionals as a certified peer support worker (CPSW) or as a certified peer family specialist (CPFS).

(b) Minimum staff qualifications for certified peer support workers (CPSW):

(i) must be 18 years of age or older; and

(ii) have a high school diploma or equivalent; and

(iii) be self-identified as a current or former consumer of mental health or substance abuse services, and have at least two years of mental health or substance abuse recovery; and

(iv) have received certification as a CPSW.

(c) Minimum staff qualifications for certified family peer support workers (CFPSW):

(i) must be 18 years of age or older; and

(ii) have a high school diploma or equivalent; and

(iii) must have lived-experience of being actively involved in raising a child who experienced emotional, behavioral, mental health, or mental health with co-occurring substance use or developmental disability challenges prior to the age of 18 years.

(iv) must have personal experience navigating child serving systems on behalf of their own child. Must also have an understanding of how these systems operate in New Mexico; and

(v) have received certification as a CFPSW.

(d) Minimum staff qualifications for certified youth peer support workers (CYPSW):

(i) must be 18 years of age or older; and

(ii) have a high school diploma or equivalent; and

(iii) have personal experience navigating any of the child/family-serving systems prior to the age of 18 years. Must also have an understanding of how these systems operate in New Mexico; and

(iv) have received certification as a CYPSW.

(e) Minimum staff qualifications for the CCSS program supervisor:

(i) must hold a bachelor's degree in a human services field from an accredited university; and

(ii) have four years relevant experience in the delivery of case management or CCSS with the target population; and

(iii) have one year demonstrated supervisory experience.

(f) Minimum staff qualifications for the clinical supervisor:

(i) must be a licensed independent practitioner (i.e. psychiatrist, psychologist, LISW, LPCC, LMFT), psychiatrically certified clinical nurse specialist or clinical nurse practitioner practicing under the scope of their NM licensure; and

(ii) have one year demonstrated supervisory experience; and

(iii) provide documented clinical supervision on a regular basis to the CSW, CPS and CFS.

(3) Staff training requirements:

(a) Minimum staff training requirements for a community support worker includes:

(i) an initial training comprised of 20 hours of documented education within the first 90 days of employment drawn from an array of areas documented in the BH policy and billing manual;

(ii) documentation of ongoing training comprised of 20 hours is required of a CSW every year, after the first year of hire, with content of the education based upon agency assessment of staff need.

(b) Minimum staff training requirements for supervisors:

(i) the same 20 hours of documented training or continuing education as required for the CCSS community support worker;

(ii) an attestation of training related to providing clinical supervision of non-clinical staff.

(4) The clinical supervisor and the CCSS program supervisor may be the same individual.

(5) Documentation requirements: In addition to the standard client record documentation requirements for all services, the following is required for CCSS:

(a) case notes identifying all activities and location of services;

(b) duration of service span (e.g., 1:00 p.m.-2:00 p.m.); and

(c) description of the service provided with reference to the CCSS treatment plan and related goals.

B. Coverage criteria:

(1) CCSS must be identified in the service plan for an individual. When identifying a need for this service, if the provider agency is utilizing the "Treat First" clinical model, they may be placed in this service for up to four encounters without having had a psychiatric diagnostic evaluation with the utilization of a provisional diagnosis for billing purposes. After four encounters, an individual must have a comprehensive needs assessment, a diagnostic evaluation, and a CCSS treatment plan. Further details related to the CCSS treatment plan can be accessed in the BH policy and billing manual.

(2) A maximum of 16 units per each admission or discharge may be billed concurrently with:

(a) accredited residential treatment center (ARTC);

(b) adult accredited residential treatment center (AARTC);

(c) residential treatment center (RTC);

(d) group home service;

(e) inpatient hospitalization; or

(f) treatment foster care (TFC).

C. Covered services: The purpose of CCSS is to provide an eligible recipient and his or her family with the services and resources necessary to promote recovery, rehabilitation and resiliency. Community support services address goals specifically in the following areas of the eligible recipient's activities: independent living; learning; working; socializing and recreation. CCSS consists of a variety of interventions, based on coaching and addressing barriers that impeded the development of skills necessary for independent functioning in the community. Community support services also include assistance with identifying and coordinating services and supports identified in an individual's service plan; supporting an individual and family in crisis situations; and providing individual interventions to develop or enhance an individual's ability to make informed and independent choices.

D. Identified population:

(1) CCSS is provided to an eligible recipient under 21 years who meets the NM state criteria for severe emotional disturbance (SED)/neurobiological/ behavioral disorders; and

(2) CCSS is provided to an eligible recipient 21 years and older whose diagnosis or diagnoses meet the NM state criteria of serious mental illness (SMI) and for an eligible recipient with a diagnosis that does not meet the criteria for SMI, but for whom time-limited CCSS would support his or her recovery and resiliency process; and

(3) Recipients with a moderate to severe substance use disorder (SUD) according to the current DSM V or its successor; and

(4) Recipients with a co-occurring disorder (mental illness/substance use) or dually diagnosed with a primary diagnosis of mental illness.

E. Non-covered services: CCSS is subject to the limitations and coverage restrictions which exist for other MAD services. See 8.310.2 NMAC for a detailed description of MAD general non-covered services and Subsection G of

8.321.2.9 NMAC for all non-covered MAD behavioral health services or activities. Specifically, CCSS may not be billed in conjunction with multi-systemic therapy (MST) or ACT services, or resource development by New Mexico corrections department (NMCD).

F. Reimbursement: CCSS agencies must submit claims for reimbursement on the CMS-1500 claim form or its successor; see 8.302.2 NMAC. Once enrolled, a provider receives instructions on how to access documentation, billing, and claims processing information. General reimbursement instructions are found in this rule under Subsection H of 8.321.2.9 NMAC. Billing instructions for CCSS are found in the BH policy and billing manual.

[8.321.2.18 NMAC - Rp, 8.321.2.18 NMAC, 8/10/2021]

8.321.2.19 CRISIS INTERVENTION SERVICES: MAD pays for community-based crisis intervention services which are immediate, crisis oriented services designed to ameliorate or minimize an acute crisis episode or to prevent inpatient psychiatric hospitalization or medical detoxification. Services are provided to eligible recipients who have suffered a breakdown of their normal strategies or resources and who exhibit acute problems or disturbed thoughts, behaviors, or moods which could threaten the safety of self or others. MAD covers four types of crisis services: telephone crisis services; face-to-face crisis intervention in a clinic setting; mobile crisis services; and outpatient crisis stabilization services.

A. Coverage criteria:

(1) Telephone crisis services:

(a) Must provide 24-hour, seven day-a-week telephone services to eligible recipients that are in crisis and to callers who represent or seek assistance for persons in a mental health crisis;

(b) The establishment of a toll-free number dedicated to crisis calls for the identified service area;

(c) Assurance that a backup crisis telephone system is available if the toll-free number is not accessible;

(d) Assurance that calls are answered by a person trained in crisis response as described in the BH policy and billing manual;

(e) Processes to screen calls, evaluate crisis situation, and provide counseling and consultation to crisis callers are documented and implemented;

(f) Assurance that face-to-face intervention services are available immediately if clinically indicated either by the telephone service or through memorandums of understanding with referral sources;

(g) Provision of a toll-free number to active clients and their support; and

(h) A crisis log documenting each phone call must be maintained and include:

(i) date, time and duration of call;

(ii) name of individual calling;

(iii) responder handling call;

(iv) description of crisis; and

(v) intervention provided, (e.g. counseling, consultation, referral, etc.).

(2) Face-to-face clinic crisis services:

(a) The provider shall make an immediate assessment for purposes of developing a system of triage to determine urgent or emergent needs of the person in crisis. (Note: The immediate assessment may have already been completed as part of a telephone crisis response.)

(b) Within the first two hours of the crisis event, the provider will initiate the following activities:

(i) immediately conduct the crisis assessment;

(ii) protect the individual (possibly others) and de-escalate the situation;

(iii) determine if a higher level of service or other supports are required and arrange, if applicable.

(c) Follow-up. Initiate telephone call or face-to-face follow up contact with individual within 24 hours of initial crisis.

(3) Mobile crisis intervention services: When mobile crisis is provided, the response will include a two member team capable of complying with the initial crisis requirements described in 8.321.2.19 NMAC.

(4) Crisis stabilization services: Outpatient services for up to 24 hour stabilization of crisis conditions which may, but do not necessarily, include ASAM level two withdrawal management, and can also serve as an alternative to the emergency department or police department. Eligible population is 14 years and older.

B. Eligible practitioners:

(1) Telephone crisis services (Independently licensed BH practitioner):

(a) Individual crisis workers who are covering the crisis telephone must meet the following criteria:

(i) CPSW with one year work experience with individuals with behavioral health condition;

(ii) Bachelor level community support worker employed by the agency with one year work experience with individuals with a behavioral health condition;

(iii) RN with one year work experience with individuals with behavioral health condition;

(iv) LMHC with one year work experience with individuals with behavioral health condition;

(v) LMSW with one year work experience with individuals with behavioral health condition; or

(vi) Psychiatric physician assistant.

(b) Supervision by a:

(i) licensed independent behavioral health practitioner; or

(ii) behavioral health clinical nurse specialist; or

(iii) psychiatric certified nurse practitioner; or

(iv) psychiatrist.

(c) Training:

(i) 20 hours of crisis intervention training that addresses the developmental needs of the full age span of the target population by a licensed independent mental health professional with two years crisis work experience; and

(ii) 10 hours of crisis related continuing education annually.

(2) Mobile crisis intervention services:

(a) Services must be delivered by licensed behavioral health practitioners employed by a mental health or substance abuse provider organization as described above.

(b) One of the team members may be a certified peer support or family peer support worker.

(3) Crisis stabilization services staffing must include all of the below positions and must be adequate to serve the expected population, but not less than:

(a) one registered nurse (RN) licensed by the NM board of nursing with experience or training in crisis triage and managing intoxication and withdrawal management, if this service is provided during all hours of operation;

(b) one regulation and licensing department (RLD) master's level licensed mental health professional on-site during all hours of operation;

(c) certified peer support worker on-site or available for on-call response during all hours of operation;

(d) board certified physician or certified nurse practitioner licensed by the NM board of nursing either on-site or on call; and

(e) at least one staff trained in basic cardiac life support (BCLS), the use of the automated external defibrillator (AED) equipment, and first aid shall be on duty at all times.

C. Covered services:

(1) Telephone crisis services:

(a) The screening of calls, evaluation of the crisis situation and provision of counseling and consultation to the crisis callers.

(b) Referrals to appropriate mental health professions, where applicable.

(c) Maintenance of telephone crisis communication until a face-to-face response occurs, as applicable.

(2) Face-to-face clinic crisis services:

(a) crisis assessment;

(b) other screening, as indicated by assessment;

(c) brief intervention or counseling; and

(d) referral to needed resource.

(3) Mobile crisis intervention services:

(a) crisis assessment;

(b) other screening, as indicated by assessment;

(c) brief intervention or counseling; and

(d) referral to needed resource.

(4) Crisis stabilization services:

(a) Ambulatory withdrawal management includes:

(i) evaluation, withdrawal management and referral services under a defined set of physician approved policies and clinical protocols. The physician does not have to be on-site, but available during all hours of operation;

(ii) clinical consultation and supervision for bio-medical, emotional, behavioral, and cognitive problems;

(iii) comprehensive medical history and physical examination of recipient at admission;

(iv) psychological and psychiatric consultation;

(v) conducting or arranging for appropriate laboratory and toxicology test;

(vi) assistance in accessing transportation services for recipients who lack safe transportation.

(b) Crisis stabilization includes but is not limited to:

(i) crisis triage that involves making crucial determinations within several minutes about an individual's course of treatment;

(ii) screening and assessment;

(iii) de-escalation and stabilization;

(iv) brief intervention or psychological counseling;

(v) peer support; and

(vi) prescribing and administering medication, if applicable.

(c) Navigational services for individuals transitioning to the community include:

(i) prescription and medication assistance;

(ii) arranging for temporary or permanent housing;

(iii) family and natural support group planning;

(iv) outpatient behavioral health referrals and appointments; and

(v) other services determined through the assessment process.

D. Reimbursement: See Subsection H of 8.321.9 NMAC for MAD behavioral health general reimbursement requirements. See the BH policy and billing manual for reimbursement specific to crisis intervention services.

[8.321.2.19 NMAC - Rp 8.321.2.19 NMAC, 8/10/2021]

8.321.2.20 CRISIS TRIAGE CENTER: MAD pays for a set of services, either outpatient only or including residential, to eligible adults and youth 14 years of age and older, to provide voluntary stabilization of behavioral health crises including emergency mental health evaluation and care. Crisis triage centers (CTC) shall provide emergency screening and evaluation services 24 hours a day, seven days a week.

A. Coverage criteria for CTCs which include residential care:

(1) The CTC shall provide emergency screening, and evaluation services 24-hours a day, seven days a week and shall admit 24-hours a day seven days a week and discharge seven days a week;

(2) Readiness for discharge shall be reviewed in collaboration with the recipient every day;

(3) An independently licensed mental health practitioner or non-independent mental health practitioner under supervision must assess each individual with the assessment focusing on the stabilization needs of the client;

(4) The assessment must include medical and mental health history and status, the onset of the illness, the presenting circumstances, risk assessment, cognitive abilities, communication abilities, social history and history of trauma;

(5) A licensed mental health professional must document a crisis stabilization plan to address needs identified in the assessment which must also include criteria describing evidence of stabilization and either transfer or discharge criteria;

(6) The CTC identifies recipients at high risk of suicide or intentional self-harm, and subsequently engages these recipients through solution-focused and harm-reducing methods;

(7) Education and program offerings are designed to meet the stabilization and transfer of recipients to a different level of care;

(8) The charge nurse, in collaboration with a behavioral health practitioner, shall make the determination as to the time and manner of transfer to ensure no further deterioration of the recipient during the transfer between facilities, and shall specify the benefits expected from the transfer in the recipient's record;

(9) The facility shall develop policies and procedures addressing risk assessment and mitigation including, but not limited to: assessments, crisis intervention plans, treatment, approaches to supporting, engaging and problem solving, staffing, levels of observation and documentation. The policies and procedures must prohibit seclusion and address physical restraint, if used, and the facility's response to clients that present with imminent risk to self or others, assaultive and other high-risk behaviors;

(10) Use of seclusion is prohibited;

(11) The use of physical restraint must be consistent with federal and state laws and regulation;

(12) Physical restraint, as defined in the BH policy and billing manual, shall be used only as an emergency safety intervention of last resort to ensure the physical safety of the client and others, and shall be used only after less intrusive or restrictive interventions have been determined to be ineffective;

(13) If serving both youth and adult populations, the service areas must be separate; and

(14) If an on-site laboratory is part of services, the appropriate clinical laboratory improvement amendments (CLIA) license must be obtained.

B. Coverage criteria for CTCs which are outpatient only: Paragraph (3) through (14) of Subsection A of 8.321.2.20 NMAC are conditions of coverage for outpatient only services.

C. Eligible providers and practitioners:

(1) A provider agency licensed through the department of health as a crisis triage center offering one of the following types of service:

(a) a CTC structured for less than 24-hour stays providing only outpatient withdrawal management or other stabilization services;

(b) a CTC providing outpatient and residential crisis stabilization services; or

(c) a CTC providing residential crisis stabilization services.

(2) Practitioners must be contracted or employed by the provider agency as part of its crisis triage center service delivery.

(3) All providers must be licensed in New Mexico for services performed in New Mexico. For services performed by providers licensed outside of New Mexico, a provider's out-of-state license may be accepted in lieu of licensure in New Mexico if the out-of-state licensure requirements are similar to those of the state of New Mexico.

(4) For services provided under the public health service including IHS,

providers must meet the requirements of the public health service corps.

(5) The facility shall maintain sufficient staff including supervision and direct care and mental health professionals to provide for the care of residential and non-residential clients served by the facility, based on the acuity of client needs.

(6) The following individuals and practitioners must be contracted or employed by the provider agency as part of its crisis triage center service delivery:

(a) An on-site administrator which can be the same person as the clinical director. The administrator is specifically assigned to crisis triage center service oversight and administrative responsibilities and:

(i) is experienced in acute mental health; and

(ii) is at least 21 years of age; and

(iii) holds a minimum of a bachelor's degree in the human services field; or

(iv) is a registered nurse (RN) licensed by the NM board of nursing with experience or training in acute mental health treatment.

(b) A full time clinical director that is:

(i) at least 21 years of age; and

(ii) is a licensed independent mental health practitioner or certified nurse practitioner or clinical nurse specialist with experience and training in acute mental health treatment and withdrawal management services, if withdrawal management services are provided.

(c) A charge nurse on duty during all hours of operation under whom all services are directed, with the exception of services provided by the physician and the licensed independent mental health practitioner, and who is:

(i) at least 18 years of age; and

(ii) a RN licensed by the NM board of nursing with experience in acute mental health treatment and withdrawal management services, if withdrawal management services are provided.

(d) A regulation and licensing department (RLD) master's level licensed mental health practitioner.

(e) Certified peer support workers (CPSW) holding a certification by the New Mexico credentialing board for behavioral health professionals as a certified peer support worker staffed appropriate to meet the client needs 24 hours a day 7 days a week.

(f) An on call physician during all hours of operation who is a physician licensed to practice medicine (MD) or osteopathy (DO), or a licensed certified nurse practitioner (CNP), or a licensed clinical nurse specialist (CNS) with behavioral health experience as described in 8.310.3 NMAC.

(g) A part time psychiatric consultant or prescribing psychologist, hours determined by size of center, who is a physician (MD or DO) licensed by the board of medical examiners or board of osteopathy and is board eligible or board certified in psychiatry as described in 8.321.2 NMAC, or a prescribing psychologist licensed by the board of psychologist examiners or psychiatric certified nurse practitioner as licensed by the board of nursing. These services may be provided through telehealth.

(h) At least one staff trained in basic cardiac life support (BCLS), the use of the automated external defibrillator (AED) equipment, and first aid shall be on duty at all times.

(7) Additional staff may include an emergency medical technician (EMT) with documentation of three hours of annual training in suicide risk assessment.

D. Identified population:

(1) An eligible recipient is 18 years of age and older who meets the crisis triage center admission criteria if the CTC is an adults only agency.

(2) If serving youth, an eligible recipient is 14 years through 17 years.

(3) Recipients may also have other co-occurring diagnoses.

(4) The CTC shall not refuse service to any recipient who meets the agency's criteria for services, or solely based on the recipient being on a law enforcement hold or living in the community on a court ordered conditional release.

E. Covered services:

(1) Comprehensive medical history and physical examination of recipient at admission;

(2) Development and update of the assessment and plan as described in the BH policy and billing manual;

(3) Crisis stabilization including, but not limited to:

(a) crisis triage that involves making crucial determinations within several minutes about an individual's course of treatment;

(b) screening and assessment as described in the BH policy and billing manual;

(c) de-escalation and stabilization;

(d) brief intervention and psychological counseling;

(e) peer support.

(4) Ambulatory withdrawal management (non-residential) based on American society of addiction medicine (ASAM) 2.1 level of care includes:

(a) evaluation, withdrawal management and referral services under a defined set of physician approved policies and clinical protocols;

(b) clinical consultation and supervision

for bio-medical, emotional, behavioral, and cognitive problems;

(c) psychological and psychiatric consultation; and

(d) other services determined through the assessment process.

(5) Clinically or medically monitored withdrawal management in residential setting, if included, not to exceed services described in level 3.7 of the current ASAM patient placement criteria.

(6) Prescribing and administering medication, if applicable.

(7) Conducting or arranging for appropriate laboratory and toxicology testing.

(8) Navigational services for individuals transitioning to the community when available include:

(a) prescription and medication assistance;

(b) arranging for temporary or permanent housing;

(c) family and natural support group planning;

(d) outpatient behavioral health referrals and appointments; and

(e) other services determined through the assessment process.

(9) Assistance in accessing transportation services for recipients who lack safe transportation.

F. Non-covered services: are subject to the limitations and coverage restrictions that exist for other MAD services. See 8.310.2 and 8.321.2 NMAC for general non-covered services. Specific to crisis triage services, the following apply:

(1) Acute medical alcohol detoxification that requires hospitalization as diagnosed by the agency physician or certified nurse practitioner.

(2) Medical care not related to crisis triage intervention services beyond basic medical care of first aid and CPR.

G. Prior authorization and utilization review: All MAD services are subject to utilization review (UR) for medical necessity and program compliance. The provider agency must contact HSD or its authorized agents to request UR instructions. It is the provider agency's responsibility to access these instructions or ask for hard copies to be provided, to understand the information provided, to comply with the requirements, and to obtain answers to questions not covered by these materials.

(1) Prior authorization: Crisis triage services do not require prior authorization, but are provided as approved by the crisis triage center provider agency. However, other procedures or services may require prior authorization from MAD or its designee when such services require prior authorization for other MAD eligible recipients, such as inpatient admission. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process, including after payment has been made. It is the provider agency's responsibility to contact MAD or its designee and review documents and instructions available from MAD or its designee to determine when prior authorization is necessary.

(2) Timing of UR: A UR may be performed at any time during the service, payment, or post payment processes. In signing the MAD PPA, a provider agency agrees to cooperate fully with MAD or its designee in their performance of any review and agree to comply with all review requirements.

H. Reimbursement: Crisis triage center services are reimbursed through an agency specific cost based bundled rate relative to type of services rendered. Billing details are provided in the BH policy and billing manual.

[8.321.2.20 NMAC - Rp, 8.321.2.20 NMAC, 8/10/2021]

8.321.2.21 DAY TREATMENT: MAD pays for services provided by a day treatment provider as part of the EPSDT program for eligible recipients under 21 years of age (42 CFR section 441.57). The need for day treatment services (DTS) must be identified through an EPSDT tot to teen health check or other diagnostic evaluation. Day treatment services include eligible recipient and parent education, skill and socialization training that focus on the amelioration of functional and behavioral deficits. Intensive coordination and linkage with the eligible recipient's school or other child serving agencies is included. The goals of the service must be clearly documented utilizing a clinical model for service delivery and support.

A. Eligible providers: An agency must be certified by CYFD to provide day treatment services in addition to meeting the general provider enrollment requirements in Subsections A and B of 8.321.2.9 NMAC.

B. Coverage criteria:

(1) Day treatment services must be provided in a school setting or other community setting; however, there must be a distinct separation between these services in staffing, program description and physical space from other behavioral health services offered.

(2) A family who is unable to attend the regularly scheduled sessions at the day treatment facility due to transportation difficulties or other reasons may receive individual family sessions scheduled in the family's home by the day treatment agency.

(3) Services must be based upon the eligible recipient's individualized treatment plan goals and should include interventions with a significant member of the family which are designed to enhance the eligible recipients' adaptive functioning in their home and community.

(4) The certified DTS provider delivers

adequate care and continuous supervision of the client at all times during the course of the client's DTS program participation.

(5) 24-hour availability of appropriate staff or implementation of crisis plan (which may include referral) to respond to the eligible recipient's crisis situation.

(6) Only those activities of daily living and basic life skills that are assessed as a clinical problem should be addressed in the treatment plans and deemed appropriate to be included in the eligible recipient's individualized program.

(7) Day treatment services are provided at a minimum of four hours of structured programming per day, two to five days per week based on acuity and clinical needs of the eligible recipient and his or her family as identified in the treatment plan.

C. Identified population: MAD covers day treatment services for an eligible recipient under age 21 who:

(1) is diagnosed with an emotional, behavioral, and neurobiological or substance abuse problem;

(2) may be at high risk of out-of-home placement;

(3) requires structured therapeutic services in order to attain or maintain functioning in major life domains of home, work or school; and

(4) through an assessment process, has been determined to meet the criteria established by MAD or its designee for admission to day treatment services.

D. Covered services:

(1) Day treatment services are non-residential specialized services and training provided during or after school, weekends or when school is not in session. Services include parent and eligible recipient education, and skills and socialization training that focus on the amelioration of functional and behavioral deficits. Intensive coordination and linkage with the eligible recipient's school or other child serving agencies are included. Other behavioral health services (e.g. outpatient counseling, ABA) may be provided in addition to the day treatment services when the goals of the service are clearly documented, utilizing a clinical model for service delivery and support.

(2) The goal of day treatment is to maintain the eligible recipient in his or her home or community environment.

(3) The service is designed to complement and coordinate with the eligible recipient's educational system.

(4) Services must be identified in the treatment plan, including crisis planning, which is formulated on an ongoing basis by the treatment team. The treatment plan guides and records for each client: individualized therapeutic goals and objectives; individualized therapeutic services provided; and individualized discharge and aftercare plans. Treatment plan requirements are detailed in the BH policy and billing manual.

(5) The following services must be furnished by a day treatment service agency to receive reimbursement from MAD:

(a) the assessment and diagnosis of the social, emotional, physical and psychological needs of the eligible recipient and his or her family for treatment planning ensuring that evaluations already performed are not unnecessarily repeated;

(b) development of individualized treatment and discharge plans and ongoing reevaluation of these plans;

(c) regularly scheduled individual, family, multifamily, group or specialized group sessions focusing on the attainment of skills, such as managing anger, communicating and problem-solving, impulse control, coping and mood management, chemical dependency and relapse prevention, as defined in the DTS treatment plan;

(d) family training and family outreach to assist the eligible recipient in gaining functional and behavioral skills;

(e) supervision of self-administered medication, as clinically indicated;

(f) therapeutic recreational activities that are supportive of the clinical objectives and identified in each eligible recipient's individualized treatment plan;

(g) 24-hour availability of appropriate staff or implementation of crisis plan, which may include referral, to respond to the eligible recipient's crisis situations;

(h) advance schedules are posted for structured and supervised activities which include individual, group and family therapy, and other planned activities appropriate to the age, behavioral and emotional needs of the client pursuant to the treatment plan.

E. Non-covered services: Day treatment services are subject to the limitations and coverage restrictions which exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for non-covered MAD behavioral health services or activities. MAD does not cover the following specific services billed in conjunction with day treatment services:

(1) educational programs;

(2) pre-vocational training;

(3) vocational training which is related to specific employment opportunities, work skills or work settings;

(4) any service not identified in the treatment plan;

(5) recreation activities not related to the treatment plan;

(6) leisure time activities such as watching television, movies or playing computer or video games;

(7) transportation reimbursement for the therapist who delivers services in the family's home; or

(8) a partial hospitalization program and residential programs cannot be offered at the same time as day treatment services.

