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New Mexico Register

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

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The New Mexico Register

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Volume XXXII, Issue 17

September 14, 2021

Table of Contents

Notices of Rulemaking and Proposed Rules

ARCHITECTS, BOARD OF EXAMINERS FOR	
Notice of Public Hearing.....	1037
DENTAL HEALTH CARE, BOARD OF	
Notice of Public Rule Hearing and Regular Board Meeting.....	1038
EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT	
Notice of Rulemaking and Public Rule Hearing.....	1039
Notice of Rulemaking and Public Rule Hearing.....	1042
Notice of Rulemaking and Public Rule Hearing.....	1048
GAME AND FISH DEPARTMENT	
State Game Commission Meeting and Rulemaking Notice.....	1052
State Game Commission Meeting and Rulemaking Notice.....	1053
HUMAN SERVICES DEPARTMENT	
CHILD SUPPORT ENFORCEMENT DIVISION	
Notice of Rulemaking Hearing.....	1053
PUBLIC ACCOUNTANCY, BOARD OF	
Public Rule Hearing and Regular Board Meeting.....	1055
REGULATION AND LICENSING DEPARTMENT	
COUNSELING AND THERAPY PRACTICE BOARD	
Public Rule Hearing and Regular Board Meeting.....	1056
PHARMACY, BOARD OF	
Notice of Regular Board Meeting and Rule Hearing.....	1059
SUPERINTENDENT OF INSURANCE, OFFICE OF	
Notice of Proposed Rulemaking.....	1060

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

REGULATION AND LICENSING DEPARTMENT	
PHARMACY, BOARD OF	
16.19.4 NMAC A Pharmacist.....	1063
16.19.20 NMAC A Controlled Substances.....	1066
16.19.30 NMAC A Compounding of Non-Sterile Pharmaceuticals.....	1074
16.19.31 NMAC A Emergency Provisions.....	1077
STATE ETHICS COMMISSION	
1.8.3 NMAC A State Ethics Commission Administrative Hearings.....	1078
WORKFORCE SOLUTIONS, DEPARTMENT OF	
11.3.300 NMAC A Claims Administration.....	1088

Other Material Related to Administrative Law

HEALTH, DEPARTMENT OF

Amended Public Health Order 8/22/2021.....1091

STATE ETHICS COMMISSION

Notice of Minor, Nonsubstantive Correction.....1092

Notices of Rulemaking and Proposed Rules

ARCHITECTS, BOARD OF EXAMINERS FOR

NOTICE OF PUBLIC HEARING

Public Notice. The New Mexico Board of Examiners for Architects (NMBEA) gives notice that it will conduct a public hearing and regular meeting of the Board virtually on October 22, 2021 at 10:00am. The purpose of the public hearing is to receive public input on the proposed amendment to 16.30.1 NMAC- General Provisions, 16.30.3 NMAC- Registration and Renewal, Duplicate Certificates, Seal Specifications and Document Identification, 16.30.4 NMAC- Code of Conduct, 16.30.5 NMAC- Enforcement, and 16.30.7 NMAC- Licensure for Military Service Members, Spouses and Veterans. The board will hold a regular board meeting following the public hearing.

Join Zoom Meeting
<https://us02web.zoom.us/j/8673287554?pwd=MnNoMHFuRVEyY3dBcTAxTC9DSmZxZz09>

Meeting ID: 867 3287 5554
 Passcode: 043113
 One tap mobile
 +12532158782,86732875554#,*0431 13# US (Tacoma)
 +13462487799,86732875554#,*0431 13# US (Houston)

Dial by your location
 +1 253 215 8782 US (Tacoma)
 +1 346 248 7799 US (Houston)
 +1 669 900 9128 US (San Jose)
 +1 301 715 8592 US (Washington DC)
 +1 312 626 6799 US (Chicago)
 +1 646 558 8656 US (New York)

Meeting ID: 867 3287 5554
 Passcode: 043113
 Find your local number: <https://us02web.zoom.us/j/8673287554>

Purpose. The purpose of the proposed change to 16.30.1.7 is to clarify the standard that would qualify

as misconduct for unauthorized use of an architect’s seal. The purpose of the proposed change to 16.30.3.8 NMAC serve to add a list of disqualifying criminal convictions for registrants and potential registrants pursuant to Section 61-1-36 NMSA 1978. The purpose of the proposed changes to 16.30.3.10 NMAC is to adjust the timeframe for an applicant seeking registration through reciprocity to one year and enable Board staff to raise issues with potential registrants for consideration by the enforcement subcommittee. The purpose of the proposed changes to 16.30.3.12 is to adjust the fee schedule and reporting requirements for those registrants who fail to timely complete continuing education. The purpose of the proposed change to 16.30.4.11 is to add a reference to the enumerated list in 16.30.3.8 in the list of potential areas of discipline for a registrant. The purpose of the proposed change to 16.30.5.8 is to adjust the manner in which a complaint shall be initiated to include a reference to allegations being made under penalty of perjury. The purpose of the proposed change to 16.30.5.7 is to update the reference to the Parental Responsibility Act to the correct statute, Section 40-5A-1 through 13NMSA 1978. The purpose of the proposed changes to 16.30.7.8 is to bring the board into compliance with Section 61-1-34, NMSA 1978.

The statutory authorization. Section 61-15-4 NMSA 1978 grants the board authority to make rules not inconsistent with law in order to promote the public welfare and protect the citizens of New Mexico.

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

Public comment. Interested parties may provide comment on the proposed amendments of this state rule at the public hearing or may submit written comments to Melarie Gonzales, New Mexico Board of Examiners for Architects, P. O. Box 509, Santa Fe, New Mexico 87504, or by electronic mail at nmbea@state.

nm.us, or fax to (505) 476-4829. All written comments must be received no later than 5:00 p.m. (MDT) on the date of the public hearing. The public comment period is from September 14, 2021 to October 18, 2021 at 5:00 p.m. (MDT).

Copies of the proposed rules. Copies of proposed rules may be accessed through the New Board of Examiners for Architect’s website at <https://www.bea.state.nm.us>, or may be obtained from Melarie Gonzales by contacting her at (505) 476-4833 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Melarie Gonzales at (505) 476-4833 as soon as possible before the date set for the public hearing. The NMBEA requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

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

16.30.1.7 NMAC – General Provisions
 As a general summary, the proposed changes to 16.30.1.7 NMAC adjust the qualifications of misconduct for unauthorized use of a registration seal. The changes now reflects a “knowingly” standard, in place of the previous standard which used the term “all reasonable measures. is to clarify language and to add a new provision to the definition of misconduct to account for the misuse of an architectural seal.

16.30.3.8 NMAC– General Qualifications
 As a general summary, the proposed changes to 16.30.3.8 NMAC serve to add a list of disqualifying criminal convictions pursuant to Section 61-1-36 NMSA 1978. This list enumerates

those felonies for which convictions could result in denial of an application or disciplinary action.

16.30.3.10 NMAC– Registration through Reciprocity

As a general summary, the proposed changes to 16.30.3.10 NMAC adjust the timeframe from six months to one year for a reciprocity and enables board staff to raise issues with reciprocity applications with the enforcement subcommittee.

16.30.3.12 NMAC- Continuing Education

As a general summary, the proposed changes to 16.30.3.12 NMAC is to update the fee schedule for licensees who fail to timely complete the required continuing education hours. The adjusted fee schedule permits the reporting of excessive violations to the National Council of Architectural Registration Boards (“NCARB”).

16.30.4.11 NMAC- Compliance with Laws

As a general summary, the proposed changes to 16.30.4.11 NMAC is to add a reference to the enumerated crimes listed in 16.30.3.8 that would disqualify an architect from practicing.

16.30.5.7 NMAC- Definitions

As a general summary, the proposed changes to 16.30.5.7 NMAC update the reference to the Parental Responsibility Act to the correct statute, Section 40-5A-1 through 13NMSA 1978.

16.30.5.8 NMAC- Complaints

As a general summary, the proposed changes to 16.30.5.8 is to clarify language to include language for complaints signed under penalty of perjury.

16.30.7.8 NMAC- Expedited Licensure

As a general summary, the proposed changes to 16.30.7.8 NMAC add a reference to Section 61-1-34 NMSA and mandate that the Board comply with the provisions of this section.

**DENTAL HEALTH CARE,
BOARD OF**

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

The New Mexico Board of Dental Health Care will hold a rule hearing on Friday, October 22, 2021, at 8:30 a.m. Following the rule hearing, the Board will convene a regular board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, NM, in the Rio Grande Conference Room for those desiring to attend in person.

Face masks are required to be worn in the Toney Anaya Building for all in-person attendees.

The meeting will also be held via Cisco Webex Meetings for those desiring to attend virtually.

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=ed033715e1133f11efaff9466b3065126>

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

Access Code: 146 906 6180

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

16.5.1 NMAC – General Provisions
16.5.59 NMAC – Licensure for Military Service Members, Spouses, Dependent Children and Veterans

To obtain and review copies of the proposed changes and public comments, you may go to the Board’s website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/dental-health-care-overview/dhc-board-information/dhc-board-meetings/> or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public written comments on the proposed amendments. Please submit written comments on the proposed changes to Roberta Perea, Board Administrator, via electronic mail at: Dental.Board@state.nm.us, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Thursday, October 21, 2021. Written comments received prior to the rule hearing will be posted to the RLD website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/dental-health-care-overview/dhc-laws-rules-and-policies/>. Persons will also be given the opportunity to present their written or oral comments at the public rule hearing.

The agenda for the board meeting will be posted and available at least 72 hours before the meeting on the Board website at <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/dental-health-care-overview/dhc-board-information/dhc-board-meetings/>. Copies of the rules or the agenda may also be obtained by contacting Roberta Perea, Board Administrator at (505) 476-4622.

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

Statutory Authority: The Dental Health Care Act, NMSA 1978, Sections 61-5A-10(B) (1) and (5).

Purpose of the Proposed Rules:

The purpose of the rule hearing is to receive written and oral comments from the public on proposed rules amending 16.5.59 NMAC - Licensure for Military Service Members, Spouses, Dependent Children and Veterans to comply with 2021 legislative changes made during the regular session in HB 120 Military Spouses Expedited Licensure signed into law by Governor Lujan Grisham

on April 6, 2021 and amending 16.5.1 NMAC - General Provisions to comply with 2021 legislative changes made during the special session in SB2 Expungement of Certain Records signed into law by the Governor Lujan Grisham on April 12, 2021.

Summary of Proposed Changes:

16.5.1 NMAC - General Provisions

The amendments to this part is to add a new section to the rule to be in compliance with the 2021 legislative change regarding SB2 Expungement of Certain Records. The proposed rule sets out what criminal felony convictions directly relate to the particular employment, trade, business or profession of dentistry or hygienist that may disqualify the applicant or licensee from holding a license. The rule also defines how the conviction may and may not be used when reviewing an application for licensure or for violation of Board statute or rules by a current licensee.

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

The amendments to this part includes a repeal and replace due to the 2021 legislative change regarding HB120 Military Spouses Expedited Licensure. The proposed rule changes the time for approving an application for license from sixty days to thirty days and removes “recent” from the definition of veteran. The rule also sets out application and renewal requirements.

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Children, Youth and Families Department (CYFD) and the Early Childhood Education and Care Department (ECECD) hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to

adopt amendments to the following rules regarding SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENT AND CHILD CARE PROVIDERS as authorized by Section 9-2A-1 to 9-2A-16, NMSA 1978 and 9-29-6, NMSA 1978:

- 8.15.2.6 NMAC OBJECTIVE**
- 8.15.2.7 NMAC DEFINITIONS**
- 8.15.2.9 NMAC PRIORITIES FOR ASSISTANCE**
- 8.15.2.10 NMAC APPLICATION PROCESS**
- 8.15.2.11 NMAC ELIGIBILITY REQUIREMENTS**
- 8.15.2.12 NMAC RECERTIFICATION**
- 8.15.2.13 NMAC CLIENT RESPONSIBILITIES**
- 8.15.2.14 NMAC CASE SUSPENSIONS AND CLOSURES**
- 8.15.2.15 NMAC PROVIDER REQUIREMENTS**
- 8.15.2.17 NMAC PAYMENT FOR SERVICES**
- 8.15.2.21 NMAC SANCTIONS**

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

Purpose and summary of proposed rules: The purpose of the rulemaking is to promulgate permanent amendments to 8.15.2 NMAC, which were initially published as emergency amendments effective July 1, 2021, and August 1, 2021, along with additional necessary changes. Due to the COVID-19 health crisis and the resulting executive orders and declarations, along with the federal Child Care Development Fund (CCDF) grant, there was an emergency need for amendments to 8.15.2 NMAC in order to protect the public from an imminent peril to public health, safety and welfare of children and families in New Mexico and ensure continued federal funding. In summary, the proposed rules will update necessary health and safety changes for the provision of child care services in New Mexico as well as make changes required by the CCDF

grant. A summary of the proposed amendments is attached to this notice.

As part of the amendment process, ECECD will hold a public rule hearing for the proposed amendments on October 28, 2021 from 1:00 to 4:00 p.m. The deadline for submittal to the New Mexico Register is on August 26, 2021, with a publication date of September 14, 2021. Copies of the proposed amended rules may be found at ECECD’s website at <https://www.newmexicokids.org/> no later than September 14, 2021.

Notice of public rule hearing: The public rule hearing will be held on Thursday, October 28, 2021 at 1:00 p.m. to 4:00 p.m. The hearing will be held in Apodaca Hall of the Old PERA building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502 and via virtual web platform (Zoom), email, and telephonic means. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comments, either orally or in writing, including presentations of data, views or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests but cannot guarantee accommodations of a request that is not received at least ten calendar days before the schedule hearing.

Notice of acceptance of written public comment: Written public comments, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may be submitted via email to ECECD-ECS-PublicComment@state.nm.us with the subject line “8.15.2 NMAC

Public Comment” or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502-5619. Written comments may be delivered to the Old PERA building at 1120 Paseo de Peralta on Thursday, October 28, 2021 from 1:00 p.m. to 4:00 p.m. The comment period ends at the conclusion of the public hearing October 28, 2021.

Any interested member of the public may attend the hearing in person or via the virtual web platform or telephone, and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: place call 1-720-707-2699, access code 823 7497 1518. You will be able to hear the hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to <https://zoom.us/j/82374971518>, and follow the instructions indicated on the screen – Meeting ID (access code): 823 7497 1518#. This will be a live stream of the hearing. You may also provide comments via Chat during the live stream.

THE EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT’S (ECECD) SUMMARY OF PROPOSED AMENDMENTS TO 8.15.2 NMAC

8.15.2.6 NMAC OBJECTIVE: ECECD proposes amendments that include non-discrimination language and an objective related to the federal Child Care and Development Block Grant (CCDBG) and the Child Care Development Fund (CCDF).

8.15.2.7 NMAC DEFINITIONS: ECECD proposes updates to the definitions of various terms (“Job Training and Educational Program,” “Temporary Change of Activity,” and “Family, Friend, or Neighbor (FFN)”) and includes new proposed terms (“Essential Worker” and “Termination”).

8.15.2.9 NMAC PRIORITIES FOR ASSISTANCE: ECECD proposes updates to the child care priorities for

assistance requirements that include the provision of a new category, “priority four plus,” for increased eligibility.

8.15.2.10 NMAC APPLICATION PROCESS: ECECD proposes updates to the child care assistance application process requirements that include a list of acceptable documents for eligibility and related issues.

8.15.2.11 NMAC ELIGIBILITY REQUIREMENTS: ECECD proposes updates to the eligibility requirements for child care assistance in order to clarify the eligibility period, placement agreements and related issues.

8.15.2.12 NMAC RECERTIFICATION: ECECD proposes updates to the recertification process for child care assistance in order to increase eligibility based on income and for essential workers.

8.15.2.13 NMAC CLIENT RESPONSIBILITIES: ECECD proposes updates to the requirements related to client responsibilities to remove restrictions placed on the co-payment for child care.

8.15.2.14 NMAC CASE SUSPENSIONS AND CLOSURES: ECECD proposes updates to the requirements related to case suspensions and closures to clarify that the eligibility period for child care assistance lasts for 12 months.

8.15.2.15 NMAC PROVIDER REQUIREMENTS: ECECD proposes updates to the provider requirements that removes the five dollar registration/education fee paid to providers, clarifies that owners and licensees cannot receive child care assistance for their own children, and requires updated policies and procedures.

8.15.2.17 NMAC PAYMENT FOR SERVICES: ECECD proposes updates to the requirements related to the payment for services that increases the child care subsidy rates

paid to providers, based on a cost estimation model, makes related updates, and removes outdated requirements.

8.15.2.21 NMAC SANCTIONS: ECECD proposes updates to the requirements related to sanctions and removes the provision that requires placement on a conditional eligibility status for clients who fail to update non-temporary changes in status.

NOTIFICACIÓN DE ELABORACIÓN DE REGLAMENTOS Y AUDIENCIA PÚBLICA SOBRE REGLAMENTOS

El Departamento de Niños, Jóvenes y Familias (CYFD) y el Departamento de Educación y Cuidado en la Primera Infancia (ECECD) de Nuevo México notifican por el presente, según lo establecido por la Sección 14-4-5.2 NMSA 1978 y 1.24.25.11 NMAC que se proponen adoptar enmiendas a las siguientes reglas relativas a SERVICIOS SOCIALES AYUDA PARA CUIDADO INFANTIL REQUISITOS PARA PROGRAMAS DE AYUDA PARA CUIDADO INFANTIL PARA CLIENTES Y PROVEEDORES DE CUIDADO INFANTIL, según lo autorizado por las Secciones 9-2A-1 a 9-2A-16, NMSA 1978 y 9-29-6, NMSA 1978:

8.15.2.6 NMAC OBJETIVO

8.15.2.7 NMAC DEFINICIONES

8.15.2.9 NMAC PRIORIDADES PARA CONCEDER AYUDA

8.15.2.10 NMAC PROCESO DE SOLICITUD

8.15.2.11 NMAC REQUISITOS DE ELEGIBILIDAD

8.15.2.12 NMAC RECERTIFICACIÓN

8.15.2.13 NMAC RESPONSABILIDADES DEL CLIENTE

8.15.2.14 NMAC SUSPENSIONES Y CIERRES DE CASOS

8.15.2.15 NMAC REQUISITOS DEL PROVEEDOR

8.15.2.17 NMAC PAGO DE SERVICIOS

8.15.2.21 NMAC SANCIONES

Para la redacción de las reglas propuestas no se consultó ninguna información técnico científica.

El propósito y resumen de las reglas propuestas: El propósito de la elaboración de reglamentos es promulgar enmiendas permanentes a la sección 8.15.2 del NMAC, que inicialmente fueron publicadas como enmiendas de emergencia con validez al 1 de julio de 2021 y el 1 de agosto de 2021, junto con los cambios necesarios adicionales. Debido a la emergencia para la salud planteada por el COVID-19 y a la orden ejecutiva y las declaraciones resultantes, junto con la subvención del Fondo para el Desarrollo y Cuidado Infantil (CCDF), hubo una necesidad de emergencia de enmendar el 8.15.2 del NMAC con el fin de proteger al público de un peligro inminente para la salud pública, la seguridad y el bienestar de los niños y familias de Nuevo México y garantizar la continuidad del financiamiento federal. En resumen, las reglas propuestas actualizarán los cambios de salud y seguridad necesarios para la prestación de servicios de cuidado infantil en Nuevo México, así como también realizarán los cambios requeridos por la subvención de CCDF. Se adjunta a la presente comunicación un resumen de las modificaciones propuestas.

Como parte del proceso de enmienda, ECECD llevará a cabo una audiencia pública de reglas para las enmiendas propuestas el 28 de octubre de 2021 de 1:00 a 4:00 p.m. La fecha límite para la presentación al Registro de Nuevo México es el 26 de agosto de 2021, con fecha de publicación el 14 de septiembre de 2021.

Puede encontrar copias de las propuestas leyes administrativas en el sitio web de ECECD en <https://www.newmexicokids.org/> a más tardar el 14 de septiembre de 2021.

Anuncio de audiencia pública sobre reglamentos: La audiencia pública sobre reglamentos se celebrará el jueves, 28 de octubre de 2021, de 1:00 p.m. a 4:00 p.m.

La audiencia se llevará a cabo en el Apodaca Hall del edificio Old PERA situado en 1120 Paseo de Peralta, Santa Fe, Nuevo México 87502 y a través de una plataforma web a distancia (Zoom), de correo electrónico y de medios telefónicos. La audiencia pública la conducirá de manera imparcial y equitativa un representante del ECECD o un funcionario de audiencias, y esta será grabada. Cualquier persona del público que tenga interés podrá asistir a la audiencia y se le dará una oportunidad razonable de dar sus comentarios públicamente, ya sea de manera oral o por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre las reglas propuestas. A los individuos con discapacidades que necesiten cualquier forma de apoyo auxiliar para poder asistir o participar en la audiencia pública, se les solicita que contacten al ECECD a través de ECECD-ECS-PublicComment@state.nm.us o llamando al teléfono (505) 231-5820. El ECECD hará todo lo posible por adaptarse a las solicitudes razonables, pero no puede garantizar que se adaptará a solicitudes que no se reciban cuando menos diez días calendario antes de la audiencia programada.

Anuncio de aceptación de comentarios públicos por escrito:

Los comentarios públicos por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre las reglas propuestas, de parte de cualquier interesado del público, pueden presentarse por correo electrónico a ECECD-ECS-PublicComment@state.nm.us con el asunto "8.15.2 NMAC Public Comment" o por correo postal de primera clase al apartado postal Drawer 5619, Santa Fe, New Mexico 87502-5619. Los comentarios por escrito se pueden entregar el jueves, 28 de octubre de 2021 de 1:00 p.m. a 4:00 p.m. en el edificio Old PERA, en 1120 Paseo De Peralta. El período para presentar comentarios termina al concluir la audiencia pública el 28 de octubre de 2021.

Cualquier persona del público que esté interesada puede asistir a la audiencia de manera presencial o a través de la plataforma web o por teléfono, y ofrecer sus comentarios públicos sobre las reglas propuestas. Para participar por teléfono: llame al 1-720-707-2699, usando el código de acceso 823 7497 1518. Usted podrá escuchar toda la audiencia y sus comentarios telefónicos quedarán grabados. Para participar por Internet: visite <https://zoom.us/j/82374971518> y siga las instrucciones indicadas en la pantalla – ID de la reunión (código de acceso): 823 7497 1518#. Esta será una transmisión en vivo de la audiencia. También puede hacer sus comentarios por medio del chat durante la transmisión en vivo.

RESUMEN DEL ECECD (EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT) DE MODIFICACIONES PROPUESTAS PARA EL NMAC 8.15.2

8.15.2.6 OBJETIVO DE NMAC: El ECECD propone modificaciones que incluyen un lenguaje de no discriminación y un objetivo relacionado con la Subvención federal para el desarrollo y el cuidado infantil (CCDBG, por sus siglas en inglés) y el Fondo para el desarrollo del cuidado infantil (CCDF, por sus siglas en inglés).

8.15.2.7 DEFINICIONES DE NMAC: El ECECD propone actualizaciones a las definiciones de varios términos ("Programa educativo y de capacitación laboral", "Cambio temporal de actividad" y "Familiar, amigo o vecino (FFN, por sus sigla en inglés)") e incluye nuevos términos propuestos ("Trabajador esencial" y "Rescisión").

8.15.2.9 PRIORIDADES DE NMAC PARA CONCEDER ASISTENCIA: El ECECD propone actualizaciones a las prioridades de cuidado infantil para los requisitos de asistencia que incluyen la provisión de una nueva categoría, "prioridad cuatro más", para una mayor elegibilidad.

8.15.2.10 NMAC PROCESO DE SOLICITUD: El ECECD propone actualizaciones a los requisitos del proceso de solicitud de asistencia para el cuidado infantil que incluyen una lista de documentos aceptables para la elegibilidad y asuntos relacionados.

8.15.2.11 REQUISITOS DE ELEGIBILIDAD DE NMAC: El ECECD propone actualizaciones a los requisitos de elegibilidad para la asistencia de cuidado infantil con el fin de aclarar el período de elegibilidad, los acuerdos de colocación y asuntos relacionados.

8.15.2.12 RECERTIFICACIÓN DE NMAC: El ECECD propone actualizaciones al proceso de recertificación para la asistencia de cuidado infantil con el fin de aumentar la elegibilidad según los ingresos y para los trabajadores esenciales.

8.15.2.13 RESPONSABILIDADES DEL CLIENTE DE NMAC: El ECECD propone actualizaciones de los requisitos relacionados con las responsabilidades del cliente para eliminar las restricciones impuestas al copago del cuidado infantil.

8.15.2.14 SUSPENSIONES Y CIERRES DE CASOS DE NMAC: El ECECD propone actualizaciones a los requisitos relacionados con las suspensiones y cierres de casos para aclarar que el período de elegibilidad para la asistencia de cuidado infantil dura 12 meses.

8.15.2.15 REQUISITOS DEL NMAC PARA PROVEEDORES: El ECECD propone actualizaciones a los requisitos para proveedores que eliminan la tarifa de inscripción/ educación de cinco dólares que se paga a los proveedores, aclara que los propietarios y los titulares de licencias no pueden recibir asistencia de cuidado infantil para sus propios hijos y exige políticas y procedimientos actualizados.

8.15.2.17 PAGO DE NMAC POR SERVICIOS: El ECECD propone actualizaciones de los requisitos

relacionados con el pago de servicios que aumentan las tarifas de subsidio de cuidado infantil pagadas a los proveedores, según un modelo de estimación de costos, realiza actualizaciones relacionadas y elimina requisitos obsoletos.

8.15.2.21 SANCIONES DE NMAC: El ECECD propone actualizaciones de los requisitos relacionados con sanciones y elimina la disposición que exige la colocación de un estado de elegibilidad condicional para clientes que no actualicen cambios de estado no temporales.

