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# New Mexico Register

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

**Volume XXXII - Issue 20 - October 26, 2021**

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## **The New Mexico Register**

Published by the Commission of Public Records,  
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

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

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

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# New Mexico Register

Volume XXXII, Issue 20

October 26, 2021

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## Notices of Rulemaking and Proposed Rules

### CULTURAL AFFAIRS DEPARTMENT

#### NEW MEXICO STATE LIBRARY PUBLIC RULE HEARING

NOTICE IS HEREBY GIVEN that the New Mexico State Library (NMSL) will convene an online public hearing on Monday, November 29, 2021 at 1:00 pm. Interested parties may attend by way of the following link, <https://nmculture-org.zoom.us/j/86382145783?pwd=KzBtZHVOcUJldVhqd3Q5OEluUmpiZz09>. Following the hearing, the NMSL will consider public comments and adopt the rule.

The purpose of the hearing is to consider amending rule 4.5.9 NMAC, Special Grants for Public Libraries. The NMSL proposes to amend the rule in order to facilitate the effective administration of special grants for public libraries.

The statutory authority for the proposed changes to 4.5.9 NMAC is found in Subsection I of Section 18-2-4 NMSA 1978 which directs the state librarian to make rules and regulations necessary to administer the division and as provided by law and Subsection B of Section 18-2-4 NMSA 1978 which directs the state librarian to administer grants-in-aid and encourage local library services and generally promote an effective statewide library system. The NMSL is considering the adoption of a new rule 4.5.9 NMAC in order to allow full disbursement of federal funds awarded for emergency relief, expand grant eligibility through guidelines set by the state librarian, and allow the state librarian to determine through grant guidelines whether a grant award will be disbursed directly or by way of reimbursement.

The proposed rule is available at the NMSL website, <http://www.nmstatelibrary.org>, and at the NMSL office located in the Garrey Carruthers State Library Building, 1209 Camino

Carlos Rey, Santa Fe, New Mexico 87507. To request that a copy of the proposed rule be mailed to you, submit your request in writing to New Mexico State Library, 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507, by email to [eli.guinnee@state.nm.us](mailto:eli.guinnee@state.nm.us), or via fax to (505) 476-9776.

The NMSL is currently accepting public comments on the proposed rule. Additionally, any person may join the online hearing to submit their comments. Written comments may be submitted by mail to: New Mexico State Library, 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507, by email to [eli.guinnee@state.nm.us](mailto:eli.guinnee@state.nm.us), or via fax to (505) 476-9776. Written comments should be submitted for the NMSL's consideration no later than 10:00 am on November 29, 2021. Written comments will be posted on NMSL's website.

Individuals 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 should contact Eli Guinnee at 505-476-9762 or [eli.guinnee@state.nm.us](mailto:eli.guinnee@state.nm.us) at least ten business days prior to the hearing.

### CULTURAL AFFAIRS DEPARTMENT

#### NEW MEXICO STATE LIBRARY PUBLIC RULE HEARING

NOTICE IS HEREBY GIVEN that the New Mexico State Library (NMSL) will convene an online public hearing on Tuesday, November 30, 2021 at 1:00 pm. Interested parties may attend by way of the following link, <https://nmculture-org.zoom.us/j/81348393051?pwd=aGFsRmFuVDBlWXlFeXY0aF0ZmlPUT09>. Following the hearing, the NMSL will consider public comments and adopt the rule.

The purpose of the hearing is to consider implementing a new rule

4.5.10 NMAC, Rural Libraries Endowment Grants. The NMSL proposes to implement the new rule in order to facilitate the effective administration of rural libraries endowment grants for public libraries.

The statutory authority for the proposed 4.5.10 NMAC is found in Section 18-18-1 NMSA 1978 (2019) which establishes the rural libraries endowment fund established in the state treasury to support the preservation, development and establishment of rural libraries throughout the state by providing funding for rural libraries' operational and capital needs and funding for the delivery of specialized services to rural libraries. Subsection A of Section 18-18-2 NMSA directs the state librarian to provide grants directly benefiting developing rural libraries and established rural libraries and grants for the establishment of developing rural libraries in cities, towns and villages without libraries. Section 18-18-2 NMSA further directs the state librarian to use money allocated for specialized services to rural libraries from the rural libraries endowment fund to provide specialized services to rural libraries. Subsection D of Section 18-18-4 NMSA 1978 (2019) defines specialized services as professional development opportunities, program support, information technology support and other capacity building services, as defined by the state librarian.