F. Prior authorization: See Subsection J of 8.321.2.9 NMAC for general behavioral health services prior authorization requirements. This service does not require prior authorization.

G. Reimbursement:

(1) All services described in Subsection D of 8.321.2.21 NMAC are covered in the bundled day treatment rate;

(2) Day treatment providers must submit claims for reimbursement on the CMS-1500 claim form or its successor. See Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements, see 8.302.2 NMAC. Once enrolled, a provider receives instructions on how to access documentation, billing and claims processing information. [8.321.2.21 NMAC - Rp, 8.321.2.21 NMAC, 8/10/2021]

8.321.2.22 FAMILY SUPPORT SERVICES (FSS) (MCO reimbursed only): Family support services are community-based, face-to-face interactions with children, youth or adults and their family, available to managed care members only. Family support services enhance the member family's strengths, capacities, and resources to promote the member's ability to reach the recovery and resiliency behavioral health goals they consider most important. See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

A. Eligible providers:

(1) Family support service providers and staff shall meet standards established by the state of NM and documented in the New Mexico BH policy and billing manual.

(2) Family support service staff and supervision by licensed behavioral health practitioners must be in accordance with their respective licensing board regulations or credentialing standards for peer support workers or family peer support workers.

(3) Minimum staff qualifications for peer support workers or family peer support workers includes maintenance of credentials as a peer support worker or family peer support worker in New Mexico.

(4) Minimum staff qualifications for the clinical supervisor:

(a) Must be a licensed independent practitioner (i.e., psychiatrist, psychologist, LISW, LPCC, LMFT, or psychiatrically certified nurse practitioner) practicing under the scope of their NM licensure;

(b) Have four years' relevant experience in the delivery of case management or comprehensive community support services or family support services with the target population;

(c) Have one year demonstrated supervisory experience; and

(d) Have completed both basic and supervisory training regarding family support services.

B. Identified population:

(1) Members with parents, family members, legal guardians, and other primary caregivers who are living with or closely linked to the member and engaged in the plan of care for the member.

(2) Members are young persons diagnosed with a severe emotional disturbance or adults diagnosed with serious mental illness as defined by the state of New Mexico.

C. Covered services:

(1) Minimum required family support services activities:

(a) review of the existing social history and other relevant information with the member and family;

(b) review of the existing service and treatment plans;

(c) identification of the member and family functional strengths and any barriers to recovery;

(d) participation in service planning and delivery with the member and family; and

(e) adherence to the applicable code of ethics.

(2) The specific services provided are tailored to the individual needs of the member and family according to the individual's treatment or service plan and include but are not limited to support needed to:

(a) prevent members from being placed into more restrictive setting; or

(b) quickly reintegrate the member to their home and local community; or

(c) direct the member and family towards recovery, resiliency, restoration, enhancement and maintenance of the member's functioning; or

(d) increase the family's ability to effectively interact with the member.

(3) Family support services focus on psycho-education, problem solving, and skills building for the family to support the member and may involve support activities such as:

(a) working with teams engaged with the member;

(b) engaging in service planning and service delivery for the member;

(c) identifying family strengths and resiliencies in order to effectively articulate those strengths and prioritize their needs;

(d) navigating the community-based systems and services that impact the member's life;

(e) identifying natural and community supports;

(f) assisting the member and family to understand, adjust to, and manage behavioral health crises and other challenges;

(g) facilitating an understanding of the options for treatment of behavioral health issues;

(h) facilitating an understanding of the principles and practices of recovery and resiliency; and

(i) facilitating effective access and use of the behavioral health service system to achieve recovery and resiliency.

(4) Documentation requirements:

(a) notes related to all family support service interventions to include how and to what extent the activity promoted family support in relationship to the member's recovery and resilience goals and outcomes;

(b) any supporting collateral documentation.

D. Non-covered services: This service may be billed only during the transition phases from these services:

(a) accredited residential treatment center (ARTC);

(b) adult accredited residential treatment center (AARTC);

(c) residential treatment center services;

(d) group home services;

(e) inpatient hospitalization;

(f) partial hospitalization;

(g) treatment foster care; or

(h) crisis triage centers.

E. Reimbursement: To help an eligible MCO member receive medically necessary services, the centennial care MCOs pay for family support services.

[8.321.2.22 NMAC - Rp, 8.321.2.22 NMAC, 8/10/2021]

8.321.2.23 INPATIENT PSYCHIATRIC CARE IN FREESTANDING PSYCHIATRIC HOSPITALS AND PSYCHIATRIC UNITS OF ACUTE CARE HOSPITALS: To assist the eligible recipient in receiving necessary mental health services, MAD pays for inpatient psychiatric care furnished in freestanding psychiatric hospitals as part of the EPSDT program (42 CFR 441.57). A freestanding psychiatric hospital (an inpatient facility that is not a unit in a general acute care hospital), with more than 16 beds is an institution for mental disease (IMD) subject to the federal medicaid IMD exclusion that prohibits medicaid payment for inpatient stays for eligible recipients aged 22 through 64 years. Coverage of stays in a freestanding psychiatric hospital that is considered an IMD are covered only for eligible recipients up to age 21 and over age 64. A managed care organization making payment to an IMD as an in lieu of service may pay for stays that do not exceed 15 days. For stays in an IMD that include a substance use disorder (SUD) refer to 8.321.2.24 NMAC, *Institution for Mental Diseases (IMD)*. However, for freestanding psychiatric hospitals, if the eligible recipient who is receiving inpatient services reaches the age of 21 years, services may continue until one of the following conditions is reached: until the date the eligible recipient no longer requires the services, or until the date the eligible recipient reaches the age of 22 years, whichever occurs first. The need for inpatient psychiatric care in a freestanding psychiatric hospital must be identified in the eligible recipient's tot to teen health check screen or another diagnostic evaluation furnished through a health check referral. Inpatient stays for eligible recipients in an inpatient psychiatric unit of a general acute care hospital are also covered. As these institutions are not considered to be IMDs, there are no age exclusions for their services.

A. Eligible providers: A MAD eligible provider must be licensed and certified by the New Mexico DOH (or the comparable agency if in another state), comply with 42 CFR 456.201 through 456.245; and be accredited by at least one of the following:

(1) the joint commission (JC);

(2) the council on accreditation of services for families and children (COA);

(3) the commission on accreditation of rehabilitation facilities (CARF); or

(4) another accrediting organization recognized by MAD as having comparable standards; and

(5) be an approved MAD provider before it furnishes services, see 42 CFR Sections 456.201 through 456.245.

B. Covered services: MAD covers inpatient psychiatric hospital services which are medically necessary for the diagnosis or treatment of mental illness as required by the condition of the eligible recipient.

(1) These services must be furnished by eligible providers within the scope and practice of his or her profession (see 8.321.2.9 NMAC) and in accordance with federal regulations; see (42 CFR 441.156);

(2) Services must be furnished under the direction of a physician;

(3) In the case of an eligible recipient under 21 years of age these services:

(a) must be furnished under the direction of a board prepared, board eligible, board certified psychiatrist or a licensed psychologist working in collaboration with a similarly qualified psychiatrist; and

(b) the psychiatrist must conduct an evaluation of the eligible recipient, in person within 24 hours of admission.

(4) In the case of an eligible recipient under 12 years of age, the psychiatrist must be board prepared, board eligible, or board certified in child or adolescent psychiatry. The requirement for the

specified psychiatrist for an eligible recipient under age 12 and an eligible recipient under 21 years of age can be waived when all of the following conditions are met:

(a) the need for admission is urgent or emergent and transfer or referral to another provider poses an unacceptable risk for adverse patient outcomes;

(b) at the time of admission, a psychiatrist who is board prepared, board eligible, or board certified in child or adolescent psychiatry, is not accessible in the community in which the facility is located;

(c) there is another facility which has a psychiatrist who is board prepared, board eligible, board certified in child or adolescent psychiatry, but the facility, is not available or is inaccessible to the community in which the facility is located; and

(d) the admission is for stabilization only and a transfer arrangement to the care of a psychiatrist who is board prepared, board eligible, board certified in child or adolescent psychiatry, is made as soon as possible with the understanding that if the eligible recipient needs transfer to another facility, the actual transfer will occur as soon as the eligible recipient is stable for transfer in accordance with professional standards.

(5) A freestanding hospital must provide the following components to an eligible recipient to receive reimbursement:

(a) performance of necessary evaluations and psychological testing for the development of the treatment plan, while ensuring that evaluations already performed are not repeated;

(b) a treatment plan and all supporting documentation must be available for review in the eligible recipient's file;

(c) regularly scheduled structured behavioral health therapy sessions for the eligible recipient, group, family, or a multifamily group based on individualized needs, as specified in the eligible recipient's treatment plan;

(d) facilitation of age-appropriate skills development in the areas of household management, nutrition, personal care, physical and emotional health, basic life skills, time management, school, attendance and money management;

(e) assistance to an eligible recipient in his or her self administration of medication in compliance with state regulations, policies and procedures;

(f) appropriate staff available on a 24-hour basis to respond to crisis situations; determine the severity of the situation; stabilize the eligible recipient by providing support; make referrals, as necessary; and provide follow-up;

(g) a consultation with other professionals or allied caregivers regarding a specific eligible recipient;

(h) non-medical transportation services needed to accomplish treatment objectives;

(i) therapeutic services to meet the physical, social, cultural, recreational, health maintenance, and rehabilitation needs of the eligible recipient; and

(j) plans for discharge must begin upon admittance to the facility and be included in the eligible recipient's treatment plan. If the eligible recipient will receive services in the community or in the custody of CYFD, the discharge must be coordinated with those individuals or agencies responsible for post-hospital placement and services. The discharge plan must consider related community services to ensure continuity of care with the eligible recipient, his or her family, and school and community.

(6) MAD covers "awaiting placement days" when the MAD UR contractor determines that an eligible recipient under 21 years of age no longer meets this acute care criteria and determines that the eligible recipient requires a residential placement which cannot be immediately located. Those days during which the eligible recipient is awaiting placement to the step-down placement are termed awaiting placement days. Payment to the hospital for awaiting placement days is made at the average payment for accredited residential treatment centers plus five percent. A separate claim form must be submitted for awaiting placement days.

(7) A treatment plan must be developed by a team of professionals in consultation with an eligible recipient, his or her parent, legal guardian or others in whose care the eligible recipient will be released after discharge. The plan must be developed within 72 hours of admission of the eligible recipient's admission to freestanding psychiatric hospitals. The interdisciplinary team must review the treatment plan at least every five calendar days. See the BH policy and billing manual for a description of the treatment team and plan.

C. Non-covered services: Services furnished in a freestanding psychiatric hospital are subject to the limitations and coverage restrictions which exist for other MAD services; see Subsection G of 8.321.2.9 NMAC for MAD general non-covered services. MAD does not cover the following specific services for an eligible recipient in a freestanding psychiatric hospital in the following situations:

(1) conditions defined only by Z codes in the current version of the international classification of diseases (ICD) or the current version of DSM;

(2) services in freestanding psychiatric hospital for an eligible recipient 22 years of age through 64, except as allowed in 8.321.2 NMAC;

(3) services furnished after the determination by MAD or its designee has been made that the eligible recipient no longer needs hospital care;

(4) formal educational or vocational services,

other than those covered in Subsection B of 8.321.2.9 NMAC, related to traditional academic subjects or vocational training; MAD only covers non-formal education services if they are part of an active treatment plan for an eligible recipient under the age of 21 receiving inpatient psychiatric services; see 42 CFR Section 441.13(b); or

(5) drugs classified as "ineffective" by the food and drug administration (FDA) drug evaluation.

D. Prior authorization and utilization review: All MAD services are subject to utilization review for medical necessity, inspection of care, and program compliance. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made; see 8.310.2 and 8.310.3 NMAC.

(1) All inpatient services for an eligible recipient under 21 years of age in a freestanding psychiatric hospital require prior authorization from MAD or its designee. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

(2) Prior authorization of services does not guarantee that individuals are eligible for MAD services. Providers must verify that an individual is eligible for MAD services at the time services are furnished and through his or her inpatient stay and determine if the eligible recipient has other health insurance.

(3) A provider who disagrees with prior authorization request denials or other review decisions can request a re-review and a reconsideration; see 8.350.2 NMAC.

E. Reimbursement: A freestanding psychiatric hospital service provider must submit claims for reimbursement on the UB-04 claim form or its successor; see 8.302.2 NMAC. Once enrolled, providers receive instructions on how to access documentation, billing, and claims processing information.

(1) Reimbursement rates for New Mexico freestanding psychiatric hospital are based on the Tax Equity and Fiscal Responsibility Act (TEFRA) provisions and principles of reimbursement; see 8.311.3 NMAC. Covered inpatient services provided in a freestanding psychiatric hospital will be reimbursed at an interim rate established by HSD to equal or closely approximate the final payment rates that apply under the cost settlement TEFRA principles.

(2) If a provider is not cost settled, the reimbursement rate will be at the provider's cost-to-charge ratio reported in the provider's most recently filed cost report prior to February 1, 2012. Otherwise, rates are established after considering available cost-to-charge ratios, payment levels made by other payers, and MAD payment levels for services of similar cost, complexity and duration.

(3) Reimbursement rates for services furnished by a psychiatrist and licensed Ph.D. psychologist in a freestanding psychiatric hospital are contained in 8.311.3 NMAC. Services furnished by a psychiatrist and psychologist in a freestanding psychiatric hospital cannot be included as inpatient psychiatric hospital charges.

(4) When services are billed to and paid by a MAD coordinated services contractor, the provider must also enroll as a provider with the MAD coordinated services contractor and follow that contractor's instructions for billing and for authorization of services.

(5) The provider agrees to be paid by a MCO at any amount mutually-agreed upon between the provider and MCO when the provider enters into contracts with MCO contracting with HSD for the provision of managed care services to an eligible recipient.

(a) If the provider and the HSD contracted MCO are unable to agree to terms or fail to execute an agreement for any reason, the MCO shall be obligated to pay, and the provider shall accept, one hundred percent of the "applicable reimbursement rate" based on the provider type for services rendered under both emergency and non-emergency situations.

(b) The "applicable reimbursement rate" is defined as the rate paid by HSD to the provider participating in the medical assistance programs administered by MAD and excludes disproportionate share hospital and medical education payments.

[8.321.2.23 NMAC - Rp, 8.321.2.23 NMAC, 8/10/2021]

8.321.2.24 INSTITUTION FOR MENTAL DISEASES (IMD) FOR SUBSTANCE ABUSE: IMD is defined as any facility with more than 16 beds that is primarily engaged in the delivery of psychiatric care or treating substance use disorders (SUD) that is not part of a certified general acute care hospital. The federal medicaid IMD exclusion generally prohibits payment to these providers for recipients aged 22 through 64. Based upon a New Mexico state plan amendment and 1115 waiver MAD covers inpatient hospitalization in an IMD for SUD diagnoses only with criteria for medical necessity and based on ASAM admission criteria. The coverage may also include co-occurring behavioral health disorders with the primary SUD. For other approved IMD stays for eligible recipients under age 21 or over age 64, the number of days is determined by medical necessity as the age restriction for IMDs does not apply to ages under 21 or over 65. Also refer to 8.321.2.23 NMAC, *Inpatient Psychiatric Care in Freestanding Psychiatric Hospitals and Psychiatric Units of Acute Care Hospitals*.

A. Eligible recipients: Adolescents and adults with a mental health or substance use disorder or co-occurring mental health and SUD.

B. Covered services: Withdrawal management (detoxification) and rehabilitation.

C. Prior authorization is required. Utilize the substance abuse and mental health services administration (SAMHSA) admission criteria for medical necessity.

D. Reimbursement: An IMD is reimbursed according to the provisions in Subsection E of 8.321.2.23 NMAC.

[8.321.2.24 NMAC - Rp, 8.321.2.24 NMAC, 8/10/2021]

8.321.2.25 INTENSIVE OUTPATIENT PROGRAM FOR SUBSTANCE USE DISORDERS (IOP): MAD pays for time-limited IOP services utilizing a multi-faceted approach to treatment for an eligible recipient who requires structure and support to achieve and sustain recovery. IOP must utilize a research and evidence-based model approved by the IOP interdepartmental council, and target specific behaviors with individualized behavioral interventions.

A. Eligible providers: Services may only be delivered through a MAD approved agency after demonstrating that the agency meets all the requirements of IOP program services and supervision. See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

(1) IOP services are provided through an integrated interdisciplinary approach including staff expertise in both addiction and mental health treatment. This team may have services rendered by non-independent practitioners under the direction of the IOP supervisor including LMSW, LMHC, LADAC, CADC, LSAA, and a master's level psych associates.

(2) Each IOP program must have a clinical supervisor. Both clinical services and supervision by licensed practitioners must be conducted in accordance with respective licensing board regulations. An IOP clinical supervisor must meet all the following requirements:

(a) be licensed as a MAD approved independent practitioner; see Subsection C of 8.321.2.9 NMAC;

(b) have two years relevant experience with an IOP program or approved exception by the interdepartmental council;

(c) have one year demonstrated supervisory experience; and

(d) have expertise in both mental health and substance abuse treatment.

(3) The IOP agency is required to develop and implement a program outcome evaluation system.

(4) The agency must maintain the appropriate state facility licensure if offering medication treatment or medication replacement services.

(5) The agency must hold an IOP interdepartmental council approval letter and be enrolled by MAD to render IOP services to an eligible recipient. In the application process each IOP must identify if it is a youth program, an adult program, a transitional age program, or multiple programs. Transitional age programs must specify the age range of the target population. A MAD IOP agency will be provisionally approved for a specified timeframe to render IOP services to an eligible recipient. During this provisionally approved time, MAD or its designee will determine if the IOP meets MAD IOP requirements and if so, the agency will receive an approval letter for IOP full enrollment.

B. Coverage criteria:

(1) An IOP is based on research and evidence-based practice models (EBP) that target specific behaviors with individualized behavioral interventions. All EBP services must be culturally sensitive and incorporate recovery and resiliency values into all service interventions. EBPs must be approved by the IOP interdepartmental council. A list of pre-approved EBPs is available through the council, as are the criteria for having another model approved. They are also listed in the BH policy and billing manual.

(2) Treatment services must address co-occurring mental health disorders, as well as substance use disorders, when indicated.

C. Covered services:

(1) IOP core services include:

(a) individual substance use disorder related therapy;

(b) group therapy (group membership may not exceed 15 in number); and

(c) psycho-education for the eligible recipient and his or her family.

(2) Co-occurring mental health and substance use disorders: The IOP agency must accommodate the needs of an eligible recipient with co-occurring substance use and mental health disorders. Treatment services are provided through an integrated interdisciplinary team and through coordinated, concurrent services with MAD behavioral health providers.

(3) Medication management services are available either in the IOP agency or by referral to oversee the use of psychotropic medications and medication assisted treatment of substance use disorders.

(4) The duration of an eligible recipient's IOP intervention is typically three to six months. The amount of weekly services per eligible recipient is directly related to the goals specified in his or her IOP treatment plan and the IOP EBP in use.

(5) Other mental health therapies: outpatient therapies may be rendered in addition to the IOP therapies of individual and group when the eligible recipient's co-occurring disorder requires treatment services which are outside the scope of the IOP therapeutic services. The eligible recipient's file must document the medical necessity of receiving outpatient therapy services in addition to IOP therapies, and a statement from the IOP agency that to postpone such therapy until the completion of the eligible recipient's IOP services is not in the best interest of the eligible

recipient. Such documentation includes, but is not limited to: current assessment, a co-occurring diagnosis, and the inclusion in service plan for outpatient therapy services. An IOP agency may:

(a) render these services when it is enrolled as a provider covered under Subsection D of 8.321.2.9 NMAC with practitioners listed in Subsections C and E of 8.321.2.9 NMAC whose scope of practice specifically allows for mental health therapy services; or

(b) refer the eligible recipient to another provider if the IOP agency does not have such practitioners available; the IOP agency may continue the eligible recipient's IOP services coordinating with the new provider.

D. Identified population:

(1) IOP services are provided to an eligible recipient 11 through 17 years of age diagnosed with substance abuse disorder or with co-occurring disorders (mental illness and substance abuse) or that meet the American society of addiction medicine (ASAM) patient placement criteria for level 2.1 - intensive outpatient treatment; or have been mandated by the local judicial system as an option of least restrictive level of care. Services are not covered if the recipient is in detention or incarceration. See eligibility rules 8.200.410.17 NMAC.

(2) IOP services are provided to an eligible recipient of a transitional age in a transitional age program of which the age range has been determined by the agency, and that have been diagnosed with substance abuse disorder or with co-occurring disorders (mental illness and substance abuse) or that meet the American society of addiction medicine's (ASAM) patient placement criteria for level 2.1 - intensive outpatient treatment, or have been mandated by the local judicial system as an option of least restrictive level of care.

(3) IOP services are provided to an eligible adult recipient 18 years of age and older diagnosed with substance abuse disorders or co-occurring disorders (mental illness and substance abuse) that meet the American society of addiction medicine's (ASAM) patient placement criteria for level 2.1 - intensive outpatient treatment or have been mandated by the local judicial system as an option of least restrictive level of care.

(4) Prior to engaging in a MAD IOP program, the eligible recipient must have a treatment file containing:

(a) one diagnostic evaluation with a diagnosis of substance use disorder; and

(b) one individualized treatment service plan that includes IOP as an intervention.

E. Non-covered services: IOP services are subject to the limitations and coverage restrictions which exist for other MAD services see Subsection G of 8.321.2.9 NMAC for general non-covered MAD behavioral health services and 8.310.2 NMAC for MAD general non-covered services. MAD does not cover the following specific services billed in conjunction with IOP services:

(1) acute inpatient;

(2) residential treatment services (i.e., ARTC, RTC, group home, and transitional living services);

(3) ACT;

(4) partial hospitalization;

(5) outpatient therapies which do not meet Subsection C of 8.321.2.9 NMAC;

(6) multi-systemic therapy (MST);

(7) activity therapy; or

(8) psychosocial rehabilitation (PSR) group services.

F. Reimbursement: See Subsection H of 8.321.2.9 NMAC for MAD behavioral health general reimbursement requirements.

(1) For IOP services, the agency must submit claims for reimbursement on the CMS-1500 claim form or its successor.

(2) Core IOP services are reimbursed through a bundled rate. Medication assisted treatment and other mental health therapies are billed and reimbursed separately from the bundled rate.

(3) IOP services furnished by an IOP team member are billed by and reimbursed to a MAD IOP agency whether the team member is under contract with or employed by the IOP agency.

(4) IOP services not provided in accordance with the conditions for coverage as specified in 8.321.2 NMAC are not MAD covered services and are subject to recoupment.

[8.321.2.25 NMAC - Rp, 8.321.2.25 NMAC, 8/10/2021]

8.321.2.26 INTENSIVE OUTPATIENT PROGRAM FOR MENTAL HEALTH CONDITIONS (IOP):

MAD pays for IOP services which provide a time-limited, multi-faceted approach to treatment for an eligible recipient with a SMI or SED including an eating disorder or borderline personality disorder who requires structure and support to achieve and sustain recovery. IOP must utilize a research and evidence-based model approved by the IOP interdepartmental council, and target specific behaviors with individualized behavioral interventions. The effective date will be January 1, 2019, or as otherwise approved by the centers for medicare and medicaid services (CMS).

A. Eligible providers: Services may only be delivered through an agency approved by HSD and CYFD after demonstrating that the agency meets all the requirements of IOP program services and supervision. See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

(1) IOP services are provided through an

integrated interdisciplinary approach by staff with expertise in the mental health condition being addressed. This team may have services rendered by non-independent practitioners under the direction of the IOP supervisor including LMSW, LMHC, a master's level psych associates, RNs or registered dieticians.

(2) Each IOP program must have a clinical supervisor. Both clinical services and supervision by licensed practitioners must be conducted in accordance with respective licensing board regulations. An IOP clinical supervisor must meet all of the following requirements:

(a) be licensed as a MAD approved independent practitioner; see Subsection C of 8.321.2.9 NMAC;

(b) have two years relevant experience in providing the evidence-based model to be delivered; and

(c) have one year demonstrated supervisory experience.

(3) The IOP agency is required to develop and implement a program outcome evaluation system.

(4) The agency must maintain the appropriate state facility licensure if offering medication treatment.

(5) The agency must hold an IOP approval letter and be enrolled by MAD to render IOP services to an eligible recipient. In the application process each IOP must identify if it is a youth program, an adult program, a transitional age program, or multiple programs. Transitional age programs must specify the age range of the target population. A MAD IOP agency will be provisionally approved for a specified timeframe to render IOP services to an eligible recipient. During this provisionally approved time, MAD or its designee will determine if the IOP meets MAD IOP requirements and if so, the agency will receive an approval letter for IOP full enrollment.

B. Coverage criteria:

(1) An IOP is based on research and evidence-based practice (EBP) models that target specific behaviors with individualized behavioral interventions. All EBP services must be culturally sensitive and incorporate recovery and resiliency values into all service interventions. EBPs must be approved by the IOP interdepartmental council. A list of pre-approved EBPs is available through the council, as are the criteria for having another model approved. They are also listed in the BH policy and billing manual.

(2) Treatment services must address co-occurring disorders when indicated.

C. Covered services:

(1) IOP core services include:

(a) individual therapy;

(b) group therapy (group membership may not exceed 15 in number); and

(c) psycho-education for the eligible recipient and his or her family.

(2) Medication management services are available either in the IOP agency or by referral to oversee the use of psychotropic medications and medication assisted treatment of substance use disorders.

(3) The amount of weekly services per eligible recipient is directly related to the goals specified in his or her IOP treatment plan and the IOP EBP in use.

(4) Treatment services must address co-occurring disorders when indicated.

D. Identified population:

(1) IOP services are provided to an eligible recipient, 11 through 17 years of age diagnosed with a SED.

(2) IOP services are provided to an eligible adult recipient 18 years of age and older diagnosed with a SMI.

(3) Prior to engaging in a MAD IOP program, the eligible recipient must have a treatment file containing:

(a) one diagnostic evaluation with a diagnosis of serious mental illness or severe emotional disturbance; or diagnosis for which the IOP is approved; and

(b) one individualized service plan that includes IOP as an intervention.