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Children, Youth and Families Department (CYFD) and the Early Childhood Education and Care Department (ECECD) hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding CHILD CARE LICENSING CHILD CARE CENTERS, OUT OF SCHOOL TIME PROGRAMS, FAMILY CHILD CARE HOMES, AND OTHER EARLY CARE AND EDUCATION PROGRAMS as authorized by Sections 9-2A-1 to 9-2A-16, NMSA 1978 and 9-29-6, NMSA 1978:

- 8.16.2.6 NMAC - OBJECTIVE
- 8.16.2.7 NMAC - DEFINITIONS
- 8.16.2.11 NMAC - LICENSING
- 8.16.2.12 NMAC - LICENSING ACTIONS AND ADMINISTRATIVE APPEALS
- 8.16.2.17 NMAC - SURVEYS FOR CHILD CARE FACILITIES
- 8.16.2.21 NMAC - LICENSURE REQUIREMENTS FOR CENTERS
- 8.16.2.22 NMAC - ADMINISTRATIVE REQUIREMENTS FOR CENTERS
- 8.16.2.23 NMAC -

PERSONNEL AND STAFFING REQUIREMENTS FOR CENTERS

- 8.16.2.24 NMAC - SERVICES AND CARE OF CHILDREN IN CENTERS
- 8.16.2.25 NMAC - FOOD SERVICE REQUIREMENTS FOR CENTERS
- 8.16.2.26 NMAC - HEALTH AND SAFETY REQUIREMENTS FOR CENTERS
- 8.16.2.27 NMAC - ILLNESS REQUIREMENTS FOR CENTERS
- 8.16.2.28 NMAC - TRANSPORTATION REQUIREMENTS FOR CENTERS
- 8.16.2.29 NMAC - BUILDING, GROUNDS AND SAFETY REQUIREMENTS FOR CENTERS
- 8.16.2.31 NMAC - LICENSURE REQUIREMENTS FOR HOMES
- 8.16.2.32 NMAC - ADMINISTRATIVE REQUIREMENTS FOR HOMES
- 8.16.2.33 NMAC - PERSONNEL AND STAFFING REQUIREMENTS FOR HOMES
- 8.16.2.34 NMAC - SERVICES AND CARE OF CHILDREN IN HOMES
- 8.16.2.35 NMAC - FOOD SERVICE REQUIREMENTS FOR HOMES
- 8.16.2.36 NMAC - HEALTH AND SAFETY REQUIREMENTS FOR HOMES
- 8.16.2.37 NMAC - TRANSPORTATION REQUIREMENTS FOR HOMES
- 8.16.2.38 NMAC - BUILDING, GROUND AND SAFETY REQUIREMENTS FOR HOMES
- 8.16.2.40 NMAC - LICENSURE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE
- 8.16.2.41 NMAC - ADMINISTRATIVE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE
- 8.16.2.42 NMAC - PERSONNEL AND STAFFING REQUIREMENTS FOR OUT OF SCHOOL TIME CARE
- 8.16.2.43 NMAC - SERVICES AND CARE OF CHILDREN IN OUT

OF SCHOOL TIME CARE
8.16.2.44 NMAC - FOOD SERVICE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE
8.16.2.45 NMAC - HEALTH AND SAFETY REQUIREMENTS FOR OUT OF SCHOOL TIME CARE
8.16.2.46 NMAC - TRANSPORTATION REQUIREMENTS FOR OUT OF SCHOOL TIME CARE
8.16.2.47 NMAC - BUILDING, GROUND AND SAFETY REQUIREMENTS FOR OUT OF SCHOOL TIME CARE

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

Purpose of proposed rules: The purpose of the rulemaking is to promulgate permanent amendments to 8.16.2 NMAC, which were initially published as emergency amendments effective July 1, 2021, along with additional necessary changes. Due to the COVID-19 health crisis and the resulting executive orders and declarations, along with the federal Child Care Development Fund (CCDF) grant, there was an emergency need for amendments to 8.16.2 NMAC in order to protect the public from an imminent peril to public health, safety and welfare of children and families in New Mexico and ensure continued federal funding. In summary, the proposed rules will update necessary health and safety changes for the provision of child care services in New Mexico as well as make changes required by the CCDF grant. A summary of the proposed amendments is attached to this notice.

As part of the amendment process, ECECD will hold a public rule hearing for the proposed amendments on October 14, 2021, from 1:00 to 4:00 p.m. The deadline for submittal to the New Mexico Register is on August 26, 2021, with a publication date of September 14, 2021.

Copies of the proposed amended rules may be found at ECECD’s website at <https://www.newmexicokids.org/> no later than September 14, 2021.

Notice of public rule hearing: The public rule hearing will be held on October 14, 2021, at 1:00 p.m. The hearing will be held in Apodaca Hall of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502 and via virtual web platform (Zoom), email, and telephonic means. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of acceptance of written public comment: Written public comment, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may be submitted via email to ECECD-ECS-PublicComment@state.nm.us with the subject line “8.16.2 NMAC Public Comment” or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Written comments may be delivered to the Old PERA building at 1120 Paseo De Peralta on October 14, 2021, from 1:00 pm to 4:00 pm. The comment period ends at the conclusion of the public hearing on October 14, 2021.

Any interested member of the public may attend the hearing in person, or via the virtual web platform or telephone, and offer public comments on the proposed rule during the hearing. To access the hearing by

telephone: place call 1-346-248-7799, access code 810 8092 8793. You will be able to hear the full hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to <https://nmececdorg.zoom.us/j/81080928793>, and follow the instructions indicated on the screen – Meeting ID (access code): 810 8092 8793#. This will be a live stream of the hearing. You may also provide comment via Chat during the live streaming.

THE EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT’S (ECECD) SUMMARY OF PROPOSED AMENDMENTS TO 8.16.2 NMAC

8.16.2.6 NMAC - OBJECTIVE: ECECD’s proposes amendments that include non-discrimination language.

8.16.2.7 NMAC - DEFINITIONS: ECECD proposes amendments to the definitions of various terms (“Aim High” and “Home”) and includes new proposed terms (“Cease and Desist,” “Media” and “Pacifier.”).

8.16.2.11 NMAC – LICENSING: ECECD proposes updates to the types of licenses that it issues, including a new “Military License” and other related updates.

8.16.2.12 NMAC - LICENSING ACTIONS AND ADMINISTRATIVE APPEALS: ECECD proposes updates to this section to include ECECD’s authority to issue a “Cease and Desist” letter and other related amendments.

8.16.2.17 NMAC - SURVEYS FOR CHILD CARE FACILITIES: ECECD proposes updates to the survey process for child care facilities, including provisions related to access and the use of video cameras.

8.16.2.21 NMAC - LICENSURE REQUIREMENTS FOR CENTERS: ECECD proposes updates to the licensure requirements for child care centers, including

provisions for unlicensed areas of centers, unattended children and the reporting of incidents.

8.16.2.22 NMAC - ADMINISTRATIVE REQUIREMENTS FOR CENTERS: ECECD proposes updates to the administrative requirements for child care centers, including the necessary elements for the various handbooks.

8.16.2.23 NMAC - PERSONNEL AND STAFFING REQUIREMENTS FOR CENTERS: ECECD proposes updates to the personnel and staffing requirements for child care centers, including requirements for the director's time on site, the maintenance of staff/child ratios, and training requirements.

8.16.2.24 NMAC - SERVICES AND CARE OF CHILDREN IN CENTERS: ECECD proposes updates to the requirements related to the services and care of children in centers that are necessary to ensure the protection of children's health and safety.

8.16.2.25 NMAC - FOOD SERVICE REQUIREMENTS FOR CENTERS: ECECD proposes updates to the food services requirements for child care centers that ensure the health and safety of children in care.

8.16.2.26 NMAC - HEALTH AND SAFETY REQUIREMENTS FOR CENTERS: ECECD proposes necessary updates to the health and safety requirements for child care centers, including sanitation procedures and first aid requirements.

8.16.2.27 NMAC - ILLNESS REQUIREMENTS FOR CENTERS: ECECD proposes updates to the illness requirements for child care centers to require all centers to perform daily health checks/screenings of children.

8.16.2.28 NMAC - TRANSPORTATION REQUIREMENTS FOR CENTERS: ECECD proposes updates to the transportation requirements for child care centers that are necessary to protect the health and safety of children in care.

8.16.2.29 NMAC - BUILDING, GROUNDS AND SAFETY REQUIREMENTS FOR CENTERS: ECECD proposes various updates to the building, grounds, and safety requirements for child care centers that are necessary to protect the health and safety of children in care.

8.16.2.31 NMAC - LICENSURE REQUIREMENTS FOR HOMES: ECECD proposes updates to the licensure requirements for homes, including requirements for outdoor play, reporting requirements, and other related provisions.

8.16.2.32 NMAC - ADMINISTRATIVE REQUIREMENTS FOR HOMES: ECECD proposes updates to the administrative requirements for homes, including the necessary elements for the various handbooks.

8.16.2.33 NMAC - PERSONNEL AND STAFFING REQUIREMENTS FOR HOMES: ECECD proposes updates to the personnel and staffing requirements for homes, including requirements for headcounts and training.

8.16.2.34 NMAC - SERVICES AND CARE OF CHILDREN IN HOMES: ECECD proposes updates to the requirements for services and care of children in homes that are necessary to protect the health and safety of children in care.

8.16.2.35 NMAC - FOOD SERVICE REQUIREMENTS FOR HOMES: ECECD proposes updates to the food service requirements in homes that are necessary to protect the health and safety of children in care.

8.16.2.36 NMAC - HEALTH AND SAFETY REQUIREMENTS FOR HOMES: ECECD proposes updates to the health and safety requirements for homes to include sanitation procedures.

8.16.2.37 NMAC - TRANSPORTATION REQUIREMENTS FOR HOMES: ECECD proposes updates to the transportation requirements for homes, including requirements for training, headcounts, and the maintenance of proper temperatures.

8.16.2.38 NMAC - BUILDING, GROUND AND SAFETY REQUIREMENTS FOR HOMES: ECECD proposes various updates to the building, grounds, and safety requirements for homes that are necessary to protect the health and safety of children in care.

8.16.2.40 NMAC - LICENSURE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE: ECECD proposes updates to the licensure requirements for out of school time care, including provisions to cover unlicensed areas and reporting requirements.

8.16.2.41 NMAC - ADMINISTRATIVE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE: ECECD proposes updates to the administrative requirements for out of school time, including the necessary elements for the various handbooks and requirements for the maintenance of certain personnel records.

8.16.2.42 NMAC - PERSONNEL AND STAFFING REQUIREMENTS FOR OUT OF SCHOOL TIME CARE: ECECD proposes updates to the personnel and staffing requirements for out of school time, including requirements related to headcounts and training.

8.16.2.43 NMAC - SERVICES AND CARE OF CHILDREN IN OUT OF SCHOOL TIME CARE: ECECD proposes updates to the requirements

related to the services and care of children in out of school time care that are necessary to protect the health and safety of children in care.

8.16.2.44 NMAC - FOOD SERVICE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

ECECD proposes updates to the food service requirements for out of school time care to include sanitation procedures.

8.16.2.45 NMAC - HEALTH AND SAFETY REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

ECECD proposes updates to the health and safety requirements for out of school time care that include sanitation procedures and training requirements.

8.16.2.46 NMAC - TRANSPORTATION REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

ECECD proposes updates to the transportation requirements for out of school time care, including requirements related to headcounts, training, and other health and safety issues.

8.16.2.47 NMAC - BUILDING, GROUND AND SAFETY REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

ECECD proposes updates to the building, ground, and safety requirements for out of school time care that are necessary to protect the health and safety of children in care.

NOTIFICACIÓN DE ELABORACIÓN DE REGLAMENTOS Y AUDIENCIA PÚBLICA SOBRE REGLAMENTOS

El Departamento de Niños, Jóvenes y Familias (CYFD) y el Departamento de Educación y Cuidado en la Primera Infancia (ECECD) de Nuevo México notifican por el presente, según lo establecido por la Sección 14-4-5.2 NMSA 1978 y 1.24.25.11 NMAC que se proponen adoptar enmiendas a las siguientes reglas relativas a LICENCIAS PARA

CUIDADO INFANTIL, CENTROS DE CUIDADO INFANTIL, PROGRAMAS DE TIEMPO FUERA DE LA ESCUELA, HOGARES FAMILIARES DE CUIDADO INFANTIL Y OTROS PROGRAMAS DE EDUCACIÓN Y CUIDADO DE LA PRIMERA INFANCIA, según lo autorizado por las Secciones 9-2A-1 a 9-2A-16, NMSA 1978 y 9-29-6, NMSA 1978:

- 8.16.2.6 NMAC OBJETIVO
- 8.16.2.7 NMAC - DEFINICIONES:
- 8.16.2.11 NMAC - CONCESIÓN DE LICENCIAS
- 8.16.2.12 NMAC - CONCESIÓN DE LICENCIAS Y APELACIONES ADMINISTRATIVAS
- 8.16.2.17 NMAC - ENCUESTAS PARA CENTROS DE CUIDADO INFANTIL
- 8.16.2.21 NMAC - REQUISITOS DE LICENCIAS PARA LOS CENTROS
- 8.16.2.22 NMAC - REQUISITOS ADMINISTRATIVOS PARA LOS CENTROS
- 8.16.2.23 NMAC - REQUISITOS SOBRE PERSONAL Y DOTACIÓN DE PERSONAL PARA LOS CENTROS
- 8.16.2.24 NMAC - SERVICIOS Y CUIDADO DE NIÑOS EN LOS CENTROS
- 8.16.2.25 NMAC - REQUISITOS SOBRE SERVICIO DE ALIMENTOS PARA LOS CENTROS
- 8.16.2.26 NMAC - REQUISITOS SOBRE SALUD Y SEGURIDAD PARA LOS CENTROS
- 8.16.2.27 NMAC - REQUISITOS SOBRE ENFERMEDADES PARA LOS CENTROS
- 8.16.2.28 NMAC - REQUISITOS SOBRE TRANSPORTE PARA LOS CENTROS
- 8.16.2.29 NMAC - REQUISITOS SOBRE EL EDIFICIO, EL TERRENO Y LA SEGURIDAD PARA LOS CENTROS
- 8.16.2.31 NMAC - REQUISITOS DE LICENCIAS PARA LOS HOGARES
- 8.16.2.32 NMAC - REQUISITOS ADMINISTRATIVOS PARA LOS HOGARES

8.16.2.33 NMAC - REQUISITOS SOBRE PERSONAL Y DOTACIÓN DE PERSONAL PARA LOS HOGARES

8.16.2.34 NMAC - SERVICIOS Y CUIDADO DE NIÑOS EN LOS HOGARES

8.16.2.35 NMAC - REQUISITOS SOBRE SERVICIO DE ALIMENTOS PARA LOS HOGARES

8.16.2.36 NMAC - REQUISITOS SOBRE SALUD Y SEGURIDAD PARA LOS HOGARES

8.16.2.37 NMAC - REQUISITOS SOBRE TRANSPORTE PARA LOS HOGARES

8.16.2.38 NMAC - REQUISITOS SOBRE EL EDIFICIO, EL TERRENO Y LA SEGURIDAD PARA LOS HOGARES

8.16.2.40 NMAC - REQUISITOS DE LICENCIAS PARA PROGRAMAS DE CUIDADO EN TIEMPO FUERA DE LA ESCUELA

8.16.2.41 NMAC - REQUISITOS ADMINISTRATIVOS PARA PROGRAMAS DE CUIDADO EN TIEMPO FUERA DE LA ESCUELA

8.16.2.42 NMAC - REQUISITOS SOBRE PERSONAL Y DOTACIÓN DE PERSONAL PARA PROGRAMAS DE CUIDADO EN TIEMPO FUERA DE LA ESCUELA

8.16.2.43 NMAC - SERVICIOS Y CUIDADO DE NIÑOS EN PROGRAMAS DE CUIDADO EN TIEMPO FUERA DE LA ESCUELA

8.16.2.44 NMAC - REQUISITOS DE SERVICIOS DE ALIMENTOS PARA PROGRAMAS DE CUIDADO EN TIEMPO FUERA DE LA ESCUELA

8.16.2.45 NMAC - REQUISITOS DE SERVICIOS DE SALUD Y SEGURIDAD PARA PROGRAMAS DE CUIDADO EN TIEMPO FUERA DE LA ESCUELA

8.16.2.46 NMAC - REQUISITOS SOBRE TRANSPORTE PARA PROGRAMAS DE CUIDADO EN TIEMPO FUERA DE LA ESCUELA

8.16.2.47 NMAC - REQUISITOS SOBRE EL EDIFICIO, EL TERRENO Y LA SEGURIDAD PARA PROGRAMAS DE CUIDADO EN TIEMPO FUERA DE LA ESCUELA

Para la redacción de las reglas propuestas no se consultó ninguna información técnico científica.

El propósito y resumen de las reglas propuestas: El propósito de la elaboración de reglamentos es promulgar enmiendas permanentes a la sección 8.16.2 del NMAC, que inicialmente fueron publicadas como enmiendas de emergencia con validez al 1 de julio de 2021, junto con los cambios necesarios adicionales. Debido a la crisis para la salud planteada por el COVID-19 y a las órdenes ejecutivas y las declaraciones resultantes, junto con la subvención del Fondo para el Desarrollo y Cuidado Infantil (CCDF), hubo una necesidad de emergencia de enmendar el 8.16.2 del NMAC con el fin de proteger al público de un peligro inminente para la salud pública, la seguridad y el bienestar de los niños y familias de Nuevo México y garantizar la continuidad del financiamiento federal. En resumen, las reglas propuestas actualizarán los cambios de salud y seguridad necesarios para la prestación de servicios de cuidado infantil en Nuevo México, así como también realizarán los cambios requeridos por la subvención de CCDF. Se adjunta a la presente comunicación un resumen de las modificaciones propuestas.

Como parte del proceso de enmienda, ECECD llevará a cabo una audiencia pública de reglas para las enmiendas propuestas el 14 de octubre de 2021 de 1:00 a 4:00 p.m. La fecha límite para la presentación al Registro de Nuevo México es el 26 de agosto de 2021, con fecha de publicación el 14 de septiembre de 2021. Puede encontrar copias de las propuestas leyes administrativas en el sitio web de ECECD en <https://www.newmexicokids.org/> a más tardar el 14 de septiembre de 2021.

Anuncio de audiencia pública sobre reglamentos:

La audiencia pública se celebrará el 14 de octubre de 2021 a la 1:00 p.m. La audiencia se llevará a cabo en el Apodaca Hall del edificio Old PERA situado en 1120 Paseo de Peralta, Santa Fe, Nuevo México 87502 y a través de una plataforma web a distancia (Zoom), de correo electrónico y de medios telefónicos. La audiencia pública la conducirá de manera imparcial y equitativa un representante del ECECD o un funcionario de audiencias, y esta será grabada. Cualquier persona del público que tenga interés, podrá asistir a la audiencia y se le dará una oportunidad razonable de dar sus comentarios públicamente, ya sea de manera oral o por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre las reglas propuestas. A los individuos con discapacidades que necesiten cualquier forma de apoyo auxiliar para poder asistir o participar en la audiencia pública, se les solicita que contacten al ECECD a través de ECECD-ECS-PublicComment@state.nm.us o llamando al teléfono (505) 231-5820. El ECECD hará su mejor esfuerzo por adaptarse a las solicitudes razonables, pero no puede garantizar que se adaptará a solicitudes que no se reciban cuando menos diez días calendario antes de la audiencia programada.

Anuncio de aceptación de comentarios públicos por escrito:

Los comentarios públicos por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre las reglas propuestas, de parte de cualquier interesado del público, pueden presentarse por correo electrónico a ECECD-ECS-PublicComment@state.nm.us con el asunto "8.16.2 NMAC Public Comment" o por correo postal de primera clase al apartado postal Drawer 5619, Santa Fe, New México 87502 – 5619. Los comentarios por escrito se pueden entregar el 14 de octubre de 2021 de 1:00 p.m. a 4:00 p.m. en el edificio Old PERA en 1120 Paseo De Peralta. El período para presentar comentarios termina al

concluir la audiencia pública el 14 de octubre de 2021.

Cualquier persona del público que esté interesada puede asistir a la audiencia de manera presencial o a través de la plataforma web o por teléfono, y ofrecer sus comentarios públicos sobre la regla propuesta. Para participar por teléfono: llame al 1-346-248-7799, usando el código de acceso 810 8092 8793. Usted podrá escuchar toda la audiencia y sus comentarios telefónicos quedarán grabados. Para participar por Internet: visite <https://nmececdorg.zoom.us/j/81080928793> y siga las instrucciones indicadas en la pantalla – ID de la reunión (código de acceso): 810 8092 8793#. Esta será una transmisión en vivo de la audiencia. También puede hacer sus comentarios por medio del chat durante la transmisión en vivo.

RESUMEN DEL ECECD (EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT) DE MODIFICACIONES PROPUESTAS PARA EL NMAC 8.16.2

8.16.2.6 NMAC - OBJETIVO: El ECECD propone modificaciones que incluyen un lenguaje de no discriminación.

8.16.2.7 NMAC - DEFINICIONES: El ECECD propone modificaciones en las definiciones de varios términos ("Apuntar alto" y "Hogar") e incluye nuevos términos propuestos ("Cesar y desistir", "Medios de comunicación" y "Chupón").

8.16.2.11 NMAC – LICENCIA: El ECECD propone actualizaciones para los tipos de licencias que emite, incluida una nueva "Licencia militar" y otras actualizaciones relacionadas.

8.16.2.12 NMAC - ACCIONES DE LICENCIA Y APELACIONES ADMINISTRATIVAS: El ECECD propone actualizaciones de esta sección para incluir la autoridad del ECECD para emitir una carta

de “Cesar y desistir” y otras modificaciones relacionadas.

8.16.2.17 NMAC - ENCUESTAS PARA INSTALACIONES DE CUIDADO INFANTIL: El ECECD propone actualizaciones del proceso de encuesta para las instalaciones de cuidado infantil, incluidas disposiciones relacionadas con el acceso y el uso de cámaras de video.

8.16.2.21 NMAC - REQUISITOS DE LICENCIA PARA CENTROS: El ECECD propone actualizaciones de los requisitos de licencia para los centros de cuidado infantil, incluidas disposiciones para áreas de centros sin licencia, niños desatendidos y notificaciones de incidentes.

8.16.2.22 NMAC - REQUISITOS ADMINISTRATIVOS PARA CENTROS: El ECECD propone actualizaciones de los requisitos administrativos para los centros de cuidado infantil, incluidos los elementos necesarios para los diversos manuales.

8.16.2.23 NMAC - PERSONAL Y REQUISITOS DE DOTACIÓN DE LOS CENTROS: El ECECD propone actualizaciones para el personal y los requisitos de dotación de personal para los centros de cuidado infantil, incluidos requisitos de tiempo del director en el sitio, mantenimiento de la proporción de personal respecto de niños y requisitos de capacitación.

8.16.2.24 NMAC - SERVICIOS Y CUIDADO DE NIÑOS EN CENTROS: El ECECD propone actualizaciones de los requisitos relacionados con los servicios y el cuidado de los niños en los centros que son necesarios para garantizar la protección de la salud y la seguridad de los niños.

8.16.2.25 NMAC - REQUISITOS DE SERVICIO DE ALIMENTOS PARA CENTROS: El ECECD propone actualizaciones de los requisitos de servicios de alimentos para centros de cuidado infantil que

aseguran la salud y la seguridad de los niños cuidados.

8.16.2.26 NMAC - REQUISITOS DE SALUD Y SEGURIDAD PARA LOS CENTROS: El ECECD propone las actualizaciones necesarias de los requisitos de salud y seguridad para los centros de cuidado infantil, incluidos procedimientos de saneamiento y requisitos de primeros auxilios.

8.16.2.27 NMAC - REQUISITOS PARA CENTROS EN RELACIÓN CON ENFERMEDADES: El ECECD propone actualizaciones de los requisitos relativos a enfermedades para exigir que todos los centros de cuidado infantil hagan controles/exámenes médicos diarios de los niños.

8.16.2.28 NMAC - REQUISITOS DE TRANSPORTE PARA CENTROS: El ECECD propone actualizaciones de los requisitos de transporte para los centros de cuidado infantil que son necesarias para proteger la salud y seguridad de los niños cuidados.

8.16.2.29 NMAC - REQUISITOS DE CONSTRUCCIÓN, TERRENO Y SEGURIDAD DE LOS CENTROS: El ECECD propone varias actualizaciones de los edificios y terrenos y los requisitos de seguridad para los centros de cuidado infantil que son necesarios para proteger la salud y la seguridad de los niños cuidados.

8.16.2.31 NMAC - REQUISITOS DE LICENCIA PARA HOGARES: El ECECD propone actualizaciones de los requisitos de licencia para los hogares, incluidos requisitos relacionados con juegos al aire libre, requisitos de informes y otras disposiciones relacionadas.

8.16.2.32 NMAC - REQUISITOS ADMINISTRATIVOS PARA HOGARES: El ECECD propone actualizaciones de los requisitos administrativos para los hogares, incluidos los elementos necesarios para los diversos manuales.

8.16.2.33 NMAC - PERSONAL Y REQUISITOS DE PERSONAL PARA HOGARES: El ECECD propone actualizaciones para el personal y los requisitos de dotación de personal para los hogares que incluyen requisitos de cantidad de personal y capacitación.

8.16.2.34 NMAC - SERVICIOS Y CUIDADO DE NIÑOS EN HOGARES: El ECECD propone actualizaciones de los requisitos de servicios y cuidado de niños en hogares que son necesarios para proteger la salud y la seguridad de los niños cuidados.

8.16.2.35 NMAC - REQUISITOS DE SERVICIO DE ALIMENTOS PARA HOGARES: El ECECD propone actualizaciones de los requisitos del servicio de alimentos en los hogares que son necesarias para proteger la salud y la seguridad de los niños cuidados.

8.16.2.36 NMAC - REQUISITOS DE SALUD Y SEGURIDAD PARA LOS HOGARES: El ECECD propone actualizaciones de los requisitos de salud y seguridad para los hogares para incluir procedimientos de saneamiento.

8.16.2.37 NMAC - REQUISITOS DE TRANSPORTE PARA HOGARES: El ECECD propone actualizaciones de los requisitos de transporte para los hogares que incluyen requisitos de capacitación, cantidad de personal y mantenimiento de temperaturas adecuadas.

8.16.2.38 NMAC - REQUISITOS RELATIVOS A EDIFICIOS, TERRENOS Y SEGURIDAD DE LOS HOGARES: El ECECD propone diferentes actualizaciones en edificios y terrenos, y requisitos de seguridad para los hogares que son necesarios para proteger la salud y la seguridad de los niños cuidados.

8.16.2.40 NMAC - REQUISITOS DE LICENCIA PARA EL CUIDADO FUERA DEL HORARIO ESCOLAR: El ECECD

propone actualizaciones de los requisitos de licencia para el cuidado fuera del horario escolar, incluidas disposiciones para cubrir áreas sin licencia y requisitos de informes.

8.16.2.41 NMAC - REQUISITOS ADMINISTRATIVOS PARA EL CUIDADO DE TIEMPO FUERA DEL HORARIO ESCOLAR: El ECECD propone actualizaciones de los requisitos administrativos fuera del horario escolar, incluidos elementos necesarios para los diversos manuales y requisitos para el mantenimiento de ciertos registros de personal.

8.16.2.42 NMAC - PERSONAL Y REQUISITOS DE PERSONAL PARA EL CUIDADO FUERA DEL HORARIO ESCOLAR: El ECECD propone actualizaciones para el personal y los requisitos de personal fuera del horario escolar que incluyen requisitos relacionados con la cantidad de personal y la capacitación.

8.16.2.43 NMAC - SERVICIOS Y CUIDADO DE NIÑOS FUERA DEL HORARIO ESCOLAR: El ECECD propone actualizaciones de los requisitos relacionados con los servicios y el cuidado de los niños fuera del horario escolar que son necesarios para proteger la salud y la seguridad de los niños cuidados.

8.16.2.44 NMAC - REQUISITOS DE SERVICIO DE ALIMENTOS PARA EL CUIDADO FUERA DEL HORARIO ESCOLAR: El ECECD propone actualizaciones de los requisitos del servicio de alimentos para el cuidado fuera del horario escolar para incluir procedimientos de saneamiento.

8.16.2.45 NMAC - REQUISITOS DE SALUD Y SEGURIDAD PARA EL CUIDADO FUERA DEL HORARIO ESCOLAR: El ECECD propone actualizaciones de los requisitos de salud y seguridad para el cuidado fuera del horario escolar que incluyen procedimientos

de saneamiento y requisitos de capacitación.