The proposed rule is available at the NMSL website, <http://www.nmstatelibrary.org>, and at the NMSL office located in the Garrey Carruthers State Library Building, 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507. To request that a copy of the proposed rule be mailed to you, submit your request in writing to New Mexico State Library, 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507, by email to [eli.guinnee@state.nm.us](mailto:eli.guinnee@state.nm.us), or via fax to (505) 476-9776.

The NMSL is currently accepting public comments on the proposed rule. Additionally, any person may join the online hearing to submit their comments. Written comments may be submitted by mail to: New Mexico State Library, 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507, by email to [eli.guinnee@state.nm.us](mailto:eli.guinnee@state.nm.us), or via fax to (505) 476-9776. Written comments should be submitted for the NMSL’s consideration no later than 10:00 am on November 30, 2021. Written comments will be posted on NMSL’s website.

Individuals 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 should contact Eli Guinnee at 505-476-9762 or [eli.guinnee@state.nm.us](mailto:eli.guinnee@state.nm.us) at least ten business days prior to the hearing.

**HOMELAND SECURITY  
AND EMERGENCY  
MANAGEMENT,  
DEPARTMENT OF  
STATE FIRE MARSHALL  
  
NOTICE OF PROPOSED  
RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the State Fire Marshal (“Fire Marshal”), New Mexico Department of Homeland Security & Emergency Management, pursuant to the New Mexico Insurance Code, NMSA 1978, Section 59A-52-1.1, proposes to adopt a new rule, 10. 25.12.1 NMAC, INSPECTION OF FIRE AND SMOKE DAMPERS.

**PURPOSE OF THE PROPOSED NEW RULE IS:** This rule requires the inspection and testing of mechanical fire and smoke dampers and smoke control systems in places of assembly, educational occupancies, institutional occupancies, residential occupancies consisting of four or more family units, mercantile occupancies, industrial occupancies, storage occupancies, and miscellaneous structures consisting

of towers, underground structures and windowless buildings and all buildings owned or occupied by the state or any political subdivision thereof or by municipal governments. It also sets the minimum qualifications for the inspection and testing of fire and smoke dampers and some control systems.

**STATUTORY AUTHORITY:** NMSA 1978, Section 59A-52-1.1(C) (1).

Copies of the Notice of Proposed Rulemaking and proposed rule are available by electronic download from the State Fire Marshal’s Office website State Fire Marshal - NM Department of Homeland Security & Emergency ([nmdhsem.org](http://nmdhsem.org)) or the New Mexico Sunshine Portal.

The State Fire Marshal’s Office will hold a public video/telephonic hearing on the proposed rule on November 30, 2021 at 9:00 a.m.

Join via Video: <https://us06web.zoom.us/j/87103002232?pwd=clZKMnBRbGI0NmM0U3FHwKRVbGIYdz09>  
Join via telephone: 17207072699  
Meeting ID: 871 0300 2232 Passcode: 368050

The Fire Marshal designates Bureau Chief Kyle Marshall to act as the hearing officer for this rulemaking. Oral comments will be accepted at the video/telephonic hearing from members of the public and any interested parties.

Written comments and proposals will be accepted through 4:00 pm on November 23, 2021. Responses to written comments or oral comments will be accepted through 4:00 pm on November 24, 2021. Comments may be submitted via email to [kylle.marshall@state.nm.us](mailto:kylle.marshall@state.nm.us) or may be filed by sending original copies to:

New Mexico Fire Marshal’s Office, New Mexico Department of Homeland Security, 13 Bataan Blvd., P.O. Box 27111, Santa Fe, NM. 87502

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, the Fire Marshal reserves the right to require that original signatures be provided to verify the electronic signature. All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. Any filings after 4:00 will be filed to the docket the next business day.