E. Non-covered services: IOP services are subject to the limitations and coverage restrictions which exist for other MAD services see Subsection G of 8.321.2.9 NMAC for general non-covered MAD behavioral health services and 8.310.2 NMAC for MAD general non-covered services. MAD does not cover the following specific services billed in conjunction with IOP services:

(1) acute inpatient;

(2) residential treatment services (i.e., ARTC, RTC, group home, and transitional living services);

(3) ACT;

(4) partial hospitalization;

(5) outpatient therapies which do not meet Subsection C of 8.321.2.9 NMAC;

(6) multi-systemic therapy (MST);

(7) activity therapy; or

(8) psychosocial rehabilitation (PSR) group services.

F. Reimbursement: See Subsection H of 8.321.2.9 NMAC for MAD behavioral health general reimbursement.

(1) For IOP services, the agency must submit claims for reimbursement on the CMS-1500 claim form or its successor.

(2) Core IOP services are reimbursed through a bundled rate. Medications and other mental health therapies are billed and reimbursed separately from the bundled rate.

(3) IOP services furnished by an IOP team member are billed by and reimbursed

to a MAD IOP agency whether the team member is under contract with or employed by the IOP agency.

(4) IOP services not provided in accordance with the conditions for coverage as specified in the rule are not a MAD covered service and are subject to recoupment.

[8.321.2.26 NMAC - Rp, 8.321.2.26 NMAC, 8/10/2021]

8.321.2.27 MEDICATION ASSISTED TREATMENT (MAT): BUPRENORPHINE TREATMENT FOR OPIOID USE DISORDER: MAD pays for coverage for medication assisted treatment (MAT) for opioid use disorder to an eligible recipient as defined in the Drug Addiction Treatment Act of 2000 (DATA 2000), the Comprehensive Addiction and Recovery Act of 2016 (CARA), and the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act of 2018 (SUPPORT Act). Services include, but are not limited to, the administration of opioid replacement medication (excluding methadone) to an eligible recipient for detoxification from opioids or maintenance treatment. See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

A. Eligible providers and practitioners:

(1) Any clinic, office, or hospital staffed by required practitioners.

(2) Practitioners for diagnosing, assessment, and prescribing include:

(a) a physician or DO licensed in the state of New Mexico that has board certification in addiction medicine or addiction psychiatry or has completed special training and has the federal waiver to prescribe buprenorphine;

(b) a certified nurse practitioner that has completed 24 hours of required training and has a DATA 2000 waiver; or

(c) a physician assistant licensed in the state of New Mexico and has the federal DATA 2000 waiver to prescribe buprenorphine.

(3) Practitioners for administration and education:

(a) a registered nurse licensed in the state of New Mexico; or

(b) a physician assistant licensed in the state of New Mexico.

(4) Practitioners for counseling and education may include behavioral health practitioners licensed for counseling or therapy.

(5) Practitioners for skills and education include certified peer support workers or certified family peer support workers to provide skill-building, recovery and resiliency support.

B. Coverage criteria:

(1) an assessment and diagnosis by the prescribing practitioner as to whether the recipient has an opioid abuse diagnosis and their readiness for change must be conducted prior to starting treatment;

(2) an assessment for concurrent medical or behavioral health illnesses;

(3) an assessment for co-occurring substance abuse disorders;

(4) educating the recipient as to differing treatment options prior to starting treatment; and

(5) a service plan that prescribes either in house counseling or therapy, or referral to outside services, as indicated.

C. Eligible recipients: Individuals with an opioid use disorder diagnosis defined by DSM 5 or ICD 10.

D. Covered services:

(1) history and physical;

(2) comprehensive assessment and treatment plan;

(3) induction phase of opioid treatment;

(4) administration of medication and concurrent education;

(5) subsequent evaluation and management visits;

(6) development and maintenance of medical record log of opioid replacement medication prescriptions;

(7) development and maintenance of required records regarding inventory, storage and destruction of controlled medications if dispensing from office;

(8) initiation and tracking of controlled substance agreements with eligible recipients;

(9) regular monitoring and documentation of NM prescription monitoring program results;

(10) urine drug screens;

(11) recovery services (MCO members only);

(12) family support services (MCO members only).

E. Reimbursement: See Subsection H of 8.321.9 NMAC for MAD behavioral health general reimbursement requirements. See the BH policy and billing manual for reimbursement specific to MAT.

[8.321.2.27 NMAC - Rp, 8.321.2.27 NMAC, 8/10/2021]

8.321.2.28 MULTI-SYSTEMIC THERAPY (MST): To help an eligible recipient 10 up to 18 years of age receive behavioral health services to either remain in or re-enter his or her home and community, MAD pays for MST services as part of EPSDT program (42 CFR 441.57). MAD covers medically necessary MST services required by the condition of the eligible recipient. MST provides intensive home, family and community-based treatment for an eligible recipient 10 to 18 years of age who is at risk of out-of-home placement or is returning home from an out-of-home placement. The need for MST services must be identified in the eligible recipient's tot to teen health check screen or another diagnostic evaluation.

A. Eligible providers: In addition to the requirements of Subsections A and B of 8.321.2.9

NMAC, in order to be eligible to be reimbursed for providing MST services, an agency must hold a copy of MST Inc licensure, or any of its approved subsidiaries. MST Inc is a national organization located in Mt. Pleasant, South Carolina, and is deemed by MAD to be the primary authority on licensure of New Mexico MST programs.

(1) The MST program includes an assigned MST team for each eligible recipient. The MST team must include at minimum:

(a) master's level independently licensed behavioral health professional clinical supervision; see Subsection H of 8.321.2.9 NMAC;

(b) licensed master's and bachelor's level behavioral health staff able to provide 24-hour coverage, seven days a week; see Subsection E of 8.321.2.9 NMAC;

(c) a licensed master's level behavioral health practitioner that is required to perform all MST interventions; a bachelor's level behavioral health practitioner is limited to performing functions defined within the scope of his or her RLD practice board licensure or practice (see Subsection E of 8.321.2.9 NMAC;

(d) bachelor's level staff that has a degree in social work, counseling, psychology or a related human services field and must have at least three years' experience working with the identified population of children, adolescents and their families; and

(e) staffing for MST services is comprised of no more than one-third bachelor's level staff and, at minimum, two-thirds licensed master's level staff.

(2) Clinical supervision must include at a minimum:

(a) weekly supervision provided by an independently licensed master's level behavioral health practitioner (see Subsection C of 8.321.2.9 NMAC) who is MST trained; this supervision, following the MST supervisory protocol, is provided to team members on topics directly related to the needs of the eligible recipient and his or her family on an ongoing basis; and

(b) one hour of local group supervision per week and one hour of telephone consultation per week with the MST systems supervisor, provided to team members on topics directly related to the needs of the eligible recipient and his or her family on an ongoing basis.

(3) All clinical staff is required to participate in and complete a prescribed five-day MST introductory training and subsequent quarterly trainings.

B. Identified population:

(1) MST is provided to an eligible recipient 10 to 18 years of age who meets the criteria of SED, involved in or at serious risk of involvement with the juvenile justice system; has antisocial, aggressive, violent, and substance-abusing behaviors; is at risk for an out-of-home placement; or is returning from an out-of-home placement where the above behaviors were the focus of his or her treatment and his or her family's involvement.

(2) A co-occurring diagnosis of substance abuse shall not exclude an eligible recipient from the program.

C. Covered services and service limitations: MST is a culturally sensitive service, rendered by a MST team, to provide intensive home, family and community-based treatment for the family of an eligible recipient who is at risk of an out-of-home placement or is returning home from an out-of-home placement. MST services are primarily provided in the eligible recipient's home, but a MST worker may also intervene at the eligible recipient's school and other community settings. Specialized therapeutic and rehabilitative interventions are used to address specific areas of need, such as substance abuse, delinquency and violent behavior.

(1) The following services must be furnished as part of the MST service to be eligible for reimbursement:

(a) an initial assessment to identify the focus of the MST intervention;

(b) therapeutic interventions with the eligible recipient and his or her family;

(c) case management; and

(d) crisis stabilization.

(2) MST services are conducted by practitioners using the MST team approach. The MST team must have the ability to deliver services in various environments, such as homes, schools, homeless shelters, or street locations. MST services:

(a) promote the recipient's family's capacity to monitor and manage his or her behavior;

(b) involve the eligible recipient's family and other systems, such as the school, probation officers, extended families and community connections;

(c) provide access to a variety of interventions 24-hours a day, seven days a week, by staff that maintain contact and intervene as one organizational unit; and

(d) include structured face-to-face therapeutic interventions to provide support and guidance in all areas of the recipient's functional domains, such as adaptive, communication, psychosocial, problem solving, and behavior management.

(3) The duration of MST intervention is typically three to six months. Weekly interventions may range from three to 20 hours a week; less as an eligible recipient nears discharge.

D. Non-covered services: MST services are subject to the limitations and coverage restrictions that exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for general non-covered specialized behavioral health services.

E. Reimbursement: MST agencies must submit claims for reimbursement on the CMS-1500 claim form or its successor. See Subsection E of 8.321.2.9 NMAC for MAD general reimbursement requirements and 8.302.2 NMAC. Once enrolled, the MST agency receives instructions on how to access documentation, billing, and claims processing information.
[8.321.2.28 NMAC - Rp, 8.321.2.28 NMAC, 8/10/2021]

8.321.2.29 NON-ACCREDITED RESIDENTIAL TREATMENT CENTERS (RTC) AND GROUP HOMES: MAD pays for medically necessary services for an eligible recipient under 21 years of age which are designed to develop skills necessary for successful reintegration into his or her family or transition into his or her community. A determination must be made that the eligible recipient needs the level of care (LOC) for services furnished in a RTC or group home. This determination must have considered all environments which are least restrictive, meaning a supervised community placement, preferably a placement with the juvenile's parent, guardian or relative. A facility or conditions of treatment that is a residential or institutional placement should only be utilized as a last resort based on the best interest of the juvenile or for reasons of public safety. Residential services must be rehabilitative and provide access to necessary treatment services in a therapeutic environment. MAD pays for services furnished in a RTC or group home as part of EPSDT program (42 CFR 441.57). The need for RTC and group home services must be identified in the eligible recipient's tot to teen health check screen or other diagnostic evaluation furnished through a health check referral.

A. Eligible providers: In addition to the requirements of Subsections A and B of 8.321.2.9 NMAC, in order to be eligible to be reimbursed for providing RTC or group home services to an eligible recipient, an agency must meet the following requirements:

(1) a RTC must be certified by the children, youth and families department (CYFD) see 7.20.12 NMAC;

(2) a group home must be certified and licensed by CYFD;

(3) if the RTC is operated by IHS or by a federally recognized tribal government, the facility must meet CYFD RTC licensing and certification requirements but is not required to be licensed or certified by CYFD. In lieu of receiving a license and certification, CYFD provides MAD copies of its facility findings and recommendations. MAD will work with the facility to address recommendations. The BH policy and billing manual provides guidance for addressing the facility findings and recommendations.

B. Covered services: Residential treatment services are provided through a treatment team approach and the roles, responsibilities and leadership of the team are clearly defined. MAD covers accommodation and residential treatment services which are medically necessary for the diagnosis and treatment of an eligible recipient's condition. A RTC or group home must provide an interdisciplinary psychotherapeutic treatment program on a 24-hour basis to the eligible recipient through the provision of a 24-hour therapeutic group living environment to meet their developmental, psychological, social, and emotional needs. The following are covered services:

(1) performance of necessary evaluations, assessments and psychological testing of the eligible recipient for the development of his or her treatment plan for each service, while ensuring that assessments already performed are not repeated;

(2) provide regularly scheduled counseling and therapy sessions in an individual, family or group setting following the eligible recipient's individualized treatment plan;

(3) facilitation of age-appropriate skills development in the areas of household management, nutrition, personal care, physical and emotional health, basic life skills, time management, school attendance and money management to the eligible recipient;

(4) assistance to the eligible recipient in his or her self-administration of medication in compliance with state statute, regulation and rules;

(5) provision of appropriate on-site staff based upon the acuity of recipient needs on a 24-hour basis to ensure adequate supervision of the recipients, and response in a proactive and timely manner. Response to crisis situations, determining the severity of the situation, stabilizing the eligible recipient by providing individualized treatment plan/safety plan interventions and support, and making referrals for emergency services or to other non-agency services, as necessary, and providing follow-up;

(6) development of an interdisciplinary service plan; see the BH policy and billing manual;

(7) non-medical transportation services needed to accomplish the treatment objective;

(8) therapeutic services to meet the physical, social, cultural, recreational, health maintenance and rehabilitation needs of the eligible recipient;

(9) for planning of discharge and aftercare services to facilitate timely and appropriate post discharge care regular assessments are conducted. These assessments support discharge planning and effect successful discharge with clinically appropriate after care services. This discharge planning begins when the recipient is admitted to residential treatment services and is updated and documented in the recipient record at every treatment plan review, or more frequently as needed; and

(10) the RTC and group homes provide services,

care and supervision at all times, including:

(a) the provision of, or access to, medical services on a 24-hour basis; and

(b) maintenance of a staff-to-recipient ratio appropriate to the level of care and needs of the recipients.

C. Non-covered services: RTC and group home services are subject to the limitations and coverage restrictions that exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for general MAD behavioral health non-covered services or activities. MAD does not cover the following specific services billed in conjunction with RTC and group home services to an eligible recipient:

(1) Comprehensive community support services (CCSS) except by a CCSS agency when discharge planning with the eligible recipient from the RTC or group home facility;

(2) services not considered medically necessary for the condition of the eligible recipient, as determined by MAD or its UR contractor;

(3) room and board;

(4) services for which prior approval was not obtained; or

(5) services furnished after a MAD or UR contractor determination that the recipient no longer meets the LOC for RTC or group home care.

D. Treatment plan: If the eligible recipient is solely receiving RTC or group home services, a service plan is not required. If the eligible recipient is receiving other behavioral health services, then a service plan is required, see Subsection K of 8.321.2.9 NMAC and the BH policy and billing manual.

E. Prior authorization: Before a RTC or group home service is furnished to an eligible recipient, prior authorization is required from MAD or its UR contractor or the respective centennial care MCO. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

F. Reimbursement: A RTC or group home agency must submit claims for reimbursement on the UB-04 form or its successor. See Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements and see 8.302.2 NMAC. Once enrolled, the agency receives instructions on how to access documentation, billing, and claims processing information. For IHS and a tribal 638 facility and any other "Indian Health Care Provider (IHCP)" defined in 42 Code of Federal Regulations §438.14(a), MAD considers RTC services to be outside the IHS all inclusive rate and RTC is therefore reimbursed at the MAD fee schedule utilizing the appropriate claim form designated by MAD.

(1) The fee schedule is established after considering cost data submitted by the RTC or group home agency. Cost data is grouped into various cost categories for purposes of analysis and rate setting. These include direct service, direct service supervision, therapy, admission and discharge planning, clinical support, non-personnel operating, administration and consultation.

(a) The MAD fee schedule reimbursement covers those services considered routine in the residential setting. Routine services include, but are not limited to: counseling, therapy, activities of daily living, medical management, crisis intervention, professional consultation, transportation, rehabilitative services and administration.

(b) Services which are not included in the RTC or group home rate include:

(i) direct services furnished by a psychiatrist or licensed Ph.D. psychologist; these services can be billed directly by the provider; see 8.310.3 NMAC; and

(ii) other MAD services that an eligible recipient might require that are not furnished by the facility, such as pharmacy services, primary care visits, laboratory or radiology services, are billed directly by the applicable providers and are governed by the applicable sections of NMAC rules.

(c) Services which are not covered in the routine rate and are not a MAD covered service include:

(i) room and board; and

(ii) services not related to medical necessity, clinical treatment, and patient care.

(2) A vacancy factor of 24 days annually for each eligible recipient is built into the rate to allow for therapeutic leave and trial community placement. Since the vacancy factor is built into the rate, a RTC and group home agency cannot bill or be reimbursed for days when the eligible recipient is absent from the facility.

[8.321.2.29 NMAC - Rp, 8.321.2.29 NMAC, 8/10/2021]

8.321.2.30 OPIOID TREATMENT PROGRAM (OTP): MAD pays for coverage for medication assisted treatment for opioid addiction to an eligible recipient through an opioid treatment center as defined in (42 CFR Part 8), certification of opioid treatment programs (OTP). Services include, but are not limited to, the administration of methadone (opioid replacement medication) to an individual for detoxification from opioids and maintenance treatment. The administration/supervision must be delivered in conjunction with the overall treatment based upon a treatment plan, which must include counseling/therapy, case review, drug testing, and medication monitoring. See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

A. Eligible providers and practitioners:

(1) Provider requirements:

(a) Accreditation with a substance abuse and mental health services administration (SAMHSA)/CSAT approved nationally recognized accreditation body, (e.g., commission on accreditation of rehabilitation facilities (CARF), joint commission (JC) or council on accreditation of services for families and children (COA).

(b) Behavioral health services division (BHSD) approval. As a condition of approval to operate an OTP, the OTP must maintain above accreditation. In the event that such accreditation lapses, or approval of an application for accreditation becomes doubtful, or continued accreditation is subject to any formal or alleged finding of need for improvement, the OTP program will notify the BHSD within two business days of such event. The OTP program will furnish the BHSD with all information related to its accreditation status, or the status of its application for accreditation, upon request.

(c) The BHSD shall grant approval or provisional approval to operate pending accreditation, provided that all other requirements of these regulations are met.

(2) Staffing requirements:

(a) Both clinical services and supervision by licensed practitioners must be in accord with their respective licensing board regulations. Provider staff members must be culturally competent;

(b) Programs must be staffed by:

(i) medical director (MD licensed to practice in the state of New Mexico or a DO licensed to practice in the State of New Mexico);

(ii) clinical supervisor (must be one of the following: licensed psychologist, or licensed independent social worker; or certified nurse practitioner in psychiatric nursing; or licensed professional clinical mental health counselor; or licensed marriage and family therapist;

(iii) licensed behavioral health practitioner; registered nurse; or licensed practical nurse; and

(iv) full time or part time pharmacist.

(c) Programs may also be staffed by:

(i) licensed substance abuse associate (LSAA);

(ii) certified peer support worker (CPSW); and

(iii) emergency medical technicians (EMT) with documentation of three hours of annual training in substance use disorder.

B. Coverage criteria:

(1) A physician licensed to practice in New Mexico is designated to serve as medical director and to have authority over all medical aspects of opioid treatment.

(2) The OTP shall formally designate a program sponsor who shall agree on behalf of the OTP to adhere to all federal and state requirements and regulations regarding the use of opioid agonist treatment medications in the treatment of opioid addiction which may be promulgated in the future.

(3) The OTP shall be open for patients every day of the week with an option for closure for federal and state holidays, and Sundays, and be closed only as allowed in advance in writing by CSAT and the state opioid treatment authority. Clinic hours should be conducive to the number of patients served and the comprehensive range of services needed.

(4) Written policies and procedures outlined in the BH policy and billing manual are developed, implemented, compiled, and maintained at the OTP.

(5) OTP programs will not deny a reasonable request for transfer.

(6) The OTP will maintain criteria for determining the amount and frequency of counseling that is provided to a patient.

(7) Referral or transfer of recipients to a suitable alternative treatment program. Because of the risks of relapse following detoxification, patients must be offered a relapse prevention program that includes counseling, naloxone and opioid replacement therapy.

(8) Provision of unscheduled treatment or counseling to patients.

(9) Established substance abuse counselor caseloads based on the intensity and duration of counseling required by each patient. Counseling can be provided in person or via telehealth. Counselor to patient ratios should be sufficient to ensure that patients have reasonable and prompt access to counselors and receive counseling services at the required levels of frequency and intensity.

(10) Preparedness planning: the program has a list of all patients and the patients' dosage requirements available and accessible to program on call staff members.

(11) Patient records: The OTP program shall establish and maintain a recordkeeping system that is adequate to document and monitor patient care. The system shall comply with all federal and state requirements relevant to OTPs and to confidentiality of patient records.

(12) Diversion control: a written plan is developed, implemented, and complied with to prevent diversion of opioid treatment medication from its intended purpose to illicit purposes. This plan shall assign specific responsibility to licensed and administrative staff for carrying out the diversion control measures and functions described in the plan. The program shall develop and implement a policy and procedure providing for the reporting of theft or division of medication to the relevant regulatory agencies, and law enforcement authorities.

(13) Prescription [~~drug~~] monitoring program (PMP): a written plan is developed, implemented, and complied with to ensure that all OTP physicians and other health care providers, as permitted, are registered to use the New Mexico (PMP). The (PMP) should be checked quarterly through the course of each patient's treatment.

(14) HIV/AIDS and hepatitis testing and education are available to patients either at the provider or through referral, including treatment, peer group or support group and to social services either at the provider or through referral to a community group.

(15) Requirements for health care providers who prescribe, distribute or dispense opioid analgesics:

(a) A health care provider who prescribes, distributes or dispenses an opioid analgesic for the first time to a patient shall advise the patient on the risks of overdose and inform the patient of the availability of an opioid antagonist.

(b) For a patient to whom an opioid analgesic has previously been prescribed, distributed or dispensed by the health care provider, the health care provider shall advise the patient on the risks of overdose and inform the patient of the availability of an opioid antagonist on the first occasion that the health care provider prescribes, distributes or dispenses an opioid analgesic each calendar year.

(c) A health care provider who prescribes an opioid analgesic for a patient shall co-prescribe an opioid antagonist if the amount of opioid analgesic being prescribed is at least a five-day supply. The prescription for the opioid antagonist shall be accompanied by written information regarding the temporary effects of the opioid antagonist and techniques for administering the opioid antagonist. That written information shall contain a warning that a person administering the opioid antagonist should call 911 immediately after administering the opioid antagonist.

C. Identified population:

(1) An eligible recipient is treated for opioid dependency only after the agency's physician determines and documents that:

(a) the recipient meets the definition of opioid use disorder using generally accepted medical criteria, such as those contained in the current version of the DSM;

(b) the recipient has received an initial medical examination as required by 7.32.8.19 NMAC, *Opioid Treatment Program Admissions*;

(c) if the recipient is requesting maintenance treatment, he or she must have been addicted for at least 12 months prior to starting OTP services unless the recipient receives a waiver of this requirement from the agency's physician because the recipient:

(i) was released from a penal institution within the last six months;

(ii) is pregnant, as confirmed by the agency's physician;

(iii) was treated for opioid use disorder within the last 24 months;

(iv) is under the age of 18; has had two documented unsuccessful attempts at short-term opioid treatment withdrawal procedures of drug-free treatment within a 12 month period, and has informed consent for treatment provided by a parent, guardian, custodian or responsible adult designated by the relevant state authority; or

(v) meets any other requirements specified in 7.32.8 NMAC, *Opioid Treatment Program* regarding waivers, consent, and waiting periods.

D. Covered services:

(1) Withdrawal treatment and medically supervised dose reduction.

(2) A biopsychosocial assessment will be conducted by a licensed behavioral health professional or a LADAC under the supervision of an independently licensed clinician, as defined by the NM RLD within 14 days of admission.

(3) A comprehensive, patient centered, individualized treatment plan shall be conducted within 30 days of admission and be documented in the patient record.

(4) Each OTP will ensure that adequate medical, psychosocial counseling, mental health, vocational, educational and other services identified in the initial and ongoing treatment plans are fully and reasonably available to patients, either by the program directly, or through formal, documented referral agreements with other providers.

(5) Drug screening: A recipient in comprehensive maintenance treatment receives one random urine drug detection test per month; short-term opioid treatment withdrawal procedure patients receive at least one initial drug abuse test; long-term opioid treatment withdrawal procedure patients receive an initial and monthly random tests; and other toxicological tests are performed according to written orders from the program medical director or medical practitioner designee. Samples that are sent out for confirmatory testing (by internal or external laboratories) are billed separately by the laboratory.

E. Non-covered services: Blood samples collected and sent to an outside laboratory.

F. Reimbursement:

(1) The bundled reimbursement rate for administration and dispensing includes the cost of methadone, administering and dispensing methadone, and urine dipstick testing conducted within the agency.

(2) Other services performed by the agency as listed below are reimbursed separately and are required by (42 CFR Part 8.12 (f)), or its successor.

(a) A narcotic replacement or agonist drug item other than methadone that is administered or dispensed;

(b) Behavioral health prevention and education services to affect knowledge, attitude, or behavior can be rendered by a licensed substance abuse associate or certified peer support worker in addition to independently licensed practitioners;

(c) Outpatient therapy other than the substance abuse and HIV counseling required by (42 CFR Part 8.12 (f)) is reimbursable when rendered by a MAD approved independently licensed provider that meets Subsection H of 8.321.2.9 NMAC;

(d) An eligible recipient's initial medical examination when rendered by a MAD approved medical provider who meets 8.310.2 and 8.310.3 NMAC requirements;

(e) Full medical examination, prenatal care and gender specific services for a pregnant recipient; if she is referred to a provider outside the agency, payment is made to the provider of the service;

(f) Medically necessary services provided beyond those required by (42 CFR Part 8.12 (f)), to address the medical issues of the eligible recipient; see 8.310.2 and 8.310.3 NMAC;

(g) The quantity of service billed in a single day can include, in addition to the drug items administered that day, the number of take-home medications dispensed that day; and

(h) Guest dosing can be reimbursed at medicaid-enrolled agencies per 7.32.8 NMAC. Arrangements must be confirmed prior to sending the patient to the receiving clinic.

(3) For an IHS, [~~or~~] tribal 638 facility or any other "Indian Health Care Provider (IHCP)" defined in 42 Code of Federal Regulations §438.14(a), MAD considers the bundled OTP services to be outside the IHS all-inclusive rate and is therefore reimbursed at the MAD fee schedule utilizing the appropriate claim form designated by MAD; see 8.310.12 NMAC. Non-bundled services may be billed at the office of management and budget (OMB) rate.