8.16.2.46 NMAC - REQUISITOS DE TRANSPORTE PARA EL CUIDADO FUERA DEL HORARIO ESCOLAR: El ECECD propone actualizaciones de los requisitos de transporte para el cuidado fuera del horario escolar, incluidos requisitos relacionados con la cantidad de personal, la capacitación y otros temas de salud y seguridad.

8.16.2.47 NMAC - REQUISITOS RELATIVOS A EDIFICIOS, TERRENOS Y SEGURIDAD PARA EL CUIDADO FUERA DEL HORARIO ESCOLAR: El ECECD propone actualizaciones de los requisitos relativos a edificios, terrenos y seguridad para el cuidado fuera del horario escolar que son necesarias para proteger la salud y la seguridad de los niños cuidados.

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Children, Youth and Families Department (CYFD) and the Early Childhood Education and Care Department (ECECD) hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding SOCIAL SERVICES NON-LICENSED CHILD CARE – REQUIREMENTS GOVERNING REGISTRATION OF NON-LICENSED FAMILY CHILD CARE HOMES as authorized by Sections 9-2A-1 to 9-2A16, NMSA 1978 and 9-29-6, NMSA 1978, Section 9-2A-7 NMSA 1978:

- 8.17.2.6 NMAC - OBJECTIVE**
- 8.17.2.7 NMAC - DEFINITIONS**
- 8.17.2.8 NMAC - APPLICATION**
- 8.17.2.10 NMAC - CAREGIVER**

REQUIREMENTS

- 8.17.2.11 NMAC - BACKGROUND CHECKS**
- 8.17.2.12 NMAC - ANNUAL REGISTRATION**
- 8.17.2.13 NMAC - VISITS BY THE SPONSORING AGENCY AND REGISTERED AUTHORITY**
- 8.17.2.14 NMAC - NON-TRANSFERABILITY OF REGISTRATION**
- 8.17.2.15 NMAC - INCIDENT REPORTS**
- 8.17.2.17 NMAC - NON-COMPLIANCE**
- 8.17.2.20 NMAC - PROBABLE CAUSE OF IMMINENT DANGER**
- 8.17.2.22 NMAC - HEALTH AND SAFETY REQUIREMENTS**
- 8.17.2.23 NMAC - MEAL REQUIREMENTS**
- 8.17.2.24 NMAC - RECORD KEEPING REQUIREMENTS**
- 8.17.2.25 NMAC - CAREGIVER'S RESPONSIBILITIES**

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

Purpose and summary of proposed rules:

The purpose of the rulemaking is to promulgate permanent amendments to 8.17.2 NMAC, which were initially published as emergency amendments effective July 1, 2021, along with additional necessary changes. Due to the COVID-19 health crisis and the resulting executive orders and declarations, along with the federal Child Care Development Fund (CCDF) grant, there was an emergency need for amendments to 8.17.2 NMAC in order to protect the public from an imminent peril to public health, safety and welfare of children and families in New Mexico and ensure continued federal funding. In summary, the proposed rules will update necessary health and safety changes for the provision of child care services in New Mexico as well as make changes required by the CCDF grant. A summary of the proposed amendments is attached to this notice.

As part of the amendment process, ECECD will hold a public rule

hearing for the proposed amendments on October 21, 2021 from 1:00 to 4:00 p.m. The deadline for submittal to the New Mexico Register is on August 26, 2021, with a publication date of September 14, 2021. Copies of the proposed amended rules may be found at ECECD’s website at <https://www.newmexicokids.org/> no later than September 14, 2021.

Notice of public rule hearing: The public rule hearing will be held on October 21, 2021, at 1:00 p.m. The hearing will be held in Apodaca Hall of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502 and via virtual web platform (Zoom), email, and telephonic means. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of acceptance of written public comment: Written public comment, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may be submitted via email to ECECD-ECS-PublicComment@state.nm.us with the subject line “8.17.2 NMAC Public Comment” or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Written comments may be delivered to the Old PERA building at 1120 Paseo

De Peralta on October 21, 2021 from 1:00 pm to 4:00 pm. The comment period ends at the conclusion of the public hearing on October 21, 2021.

Any interested member of the public may attend the hearing in person, or via the virtual web platform or telephone, and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: place call 1-346-248-7799, access code 824 7328 6769#. You will be able to hear the full hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to <https://nmececdorg.zoom.us/j/82473286769>, and follow the instructions indicated on the screen – Meeting ID (access code): 824 7328 6769. This will be a live stream of the hearing. You may also provide comment via Chat during the live streaming.

THE EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT’S (ECECD) SUMMARY OF PROPOSED AMENDMENTS TO 8.17.2 NMAC

8.17.2.6 NMAC – OBJECTIVE: ECECD proposes amendments that include non-discrimination language.

8.17.2.7 NMAC - DEFINITIONS: ECECD proposes updates to the definitions of various terms (“Family, Friend, or Neighbor (FFN)” and “home”) and includes new proposed terms (“attended”, “care”, “cease and desist”, “clean conditions of operation”, “corrective action plan”, “disinfect”, “exploitation”, “in-homecare”, “media”, “pacifier”, “premises”, “significant amount of time”, “toddler”).

8.17.2.8 NMAC – APPLICATION: ECECD proposes administrative updates to the application requirements for registered homes.

8.17.2.10 NMAC - CAREGIVER REQUIREMENTS: ECECD proposes updates to the caregiver

requirements for registered homes, including provisions related to background checks and training.

8.17.2.11 NMAC - BACKGROUND CHECKS: ECECD proposes updates to the background check requirements for registered homes, including provisions related to family members and visitors.

8.17.2.12 NMAC - ANNUAL REGISTRATION: ECECD proposes updates to the annual registration requirements related to in-home care and individuals required to be listed on the registration.

8.17.2.13 NMAC - VISITS BY THE SPONSORING AGENCY AND REGISTERED AUTHORITY: ECECD proposes updates to the requirements related to visits by the sponsoring agency and registered authority and includes provisions for visits and annual surveys of registered homes.

8.17.2.14 NMAC - NON-TRANSFERABILITY OF REGISTRATION: ECECD proposes updates to the requirements related to the non-transferability of registration and includes a provision that a caregiver with only a change in name will not need to pay a fee or processing charge.

8.17.2.15 NMAC - INCIDENT REPORTS: ECECD proposes updates to the requirements related to incident reports and includes provisions for unattended children and the notification of parents or guardians.

8.17.2.17 NMAC - NON-COMPLIANCE: ECECD proposes updates to the requirements related to non-compliance that include the issuance of a “cease and desist letter” and other related provisions.

8.17.2.20 NMAC - PROBABLE CAUSE OF IMMINENT DANGER: ECECD proposes updates to the requirements related to probable cause of imminent danger

and includes changes to the manner in which parents or guardians of children in care are notified of hearings.

8.17.2.22 NMAC - HEALTH AND SAFETY REQUIREMENTS:

ECECD proposes updates to the health and safety requirements for homes that are necessary to protect the health, safety, and welfare of children in care and include provisions related to home maintenance, outdoor play, transportation, and other issues.

8.17.2.23 NMAC - MEAL REQUIREMENTS:

ECECD proposes updates to the meal requirements for homes that are necessary for sanitation and to protect the health and safety of children in care.

8.17.2.24 NMAC - RECORD KEEPING REQUIREMENTS:

ECECD proposes updates to the record keeping requirements that include for the provision of an attendance log for children in care.

8.17.2.25 NMAC - CAREGIVER'S RESPONSIBILITIES:

ECECD proposes updates to the caregiver's responsibilities requirements that are necessary to protect the health, safety, and welfare of children in care.

AVISO DE PROMULGACION DE LEYES ADMINISTRATIVAS Y AUDIENCIA PÚBLICA

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

FAMILIARES SIN LICENCIA según lo autorizado por la sección 9-2A-1 a 9-2A-16, NMSA 1978, 9-29-6, NMSA, y 9-2A-7 del NMSA 1978:

- 8.17.2.6 NMAC - OBJETIVO
- 8.17.2.7 NMAC - DEFINICIONES
- 8.17.2.8 NMAC - SOLICITUD
- 8.17.2.10 NMAC - REQUISITOS DEL CUIDADOR
- 8.17.2.11 NMAC - VERIFICACIONES DE ANTECEDENTES
- 8.17.2.12 NMAC - REGISTRO ANUAL
- 8.17.2.13 NMAC - VISITAS DE LA AGENCIA PATROCINADORA Y AUTORIDAD REGISTRADA
- 8.17.2.14 NMAC - NO TRANSFERIBILIDAD DEL REGISTRO
- 8.17.2.15 NMAC - INFORMES DE INCIDENTES
- 8.17.2.17 NMAC - INCUMPLIMIENTO
- 8.17.2.20 NMAC - CAUSA PROBABLE DE PELIGRO INMINENTE
- 8.17.2.22 NMAC - REQUISITOS DE SALUD Y SEGURIDAD
- 8.17.2.23 NMAC - REQUISITOS DE COMIDA
- 8.17.2.24 NMAC - REQUISITOS DE MANTENIMIENTO DE REGISTROS
- 8.17.2.25 NMAC - RESPONSABILIDADES DEL CUIDADOR

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

Propósito y resumen de las leyes administrativas propuestas: El propósito de las leyes administrativas es promulgar permanentemente enmiendas a la sección 8.17.2 del NMAC, que se publicaron inicialmente como enmiendas de emergencia a partir del 1 de Julio de 2021, junto con los cambios adicionales necesarios. Debido a la crisis de salud del COVID-19 y las órdenes ejecutivas y declaraciones resultantes, junto con la subvención federal Child Care Development

Fund (CCDF), hubo una necesidad de emergencia de realizar enmiendas a la 8.17.2 del NMAC para proteger al público de un peligro inminente para la salud pública, la seguridad y el bienestar de los niños y las familias de Nuevo México y garantizar la financiación federal continua. En resumen, las reglas propuestas actualizarán los cambios de salud y seguridad necesarios para la prestación de servicios de cuidado infantil en Nuevo México, así como también realizarán los cambios requeridos por la subvención de CCDF.

Se adjunta a la presente Comunicación un resumen de las modificaciones propuestas.

Como parte del proceso de enmienda, ECECD llevará a cabo una audiencia pública de reglas para las enmiendas propuestas el 21 de octubre de 2021 de 1:00 a 4:00 p.m. La fecha límite para la presentación al Registro de Nuevo México es el 26 de agosto de 2021, con fecha de publicación el 14 de septiembre de 2021.

Puede encontrar copias de las propuestas leyes administrativas en el sitio web de ECECD en <https://www.newmexicokids.org/> a más tardar el 14 de septiembre de 2021.

Aviso de Audiencia Pública de leyes administrativas: La audiencia pública de leyes administrativas tendrá lugar el 21 de octubre de 2021 a la 1:00 p.m. en 1120 Paseo de Peralta, Santa Fe, Nuevo Mexico 87502 en la sala Apodoca Hall y a través de plataforma virtual (Zoom). La audiencia pública se llevará a cabo de manera justa y equitativa por un representante de la agencia de ECECD o el funcionario de audiencias y será grabada. Cualquier miembro del público interesado puede asistir a la audiencia y se le brindará una oportunidad razonable para ofrecer comentarios al público, oralmente o por escrito, incluso una presentación de datos, puntos de vistas o argumentos, sobre las propuestas. Las personas con discapacidades que necesiten cualquier forma de ayuda auxiliar

para asistir o participar en la audiencia pública deben comunicarse con el ECECD en ECECD-ECS-PublicComment@state.nm.us o llamar al (505) 231-5820. El ECECD hará todos los esfuerzos posibles para acomodar todas solicitudes razonables, pero no puede garantizar acomodar solicitudes que no sean recibidas por lo menos diez días antes de la fecha programada para la audiencia.

Aviso de aceptación de comentarios públicos por escrito: Los comentarios públicos por escrito, incluso las presentaciones de datos, puntos de vista o argumentos de cualquier miembro del público interesado, sobre las propuestas leyes administrativas, pueden ser enviados a través de correo electrónico a ECECD-ECS-PublicComment@state.nm.us, especificando en la línea de Asunto: “8.17.2 NMAC Public Comment,” o por correo de primera clase a P.O. Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Los comentarios escritos se pueden entregar en el edificio Old PERA en 1120 Paseo De Peralta el 21 de octubre de 2021 de 1:00 p.m. a 4:00 p.m. El período de comentarios termina a la conclusión de la audiencia pública el 21 de octubre de 2021.

Cualquier miembro del público interesado puede asistir a la audiencia a través de plataforma virtual o por teléfono y ofrecer comentarios públicos sobre las leyes administrativas propuestas durante la audiencia. Para acceder a la audiencia por teléfono llame al 1-346-248-7799, código de acceso 824 7328 6769#. Podrá escuchar la audiencia completa y se grabarán sus comentarios telefónicos. Para acceder a la audiencia a través de Internet vaya a <https://nmececd.org.zoom.us/j/82473286769> y siga las instrucciones que se indican en la pantalla (ID de la reunión - código de acceso: 824 7328 6769 #). Esta será una transmisión en directo de la audiencia. También puede proporcionar comentarios a través del

chat durante la transmisión en directo.

RESUMEN DEL ECECD (EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT) DE MODIFICACIONES PROPUESTAS PARA EL NMAC 8.17.2

8.17.2.6 NMAC – OBJETIVO: El ECECD propone modificaciones que incluyen un lenguaje de no discriminación.

8.17.2.7 NMAC - DEFINICIONES: El ECECD propone actualizaciones a las definiciones de varios términos (“Familiar, amigo o vecino (FFN por sus siglas en inglés)” y “hogar”) e incluye nuevos términos propuestos (“atendido”, “cuidado”, “cesar y desistir”, “condiciones limpias de funcionamiento”, “plan de medidas correctivas”, “desinfectar”, “explotación”, “cuidado en el hogar”, “medios de comunicación”, “chupón”, “instalaciones”, “cantidad significativa de tiempo” y “niño pequeño”).

8.17.2.8 NMAC – SOLICITUD: El ECECD propone actualizaciones administrativas en los requisitos de solicitud para hogares registrados.

8.17.2.10 NMAC - REQUISITOS DEL CUIDADOR: El ECECD propone actualizaciones de los requisitos de los cuidadores para los hogares registrados, incluidas disposiciones relacionadas con la verificación de antecedentes y la capacitación.

8.17.2.11 NMAC - VERIFICACIONES DE ANTECEDENTES: El ECECD propone actualizaciones de los requisitos de verificación de antecedentes para los hogares registrados, incluidas disposiciones relacionadas con familiares y visitantes.

8.17.2.12 NMAC - INSCRIPCIÓN ANUAL: El ECECD propone actualizaciones de los requisitos de

registro anual relacionados con la atención domiciliar y las personas que deben figurar en el registro.

8.17.2.13 NMAC - VISITAS DE LA AGENCIA PATROCINADORA Y AUTORIDAD REGISTRADA: El ECECD propone actualizaciones de los requisitos relacionados con las visitas de la agencia patrocinadora y la autoridad registrada e incluye disposiciones para visitas y encuestas anuales de hogares registrados.

8.17.2.14 NMAC - NO TRANSFERIBILIDAD DEL REGISTRO: El ECECD propone actualizaciones de los requisitos relacionados con la no transferibilidad del registro e incluye una disposición de que un cuidador con solo un cambio de nombre no tendrá que pagar una tarifa o cargo de procesamiento.

8.17.2.15 NMAC - INFORMES DE INCIDENTES: El ECECD propone actualizaciones de los requisitos relacionados con los informes de incidentes e incluye disposiciones para los niños desatendidos y la notificación a los padres o tutores.

8.17.2.17 NMAC - INCUMPLIMIENTO: El ECECD propone actualizaciones de los requisitos relacionados con el incumplimiento que incluyen la emisión de una “carta de cese y desistimiento” y otras disposiciones relacionadas.

8.17.2.20 NMAC - CAUSA PROBABLE DE PELIGRO INMINENTE: El ECECD propone actualizaciones de los requisitos relacionados con la causa probable de peligro inminente e incluye cambios en la manera en que los padres o tutores de los niños cuidados son notificados respecto de las audiencias.

8.17.2.22 NMAC - REQUISITOS DE SEGURIDAD Y SALUD: El ECECD propone actualizaciones de los requisitos de salud y seguridad para los hogares que son necesarias para proteger la salud, la seguridad y

el bienestar de los niños cuidados e incluyen disposiciones relacionadas con el mantenimiento del hogar, juegos al aire libre, transporte y otros asuntos.

8.17.2.23 NMAC - REQUISITOS RELATIVOS A LAS COMIDAS:

El ECECD propone actualizaciones de los requisitos relativos a las comidas en los hogares que son necesarias para el saneamiento y para proteger la salud y la seguridad de los niños cuidados.

8.17.2.24 NMAC - REQUISITOS DE MANTENIMIENTO DE REGISTROS:

El ECECD propone actualizaciones de los requisitos de mantenimiento de registros que incluyen la provisión de un registro de asistencia de los niños cuidados.

8.17.2.25 NMAC -

RESPONSABILIDADES DEL CUIDADOR:

El ECECD propone actualizaciones de los requisitos de responsabilidades del cuidador que son necesarias para proteger la salud, la seguridad y el bienestar de los niños cuidados.

GAME AND FISH DEPARTMENT

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission (“Commission”) will be hosting a hybrid virtual meeting and rule hearing on Friday, October 22, 2021 beginning at 9:00 a.m. For instructions on how to attend this meeting either in person or virtually, visit the Department’s website at <http://www.wildlife.state.nm.us/commission/webcast/>. The purpose of this meeting is to hear and consider action as appropriate on the following: proposed changes for the Fisheries Rule, proposed changes to the Hunting and Fishing Manner and Method of Taking Rule, and proposed changes to the Commercial Use of

Fish Rule.

Synopsis for the Fisheries Rule, Hunting and Fishing Manner and Method of Taking Rule, and Commercial Use of Fish Rule:

The proposal is to adopt a new Fisheries Rule, 19.31.4 NMAC, which will include changes from the existing rule and will become effective April 1, 2022. There are also fisheries related amendments proposed to the Hunting and Fishing Manner and Method of Taking Rule, 19.31.10 NMAC, and an amendment proposed to the Commercial Use of Fish Rule, 19.31.9 NMAC.

Proposed amendments to the Fisheries Rule will clarify kokanee snagging season dates, remove Abiquiu Lake from the list of waters with a kokanee snagging season, add a definition of daily bag limit, remove a definition of trout water, remove fishing hour restrictions for specific waters, clarify age and individual with disabilities restrictions for some waters, increase the cutthroat trout possession limit, add Trees Lake and Harris Pond to the list of Summer Catfish Waters with reduced daily limits for channel catfish, remove smallmouth bass length limit in the upper Rio Grande, remove the statewide walleye length limit, open McKenna Creek and Pinelodge Creek to angling, increase the daily bag limit for trout in the Rio Grande below Elephant Butte, Red River City Ponds, Red River Hatchery Pond, and Goose Lake, open Rock Lake settling ponds to fishing by children ages 11 and under, and increase the daily bag limit for cutthroat trout at Seven Springs Kids Pond from 2 to 5 fish per day.

Proposed amendments to the Hunting and Fishing Manner and Method of Taking Rule include adding a definition of drainage, adding shad as an approved bait species in the Pecos drainage, and adding a list of waters approved for trotline use.

Proposed amendments to the Commercial Use of Fish Rule include

removing the reference to trout water.

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

Interested persons may submit comments on the proposed changes to the Fisheries Rule at: DGF-FisheriesRule@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 5:00 p.m. on October 20, 2021. The final proposed rules will be voted on by the Commission during a hybrid virtual public meeting on October 22, 2021. Interested persons may also provide data, views or arguments, orally or in writing, at the hybrid virtual public rule hearing to be held October 22, 2021.

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

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

Legal authority for this rulemaking

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

GAME AND FISH DEPARTMENT

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission (“Commission”) will be hosting a virtual and in-person meeting and rule hearing on Thursday October 22, 2021 beginning at 9:00 a.m. at the New Mexico Farm and Ranch Heritage Museum, 4100 Dripping Springs Rd., Las Cruces, NM. Please check the Department’s website at: www.wildlife.state.nm.us for potential venue changes due to the COVID-19 pandemic. The purpose of this meeting is to hear and consider action as appropriate on the following: presentation of proposed changes to 1) the Upland Game rule; and 2) the Furbearers rule.

Synopsis:

1) The proposal is to amend the Upland Game rule, 19.31.5 NMAC, which will become effective April 1, 2022. The current Upland Game rule will expire on March 31, 2022. The proposed new rule includes expanding boundaries of the Bernardo youth pheasant hunt to include adjacent WMAs in the middle Rio Grande Valley, adjusting dusky grouse and squirrel seasons to close December 31, adjusting hunt dates based on calendar dates, and removing language duplicated in 19.31.10 NMAC Hunting and Fishing- Manner and Method and 19.31.3 NMAC Hunting and Fishing Licenses and Application.

2) The proposal is to amend the Furbearers rule, 19.32.2 NMAC, which will become effective April 1, 2022. The current Furbearer rule will expire on March 31, 2024. Senate Bill 32, the **Wildlife Conservation**

and Public Safety Act (17-11-1 to 5 NMSA 1978), passed the 2021 Legislative session and was signed into law. The proposed amendment will conform with new statutory changes.

A full text of changes for both rules will be available on the Department’s website at: www.wildlife.state.nm.us.

Interested persons may submit comments on the proposed changes to the Upland Game rule at DGF-Gamebird@state.nm.us, or the Furbearer rule at DGF-Furbearer-Rules@state.nm.us; individuals may also submit written comments to the physical address below. Comments are due by 8:00 a.m. on October 21, 2021. The final proposed rules will be voted on by the Commission during a public meeting on October 22, 2021. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on October 22, 2021.

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

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

accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

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

HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department through the Child Support Enforcement Division (CSED), is proposing amendments to rules 8.50.100.13 NMAC, Confidentiality; 8.50.100.14 NMAC, Authorized Release of Information; 8.50.100.15 NMAC, Written Statements of Collection Provided to Recipients of IV-D Services; 8.50.100.16 NMAC, Controls and Reporting; 8.50.100.17 NMAC, Change of Address; 8.50.106.2 NMAC, Scope; 8.50.106.3 NMAC, Statutory Authority; 8.50.106.9 NMAC, Time Frames For Parent Locate; 8.50.106.10 NMAC, Verification of Location; 8.50.106.11 NMAC, The State Parent Locator Service; 8.50.106.12 NMAC, Federal Parent Locator Service (FPLS); 8.50.106.13 NMAC, Deseased Parties; 8.50.106.14 NMAC, State Case Registry; 8.50.106.15 NMAC, Locator Information from Interstate Networks; 8.50.106.16 NMAC, State Directory of New Hires; 8.50.107.2 NMAC, Scope; 8.50.107.3 NMAC, Statutory Authority; 8.50.107.6 NMAC, Objective; 8.50.107.8 NMAC, Determination of Parentage; 8.50.107.9 NMAC, Parentage Involving Minor Fathers and Mothers; 8.50.107.11 NMAC, Long Arm Statue Cases; 8.50.107.12 NMAC, Genetic Testing; 8.50.108.3 NMAC, Statutory Authority; 8.50.108.12 NMAC, Modification of Child

Support Orders; 8.50.109.2 NMAC, Scope; 8.50.109.3 NMAC, Statutory Authority; 8.50.109.6 NMAC, Objective; 8.50.109.8 NMAC, Establishment of Medical Support; 8.50.109.10 NMAC, Availability of Medical Care Coverage; 8.50.109.11 NMAC, Providing Custodial Parents With Medical Care Coverage Information; 8.50.109.12 NMAC, Monitoring and Enforcing Coverage; 8.50.109.13 NMAC, Medical Support; 8.50.109.14 NMAC, Communication With the Medical Assistance Division; 8.50.109.15 NMAC, Ordering Specific Amounts for Medical Support; 8.50.109.17 NMAC, Fees; 8.50.110.2 NMAC, Scope; 8.50.110.3 NMAC, Statutory Authority; 8.50.110.8 NMAC, Income Withholding; 8.50.110.9 NMAC, Termination of Income Withholding; 8.50.110.10 NMAC, Withholding of Unemployment Compensation; 8.50.110.11 NMAC, Withholding of Workman's Compensation; 8.50.111.2 NMAC, Scope; 8.50.111.3 NMAC, Statutory Authority; 8.50.111.8 NMAC, General Enforcement of Support Obligations; 8.50.111.9 NMAC, Persons Owing Overdue Support; 8.50.111.10 NMAC, Interest Calculations; 8.50.111.12 NMAC, Contempt Proceedings; 8.50.111.13 NMAC, Garnishment; 8.50.111.15 NMAC, Post of Bond, Guarantee, or Other Security; 8.50.111.16 NMAC, State or Federal Criminal Prosecutions; 8.50.112.2 NMAC, Scope; 8.50.112.3 NMAC, Statutory Authority; 8.50.112.8 NMAC, Parental Responsibility Act (License Suspension); 8.50.112.9 NMAC, Consumer Reporting Agencies (Credit Bureaus); 8.50.112.10 NMAC, Full Collection Services by the Secretary of the Treasury; 8.50.112.11 NMAC, Collection of Past Due Support by Federal Tax Refund Offset; 8.50.112.12 NMAC, Collection of Past Due Support by New Mexico Taxation and Revenue Department by State Tax Refund Offset; 8.50.112.13 NMAC, Denial of Passports for Nonpayment of Child Support; 8.50.112.14 NMAC, Lottery; 8.50.112.15 NMAC, Gaming; 8.50.112.16 NMAC,

Administrative Offset by the Secretary of the Treasury; 8.50.114.2 NMAC, Scope; 8.50.114.3 NMAC, Statutory Authority; 8.50.114.8 NMAC, Agreements With Financial Institutions; 8.50.114.9 NMAC, Freeze Order; 8.50.114.10 NMAC, Seize Order; 8.50.114.12 NMAC, Seized Assets; 8.50.114.13 NMAC, Distribution of FIDM Collections in Multiple Cases; 8.50.125.2 NMAC, Scope; 8.50.125.3 NMAC, Statutory Authority; 8.50.125.8 NMAC, Child Support Payments; 8.50.125.9 NMAC, State Disbursement Unit; 8.50.125.10 NMAC, Collection of fees/Recoupments; 8.50.125.11 NMAC, Distribution of Collections (Except For Federal Income Tax refund Offsets); 8.50.125.14 NMAC, Assigned Medical Support Collections; 8.50.125.15 NMAC, Child Level Accounting; 8.50.125.16 NMAC, Child Support Received Directly From Payors; 8.50.125.18 NMAC, Child Support Case Services; 8.50.125.19 NMAC, Issuance of Replacement Warrants; 8.50.130.2 NMAC, Scope; 8.50.130.3 NMAC, Statutory Authority; 8.50.130.8 NMAC, Administrative Hearings; 8.50.130.9 NMAC, In General; 8.50.130.10 NMAC, Notice of Administrative Enforcement Action; 8.50.130.11 NMAC, Time Frames For Requesting an Administrative Hearing; 8.50.130.12 NMAC, Contesting Tax Refund Intercept in Interstate Cases; 8.50.130.14 NMAC, Contesting The Denial of Payment of an Undistributed Collection; 8.50.130.15, Initiation of Hearing Process; 8.50.130.16 NMAC, Denial/Dismissal of Request For Hearing; 8.50.130.17 NMAC, Notice of Hearing; 8.50.130.18 NMAC, Appellant's Rights; 8.50.130.19 NMAC, Title IV-D Agency Responsibility; 8.50.130.20 NMAC, Pre-Hearing Activity; 8.50.130.21 NMAC, Conduct of Hearing; 8.50.130.22 NMAC, Desisin Making; 8.50.130.23 NMAC, Implementation of Decisions; 8.50.130.24 NMAC, Right of Appeal; 8.50.130.25 NMAC, State Directory of New Hires Penalty Assessment Hearings.