**SPECIAL NEEDS:** Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other auxiliary aid or service to attend or participate in the hearing should contact Danielle Gonzales at 505-476-0874 ten (10) business days prior to the hearing.

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

ISSUED this 14<sup>th</sup> day of October 2021 /S/Chief John Kondratick

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE  
DIVISION**

**NOTICE OF RULEMAKING**

The Human Services Department (the Department), through the Medical Assistance Division (MAD), issued emergency rule changes to New Mexico Administrative Code (NMAC) rule 8.100.970, *General Provisions for Public Assistance Programs, Oversight-Program Participation Hearings* on October 26, 2021 with an effective date of November 1, 2021. The Department is re-promulgating this rule in full within six months of issuance of the emergency rule in accordance with the New Mexico State Rules Act.

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

Notice Date: October 26, 2021  
Hearing Date: November 30, 2021  
Adoption Date: Proposed as March 1, 2022  
Technical Citations: 45 CFR 155 subpart F

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

**Background**

New Mexico's Health Insurance Exchange (NMHIX; aka beWellnm) is transitioning from utilizing the federal IT platform of Healthcare.gov to a state-based IT platform. Given this transition, HSD must collaborate with beWellnm on IT and program integration. One aspect of program integration pertains to appeals rights for adverse actions impacting an enrollee's eligibility for qualified health plans through NMHIX, federal tax credits and cost-sharing reductions, and other issues pertaining to NMHIX coverage. While using the federal Healthcare.gov platform, NMHIX has been working with the federal government on such appeals, when necessary. With the move to a state-based platform, NMHIX has requested that HSD take on the role of providing first tier appeals of adverse actions by enrollees. Thus, HSD must promulgate rules pertinent to providing those appeals for NMHIX enrollees or potential enrollees.

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

**8.100.970 - NMAC-General Provisions for Public Assistance Programs – Oversight-Program Participation Hearings.**

This rule is being updated to integrate functions of providing first tier appeals for New Mexicans purchasing coverage through New Mexico's Health Insurance Exchange (NMHIX; aka beWellnm).

The register for these proposed amendments to this rule will be available October 26, 2021 on the HSD web site at <https://www.hsd.state.nm.us/lookingforinformation/registers/> or at <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>. If you do not have Internet access, a copy of the proposed rule may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement this rule effective March 1, 2022. A public hearing to receive testimony on this proposed rule will be held **via conference call** on November 30, 2021 at 10:00 a.m., Mountain Time (MT). **Conference phone number: 1-800-747-5150.** **Access Code: 2284263.**

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

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: [madrules@state.nm.us](mailto:madrules@state.nm.us). Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on November 30, 2021. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/> along with the applicable register and rule. The public posting will include the name

and any contact information provided by the commenter.

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

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

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**PUBLIC EDUCATION  
DEPARTMENT**

**NOTICE OF CHANGES TO RULE  
HEARING**

The New Mexico Public Education Department (PED) gives notice of time and location changes to a public hearing scheduled Friday, November 12, 2021, published in Issue 18 of the New Mexico Register on September 28, 2021.

The PED gives notice that it will conduct a public hearing on Friday, November 12, 2021 from 1 p.m. to 5 p.m. (MDT) via Zoom for

- the proposed repeal of **6.30.6 NMAC, Suspension of Authority of a Local School Board, Superintendent, or Principal**, to be replaced with **6.30.6 NMAC, Suspension of Authority of a Local School Board**;
- the proposed new rule **6.60.11 NMAC, Required Training Program for School District Personnel, School Volunteers, and Contractors**; and
- the proposed repeal and replace of **6.29.11 NMAC, Social Studies**.



**Zoom Information.**

- Link: <https://zoom.us/j/95261645812?pwd=ejNMZ2Fyb2xsVWFhT2VtMWRabnRKQT09>
- Passcode: Policy2021
- Or One tap mobile: US : +16699006833,,95261645812# or +12532158782,,95261645812# or Telephone: Dial (for higher quality, dial a number based on your current location): US: +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799 or +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799
- Webinar ID: 952 6164 5812
- International numbers available: <https://zoom.us/u/adcuJ7c7Py>

**Public Comment.** Interested parties may provide comment at the public hearing or may submit written comments by mail to John Sena, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 121, Santa Fe, New Mexico 87501, by electronic mail to [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), or by fax to (505) 827-6520. Written comments must be received no later than 5 p.m. (MDT) on Friday, November 12, 2021. The PED encourages the early submission of written comments. The public comment period is from Tuesday, September 28, 2021 to Friday, November 12, 2021 at 5:00 p.m. (MDT).