(4) For a FQHC, MAD considers the bundled OTP services to be outside the FQHC all-inclusive rate and is therefore reimbursed at the MAD fee schedule utilizing the appropriate claim form designated by MAD; see 8.310.12 NMAC. Non-bundled services may be billed at the FQHC rate. [8.321.2.30 NMAC - Rp, 8.321.2.30 NMAC, 8/10/2021]

8.321.2.31 PARTIAL HOSPITALIZATION SERVICES: To help an eligible recipient receive the level of services needed, MAD pays for partial hospitalization services furnished by an acute care or freestanding psychiatric hospital. Partial Hospitalization Programs (PHP) are structured to provide intensive psychiatric care through active treatment that utilizes a combination of clinical services. They are designed to stabilize deteriorating conditions or avert inpatient admissions, or can be a step-down strategy for individuals with SMI, SUD or SED who have required inpatient admission. The environment is highly structured, is time-limited and outcome oriented for recipients experiencing acute symptoms or exacerbating clinical conditions that impede their ability to function on a day-to-day basis. Program objectives focus on ensuring important community tdies and closely resemble the real-life experiences of the recipients served.

A. Eligible providers and practitioners: In addition to the requirements found in Subsections A and B of 8.321.2.9 NMAC, an eligible provider includes a facility joint commission accredited, and licensed and certified by DOH or the comparable agency in another state.

(1) The program team must include:

(a) registered nurse;

(b) a clinical supervisor that is an independently licensed behavioral health practitioner or psychiatric nurse practitioner or psychiatric nurse clinician; and

(c) licensed behavioral health practitioners.

(2) The team may also include:

(a) physician assistants;

(b) certified peer support workers;

(c) certified family peer support workers;

(d) licensed practical nurses;

(e) mental health technicians.

B. Coverage criteria: MAD covers only those services which meet the following criteria:

(1) Services that are ordered by a psychiatrist or licensed Ph.D.

(2) Partial hospitalization is a voluntary, intensive, structured and medically staffed, psychiatrically supervised treatment program with an interdisciplinary team intended for stabilization of acute psychiatric or substance use symptoms and adjustment to community settings. The services are essentially of the same nature and intensity, including medical and nursing services, as would be provided in an inpatient setting, except that the recipient is in the program less than 24-hours a day, and it is a time-limited program.

(3) A history and physical (H&P) must be conducted within 24 hours of admission. If the eligible recipient is a direct admission from an acute or psychiatric hospital setting, the program may elect to obtain the H&P in lieu of completing a new H&P. In this instance, the program physician's signature indicates the review and acceptance of the document. The H&P may be conducted by a clinical nurse specialist, a clinical nurse practitioner, a physician assistant or a physician.

(4) An interdisciplinary biopsychosocial

assessment within seven days of admission including alcohol and drug screening. A full substance abuse evaluation is required if alcohol and drug screening indicates the need. If the individual is a direct admission from an acute psychiatric hospital setting, the program may elect to obtain and review this assessment in lieu of completing a new assessment.

(5) Services are furnished under an individualized written treatment plan established within seven days of initiation of service by the psychiatrist, together with the program's team of professionals, and in consultation with recipients, parents, legal guardian(s) or others who participate in the recipient's care. The plan must state the type, amount, frequency and projected duration of the services to be furnished, and indicate the diagnosis and anticipated goals. The treatment plan must be reviewed and updated by the interdisciplinary team every 15 days.

(6) Documentation must be sufficient to demonstrate that coverage criteria are met, including:

(a) Daily documentation of treatment interventions which are outcome focused and based on the comprehensive assessment, treatment goals, culture, expectations, and needs as identified by the recipient, family or other caregivers.

(b) Supervision and periodic evaluation of the recipient, either individually or in a group, by the psychiatrist or psychologist to assess the course of treatment. At a minimum, this periodic evaluation of services at intervals indicated by the condition of the recipient must be documented in the recipient's record.

(c) Medical justification for any activity therapies, recipient education programs and psychosocial programs.

(7) Treatment must be reasonably expected to improve the eligible recipient's condition or designed to reduce or control the eligible recipient's psychiatric symptoms to prevent relapse or hospitalization and to improve or maintain the eligible recipient's level of functions. Control of symptoms and maintenance of a functional level to avoid further deterioration or hospitalization are acceptable expectations of improvement.

(8) For recipients in elementary and secondary school, educational services must be coordinated with the recipient's school system.

C. Identified population:

(1) Recipients admitted to a PHP shall be under the care of a psychiatrist who certifies the need for partial hospitalization. The recipient requires comprehensive, structured, multimodal treatment requiring medical supervision and coordination, provided under an individualized plan of care, because of a SMI, SED or moderate to severe SUD which severely interferes with multiple areas of daily life, including social, vocational or educational functioning. Such dysfunction generally is of an acute nature;

(2) Recipients must have an adequate support system to sustain/maintain his or herself outside the PHP;

(3) Recipients 19 and over with a serious mental illness including substance use who can be safely managed in the community with high intensity therapeutic intervention more intensive than outpatient services but are at risk of inpatient care without this treatment; or

(4) Recipients five to 18 with severe emotional disturbances including substance use disorders who can be safely managed in the community with high intensity therapeutic intervention more intensive than outpatient services but are at risk of inpatient care without this treatment.

D. Covered services and service limitations: A program of services must be furnished by a MAD enrolled provider delivering partial hospitalization to receive reimbursement from MAD. Payment for performance of these services is included in the facility's reimbursement rate:

(1) regularly scheduled structured counseling and therapy sessions for an eligible recipient, his or her family, group or multifamily group based on individualized needs furnished by licensed behavioral health professionals, and, as specified in the treatment plan;

(2) educational and skills building groups furnished by the program team to promote recovery;

(3) age-appropriate skills development in the areas of household management, nutrition, personal care, physical and emotional health, basic life skills, time management, school attendance and money management;

(4) drugs and biologicals that cannot be self-administered and are furnished for therapeutic management;

(5) assistance to the recipient in self-administration of medication in compliance with state policies and procedures;

(6) appropriate staff available on a 24-hour basis to respond to crisis situations, evaluate the severity of the situation, stabilize the recipient make referrals as necessary, and provide follow-up;

(7) consultation with other professionals or allied caregivers regarding a specific recipient;

(8) coordination of all non-medical services, including transportation needed to accomplish a treatment objective;

(9) therapeutic services to meet the physical, social, cultural, recreational, health maintenance, and rehabilitation needs of recipients; and

(10) discharge planning and referrals as necessary to community resources, supports, and providers in order to promote a recipient's return to a higher level of functioning in the least restrictive environment.

E. Non-covered services: Partial hospitalization services are subject to the limitations and coverage restrictions which exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for all general non-covered MAD behavioral health services or activities. MAD does not cover the following specific services with partial hospitalization:

(1) meals;

(2) transportation by the partial hospitalization provider;

(3) group activities or other services which are primarily recreational or diversional in nature;

(4) a program that only monitors the management of medication for recipients whose psychiatric condition is otherwise stable, is not the combination, structure, and intensity of services which make up active treatment in a partial hospitalization program;

(5) actively homicidal or suicidal ideation that would not be safely managed in a PHP;

(6) formal educational and vocational services related to traditional academic subjects or vocational training; non-formal education services can be covered if they are part of an active treatment plan for the eligible recipient; see 42 CFR Section 441.13(b); or

(7) services to treat social maladjustments without manifest psychiatric disorders, including occupational maladjustment, marital maladjustment, and sexual dysfunction.

F. Prior authorization: Prior authorization is not required for this service unless the length of stay exceeds 45 days, at which time continued stay must be prior authorized (PA) from MAD or its UR contractor; or applicable centennial care MCO. Request for authorization for continued stay must state evidence of the need for the acute, intense, structured combination of services provided by a PHP, and must address the continuing serious nature of the recipient's psychiatric condition requiring active treatment in a PHP and include expectations for imminent improvement. Control of symptoms and maintenance of a functional level to avoid further deterioration or hospitalization are acceptable expectations of improvement. The request for authorization must also specify that a lower level of outpatient services would not be advised, and why, and that the recipient may otherwise require inpatient psychiatric care in the absence of continued stay in the PHP. The request describes:

(1) the recipient's response to the therapeutic interventions provided by the PHP;

(2) the recipient's psychiatric symptoms that continue to place the recipient at risk of hospitalization; and

(3) treatment goals for coordination of services to facilitate discharge from the PHP. See Subsection F of 8.321.2.9 NMAC for MAD general prior authorization requirements.

G. Reimbursement: A provider of partial hospitalization services must submit claims for reimbursement on the UB claim form or its successor. See 8.302.2 NMAC and Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements. Specific to partial hospitalization services:

(1) Freestanding psychiatric hospitals are reimbursed at an interim percentage rate established by HSD to equal or closely approximate the final payment rates that apply under the cost settlement TEFRA principles using the Title XVIII (medicare) principles cost methodology, MAD reduces the medicare allowable costs by three percent. For partial hospitalization services that are not cost settled, such as general acute care hospitals, payments are made at the outpatient hospital prospective levels, when applicable, on the procedure codes (see Subsection E of 8.311.2.15 NMAC).

(2) The payment rate is at a per diem representing 8 hours, which is billed fractions of .25, .5, or .75 units to represent 2, 4, or 6 hours when applicable.

(3) Any professional services are billed and reimbursed to the provider under a separate professional component number, all costs for these services must be removed from the hospital cost report prior to cost settlement or rebasing.

(4) Services performed by a physician or Ph.D. psychologist are billed separately as a professional service. Other services performed by employees or contractors to the facility are included in the per diem rate which may be billed separately are:

(a) performance of necessary evaluations and psychological testing for the development of the treatment plan, while ensuring that evaluations already performed are not repeated;

(b) physical examination and any resultant medical treatments, while ensuring that a physical examination already performed is not repeated;

(c) any medically necessary occupational or physical therapy; and

(d) other professional services not rendered as part of the program.

[8.321.2.31 NMAC - Rp & Rn, 8.321.2.31 NMAC, 8/10/2021]

8.321.2.32 PSYCHOSOCIAL REHABILITATION SERVICES: To help an adult eligible recipient (18 years and older) who met the criteria of SMI, MAD pays for psychosocial rehabilitation services (PSR). PSR is an array of services offered in a group setting through a clubhouse or a classroom and is designed to help an individual to capitalize on personal strengths, to develop coping strategies and skills to deal with deficits, and to develop a supportive environment in which to function as independently as possible. Psychosocial rehabilitation intervention is intended to be a

transitional level of care based on the individual's recovery and resiliency goals. See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

A. Eligible providers and practitioners:

(1) Agency staff must possess the education, skills, abilities, and experience to perform the activities that comprise the full spectrum of PSR services. See Subsection A of 8.321.2.9 NMAC for MAD general provider requirements.

(2) Staffing requirements:

(a) Both clinical services and supervision by licensed practitioners must be in accord with their respective licensing board regulations.

(b) PSR services must meet a staff ratio sufficient to ensure that patients have reasonable and prompt access to services.

(c) In both clubhouse and classroom settings, the entire staff works as a team.

(d) The team must include a clinical supervisor/team lead and can include the following:

(i) certified peer support workers;

(ii) certified family support workers;

(iii) community support workers; and

(iv) other HIPAA trained individuals working under the direct supervision of the clinical supervisor.

(e) Minimum qualifications for the clinical supervisor/team lead:

(i) independently licensed behavioral health professional (i.e. psychiatrist, psychologist, LISW, LPCC, LMFT, psychiatrically certified (CNS) practicing under the scope of their NM license;

(ii) have one year of demonstrated supervisory experience;

(iii) demonstrated knowledge and competence in the field of psychosocial; rehabilitation; and

(iv) an attestation of training related to providing clinical supervision of non-clinical staff.

B. Coverage criteria:

(1) MAD covers only those PSR services which comply with DOH licensing standards and are medically necessary to meet the individual needs of the eligible recipient, as delineated in his or her service plan and treatment plan. Medical necessity is based upon the eligible recipient's level of functioning as affected by his or her SMI. The PSR services are limited to goals which are individually designed to accommodate the level of the eligible recipient's functioning and which reduce the disability and restore the recipient to his or her best possible level of functioning.

(2) These services must be provided in a facility-based setting, either in a clubhouse model or a structured classroom.

(3) PSR services must be identified and justified in the individual's treatment or service plan. Recipients shall participate in PSR services for those activities that are identified in the treatment or service plan and are tied directly to the recipient's recovery and resiliency plan/goals.

(4) Specific service needs (e.g., household management, nutrition, hygiene, money management, parenting skills, etc.) must be identified in the individual's treatment or service plan.

C. Identified population:

(1) An eligible recipient 18 years or older meeting the criteria for SMI and for whom the medical necessity for PSR services was determined.

(2) Adults diagnosed with co-occurring SMI and substance use disorders and for whom the medical necessity for PSR services was determined.

(3) A resident in an institution for mental illness is not eligible for this service**.**

D. Covered services: The psychosocial intervention (PSI) program must include the following major components: basic living skills development; psychosocial skills training; therapeutic socialization; and individual empowerment.

(1) Basic living skills development activities address the following areas, including but not limited to:

(a) basic household management;

(b) basic nutrition, health, and personal care including hygiene;

(c) personal safety;

(d) time management skills;

(e) money management skills;

(f) how to access and utilize transportation;

(g) awareness of community resources and support in their use;

(h) child care/parenting skills;

(i) work or employment skill-building; and

(j) how to access housing resources.

(2) Psychosocial skills training activities address the following areas:

(a) self-management;

(b) cognitive functioning;

(c) social/communication; and

(d) problem-solving skills.

(3) Therapeutic socialization activities address the following areas:

(a) understanding the importance of healthy leisure time;

(b) accessing community recreational facilities and resources;

(c) physical health and fitness needs;

(d) social and recreational skills and opportunities; and

(e) harm reduction and relapse prevention strategies (for individuals with co-occurring disorders).

(4) Individual empowerment activities address the following areas:

(a) choice;

(b) self-advocacy;

(c) self-management; and

(d) community integration.

E. Non-covered services: PSR services are subject to the limitations and coverage restrictions which exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for all general non-covered MAD behavioral health services or activities. Specifically, PSR cannot be billed concurrently when the recipient is a resident of an institution for the mentally ill.

F. Prior authorization: No prior authorization is required. To determine retrospectively if the medical necessity for the service has been met, the following factors are considered:

(1) recipient assessment;

(2) recipient diagnostic formation;

(3) recipient service and treatment plans; and

(4) compliance with 8.321.2 NMAC.

G. Reimbursement: Claims for reimbursement are submitted on the CMS-1500 claim form or its successor. See Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements and see 8.302.2 NMAC.

[8.321.2.32 NMAC - Rp, 8.321.2.32 NMAC, 8/10/2021]

8.321.2.33 RECOVERY SERVICES (MCOs only): Recovery services are peer-to-peer support for centennial care members to develop and enhance wellness and health care practices. Recovery services promote self-responsibility through recipients learning new health care practices from a peer who has had similar life challenges and who has developed self-efficacy in using needed skills. See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

A. Staffing requirements:

(1) all staff must possess a current and valid NM driver's license;

(2) clinical supervisor:

(a) licensed as an independent practitioner (i.e., psychiatrist, psychologist, LISW, LPCC, LMFT, CNP, CNS); and

(b) two years relevant experience with the target population; and

(c) one year demonstrated supervisory experience; and

(d) expertise in both mental health and addiction treatment services; and

(e) supervision must be conducted in accord with respective licensing board regulations.

(3) certified peer support workers; and

(4) certified family specialists.

(5) Group ratios should be sufficient to ensure that patients have reasonable and prompt access to services at the required levels of frequency and intensity within the practitioner's scope of practices.

B. Coverage criteria: Services occur individually or with consumers who support each other to optimize learning new skills. This skill enhancement then augments the effectiveness of other treatment and recovery support initiatives.

(1) Admissions criteria: Consumer has been unable to achieve functional use of natural and community support systems to effectively self-manage recovery and wellness.

(2) Continuation of services criteria: Consumer has made progress in achieving use of natural and community support systems to effectively self-manage recovery and wellness, but continues to need support in developing those competencies.

(3) Discharge criteria: Consumer has achieved maximum use of natural and community support systems to effectively self-manage recovery and wellness.

C. Identified population:

(1) Children experiencing serious emotional/ neurobiological/behavioral disorders;

(2) Adults with serious mental illness (SMI); and

(3) Individuals with chronic substance abuse; or individuals with a co-occurring disorder (mental illness/substance abuse) or dually diagnosed with a primary diagnosis of mental illness.

D. Covered services:

(1) This service will particularly focus on the individual's wellness, ongoing recovery and resiliency, relapse prevention, and chronic disease management.

(2) Recovery services support specific recovery goals through:

(a) use of strategies for maintaining the eight dimensions of wellness;

(b) creation of relapse prevention plans;

(c) learning chronic disease management methods; and

(d) identification of linkages to ongoing community supports.

(3) Activities must support the individual's recovery goals. There must be documented evidence of the individual identifying desired recovery goals and outcomes and incorporating them into a recovery services treatment plan.

(4) Recovery services activities include, but are not limited to:

(a) screening, engaging, coaching, and educating.

(b) emotional support that demonstrates empathy, caring, or concern to bolster the person's self-esteem and confidence.

(c) sharing knowledge and information or providing life skills training.

(d) provision of concrete assistance to help others accomplish tasks.

(e) facilitation of contacts with other people to promote learning of social and recreational skills, create community and acquire a sense of belonging.

(5) Recovery services can be delivered in an individual or group setting.

E. Non-covered services: This service may not be billed in conjunction with:

(1) multi-systemic therapy (MST);

(2) assertive community treatment (ACT);

(3) partial hospitalization;

(4) transitional living services (TLS); or

(5) treatment foster care (TFC).

[8.321.2.33 NMAC - Rp, 8.321.2.33 NMAC, 8/10/2021]

8.321.2.34 SCREENING, BRIEF INTERVENTION & REFERRAL TO TREATMENT (SBIRT) TO BE EFFECTIVE FOLLOWING CMS WAIVER APPROVAL. SBIRT is a community-based practice designed to identify, reduce and prevent problematic substance use or misuse and co-occurring mental health disorders as an early intervention. Through early identification in a medical setting, SBIRT services expand and enhance the continuum of care and reduce costly health care utilization. The primary objective is the integration of behavioral health with medical care. SBIRT is delivered through a process consisting of universal screening, scoring the screening tool and a warm hand-off to a SBIRT trained professional who conducts a face-to-face brief intervention for positive screening results. If the need is identified for additional treatment, the staff member will refer to behavioral health services. See Subsections A and B of 8.321.2.9 NMAC for MAD general provider requirements.

A. Eligible providers and practitioners:

(1) Providers may include:

(a) primary care offices including FQHCs, IHS 638 tribal facilities and any other "Indian Health Care Provider (IHCP)" defined in 42 Code of Federal Regulations §438.14(a);

(b) patient centered medical homes;

(c) urgent care centers;

(d) hospital outpatient facilities;

(e) emergency departments;

(f) rural health clinics;

(g) specialty physical health clinics; [~~and~~]

(h) school based health centers; and

(i) nursing facilities.

(2) Practitioners may include:

(a) licensed nurse trained in SBIRT;

(b) licensed nurse practitioner or licensed nurse clinician trained in SBIRT;

(c) behavioral health practitioner trained in SBIRT;

(d) certified peer support worker trained in SBIRT;

(e) certified community health worker trained in SBIRT;

(f) licensed physician assistant trained in SBIRT;

(g) physician trained in SBIRT;

(h) home health agency trained in SBIRT

(i) nurse home visit EPSDT;

(j) medical assistant trained in SBIRT; and

(k) community health representative in tribal clinics trained in SBIRT.

B. Coverage Criteria:

(1) screening shall be universal for recipients being seen in a medical setting;

(2) referral relationships with mental health agencies and practices are in place;

(3) utilization of approved screening tool specific to age described in the BH policy and billing manual;

(4) all participating providers and practitioners are trained in SBIRT through state approved SBIRT training entities. See details in the BH policy and billing manual.

C. Identified population:

(1) MAD recipient adolescents 11-13 years of age with parental consent;

(2) MAD recipient adolescents 14-18 years of age;

(3) MAD recipient adults 19 years and older.

D. Covered services:

(1) SBIRT screening with negative results eligible for only screening component;

(2) SBIRT screening with positive results for alcohol, or other drugs, and co-occurring with depression, or anxiety, or trauma are eligible for:

(a) screening; and

(b) brief intervention and referral to behavioral health treatment, if needed.

E. Reimbursement:

(1) Screening services do not require a diagnosis; brief interventions can be billed with a provisional diagnosis.

(2) See BH policy and billing manual for coding and billing instruction.

[8.321.2.34 NMAC - Rp, 8.321.2.34 NMAC, 8/10/2021]

8.321.2.35 SMOKING CESSATION COUNSELING: See 8.310.2 NMAC for a detailed description of tobacco cessation services and approved behavioral health providers.

[8.321.2.35 NMAC - Rp, 8.321.2.35 NMAC, 8/10/2021]

8.321.2.36 SUPPORTIVE HOUSING PRE-TENANCY AND TENANCY SERVICES (PSH-TSS) (MCO only): MAD pays for coverage for permanent supportive housing pre-tenancy and tenancy support services (PSH-TSS) to an eligible recipient enrolled in a managed care organization to facilitate community integration and contribute to a holistic focus on improved health outcomes, to reduce the negative health impact of precarious housing and homelessness, and to reduce costly inpatient health care utilization. Services include, but are not limited to, pre-tenancy services including individual housing support and crisis planning, tenancy orientation and landlord relationship services as well as tenancy support services to identify issues that undermine housing stability and coaching, education and assistance in resolving tenancy issues for an eligible recipient who has a serious mental illness and is enrolled in a medicaid managed care organization on, or after, July 1, 2019. The effective date will be July 1, 2019, or as otherwise approved by the centers for medicare and medicaid services (CMS).

A. Eligible providers and practitioners:

(1) Any clinic, office or agency providing permanent supportive housing under the human services department's linkages program administered by the behavioral health services division.

(2) Behavioral health practitioners employed or contracted with such facilities including:

(a) behavioral health professional licensed in the state of New Mexico; and

(b) certified peer support workers or certified family peer support workers.

B. Coverage criteria:

(1) Enrollment in the linkages permanent supportive housing program.

(2) An assessment documenting serious mental illness.

C. Eligible recipients: Individuals with serious mental illness.

D. Covered services:

(1) Pre-tenancy services, including:

(a) screening and identifying preferences and barriers related to successful tenancy;

(b) developing an individual housing support plan and housing crisis plan;

(c) ensuring that the living environment is safe and ready for move-in;

(d) tenancy orientation and move-in assistance;

(e) assistance in securing necessary household supplies; and

(f) landlord relationship building and communication.

(2) Tenancy support services, including:

(a) early identification of issues undermining housing stability, including member behaviors;

(b) coaching the member about relationships with neighbors, landlords and tenancy conditions;

(c) education about tenant responsibilities and rights;

(d) assistance and advocacy in resolving tenancy issues;

(e) regular review and updates to housing support plan and housing crisis plan; and

(f) linkages to other community resources for maintaining housing.

E. Duration: The PSH-TSS benefit is available to an eligible member for the duration of the member's enrollment in a linkages program, ceasing when the client leaves the program.

F. Reimbursement: See Subsection H of 8.321.9 NMAC for MAD behavioral health general reimbursement requirements. See the BH policy and billing manual for reimbursement specific to PSH-TSS. These services do not include tenancy assistance in the form of rent or subsidized housing.

[8.321.2.36 NMAC - Rp, 8.321.2.36 NMAC, 8/10/2021]

8.321.2.37 TREATMENT FOSTER CARE I and II: MAD pays for medically necessary services furnished to an eligible recipient under 21 years of age who has an identified need for treatment foster care (TFC) and meets the TFC I or TFC II level of care (LOC) as part of the EPSDT program. MAD covers those services included in the eligible recipient's individualized treatment plan which is designed to help him or her develop skills necessary for successful reintegration into his or her family or transition back into the community. TFC I agency provides therapeutic services to an eligible recipient who is experiencing emotional or psychological trauma and who would optimally benefit from the services and supervision provided in a TFC I setting. The TFC II agency provides therapeutic family living experiences as the core treatment service to which other individualized services can be added. The need for TFC I and II services must be identified in the tot to teen health check or other diagnostic evaluation furnished through the eligible recipient's health check referral.

A. Eligible agencies: In addition to the requirements of Subsections A and B of 8.321.2.9 NMAC, in order to be eligible to be reimbursed for providing TFC services to an eligible recipient, the agency must be a CYFD certified TFC agency and be licensed as a child placement agency by CYFD protective services.

B. Coverage criteria:

(1) The treatment foster care agency provides intensive support, technical assistance, and supervision of all treatment foster parents.

(2) A TFC I and II parent is either employed or contracted by the TFC agency and receives appropriate training and supervision by the TFC agency.

(3) Placement does not occur until after a comprehensive assessment of how the prospective treatment foster family can meet the recipient's needs and preferences, and a documented determination by the agency that the prospective placement is a reasonable match for the recipient.

(4) An initial treatment plan must be developed within 72 hours of admission and a comprehensive treatment plan must be developed within 14 calendar days of the eligible recipient's admission to a TFC I or II program. See the BH policy and billing manual for the specific requirements of a TFC treatment plan.

(5) The treatment team must review the treatment plan every 30 calendar days.

(6) TFC families must have one parent readily accessible at all times, cannot schedule work when the eligible recipient is normally at home, and is able to be physically present to meet the eligible recipient's emotional and behavioral needs.

(7) In the event the treatment foster parents request a treatment foster recipient be removed from their home, a treatment team meeting must be held and an agreement made that a move is in the best interest of the involved recipient. Any treatment foster parent(s) who demands removal of a treatment foster recipient from his or her home without first discussing with and obtaining consensus of the treatment team, may have their license revoked.

(8) A recipient eligible for treatment foster care services, level I or II, may change treatment foster homes only under the following circumstances:

(a) an effort is being made to reunite siblings; or

(b) a change of treatment foster home is clinically indicated, as documented in the client's record by the treatment team.

C. Identified population:

(1) TFC I services are for an eligible recipient who meets the following criteria:

(a) is at risk for placement in a higher level of care or is returning from a higher level of care and is appropriate for a lower level of care; or

(b) has complex and difficult psychiatric, psychological, neurobiological, behavioral, psychosocial problems; and

(c) requires and would optimally benefit from the behavioral health services and supervision provided in a treatment foster home setting.

(2) TFC II services are for an eligible recipient who meets the criteria listed in Section 25 Subsection B of 8.321.2.9 NMAC and also meet one of the following criteria:

(a) has successfully completed treatment foster care services level I (TFC I), as indicated by the treatment team; or

(b) requires the initiation or continuity of treatment and support of the treatment foster family to secure or maintain therapeutic gains; or

(c) requires this treatment modality as an appropriate entry level service from which the client will optimally benefit.