Changes in the rule are to update language, incorporate standardized rule language, and to provide additional clarification of the rules. Additional changes include updating statute citation format, replacing insurance to health care coverage to include public coverage, updating address, deceased persons and income withholding policies. The register for these proposed amendments to these rules will be available 9/14/2021 on the HSD web site at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting CSED at (505) 795-3251.

A public hearing to receive testimony on these proposed rules will be held at 9:00am on Monday, October 18, 2021, in the ASD/HSD Large Conference Room on the 1st floor, 1474 Rodeo Rd, Santa Fe, New Mexico, or

Please join my meeting from your computer, tablet or smartphone.
<https://global.gotomeeting.com/join/834239293>

You can also dial in using your phone.
 United States: +1 (646) 749-3122

Access Code: 834-239-293

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Dial in or type: 67.217.95.2 or inroomlink.goto.com
 Meeting ID: 834 239 293
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[67.217.95.2##834239293](tel:67.217.95.2##834239293)

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Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATTN: Child Support Enforcement Division Public Comments, P.O. Box 2348, Santa

Fe, New Mexico 87504-2348. Recorded comments may be left by calling (505) 709-5755. Electronic comments may be submitted to john.lujan2@state.nm.us. Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. October 18, 2021. All written comments will be posted on the agency’s website within three days of receipt.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Division toll free at 1-800-432-6217. The Department’s TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling (505) 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

**PUBLIC ACCOUNTANCY,
BOARD OF**

**PUBLIC RULE HEARING AND
REGULAR BOARD MEETING**

The New Mexico Public Accountancy Board (“Board”) will hold a rule hearing on Tuesday, October 26, 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 and Licensing Department, 5500 San Antonio Dr. NE, Albuquerque, NM 87109 (dependent upon the current public health order), and online via Cisco Webex Meetings in Albuquerque, New Mexico.

To join the meeting online by Cisco Webex Meeting, please use the following link:

<https://nmrld.webex.com/nmrld/j.php?MTID=eb2ef8911d72d7790b01d9f8384cadfe9>

Event Code: 146 572 6875

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

- 16.60.1.7 NMAC – Definitions;
- 16.60.3.9 NMAC – Initial Certificate/License Requirements;
- 16.60.3.12 NMAC – Reinstatement Requirements;
- 16.60.3.14 NMAC- Substantial equivalency/intent to practice requirements;
- 16.60.3.15 NMAC – Continuing Professional Education (CPE) Required to Obtain or Maintain an “Active” CPA License;
- 16.60.4.8 NMAC – Firm Permit Application, Renewal, Reinstatement and Notification Requirements;
- 16.60.5.11 NMAC – Rules of Conduct; and

The purpose of the rule hearing is to consider the creation of the following rule:

- 16.60.5.15 NMAC – Criminal Convictions.

To obtain and review copies of the proposed changes you may go to the Board’s website at: <http://www.rld.state.nm.us/boards/Accountancy.aspx> or contact the New Mexico Public Accountancy Board by email at Accountancy.Board@state.nm.us.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Noel Davis, Board Executive Director, via electronic mail at Accountancy.Board@state.nm.us or by regular mail at 5500 San Antonio Dr. NE, Albuquerque, NM 87109, no later than Monday, October 25, 2021. Persons will also be given

the opportunity to drop off their comments prior to the rule hearing. An NMPAB staff member will be present between 8:00a.m – 9:00a.m. on the day of the rule hearing at the Regulation and Licensing Department, 5500 San Antonio Dr. NE, Albuquerque, NM 87109, to accept public comment in written form. The NMPAB staff will then present the public comment during the rules hearing.

All written comments will be posted to the Board’s website at: <http://www.rld.state.nm.us/boards/Accountancy.aspx>, 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 sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Jeanette Contreras, Board Executive Director by email at Noel.Davis1@state.nm.us.

Statutory Authority: The 1999 New Mexico Public Accountancy Act, Sections 61-28B-5, NMSA 1978, among other provisions, specifically authorizes the Board to “adopt and file rules necessary to carry out the provisions of the 1999 Public Accountancy Act.”

Summary of Proposed Changes: In addition to making minor clarification changes, the proposed rules are summarized as follows:

16.60.1.7 NMAC - Definitions
The amendments to this section clarify and create new definitions that will create better understanding of the Act.

16.60.3.9 NMAC - Initial Certificate/License Requirements
The amendments to this section will update licensing requirements to meet the Criminal Record Expungement Act pursuant to Sections 29-3A-1 through 29-3A-7 NMYSA 1978 and the Expedited Licensure for Military Families pursuant to 61-1-34 NMSA 1978.

16.60.3.12 NMAC - Reinstatement Requirements

The amendments to this section will update licensing requirements to meet the Criminal Record Expungement Act pursuant to Sections 29-3A-1 through 29-3A-7 NMYSA 1978.

16.60.3.14 NMAC – Substantial Equivalency/Intent to Practice Requirements

The amendments to this section will update licensing requirements to meet the Criminal Record Expungement Act pursuant to Sections 29-3A-1 through 29-3A-7 NMYSA 1978.

16.60.3.15 NMAC - Continuing Professional Education (CPE) Required to Obtain or Maintain an “Active” CPA License

The amendments to this section will clarify the process to request an extension to meet the CPE renewal requirements; add community service as an alternative option to a fine; update licensing requirements to meet the Criminal Record Expungement Act pursuant to Sections 29-3A-1 through 29-3A-7 NMYSA 1978.

16.60.4.8 NMAC - Firm Permit Application, Renewal, Reinstatement and Notification Requirements

The amendment to this section defines the firm permit expiration date.

16.60.5.11 NMAC - Rules of Conduct

The amendment to this section will update licensing requirements to meet the Criminal Record Expungement Act pursuant to Sections 29-3A-1 through 29-3A-7 NMYSA 1978.

16.60.5.14 NMAC – Criminal Convictions

This new section details the applicable criminal convictions that may disqualify an applicant from receiving or retaining a license in regards to the Criminal Record Expungement Act pursuant to Sections 29-3A-1 through 29-3A-7 NMYSA 1978; defines the board will not disseminate criminal records that

are unrelated to the disqualifying event.

REGULATION AND LICENSING DEPARTMENT COUNSELING AND THERAPY PRACTICE BOARD

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Counseling and Therapy Practice Board will hold a rule hearing on Friday, October 15, 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 via Cisco Webex Meetings.

The purpose of the rule hearing is to receive input and public comment for proposed amendments to the following rules:

- 16.27.1 NMAC – General Provisions;
- 16.27.2 NMAC – Mental Health Core Curriculum Requirements;
- 16.27.3 NMAC – Application Procedures, Initial Licenses, and License Period;
- 16.27.4 NMAC – Requirements for Licensure as a Professional Clinical Mental Health Counselor;
- 16.27.6 NMAC – Requirements for Licensure as a Marriage and Family Therapist;
- 16.27.7 NMAC – Requirements for Licensure as a Professional Art Therapist;
- 16.27.9 NMAC – Requirements for Licensure as a Mental Health Counselor;
- 16.27.11 NMAC – Requirements for Licensure with Examination as an Alcohol and Drug Abuse Counselor;
- 16.27.13 NMAC – Requirements for Licensure as a Substance Abuse Associate;
- 16.27.14 NMAC – Temporary License;
- 16.27.15 NMAC – Examinations;
- 16.27.16 NMAC – Continuing Education;

- 16.27.17 NMAC – Fees;
- 16.27.18 NMAC – Code of Ethics;
- 16.27.19 NMAC – Approved Supervision;
- 16.27.20 NMAC – Parental Responsibility Act Compliance;
- 16.27.21 NMAC – Emergency Licensure;
- 16.27.22 NMAC – Requirements for Licensure as an Associate Marriage and Family Therapist;
- 16.27.23 NMAC – Licensure as an Alcohol and Drug Abuse Counselor (LADAC) for Current Credential Alcohol and Drug Abuse Counselor (CADAC); and
- 16.27.24 NMAC – Licensure for Military Service Members, Spouses, and Veterans

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/counseling-and-therapy-practice-overview/ct-laws-rules-and-policies/>, or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Lori Sciacca, Board Administrator, via electronic mail at [Counseling.Board@state.nm.us](mailto:Board@state.nm.us) or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Thursday, October 14, 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/counseling-and-therapy-practice-overview/ct-laws-rules-and-policies/>, no more than three business days following receipt to allow for public view.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing,

please contact Lori Sciacca, Board Administrator at (505) 476-4622.

Statutory Authority: The Counseling and Therapy Practice Act, Sections 61-9A-1 to -30, NMSA 1978, and specifically Section 61-9A-9, NMSA 1978, authorizes the Board to “adopt and file rules necessary to carry out the provisions of the Counseling and Therapy Practice Act.”

Summary of Proposed Changes: The changes to Parts 1, 2, 3, 4, 6, 7, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 of the Board’s rules are primarily intended to address the significant changes to the Counseling and Therapy Practice Act, Sections 61-9A-1 to -30, 1978 (1991, as amended through 2019) (the “Act”), which occurred this past Legislative Session. *See* S.B. 2, 56th Leg., 1st Sess. (N.M. 2019), available at <https://www.nmlegis.gov/Sessions/19%20Regular/final/SB0200.pdf>. Additionally, amendments to the rules are intended to update and clarify licensing requirements, definitions and the rules of ethics. The amendments are also intended to clean up language, statutory and rule citations and grammar currently existing in the rules to ensure uniformity in the application of the rules.

16.27.1 NMAC – General Provisions

The amendments to General Provisions are generally minor and include adjustments intended to make the definitions of common terms more clear, an update to calculations for quarter hours to align with most common educational programs, and updated language to include electronic work (counseling and therapy, supervision, and board activities) within definitions. A provision that requires license number and designation on a web page is added. The elected positions on the board are reduced to only chairperson and vice chairperson. The minimum number of members to serve on committees is reduced from three to one. And, a

section regarding criminal convictions has been added, as required by the Act.

16.27.2 NMAC – Mental Health Core Curriculum Requirements

The amendments to Part 2 are very minor, they adjust the quarter and semester hour requirements to meet current educational program guidelines, and make minor grammatical changes.

16.27.3 NMAC – Application Procedures, Initial Licenses, and License Period

The amendments to Part 3 are generally minor, they make changes to grammar and sentence structure and remove language about notarization. More substantially, a section on renewal requirements is added, including new requirements for a minimum of 12 CEUs (previously 6) related to ethics and a minimum of 6 CEUs (previously 3) related to supervision (if providing supervision). The board believes these changes were necessary to ensure that licensees are more informed of these important topics, and hopefully to stem the surge of complaints filed related to ethics and to supervision.

16.27.4 NMAC – Requirements for Licensure as a Professional Clinical Mental Health Counselor (LPCC)

The amendments to Part 4 remove language pertaining to supervision which is not required for the LPCC, and qualifies that the board may request syllabi rather than requiring them to be sent in initially. Also added is a process by which applicants who have just graduated can verify degree completion prior to their school certifying transcripts, so that new professionals may seek employment without being delayed by college and university timetables. And, the requirement for an applicant by credentials’ years of independent experience was changed from 5 to 2 to help to eliminate barriers for experienced practitioners entering the state.

16.27.6 NMAC – Requirements for Licensure as a Marriage and Family Therapist (LMFT)

The amendments to Part 6 remove language pertaining to supervision which is not required for the LMFT and updates the semester and quarter hour requirements to meet current educational program standards. Additionally, a mechanism for degree verification prior to a degree being conferred is outlined so that new professionals may seek employment without being delayed by college and university timetables. And, the requirement for an applicant by credentials’ years of independent experience was changed from 5 to 2 to help to eliminate barriers for experienced practitioners entering the state.

16.27.7 NMAC – Requirements for Licensure as a Professional Art Therapist (LPAT)

The amendments to Part 7 removes language pertaining to supervision which is not required for LPAT, clarifies the educational levels required for entering the field, outlines the core curriculum with a description of each area, and adds a process by which applicants who have just graduated can verify degree completion prior to their school certifying transcripts so that new professionals may seek employment without being delayed by college and university timetables. The requirement to submit syllabi is replaced with a statement that says the board can request them if needed. And, the number of years that a license must have been in good standing for licensure by credentials is changed from five to two, to eliminate barriers for experienced practitioners entering the state.

16.27.9 NMAC – Requirements for Licensure as a Mental Health Counselor (LMHC, Practice under Supervision)

The amendments to Part 9 are of note. They remove mention of marriage and family therapist, as they have a separate part regarding their licensure under supervision.

Additionally, the terms under which supervised hours would become invalid is now specified to be five years. Updates to the semester and quarter hour requirements were made to meet current educational program standards. And, the process and requirements for applying for licensure by credential were added.

16.27.11 NMAC – Requirements for Licensure with Examination as an Alcohol and Drug Abuse Counselor (LADAC) Effective July 1, 2005

The amendments to Part 11 are minor, and update the language to clarify that supervision is not required for the LADAC license since it is an independent license. Also, language about the educational requirements is updated for greater clarity and to specify the ways that semester credit hours are calculated for clock hours. And, outdated language that related to grandfathered licenses is removed since it is no longer relevant.

16.27.13 NMAC – Requirements for Licensure as a Substance Abuse Associate (LSAA) Effective July 1, 2005

The amendments to Part 13 are minor and include the addition of LCSWs as well as LISWs as appropriate supervisors, change in language from ‘drug and alcohol counseling’ to ‘substance abuse counseling’, and addresses minor grammatical issues. Outdated language about reciprocity is also removed, since it covers something that was repealed in 2004.

16.27.14 NMAC – Temporary License

The amendments to Part 14 are substantial. There are changes that serve to update the language to include associate marriage and family therapists in addition to LMHCs, and to clean up the grammar. The guidelines regarding issuance of a temporary license are of note, as they no longer prohibit someone from testing for 1 year if they fail to pass their examination three times. Additionally, clinical and supervision hours that were obtained during

the period that the applicant held a temporary license will not expire, and may be used after the candidate passes their exam and is ready to apply for independent licensure.

16.27.15 NMAC – Examinations

The amendments to Part 15 are minor grammatical changes to improve clarity, particularly with regard to the process of re-taking an exam.

16.27.16 NMAC – Continuing Education

The amendments to Part 16 make minor changes in grammar, are clarify the activities that will count for CEUs, how CEUs are calculated, and what the procedures are for registering as a CEU provider. Specifically the changes; describe how semester and quarter hours are calculated, add a policy on how pro bono work can be counted for CEUs, and details what happens if a licensee’s CEUs are not accepted.

16.27.17 NMAC – Fees

The amendments to Part 17 are generally minor and include changes in grammar, and the addition of a fee for a late CEU extension request, a fee for CEUs that are incorrectly issued, and a fee for CEU providers.

16.27.18 NMAC – Code of Ethics

Part 18 was repealed and replaced. The most notable change is the addition of ethical expectations related to electronic therapy.

16.27.19 NMAC – Approved Supervision

The amendments to Part 19 are substantial and include provisions to better protect both supervisors and supervisees. The major amendments are: listing out the licensures that are appropriate to provide supervision, a definition of virtual supervision, some grammatical updates, and a limit on the number of supervision hours that can be completed per week (40). There is a proposed change to eliminate the requirement to have three years’ experience, and instead to specify that a supervisor must be independently licensed, to help

remove some barriers that the state can face of having too few qualified supervisors. And, the supervisory role is updated to include requirements that supervisors track supervisees’ professionalism and ethical conduct, as well as to maintain documentation such as a supervisory contract and a supervision log to include notes. A supervisor designation is outlined, to help ensure a supervisor meets and maintains the minimum standards for supervising.

16.27.20 NMAC – Parental Responsibility Act Compliance

The amendments to Part 20 include minor changes to update the numbering of the rules, and the addition of a delegation of authority clause. These are all to adopt language found in the Act.

16.27.21 NMAC – Emergency Licensure

The amendments to Part 21 involved minor numbering changes, and the removal of the requirement for notarization, to be in compliance with the Act.

16.27.22 NMAC – Requirements for Licensure as an Associate Marriage and Family Therapist (LAMFT)

The amendments to Part 22 are of note. They specify that LCSWs or LISWs may supervise LAMFTs as long as they have received the CTPB supervisor designation. Also, terms under which supervised hours would become invalid is now specified to be five years. Additionally, a mechanism for degree verification prior to a degree being conferred is outlined so that new professionals may seek employment without being delayed by college and university timetables.

16.27.23 NMAC – Licensure as an Alcohol and Drug Abuse Counselor (LADAC) for Current Credential Alcohol and Drug Abuse Counselor (CADAC)

Part 23 was removed, as it has been repealed.

16.27.24 NMAC – Licensure for Military Service Members, Spouses,

and Veterans

The amendments for Part 24 were to repeal and replace, following changes to the Act.

**REGULATION AND LICENSING DEPARTMENT
PHARMACY, BOARD OF**

NOTICE OF REGULAR BOARD MEETING AND RULE HEARING

The New Mexico Board of Pharmacy will convene for the purpose of conducting a regular board meeting and rule hearing on October 21, 2021. The meeting will continue until finished. If the meeting agenda items are not finished by 5:00 p.m., the Board will convene on October 22nd at 9:00 a.m. and continue until finished. Given the declared public health emergency due to COVID-19, the meeting will be held virtually via Cisco WebEx.

Location: Virtual meeting

October 21, 2021

Meeting link <https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e53bb0ac59f31b17815c692d6324eb0a5>

**Meeting number: 146 766 2710
Password: R3zESYCCC72**

Join by phone +1-415-655-0002
United States Toll
Access code: 146 766 2710

October 22, 2021

Meeting link <https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e81c50dac9952a2971a5973b547ca78a>

**Meeting number: 146 694 4364
Password: 4qYxUAunC22**

Join by phone +1-415-655-0002
United States Toll
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The agenda is posted 72 hours prior to the scheduled meeting. You may view and download a copy of the agenda through the board's website: [https://www.rld.nm.gov/boards-and-](https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/pharmacy/pharmacy-board-information/pharmacy-board-meetings/)

[commissions/individual-boards-and-commissions/pharmacy/pharmacy-board-information/pharmacy-board-meetings/](https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/pharmacy/pharmacy-board-information/pharmacy-board-meetings/). All proposed language regarding rule hearings is linked to the *Agenda*, the *Notice to the Public* on our website and the *New Mexico Sunshine Portal*.

Individuals petitioning the board regarding requests/waivers and/or interested persons wishing to comment on proposed language regarding rule hearings must submit documentation for presentation; via fax (505) 222-9845, mail or email to the Board Administrator, Gabriella Romero, gabriella.romero@state.nm.us at least one week in advance of the scheduled meeting, as public comment is allowed during the rule hearing. On the morning of the hearing beginning at 8:00 a.m. and ending when the rule hearing adjourns, a Board of Pharmacy representative will be stationed at the board office, located at 5500 San Antonio Drive NE, Albuquerque, NM 87109, to receive written comments regarding the rule hearings and also to convey them to the Board. Public attendance will be limited to remote participation. Oral participation by members of the public will be limited to those comments and discussion through audiovisual means.

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

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Gabriella Romero 505-222-9835 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.

Please contact Gabriella Romero, at 505-222-9835 or e-mail gabriella.romero@state.nm.us if a summary or other type of accessible format is needed.

The Board will address:

All Board Matters:

Rule Hearings: October 21, 2021
9:10 a.m.

16.19.4 NMAC – PHARMACIST: Section 1, administrative update. Section 3, update to statutory authority. Section 8, defining gross immorality and enumerating disqualifying criminal convictions that may result in license suspension, or refusal to grant or renew a license issued by the board. The board is not barred from denying an application or disciplining a licensee for conduct in violation of the Pharmacy Act (Chapter 61, Article 11 NMSA 1978), the Drug Device and Cosmetic Act (Chapter 26, Article 1 NMSA 1978), the Controlled Substances Act (Chapter 30, Article 31 NMSA 1978), the Imitation Controlled Substances Act (Chapter 30, Article 31A NMSA 1978), or the Drug Precursor Act (Chapter 30, Article 31B NMSA 1978), or similar act of another state or of the United States, or pursuant to the Impaired Health Care Provider Act (Chapter 61, Article 7 NMSA 1978), or the Impaired Pharmacists Act (Chapter 61, Article 11 NMSA 1978). Section 11, update citation and add allowance for custodial care facilities to stock naloxone for opioid overdose (rescue).

STATUTORY AUTHORITY: Subsection B of Section 61-1-36 NMSA 1978, Subsection B of Section 28-2-3 NMSA 1978, Section 28-2-4 NMSA 1978, and Paragraph 1 of Subsection A of Section 61-11-6 NMSA 1978.

16.19.12 NMAC – FEES: Section 3, update to statutory authority. Section 9, waive registration fees for United States military service members, spouses, dependent children, and veterans who are applying for

pharmacist licensure by reciprocity. Section 12, waive initial renewal fees for United States military service members, spouses, dependent children, and veterans who obtained pharmacist licensure by reciprocity. STATUTORY AUTHORITY: Section 61-1-34 NMSA 1978

16.19.22 NMAC – SUPPORT PERSONNEL AND PHARMACY TECHNICIANS: Sections 1 and 3, administrative updates. New section 16, allowing pharmacy technician administration of vaccines under outlined requirements. STATUTORY AUTHORITY: Subsection A of Section 61-11-6 NMSA 1978

16.19.27 – DISHONORABLE CONDUCT: Section 1, administrative update. Section 3, update to statutory authority. Section 7, defining and enumerating disqualifying criminal convictions that may result in license or registration suspension, or refusal to grant or renew a license or registration issued by the board. The board is not barred from denying an application or disciplining a licensee (including a registrant) for conduct in violation of the Pharmacy Act (Chapter 61, Article 11 NMSA 1978), the Drug Device and Cosmetic Act (Chapter 26, Article 1 NMSA 1978), the Controlled Substances Act (Chapter 30, Article 31 NMSA 1978), the Imitation Controlled Substances Act (Chapter 30, Article 31A NMSA 1978), or the Drug Precursor Act (Chapter 30, Article 31B NMSA 1978), or similar act of another state or of the United States, or pursuant to the Impaired Health Care Provider Act (Chapter 61, Article 7 NMSA 1978), or the Impaired Pharmacists Act (Chapter 61, Article 11 NMSA 1978). STATUTORY AUTHORITY: Subsection B of Section 61-1-36 NMSA 1978, Subsection B of Section 28-2-3 NMSA 1978, and Section 28-2-4 NMSA 1978

Executive Director’s Report:

Disciplinary Hearing(s): October

21, 2021, 1:30 p.m. William Gardner CS00019456, Case # 2021-002 Order to Show Cause

October 21, 2021, 2:15 p.m. Teerada Sujithamrak, pharmacist license applicant, Case # 2020-064

Additional hearing(s), if scheduled, will be included in the agenda

Published in NM Register September 14, 2021

Published in Albuquerque Journal September 17, 2021

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance, in his capacity as Custodian of the New Mexico Patient’s Compensation Fund (“Custodian”), proposes to repeal and replace Parts 1 and 2 of 13.21 NMAC, amend Parts 3 and 4 of 13.21 NMAC, and adopt a new Part 5 of 13.21 NMAC.

PURPOSE OF THE PROPOSED ACTIONS: The purpose of this rulemaking is to bring the current Patient’s Compensation Fund (“PCF”) rules into conformity with the House Bill 75 amendments to the New Mexico Medical Malpractice Act that were adopted in the Regular Session of the 2021 Legislature.

STATUTORY AUTHORITY: Section 41-5-25 NMSA 1978.

Copies of the proposed rule will be available on the PCF Website or the New Mexico Sunshine Portal, or by contacting Melissa Gutierrez at melissa.gutierrez@state.nm.us.

OSI will hold a public video/ telephonic hearing on the proposed replacements, amendments, and new rules on October 18, 2021 at 9:00 a.m.

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

Join via telephone: 1 312 626 6799 Meeting ID: 2916274744

The Custodian designates Robert Desiderio as hearing officer for this rulemaking. Mr. Desiderio will accept oral comments at the video/ telephonic hearing from members of the public and any interested parties.

Written comments and proposals will be accepted through 4:00 pm on October 18, 2021. Responses to written comments or oral comments will be accepted through 4:00 pm on October 28, 2021. Comments may be submitted via email to Freya. tschantz2@state.nm.us or may be filed by sending original copies to:

Freya Tschantz, PCF Records and Docketing, 1120 Paseo de Peralta, P.O. Box 1689, Santa Fe, NM 87504-1689

Docket No.: 21-0005-PCF IN THE MATTER OF ADOPTION OF RULES FOR THE PATIENT’S COMPENSATION FUND

Only signed statements, proposals, or comments will be accepted. Scanned or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic signature.

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

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

ISSUED this 14th day of September,
2021
/S/RUSSELL TOAL

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

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Adopted Rules

Effective Date and Validity of Rule Filings

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

**REGULATION
AND LICENSING
DEPARTMENT
PHARMACY, BOARD OF**

This is an amendment to 16.19.4 NMAC, Sections 1, 3 and 17, effective 9/14/2021

16.19.4.1 ISSUING AGENCY: [~~Regulation and Licensing Department~~] Board of Pharmacy [~~, Albuquerque, NM.~~]. [2/15/1996; 16.19.4.1 NMAC - Rn, 16 NMAC 19.4.1, 3/30/2002; A, 12/15/2002; A, 8/16/2010; A, 9/14/2021]

16.19.4.3 STATUTORY AUTHORITY: Paragraph (1) of Subsection A of Section [61-11-6.A.(1)] 61-11-6 NMSA, 1978 authorizes the board of pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act, Sections 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978. Those provisions include the authority to: [(i)]

A. deny or take disciplinary action with respect to any certificate of registration or license held or applied for under the Pharmacy Act, [~~Sections~~] Section 61-11-20 NMSA 1978; [(ii)]

B. require and establish criteria for continuing education as a condition of renewal of a pharmacist license, Paragraph (4) of Subsection A of [Sections 61-11-6.A.(4)] Section 61-11-6 NMSA 1978; [(iii)]

C. issue permits or licenses, as defined and limited by board regulation, to nursing homes, industrial and public health clinics and home care services, Paragraph (6) of Subsection A of Section 61-11-6

~~[-A.(6);] and 61-11-14 NMSA 1978; [(iv)]~~

D. provide for the [~~annual~~] issuance and renewal of licenses for pharmacists, Paragraph (3) of Subsection A of [Sections 61-11-6.A.(3)] Section 61-11-6, and 61-11-13 NMSA 1978; [(v)]

E. provide for the registration of pharmacist interns, their certification, annual renewal of certification, training, supervision, and discipline, Paragraph (5) of Subsection A of Section 61-11-6 [-A.(5)] NMSA 1978; and [(vi)]

F. adopt rules and regulations that establish patient counseling requirements, Paragraph (18) of Subsection A of [61-11-6.A.(18)] 61-11-6 NMSA 1978.