(3) An eligible recipient has the right to receive services from any MAD TFC enrolled agency of his or her choice.

D. Covered services: The family living experience is the core treatment service to which other individualized services can be added, as appropriate to meet the eligible recipient's needs.

(1) The TFC parental responsibilities include, but are not limited to:

(a) meeting the recipient's base needs, and providing daily care and supervision;

(b) participating in the development of treatment plans for the eligible recipient by providing input based on his or her observations;

(c) assuming the primary responsibility for implementing the in-home treatment strategies specified in the eligible recipient's treatment plan;

(d) recording the eligible recipient's information and documentation of activities, as required by the TFC agency and the standards under which it operates;

(e) assisting the eligible recipient with maintaining contact with his or her family and enhancing that relationship;

(f) supporting efforts specified by the treatment plan to meet the eligible recipient's permanency planning goals;

(g) reunification with the recipient's family. The treatment foster parents work in conjunction with the treatment team toward the accomplishment of the reunification objectives outlined in the treatment plan;

(h) assisting the eligible recipient obtain medical, educational, vocational and other services to reach goals identified in treatment plan;

(i) ensuring proper and adequate supervision is provided at all times. Treatment teams determine that all out-of-home activities are appropriate for the recipient's level of need, including the need for supervision; and

(j) working with all appropriate and available community-based resources to secure services for and to advocate for the eligible recipient.

(2) The treatment foster care agency provides intensive support, technical assistance, and supervision of all treatment foster parents. The following services must be furnished by both TFC I and II agencies unless specified for either I or II. Payment for performance of these services is included in the TFC agency's reimbursement rate:

(a) facilitation, monitoring and documenting of treatment of TFC parents initial and ongoing training;

(b) providing support, assistance and training to the TFC parents;

(c) providing assessments for pre placement and placement to determine the eligible recipient's placement is therapeutically appropriate;

(d) ongoing review of the eligible recipient's progress in TFC and assessment of family interactions and stress;

(e) ongoing treatment planning as defined in Subsection G of 8.321.2.9 NMAC and treatment team meetings;

(f) provision of individual, family or group psychotherapy to recipients as described in the treatment plan. The TFC therapist is an active treatment team member and participates fully in the treatment planning process;

(g) family therapy is required when client reunification with their family is the goal;

(h) ensuring facilitation of age-appropriate skill development in the areas of household management, nutrition, physical and emotional health, basic life skills, time management, school attendance, money management, independent living, relaxation techniques and self-care techniques for the eligible recipient;

(i) providing crisis intervention on call to treatment foster parents, recipients and their families on a 24-hour, seven days a week basis including 24-hour availability of appropriate staff to respond to the home in crisis situations;

(j) assessing the family's strengths, needs and developing a family service plan when an eligible recipient's return to his or her family is planned;

(k) conducting a private face-to-face visit with the eligible recipient within the first two weeks of TFC I placement and at least twice monthly thereafter by the treatment coordinator;

(l) conducting a face-to-face interview with the eligible recipient's TFC parents within the first two weeks of TFC I placement and at least twice monthly thereafter by the treatment coordinator;

(m) conducting at a minimum one phone contact with the TFC I parents weekly; phone contact is not necessary in the same week as the face-to-face contact by the treatment coordinator;

(n) conducting a private face-to face interview with the eligible recipient's TFC II parent within the first two weeks of TFC II placement and at least once monthly thereafter by the treatment coordinator;

(o) conducting a face-to-face interview with the eligible recipient's TFC II parent within the first two weeks of TFC II placement and at least once monthly thereafter by the treatment coordinator; and

(p) conducting at a minimum one phone contact with the TFC II parents weekly; phone contact is not necessary in the same week as the face-to-face contact by the treatment coordinator.

E. Non-covered service: TFC I and II services are subject to the limitations and coverage restrictions that exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for all non-covered MAD behavioral health services or activities. Specific to TFC I and II services MAD does not cover:

(1) room and board;

(2) formal educational or vocational services related to traditional academic subjects or vocational training;

(3) respite care; and

(4) CCSS except as part of the discharge planning from either the eligible recipient's TFC I or II placement.

F. Prior authorization: Before any TFC service is furnished to an eligible recipient, prior authorization is required from MAD or its UR contractor. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

G. A TFC agency must submit claims for reimbursement on the CMS-1500 form or its successor. See Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements and see 8.302.2 NMAC. [8.321.2.37 NMAC - Rp, 8.321.2.37 NMAC, 8/10/2021]

HISTORY OF 8.321.2 NAMC:

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

ISD 310.1700, EPSDT Services, filed 2/13/1980.

ISD 310.1700, EPSDT Services, filed 6/25/1980.

ISD Rule 310.1700, EPSDT Services, filed 10/22/1984.

MAD Rule 310.17, EPSDT Services, filed 5/1/1992.

MAD Rule 310.17, EPSDT Services, filed 7/14/1993.

MAD Rule 310.17, EPSDT Services, filed 11/12/1993.
MAD Rule 310.17, EPSDT Services, filed 12/17/1993.
MAD Rule 310.17, EPSDT Services, filed 3/14/1994.
MAD Rule 310.17, EPSDT Services, filed 6/15/1994.
MAD Rule 310.17, EPSDT Services, filed 11/30/1994.

History of Repealed Material:
MAC Rule 310.17, EPSDT Services, filed 11/30/1994 - Repealed effective 2/1/1995.
8.321.2 NMAC, Inpatient Psychiatric Care in Freestanding Psychiatric Hospitals, filed 10/8/2010 - Repealed effective 1/1/2014.
8.321.3 NMAC, Accredited Residential Treatment Center Services, filed 2/17/2012 - Repeal effective 1/1/2014.
8.321.4 NMAC, Non- Accredited Residential Treatment Center Services, filed 2/17/2012 - Repeal effective 1/1/2014
8.321.5 NMAC, Outpatients and Partial Hospitalization Services in Freestanding Psychiatric Hospitals, filed 1/5/2012 - Repealed effective 1/1/2014.
8.322.2 NMAC, Treatment Foster Care, filed 2/17/2012 - Repealed effective 1/1/2014.
8.322.3 NMAC, Behavioral Management Skills Development Services, filed 10/12/2005 - Repealed effective 1/1/2014.
8.322.4 NMAC, Day Treatment, filed 10/12/2005 - Repealed effective 1/1/2014.
8.322.5 NMAC, Treatment Foster Care II, filed 2/17/2012 - Repealed effective 1/1/2014.
8.322.6 NMAC, Multi-Systemic Therapy, filed 11/16/2007 - Repealed effective 1/1/2014.
8.321.2 NMAC, Specialized Behavioral Health Provider Enrollment and Reimbursement filed 12/17/2013, Repealed effective 8/10/2021.
8.321.2 NMAC, Specialized Behavioral Health Provider Enrollment and Reimbursement filed 12/3/2019, Repealed effective 8/10/2021.

Other History:
8.321.2 NMAC, Specialized Behavioral Health Provider Enrollment and Reimbursement filed 12/17/2013 was replaced by 8.321.2 NMAC, Specialized Behavioral Health Provider Enrollment and Reimbursement effective 8/10/2021.
8.321.2 NMAC, Specialized Behavioral Health Provider Enrollment and Reimbursement filed 12/3/2019 was replaced by 8.321.2 NMAC, Specialized Behavioral Health Provider Enrollment and Reimbursement effective 8/10/2021.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.308.6 NMAC, Sections 8, 9 and 10, effective 8/10/2021.

8.308.6.8 [~~RESERVED~~]
MISSION STATEMENT: To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.
[8.308.6.8 NMAC - Rp, 8.308.6.8 NMAC, 5/1/2018; A, 8/10/2021]

8.308.6.9 MANAGED CARE ELIGIBILITY:

A. General requirements: HSD determines eligibility for medicaid. An eligible recipient is required to participate in a HSD managed care program unless specifically excluded as listed below. Enrollment in a particular managed care organization (MCO) will be according to the eligible recipient's selection of a MCO at the time of application for eligibility, or during other permitted selection periods, or as assigned by HSD, if the eligible recipient makes no selection.

B. The following eligible recipients, as established by their eligibility category, are excluded from managed care enrollment:

(1) qualified medicare beneficiaries (QMB)-only recipients;

(2) specified low income medicare beneficiaries (SLIMB) only;

(3) qualified individuals;

(4) qualified disabled working individuals;

(5) refugees;

(6) participants in the program of all inclusive care for the elderly (PACE);

(7) children and adolescents in out-of-state foster care or adoption placements [~~and~~]

(8) family planning-only eligible recipients and;

(9) residents in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

C. Native Americans may opt into managed care. If a [~~native~~] Native American is dually eligible or in need of long-term care services, he or she is required to enroll in a MCO.

D. For those individuals who are not otherwise eligible for medicaid and who meet the financial and medical criteria established by HSD, HSD or its authorized agent may further determine eligibility for managed care enrollment through a waiver allocation process contingent upon available funding and enrollment capacity.
[8.308.6.9 NMAC - Rp, 8.308.6.9 NMAC, 5/1/2018; A, 1/1/2019; A, 8/10/2021]

8.308.6.10 SPECIAL SITUATIONS:

A. HSD newborn enrollment criteria.

(1) When a child is born to a member enrolled in a MCO, the hospital or other providers will complete a MAD form 313 (*notification of birth*) or its successor, prior to or at the time of discharge. HSD shall ensure that upon receipt of the MAD form 313 and upon completion of the eligibility process, the newborn is enrolled

into his or her mother's MCO. The newborn is eligible for a period of 13 months, starting with the month of his or her birth.

(2) When the newborn's mother is covered by health insurance through the New Mexico health insurance exchange and the mother's qualified health plan is also a HSD-contracted MCO, HSD will enroll the newborn into the mother's MCO as of the month of his or her birth.

(3) When the newborn member's mother is covered by health insurance through New Mexico health insurance exchange and the mother's qualified health plan is not a HSD-contracted MCO, HSD shall auto-assign and enroll the newborn in a medicaid MCO as of the month of his or her birth.

(4) The newborn member's parent or legal guardian will have three months from the first day of the month of birth to change the newborn's MCO assignment. After the three-month period, the newborn's MCO enrollment may only be changed for cause, as set forth in Paragraph (2) of Subsection H of 8.308.7.9 NMAC.

B. Community benefit eligibility:

(1) A member who meets a nursing facility (NF) level of care (LOC) and who does not reside in a NF will be eligible to receive home and community-based services and may choose to receive such services either through an agency-based or self-directed approach as outlined in 8.308.12 NMAC.

(2) Members who meet NFLOC and are eligible to receive community benefits must be enrolled in a centennial care MCO.

C. ICF/IID discharge: When an ICF/IID resident is discharged, enrollment into managed care will begin 60 days following discharge.

[8.308.6.10 NMAC - Rp, 8.308.6.10 NMAC, 5/1/2018; A, 1/1/2019; A, 8/10/2021]

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.308.7 NMAC, Sections 8 and 9, effective 8/10/2021.

8.308.7.8 [~~RESERVED~~]

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

[8.308.7.8 NMAC - Rp, 8.308.7.8 NMAC, 5/1/2018; A, 8/10/2021]

8.308.7.9 MANAGED CARE ENROLLMENT:

A. General: A medical assistance division (MAD) eligible recipient is required to enroll in a HSD managed care organization (MCO) unless he or she is:

(1) [~~a Native American and elects enrollment in MAD's fee-for-service (FFS)~~] a Native American who opts into managed care. If a Native American is dually eligible or in need of long-term care services, he or she is required to enroll in a MCO; or

(2) is in an excluded population. See 8.200.400 NMAC and 8.308.6 NMAC.

Enrollment in a MCO may be the result of the eligible recipient's selection of a particular MCO or assignment by HSD. The MCO shall accept as a member an eligible recipient in accordance with 42 CFR. 434.25 and shall not discriminate against, or use any policy or practice that has the effect of discrimination against the potential or enrolled member on the basis of health status, the need for health care services, or race, color, national origin, ancestry, spousal affiliation, sexual orientation or gender identity. HSD reserves the right to limit enrollment in a specific MCO.

B. Newly eligible recipients: An individual who applies for a MAP category of eligibility (COE) and has an approved COE effective date of January 1, 2019, or later, and who is required to enroll in a MCO, must select a MCO at the time of his or her application for a MAP COE. An eligible recipient who fails to select a MCO at such time will be auto assigned to a MCO. See Subsection C of this Section. Members may choose a different MCO one time during the first three months of their enrollment.

C. Auto assignment: HSD will auto-assign an eligible recipient to a MCO in specific circumstances, including but not limited to: a) the eligible recipient is not exempt from managed care and does not select a MCO at the time of his or her application for MAD eligibility; b) the eligible recipient cannot be enrolled in the requested MCO pursuant to the terms of this rule (e.g., the MCO is subject to and has reached its enrollment limit). HSD may modify the auto-assignment algorithm, at its discretion, when it determines it is in the best interest of the program, including but not limited to, sanctions imposed on the MCO, consideration of quality measures, cost or utilization management performance criteria.

(1) The HSD auto-assignment process will consider the following:

(a) if the eligible recipient was previously enrolled with a MCO and lost his or her eligibility for a period of six months or less, he or she will be re-enrolled with that MCO, provided he or she is eligible for reenrollment in that MCO at the time of auto assignment;

(b) if the eligible recipient has a family member enrolled in a specific MCO, he or she will be enrolled with that MCO;

(c) if the eligible recipient has family members who are enrolled with different MCOs, he or she will be enrolled with the MCO that the majority of other family members are enrolled with;

(d) if the eligible recipient is a newborn, he or she will be assigned to the mother's MCO for the month of birth, at a minimum; see Subsection A of 8.308.6.10 NMAC; or

(e) if none of the above applies, the eligible recipient will be assigned to an MCO using the default logic that auto assigns an eligible recipient to a MCO.

D. Effective date for a newly eligible recipient's enrollment in managed care: In most instances, the effective date of enrollment with a MCO will be the same as the effective date of eligibility approval.

E. Retroactive MCO enrollment is limited to up to six months prior to the current month for the following reasons:

(1) retroactive medicare enrollment; or

(2) retroactive changes in eligibility; or

(3) retroactive nursing facility coverage; or

(4) changes in race code from Native American to non-Native American.

F. Eligible recipient member lock-in: A member's enrollment with a MCO is for a 12-month lock-in period. During the first three months of his or her initial [~~or annual~~] MCO enrollment, either by the member's choice or by auto-assignment, he or she shall have one option to change MCOs for any reason, except as described below.

(1) If the member does not choose a different MCO during his or her first three months of enrollment, the member will remain with this MCO for the full 12-month lock-in period before being able to switch MCOs.

(2) If during the member's first three months of enrollment in the initially or annually-selected or a HSD assigned MCO, and he or she chooses a different MCO, he or she is subject to a new 12-month lock-in period and will remain with the newly selected MCO until the lock-in period ends. After that time, the member may switch to another MCO.

(3) At the conclusion of the 12-month lock-in period, the member shall have the option to select a new MCO, if desired. The member shall be notified of the option to switch MCOs [~~60 days~~] two months prior to the expiration date of the member's lock-in period, the deadline by when to choose a new MCO.

(4) [~~If a member loses his or her MAD eligibility for a period of six months or less, he or she will be automatically re-enrolled with the former MCO.~~

(5)] If an inmate, as defined at 8.200.410.17 NMAC, becomes a newly eligible recipient during incarceration and remains eligible at the time of their release, he or she will be enrolled with the MCO of their choice or auto-assigned to a MCO, unless they are Native American. Their initial 12-month lock-in period will begin on the first of the month of their release from incarceration.

[~~(6)~~] **(5)** If a member misses what would have been his or her annual switch enrollment period due to incarceration, hospitalization or incapacitation, the member will have two months to choose a new MCO.

G. Eligible recipient MCO open enrollment period: The open enrollment period is the last two months of an eligible recipient's 12-month lock-in period, and is the time period during which a member can change his or her MCO without having to provide a specific reason to HSD. The open enrollment period may be initiated at HSD's discretion in order to support program needs.

H. Mass transfers from another MCO: A MCO shall accept any member transferring from another MCO as authorized by HSD. The transfer of membership may occur at any time during the year.

I. Change of enrollment initiated by a member during a MCO lock-in period:

(1) A member may select another MCO during his or her annual renewal of eligibility, or re-certification period.

(2) A member may request to be switched to another MCO for cause, even during a lock-in period. [~~The member must submit a written request to HSD or may submit an oral request by calling the New Mexico medicaid call center~~] The member may submit the request to HSD's consolidated customer service center or the medical assistance division. Examples of "cause" include, but are not limited to:

(a) the MCO does not, because of moral or religious objections, cover the service the member seeks;

(b) the member requires related services (for example a cesarean section and a tubal ligation) to be performed at the same time, not all of the related services are available within the network, and his or her PCP or another provider determines that receiving the services separately would subject the member to unnecessary risk; and

(c) poor quality of care, lack of access to covered benefits, or lack of access to providers experienced in dealing with the member's health care needs.

(d) continuity of care (for example, a member's physician or specialist is no longer in the MCO's provider network or a member lives in a rural area and the closest physician that accepts their current MCO is too far away);

(e) family continuity (for example, a switch that is requested so that all family members are enrolled with the same MCO);

(f) administrative error (for example, a member chooses an MCO at initial enrollment or requests to change MCOs during an allowable switch period but the request was not honored).

(3) No later than the first calendar day of the second month following the month in which the request is filed by the member, HSD must respond in writing. If HSD does not respond timely, the request of the member is

deemed approved. If the member is dissatisfied with HSD's determination, he or she may request a HSD administrative hearing; see 8.352.2 NMAC for detailed description.

(4) Native American opt-in and opt-out:

(a) Native American members in fee-for-service (FFS) may opt-in to managed care at any time during the year. MCO enrollment begins on the first calendar day of the month following HSD's receipt of the member's MCO opt-in request.

(b) Native American members may opt-out of managed care at any time during the year. MCO enrollment ends on the last calendar day of the enrollment month in which HSD receives the opt-out request.

(c) Native Americans who opt-in to managed care are not retroactively enrolled into managed care for prior months.

(d) A Native American who is approved for a category of eligibility that is required to be enrolled with a MCO must follow Subsection E, F and H of 8.308.7.9 NMAC regarding MCO enrollment.

[8.308.7.9 NMAC - Rp, 8.308.7.9 NMAC, 5/1/2018; A, 1/1/2019; A, 8/10/2021]

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.310.2 NMAC, Sections 8, 12 and 13, effective 8/10/2021.

8.310.2.8 MISSION STATEMENT: [~~To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.~~] To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.310.2.8 NMAC - Rp, 8.310.2.8 NMAC, 1/1/2014; A, 8/10/2021]

8.310.2.12 SERVICES: MAD covers services and procedures that are medically necessary for the diagnosis and treatment of an illness or injury as indicated by the MAP eligible recipient's condition. All services must be furnished within the limits of provider program rules and within the scope of their practice board and licensure.

A. Medical practitioner services:

(1) Second surgical opinions: MAD covers second opinions when surgery is considered.

(2) Services performed in an outpatient setting: MAD covers procedures performed in the office, clinic or as outpatient institutional services as alternatives to hospitalization. These procedures are those for which an overnight stay in a hospital is seldom necessary.

(a) A MAP eligible recipient may be hospitalized if he or she has existing medical conditions that predispose him or her to complications even with minor procedures.

(b) Claims may be subject to pre-payment or post-payment review.

(c) Medical justification for performance of these procedures in a hospital must be documented in the MAP eligible recipient's medical record.

(3) Noncovered therapeutic radiology and diagnostic imaging services: MAD does not pay for kits, films or supplies as separate charges. All necessary materials and minor services are included in the service or procedure charge. Reimbursement for imaging procedures includes all materials and minor services necessary to perform the procedure. MAD does not pay an additional amount for contrast media except in the following instances:

(a) radioactive isotopes;

(b) non-ionic radiographic contrast material; or

(c) gadolinium salts used in magnetic resonance imaging.

(4) Midwives services: MAD covers services furnished by certified nurse midwives or licensed midwives within the scope of their practice, as defined by state laws and rules and within the scope of their practice board and licensure. Reimbursement for midwife services is based on one global fee, which includes prenatal care, delivery and postnatal care.

(a) Separate trimesters completed and routine vaginal delivery can be covered if a MAP eligible recipient is not under the care of one provider for the entire prenatal, delivery and postnatal periods.

(b) MAD covers laboratory and diagnostic imaging services related to [~~essentially normal~~] pregnancy. These services can be billed separately.

(c) MAD covers gynecological or obstetrical ultrasounds without requiring a prior authorization of any kind.

(d) MAD covers a MAP eligible pregnant recipient's labor and delivery services at a New Mexico department of health (DOH) licensed birth center through the "Birthing Options Program" (BOP). MAD reimburses the birth center facility and the rendered services of a midwife separately. BOP services are provided by an eligible midwife that enrolls as a BOP provider with the human services department/medical assistance division (HSD/MAD). The facility must comply with all DOH licensing requirements, including limiting licensure. The facility must maintain all clinical documentation, including schedules, for the period of time as required under 8.302.1 NMAC. The program does not cover the full scope of midwifery services nor replace

pediatric care that should occur at a primary care clinic.

[~~(c)~~] **(c)** Non-covered midwife services: Midwife services are subject to the limitation and coverage restrictions which exist for other MAD services. MAD does not cover the following specific services furnished by a midwife:

(i) oral medications or medications, such as ointments, creams, suppositories, ophthalmic and otic preparations which can be appropriately self-administered by the MAP eligible recipient;

(ii) services furnished by an apprentice; unless billed by the supervising midwife;

(iii) an assistant at a home birth unless necessary based on the medical condition of the MAP eligible recipient which must be documented in the claim.

B. Pharmaceutical, vaccines and other items obtained from a pharmacy: MAD does not cover drug items that are classified as ineffective by the food and drug administration (FDA) and antitubercular drug items that are available from the public health department. In addition, MAD does not cover personal care items or pharmacy items used for cosmetic purposes only. Transportation to a pharmacy is not a MAD allowed benefit with the exception for justice-involved MAP eligible recipients who are released from incarceration at a correctional facility within the first seven days of release.

C. Laboratory and diagnostic imaging services: MAD covers medically necessary laboratory and diagnostic imaging services ordered by primary care provider (PCP), physician assistant (PA), certified nurse practitioner (CNP), or clinical nurse specialists (CNS) and performed in the office by a provider or under his or her supervision by a clinical laboratory or a radiology laboratory, or by a hospital-based clinical laboratory or radiology laboratory that are a enrolled MAD provider. See 42 CFR Section 440.30.

(1) MAD covers interpretation of diagnostic imaging with payment as follows: when diagnostic radiology procedures, diagnostic imaging, diagnostic ultrasound, or non-invasive peripheral vascular studies are performed in a hospital inpatient or outpatient setting, payment is made only for the professional component of the service. This limitation does not apply if the hospital does not bill for any component of the radiology procedures and does not include the cost associated with furnishing these services in its cost reports.

(2) A provider may bill for the professional components of imaging services performed at a hospital or independent radiology laboratory if the provider does not request an interpretation by the hospital radiologist.

(3) Only one professional component is paid per radiological procedure.

(4) Radiology professional components are not paid when the same provider or provider group bills for professional components or interpretations and for the performance of the complete procedure.

(5) Professional components associated with clinical laboratory services are payable only when the work is actually performed by a pathologist who is not billing for global procedures and the service is for anatomic and surgical pathology only, including cytopathology, histopathology, and bone marrow biopsies, or as otherwise allowed by the medicare program.

(6) Specimen collection fees are payable when obtained by venipuncture, arterial stick, or urethral catheterization, unless a MAP eligible recipient is an inpatient of [~~nursing facilities or hospitals~~] a nursing facility or hospital.

(7) Noncovered laboratory services: MAD does not cover laboratory specimen handling, mailing, or collection fees. Specimen collection is covered only if the specimen is drawn by venipuncture, arterial stick, or collected by urethral catheterization from a MAP eligible recipient who is not a resident of a NF or hospital. MAD does not cover the following specific laboratory services:

(a) clinical laboratory professional components, except as specifically described under covered services above;

(b) specimens, including pap smears, collected in a provider's office or a similar facility and conveyed to a second provider's office, office laboratory, or non-certified laboratory;

(c) laboratory specimen handling or mailing charges;

(d) specimen collection fees other than those specifically indicated in covered services; and

(e) laboratory specimen collection fees for a MAP eligible recipient in NF or inpatient hospital setting.

D. Reproductive health services: MAD pays for family planning and other related health services (see 42 CFR Section 440.40(c)) and supplies furnished by or under the supervision of a MAD enrolled provider acting within the scope of his or her practice board or licensure.

(1) Prior to performing medically necessary surgical procedures that result in sterility, providers must complete a [~~"*consent to sterilization*" or a "*hysterectomy acknowledgement*"~~] "*sterilization consent*" or a "*hysterectomy acknowledgment/ consent*" form. MAD covers a medically necessary sterilization under the following conditions. See 42 CFR Section 441.251 et seq:

(a) a MAP eligible recipient 21 years and older at the time consent is obtained;

(b) a MAP eligible recipient is not mentally

incompetent; mentally incompetent is a declaration of incompetency as made by a federal, state, or local court; a MAP eligible recipient can be declared competent by the court for a specific purpose, including the ability to consent to sterilization;

(c) a MAP eligible recipient is not institutionalized; for this section, institutionalized is defined as:

(i) an individual involuntarily confined or detained under a civil or criminal statute in a correctional or rehabilitative facility, including a psychiatric hospital or an intermediate care facility for the care and treatment of mental illness;

(ii) confined under a voluntary commitment in a psychiatric hospital or other facility for the care and treatment of mental illness;

(d) a MAP eligible recipient seeking sterilization must be given information regarding the procedure and the results before signing a consent form; this explanation must include the fact that sterilization is a final, irreversible procedure; a MAP eligible recipient must be informed of the risks and benefits associated with the procedure;

(e) a MAP eligible recipient seeking sterilization must also be instructed that his or her consent can be withdrawn at any time prior to the performance of the procedure and that he or she does not lose any other MAD benefits as a result of the decision to have or not have the procedure; and

(f) a MAP eligible recipient voluntarily gives informed consent to the sterilization procedure. See 42 CFR Section 441.257(a); and

(g) a MAP eligible recipient's informed consent to the sterilization procedure must be attached to the claim.