Under the Pharmacist Prescriptive Authority Act, Sections 61-11B-1 to 61-11B-3 NMSA 1978, the board is required to establish regulations governing certification as a pharmacist clinician. The Impaired Pharmacists Act, Sections 61-11A-1 to 61-11A-8 NMSA 1978, requires the establishment by the board of a plan for treatment and rehabilitation of impaired pharmacists. [3/14/1998; 16.19.4.3 NMAC - Rn, 16 NMAC 19.4.3, 3/30/2002; A, 9/14/2021]

16.19.4.17 PHARMACIST CLINICIAN:

A. Purpose: The purpose of these regulations is to implement the Pharmacist Prescriptive Authority Act, Sections 61-11B-1 through 61-11B-3 NMSA 1978 by providing minimum standards, terms and conditions for the certification, registration, practice, and supervision of pharmacist clinicians. These regulations are adopted pursuant to Section 61-11B-3 NMSA 1978 of the Pharmacist Prescriptive Authority Act.

B. Initial certification and registrants.

(1) The board may certify and register a pharmacist as a pharmacist clinician upon completion of an application for certification and satisfaction of the requirements set forth in these regulations.

(2) A pharmacist who applies for certification and registration as a pharmacist clinician shall complete application forms as required by the board and shall pay a fee. The fee shall be set by the board to defray the cost of processing the application, which fee is not returnable.

(3) To obtain initial certification and registration as a pharmacist clinician, the following must be submitted:

(a) proof of completion of 60 hour board approved physical assessment course, followed by a 150 hour, 300 patient contact preceptorship supervised by a physician or other practitioner with prescriptive authority, with hours counted only during direct patient interactions;

(b) the applicant will submit a log of patient encounters as part of the application;

(c) patient encounters must be initiated and completed within two years of the application;

(d) a pharmacist clinician requesting a controlled substance registration to prescribe controlled substance in schedule II or schedule III shall be trained in responsible opioid prescribing practices. Educational programs shall include an understanding of the pharmacology and risks of controlled substances, a basic awareness of the problems of

abuse, addiction, and diversion, and awareness of the state and federal regulations of the prescribing of controlled substances.

(4) The board shall register each pharmacist certified as a pharmacist clinician.

(5) Upon certification and registration by the board, the name and address of the pharmacist clinician, (name of the supervising physician if applicable), and other pertinent information shall be enrolled by the board on a roster of pharmacist clinicians.

C. Biennial renewal of registration.

(1) Renewal applications shall be submitted prior to the license expiration.

(2) Applications for renewal must include:

(a) after January 1, 2013, documentation of continuing education hours, including proof of completion of 2.0 CEU 20 contact hours of live CPE or continuing medical education (CME) approved by (ACPE) or AACME (live programs provided by other continuing education providers may be submitted for review and approval to the board), beyond the required hours in 16.19.4.10 NMAC (as amended), as required by the board; and

(b) effective January 1, 2015, a pharmacist clinician with a controlled substance registration to prescribe controlled substances listed in schedule II or schedule III shall complete a minimum of 0.2 CEU (two contact hours) per renewal period in the subject area of responsible opioid prescribing practices, and

(c) a current protocol of collaborative practice signed by the supervising physician (if prescriptive authority is sought); and

(d) a copy of the pharmacist clinicians registration with the supervising physicians board (if prescriptive authority is sought); and

(e) other additional information as requested by the board.

D. Prescriptive authority, guidelines or protocol.

(1) Only a registered pharmacist clinician with current protocols, registered with the New Mexico medical board or the New Mexico board of osteopathic medical examiners, may exercise prescriptive authority.

(2) A pharmacist clinician seeking to exercise prescriptive authority shall submit an application to the board. The application must include the supervising physicians' name and current medical license, protocol of collaborative practice and other information requested by the board.

A pharmacist may submit the application with the initial application for certification or as a separate application after becoming certified and registered as a pharmacist clinician.

(3) The protocol will be established and approved by the supervising physician as set forth in these regulations and will be kept on file at each practice site of the pharmacist clinician and with the board.

(4) The protocol must include:

(a) name of the physician(s) authorized to prescribe dangerous drugs and name of the pharmacist clinician;

(b) statement of the types of prescriptive authority decisions the pharmacist clinician is authorized to make, including, but not limited to:

(i) types of diseases, dangerous drugs or dangerous drug categories involved and the type of prescriptive authority authorized in each case;

(ii) ordering lab tests and other tests appropriate for monitoring of drug therapy;

(iii) procedures, decision criteria or plan the pharmacist clinician is to follow when exercising prescriptive authority;

(c) activities to be followed by the pharmacist clinician while exercising prescriptive authority, including documentation of feedback to the authorizing physician concerning specific decisions made; documentation may be made on the prescriptive record, patient profile, patient medical chart or in a separate log book;

(d) description of appropriate mechanisms for consulting with the supervising physician, including a quality assurance program for review of medical services provided by the pharmacist clinician, (this quality assurance program will be available for board review); and

(e) description of the scope of practice of the pharmacist clinician.

(5) Pharmacist clinicians shall not prescribe dangerous drugs including controlled substances for self-treatment or treatment of immediate family members, except under emergency situations. This will not apply to medications that may be prescribed under 16.19.26 NMAC. [~~Pharmacist clinicians shall not write a recommendation for the use of medical cannabis.~~]

E. Scope of practice.

(1) A pharmacist clinician shall perform only those services that are delineated in the protocol and are within the scope of practice of the supervising physician or alternate supervising physician(s).

(2) A pharmacist clinician may practice in a health care institution within the policies of that institution.

(3) A pharmacist clinician may prescribe controlled substances provided that the pharmacist clinician:

(a) has obtained a New Mexico controlled substances registration and a drug enforcement agency registration, and

(b) prescribes controlled substances

within the parameters of written guidelines or protocols established under these regulations and Subsection A of 61-11B-3 NMSA 1978 of the Pharmacist Prescriptive Authority Act.

(4) The board may, in its discretion after investigation and evaluation, place limitations on the tasks a pharmacist clinician may perform under the authority and direction of a supervising physician or alternate supervising physician(s).

F. Prescription monitoring program:

(1) A pharmacist clinician exercising prescriptive authority in the prescribing of a controlled substance;

(a) shall register with the board to become a regular participant in PMP inquiry and reporting;

(b) may authorize delegate(s) to access the PMP report consistent with 16.19.29 NMAC; while a pharmacist clinician's delegate may obtain a report from the states' PMP, pharmacist clinician is solely responsible for reviewing the PMP report and documenting the receipt and review of a report in the patient's medical record;

(c) before a pharmacist clinician prescribes for the first time, a controlled substance in schedule II, III or IV to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the pharmacist clinician shall review a PMP report for the patient for the preceeding 12 months; when available, the pharmacist clinician shall review similar reports from adjacent states; the pharmacist clinician shall document the receipt and review of such reports in the patient's medical record;

(d) a PMP report shall be;

(i) reviewed a minimum of once every three months during the continuous use of an opioid, benzodiazepine, or

carisoprodol for each patient; and (ii) reviewed a minimum of once every six months during the continuous use of a controlled substance in schedule II, III or IV which is not an opioid, benzodiazepine, or carisoprodol for each patient; and

(iii) the pharmacist clinician shall document the review of these reports in the patient's medical record; nothing in this section shall be construed as preventing a pharmacist clinician from reviewing PMP reports with geater frequency than that required by this section;

(e) a pharmacist clinician does not have to obtain and review a PMP report before prescribing, ordering, or dispensing a controlled substance in schedule II, III or IV;

(i) to a patient in a nursing facility; or

(ii) to a patient in hospice care.

(f) upon review of a PMP report for a patient, the pharmacist clinician shall identify and be aware of a patient currently receiving:

(i) opioids from multiple prescribers;

(ii) opioids and benzodiazepines concurrently;

(iii) opioids for more than 12 consecutive weeks;

(iv) more than one controlled substance analgesic;

(v) opioids totaling more than 90 morphine milligram equivalents per day;

(vi) exhibiting potential for abuse of misuse of opioids and other controlled substances, such as over-utilization, requests to fill early, requests for specific opioids, requests to pay cash when insurance is available, receiving opioids from multiple pharmacies.

(g) upon recognizing any of the above conditions described in Subparagraph

(f) of Paragraph (1) of Subsection F of 16.19.4.17 NMAC, the pharmacist clinician using professional judgement based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse, abuse, or overdose; these steps may involve counseling the patient on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, offering or arranging treatment for opioid or substance use disorder; the pharmacist clinician shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

(2) Pharmacist clinician's licensed to practice in an opioid treatment program, as defined in 7.32.8 NMAC, shall review a PMP report upon a patients' initial enrollement into the opioid treatment program and every three months thereafter while prescribing, ordering, administering, or dispensing opioid treatment medications in schedule II for the purpose of treating opioid use disorder. The pharmacist clinician shall document the receipt and review of a report in the patients' medical record.

G. Complaints and appeals.

(1) The chair of the board will appoint two members of the board, and the president of the supervising physician respective board will appoint two members of the respective board to the oversight committee; the oversight committee will review complaints concerning the pharmacist clinician practice; the oversight committee will make a report that may include non-binding recommendations to both the board and respective board(s) regarding disciplinary action. Each board can accept or reject the recommendations.

(2) Any applicant for certification or any pharmacist clinician may appeal a decision of the board in accordance with the provisions of the Uniform

Licensing Act, Sections 61-1-1 to 61-1-33 NMSA 1978.
 [3/14/1998; 16.19.4.17 NMAC - Rn, 16 NMAC 19.4.17, 3/30/2002; 16.19.4.17 NMAC - Rn, 16.19.4.18 NMAC, 12/15/2002; A, 9/30/2003; A, 1/31/2007; A, 5/14/2010; A, 8/16/2010; A, 10/25/2012; A, 3/23/2013; A, 6/29/2013; A, 8/12/2013; A, 10/19/2019; A 9/14/2021]

**REGULATION
 AND LICENSING
 DEPARTMENT
 PHARMACY, BOARD OF**

This is an amendment to 16.19.20 NMAC, Sections 65, 68 and 69, effective 9/14/2021.

16.19.20.65 SCHEDULE I:
A. Section 30-31-6 NMSA 1978, schedule I shall consist of the following drugs and other substances, by whatever name, common or usual name, chemical name or brand name designated, listed in this section; **OPIOIDS**, unless specifically exempt or unless listed in another schedule, any of the following opioids, including its isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

- (1) Acetylmethadol;
- (2) Allylprodine;
- (3) Alphacetylmethadol;
- (4) Alphameprodine;
- (5) Alphamethadol;
- (6) Alpha-methyl fentanyl;
- (7) Benzethidine;
- (8) Betacetylmethadol;
- (9) Betameprodine;
- (10) Betamethadol;

- (11) Betaprodine;
- (12) Clonitazene;
- (13) Desmethytramadol;
- (14) Dextromoramide;
- (15) Diampromide;
- (16) Diethylthiambutene;
- (17) Dimethylthiambutene;
- (18) Difenoxin;
- (19) Dimenoxadol;
- (20) Dimepheptanol;
- (21) Dimethylthiambutene;
- (22) Dioxaphetyl Butyrate;
- (23) Dipipanone;
- (24) Ethylmethylthiambutene;
- (25) Etonitazene;
- (26) Etoxidine;
- (27) Furethidine;
- (28) Hydroxypethidine;
- (29) Isotonitazene;
- (30) Ketobemidone;
- (31) Levomoramide;
- (32) Levophenacymorphan;
- (33) Morpheridine;
- (34) Noracymethadol;
- (35) Norlevorphanol;
- (36) Normethadone;
- (37) Norpipanone;
- (38) Phenadoxone;
- (39) Phenampromide;
- (40)

- Phenomorphan;
- (40) (41) Phenoperidine;
- (41) (42) Piritramide;
- (42) (43) Proheptazine;
- (43) (44) Properidine;
- (44) (45) Propiram;
- (45) (46) Racemoramide;
- (46) (47) Tilidine;
- (47) (48) Trimeperidine
- (48) (49) U-48800; (2-(2,4-dichlorophenyl)-N-((1S,2S)-2-(dimethylamino)cyclohexyl)-N-methylacetamide, monohydrochloride;
- (49) (50) U-49900; (trans-3,4-dichloro-N-[2-(diethylamino)cyclohexyl]-N-methylbenzamide;
- (50) (51) Beta-Hydroxy-3-Methylfentanyl;
- (51) (52) 3-Methylthiofentanyl;
- (52) (53) Acetyl-Alpha-Methyl fentanyl ;
- (53) (54) Alpha-Methylthiofentanyl ;
- (54) (55) Beta-hydroxfentanyl ;
- (55) (56) Para-Fluoro fentanyl;
- (56) (57) Thiofentanyl;
- (57) (58) Acetyl fentanyl;
- (58) (59) Butyryl fentanyl;
- (59) (60) Betahydroxythiofentanyl;
- (60) (61) Furanyl fentanyl;
- (61) (62) AH-7921; (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl] benzamide);
- (62) (63) U47700; (trans-3,4-dichloro-N-(2-(dimethylamino)cyclohexyl)-N-methylbenzamide);
- (63) (64) MT-45; (1-(4-Nitrophenylethyl)

piperidylidene-2-(4-chlorophenyl sulfonamide);
 [(64)] (65)
 W-15; (4-chloro-N-[1-(2-phenylethyl)-2-piperidinylidene]-benzenesulfonamide);
 [(65)] (66)
 W-18; (1-(4-Nitrophenylethyl) piperidylidene-2-(4-chlorophenyl sulfonamide);
 [(66)] (67)
 U-50488; (2-(3,4-dichlorophenyl)-N-methyl-N-[(1R,2R)-2-pyrrolidin-1-ylcyclohexyl]acetamide);
 [(67)] (68)
 U50488H; ((-)(trans)-3,4-dichloro-N-methyl-N-[2-(1-pyrrolidiny)cyclohexyl]benzeneacetamide).
 [(68)] (69)
 Fentanyl-related substances, their isomers, esters, ethers, salts, and salts of isomers, esters and ethers. Fentanyl-related substance means any substance, unless specifically exempted or unless listed in another schedule, that is structurally related to fentanyl by one or more of the following modifications:
 (a) replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;
 (b) substitution in or on the phenethyl group with alkyl, alkenyl, alkoxy, hydroxyl, halo, haloalkyl, amino or nitro groups;
 (c) substitution in or on the piperidine ring with alkyl, alkenyl, alkoxy, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;
 (d) replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; or
 (e) replacement of the N-propionyl group by another acyl group; or
 (f) any combination of the above substances include, but are not limited to, the following substances:
 (i) Acrylfentanyl;

(ii) 4F-butyrfentanyl;
 (iii) 4-methoxybutyrfentanyl;
 (iv) Fluorobutyrfentanyl;
 (v) Fluorofentanyl;
 (vi) FIBF; (Para Fluoro Isobutyryl Fentanyl);
 (vii) Cyclopropyl fentanyl;
 (viii) Thiofuranyl fentanyl (Thiophene fentanyl);
 (ix) 3-methylfentanyl (N-3-methyl-1-(2-phenyl-ethyl)-4-Piperidyl)-N-phenylpropanamide, its optical and geometric isomers, salts and salts of isomers.
 (x) crotonyl fentanyl ((E)-N-(1-phenethylpiperidin-4-yl)-N-phenylbut-2-enamide);
 (xi) valeryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylpentanamide).
B. OPIUM DERIVATIVES: Unless specifically exempt or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation.
 (1) Acetorphine;
 (2) dihydrocodeine;
 (3) morphine;
 (4) methylbromide;
 (5) N-Oxide;
 (6) Cyprenorphine;
 (7) Desomorphine;
 (8) morphine;
 (9) Etorphine;
 (10) Heroin;

(11) Hydromorphanol;
 (12) Methyldesorphine;
 (13) Methyldihydromorphine;
 (14) Morphine
 (15) methylbromide;
 (16) Morphine
 (17) methylsulfonate;
 (18) N-Oxide;
 (19) Myrophine;
 (20) Nicocodeine;
 (21) Nicomorphine;
 (22) Normorphine;
 (23) Pholcodine;
 (24) Thebacon;
 (25) Drotebanol;
 (26) 6AM;
 (27) (6-acetylmorphine).
C. STIMULANTS:
 Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers.
 (1) Fenethylamine;
 (2) N-ethylamphetamine;
 (3) cis-4-methylaminorex;
 (4) N,N-dimethylamphetamine;
 (5) (BZP), 1-benzylpiperazine;
 (6) N-benzylpiperazine;
 (7) (DCPP);
 (8) 2,3-dichlorophenylpiperazine;
 (9) (DBZP);
 (10) dibenzylpiperazine;
 (11) (MBZP);
 (12) methylbenzylpiperazine;
 (13) (mCPP);
 (14) meta-chlorophenylpiperazine;
 (15) (MDBZP);
 (16) methylenedioxybenzylpiperazine;

(11) (meOPP);
para-methoxyphenylpiperazine;
(12) (pCPP);
para-chlorophenylpiperazine;
(13) (pFPP);
para-fluorophenylpiperazine;
(14)
(2-DPMP), desoxypipradrol;
2-diphenylmethylpiperidine;
(15) D2PM,
diphenylprolinol; diphenyl-2-
pyrrolidinemethanol;
(16) HDMP-28;
methylnaphthidate;
(17) Cocaine,
(+)-CPCA; 3 α -carbomethoxy-4 β -(4-
chlorophenyl)-N-methylpiperidine;
(18) BTQ or
butyltolylquinuclidine; (2-Butyl-3-(p-
tolyl)quinuclidine.

D. DEPRESSANTS:

Unless specifically exempt or
unless listed in another schedule,
any material, compound, mixture
or preparation which contains any
quantity of the following substances
having a depressant effect on the
central nervous system, including its
salts, isomers and salts of isomers
whenever the existence of such
salts, isomers and salts of isomers is
possible within the specific chemical
designation:

(1)
Mecloqualone;
(2)
Methaqualone;
(3)
Benzodiazepines;
(a)
Bromazepam;
(b)
Camazepam;
(c)
Cloxazolam;
(d)
Delorazepam;
(e)
Ethylloflazepate;
(f)
Fudiazepam;
(g)
Flunitrazepam;
(h)
Haloxazolam;
(i)
Ketazolam;

(j)
Loprazolam;
(k)
Lormetazepam;
(l)
Medazepam;
(m)
Nimetazepam;
(n)
Nitrazepam;
(o)
Nordiazepam;
(p)
Oxazolam;
(q)
Phenazepam
(r)
Pinazepam;
(s)
Tetrazepam;
(t)
Flubromazepam;
(u)
Diclazepam
(4) Gamma
hydroxybutyric acid and any chemical
compound that is metabolically
converted to GHB;
(5) Gamma
butyrolactone and any chemical
compound that is metabolically
converted to GHB;
(6) 1-4 butane
diol and any chemical compound that
is metabolically converted to GHB
(7) GHV or
4-methyl-GHB; γ -hydroxyvaleric
acid;
(8) GVL;
 γ -valerolactone;
(9) MMQ;
methylnaphthidate;
(10) MBQ;
mebroqualone.

E. HALLUCINOGENIC

SUBSTANCES: Unless specifically
exempt or unless listed in another
schedule, any material, compound,
mixture or preparation, which
contains any quantity of the following
hallucinogenic substances, or which
contains any of its salts, isomers,
and salts of isomers whenever the
existence of such salts, isomers and
salts of isomers is possible within the
specific chemical designation (for
purpose of this sub-section only, the
term "isomers" includes the optical,

positional, and geometric isomers).
(1) 3,4
-methylenedioxy amphetamine;
(2)
5 - methoxy - 3,4-methylenedioxy
amphetamine;
(3) 3,4,5
-trimethoxy amphetamine;
(4)
Bufotenine;
(5) DET;
(Diethyltryptamine);
(6) DMT;
(Dimethyltryptamine);
(7) DOM
or STP; (4-methyl-2,5-dimethoxy
amphetamine);
(8) Lysergic
acid amide;
(9) Lysergic
acid diethylamide;
[(10) —
Marijuana;]
[(11) (10)
Mescaline;
[(12) (11)
Peyote;
[(13) (12)
N-ethyl-3-piperidyl benzilate;
[(14) (13)
N-methyl-3-piperidyl benzilate;
[(15) (14)
Psilocybin;
[(16) (15)
Psilocyn;
[(17) —
Tetrahydrocannabinols;]
[(18) (16)
Parahexyl (synthetic analog of
delta-9-tetrahydrocannabinol) [(FHC)-
an active ingredient of cannabis];
[(19) — Hashish;]
[(20) (17)
2, 5 -dimethoxyamphetamine; 2,
5-DMA;
[(21) (18)
4-bromo-2, 5-dimethoxy-
amphetamine; 2, 5-DMA;
[(22) (19)
PMA; 4-methoxyamphetamine;
[(23) (20)
PCE; (Ethylamine N-ethyl-1-
phenylcyclohexylamine);
[(24) (21)
Pyrrolidine 1-(1-phenylcyclohexyl)-
pyrrolidine (PCPy), (PHP) analog of
the drug phencyclidine;

(25) (22)
Thiophene (analog of phencyclidine)
TCP or TPCP;

(26) (23)
Alpha-ethyltryptamine;
(27) (24) 2,
5-dimethoxy-4-ethylamphet-amine;

(28) (25)
Ibogaine;

(29) (26)
2C-T-7; (2,5-dimethoxy-4-(n)-
propylthiophenethylamine);

(30) (27)
AMT; (Alpha-methyltryptamine);

(31) (28)
5-MeO-DIPT; (5-methoxy-N,N-
diisopropyltryptamine);

(32) (29)
25B-NBOMe; (2-(4-bromo-
2.5-dimethoxyphenyl)-N-(2-
methoxybenzyl)ethanamine);

(33) (30)
25C-NBOMe; (2-(4-chloro-
2.5-dimethoxyphenyl)-N-(2-
methoxybenzyl)ethanamine);

(34) (31)
25I-NBOMe; (2-(4-iodo-2.5-
dimethoxyphenyl)-N-(2-
methoxybenzyl)ethanamine).

(35) (32)
Synthetic cannabinoids: Unless
specifically exempted or unless listed
in another schedule, any material,
compound, mixture or preparation
which contains any quantity of the
following synthetic cannabinoids
which demonstrates binding activity
to the cannabinoid receptor or analogs
or homologs with binding activity.
Substances include but are not limited
to:

(a)
CP 55,244 ((hydroxymethyl)-4-[2-
hydroxy-4-(2-methyloctan-2-yl)
phenyl] 1,2,3,4,4a,5,6,7,8,8a-
decahydronaphthalen-2-ol);

(b)
CP 55,940 (5-hydroxy-2-(3-
hydroxypropyl) cyclohexyl)-5-(2-
methyloctan-2-yl)phenol);

(c)
JWH-081 (1-pentyl-3-[1-(4-
methoxynaphthoyl)]indole);

(d)
JWH-122 (1-pentyl-3-(4-methyl-1-
naphthoyl)indole);

(e)
JWH-133 3-(1,1-dimethylbutyl)-

6a,7,10,10a-tetrahydro
-6,6,9-trimethyl-6H dibenzo[b,d]
pyran;

(f)
JWH 203 1-pentyl-3-(2-
chlorophenylacetyl)indole);

(g)
JWH 210 4-ethylnaphthalen-1-yl-(1-
pentylindol-3-yl)methanone;

(h)
AM-694 (1-(5-fluoropentyl)-3-(2-
iodobenzoyl)indole);

(i)
AM-1221 (1-(N-methylpiperidin-2-yl)
methyl-2-methyl-3-(1-naphthoyl)-6-
nitroindole);

(j)
AM-2201 (1-(5-fluoropentyl)-3-(1-
naphthoyl)indole);

(k)
RCS-4 or SR-19 (1-pentyl-3-[(4-
methoxy)-benzoyl]indole);

(l)
RCS-8 or SR-18 (1-cyclohexylethyl-
3-(2-methoxyphenylacetyl)indole);

(m)
JWH-210 (1-pentyl-3-(4-
ethylnaphthoyl)indole);

(n)
WIN-49,098 (Pravadoline)
(4-methoxyphenyl)-[2-methyl-1-
(2-morpholin-4-ylethyl)indol-3-yl]
methanone;

(o)
WIN-55,212-2 (2,3-dihydro-5-
methyl-3-(4-morpholinylmethyl)
pyrrolo-1,4-benzoxazin-6-yl)-1-
naphthalenylmethanone);

(p)
any of the following synthetic
cannabinoids, their salts, isomers, and
salts of isomers, unless specifically
excepted, whenever the existence
of these salts, isomers, and salts of
isomers is possible within the specific
chemical designation;

(i)
naphthoylindoles: any compound
containing a 3-(1-naphthoyl) indole
structure with substitution at the
nitrogen atom of the indole ring
by an alkyl, haloalkyl, alkenyl,
cycloalkylmethyl, cycloalkylethyl,
1-(N-methyl-2-piperidinyl) methyl,
or 2-(4-morpholinyl) ethyl group,
whether or not further substituted
in the indole ring to any extent and
whether or not substituted in the

naphthyl ring to any extent including,
but not limited to, JWH-015, JWH-
018, JWH-019, JWH-073, JWH-081,
JWH-122, JWH-200, JWH-210,
JWH-398 and AM-2201;

(ii)
naphthylmethylindoles: any
compound containing a 1Hindol-
3-yl-(1-naphthyl) methane
structure with substitution at the
nitrogen atom of the indole ring
by an alkyl, haloalkyl, alkenyl,
cycloalkylmethyl, cycloalkylethyl,
1-(N-methyl-2-piperidinyl) methyl,
or 2-(4-morpholinyl) ethyl group,
whether or not further substituted
in the indole ring to any extent and
whether or not substituted in the
naphthyl ring to any extent including,
but not limited to, JWH-175, JWH-
184, and JWH-199;

(iii)
naphthoylpyrroles: any compound
containing a 3-(1-naphthoyl)
pyrrole structure with substitution
at the nitrogen atom of the pyrrole
ring by an alkyl, haloalkyl, alkenyl,
cycloalkylmethyl, cycloalkylethyl,
1-(N-methyl-2-piperidinyl) methyl,
or 2-(4-morpholinyl) ethyl group,
whether or not further substituted
in the pyrrole ring to any extent and
whether or not substituted in the
naphthyl ring to any extent including,
but not limited to, JWH-307;

(iv)
naphthylmethylindenes: any
compound containing a
naphthylideneindene structure with
substitution at the 3-position of the
indene ring by an alkyl, haloalkyl,
alkenyl,
cycloalkylmethyl, cycloalkylethyl,
1-(N-methyl-2-piperidinyl) methyl,
or 2-(4-morpholinyl) ethyl group,
whether or not further substituted
in the indene ring to any extent and
whether or not substituted in the
naphthyl ring to any extent including,
but not limited to, JWH-176;

(v)
phenylacetylindoles: any compound
containing a 3-phenylacetylindole
structure with substitution at the
nitrogen atom of the indole ring
by an alkyl, haloalkyl, alkenyl,
cycloalkylmethyl, cycloalkylethyl,
1-(N-methyl-2-piperidinyl) methyl,

or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, JWH-203, JWH-250, JWH-251, and RCS-8;

(vi)

cyclohexylphenols: any compound containing a 2-(3- hydroxycyclohexyl) phenol structure with substitution at the 5- position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not substituted in the cyclohexyl ring to any extent including, but not limited to, Cannabicyclohexanol (CP 47,497 C8 homologue), CP 47,497 and CP 55,490;

(vii)

benzoylindoles: any compound containing a 3-(benzoyl) [5] OTS-3833.4 indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, AM-694, Pravadoline (WIN 48,098), RCS-4, and AM-1241;

(q)

UR-144 1-(pentyl-1H-indol-3-yl) (2,2,3,3-tetramethylcyclopropyl) methanone;

(r)

XLR11 1-(5-fluoro-pentyl)-1H-indol-3-yl(2,2,3,3-tetramethylcyclopropyl) methanone;

(s)

AKB48 N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide;

(t)

QUPIC; Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate;

(u)

5-fluoro-PB22; 5F-PB22; Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate;

(v)

AB-FUBINACA; N-(1-amino-

3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide;

(w)

ADB-PINACA; N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide;

(x)

AB-CHMINACA; N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide;

(y)

AB-PINACA; N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide;

(z)

THJ-2201; [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl) methanone;

(aa)

FDU-PB-22 IUPAC: 1-Naphthyl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate;

(bb)

5-fluoro ABICA: N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indole-3-carboxamide;

(cc)

FUB-144 or FUB-UR-144; [1-(4-fluorobenzyl)-1H-indol-3-yl] (2,2,3,3-tetramethylcyclopropyl) methanone;

(dd)

MN-18; N-(1-Naphthyl)-1-pentyl-1H-indazole-3-carboxamide;

(ee)

FUB-PB-22; Quinolin-8-yl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate;

(ff)

ADB-CHMINACA (N-[1-(aminocarbonyl)-2,2-dimethylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide);

(gg)

AMB-FUBINACA or FUB-AMB (methyl(1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)-L-valinate);

(hh)

5-fluoro-AMB (N-[[1-(5-fluoropentyl)-1H-indazol-3-yl] carbonyl]-L-valine, methyl ester);

(ii)

5-fluoro-ADB (N-[[1-(5-fluoropentyl)-1H-indazol-3-yl] carbonyl]-3-methyl-D-valine, methyl ester);

(ji)

Bk-DMBDB or dibutylone; 1-(Benzo[d][1,3]dioxol-5-yl)-2-(dimethylamino)butan-1-one;

(kk)

MMB-FUBINACA; methyl (1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)-L-valinate;

(ll)

MDMB-CHMICA; methyl (S)-2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate;

(mm)

NM2201; Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate;

(nn)

5-Fluoro-AKB48 or 5F-APINACA; N-((3s,5s,7s)-adamanta-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide;

(oo)

5-Fluoro-ADB; Methyl(S)-2-[1-(5-fluoropentyl)-1H-indazole-3-carboxamido]-3,3-dimethylbutanoate;

(pp)

5-Fluoro-AMB; N-[[1-(5-fluoropentyl)-1H-indazol-3-yl] carbonyl]-L-valine, methyl ester;

(qq)

MAB-CHMINACA; N-[1-(aminocarbonyl)-2,2-dimethylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide;

(rr)

SDB-006; N-benxyl-1-pentyl-1H-indole-3-carboxamide;

(ss)

Cumyl-PINACA; 1-pentyl-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide;

(tt)

Cumyl-PICA; 1-pentyl-N-(2-phenylpropan-2-yl)-1H-indole-3-carboxamide.

[36] (33)

Substances determined by the board to have the pharmacological effect of the substance, the risk to the public health by abuse of the substance and the potential of the substance to produce psychic or physiological dependence liability is similar to the substances described in Paragraph (1) or (2) of 30-31-23C NMSA 1978. Substances include but are not limited to:

Salvia divinorum;	(a)	(54) (51)	(72) (69)
	(b)	Eutylone; beta-keto-ethylbenzodioxolylbutanamine;	4-FMC or flephedrone; 4-fluro-N-methylcathinone;
Salvinorin A (methyl (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(furan-3-yl)-6a,10b-dimethyl-4,10-dioxododecahydro-2H-benzo[f]isochromene-7-carboxylate);		(55) (52)	(73) (70)
(4-MEC); 4-methyl-ethylcathinone;		beta-keto-ethylbenzodioxolylpentanamine;	(3-FMC); 3-fluro-N-methylcathinone;
		(56) (53)	(74) (71)
(4-EMC); 4-ethyl-methcathinone;		beta-keto-methylbenzodioxolylpentanamine (pentylone);	(3-MMC); 3-methylmethcathinone;
		(57) (54)	(75) (72)
Ethcathinone; 2-ethylamino-1-phenylpropan-1-one;		4-Bromo-2,5-dimethoxyphenethylamine (2c-B, Nexus);	(3,4 DMMC); 3,4-Dimethylmethcathinone;
		(58) (55)	(76) (73)
Ethylone;		N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)-phenethylamine, and N-hydroxy MDA;	(3-MEC); 3-Methyl-N-ethylcathinone;
3',4'-methylenedioxyethylcathinone;		(59) (56)	(77) (74)
		5-methoxy-N,N-dimethyltryptamine (5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT;	4-methylbuphedrone or 4-MeBP; 2-methylamino-1-(4-methylphenyl)butan-1-one
Bk-MBDB, butylone;		(60) (57)	(78) (75) (4
beta-keto-N-methyl-3,4-benzodioxolybutanamine;		Mephedrone; 4-methylmethcathinone;	MTA); 4-methylthioamphetamine;
		(61) (58)	(79) (76)
1), naphyrone; naphthylpyrovalerone;		(MDPV); 3,4-methylenedioxypropylvalerone;	(5-Me MDA); 5-methyl-3,4-methylenedioxyamphetamine;
		(62) (59)	(80) (77)
Metamfepramone; N,N-dimethylcathinone;		(2C-E); 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine;	(6-APB); 6-benzofuran;
		(63) (60)	(81) (78)
Alpha-PPP; alpha-pyrrolidinopropiophenone;		(2C-D); 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine;	(PMA); 4-methoxyamphetamine;
		(64) (61)	(82) (79)
(alpha-PBP); alpha-pyrrolidinobutiophenone;		(2C-T-2); 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine;	(2C-B); 2,5-dimethoxy-4-bromophenethylamine;
		(65) (62)	(83) (80)
(MOPPP); 4'-methoxy-alpha-pyrrolidinopropiophenone;		(2C-T4); 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine;	(2C-C); 2,5-dimethoxy-4-chlorophenethylamine;
		(66) (63)	(84) (81)
(MaPPP); 4'-methyl-alpha-pyrrolidinopropiophenone;		(2C-H); 2-(2,5-Dimethoxyphenyl)ethanamine;	(2C-D); 4-methyl-2,5-dimethoxyphenethylamine;
		(67) (64)	(85) (82)
(MDPPP); 3',4'-methylenedioxy-alpha-pyrrolidinopropiophenone;		(2C-N); 2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine;	(2C-E, aquarust, cindy); 2,5-dimethoxy-4-ethylphenethylamine;
		(68) (65)	(86) (83)
(MDPBP); 3',4'-methylenedioxy-alpha-pyrrolidinobutiophenone;		(2C-P); 2-(2,5-Dimethoxy-4-(n-propylphenyl)ethanamine;	(2C-G); 3,4-dimethyl-2,5-dimethoxyphenethylamine;
		(69) (66)	(87) (84)
Alpha-PVP; alpha-pyrrolidinovalerophenone;		Methylone; 3,4-Methylenedioxy-N-methylcathinone;	(2C-I); 2,5-dimethoxy-4-iodophenethylamine;
		(70) (67)	(88) (85)
(MDAI); 5,6-methylenedioxy-2-aminoindane;		Aminorex (2-amino-5-phenyl-2-oxazoline);	(2C-T21); 2-[2,5-dimethoxy-4-(2-fluoroethylthio)phenyl]ethanamine;
		(71) (68)	(89) (86)
Buphedrone; alpha-methylamino-butyrophenone;		Pentadrone;	(2C-B-FLY); 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine;
			(90) (87)
			Bromo-DragonFLY or 3C-Bromo-Dragonfly or DOB-Dragonfly; 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine;

(~~91~~) (88)
 (DOB); 2,5-Dimethoxy-4-bromoamphetamine;
 (~~92~~) (89)
 (DOC); 2,5-Dimethoxy-4-chloroamphetamine;
 (~~93~~) (90)
 (DOM); 2,5-Dimethoxy-4-methylamphetamine;
 (~~94~~) (91)
 (TMA2);
 2,4,5-trimethoxyamphetamine;
 (~~95~~) (92)
 (TMA6);
 2,4,6-trimethoxyamphetamine;
 (~~96~~) (93)
 (MDAT); 6,7-methylenedioxy-2-aminotetralin;
 (~~97~~) (94)
 (4-acetoxy DiPT, ipracetin);
 4-acetoxy-N,N-diisopropyltryptamine;
 (~~98~~) (95)
 (4-acetoxy DMT, psilacetin);
 O-Acetylpsilocin;
 (~~99~~) (96)
 4-HO MET, metocin; 4-hydroxy-N-methyl-N-ethyltryptamine;
 (~~100~~) (97)
 4-HO MiPT, hats; 4-hydroxy-N-methyl-N-isopropyltryptamine;
 (~~101~~) (98)
 5-MeO-aMT, Alpha-O; 5-methoxy- α -methyltryptamine;
 (~~102~~) (99)
 (5-MeO-MiPT); N-[2-(5-methoxy-1H-indol-3-yl)ethyl]-N-methylpropan-2-amine;
 (~~103~~) (100)
 (DiPT); N,N-diisopropyltryptamine;
 (~~104~~) (101)
 (DPT); dipropyltryptamine;
 (~~105~~) (102)
 (5-MeO-DALT); N,N-diallyl-5-methoxytryptamine;
 (~~106~~) (103)
 (3-MeO PCP);
 3-methoxyphencyclidine;
 (~~107~~) (104)
 (4-MeO PCP);
 4-methoxyphencyclidine;
 (~~108~~) (105)
 (MK-801); dizocilpine;
 (~~109~~) (106)
 (PCE, perchloroethylene, perchloroethene), Perc;
 tetrachloroethylene;
 (~~110~~) (107)
 (PCE, perchloroethylene,

perchloroethene), Perc;
 tetrachloroethylene;
 (~~111~~) (108)
 (PCPr); phencyclamine, N-(1-phenylcyclohexyl)propanamine;
 (~~112~~) (109)
 (Tenocyclidine); 1-(1-(2-thienyl)cyclohexyl)piperidine
 (~~113~~) (110)
 (3-MeO PCE); 3-methoxyeticyclidine,
 N-ethyl-1-(3-methoxyphenyl)cyclohexanamine;
 (~~114~~) (111)
 (ETH-LAD); 6-ethyl-6-nor-lysergic acid diethylamide;
 (~~115~~) (112)
 (AL-LAD); 6-allyl-6-nor-LSD;
 (~~116~~) (113)
 (PRO-LAD); 10-didehydroergoline-8-carboxamide.
F. Any material, compound, mixture or preparation which contains any quantity of the following substances.
(1) 3,
 4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers;
(2)
 (MPPP); 1-methyl-4-phenyl-4-propionoxypiperidine its optical isomers, salts, and salts of isomers;
(3)
 1-(2-phenylethyl)-4-phenyl-4-acetoxy piperidine (PEPAP), its optical isomers, salts and salts of isomers;
(4) Cathinone;
(5)
 Methcathinone;
(6)
 Tianeptene.
 [16.19.20.65 NMAC - Rp 16.19.20.65 NMAC, 6/26/2018; A, 12/17/2019; A, 9/14/2021]

16.19.20.68 SCHEDULE IV:
 Shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

A. DEPRESSANTS:
 Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any

quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1)** Alfaxalone;
- (2)** Alprazolam;
- (3)** Barbital;
- (4)** Chloral
- (5)** Chloral
- (6)** Hydrate;
- (7)** Chlordiazepoxide;
- (8)** Clobazam;
- (9)** Clonazepam;
- (10)** Clorazepate;
- (11)** Clotiazepam
- (12)** Diazepam;
- (13)** Estazolam;
- (14)** Ethchlorvynol;
- (15)** Ethinamate;
- (16)** Flurazepam;
- (17)** Fospropofol;
- (18)** Halazepam;
- (19)** Lorazepam;
- (20)** Mebutamate;
- (21)** Meprobamate;
- (22)** Methohexital;
- (23)** Methylphenobarbital;
- (24)** Midazolam;
- (25)** Oxazepam;
- (26)** Paraldehyde;
- (27)** Petrichloral;
- (28)** Phenobarbital;
- (29)** Prazepam;
- (30)** Quazepam;

Remimazolam; ~~(30)~~ (31)
 Suvorexant; ~~(31)~~ (32)
 Temazepam; ~~(32)~~ (33)
 Triazolam.

B. FENFLURAMINE:
 Any material, compound, mixture or preparation which contains any quantity of the following substance, including its salts, isomers (whether optical, positional, or geometric) and its salts, or such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:
 Fenfluramine.

C. LORCASERIN:
 Any material, compound, mixture or preparation which contains any quantity of the following substance, including its salts, isomers (whether optical, positional, or geometric) and its salts, or such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:
 Lorcaserin.

D. STIMULANTS:
 Unless specifically exempt or unless listed in another schedule any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, positional, or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:
 (1)
 Diethylpropion;
 (2)
 Phentermine;
 (3) Pemoline
 (including organometallic complexes and chelates thereon);
 (4) Pipradrol;
 (5)
 SPA ((-)-1-dimethyl amino-1,2-diphenylmethane);
 (6) Mazindol;
 (7) Cathine;
 (8)
 Fencamfamin;
 (9)
 Fenproporex;

(10)
 Mefenorex;
 (11) Modafinil;
 (12)
 Sibutramine.

E. OTHER SUBSTANCES: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:
 (1)
 Dextropropoxyphene(Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane);
 (2)
 Pentazocine;
 (3)
 Carisoprodol;
 (4)
 Nalbuphine Hydrochloride;
 (5)
 Butorphanol Tartrate;
 (6) Dezocine;
 (7)
 Dichloralphenazone;
 (8) Zaleplon;
 (9) Zolpidem;
 (10)
 Eszopiclone;
 (11) Tramadol;
 (12)
 Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl]](1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino)methyl]-2-methoxybenzoic acid) (including its optical isomers) and its salts, isomers, and salts of isomers.

F. NARCOTIC DRUG: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof:
 Not more than one milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

G. EXEMPTION OF CHLORAL: When packaged in a sealed, oxygen-free environment, under nitrogen pressure, safeguarded against exposure to the air. Chloral when existing under the above conditions is a substance which is not

intended for general administration to a human being or another animal, and contains no narcotic controlled substances and is packaged in such a form that the package quantity does not present any significant potential for abuse. All persons who engage in industrial activities with respect to such chloral are subject to registration; but shall be exempt from Section 30-31-16 through 19 of the New Mexico Controlled Substances Act and 16.19.20.19 NMAC through 16.19.20.52 NMAC of the board of pharmacy regulations.

H. EXEMPT COMPOUNDS: Librax and Menrium are preparations which contain chlordiazepoxide, a depressant listed in schedule IV, Paragraph (6) of Subsection A of 16.19.20.68 NMAC and other ingredients in such combinations, quantity, preparation or concentration as to vitiate the potential for abuse of chlordiazepoxide, and are hereby exempt preparations.

- (1) Librax;
 - (2) Menrium, 5-2;
 - (3) Menrium, 4-5;
 - (4) Menrium, 10-4.
- [16.19.20.68 NMAC - Rp 16.19.20.68 NMAC, 6/26/2018; A, 9/14/2021]

16.19.20.69 SCHEDULE V:
A. Narcotic drugs

containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone.

- (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
- (2) Not more than 100 milligrams of

dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than two and five-tenths milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(6) Not more than five-tenths milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

B. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers.

(1) Pyrovalerone.

(2) Pseudoephedrine as a drug that includes any compound, mixture, or preparation that contains any detectable quantity of pseudoephedrine, its salts or its optical isomers, or salts of its optical isomers. Pursuant to 30-31-10.C the following substances are excluded from schedule V controlled substances: pseudoephedrine products in liquid form including liquid filled gel caps and pseudoephedrine products already classified as dangerous drugs.

C. Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]

(2) Pregabalin [(S)-3-(aminomethyl)-5-

methylhexanoic acid]

(3) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino-phenyl)]-carbamic acid ethyl ester]

(4) Brivaracetam

(5) Cenobamate
[16.19.20.69 NMAC - Rp 16.19.20.69 NMAC, 6/26/2018; A, 12/17/2019, A, 12/15/2020; A, 9/14/2021]

**REGULATION
AND LICENSING
DEPARTMENT
PHARMACY, BOARD OF**

This is an amendment to 16.19.30 NMAC, Sections 7, 8 and 9, effective 9/14/2021.

16.19.30.7 DEFINITIONS:

In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

A. "Active pharmaceutical ingredient (API)" any substance or mixture of substances intended to be used in the compounding of a drug preparation, thereby becoming the active ingredient in that preparation and furnishing pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans and animals or affecting the structure and function of the body.

B. "Beyond-use date (BUD)" the date after which a compounded preparation should not be used and is determined from the date the preparation was compounded.

C. "Component" any ingredient intended for use in the compounding of a drug product, including those that may not appear in such product labeling.

D. "Compounding" the preparation, mixing, assembling, packaging, or labeling of a drug or device (reconstitution of commercial products is not considered compounding for purposes of this article).

(1) as the result of a practitioner's prescription order, based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(2) preparing limited quantities of prescription orders based upon a history of receiving valid prescriptions issued within an established practitioner-patient-pharmacist relationship in the course of professional practice;

(3) reconstitution of commercial products is not considered compounding for purpose of this article.

E. "FDA" Food and Drug administration.

F. "SOP's" standard operating procedures.

G. "USP/NF" the current edition of the United States Pharmacopeia/National Formulary. [16.19.30.7 NMAC - N, 9/15/2006; A, 12/13/2015; A, 9/14/2021]

16.19.30.8 PERSONNEL:

A. Pharmacist-in-charge. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following concerning non-sterile compounding:

(1) determining that all personnel involved in non-sterile compounding possess the education, training, and proficiency necessary to properly and [as] safely perform compounding duties undertaken or supervised;

(2) determining that all personnel involved in non-sterile compounding obtain continuing education appropriate for the type of compounding done by the personnel;

(3) assuring that the equipment used in compounding is properly maintained;

(4) maintaining an appropriate environment in the area where non-sterile compounding occurs [and];

(5) assuring that effective quality control procedures are developed and followed; and

(6) assuring availability of current reference

source for the type of compounding conducted.

B. Pharmacists.
Special requirements for non-sterile compounding:

(1) all pharmacists engaged in compounding shall:

(a) possess the education, training and proficiency necessary to properly and safely perform compounding duties undertaken or supervised and

(b) obtain continuing education for the type of compounding done by the pharmacist.

(2) A pharmacist shall inspect and approve all components, drug product containers, closures, labeling and any other material involved in the compounding process.

(3) A pharmacist shall review all compounding records for accuracy and conduct in-process and final checks to assure that errors have not occurred in the compounding process.

(4) A pharmacist is responsible for the proper maintenance, cleanliness and use of all equipment used in the compounding process.

C. Pharmacy technicians. All technicians engaged in compounding shall:

(1) possess the education, training and proficiency necessary to properly and safely perform compounding duties undertaken;

(2) obtain continuing education for the type of compounding done by the pharmacy technician; and

(3) perform compounding duties under the direct supervision of and responsible to a pharmacist.

D. Training. All personnel involved in non-sterile compounding shall be trained and must participate in continuing relevant training programs. [16.19.30.8 NMAC - N, 9/15/2006; A, 9/14/2021]

16.19.30.9 OPERATIONAL STANDARDS:

A. General requirements.

(1) Non-sterile drug products may be compounded in licensed pharmacies as a result of a practitioner’s prescription order based on the practitioner-patient-pharmacist relationship in the course of professional practice.

(2) Preparing limited quantities of prescription drug orders in anticipation based upon a history of receiving valid prescriptions issued within an established practitioner-patient-pharmacist relationship in the course of professional practice.

(a) The beyond-use date should be based on the criteria outlined in USP Chapter <795>.

(b) Any product compounded in anticipation of future prescription drug or medication orders shall be labeled. Each label shall contain:

(i) name and strength of the compounded medication or list of the active ingredient and strengths;

(ii) facility’s lot number;

(iii) beyond-use date;

(iv) quantity or amount in the container.

(3) Commercially available product may be compounded for dispensing to individual patients provided the following conditions are met:

(a) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet patient’s needs; and

(b) the prescribing practitioner has requested that the drug be compounded; or

(c) if the compounded product is changed to produce for that patient a significant difference, as authorized by the prescriber, between the compounded drug and the comparable

commercially available drug product, or if use of the compounded product is in the best interest of the patient; “significant difference” would include the removal of a dye for medical reason such as an allergic reaction; when a compounded product is to be dispensed in place of a commercially available product, the prescriber and patient shall be informed that the product will be compounded.

(4) Compounding [~~veterinarian~~] veterinary preparations.

(a) Preparations for animals may be compounded based on an order or prescription from a duly authorized veterinarian.

(b) These preparations are to be handled and filled the same as the human prescriptions.

(c) Compounding of drugs for animals must be in accordance with the Animal Medicinal Drug Use Clarification Act of 1994 or successor Act.

(d) A licensed pharmacy may compound veterinary [~~non-controlled substance~~] drug preparations in reasonable quantities, in accordance with Paragraph (5) of Subsection DDD of 16.19.8.7 NMAC to be used by veterinarians in their office for administration to patients (“office use preparations”).

(e) Compounded office use preparations may be dispensed by a veterinarian to clients only under the following conditions:

(i) a valid veterinarian client patient relationship exists;

(ii) the patient has an emergency condition that the compounded drug is necessary to treat;

(iii) dispensed amount is for use in a single course of treatment, not to exceed a 120-hour supply;

(iv) timely access to a compounding pharmacy is not available; and

(v) the medication is not a controlled substance; [and]

(f) Compounded controlled substance veterinary office use preparations may be distributed by a pharmacy under the following conditions:

(i) the preparation is not readily available from an outsourcing facility;

(ii) ordering and distribution occur in compliance with applicable state and federal law;

(iii) the pharmacy shall be registered with the DEA as a manufacturer; and

(iv) in addition to other required labeling, such preparations shall bear a statement "For administration only. Not for dispensing or resale."

(f) (g) Prohibition on wholesaling:

(i) Office use preparations will not be distributed by a person other than the pharmacy that compounded such veterinary drug preparations.

(ii) This does not prohibit administration or dispensing pursuant to a prescription drug order executed in accordance with federal and state law; and the conditions of this Paragraph (4).

(g) (h) Providing samples of compounded veterinary preparations is prohibited.

(5) Compounding pharmacies/ pharmacists may advertise and promote the fact that they provide non-sterile prescription compounding services which may include specific drug products and classes of drugs.

B. Environment.
(1)

Pharmacies regularly engaging in compounding shall have a designated and adequate area for the safe and orderly compounding of drug products including the placement of equipment and materials. Pharmacies involved in occasional compounding shall prepare an area prior to each compounding activity, which is

adequate for safe and orderly compounding.

(2) Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of a drug compounding operation.

(3) A sink with hot and cold running water, exclusive of rest room facilities, shall be accessible to the compounding areas and be maintained in a sanitary condition.

(4) When drug products that require special precautions to prevent contamination, such as penicillin, are involved in a compounding operation, appropriate measures, including dedication of equipment for such operations or the meticulous cleaning of contaminated equipment prior to its' use for the preparation of other drug products, must be used in order to prevent cross-contamination.

C. Equipment and supplies. The pharmacy shall:

(1) have a Class A prescription balance, or analytical balance and weights when necessary which shall be properly maintained and subject to inspection by the New Mexico board of pharmacy; and

(2) have equipment and utensils necessary for the proper compounding of prescription or medication drug orders; such equipment and utensils used in the compounding process shall be:

(a) of appropriate design and capacity, and be operated within designated operational limits;

(b) of suitable composition so that surfaces that contact components, in-process material or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality or purity of the drug product beyond the desired result;

(c) cleaned and sanitized appropriately prior to each use; and

(d) routinely inspected, calibrated when

necessary or checked to ensure proper performance.

D. Labeling. In addition to the labeling requirements of the pharmacy's specific license classification, the label dispensed or distributed pursuant to a prescription or medication drug order shall contain the following:

(1) the generic name(s) or the designated name and the strength of the compounded preparation;

(2) the quantity dispensed;

(3) the date on which the product was compounded;

(4) a lot or batch number; and

(5) the beyond-use date after which the compounded preparation should not be used;

(a) in the absence of stability information applicable for a specific drug **or preparation** in the USP/NF the preparation shall adhere to the following maximum beyond-use date guidelines:

(i) for non-aqueous formulations - the BUD is not later than the time remaining until the earliest expiration date of any API or six months, whichever is earlier;

(ii) for water-containing oral formulations - the BUD is not later than 14 days when stored at controlled cold temperatures;

(iii) for water-containing topical/dermal and mucosal liquid and semisolid formulations - the BUD is not later than 30 days.

(b) beyond-use date limits may be exceeded when supported by valid scientific stability information for the specific compounded preparation; **the BUD shall not be later than the expiration date on the container of any component.**

E. Drugs, components and material used in non-sterile compounding.

(1) Drugs used in non-sterile compounding

shall preferably be a USP/NF grade substance manufactured in a FDA registered facility.

(2) In the event that USP/NF grade substances are not available, documentation of stability and purity must be established and documented.

(3) A pharmacy may not compound a drug product which has been withdrawn or removed from the market for safety reasons.

F. Compounding process. The safety, quality and performance of compounded prescriptions depend on correct ingredients and calculations, accurate and precise measurements, appropriate formulation conditions and procedures, and prudent pharmaceutical judgment. Each pharmacy shall develop and follow written SOP's based on established compounding procedures as outlined in chapter 795 of the USP/NF concerning pharmacy compounding of non-sterile preparations designed to ensure accountability, accuracy, quality, safety, and uniformity in the compounding process.

G. Quality control.

(1) The safety, quality, and monitoring is used to insure that the output of compounded drug products for uniformity and consistency such as capsule weight variations, adequacy of mixing, clarity or pH of solutions are met. When developing these procedures, pharmacy personnel shall consider the provisions of Chapter 795 of the USP/NF concerning pharmacy compounding of non-sterile preparations, chapter 1075 of the USP/NF concerning good compounding practices, and chapter 1160 of the USP/NF concerning pharmaceutical calculations in prescription compounding. Such procedures shall be documented and be available for inspection.

(2) Compounding procedures that are routinely performed, including batch compounding, shall be completed and verified according to written procedures. The act of verification of

a compounding procedure involves checking to ensure that calculations, weighing and measuring, order of mixing, and compounding techniques were appropriate and accurately performed.

(3) Unless otherwise indicated or appropriate, compounded preparations are to be prepared to ensure that each preparation shall contain not less than 90.0 percent and not more than 110.0 percent of the theoretically calculated and labeled quantity of active ingredient per unit volume and not less than 90.0 percent and not more than 110.0 percent of the theoretically calculated weight or volume per unit of the preparation.