(2) Hysterectomies: MAD covers only a medically necessary hysterectomy. MAD does not cover a hysterectomy performed for the sole purpose of sterilization. See 42 CFR Section 441.253.

(a) Hysterectomies require a signed, voluntary informed consent which acknowledges the sterilizing results of the hysterectomy. The form must be signed by the MAP eligible recipient prior to the operation.

(b) Acknowledgement of the sterilizing results of the hysterectomy is not required from a MAP eligible recipient who has been previously sterilized or who is past child-bearing age as defined by the medical community. In this instance, the PCP signs the bottom portion of the hysterectomy form which states the MAP eligible recipient has been formerly sterilized, and attaches it to the claim.

(c) An acknowledgement can be signed after the fact if the hysterectomy is performed in an emergency.

(3) Birthing options services (BOP): MAD covers a MAP eligible pregnant recipient's labor and delivery services at a New Mexico department of health (DOH) licensed birth center through BOP. The BOP is an out-of-hospital birthing option for pregnant women enrolled in the medicaid program who are at low-risk for adverse birth outcomes. BOP services are provided by an eligible midwife that enrolls as a BOP provider with human services department/medical assistance division (HSD/MAD). The BOP services are specifically for basic obstetric care for uncomplicated pregnancies and childbirth, including immediate newborn care that is limited to stabilization of the baby during this transition. The program does not cover the full scope of midwifery services nor replace pediatric care that should occur at a primary care clinic.

[~~(3)~~] **(4)** Other covered services: MAD covers medically necessary methods, procedures, pharmaceutical supplies and devices to prevent unintended pregnancy or contraception.

[~~(4)~~] **(5)** Noncovered reproductive health care: MAD does not cover the following specific services:

(a) sterilization reversal services;

(b) fertility drugs;

(c) in vitro fertilization;

(d) artificial insemination;

(e) hysterectomies performed for the sole purpose of family planning;

(f) induced vaginal deliveries prior to 39 weeks unless medically indicated;

(g) caesarean sections unless medically indicated; and

(h) elective procedures to terminate a pregnancy.

E. Nutritional services: MAD covers medically necessary nutritional services which are based on scientifically validated nutritional principles and interventions which are generally accepted by the medical community and consistent with the physical and medical condition of the MAP eligible recipient. MAD covers only those services furnished by PCP, licensed nutritionists or licensed dieticians. MAD covers the following services:

(1) Nutritional assessments for a pregnant MAP eligible recipient and for a MAP eligible recipient under 21 years of age through the early and periodic screening, diagnosis and treatment (EPSDT) program. Nutritional assessment is defined as an evaluation of the nutritional needs of the MAP eligible recipient based upon appropriate biochemical, anthropometric, physical and dietary data to determine nutrient needs and includes recommending appropriate nutritional intake.

(2) Nutrition counseling to or on behalf of a MAP eligible recipient under 21 years of age who has been referred for a nutritional need. Nutrition counseling is defined as advising

and helping a MAP eligible recipient obtain appropriate nutritional intake by integrating information from the nutrition assessment with information on food, other sources of nutrients and meal preparation, consistent with cultural background and socioeconomic status.

(3) Noncovered nutritional services: MAD covers only those services furnished by a PCP, licensed nutritionist or licensed dietician. MAD does not cover the following specific services:

(a) services not considered medically necessary for the condition of the MAP eligible recipient as determined by MAD or its designee;

(b) dietary counseling for the sole purpose of weight loss;

(c) weight control and weight management programs; and

(d) commercial dietary supplements or replacement products marketed for the primary purpose of weight loss and weight management; see 8.324.4 NMAC.

F. Transplant services: [~~Non-experimental transplant services are covered. MAD does not cover any transplant procedures, treatments, use of a drug, a biological product, a product or a device which are considered unproven, experimental, investigational or not effective for the condition for which they are intended or used.~~] Non-experimental transplant services are covered. MAD covered transplantation services include hospital, a PCP, laboratory, outpatient surgical, and other MAD covered services necessary to perform the selected transplantation for the MAP eligible recipient and donor.

(1) Due to special medicare coverage available for individuals with end-stage renal disease, medicare eligibility must be pursued by the provider for coverage of a kidney transplant before requesting MAD reimbursement.

(2) MAD covers the MAP eligible recipient's and donor's related medical, transportation, meals and lodging services for non-experimental transplantation.

(3) MAD does not cover transplant procedures, treatments, use of a drug, biological product, a product or a device which are considered unproven, experimental, investigational or not effective for the condition for which they are intended or used.

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

G. Dental services: Dental services are covered as an optional medical service for a MAP eligible recipient. Dental services are defined as those diagnostic, preventive or corrective procedures to the teeth and associated structures of the oral cavity furnished by, or under the supervision of, a dentist that affect the oral or general health of the MAP eligible recipient. See 42 CFR Section 440.100(a). MAD also covers dental services, dentures and special services for a MAP eligible recipient who qualifies for services under the EPSDT program. See 42 CFR Section 441.55.

(1) Emergency dental care: MAD covers emergency care for all MAP eligible recipients. Emergency care is defined as services furnished when immediate treatment is required to control hemorrhage, relieve pain or eliminate acute infection. For a MAP eligible recipient under 21 years of age, care includes operative procedures necessary to prevent pulpal death and the imminent loss of teeth, and treatment of injuries to the teeth or supporting structures, such as bone or soft tissue contiguous to the teeth.

(a) Routine restorative procedures and root canal therapy are not emergency procedures.

(b) Prior authorization requirements are waived for emergency care, but the claim can be reviewed prior to payment to confirm that an actual emergency existed at the time of service.

(2) Diagnostic services: MAD coverage for diagnostic services is limited to the following:

(a) for a MAP eligible recipient under 21 years of age, diagnostic services are limited to one clinical oral examination every six months and upon referral one additional clinical oral examination by a different dental provider every six months;

(b) one clinical oral examination every 12 months for a MAP eligible recipient 21 years and older; and

(c) MAD covers emergency oral examinations which are performed as part of an emergency service to relieve pain and suffering.

(3) Radiology services: MAD coverage of radiology services is limited to the following:

(a) one intraoral complete series every 60 months per MAP eligible recipient; this series includes bitewing x-rays;

(b) additional bitewing x-rays once every 12 months per MAP eligible recipient; and

(c) panoramic films performed can be substituted for an intraoral complete series, which is limited to one every 60 months per MAP eligible recipient.

(4) Preventive services: MAD coverage of preventive services is subject to certain limitations.

(a) Prophylaxis: MAD covers for a MAP eligible recipient under 21 years of age one prophylaxis service every six months. MAD covers for a MAP eligible recipient 21 years of age

and older who has a developmental disability, as defined in 8.314.6 NMAC, one prophylaxis service every six months. For a MAP eligible recipient 21 years of age and older without a developmental disability, as defined in 8.314.6 NMAC, MAD covers one prophylaxis service once in a 12 month-period.

(b) Fluoride treatment: MAD covers for a MAP eligible recipient under 21 years of age, one fluoride treatment every six months. For a MAP eligible recipient 21 years of age and older MAD, covers one fluoride treatment once in a 12-month period.

(c) Fluoride varnish: MAD covers for a MAP eligible recipient under 21 years of age, one fluoride varnish treatment every six months.

[~~(c)~~] **(d)** Molar sealants: MAD only covers for a MAP eligible recipient under 21 years of age, sealants for permanent molars. Each MAP eligible recipient can receive one treatment per tooth every 60 months. MAD does not cover sealants when an occlusal restoration has been completed on the tooth. Replacement of a sealant within the 60-month period requires a prior authorization. For a MAP eligible recipient 21 years of age and older, MAD does not cover sealant services.

[~~(d)~~] **(e)** Space maintenance: MAD covers for a MAP eligible recipient under 21 years of age fixed unilateral and fixed bilateral space maintainers (passive appliances). For a MAP eligible recipient 21 years of age and older, MAD does not cover space maintenance services.

(5) Restorative services: MAD covers the following restorative services:

(a) amalgam restorations (including polishing) on permanent and deciduous teeth;

(b) resin restorations for anterior and posterior teeth;

(c) one prefabricated stainless steel crown per permanent or deciduous tooth;

(d) one prefabricated resin crown per permanent or deciduous tooth; and

(e) one recementation of a crown or inlay.

(6) Endodontic services: MAD covers therapeutic pulpotomy for a MAP eligible recipient under 21 years of age if performed on a primary or permanent tooth and no periapical lesion is present on a radiograph.

(7) Periodontic services: MAD covers for a MAP eligible recipient certain periodontics surgical, non-surgical and other periodontics services subject to certain limitations:

(a) a collaborative practice dental hygienist may provide periodontal scaling and root planning, per quadrant after diagnosis by a MAD enrolled dentist; and

(b) a collaborative practice dental hygienist may provide periodontal maintenance procedures with prior authorization.

(8) Removable prosthodontic services: MAD covers two denture adjustments per every 12 months per MAP eligible recipient. MAD also covers repairs to complete and partial dentures.

(9) Fixed prosthodontics services: MAD covers one recementation of a fixed bridge.

(10) Oral surgery services:

(a) simple and surgical extractions: MAD coverage includes local anesthesia and routine post-operative care; erupted surgical extractions are defined as extractions requiring elevation of mucoperiosteal flap and removal of bone, or section of tooth and closure;

(b) autogenous tooth reimplantation of a permanent tooth: MAD covers for a MAP eligible recipient under 21 years of age; and

(c) the incision and the drainage of an abscess for a MAP eligible recipient.

(11) Adjunctive general services: MAD covers emergency palliative treatment of dental pain for a MAP eligible recipient. MAD also covers general anesthesia and intravenous sedation for a MAP eligible recipient. Documentation of medical necessity must be available for review by MAD or its designee. For a MAP eligible recipient under 21 years of age, MAD covers the use of nitrous oxide analgesia. For a MAP eligible recipient 21 years of age and older, MAD does not cover the use of nitrous oxide analgesia.

(12) Hospital care: MAD covers dental services normally furnished in an office setting if they are performed in an inpatient hospital setting only with a prior authorization, unless one of the following conditions exist:

(a) the MAP eligible recipient is under 21 years of age; or

(b) the MAP eligible recipient under 21 years of age has a documented medical condition for which hospitalization for even a minor procedure is medically justified; or

(c) any service which requires a prior authorization in an outpatient setting must have a prior authorization if performed in an inpatient hospital.

(13) Behavioral management: Dental behavior management as a means to assure comprehensive oral health care for persons with developmental disabilities is covered. This code allows for additional compensation to a dentist who is treating persons with developmental disabilities due to the increased time, staffing, expertise, and adaptive equipment required for treatment of a special needs MAP eligible recipient. Dentists who have completed the training and received their certification from DOH are eligible for reimbursement.

(14) Noncovered dental services: MAD does not cover dental services that are performed for aesthetic or cosmetic purposes. MAD covers orthodontic

services only for a MAP eligible recipient under 21 years of age and only when specific criteria are met to assure medical necessary. MAD does not cover the following specific services:

(a) surgical tray is considered part of the surgical procedure and is not reimburse separately for tray;

(b) sterilization is considered part of the dental procedure and is not reimbursed separately for sterilization;

(c) oral preparations, including topical fluorides dispensed to a MAP eligible recipient for home use;

(d) permanent fixed bridges;

(e) procedures, appliances or restorations solely for aesthetic, or cosmetic purposes;

(f) procedures for desensitization, re-mineralization or tooth bleaching;

(g) occlusal adjustments, disking, overhang removal or equilibration;

(h) mastique or veneer procedures;

(i) treatment of TMJ disorders, bite openers and orthotic appliances;

(j) services furnished by non-certified dental assistants, such as radiographs;

(k) implants and implant-related services; or

(l) removable unilateral cast metal partial dentures.

H. Podiatry and procedures on the foot: MAD covers only medically necessary podiatric services furnished by a provider, as required by the condition of the MAP eligible recipient. All services must be furnished within the scope and practice of the podiatrist as defined by state law, the New Mexico board of podiatry licensing requirements, and in accordance with applicable federal, state, and local laws and rules. MAD covers routine foot care if certain conditions of the foot, such as corns, warts, calluses and conditions of the nails, post a hazard to a MAP eligible recipient with a medical condition. MAD covers the treatment of warts on the soles of the feet (plantar warts). Medical justification for the performance of routine care must be documented in the MAP eligible recipient's medical record. MAD covers the following specific podiatry services.

(1) Routine foot care: Routine foot care services that do not meet the coverage criteria of medicare part B are not covered by MAD. MAD covers services only when there is evidence of a systemic condition, circulatory distress or areas of diminished sensation in the feet demonstrated through physical or clinical determination. A MAP eligible recipient with diagnoses marked by an asterisk(*) in the list below must be under the active care of a physician or physician assistant (PA). to qualify for covered routine foot care, and must have been assessed by that provider for the specified condition within six months prior to or 60-calendar days after the routine foot care service. A CNP, PA and a CNS do not satisfy the coverage condition of "active care by a PCP".

(2) Common billed diagnoses: The following list of systemic diseases is not all-inclusive and represents the most commonly billed diagnoses which qualify for medically necessary foot care:

(a) diabetes mellitus*;

(b) arteriosclerosis obliterans;

(c) buerger's disease;

(d) chronic thrombophlebitis*;

(e) neuropathies involving the feet associated with:

(i) malnutrition and vitamin deficiency*;

(ii) malnutrition (general, pellagra);

(iii) alcoholism;

(iv) malabsorption (celiac disease, tropical sprue);

(v) pernicious anemia;

(vi) carcinoma*;

(vii) diabetes mellitus*;

(viii) drugs or toxins*;

(ix) multiple sclerosis*;

(x) uremia (chronic renal disease)*;

(xi) traumatic injury;

(xii) leprosy or neurosyphilis;

(xiii) hereditary disorders;

(xiv) hereditary sensory radicular neuropathy;

(xv) fabry's disease; and

(xvi) amyloid neuropathy.

(3) Routine foot care services: MAD covers routine foot care services for a MAP eligible recipient who has a systemic condition and meets the severity in the class findings as follows: one of class A findings; or two of class B findings; or one of the class B findings and two of the following class C findings:

(a) class A findings: non-traumatic amputation of foot or integral skeletal portion thereof;

(b) class B findings:

(i) absent posterior tibial pulse;

(ii) absent dorsalis pedis pulse; and

(iii) advanced trophic changes as evidenced by any three of the following: hair growth (decrease or increase); nail changes (thickening); pigmentary changes (discoloring); skin texture (thin, shiny); or skin color (rubor or redness);

(c) class C findings:

(i) claudication;

(ii) temperature changes (e.g., cold feet);

(iii) edema;

(iv) paresthesias (abnormal spontaneous sensations in the feet); or

(v) burning.

(4) Subluxated foot structure: Non-surgical and surgical correction of a subluxated foot structure that is an integral part of the treatment of foot pathology or that is undertaken to improve the function of the foot or to alleviate an associated symptomatic condition, including treatment of bunions, is covered when medical necessity has been documented. Treatment for bunions is limited to capsular or bony surgery. The treatment of subluxation of the foot is defined as partial dislocations or displacements of joint surfaces, tendons, ligaments or muscles in the foot.

(5) Foot warts: MAD covers the treatment of warts on the feet.

(6) Asymptomatic mycotic nails: MAD covers the treatment of asymptomatic mycotic nails in the presence of a systemic condition that meets the clinical findings and class findings as required for routine foot care.

(7) Mycotic nails: MAD covers the treatment of mycotic nails in the absence of a covered systemic condition if there is clinical evidence of mycosis of the toenail and one or more of the following conditions exist and results from the thickening and dystrophy of the infected nail plate:

(a) marked, significant limitation;

(b) pain; or

(c) secondary infection.

(8) Orthopedic shoes and other supportive devices: MAD only covers these items when the shoe is an integral part of a leg brace or therapeutic shoes furnished to diabetics who is a MAP eligible recipient.

(9) Hospitalization: If the MAP eligible recipient has existing medical condition that would predispose him or her to complications even with minor procedures, hospitalization for the performance of certain outpatient podiatric services may be covered.

(10) Noncovered podiatric services: A provider is subject to the limitations and coverage restrictions that exist for other medical services. MAD does not cover the following specific services or procedures.

(a) Routine foot care is not covered except as indicated under "covered services" for a MAP eligible recipient with systemic conditions meeting specified class findings. Routine foot care is defined as:

(i) trimming, cutting, clipping and debriding toenails;

(ii) cutting or removal of corns, calluses, or hyperkeratosis;

(iii) other hygienic and preventative maintenance care such as cleaning and soaking of the feet, application of topical medications, and the use of skin creams to maintain skin tone in either ambulatory or bedfast MAP eligible recipient; and

(iv) any other service performed in the absence of localized illness, injury or symptoms involving the foot.

(b) Services directed toward the care or the correction of a flat foot condition are not covered. Flat foot is defined as a condition in which one or more arches of the foot have flattened out.

(c) Orthopedic shoes and other supportive devices for the feet are generally not covered. This exclusion does not apply if the shoe is an integral part of a leg brace or therapeutic shoes furnished to a diabetic MAP eligible recipient.

(d) Surgical or nonsurgical treatments undertaken *for the sole purpose* of correcting a subluxated structure in the foot as an isolated condition are not covered. Subluxations of the foot are defined as partial dislocations or displacements of joint surfaces, tendons, ligaments, or muscles of the foot.

(e) MAD will not reimburse for services that have been denied by medicare for coverage limitations.

I. Anesthesia: MAD covers anesthesia and monitoring services which are medically necessary for performance of surgical or diagnostic procedures, as required by the condition of the MAP eligible recipient. All services must be provided within the limits of MAD benefit package, within the scope and practice of anesthesia as defined by state law and in accordance with applicable federal and state and local laws and rules.

(1) When a provider performing the medical or surgical procedure also provides a level of anesthesia lower in intensity than moderate or conscious sedation, such as a local or topical anesthesia, payment for this service is considered to be part of the underlying medical or surgical service and will not be covered in addition to the procedure.

(2) An anesthesia service is not covered if the medical or surgical procedure is not a MAD covered service.

(3) Separate payment is not allowed for qualifying circumstances. Payment is considered bundled into the anesthesia allowance.

(4) Separate payment is not allowed for the anesthesia complicated by the physical status of the MAP eligible recipient.

J. Vision: MAD covers specific vision care services that are medically necessary for the diagnosis of and treatment of eye diseases for a MAP eligible recipient. MAD pays for the correction of refractive errors required by the condition of the MAP eligible recipient. All services must be furnished within the limits of the

MAD benefits package, within the scope and practice of the medical professional as defined by state law and in accordance with applicable federal, state and local laws and rules.

(1) Vision exam: MAD covers routine eye exams. Coverage for an eligible adult recipient 21 years of age and older of age is limited to one routine eye exam in a 36-month period. An exam for an existing medical condition, such as cataracts, diabetes, hypertension, and glaucoma, will be covered for required follow-up and treatment. The medical condition must be clearly documented on the MAP eligible recipient's visual examination record and indicated by diagnosis on the claim. Exam coverage for a MAP eligible recipient under 21 years of age is limited to one routine eye exam in a 12-month period.

(2) Noncovered vision services: MAD does not cover vision services that are performed for aesthetic or cosmetic purposes. MAD covers orthoptic assessments and treatments only when specific criteria are met to assure medical necessity.

K. Hearing: All audiology screening, diagnostic, preventive or corrective services require medical clearance. Audiologic and vestibular function studies are rendered by an audiologist or a PCP. Hearing aid dealers and dispensers are not reimbursed for audiological, audiometric or other hearing tests. Only licensed audiologists and PCPs are reimbursed for providing these testing services.

L. Client medical transportation: MAD covers expenses for transportation, meals, and lodging it determines are necessary to secure MAD covered medical or behavioral health examination and treatment for a MAP eligible recipient in or out of his or her home community. See 42 CFR 440.170. Travel expenses include the cost of transportation by long distance common carrier, taxicab, handivan, and ground or air ambulance, all as appropriate to the situation and location of the MAP eligible recipient. When medically necessary, MAD covers similar expenses for an attendant who accompanies the MAP eligible recipient to the medical or behavioral health examination or treatment. MAD reimburses a MAP eligible recipient or the transportation provider for medically necessary transportation subject to the following.

(1) Free alternatives: Alternative transportation services which may be provided free of charge include volunteers, relatives or transportation services provided by a nursing facility (NF) or another residential center. A MAP eligible recipient must certify in writing that he or she does not have access to free alternatives.

(2) Least costly alternatives: MAD covers the most appropriate and least costly transportation alternatives suitable for the MAP eligible recipient's medical or behavioral health condition. If a MAP eligible recipient can use a private vehicle or public transportation, those alternatives must be used before the MAP eligible recipient can use more expensive transportation alternatives.

(3) Non-emergency transportation service:

(a) MAD covers non-emergency transportation services for a MAP eligible recipient who does not have primary transportation to a MAD covered service and who is unable to access a less costly form of public transportation.

(b) MAP eligible recipients released from incarceration at a correctional facility may be transported by a New Mexico medicaid transportation provider to a pharmacy to fill and retrieve prescribed medication. The eligible recipient must have a valid prescription that is qualified to be filled or re-filled at the time of their release from incarceration.

(4) Long distance common carriers: MAD covers long distance services furnished by a common carrier if the MAP eligible recipient must leave his or her home community to receive medical or behavioral health services. Authorization forms for direct payment to long distance bus common carriers by MAD are available through the MAP eligible recipient's local county income support division (ISD) office.

(5) Ground ambulance services: MAD covers services for a MAP eligible recipient provided by ground ambulances when:

(a) an emergency which requires ambulance service is certified by the attending provider or is documented in the provider's records as meeting emergency medical necessity as defined as:

(i) an emergency condition that is a medical or behavioral health condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the MAP eligible recipient (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to body function or serious dysfunction of any bodily organ or part; and

(ii) medical necessity for ambulance services is established if the MAP eligible recipient's condition is such that the use of any other method of transportation is contraindicated and would endanger the MAP eligible recipient's health.

(b) Scheduled, non-emergency ambulance services: These services are covered when ordered by the MAP eligible recipient's attending provider who certifies that the use of any other method of non-emergency transportation is contraindicated by the MAP eligible recipient's medical or behavioral condition.

(c) Reusable items and oxygen: MAD covers non-reusable items and oxygen

required during transportation. Coverage for these items is included in the base rate reimbursement for a ground ambulance;

(6) Air ambulance services: MAD covers services for a MAP eligible recipient provided by an air ambulance, including a private airplane, if an emergency exists and the medical necessity for the service is certified by his or her attending provider.

(a) An emergency condition is a medical or behavioral health condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the MAP eligible recipient (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to body function or serious dysfunction of any bodily organ or part.

(b) MAD covers the following services for air ambulances:

(i) non-reusable items and oxygen required during transportation;

(ii) professional attendants required during transportation; and

(iii) detention time or standby time up to one hour without provider documentation; if the detention or standby time is more than one hour, a statement from the attending provider or flight nurse justifying the additional time is required.

(7) Lodging services: MAD covers lodging services if a MAP eligible recipient is required to travel to receive medical or behavioral health services and an overnight stay is required due to medical necessity or cost considerations. If medically justified and approved, in-state lodging is initially set for up to five continuous days. For a longer stay, the need for lodging must be re-evaluated by the fifth day to authorize up to an additional 15 days. Re-evaluation must be made every 15-calendar days for extended stays, prior to the expiration of the existing authorization. Approval of lodging is based on the attending provider's statement of need. Authorization forms for direct payment to a MAD approved lodging provider by MAD are available through local county ISD offices. In addition, overnight lodging could include the following situations:

(a) a MAP eligible recipient who is required to travel more than four hours each way to receive medical or behavioral health services; or

(b) a MAP eligible recipient who is required to travel less than four hours each way and is receiving daily medical or behavioral health services and is not sufficiently stable to travel or must be near a facility because of the potential need for emergency or critical care.

(8) Meal services: MAD covers meals if a MAP eligible recipient is required to leave his or her home community for eight hours or more to receive medical or behavioral health services. Authorization forms for direct payment to a meal provider by MAD are available through local county ISD offices.

(9) Coverage for attendants: MAD covers transportation, meals and lodging in the same manner as for a MAP eligible recipient for one attendant if the medical necessity for the attendant is certified in writing by the MAP eligible recipient's attending provider or the MAP eligible recipient who is receiving medical service is under 18 years of age. MAD only covers transportation services or related expenses for a MAP eligible recipient and as certified, his or her attendant. Transportation services and related expenses will not be reimbursed by MAD for any other individual accompanying the MAP eligible recipient to a MAD covered medical or behavioral health service.

(10) Coverage for a MAP eligible waiver recipient: Transportation of a MAP eligible waiver recipient to a provider of a waiver service is only covered when the service is occupational therapy, physical therapy, speech therapy or an outpatient behavioral health therapy.

(11) Out-of-state transportation and related expenses: All out-of-state transportation, meals and lodging must be prior approved by MAD or its designee. Out-of-state transportation is approved only if the out-of-state medical or behavioral health service is approved by MAD or its designee. Documentation must be available to the reviewer to justify the out-of-state travel and verify that treatment is not available in the state of New Mexico.

(a) Requests for out-of-state transportation must be coordinated through MAD or its designee;

(b) Authorization for lodging and meal services by an out-of-state provider can be granted for up to 30-calendar days by MAD or its designee. Re-evaluation authorizations are completed prior to expiration and every 30-calendar days, thereafter.

(c) Border cities: A border city is a city within 100 miles of a New Mexico border (Mexico excluded). Transportation to a border city is treated as in-state provider service. A MAP eligible recipient who receives a MAD reimbursable service from a border area provider is eligible for transportation services to that provider. See 8.302.4 NMAC, to determine when a provider is considered an out-of-state provider or a border area provider.

(12) Client medical transportation fund: In a non-emergency situation, a MAP eligible recipient can request reimbursement from the client medical transportation (CMT) fund through his or her local county ISD office for money spent on transportation, meals and lodging by the MAP eligible recipient; for reimbursement from the CMT fund, a MAP eligible recipient must apply

for reimbursement within 30-calendar days from the date of appointment or the date he or she is discharged from the hospital.