[16.19.30.9 NMAC - N, 9/15/2006; A, 6/29/2013; A, 12/19/2013; A, 12/13/2015; A, 12/15/2020; A, 9/14/2021]

**REGULATION
AND LICENSING
DEPARTMENT
PHARMACY, BOARD OF**

This is an amendment to 16.19.31 NMAC, Sections 1, 2, 3, and 11, effective 9/14/2021.

16.19.31.1 ISSUING AGENCY: [~~Regulation and Licensing Department-~~] Board of Pharmacy.

[16.19.31.1 NMAC - N, 4/3/2006; A, 9/14/2021]

16.19.31.2 SCOPE: All pharmacies, resident and non-resident, as defined in Subsections S and Z of Section [61-11-2(S), (Y)] 61-11-2 NMSA 1978, and all persons or entities that own or operate, or are employed by, a pharmacy for the purpose of providing pharmaceutical products or services. Pharmacists and technicians subject to licensure, registration, and regulation by the board of pharmacy. Practitioners subject to registration by the board of pharmacy pursuant to Section 30-31-12 of the Controlled Substances Act. [16.19.31.1 NMAC - N, 4/3/2006; A, 9/14/2021]

16.19.31.3 STATUTORY AUTHORITY: Paragraph (1) of Subsection A of Section [61-11-6 NMAC 1978] authorizes the board of pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act, Sections 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978. Paragraph (3) of Subsection A of Section [61-11-6.A.(3)] 61-11-6 NMSA 1978 provides for the issuance and renewal of licenses for pharmacists. Paragraph (4) of Subsection A of Section 61-11-6 authorizes the board of pharmacy to require and establish criteria for continuing education as a condition of renewal of licensure for pharmacists. Paragraph (16) of Subsection A of Section [61-11-6.A.] 61-11-6 NMSA 1978

authorizes the board of pharmacy to register and regulate qualifications, training and permissible activities of pharmacy technicians. Paragraph (6) of Subsection A of Section [61-11-6.A.(6)] 61-11-6 NMSA 1978 requires that the board of pharmacy provide for the licensing of retail pharmacies and nonresident pharmacies and for the inspection of their facilities and activities. Section 30-31-11 NMSA 1978 authorizes the board of pharmacy to promulgate regulations and charge reasonable fees for the registration and control of the manufacture, distribution and dispensing of controlled substances. Section 30-31-12 NMSA 1978 requires board registration to engage in activities relating to controlled substances including possession, dispensing, prescribing or conducting research.

[16.19.31.1 NMAC - N, 4/3/2006; A, 9/14/2021]

16.19.31.11 PROVISIONS FOR PHARMACIST OR PHARMACY TECHNICIAN, UNAVAILABLE TESTING OR TRAINING:

A. During a declared civil or public health emergency resulting in unavailable required testing or training, the board may

authorize a temporary extension for a:
(1) temporary pharmacist license under reciprocity issued pursuant to 16.19.3 NMAC;

(2) pharmacy technician registration;

(3) pharmacist to exercise prescriptive authority pursuant to 16.19.26 NMAC (e.g. current live basic life support/ cardiopulmonary resuscitation).

B. Pharmacists and technicians are to complete required testing or training as soon as practicable.

[16.19.31.11 NMAC - N, 9/14/2021]

STATE ETHICS COMMISSION

This is amendment to 1.8.3 NMAC amending Sections 1, 7, 9, 10, 11, renumbered 13, 14 15 and 16; and adding new Section 12; and renumbering subsequent existing sections after new Section 12, effective 9/14/2021.

1.8.3.1 ISSUING AGENCY: State ethics commission (the commission), 800 Bradbury Dr. SE, Ste. [2+7] 215, Albuquerque, New Mexico 87106. [1.8.3.1 NMAC-N, 01/01/2020; A, 09/14/2021]

1.8.3.7 DEFINITIONS:

The following terms apply to these rules unless their context clearly indicates otherwise:

A. “Appellant” is a party who requests that the commission review and change the decision of the hearing officer.

B. “Appellee” is a party to an appeal arguing that the hearing officer’s decision is correct and should stand.

C. “Blackout period” means the period beginning 60 days before a primary or general election in which a person against whom a complaint is filed is a candidate, and ending on the day after that election.

D. “Brief” is a document summarizing the facts and points of law of a party’s case. It may be offered to or requested by a

hearing officer or filed in an appeal to the commission. For example, a “brief in chief” is filed with the commission by the appellant. An “answer brief” is filed by the appellee in response to the brief-in-chief.

E. “Candidate” as used in this part, has the same meaning as it does in Subsection G of Section 1-19-26 NMSA 1978 of the Campaign Reporting Act, Section 1-19-25 NMSA 1978.

F. “Case management system” is the commission’s electronic filing and notification system for complaints, which may be accessed at <https://proceedings.sec.state.nm.us>.

[E] G. “Claim” is a complainant’s allegation that a respondent violated a particular provision of law.

[F] H. “Designated district court judge” is an active or pro tempore district judge who has been appointed by the chief justice of the supreme court to consider the issuance and enforcement of subpoenas applied for by the commission.

[G] I. “Discriminatory practice,” as used in this part, has the same meaning as it does in Subsection L of Section 28-1-2 of the Human Rights Act, Section 28-1-1 NMSA 1978.

[H] J. “Lobbyist’s employer” as used in this part, has the same meaning as it does in Subsection F of Section 2-11-2 of the Lobbyist Regulation Act, Section 2-11-1 NMSA 1978.

[I] K. “Meeting” means a meeting of the commission duly noticed and conducted in compliance with the requirements of the Open Meetings Act, Section 10-15-1 NMSA 1978.

[J] L. “Party” and “Parties” means the named persons in a proceeding before the commission or a hearing officer.

[K] M. “Person” means any individual or entity.

[L] N. “Pleading” means any written request, motion, or proposed action filed by a party with the hearing officer or commission.

[M] O. “Qualified hearing officer” means an official appointed by the director in accordance with these rules to conduct an administrative hearing to enable the commission to exercise its statutory powers.

[N] P. “Records” means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, whether or not the records are required by law to be created or maintained.

[1.8.3.7 NMAC-N, 01/01/2020; A, 09/14/2021]

1.8.3.9 COMPLAINTS: FILING REQUIREMENTS AND LIMITATIONS; AMENDMENTS; NOTICE; TIME LIMITATIONS; CONSOLIDATION; COMMISSION-INITIATED COMPLAINTS:

A. The commission shall investigate allegations of violations of any statutes or constitutional provisions over which the legislature gives it jurisdiction. Such complaints may be filed against any public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist, [or] lobbyist’s employer, or a restricted donor subject to the Gift Act.

(1) The commission may initiate a proceeding before the commission concerning an alleged violation:

(a) through the filing of a complaint with the commission by any person which alleges that the complainant has actual knowledge of the alleged violation of such statutes or constitutional provisions;

(b) by initiating its own complaint alleging a violation of any statute or constitutional provision over which the commission has jurisdiction against a person subject to the jurisdiction of the commission, pursuant to Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978; or

(c) by accepting a complaint filed with another public agency or legislative body and forwarded by that agency or legislative body to the commission pursuant to Subsection B or E of Section 10-16G-9 NMSA 1978.

(2) A complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, shall:

(a) be filed electronically on the commission's case management system, or on a form prescribed by the commission and provided at no cost to the complainant or in a substantially equivalent form, which the director or the director's designee shall record electronically on the commission's case management system;

(b) state the name and, to the extent known to the complainant, the respondent's mailing address, email address, telephone number, and public office or other position [~~of the person against whom the complaint is filed~~];

(c) set forth in detail the specific claims against the respondent and the supporting factual allegations, including, if known to the complainant, any law that the respondent has allegedly violated;

(d) include any evidence that the complainant has that supports the complaint, which may include documents, records and names of witnesses; and

(e) be signed and sworn to by the complainant, under penalty of false statement.

(3) The director shall reject any complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC that fails to state either the respondent's mailing address or email address, or is not signed [~~notarized~~] and sworn to by the complainant, under penalty of false statement [~~shall be dismissed without prejudice~~]; and the complainant will have the opportunity to refile the complaint.

(4) A complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC may be amended once as a matter of course at any time before a responsive pleading is served. Otherwise, the complainant may amend the complaint by leave of the director. An amended complaint must be filed within seven days of the director's determination under Paragraph (3) of Subsection A of 1.8.3.10 NMAC that the commission has jurisdiction over the complaint.

(5) Unless the director grants the complainant leave, the commission shall not accept a complaint filed by a complainant who, within the previous calendar year, filed two complaints that were subsequently dismissed. In applying for leave to file a third or subsequent complaint within the same calendar year, the complainant shall explain how, as compared to the dismissed complaints, the proposed complaint concerns different facts, asserts different claims, or asserts claims against different respondents.

(6) By registering and filing a complaint through the commission's case management system, a party agrees to accept electronic service of subpoenas, notices, and other filings as a condition of submitting filings with the commission.

(7) Any party may represent themselves or may be represented by a licensed attorney. Corporations and other non-natural persons must be represented by counsel.

(a) Any [~~legal counsel~~] attorney representing [~~any~~] party shall enter an appearance with the commission and register on the commission's case management system. Upon receipt of the appearance, the commission shall direct all official notices and correspondence to the attorney named in the written appearance, at the address or location stated therein. [~~and a~~] Any official notice, [~~including a subpoena issued pursuant to Subsection J of Section 10-16G-~~

10-NMSA-1978], received by any named attorney shall be deemed to have been received by the represented party. An attorney may withdraw from representing a party before the commission only with leave of the director and for a reason provided for by Section B of Rule 16-116 NMRA.

(b) If the respondent is a public official or state public employee subject to a complaint alleging a violation made in the performance of the respondent's duties, the respondent [~~shall be~~] is entitled to representation by the risk management division of the general services department. "Respondent's duties," within the meaning of Subsection K of Section 10-16G-10 NMSA 1978 and this rule, excludes:

(i) conduct undertaken by an elected public official in furtherance of his or her campaign for election or reelection; and

(ii) any duty or obligation that by law is personal, rather than official, in nature.

(8) The commission may proceed with any complaint [~~irrespective of whether the complaint is notarized~~]; that is forwarded to the commission by another [~~state~~] public agency, or by the legislature or a legislative committee pursuant to Subparagraph (c) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, according to the terms of any agreement for shared jurisdiction between the commission and the referring agency or the legislative body, pursuant to Subsection E of Section 10-16G-9 NMSA 1978.

(9) No complaint may be accepted or considered by the commission unless the date on which the complaint is received by the commission, or the date on which the commission votes to initiate a complaint, falls within the later of two years from the date:

(a) on which the alleged conduct occurred; or

(b) the alleged conduct could reasonably have been discovered.

~~(7)~~ (10)

For the purpose of applying the two-year statute of limitations established in Subsection A of Section 10-16G-15 NMSA 1978, the date on which a complaint is filed with a public agency that refers the complaint to the commission under the law, or under an agreement for shared jurisdiction, shall be deemed the date of filing with the commission.

B. The commission shall not adjudicate a complaint filed against a candidate, except under the Campaign Reporting Act or Voter Action Act, fewer than 60 days before a primary or general election.

(1) This paragraph does not preclude during the blackout period:

(a) the dismissal of frivolous or unsubstantiated complaints, or dismissal or referral of complaints outside the jurisdiction of the commission, as provided by these rules; or

(b) an investigation related to the commission's discretion to file a court action to enforce the civil compliance provisions of any statute or constitutional provision over which the commission has jurisdiction.

(2) For complaints filed during and subject to the blackout period, the director, or the director's designee, shall notify the complainant:

(a) of the provisions of this section regarding the blackout period;

(b) that the complainant may refer allegations of criminal conduct to the attorney general or appropriate district attorney at any time; and

(c) of the deferral of commission action on the complaint for the duration of the blackout period.

(3) The director, or the director's designee, shall within five days notify a [person] candidate named as a respondent in a complaint filed during the 60-day pre-election blackout period of:

(a) the filing of the complaint;

(b) the specific allegations and violations charged in the complaint; and

(c) the deferral of commission action on the complaint for the duration of the blackout period.

C. The commission shall not adjudicate a complaint that alleges conduct occurring only before July 1, 2019. Any complaint filed with the commission or referred to the commission that alleges conduct occurring only before July 1, 2019 shall be [either] dismissed [or] and, if applicable, returned to the referring entity.

D. The director may consolidate a complaint with any other pending complaint involving related questions of fact or laws; provided that the consolidation will not unduly delay resolution of an earlier-filed complaint, unduly prejudice any complainant, or compromise the right of any complainant or respondent to confidentiality under these rules.

E. The Commission may initiate a complaint alleging a violation of any statute or constitutional provision over which the commission has jurisdiction against a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist, lobbyist's employer, or a restricted donor subject to the Gift Act, if:

(1) any commissioner or the director presents to the commission information or documents showing a violation of any statute or constitutional provision over which the commission has jurisdiction;

(2) the director determines that the complaint would be within the commission's jurisdiction; and

(3) five commissioners vote to initiate the complaint.

(4) A commissioner's vote to initiate a complaint pursuant to this Subsection

E is not grounds for recusal pursuant to Subsection A of 1.8.2.8 NMAC.

F. If the commission initiates any complaint under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC, then the director shall:

(1) provide the respondent with notice of the complaint in accordance with Subsection A of 1.8.3.10 NMAC; and

(2) forward the complaint to the general counsel to initiate an investigation in accordance with 1.8.3.11 NMAC.

G. If the director determines that the complaint, either in whole or in part, is subject to referral to another state or federal agency in accordance with Subsection D of Section 10-16G-9 NMSA 1978, the terms of an agreement entered into pursuant to the terms of Subsection E of Section 10-16G-9 NMSA 1978, Subsection D of Section 10-16-14 NMSA 1978, Subsection C of Section 1-19-34.4 NMSA 1978, or Subsection B of Section 2-11-8.2 NMSA 1978, the director shall refer some or all claims within the complaint to the appropriate agency and, within ten days of the referral, provide notice to the respondent of the referral.

H. When the commission initiates its own administrative complaint, the commission may serve in an appellate role after a hearing officer decision, and the commission will be limited to reviewing the record developed at the hearing. As such, except as provided in Subsection E of 1.8.3.9 NMAC, Subsections I & J of Section 10-16G-10 NMSA 1978, Subsection A of Section 10-16G-11 NMSA 1978, Subsection A of 1.8.3.12 NMAC, or Subsection J of 1.8.3.14 NMAC, the commission shall not receive any information related to a complaint filed pursuant to Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC until an appeal is made pursuant to 1.8.3.15 NMAC. [1.8.3.9 NMAC-N, 01/01/2020; A, 09/14/2021]

1.8.3.10 DIRECTOR'S RESPONSIBILITIES UPON RECEIVING A COMPLAINT; RESPONDENT'S OPPORTUNITY TO RESPOND; JURISDICTIONAL REVIEW; REFERRALS; NOTIFICATION TO PARTIES:

A. Within seven days of receiving a complaint, the director shall notify the respondent of the filing of the complaint; provided that, for any complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, the director shall ensure that the complaint satisfies the filing requirements set forth in Paragraph (1) of Subsection A of 1.8.3.9 NMAC before notifying the respondent of the filing of the complaint.

~~(1) The respondent may file with the commission a responsive pleading within 15 days from the date of receiving the director's notification and serve the same upon the complainant. Also, within 15 days from the date of receiving the director's notification, the respondent may file with the commission, and serve upon the complainant, a motion to dismiss the complaint for:~~

- ~~(a) lack of subject matter jurisdiction;~~
- ~~(b) lack of personal jurisdiction; or~~
- ~~(c) failure to state a claim upon which relief may be granted.~~

~~(2) The complainant may file a response to the respondent's motion. A response to a motion is due 15 calendar days from the date of the filing of the motion.~~

~~(3) If the respondent fails to submit a responsive pleading or motion within 15 days from the date of receiving the director's notification, then the director shall review the complaint for jurisdiction, and if jurisdiction lies, shall refer the complaint to the general counsel.]~~

B. Upon receiving a complaint pursuant to Subparagraph (a) or (c) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC,

~~[and any responsive pleading, or motion and corresponding response,] the director shall, within 10 days, review the [submissions] complaint to determine whether [the complaint] it is within the commission's jurisdiction.~~

C. If the director determines that a complaint lies wholly or in part within the jurisdiction of the commission, unless otherwise provided below, the director shall:

(1) provide the complainant with notice that the commission has jurisdiction for the complaint;

(2) provide the respondent with notice of the complaint and inform the respondent that the respondent may file with the commission a responsive pleading within 15 days from the date of receiving the director's notification and serve the same upon the complainant; and

(3) forward the complaint to the general counsel to initiate an investigation. Upon receiving the respondent's responsive pleading, the general counsel may request the complainant to file a response, which, if requested, is due within 15 days from the date of the respondent's responsive pleading. The response may answer the complaint's assertion of facts and present arguments that the complaint is frivolous, unsubstantiated or not supported by probable cause.

D. If the director determines that the complaint, either in whole or in part, is ~~[not wholly within the commission's jurisdiction, or is within the jurisdiction of]~~ subject to referral to another state or federal agency ~~[either in whole or in part]~~, pursuant to Subsection D of Section 10-16G-9, the terms of an agreement entered into pursuant to the terms of Subsection E of Section 10-16G-9 NMSA 1978, ~~[or]~~ Subsection D of Section 10-16-14 NMSA 1978, Subsection C of Section 1-19-34.4 NMSA 1978, or Subsection B of Section 2-11-8.2 NMSA 1978, the director shall refer some or all claims within the complaint to the

appropriate agency and, within ten days of the referral, provide notices to the complainant and the respondent of the referral.

E. If the director determines that the complaint is within the jurisdiction of the commission and recommends that the commission should not act on some or all aspects of the complaint, then the commission shall decide whether to dismiss some or all aspects of the complaint under Subsection C of Section 10-16G-9 NMSA 1978.

~~[E] E.~~ If the director determines that the complaint is neither within the jurisdiction of the commission nor subject to referral to another agency [under the terms of an agreement entered into pursuant to Subsection E of Section 10-16G-9 NMSA 1978], the commission shall dismiss the complaint.

[F] G. Subject to Subsection E of Section 1.8.3.15 NMAC, the director shall notify the complainant and respondent in writing of any action taken under Subsections B through E of 1.8.3.10 NMAC, unless notification has been delayed by the commission pursuant to Subsection H of Section 10-16G-10 NMSA 1978 and Subsection E of 1.8.3.15 NMAC. Neither the complaint nor the action taken on the complaint shall be made public by the commission or any staff member or contractor of the commission, but the complainant or respondent shall not be prevented from making public the complaint or any action taken on the complaint.

[G] H. The director shall consult with the attorney general, an appropriate district attorney or the United States attorney if:

(1) when reviewing a complaint for jurisdiction, the director determines that the complaint alleges conduct on the part of the respondent or another that appears reasonably likely to amount to a criminal violation; or

(2) the commission, any commission staff member, or any commission hearing officer finds at any time that a respondent's conduct appears

reasonably likely to amount to a criminal violation.

(3) Nothing in Section 10-16G-14 NMSA 1978 or in this section prevents the commission from taking any action authorized by the State Ethics Commission Act or deciding to suspend an investigation pending resolution of any criminal charges.

[1.8.3.10 NMAC-N, 01/01/2020; A, 09/14/2021]

1.8.3.11 GENERAL COUNSEL'S [RESPONSIBILITY TO INVESTIGATE COMPLAINTS; DISCOVERY AND SUBPOENAS; PROBABLE CAUSE DETERMINATIONS AND CONSEQUENCES; SETTLEMENT AUTHORITY] INVESTIGATION:

A. Upon receiving notice of the director's determination that the commission has full or partial jurisdiction over the complaint, the general counsel shall determine whether the complaint is frivolous or unsubstantiated, or supported by probable cause.

~~B.~~ If the respondent moves to dismiss a complaint, either in whole or in part, for failure to state a claim for which relief can be granted, and if the director determines that the commission has jurisdiction over the claim that is the subject of the respondent's motion to dismiss, the general counsel shall review the motion and any corresponding response. After reviewing the motion and any corresponding response, the general counsel shall make a recommendation on the disposition of the motion. Based on the general counsel's recommendation, the hearing officer may either:

~~(1)~~ grant the motion, either in whole or in part, dismiss the complaint or part of the complaint that fails to state a claim upon which relief can be granted, and notify the complainant and respondent in writing of the decision and the reasons for dismissal; or

~~(2)~~ deny the motion and notify the parties in writing of the denial. In that event,

the general counsel shall initiate an investigation into whether the complaint is supported by probable cause.]

~~[E] B.~~ To perform the investigation into whether probable cause supports the complaint, the general counsel, or the general counsel's designee, may administer oaths, interview witnesses under oath, and examine books, records, documents and other evidence reasonably related to the complaint.

The general counsel, or the general counsel's designee, may:

~~(1)~~ [The general counsel, or the general counsel's designee, may send to any party requests for production of] Request to inspect books, records, documents and other evidence reasonably related to a complaint; ~~[requests for admission]~~ request the complainant or respondent to admit certain facts; and serve written interrogatories, to be responded to under oath at a time therein specified;

~~[(a)]~~ The general counsel shall serve a copy of the request for production of books, records, documents and other evidence and interrogatories on the respondent.

~~(b)~~ If a claim is made that documents responsive to a request made under this subparagraph are privileged, the party asserting the claim of privilege must, within 14 days after making the claim of privilege, provide the general counsel with a written description of each document withheld that is sufficient to permit the general counsel to assess the applicability of the asserted privilege.]

~~(2)~~ Interview a witness under oath and outside the presence of the parties; and

~~[(2)] (3)~~ [The general counsel, or the general counsel's designee, may] Notice and take the deposition of any person, including any party, subject to the following provisions:

~~(a)~~ The general counsel, or the general counsel's designee, may put the witness on oath or affirmation and

shall personally, or by someone acting at the general counsel's direction, record the testimony of the witness.

~~(b)~~ Any objection during a deposition shall be stated concisely in a non-argumentative and non-suggestive manner. Objections to form or foundation may only be made by stating "objection—form" or "objection—foundation". ~~[It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.]~~ When a question is pending, or a document has been presented to the witness, no one may interrupt the deposition until the answer is given, except when necessary to preserve a privilege.

~~(c)~~ All objections shall be noted by the general counsel or the general counsel's designee upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections, except where the objection is based on an assertion of privilege made in good faith.

~~(d)~~ The general counsel, or the general counsel's designee, shall certify on the deposition that the witness was duly sworn by the general counsel or the general counsel's designee and that the deposition is a true record of the testimony given by the witness.

~~[(e)]~~ If a party refuses to respond to discovery requests, to attend a deposition, or to answer questions at a deposition noticed under this subsection, unless the party's refusal is based on an assertion of privilege made in good faith, the general counsel, when deciding whether a complaint is supported by probable cause, may draw an adverse inference against the party refusing to testify. If a party fails to provide information or identify a witness in response to a request by the general counsel, the party is not allowed to use that information or witness to supply

evidence on a motion, at a hearing, or on appeal, unless the failure was substantially justified or is harmless.

~~(3) If the general counsel determines it is necessary, the director shall request the commission's authority to petition a district court:~~

~~(a) to issue a subpoena to obtain testimony of a person or the production of books, records, documents or other evidence reasonably related to an investigation;~~

~~(b) to order enforcement if the person subpoenaed neglects or refuses to comply; or~~

~~(c) to resolve any assertion of privilege.]~~

C. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. If a party refuses to respond to the general counsel's request for information or discovery requests, to attend a deposition, or to answer questions at a deposition noticed under this subsection, unless the party's refusal is based on an assertion of privilege made in good faith, the general counsel, when deciding whether a complaint is supported by probable cause, may draw an adverse inference against the party refusing to testify. If a party fails to provide information or identify a witness in response to a request by the general counsel, the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or on appeal, unless either a hearing officer or the commission determines the failure was substantially justified or is harmless.

D. Upon the commission's approval, the director, or the director's designee, may petition the designated district court judge, or another district court judge if the designated judge is not available, for a subpoena pursuant to the previous subsection. If a person neglects or refuses to comply with a subpoena, the director or

the director's designee, upon the commission's approval, may apply to a district court for an order enforcing the subpoena and compelling compliance.

E. If the general counsel finds probable cause to support the allegations of the complaint, the director shall promptly notify both the complainant and the respondent:

(1) of the specific claims and allegations in the complaint that were the subject of the general counsel's investigation;

(2) of the finding of probable cause as to specific claims; and

(3) that a public hearing before a hearing officer will be set, provided that the notification has not been delayed by order of the commission pursuant to Subsection H of Section 10-16G-10-NMSA 1978.

F. If, after completing the investigation, the general counsel determines that a complaint is not supported by probable cause, a hearing officer must dismiss the complaint. In that event, the complainant and the respondent shall be notified in writing of the decision and the reasons for the dismissal. Neither the complaint nor the action taken on the complaint shall be made public by the commission or any staff member or contractor of the commission, but the complainant or respondent shall not be prevented from making public the complaint or any action taken on the complaint.

G. The general counsel may at any time enter into a proposed settlement agreement of the complaint with the respondent. The proposed settlement agreement shall be presented to the commission for approval. If the complaint alleges, or the general counsel has found probable cause to support, a discriminatory practice or action by the respondent against the complainant, no settlement agreement may be reached without prior consultation with the complainant. If approved by the commission, the settlement agreement shall be subject to public disclosure.

H. At any time, the complainant may voluntarily dismiss the complaint, either in whole or in part, by filing a notice of voluntary dismissal with the commission; however, any notice of voluntary dismissal does not diminish the power of the commission to initiate a complaint under Paragraph (1) of Subsection C of Section 10-16G-5-NMSA 1978. If the general counsel has determined the complaint is supported by probable cause, the complainant may dismiss the complaint only on motion and on such terms and conditions as the hearing officer deems proper.]

[1.8.3.11 NMAC-N, 01/01/2020; A, 09/14/2021]

1.8.3.12 SUBPOENAS; ENFORCEMENT:

A. If the general counsel determines it is necessary, the director shall request the commission's authority to file a petition with the designated district court judge or other judge pro tempore as designated pursuant to order of the chief judge of the supreme court:

(1) to issue a subpoena to obtain testimony of a person or the production of books, records, documents or other evidence reasonably related to an investigation;

(2) to order enforcement if the person subpoenaed neglects or refuses to comply; or

(3) to resolve any assertion of privilege.

B. Upon the commission's approval, the director, or the director's designee, may petition the designated district court judge, or another district court judge if the designated judge is not available, for a subpoena. The petition shall be filed ex parte and under seal pursuant to procedures for filing established by the designated district court judge.

C. If the petition is granted, subpoenas shall be issued by the general counsel and served as follows:

(1) If the subject of the subpoena is the

complainant or the respondent, by email to the complainant or respondent if the complainant or respondent has previously agreed to receive notice of filings with the commission by email;

(2) On a department or agency of the state by service on the department or agency's general counsel, or by service in the manner set out by law for serving the department or agency; and

(3) On any other person by handing it to the person or their attorney, leaving it at the person's office or dwelling house with some person of suitable age and discretion then residing there.

D. A subpoena issued pursuant to this Section may command the appearance of a witness at a deposition or at a hearing pursuant to 1.8.3.14 NMAC. A person who is not a party or an officer of a party may not be commanded to travel to a place more than one 100 miles from the place where that person resides, is employed, or regularly transacts business in person unless the subpoena is to attend and give testimony at a hearing. A subpoena ordering a person to attend a deposition via telephone or web conference complies with the requirements of this subsection.

E. A party claiming an interest in the materials responsive to the commission's subpoena or the recipient of the subpoena may serve a written objection on the general counsel or the general counsel's designee within 14 days after service of the subpoena. If an objection is timely served, the person subject to a subpoena need not comply with the subpoena until the commission files a motion to compel compliance pursuant to Subsection F of 1.8.3.12 NMAC and the motion is granted.

F. If a person, including a party, neglects or refuses to comply with a subpoena, the director or the director's designee, upon the commission's approval, may apply to a district court for an order enforcing the subpoena and compelling compliance. The

designated district judge or other district court may impose sanctions or other relief permitted by law, including contempt, if a person neglects or refuses to comply with an order enforcing the subpoena and compelling compliance.

[1.8.13.12 NMAC-N, 09/14/2021]

~~[1.8.3.12]~~ **1.8.3.13 GENERAL COUNSEL'S PROBABLE CAUSE DETERMINATIONS AND CONSEQUENCES;**

INVESTIGATION REPORTS AND RECOMMENDATIONS TO COMMISSION; DISPOSITION BY AGREEMENT; NOTICE TO PARTIES:

A. [Upon completion of the investigation of a complaint found to be supported by probable cause, the general counsel shall report promptly the general counsel's findings and recommendations to the director.

(1) Upon the receipt of the general counsel's findings and recommendations, the director will designate a qualified hearing officer to conduct a hearing on the complaint if so recommended by the general counsel. Based on the report of the general counsel, the hearing officer will set a public hearing as soon as practicable.

(2) In referring a complaint to the hearing officer, the director may consolidate the complaint with any other pending complaint involving related questions of law or fact; provided that consolidation will not unduly delay resolution of an earlier-filed complaint, unduly prejudice any complainant or respondent to confidentiality under these rules.] If the general counsel finds probable cause to support the allegations of the complaint, the general counsel shall report promptly the general counsel's findings and recommendations to the director, and the director shall:

(1) promptly notify both the complainant and the respondent;

(a) of the specific claims and allegations in

the complaint that were the subject of the general counsel's investigation;

(b) of the finding of probable cause as to specific claims; and

(c) that a public hearing before a hearing officer will be set, provided that the notification has not been delayed by order of the commission pursuant to Subsection H of Section 10-16G-10 NMSA 1978; and

(2) designate a qualified hearing officer to conduct a hearing on the complaint if so recommended by the general counsel. Based on the report of the general counsel, the hearing officer will set a public hearing as soon as practicable.

B. If, after completing the investigation, the general counsel determines that a complaint is not supported by probable cause, a hearing officer must dismiss the complaint. In that event, the complainant and the respondent shall be notified in writing of the decision and the reasons for the dismissal. Neither the complaint nor the action taken on the complaint shall be made public by the commission or any staff member or contractor of the commission, but the complainant or respondent shall not be prevented from making public the complaint or any action taken on the complaint.

C. The general counsel may at any time enter into a proposed settlement agreement of the complaint with the respondent. The proposed settlement agreement shall be presented to the commission for approval. If the complaint alleges, or the general counsel has found probable cause to support, a discriminatory practice or action by the respondent against the complainant, no settlement agreement may be reached without prior consultation with the complainant. If approved by the commission, the settlement agreement shall be subject to public disclosure.

D. At any time, the complainant may voluntarily dismiss the complaint, either in whole or in part, by filing a notice of voluntarily dismissal with the commission;

however, any notice of voluntary dismissal does not diminish the power of the commission to initiate a complaint under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978. If the general counsel has determined the complaint is supported by probable cause, the complainant may dismiss the complaint only on motion and on such terms and conditions as the hearing officer deems proper.

[B] E. If a hearing has not been scheduled concerning the disposition of a complaint within 90 days after the complaint has been received from the complainant or after referral from another agency, whichever is later, the director shall report to the commission at a duly convened meeting on the status of the investigation. The commission and the director shall thereafter proceed in accordance with Section 10-16G-11 NMSA 1978.

[E] E. At any time before or during a hearing, the hearing officer may, at a duly convened public meeting, approve a disposition of a complaint agreed to by the general counsel and the respondent, provided that:

(1) the complainant shall be consulted on the proposed agreement prior to its execution, and

(2) the agreement shall be effective upon approval by the commission at a public meeting.

[1.8.3.12 NMAC-N, 01/01/2020; Rn & A, 1.8.3.13 NMAC, 09/14/2021]

~~[1.8.3.13]~~ **1.8.3.14 HEARING OFFICERS; SUMMARY DISPOSITION; HEARINGS; INTERPRETERS; EVIDENCE:**

A. The commission shall authorize the director to contract, for reasonable hourly compensation, with qualified persons to act as hearing officers. Hearing officers shall be assigned to act on or preside over hearings on complaints. Hearing officers must be currently licensed attorneys, or retired judges of the appellate, district, or metropolitan courts of New Mexico or any federal

court, who are familiar with the ethics and election laws enforced by the commission. A hearing officer shall conduct a hearing fairly and impartially.

B. All hearings before the hearing officer will occur in Santa Fe or Albuquerque, or at such other location within the state as may be determined by the hearing officer. In selecting the location of a hearing other than in Santa Fe or Albuquerque, the hearing officer shall consider and give weight to the location and reasonable concerns of the respective parties, witnesses, and representatives in the proceeding. Upon a showing by any party of an undue burden, the hearing officer may move the hearing to a more appropriate venue.

C. If a hearing officer has not already notified the parties of a hearing through the issuance of a scheduling order, the director will notify the parties to the hearing by mail, directed to the address provided by the parties, of the date, time, and place scheduled for the hearing, at least 15 days before the scheduled hearing.

D. The hearing shall be conducted pursuant to the rules of evidence governing proceedings in the state courts, Rule 11-101 NMRA, and these procedural rules. In the event of a conflict between these procedural rules and the rules of evidence governing proceedings in the state courts, these procedural rules control. All hearings shall be open to the public in accordance with the Open Meetings Act, Section 10-15-1 NMSA 1978, except for hearings or portions thereof exempted from the requirements of that Act.

E. Audio recordings shall be made of all hearings conducted pursuant to this section.

F. The parties may be represented by counsel, who shall enter an appearance at the earliest opportunity, pursuant to Paragraph ~~(3)~~ (7) of Subsection A of 1.8.3.9 NMAC.

G. The hearing officer shall permit the general counsel to intervene upon request.

If the complaint was initiated by the commission under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC, then the general counsel shall represent the commission at the hearing.

H. The hearing officer shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the proceedings and to maintain order. The hearing officer shall have the powers necessary to carry out these duties, including the following:

(1) to administer or have administered oaths and affirmations;

(2) to cause depositions to be taken;

(3) to require the production or inspection of documents and other items;

(4) to require the answering of interrogatories and requests for admissions;

(5) to rule upon offers of proof and receive evidence;

(6) to regulate the course of the hearings and the conduct of the parties and their representatives therein;

(7) to issue a scheduling order, schedule a prehearing conference for simplification of the issues, or any other proper purpose;

(8) to schedule, continue and reschedule hearings;

(9) to consider and rule upon all procedural and other motions appropriate in the proceeding;

(10) to require the filing of briefs on specific legal issues prior to or after the hearing;

(11) to cause a complete audio record of hearings to be made;

(12) to make and issue decisions and orders; and

(13) to reprimand, or with warning in extreme instances exclude from the hearing, any person for engaging in a continuing pattern of disruptive or

other improper conduct that interferes with the conduct of a fair and orderly hearing or development of a complete record.

I. In the performance of these adjudicative functions, the hearing officer is prohibited from engaging in any improper *ex parte* communications about the substantive issues with any party on any matter, but may communicate with parties separately solely on scheduling issues if all parties are notified of such communications and do not object to them. An improper *ex parte* communication occurs when the hearing officer discusses the substance of a case without the opposing party being present, except that it is not an improper *ex parte* communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing despite having received timely notice thereof.

J. Parties who appear at the hearing may:

(1) request the director to request the commission's authority to petition a district court to compel the presence of witnesses. Subpoenas may be requested by the commission from a district court in the same manner as provided for in Subsection J of Section 10-16G-10 NMSA 1978 and Subsections C and D of 1.8.3.11 NMAC;

(2) present evidence and testimony;

(3) examine and cross-examine witnesses; and

(4) introduce evidentiary material developed by the general counsel. Before the hearing, the general counsel shall timely disclose to the parties all evidence in the possession or within the control of the general counsel, other than privileged information.

K. Evidence shall be presented by the parties at the hearing consistent with the terms agreed to in a prehearing conference or as set forth in a scheduling order entered under Subsection H of 1.8.3.14 NMAC. The hearing officer may allow a deviation from the agreed-upon process for good cause.

(1) The general counsel shall present any evidence collected in the investigation relating to the complaint that is relevant to the matters at issue as set forth in the general counsel's findings under Subsection A of 1.8.3.12 NMAC; evidence that is agreed to be relevant by the parties; or evidence that is allowed by the hearing officer.

(2) The respondent may present evidence that is relevant to the matters at issue as set forth in the general counsel's findings under Subsection A of 1.8.3.12 NMAC; evidence that is agreed to be relevant by the parties; or evidence that is otherwise allowed by the hearing officer.

(3) The general counsel or the general counsel's designee may authenticate evidence produced during an investigation if the source of the evidence declines a request to appear and testify about the evidence and the hearing officer determines that there are no other reasonable means for authenticating the evidence.

~~[K]~~ **L.** Any person may timely file an amicus brief, not to exceed ten pages, with the director, for consideration by the hearing officer.

~~[H]~~ **M.** Upon reasonable notice by the party to the director, a party needing language interpreter services for translation of one language into another, and any interpreter required to be provided under the American with Disabilities Act, shall be provided for by the commission. While the person serving as an interpreter need not be a court-certified interpreter in order to provide interpretation at a hearing, any person serving as an interpreter in a hearing before the commission must affirm the interpreter's oath applicable in courts across this state.

~~[M]~~ **N.** After the termination of the hearing, or in lieu of a hearing if, upon a motion by a party or the general counsel, the hearing officer concludes there is no genuine dispute as to any material facts, [if] the hearing officer [finds-by-a-preponderance-of] shall issue

written findings and conclusions on whether the evidence establishes that the respondent's conduct as alleged in the complaint [constituted] constitutes a violation of any law within the jurisdiction of the commission. [the-hearing-officer] The hearing officer's written decision:

(1) may
(a) impose any fines provided for by law; and

(b) recommend to the appropriate authority commensurate disciplinary action against the respondent;

(2) and must
(a) state the reasons for the hearing officer's decision; and

(b) provide the parties with notice of the right of appeal to the commission.

~~[N]~~ **O.** Clear and convincing evidence is required to support a finding by a hearing officer that a respondent's conduct was fraudulent or willful.

~~[O]~~ **P.** If the hearing officer finds by a preponderance of the evidence that the respondent's conduct as alleged in the complaint constituted a violation of the Governmental Conduct Act and was either unintentional or for good cause, then the hearing officer shall give the respondent 10 days to correct the violation, pursuant to Subsection B of Section 10-16-13.1 NMSA 1978, before taking any action under Subsection N of 1.8.3.14 NMAC.

~~[P]~~ **Q.** If the hearing officer finds by a preponderance of the evidence that the respondent's conduct as alleged in the complaint does not constitute a violation of any law within the jurisdiction of the commission, the hearing officer, in a written decision, shall dismiss the complaint and inform the complainant of their right to appeal to the commission.

~~[Q]~~ **R.** [Either] A party may request copies of [exhibits, documents, records in the administrative file,] evidence considered by the hearing officer or a copy of the audio recording of the

[proceeding] hearing by submitting a written request to the director. The director may charge a reasonable fee for copies made, consistent with its fee schedule under the Inspection of Public Records Act. The director may also require the requesting party to submit a new, sealed computer storage device, such as a compact disc, dvd disc, or usb drive, or other tangible device for copying of any audio or video recording that is part of the administrative record. Every party is responsible for paying the cost of any transcription of the audio recording. [1.8.3.13 NMAC-N, 01/01/2020; Rn 1.8.3.14 NMAC & A, 09/14/2021]

~~[1.8.3.14]~~ **1.8.3.15 APPEALS:**

A. [Except as provided by Subsections E and F of 1.8.3.14 NMAC, the] The complainant or respondent may appeal the final decision of the hearing officer within 30 days of the issuance of the decision to the full commission by filing a notice stating:

- (1) each party taking the appeal and each party against whom the appeal is taken;
- (2) the name, address, telephone number and email address of counsel for the appellant;
- (3) the decision or part of a decision from which the party appeals; and
- (4) the specific grounds for the appeal, including specific references to any evidence or law interpreted by the hearing officer.

(5) If the hearing officer issued a final decision on a complaint that was initiated by the commission under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC, or where the general counsel has intervened under Subsection G of 1.8.3.14 NMAC, then the general counsel may appeal the hearing officer's decision within 30 days of the issuance by filing a notice stating the information required in Subsections (1) through (4) above.

B. For the purpose of this rule, briefing time shall commence from the date the appellant files a notice of appeal to the full

commission. Unless otherwise provided for by the commission,

(1) The appellant shall file and serve a brief in chief within 15 days;

(2) The appellee shall file and serve an answer brief within 15 days after service of the brief of the appellant; and

(3) Neither the brief in chief nor the answer brief shall exceed 10 pages.

C. The commission shall schedule oral arguments, if requested by either party or ordered by the commission within sixty days of the notice of appeal.

D. Any person may timely file an amicus brief, not to exceed ten pages, with the director for consideration by the commission.

E. The commission shall review the whole record of the proceeding and shall, within 180 days of receiving the notice of appeal, issue its decision upholding or reversing the decision of the hearing officer. The commission may reverse all or part of the hearing officer's decision and remand the matter to the hearing officer for further proceedings.

~~**F.** If a hearing officer issues a decision granting a respondent's motion to dismiss for failure to state a claim and dismisses a complaint or part of a complaint pursuant to Paragraph (1) of Subsection B of 1.8.3.11 NMAC, then the complainant may appeal the hearing officer's decision to the commission as provided in these rules. If, however, a hearing officer issues a decision denying a respondent's motion to dismiss for failure to state a claim, then the respondent has no right to an interlocutory appeal of that decision to the commission, but may appeal any final decision of the hearing officer to the commission.]~~

[G] F. If a hearing officer dismisses a complaint, pursuant to Subsection B of 1.8.3.13 NMAC, following the general counsel's determination that the complaint is not supported by probable cause, then the complainant has no right to an appeal of that dismissal to the commission.

[H] G. A party may seek review of the commission's final decision by filing a petition of writ of certiorari pursuant to Rule 1-075 NMRA.

[1.8.3.14 NMAC-N, 01/01/2020; Rn & A, 1.8.3.15 NMAC, 09/14/2021]

~~[1.8.3.15]~~ **1.8.3.16 OPEN RECORDS AND CONFIDENTIALITY:**

A. 30 days after the director provides notice pursuant to ~~[Subsection F of 1.8.3.11]~~ Subsection A of 1.8.3.13 NMAC to the respondent of the allegations of a complaint, the general counsel's finding of probable cause, and the setting of the public hearing:

(1) the director shall make public the specific allegations of the complaint, the notification to the respondent, ~~[and]~~ any response filed by the respondent, and any related records, *provided that:*

(2) prior to the publication of any commission records pursuant to the preceding subparagraph, any proceedings in district court initiated by the commission to obtain subpoenas shall be sealed, and shall remain so until such time as the commission notifies the court that the commission has made the complaint public or the parties enter into an approved settlement agreement.

B. If a complaint is dismissed because the general counsel has found it to be frivolous or unsubstantiated, as provided in Subsection E of Section 10-16G-10 NMSA 1978, the commission shall not release to the public the complaint, the reason for its dismissal, or any related records. Nothing in this subsection shall prevent the making public of any document by a complainant or respondent to the proceeding.

C. Notwithstanding any other requirement in these rules or the law requiring notification to the complainant or respondent of commission actions on a complaint, the director may delay notifying parties or releasing to the public the complaint and related information

if the director deems it necessary to protect the integrity of a criminal investigation.

(1) The director shall, within 10 days of making the decision to delay release of a complaint pursuant to this subsection, present to the commission the records and information to be withheld and the reasons for delaying their release.

(2) The commission may, by a majority vote pursuant to Subsection H of Section 10-16G-10 NMSA 1978, confirm the director's decision in a meeting closed pursuant to the requirements of the Open Meetings Act, Section 10-15-1 NMSA 1978, and the commission's open meetings resolution. [1.8.3.15 NMAC-N, 01/01/2020; Rn & A, 1.8.3.16 NMAC, 09/14/2021]

WORKFORCE SOLUTIONS, DEPARTMENT OF

This is an amendment to 11.3.300 NMAC, Section 320, effective 9/14/2021.

11.3.300.320 WORK SEARCH REQUIREMENT:

A. WORK SEARCHES: To qualify for continued benefits, a claimant must:

(1) be a member of a union with a hiring hall or a referral hall and meet the union requirements for job referral or placement;

(a) the claimant must be a member in good standing at the time of certification;

(b) the hiring hall or referral hall must be actively seeking to place its members in employment; or

(2) actively seek work by contacting a minimum number of different employers each week during the week for which benefits are claimed, as directed by department representatives. It is not mandatory that the work searches

occur on different days of the week;

(a) a claimant may contact the same employer more than one time during a given week, which may count for multiple searches if the claimant applies for multiple jobs with the same employer so long as the applications are distinct and separate positions;

(b) a claimant may list jobs applied for through the New Mexico department of workforce solutions workforce connection centers, the New Mexico state personnel office (SPO), America's job bank, Workforce Innovation and Opportunity Act (WIOA) partners and similar programs as approved from time to time by the department as valid work search contacts for each week of claim certification;

(3) Other unions may apply for work search waivers by submitting a request in writing to the secretary, who may upon discretion make an exception to the work search requirements.

B. in order to qualify for continued benefits, interstate, if New Mexico is the liable state, claimants must seek work within the week for which benefits are being claimed and actively seek work by contacting a minimum of two different employers each week, or if a union member, actively seek work by contacting the union as required by the union in order to be eligible for job referral or placement

C. claimants must keep a record of the name, address and telephone number or electronic mail address of each employer contacted in the event of an audit and must retain a copy of any email confirmation received as a result of applying for a job on-line;

(1) This information must be provided to department representatives upon request;

(2) the claimant must provide the requested information no later than 10 calendar days from the date of the department's request;

(3) the claimant must provide sufficient information for the department to verify the claimant's work search efforts. If the claimant is able to provide specific job numbers or requisition numbers for the job applied for, this information will be considered sufficient to verify the contact;

(4) failure to provide the required information without good cause may result in a denial of benefits for the week in question;

(5) if the information provided is insufficient to verify a valid work search occurred, benefits for the week in question will be denied;

(6) if a denial is imposed, the effective period may include weeks for which the claimant has already been paid benefits. Such benefits would constitute an overpayment which would be recouped pursuant to Section 51-1-38 NMSA 1978;

(7) any denial imposed for failure to provide the required information may be appealed pursuant to 11.3.500.9 NMAC;

D. A claimant whose work search is deemed inadequate or invalid shall be denied benefits for the week in question. A rebuttable presumption that the claimant failed to meet the active work-search requirements for that week will be raised in all cases where a claimant's work search is deemed inadequate or invalid. In order to overturn the denial of benefits the claimant shall provide proof that the claimant did meet the active work-search requirements for that week. If a denial is imposed, the effective period may include weeks for which the claimant has already been paid benefits. Such benefits would constitute an overpayment which would be recouped pursuant to Section 51-1-38 NMSA 1978. Any denial imposed on the basis of an inadequate or invalid work search may be appealed pursuant to 11.3.500.9 NMAC.

E. The department may waive the work search requirements for claimants who the department determines are on temporary lay-off status from their regular full-time employment upon receipt of an assurance from the employer that the lay-off shall not exceed four weeks or upon receipt of an express offer in writing of substantially full-time work which will begin within a period not exceeding four weeks. Such waivers shall apply only to the four-week period covered on the determination. A claimant who receives a determination granting a waiver for the four-week period shall promptly transmit any change to the claimant's recall date or start date to the department. The claimant's eligibility shall then be subject to redetermination pursuant to Subsection A of 11.3.300.308 NMAC.

F. In cases where the department determines a claimant is in a temporary lay-off status due to a government furlough or shutdown, the department may waive the work search requirements during the period of the temporary lay-off for all affected claimants.

G. In the event of a public health emergency declaration issued by the governor, work searches shall, to the extent permissible by federal law, be waived for all claimants at the discretion of the secretary until the end of the public health crisis.

[11.3.300.320 NMAC - Rp,
11.3.300.320 NMAC, 11/1/2018;
A/E, 1/9/2019 A, 10/29/2019; A,
7/28/2020; A, 9/14/2021]

End of Adopted Rules

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Other Material Related to Administrative Law

**HEALTH,
DEPARTMENT OF**

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH
CABINET SECRETARY DR.
DAVID R. SCRASE, M.D.**

AUGUST 22, 2021

**Amended Public Health Order
directing State, Local, and Tribal
agency personnel to
Develop a Temporary Quarantine
and Isolation Program utilizing
Non-Congregate
settings, including Hotels, College
and University Dormitories, and
other appropriate sites
to House First Responders,
homeless individuals and other
At-Risk Persons as Identified
by the New Mexico Department of
Health**

PREFACE

The purpose of this Public Health Emergency Order is to officially authorize and promote the use of non-congregate settings throughout the state for temporary quarantine and isolation when deemed appropriate for fire fighters, law enforcement, medical personnel, ambulance and emergency medical response personnel, public safety personnel, homeless individuals, victims of domestic violence, and other at-risk persons as identified by the New Mexico Department of Health (“NMDOH”). It is necessary to provide safe placements for these at-risk individuals to temporarily quarantine and isolate for the safety of the individuals and the safety of all New Mexicans.

ORDER

WHEREAS, on March 11, 2020, Michelle Lujan Grisham, the Governor of the State of New

Mexico, declared in Executive Order 2020-004 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, on August 16, 2021, Governor Michelle Lujan Grisham renewed the declaration of a Public Health Emergency, through Executive Order 2020-049, due to the continued spread of COVID-19 in New Mexico;

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, COVID-19 continues to spread in New Mexico and nationally. Since Executive Order 2020-004 was issued, confirmed COVID-19 infections in New Mexico have risen more than 227,000 and cases in the United States have increased from 1,000 confirmed cases to over 38,000,000 confirmed cases;

WHEREAS, New Mexico’s first responders continue their heroic work to provide emergency services and response to the COVID-19 emergency while following established guidance to prevent spread of the infection. However, their response work often put these persons at a higher risk of COVID-19 infection;

WHEREAS, despite best efforts to implement the above practices and other NMDOH orders, Medical Personnel, Emergency Responders, Emergency Operations Center(s) personnel, public health

workers, and other persons have become persons under investigation for COVID-19 and have tested positive to COVID-19. These individuals need to be temporarily quarantined or isolated to prevent the spread the virus. Often, this temporary quarantine cannot be provided at their homes due to a heightened risk of spreading COVID-19 to their families or communities. In addition, some first responders’ response efforts involve a high risk of exposure due to their public service duties, though those responders may not know if they have had a positive exposure to COVID-19;

WHEREAS, other individuals in New Mexico who are persons under investigation for COVID-19, or who have tested positive for COVID-19 may not have a safe place to temporarily quarantine or isolate due to a variety of circumstances including homelessness and domestic violence;

WHEREAS, persons who have adverse exposure to the virus are being treated and supervised by local medical operations throughout the State. NMDOH has already taken proactive actions to engage and/or contract hotels and other facilities to assist in this non-congregate sheltering effort to stop the spread of the virus;

WHEREAS, on May 1, 2020, then Secretary of NMDOH, Kathyleen M. Kunkel, signed a Public Health Order declaring the need for non-congregate sheltering in the state and directing the Department of Homeland Security Emergency Management (“DHSEM”) to submit a statewide non-congregate sheltering request letter to the Federal Emergency Management Administration (“FEMA”). The original order was extended through August 22, 2021. This order renews that same request for another 30 days.

NOW, THEREFORE, I, Dr. David R. Scrase, Acting

Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act as invoked through Executive Order 2020-004, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

I HEREBY DIRECT AS FOLLOWS:

(1) All public responder, State, Local, and Tribal agency personnel shall coordinate with the NMDOH to organize “non-congregate sheltering” to stop the spread of COVID-19. The non-congregate sheltering will occur at the direction of State, Local, or Tribal officials with the direction of the NMDOH.

(2) The State, Local and Tribal agencies will coordinate with the DOH to receive guidance and direction for the needs to temporarily quarantine or isolate designated first responders. This may include first responders who are awaiting confirmation of a test or are in positions of likely exposure who do not want to infect their families. Additional coordination and guidance may be necessary to determine the circumstances and duration of the isolation. The activities must follow DOH guidance, documentation, and tracking procedures.

(3) The target populations for this order are firefighters, law enforcement, medical personnel, ambulance

and emergency medical response personnel, homeless, domestic violence victims, and other highly at-risk persons as identified and approved by NMDOH. This is usually for individuals who have tested positive for COVID-19 or have been documented as exposed to positive COVID-19 persons in the course of their duties and do not require medical care. All individuals temporarily quarantined under this order must meet the health and safety requirements for placement as determined by NMDOH. Alternate medical care sites and temporary hospitals are not considered non-congregate sheltering. This non-congregate sheltering must not duplicate the services provided by another federal agency.

(4) In addition, I direct NMDOH and DHSEM officials to develop a statewide noncongregate sheltering request letter to FEMA to seek reimbursement for expenses of non-congregate sheltering, so that State agencies, local jurisdictions, and Tribes, are coordinated on the needs for this program. This statewide effort will reduce the burden on State, Local and Tribal jurisdictions to independently develop approval for noncongregate sheltering.

I FURTHER DIRECT as follows:

(1) This statewide order does not preclude Local or Tribal jurisdictions from developing their own public health orders and submitting them for FEMA approval, but such actions will not be the responsibility of nor be fiscally covered by the State of New Mexico.

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

(3) This Order shall take effect immediately and remain in effect through August 22, 2021 and shall extend until September 22, 2021.

THIS ORDER supersedes

any other previous orders, proclamations, or directives in conflict. This Order shall take effect immediately and shall remain in effect until otherwise rescinded.

**ATTEST:
DONE AT SANTA FE, NEW MEXICO
THIS 22nd DAY OF AUGUST 2021**

/ S /
**DAVID R. SCRASE, M.D.
ACTING SECRETARY OF THE
NEW MEXICO DEPARTMENT
OF HEALTH**

**STATE ETHICS
COMMISSION**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The State Ethics Commission gives Notice of a Minor, Nonsubstantive Correction to 1.8.3 NMAC.

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

In renumbered Section 14, Hearing Officers; Summary Disposition; Hearings; Interpreters; Evidence, within the renumbered subsection P, on page 10 of the Amendment, the incorrect internal citation “...under Subsection M of 1.8.3.13 NMAC.” has been corrected to “...under Subsection N of 1.8.3.14 NMAC.” to account for the section renumbering.

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

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

2021 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXII, Issues 1-24

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

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

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