(a) Information requirements: The following information must be furnished to the ISD CMT fund custodian within 30-calendar days of the MAD approved provider visit to receive reimbursement:

(i) submit a letter on the provider's stationary which indicates that the MAP eligible recipient kept the appointment for which the CMT fund reimbursement is requested; for medical or behavioral health services, written receipts confirming the date of service must be given to the MAP eligible recipient for submission to the local county ISD office;

(ii) proper referral with original signatures and documentation stating that the MAD services are not available within the community from the MAD requesting provider, when a referral is necessary;

(iii) verification of current eligibility of the recipient for a MAD service for the month the appointment and travel is made;

(iv) certification that free alternative transportation services are not available and that the MAP eligible recipient is not enrolled in a HSD contracted managed care organization (MCO);

(v) verification of mileage; and

(vi) documentation justifying a medical attendant.

(b) Preparation of referrals for travel outside the home community: If a MAP eligible recipient must travel over 65 miles from his or her home community to receive medical care, the transportation provider must obtain a written verification from the referring provider or from the service provider containing the following information for the provider to retain with his or her billing records:

(i) the medical, behavioral health or diagnostic service for which the MAP eligible recipient is being referred;

(ii) the name of the out of community medical or behavioral health provider; and

(iii) justification that the medical or behavioral health care is not available in the home community.

(c) Fund advances in emergency situations: Money from the CMT fund is advanced for travel only if an emergency exists. An emergency is defined in this instance as a non-routine, unforeseen accident, injury or acute illness demanding immediate action and for which transportation arrangements could not be made five calendar days in advance of the visit to the provider. Advance funds must be requested and disbursed prior to the medical or behavioral health appointment.

(i) The ISD CMT fund custodian or a MAD FFS coordinated service contractor or the appropriate utilization review (UR) contractor verifies that the recipient is eligible for a MAD service and has a medical or behavioral health appointment prior to advancing money from the CMT fund and that the MAP eligible recipient is not enrolled in a HSD contracted MCO;

(ii) written referral for out of community service must be received by the CMT fund custodian or a MAD FFS coordinated service contractor or the appropriate UR contractor no later than 30-calendar days from the date of the medical or behavioral health appointment for which the advance funds were requested. If a MAP eligible recipient fails to provide supporting documentation, recoupment proceedings are initiated; see Section OIG-900, Restitutions.

(d) MAP Eligible recipients enrolled in a HSD contracted MCO: A member enrolled in HSD contracted MCO on the date of service is not eligible to use the client medical transportation fund for services that are the responsibility of the MAP eligible recipient's MCO.

(13) Noncovered transportation services: Transportation services are subject to the same limitations and coverage restrictions which exist for other services. A payment for transportation to a non-covered MAD service is subject to retroactive recoupment. MAD does not cover the following services or related costs of travel:

(a) an attendant where there is not the required certification from the MAP eligible recipient's medical or behavioral health provider;

(b) minor aged children of the MAP eligible recipient that are simply accompanying him or her to medical or behavioral health service;

(c) transportation to a non-covered MAD service;

(d) transportation to a pharmacy provider with the exception for justice-involved MAP eligible recipients who are released from incarceration at a correctional facility within the first seven days of release; see 8.324.7 NMAC.

M. [~~**Telemedicine**~~] **Telehealth services:**

[~~**(1)** The telemedicine originating-site is the location of a MAP eligible recipient at the time the service is being furnished via an interactive telemedicine communications system. The origination-site can be any medically warranted site. An interactive telemedicine communication system must include both interactive audio and video and be delivered on a real-time basis at the originating and distant-sites. Coverage for services rendered through telemedicine shall be determined in a manner consistent with medicaid coverage for health care services provided through in person consultation. For telemedicine services, when the originating-site is in New Mexico and the distant-site

~~(consulting telemedicine provider) is outside New Mexico, the provider at the distant-site must be licensed for telemedicine to the extent required by New Mexico state law and regulations or meet federal requirements for providing services to IHS facilities or tribal contract facilities. Provision of telemedicine services does not require that a certified medicaid healthcare provider be physically present with the patient at the originating site unless the telemedicine consultant at the distant site deems it necessary.~~

~~(2) The distant-site is the location where the consulting telemedicine provider is physically located at time of the telemedicine service. All services are covered to the same extent the service and the provider are covered when not provided through telemedicine. For these services, use of the telemedicine communications system fulfills the requirement for a face-to-face encounter.~~

~~(3) MAD will reimburse for services delivered through store-and forward. To be eligible for payment under store-and-forward, the service must be provided through the transference of digital images, sounds, or previously recorded video from one location to another; to allow a consulting provider to obtain information, analyze it, and report back to the referring physician providing the telemedicine consultation. Store-and-forward telemedicine includes encounters that do not occur in real time (asynchronous) and are consultations that do not require a face-to-face live encounter between patient and telemedicine provider.~~

~~(4) Telemedicine providers: Reimbursement for professional services at the originating-site and the distant-site are made at the same rate as when the services provided are furnished without the use of a telecommunication system. In addition, reimbursement is made to the originating-site for an interactive telemedicine system fee at the lesser of the provider's billed charge; or the maximum allowed by MAD for the specific service or procedure.~~

~~(5) A telemedicine originating-site communication system fee is covered if the MAP eligible recipient was present at and participated in the telemedicine visit at the originating-site and the system in use meets the definition of a telemedicine system.~~

~~(6) Noncovered telemedicine services: A service provided through telemedicine is subject to the same program restrictions, limitations and coverage which exist for the service when not provided through telemedicine.~~]

(1) Telemedicine visits: An interactive HIPAA compliant telecommunication system must include both interactive audio and video and be delivered on a real-time basis at the originating and distant sites. If real-time audio/video technology is used in furnishing a service when the MAP eligible recipient and the practitioner are in the same institutional or office setting, then the practitioner should bill for the service furnished as if it was furnished in person as a face to face encounter. Coverage for services rendered through telemedicine shall be determined in a manner consistent with medicaid coverage for health care services provided through in person consultation. For telemedicine services, when the originating-site is in New Mexico and the distant-site is outside New Mexico, the provider at the distant-site must be licensed for telemedicine to the extent required by New Mexico state law and regulations or meet federal requirements for providing services to IHS facilities or tribal contract facilities. Provision of telemedicine services does not require that a certified medicaid healthcare provider be physically present with the MAP eligible recipient at the originating site unless the telemedicine consultant at the distant site deems it necessary.

(a) Telemedicine originating-site: The location of a MAP eligible recipient at the time the service is being furnished via an interactive telemedicine communications system. The origination-site can be any of the following medically warranted sites where services are furnished to a MAP eligible recipient.

(i) The office of a physician or practitioner.

(ii) A critical access hospital (as described in section 1861 (mm)(1) of the Act).

(iii) A rural health clinic (as described in 1861 (mm)(2) of the Act).

(iv) A federally qualified health center (as defined in section 1861 (aa)(4) of the Act).

(v) A hospital (as defined in section 1861 (e) of the Act).

(vi) A hospital-based or critical access hospital-based renal dialysis center (including satellites).

(vii) A skilled nursing facility (as defined in section 1819(a) of the Act).

(viii) A community mental health center (as defined in section 1861(ff)(3)(B) of the Act).

(ix) A renal dialysis facility (only for the purposes of the home dialysis monthly ESRD-related clinical assessment in section 1881(b)(3)(B) of the Act).

(x) The home of an individual (only for purposes of the home dialysis ESRD-related clinical assessment in section 1881(b)(3)(B) of the Act).

(xi) A mobile stroke unit (only for the purposes of diagnosis, evaluation, or treatment of symptoms of an acute stroke provided in accordance with section 1834(m)(6) of the Act).

(xii) The home of an individual (only for the purposes of treatment of a substance use disorder or a co-occurring mental health disorder, furnished on or after July 1, 2019, to an individual with a substance use disorder diagnosis.

(xiii) The home of an individual when

an interactive audio and video telecommunication system that permits real-time visit is used between the eligible provider and the MAP eligible recipient.

(b) Telemedicine distant-site: The location where the telemedicine provider is physically located at the time of the telemedicine service. All services are covered to the same extent the service and the provider are covered when not provided through telemedicine. For these services, use of the telemedicine communications system fulfills the requirement for a face-to-face encounter.

(c) Telemedicine reimbursement: MAD covers both distant (where the eligible provider is located) as well as the originating sites (where the MAP eligible recipient is located, if another eligible provider accompanies the patient). If audio/video technology is used in furnishing a service when the MAP eligible recipient and the practitioner are in the same institutional or office setting, then the practitioner should bill for the service furnished as if it was furnished in person and no additional reimbursement is made.

(d) Telemedicine providers: Reimbursement for professional services at the originating-site and the distant-site are made at the same rate as when the services provided are furnished without the use of a telecommunication system. In addition, reimbursement is made to the originating-site for a real-time interactive audio/video technology telemedicine system fee at the lesser of the provider's billed charge, or the maximum allowed by MAD for the specific service of procedure.

(e) A telemedicine originating-site communication system fee is covered if the MAP eligible recipient was present at and participated in the telemedicine visit at the originating-site and the system that is used meets the definition of a telemedicine system.

(2) Telephone visits: MAD will reimburse eligible providers for limited professional services delivered by telephone without video. No additional reimbursement is made to the originating-site for an interactive telemedicine system fee.

(3) MAD will reimburse for services delivered through store-and-forward. To be eligible for payment under store-and-forward, the service must be provided through the transference of digital images, sounds, or previously recorded video from one location to another; to allow a consulting provider to obtain information, analyze it, and report back to the referring physician providing the telemedicine consultation. Store-and-forward telemedicine includes encounters that do not occur in real time (asynchronous) and are consultants that do not require face-to-face live encounter between patient and telemedicine provider.

(4) Noncovered telemedicine services: A service provided through telemedicine is subject to the same program restrictions, limitations and coverage which exist for the service when not provided through telemedicine. Telemedicine services are not covered when audio/video technology is used in furnishing a service when the MAP eligible recipient and the practitioner are in the same institutional or office setting.

N. [~~Transplantation services:~~ ~~MAD covered transplantation services include hospital, a PCP, laboratory, outpatient surgical, and other MAD covered services necessary to perform the selected transplantation. Due to special medicare coverage available for individuals with end-stage renal disease, medicare eligibility must be pursued by the provider for coverage of a kidney transplant before requesting MAD reimbursement.~~]

~~O.~~] Pregnancy termination services: MAD does not cover the performance of 'elective' pregnancy termination procedures. MAD will only pay for services to terminate a pregnancy when certain conditions are met.

(1) [~~A provider of pregnancy termination services must submit with his or her billing, the written certification of a provider that the procedure meets one of the following conditions:~~] Prior to performing pregnancy termination services providers must complete and file in the MAP eligible recipient medical record, a consent for pregnancy termination that includes written certification of a provider that the procedure meets one of the following conditions:

(a) the procedure is necessary to save the life of the MAP eligible recipient as certified in writing by a provider;

(b) the pregnancy is a result of rape or incest, as certified by the treating provider, the appropriate reporting agency, or if not reported, the MAP eligible recipient is not physically or emotionally able to report the incident; or

(c) the procedure is necessary to terminate an ectopic pregnancy; or

(d) the procedure is necessary because the pregnancy aggravates a pre-existing condition, makes treatment of a condition impossible, interferes with or hampers a diagnosis, or has a profound negative impact upon the physical, emotional or mental health of the MAP eligible recipient.

(2) Psychological services: MAD covers behavioral health services for a pregnant MAP eligible recipient.

(3) Oral medications: MAD covers oral medications approved by the FDA have been determined a benefit by MAD for pregnancy termination. MAD will cover oral medications when administered by a provider acting within the scope of his or her practice board and licensure.

(4) Informed consent: Under New Mexico law, the provider may not require any MAP eligible recipient to accept any medical service, diagnosis, or

treatment or to undergo any other health service provided under the plan if the MAP eligible recipient objects on religious grounds or in the case of a non-emancipated MAP eligible recipient, the legal parent or guardian of the non-emancipated MAP eligible recipient objects.

(a) Consent: Voluntary, informed consent by a MAP eligible recipient 18 years of age and older, or an emancipated minor MAP eligible recipient must be given to the provider prior to the procedure to terminate pregnancy, except in the following circumstances:

(i) in instances where a medical emergency exists; a medical emergency exists in situations where the attending PCP certifies that, based on the facts of the case presented, in his or her best clinical judgment, the life or the health of the MAP eligible recipient is endangered by the pregnancy so as to require an immediate pregnancy termination procedure;

(ii) in instances where the MAP eligible recipient is unconscious, incapacitated, or otherwise incapable of giving consent; in such circumstances, the consent shall be obtained as prescribed by New Mexico law;

(iii) in instances where pregnancy results from rape or incest or the continuation of the pregnancy endangers the life of the MAP eligible recipient;

(iv) consent is valid for 30-calendar days from the date of signature, unless withdrawn by the MAP eligible recipient prior to the procedure.

(b) Required acknowledgements: In signing the consent, the MAP eligible recipient must acknowledge that she has received, at least, the following information:

(i) alternatives to pregnancy termination;

(ii) medical procedure(s) to be used;

(iii) possibility of the physical, mental, or both, side effects from the performance of the procedure;

(iv) right to receive pregnancy termination behavioral health services from an independent MAD provider; and

(v) right to withdraw consent up until the time the procedure is going to be performed.

(c) Record retention: A dated and signed copy of the consent, with counseling referral information, if requested, must be given to the MAP eligible recipient. The provider must keep the original signed consent with the MAP eligible recipient's medical records.

(d) Consent for a MAP eligible recipient under 18 years of age who is not an emancipated minor, in instances not involving life endangerment, rape or incest: Informed written consent for an non-emancipated minor to terminate a pregnancy must be obtained, dated and signed by a parent, legal guardian, or another adult acting 'in loco parentis' to the minor. An exception is when the minor objects to parental involvement for personal reasons or the parent, guardian or adult acting 'in loco parentis' is not available. The treating PCP shall note the minor's objections or the unavailability of the parent or guardian in the minor's chart, and:

(i) certify in his or her best clinical judgment, the minor is mature enough and well enough informed to make the decision about the procedure; in the circumstance where sufficient maturity and information is not present or apparent, certify that the procedure is in the minor's best interests based on the information provided to the treating PCP by the minor; or

(ii) refer the minor to an independent MAD behavioral health provider in circumstances where the treating PCP believes behavioral health services are necessary before a clinical judgment can be rendered on the criteria established in Paragraph (1) above; the referral shall be made on the same day of the visit between the minor and the treating PCP where consent is discussed; the independent MAD behavioral health provider shall meet with the minor and confirm in writing to the treating PCP whether or not the minor is mature enough and sufficiently informed to make the decision about the procedure; in the circumstance where sufficient maturity and information is not present or apparent, that the procedure is in the minor's best interests based on the information provided to the independent MAD behavioral health provider by the minor; this provider's written report is due to the treating PCP within 72 hours of initial referral;

(iii) a minor shall not be required to obtain behavioral health services referenced in Paragraph (2) above; however, if the treating PCP is unable or unwilling to independently certify the requirements established in Paragraph (1) above, the minor must be informed by the treating PCP that written consent must be obtained by the parent, legal guardian or parent 'in loco parentis' prior to performing the procedure; or, that the minor must obtain a court order allowing the procedure without parental consent.

[~~P.~~] **O. Behavioral health professional services:** Behavioral health services are addressed specifically in 8.321.2 NMAC.

[~~Q.~~] **P. Experimental or investigational services:** MAD covers medically necessary services which are not considered unproven, investigational or experimental for the condition for which they are intended or used as determined by MAD. [~~Covered transplantation services include a hospital, a PCP, a laboratory, an outpatient surgical and other MAD-covered services necessary to perform the selected transplantation. Due to special medicare coverage available for individuals with end-stage renal disease, medicare eligibility must be pursued by the provider for coverage of a kidney transplant before requesting MAD reimbursement.~~] MAD does not cover experimental or investigational medical, surgical or health care

procedures or treatments, including the use of drugs, biological products, other products or devices, except the following:

(1) Phase I, II, III or IV: MAD may approve coverage for routine patient care costs incurred as a result of the MAP eligible recipient's participation in a phase I, II, III, or IV cancer trial that meets the following criteria. The cancer clinical trial is being conducted with the approval of at least one of the following:

(a) one of the federal national institutes of health;

(b) a federal national institutes of health cooperative group or center;

(c) the federal department of defense;

(d) the FDA in the form of an investigational new drug application;

(e) the federal department of veteran affairs; or

(f) a qualified research entity that meets the criteria established by the federal national institutes of health for grant eligibility.

(2) Review and approval: The clinical trial has been reviewed and approved by an institutional review board that has a multiple project assurance contract approved by the office of protection from research risks of the federal national institutes of health.

(3) Experimental or investigational interventions: Any medical, surgical, or other healthcare procedure or treatment, including the use of a drug, a biological product, another product or device, is considered experimental or investigational if it meets any of the following conditions:

(a) current, authoritative medical and scientific evidence regarding the medical, surgical, or other health care procedure or treatment, including the use of a drug, a biological product, another product or device for a specific condition shows that further studies or clinical trials are necessary to determine benefits, safety, efficacy and risks, especially as compared with standard or established methods or alternatives for diagnosis or treatment or both outside an investigational setting;

(b) the drug, biological product, other product, device, procedure or treatment (the "technology") lacks final approval from the FDA or any other governmental body having authority to regulate the technology;

(c) the medical, surgical, other health care procedure or treatment, including the use of a drug, a biological product, another product or device is the subject of ongoing phase I, II, or III clinical trials or under study to determine safety, efficacy, maximum tolerated dose or toxicity, especially as compared with standard or established methods or alternatives for diagnosis or treatment or both outside an investigational setting.

(4) Review of conditions: On request of MAD or its designee, a provider of a particular service can be required to present current, authoritative medical and scientific evidence that the proposed technology is not considered experimental or investigational.

(5) Reimbursement: MAD does not reimburse for medical, surgical, other health care procedures or treatments, including the use of drugs, biological products, other products or devices that are considered experimental or investigational, except as specified as follows. MAD will reimburse a provider for routine patient care services, which are those medically necessary services that would be covered if the MAP eligible recipient were receiving standard cancer treatment, rendered during the MAP eligible recipient's participation in phase I, II, III, or IV cancer clinical trials.

(6) Experimental or investigational services: MAD does not cover procedures, technologies or therapies that are considered experimental or investigational.

[~~**R. Smoking cessation:** MAD covers tobacco cessation services for a pregnant MAP eligible recipient and for a MAP eligible recipient under the age of 21 years of age.~~]

Q. Smoking/Tobacco cessation: MAD covers tobacco cessation services for all MAP eligible recipients.

(1) Eligible medical, dental, and behavioral health practitioner: Cessation counseling services may be provided by one of the following:

(a) by or under the supervision of a physician; or

(b) by any other MAD enrolled health care professional authorized to provide other MAD services who is also legally authorized to furnish such services under state law;

(c) generally, eligible practitioners would be medical practitioners, including independently enrolled CNPs, behavioral health and dental practitioners; physician assistants and CNPs not enrolled as independent MAD providers, and registered nurses and dental hygienists may bill for counseling services through the enrolled entity under which their other services are billed, when under the supervision of a dentist or physician;

(d) counseling service must be prescribed by a MAD enrolled licensed practitioner.

(2) Eligible pharmacy providers: For rendering tobacco cessation services, eligible pharmacists are those who have attended at least one continuing education course on tobacco cessation in accordance with the federal public health guidelines found in the United States department of health and human services; public health services' *quick reference guide for clinicians*, and *treating tobacco use and dependence*.

(3) Tobacco cessation drug items: MAD covers all prescribed tobacco cessation drug items for a MAP eligible recipient as

listed in this section when ordered by a MAD enrolled prescriber and dispensed by a MAD enrolled pharmacy. MAD does not require prior authorization for reimbursement for tobacco cessation products, but the items must be prescribed by a MAD enrolled practitioner. Tobacco cessation products include, but are not limited to the following:

(a)
sustained release buproprion products;

(b)
varenicline tartrate tablets; and

(c)
prescription and over-the-counter (OTC) nicotine replacement drug products, such as [~~a patch, gum, or inhaler~~] lozenges, patches, gums, sprays and inhalers.

(4)
Covered services: MAD makes reimbursement for assessing [~~a pregnant or postpartum~~] all MAP eligible recipient's tobacco dependence including a written tobacco cessation treatment plan of care as part of an evaluation and management (E&M) service, and may bill using the E&M codes. MAD covers face-to-face counseling when rendered by an appropriate provider. The effectiveness of counseling is comparable to pharmacotherapy alone. Counseling plus medication provides additive benefits. Treatment may include prescribing any combination of tobacco cessation products and counseling. Providers can prescribe one or more modalities of treatment. Cessation counseling session refers face-to-face MAP eligible recipient contact of either

(a)
intermediate session (greater than three minutes up to 10 minutes); or

(b)
intensive session (greater than 10 minutes).

(5)
Documentation for counseling services: Ordering and rendering practitioners must maintain sufficient documentation to substantiate the medical necessity of the service and the services rendered, which may consist of documentation of tobacco use. The rendering practitioner must maintain documentation that face-to-face counseling was prescribed by a practitioner, even if the case is a referral to self, consistent with other NMAC rules and other materials.

(6) Limitations on counseling sessions: [~~A cessation counseling attempt includes up to four cessation counseling sessions (one attempt plus up to four sessions). Two cessation counseling attempts (or up to eight cessation counseling sessions) are allowed in any 12-month period.~~] The services do not have any limits on the length of treatment or quit attempts per year. The program also allows participants to try multiple treatments and does not impose any requirement to enroll into counseling. During the 12-month period, the practitioner and the MAP eligible recipient have flexibility to choose between intermediate or intensive counseling modalities of treatment for each session.

R. Screening, brief intervention and referral to treatment (SBIRT) service: SBIRT is a community-based practice designed to identify, reduce and prevent problematic substance use or misuse and co-occurring mental health disorders as an early intervention. Through early identification in a medical setting, SBIRT services expand and enhance the continuum of care and reduce costly health care utilization. The primary objective is the integration of behavioral health with physical health care. SBIRT is delivered through a process consisting of universal screening, scoring the screening tool and a warm hand-off to a SBIRT trained professional who conducts a face-to-face brief intervention for positive screening results. If the need is identified for behavioral health treatment, the certified SBIRT staff, with the eligible recipient's approval, assists in securing behavioral health services. Only a physical health office, clinic, or facility who has been certified by a HSD approved SBIRT trainer and uses the approved healthy lifestyle questionnaire (HLQ) can complete the screen. The physical office, clinic or facility must be the billing provider, not the individual practitioner. All practitioners must be SBIRT certified and are employees or contractors of a SBIRT physical health office, clinic or facility. See the SBIRT policy and billing manual for detailed description of the service and billing requirements.

S. Other services: Other covered and noncovered services including hospitalization and other residential facilities, devices for hearing and vision correction, behavioral health services, home and community based services, EPSDT services, case management and other adjunct and specialty services are described in other NMAC rules. [8.310.2.12 NMAC - Rp, 8.310.2.12 NMAC, 1/1/2014; A, 8/10/2021]

8.310.2.13 GENERAL NONCOVERED SERVICES:

A. General noncovered services: MAD does not cover certain procedures, services, or miscellaneous items. See specific provider or service rules or sections of this rule for additional information on service coverage and limitations. A provider cannot turn an account over to collections or to any other factor intending to collect from the MAP eligible recipient or his or her authorized representative; see 8.302.2 NMAC. A provider cannot bill a MAP eligible recipient or his or her authorized representative for the copying of the MAP eligible recipient's records, and must provide copies of the MAP eligible recipient's records to other providers upon request of the MAP eligible recipient.

B. Appointment, interest and carrying charges: MAD does not cover penalties on payments for broken or missed appointments, costs of waiting time, or interest or carrying charges on accounts. A provider may not bill a MAP eligible recipient or his or her authorized representative for these charges or the penalties associated with missed or broken appointments or failure to produce eligibility cards, with the exception of MAP recipient eligibility categories of CHIP or WDI who may be charged up to $5 for a missed appointment.

C. Contract services: Services furnished by a contractor, an organization, or an individual who is not the billing provider must meet specific criteria for coverage as stated in MAD or its designee's NMAC rules, billing instructions, policy manuals; see 8.302.2 NMAC.

D. Cosmetic services and surgeries: MAD does not cover cosmetic items or services that are prescribed or used for aesthetic purposes. This includes items for aging skin, for hair loss, and personal care items such as non-prescription lotions, shampoos, soaps or sunscreens. MAD does not cover cosmetic surgeries performed for aesthetic purposes. "*Cosmetic surgery*" is defined as a procedure performed to improve the appearance of physical features that may or may not improve the functional ability of the area of concern. MAD covers only a surgery that meets specific criteria and is approved as medically necessary reconstructive surgery.

E. Postmortem examinations: MAD does not cover postmortem examinations.

F. Education or vocational services: MAD does not cover literature, booklets, and other educational materials. Dietary counseling is covered only for a MAP eligible recipient under 21 years of age, as part of the EPSDT program and for a pregnant MAP eligible recipient. MAD does not cover formal educational or vocational training services, unless those services are included as active treatment services for a MAP eligible recipient in intermediate care facility for individuals with intellectual disabilities (ICF-IID)or for a MAP eligible recipient under 21 years of age receiving inpatient psychiatric services [42 CFR 441.13(b)]. "*Formal educational services*" relate to training in traditional academic subjects. Vocational training services relate to organized programs directly related to the preparation of a MAP eligible recipient for paid or unpaid employment.

G. Hair or nail analysis: MAD does not cover hair or nail analysis.

H. Preparations dispensed for home use: MAD does not cover oral, topical, otic, or ophthalmic preparations dispensed to a MAP eligible recipient by a PCP, a CNP, a P.A., or an optometrist for home use or self administration unless authorized by MAD to assure the availability of medications.

~~**[I. Telephone services:** MAD does not cover any telephone consultations between the MAP eligible recipient and his or her provider.~~

~~**J.**~~**] I. Routine physical examinations:** [~~MAD only covers a routine physical examination for a MAP eligible recipient residing in a NF or an ICF-IID facility. Physical examinations, screenings, and treatment are available to a MAP eligible recipient under 21 years of age through the tot to teen healthcheck screen, New Mexico's EPSDT screening program.~~] MAD only covers a routine physical examination for:

(1) a MAP eligible recipient residing in a NF or an ICF-IID facility.

(2) a MAP eligible recipient under 21 years of age through the tot to teen health check screen, New Mexico's EPSDT screening program. Included in the coverage is the physical examinations, screenings and treatment.

[~~**K.**~~] **J. Screening services:** MAD does not cover screening services that are not used to make a diagnosis, such as chromosome screening, hypertension screening, diabetic screening, general health panels, executive profiles, paternity testing, or premarital screens. MAD covers screening services for a MAP eligible recipient under 21 years of age through the tot to teen healthcheck program. MAD covers screening services ordered by a provider for cancer detection such as pap smears and mammograms for a MAP eligible recipient when medically appropriate.

[~~**L.**~~] **K. Services not covered by medicare:** MAD does not cover services, procedures, or devices that are not covered by medicare due to their determination that the service is not medically necessary or that the service is experimental or not effective.

[~~**M.**~~] **L. Bariatric surgery services:** Bariatric surgery services are covered only when medically indicated and alternatives are not successful.

[~~**N.**~~] **M. Services and tests which are not routinely warranted due to the MAP eligible recipient's age:** MAD does not reimburse for routine screening, tests, or services which are not medically necessary due to the age of the MAP eligible recipient:

(1) Papanicolaou test (pap smear) for women under 21 years of age unless prior history or risk factors make the test medically warranted; and

(2) prostate specific antigen (PSA) test for men under age 40 unless prior history or risk factors make the test medically warranted.

[~~**O.**~~] **N. Services for surrogate mothers:** MAD does not pay for services for pregnancy, complications encountered during pregnancy related conditions, prenatal care and post-partum care, or delivery for services to a surrogate mother for which an agreement or contract between the surrogate mother and another party exists.

[8.310.2.13 NMAC - Rp, 8.310.2.14 NMAC, 1/1/2014; A, 8/10/2021]

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 30 EDUCATIONAL STANDARDS – GENERAL REQUIREMENTS
PART 15 COMMUNITY SCHOOLS

6.30.15.1 ISSUING AGENCY: Public Education Department hereinafter referred to as the department.

[6.30.15.1 NMAC – N, 8/10/2021]

6.30.15.2 SCOPE: All public schools, regional education cooperatives, and educational programs conducted in state institutions.
[6.30.15.2 NMAC – N, 8/10/2021]

6.30.15.3 STATUTORY AUTHORITY: Sections 9-24-8, 22-2-1, 22-2-2, and 22-32-1 et seq. NMSA 1978.
[6.30.15.3 NMAC – N, 8/10/2021]

6.30.15.4 DURATION: Permanent.
[6.30.15.4 NMAC – N, 8/10/2021]

6.30.15.5 EFFECTIVE DATE: August 10, 2021, unless a later date is cited at the end of a section.
[6.30.15.5 NMAC – N, 8/10/2021]

6.30.15.6 OBJECTIVE: This rule provides criteria for the development and implementation of the community schools act. Development and implementation includes establishing a set of research- and evidence-based strategies and best practices that support students and their families by making schools centers of the community that reflect local needs, assets, and priorities.
[6.30.15.6 NMAC – N, 8/10/2021]

6.30.15.7 DEFINITIONS:

A. "Active family and community engagement" means encouraging partnerships with families and community members from diverse backgrounds, including disability experience, to develop and promote a vision for student success, and establishing systems, structures, and supports to engage families and community members from in the decision-making processes regarding students' education through shared leadership.

B. "Annual evaluation" means a written review conducted by the community school coordinator and informed by the site-based leadership team to evaluate the implementation of the community school strategy.

C. "Asset mapping" or "needs and assets assessment" means an assessment of the community's strengths and resources, including organizations, people, partnerships, facilities, funding, and policies.

D. "Collaborative leadership and practices" means building trust with, and leveraging the collective expertise of a community school's stakeholders, including the site-based leadership team and community school coordinator, to develop a shared vision and goals and create participatory practices for distributing responsibilities.

E. "Community-based organization" means a public or private nonprofit organization that provides educational or related services to individuals in the community.

F. "Community school director or manager" means a person who oversees more than three community schools and coordinates implementation of the community school framework across all school sites.

G. "Community school plan" means a written plan that describes how a school will implement a community schools initiative.

H. "Community-wide leadership team" means a formal group that is inclusive and reflective of the community and has cross-sector representation that may include individuals or organizations representing school staff, students or youth, including students or youth with disabilities and their family, family members, business leaders, community members, and representatives from the local school board or governing council, the school district or charter school, teacher unions, nonprofit organizations, special education experts, and local and tribal governments. This group is not based on an individual school and focuses on developing, building, and sustaining a strategic direction for the system of community schools within a single county, municipality, or Tribal jurisdiction.

I. "Culturally and linguistically responsive" means validating and affirming an individual's home culture and language to create connections with other cultures and languages in various social contexts.

J. "Eligible applicant" means a single school, school district, or consortium of schools that has formed a partnership with at least one community-based organization with approval from the governing entity responsible for the local education agency.

K. "Eligible public school" means a public elementary or secondary school that has a student body where at least forty percent of students are eligible for free or reduced-fee lunch pursuant to the Richard B. Russell National School Lunch Act, or has been identified as needing comprehensive or targeted support and improvement under the Elementary and Secondary Education Act of 1965, or otherwise identified by the state as in need of additional support.

L. "Evidence-based interventions" means a strategy, practice, or program that has been proved effective through formal studies and research in producing positive results and improving outcomes for students.

M. "Expanded and enriched learning time and opportunities" means opportunities that include before-school, after-school, weekend, summer and year-round programs that include and accommodate students with disabilities, and that provide additional academic support, enrichment activities and other programs that may be offered in partnership with community-based organizations to enhance academic learning, social skills, emotional skills, and life skills, and are aligned with the school's curriculum.

N. "Four pillars of community schools" means the four research- and evidence-based strategies and best practices, as provided in Section 22-32-2 NMSA 1978, that support students,

families, and communities in ensuring student success, and are required to be part of each community school framework: integrated student supports, expanded and enriched learning time and opportunities, active family and community engagement, and collaborative leadership and practices..

O. "Integrated student supports" means actions or programs implemented to address non-academic and out-of-school barriers to learning through partnerships with social and health service agencies and providers, which may include school-wide positive behavioral supports and interventions, positive discipline practices, restorative practices, school-based or school-linked health care, Medicaid waiver and other case management services, and family stability supports.

P. "Lead partner agency" means the agency that employs the community school coordinator and works collaboratively with the community school coordinator, the school principal, and the site-based leadership team to asses, plan, and carry out the community school framework.

Q. "Site-based leadership team" means an interdisciplinary, school-based leadership team that includes the school principal, the community school coordinator, teachers, other school employees, families, community partners, tribal partners, nonprofit organizations, unions and neighboring community residents that guides collaborative planning, implementation, and oversight.
[6.30.15.7 NMAC – N, 8/10/2021]

6.30.15.8 COMMUNITY SCHOOLS INITIATIVE AND COMMUNITY SCHOOL FRAMEWORK:

A. The community schools initiative shall include:

(1) a lead partner agency;

(2) an annual asset mapping process conducted by the community school coordinator and informed by the site-based leadership team; and

(3) a community school framework.

B. The community school framework shall:

(1) ensure the use of evidence-based strategies and best practices that support students, families, and communities in ensuring student success;

(2) include the four pillars of community schools;

C. The community school framework may:

(1) allow broader use of public school facilities, including neighborhood events, community activities, school and community advocacy, and civic life;

(2) include community-based curriculum centered on local knowledge, service learning, and problem-solving regarding community initiatives and issues;

(3) provide public pre-kindergarten and other state- and federally funded early childhood services that:

(a) support working families and help ensure children enter kindergarten ready to learn;

(b) provide students, including students with disabilities, and working parents or caregivers full-day and after-school childcare;

(c) provide high-quality pre-kindergarten programs aligned with the department's early childhood learning standards;

(d) provide health, vision, dental, and other supports and services to children before school age;

(e) include strong partnership and alignment with early learning centers and early childhood providers; and

(f) provide transportation, including transportation that is accessible for students with disabilities.
[6.30.15.8 NMAC – N, 8/10/2021]

6.30.15.9 COMMUNITY SCHOOL PERSONNEL:

A. The duties of a community school coordinator, at a minimum, shall include:

(1) implementing the community school framework;

(2) leading the asset mapping process;

(3) facilitating communication between partners through a stakeholder and community-driven approach to problem solving;

(4) guiding data-informed continuous improvement;

(5) managing data collection for the community school;

(6) aligning, leveraging, and coordinating resources for student and family success; and

(7) collaborating with school site leadership and staff.

B. The lead partner agency of more than three community schools shall provide a full-time position that supports the community school coordinators at those public schools.

C. If a grantee receives funding under the community schools initiative grants program to implement the community schools initiative at three or more public school sites, the school district shall employ a community school director or manager. The community school director or manager shall:

(1) oversee and coordinate the implementation of the community schools initiative at each community school;

(2) support and guide community schools with the implementation of the community school strategy;

(3) support and guide community schools with the asset mapping process and data collection; and

(4) ensure the lead partner agency employs a community school coordinator at each community school.
[6.30.15.9 NMAC – N, 8/10/2021]

6.30.15.10 COMMUNITY SCHOOLS INITIATIVES GRANT PROGRAM:

A. Eligible applicants may apply for funding to implement the community schools initiative.

B. A school district is responsible for any indirect costs associated with the establishment and implementation of a community school within the school district.

C. An eligible applicant that receives funds to transform a public school into a community school shall:

(1) use a rigorous, transparent, equitable, and evidence-based evaluation system to measure the effectiveness of the implementation of the community schools initiative;

(2) provide ongoing, high-quality professional development for staff that:

(a) aligns with the community school's core instructional program;

(b) facilitates and supports effective teaching and learning; and

(c) supports the implementation of school reform strategies and evidence-based interventions, programs, and practices;

(3) give the community school sufficient operational flexibility in evidence-based programming, curriculum, staffing, budgeting, and scheduling to implement a comprehensive community school framework focused on improving:

(a) community school culture and climate;

(b) student academic achievement;

(c) student attendance;

(d) student behavior, including through the provision of positive discipline practices, restorative practices, and other positive behavioral supports and interventions for students;

(e) quality family engagement; and

(f) for high schools, graduation rates and readiness for college or career;

[6.30.15.10 NMAC – N, 8/10/2021]

6.30.15.11 GRANT APPLICATION REQUIREMENTS AND PROCEDURES:

A. The department is authorized to provide planning, implementation, and renewal grants to eligible applicants for the creation of a community schools initiative. The department shall prioritize awards for schools identified as needing comprehensive support and improvement and targeted support and improvement under the Every Student Succeeds Act.

B. Planning grants are a one-year, one-time award of up to $50,000 for each eligible public school, which shall use the grant to:

(1) conduct an initial school and community asset map;

(2) identify community supports and services through asset mapping; and

(3) establish a site-based leadership team.

C. To be considered for a planning grant, eligible applicants shall submit an application to the department and shall include a description of:

(1) the initial site-based leadership team and community-wide leadership team or the process that will be put in place to establish the teams;

(2) the process and timeline for conducting an asset map and community school plan for each eligible school; and

(3) if applicable, plans for hiring additional staff, providing additional compensation to existing staff, or the contracting of a nonprofit entity or entities that will help the eligible applicant apply for an implementation grant or grants.

D. Implementation grants are awards of $150,000 each year for a period of three years for each eligible school to be used for the implementation of the community schools initiative.

E. To demonstrate intent and to be considered for an implementation grant, within six months of receiving a planning grant, eligible applicants shall submit an application with the following documentation:

(1) evidence of an ongoing or completed needs and assets assessment for each eligible public school that includes:

(a) student demographic information and academic data disaggregated by subgroups of students as designated by the Every Student Succeeds Act;

(b) access to and need for integrated student supports;

(c) access to and need for expanded and enriched learning time and opportunities;

(d) active family and community engagement information;

(e) existing collaborative leadership and practices;

(f) opportunities for partnerships with nonprofit organizations, faith- and community-based organizations, institutions of higher education, healthcare institutions, businesses, advocacy organizations, and other community entities;

(2) community school funding information, including leveraging of federal, state, local, and private education funding and per-pupil spending;

(3) community climate indicators, including housing instability, food instability, unemployment, poverty, health indicators, and environmental hazards; and

(4) evidence of an established community-wide leadership team and site-based leadership team for each eligible public school.

F. Renewal grants are one-year awards in an amount determined by the department for which eligible applicants may submit an application to the department at

the conclusion of the initial three-year implementation grant period.

G. A school district or public school may use Title I Part A funds to support the community school framework.

[6.30.15.11 NMAC – N, 8/10/2021]

6.30.15.12 DATA COLLECTION AND SUBMISSION:

A. Within 30 calendar days after the state fiscal year ends, awardees of an implementation grant shall submit data to the department in the format required by the department.

B. Uniform data collections measures and instruments are required to meet department guidelines.

C. Awardees are required to collect and submit data to the department in the following focus areas:

(1) community school culture and climate;

(2) student academic achievement;

(3) student attendance;

(4) student behavior;

(5) quality family engagement; and

(6) for high schools, graduation rates and readiness for college or career.

D. Awardees are required to conduct an annual evaluation in the format required by the department and submit the evaluation to the coalition for community schools no later than July 31. Awardees will be provided with information regarding the format for the annual evaluation at least one month (30 days) prior to the deadline for submission, or the July 31 deadline will be extended.

[6.30.15.12 NMAC – N, 8/10/2021]

6.30.15.13 COALITION FOR COMMUNITY SCHOOLS:

A. The department shall appoint a coalition for community schools that is a statewide coalition of community school stakeholders, which shall include:

(1) local community school content experts representing the northern, central and southern regions of the state;

(2) culturally and linguistically responsive content experts;

(3) tribal leaders representing the nations and pueblos of New Mexico;

B. The department may appoint:

(1) individuals with data analysis or research expertise and experience with the effective implementation of the community school framework;

(2) representatives from the behavioral health field with experience managing wrap-around services or school-based health centers;

(3) community school coordinators representing the northern, central, and southern regions of the state;

(4) educators representing the northern, central, and southern regions of the state;

(5) representatives from teacher unions;

(6) parents;

(7) school or district administrators representing the northern, central, and southern regions of the state;

(8) representatives from higher education institutions representing the northern, central, and southern regions of the state;

(9) a representative from a community-based organization;

(10) a representative from the business community;

(11) an out-of-school-time and afterschool content expert;

(12) special education and disability experts;

(13) individuals with expertise in transition services vocational rehabilitation for students with disabilities;

(14) a representative from an organization addressing housing instability;

(15) a representative from an organization addressing food instability; and

(16) others the department may deem appropriate.

C. In collaboration with the department, the coalition may appoint a chair and vice-chair from amongst its membership and establish term limits for coalition members.

D. The coalition shall notify the department if there is a vacancy in the coalition. The department shall appoint a replacement within 90 days of the notification.

E. Responsibilities of the coalition include:

(1) working with the department to develop a competitive grant procedure;

(2) assisting the department in reviewing applications for grants and making recommendations for awards;

(3) analyzing the annual evaluation on the effectiveness of implementation grant awardees and determine:

(a) eligibility for continued funding;

(b) need for capacity-building at the community school to be provided by the coalition for community schools; and

(c) need for technical assistance to be provided by the coalition for community schools.

(3) providing advocacy, capacity building, and technical assistance to ensure equitable distribution of resources to all school districts in New Mexico; and

(4) working with the department to develop coalition priorities, activities, meeting schedules, and agendas.

[6.30.15.13 NMAC – N, 8/10/2021]

HISTORY OF 6.30.15 NMAC: [RESERVED]

End of Adopted Rules

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Other Material Related to Administrative Law

GOVERNOR, OFFICE OF THE

EXECUTIVE ORDER 2021-044

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

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

By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1,000 cases in the United States, spread out over 39 states. The President of the United States declared a national state of emergency for COVID-19 on March 13, 2020. As of July 22, 2021 the Centers for Disease Control and Prevention ("CDC") reported over 34 million people have been infected in the United States, with over 600,000 related deaths, and the New Mexico Department of Health has reported 208,243 positive COVID-19 cases and 4,394 related deaths in New Mexico.

Public health organizations have implemented emergency measures intended to slow the spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly thereafter. All of our sister states have declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19; many, if not most, have kept such states of emergency in place.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its impacts. I have been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19. Various state agencies have been at the forefront of our State's response to COVID-19, particularly the New Mexico Department of Health. The hard work of a variety of state employees has made a difference in our fight against COVID-19. Due to the continued spread of COVID-19, it is necessary for all branches of State government to continue taking actions to minimize transmission of COVID-19 and to reduce its attendant physical and economic harms.

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

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-55, 2020-059, 2020-064, 2020-073, 2020-080, 2020-085, 2021-001, 2021-004, 2021-010, 2021-011, 2021-012, 2021-023 and 2021-030 shall be renewed and extended through August 16, 2021.

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

3. All other Executive Orders with a duration that was tied to the COVID-19 public health emergency or that was not explicitly stated shall continue with the same effect, including any orders appropriating emergency funding as well as Executive Orders 2020-016, 2020-020, 2020-021, 2020-025, and 2020-039.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Order shall take effect on July 23, 2021 and shall remain in effect until August 16, 2021 unless renewed, modified, or until the Governor rescinds it.

DONE AT THE EXECUTIVE OFFICE THIS 23RD DAY OF JULY 2021

ATTEST:
/S/MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

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

/S/MICHELLE LUJAN GRISHAM
GOVERNOR

GOVERNOR, OFFICE OF THE

EXECUTIVE ORDER 2021-045

REQUIRING STATE EMPLOYEES TO COMPLY WITH CERTAIN PUBLIC HEALTH REQUIREMENTS

WHEREAS, on January 30, 2020, the World Health Organization ("WHO")

announced the emergence of a novel Coronavirus Disease 2019 ("COVID-19") that had not previously circulated in humans, but has been found to have adopted to humans such that it is contagious and easily spread from one person to another and one country to another;

WHEREAS, COVID-19 cases had been confirmed in New Mexico since March 11, 2020, when the New Mexico Department of Health confirmed the first cases of individuals infected with COVID-19 in New Mexico and additional cases have been confirmed each day since then;

WHEREAS, on March 11, 2020, because of the spread of COVID-19, I issued Executive Order 2020-004 declaring a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked my authority under the All Hazards Emergency Management Act;

WHEREAS, I have renewed the declaration of a Public Health Emergency through August 16, 2021;

WHEREAS, the currently available COVID-19 vaccines are a safe and effective way of preventing serious illness or death;

WHEREAS, the refusal to receive the COVID-19 vaccine not only endangers the individual but the entire community, and further jeopardizes the progress the State has made against the pandemic by allowing the virus to transmit more freely and mutate into more transmissible or deadly variants;

WHEREAS, one such highly-transmissible variant, B.1.617.2, commonly known as the Delta variant, now accounts for the majority of new infections;

WHEREAS, the State has recorded a significant increase in new COVID-19 cases in recent weeks, with cases expected to rise even further in the Fall and Winter months;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, and wellbeing of all New Mexicans;

WHEREAS, state employees who become ill cannot adequately perform their duties, which disrupts the orderly operation of State government; and

WHEREAS, regular testing, masks, and social-distancing remain some of the most effective ways to minimize the spread of COVID-19.

NOW THEREFORE, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby **ORDER** and **DIRECT** as follows:

1. State employees shall comply with the provisions regarding the use of masks contained in the operative Public Health Order issued by the Secretary of the Department of Health during the course and scope of their employment.

2. State employees who are not fully vaccinated against COVID-19, as defined by the Centers for Disease Control and Prevention, and willing and able to provide adequate proof or such vaccination shall provide adequate proof that the employee has tested negative for COVID-19 within the past seven (7) days every two weeks.

3. Employees who refuse to abide by the above requirements may be subject to disciplinary action, up to and including termination, in accordance with applicable law.

4. State agencies shall ensure, consistent with law, that any documentation related to vaccination status or test results are not disclosed to individuals other than those necessary to ensure compliance with this Order.

5. The New Mexico State Personnel Office shall provide agencies with guidance on the full implementation and administration this Order.

I FURTHER ORDER and DIRECT as follows:

1. This Order supersedes any previous orders, proclamations, policies or directives to the extent they are in conflict.

2. This Order shall take effect at 8:00 a.m. on August 2, 2021 and shall remain in effect until renewed, modified, or rescinded.

DONE AT THE EXECUTIVE OFFICE THIS 29TH DAY OF JULY 2021

ATTEST:
/S/MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

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

/S/MICHELLE LUJAN GRISHAM
GOVERNOR

GOVERNOR, OFFICE OF THE

EXECUTIVE ORDER 2021-046

AMENDED ORDER REQUIRING STATE EMPLOYEES TO COMPLY WITH CERTAIN PUBLIC HEALTH REQUIREMENTS

WHEREAS, on January 30, 2020, the World Health Organization ("WHO") announced the emergence of a novel Coronavirus Disease 2019 ("COVID-19") that had not previously circulated in humans, but has been found to have adopted to humans such that it is contagious and easily spread from one person to another and one country to another;

WHEREAS, COVID-19 cases had been confirmed in New Mexico since March 11, 2020, when the New Mexico Department of Health confirmed the first cases of individuals infected with COVID-19 in New Mexico and additional cases

have been confirmed each day since then;

WHEREAS, on March 11, 2020, because of the spread of COVID-19, I issued Executive Order 2020-004 declaring a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked my authority under the All Hazards Emergency Management Act;

WHEREAS, I have renewed the declaration of a Public Health Emergency through August 16, 2021;

WHEREAS, the currently available COVID-19 vaccines are a safe and effective way of preventing serious illness or death;

WHEREAS, the refusal to receive the COVID-19 vaccine not only endangers the individual but the entire community, and further jeopardizes the progress the State has made against the pandemic by allowing the virus to transmit more freely and mutate into more transmissible or deadly variants;

WHEREAS, one such highly-transmissible variant, B.1.617.2, commonly known as the Delta variant, now accounts for the majority of new infections;

WHEREAS, the State has recorded a significant increase in new COVID-19 cases in recent weeks, with cases expected to rise even further in the Fall and Winter months;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, and wellbeing of all New Mexicans;

WHEREAS, state employees who become ill cannot adequately perform their duties, which disrupts the orderly operation of State government; and

WHEREAS, regular testing, masks, and social-distancing remain some of the most effective ways to minimize the spread of COVID-19.

NOW THEREFORE, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby **ORDER** and **DIRECT** as follows:

1. State employees shall comply with the provisions regarding the use of masks contained in the operative Public Health Order issued by the Secretary of the Department of Health during the course and scope of their employment.

2. State employees who are not fully vaccinated against COVID-19, as defined by the Centers for Disease Control and Prevention, and willing and able to provide adequate proof or such vaccination shall:

A. Provide adequate proof that the employee has tested negative for COVID-19 on a weekly basis; and

B. Wear a mask or multilayer face covering at all times during the course and scope of their employment except when eating or drinking or when the employee provides adequate proof that he or she has been instructed otherwise by a bona fide healthcare provider.

3. Employees who refuse to abide by the above requirements may be subject to disciplinary action, up to and including termination, in accordance with applicable law.

4. State agencies shall ensure, consistent with law, that any documentation related to vaccination status or test results are not disclosed to individuals other than those necessary to ensure compliance with this Order.

5. The New Mexico State Personnel Office shall provide agencies with guidance on the full implementation and administration this Order.

I FURTHER ORDER and **DIRECT** as follows:

1. This Order supersedes any previous orders, proclamations, policies or directives to the extent they are in conflict.

2. This Order shall take effect at 8:00 a.m. on August 2, 2021 and shall remain in effect until renewed, modified, or rescinded.

DONE AT THE EXECUTIVE OFFICE THIS 30TH DAY OF JULY 2021

ATTEST:
/S/MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

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

/S/MICHELLE LUJAN GRISHAM
GOVERNOR

HEALTH, DEPARTMENT OF

PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
ACTING SECRETARY DAVID R. SCRASE, M.D.

JULY 30, 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"). While vaccines are the most effective method to prevent the spread of COVID-19, social distancing and self-isolation measures continue to be necessary to protect New Mexicans who are

ineligible to receive a COVID-19 vaccine or who choose not to receive a vaccine. All New Mexicans should continue to adhere to social distancing protocols when required to protect our State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans continue social distancing measures.

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 of rescinded:

A. 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;

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

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

D. February 26, 2021 Public Health Emergency Order Implementing Administration Requirements for all COVID-19 Vaccine Providers and Requiring Accurate Information be Provided by Individuals Registering to Receive the COVID-19 Vaccine.

3. The June 30, 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 August 16, 2021;

WHEREAS, confirmed cases in the United States have risen to more than 34.6 million and confirmed COVID-19 infections in New Mexico have risen to over 209,000;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 600,000 Americans and over 4,402 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, David R. Scrase, M.D., Acting 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-l-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.

I HEREBY DIRECT AS FOLLOWS:

(1) All individuals are strongly recommended to comply with official recommendations from the Centers for Disease Control ("CDC") and required to comply with any mandatory directives issued by the CDC regarding the use of face masks.

(2) Any business, establishment, or non-profit (other

than those which are a healthcare operation, utility, or indigent care services) which members of the public regularly visit must report to the Department of Health when there is an 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. Businesses, establishments, or non-profits with four or more rapid responses shall not be required to cease operations. However, the rapid responses must be reported to the Department of Health so that the public may be made aware of the positive cases.

(3) All businesses, establishments, and non-profit entities must adhere to the pertinent COVID-Safe Practices

(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 educational institutions shall follow the reporting, testing, and closure requirements set forth by the Public Education Department in the Reentry Guidance and COVID-19 Response Toolkit for New Mexico's Public Elementary Schools.

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 immediately and remain in effect through August 27, 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 New Mexico Environment Department, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(6) Any and all State officials authorized by the Department of Health may enforce this 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-l0A-19.

DONE AT THE EXECUTIVE OFFICE THIS 30TH DAY OF JULY 2021

ATTEST:
/S/MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

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

/S/DAVID R. SCRASE, M.D.
ACTING SECRETARY OF THE NEW MEXICO DEPARTMENT OF HEALTH

End of Other Material Related to Administrative Law

2021 New Mexico Register

Submittal Deadlines and Publication Dates
Volume XXXII, Issues 1-24

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
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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

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