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

Copies of the proposed rules may be accessed through the page titled, "Rule Notification," on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from John Sena at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an

alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact John Sena at (505) 570-7816 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

**PUBLIC EDUCATION DEPARTMENT**

**NOTICE OF PROPOSED RULEMAKING**

**Public Hearing.** The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing on Monday, November 29, 2021 from 1 p.m. to 3 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501. The location of the public hearing is subject to change due to concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2021-049, Renewing the State of Public Health Emergency Initially Declared in Executive Order 2020-004, Other Powers Invoked in That Order, and All Other Orders and Directives Contained in Executive Orders Tied to the Ongoing Public Health Emergency; or with any executive order that supersedes Executive Order 2021-049. Continuous updates on hearing changes and Zoom information will be provided on the PED website. The purpose of the public hearing is to receive public input on the proposed new rule, **6.64.20 NMAC, Competencies for Secondary Computer Science Teachers**. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will also be accepted at the hearing.

**Explanation of Purpose of Text**

The purpose of new rule **6.64.20 NMAC, Competencies for Secondary Computer Science Teachers**, is to establish pathways and competencies for secondary teachers to earn an endorsement in computer science, supporting effective computer science instruction in seventh grade through 12th grade. The rule is proposed to comport with Section 22-10A-6 NMSA 1978, being Laws 2021, Chapter 102.

**Summary of Text**

The proposed new rule, **6.64.20 NMAC, Competencies for Secondary Computer Science Teachers**, establishes pathways for secondary teachers to receive an endorsement in computer science. In addition to completing an endorsement pathway, secondary computer science specialists are expected to demonstrate mastery of (1) computer science knowledge and skills, (2) equitable and inclusive learning environments, (3) personal growth and identity, and (4) designing learning experiences. The competencies were authored in alignment with the New Mexico content standards and benchmarks for computer science and the national standards of the Computer Science Teachers' Association.

**Statutory Authorization(s):**

Sections 22-2-1, 22-2-2, and 22-10A-6 NMSA 1978.

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

**Public Comment.** Interested parties may provide comment at the public hearing or may submit written comments by mail to John Sena, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 121, Santa Fe, New Mexico 87501, by electronic mail to [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), or by fax to (505) 827-6520. Written comments must be

received no later than 5 p.m. (MDT) on Monday, November 29, 2021. The PED encourages the early submission of written comments. The public comment period is from Tuesday, October 26, 2021 to Monday, November 29, 2021 at 5:00 p.m. (MDT).

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

Copies of the proposed rules may be accessed through the page titled, "Rule Notification," on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/> or may be obtained from John Sena at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact John Sena at (505) 570-7816 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

## REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

### NOTICE OF PROPOSED RULEMAKING

**Public Hearing.** The New Mexico Regulation and Licensing Department (RLD), Cannabis Control Division (CCD), will hold a public rule hearing on Wednesday, December 1, 2021, starting at 9:00 a.m. Due to the ongoing public health concerns posed by the threat of the contagious disease COVID-19, the rule hearing will be virtual via an Internet-based video conference and via telephone. A PDF of the proposed rule and meeting details may be accessed through the

Cannabis Control Division website: <https://ccd.rld.state.nm.us> or from Julia Valdez at the contact below.

**Purpose of Rule Hearing.** The purpose of the public rule hearing is to receive public commentary to make rule amendments to 16.8.1 NMAC and 16.8.2 NMAC. Proposed amendment to 16.8.1 NMAC will include the formation of labor peace agreements between employers licensed by the Cannabis Control Division and their employees. Proposed amendments to 16.8.2 NMAC will include a list of acceptable solvents for licensees engaged in manufacturing activities.

Any technical information used to inform the proposed rules will be accessible by visiting: <https://ccd.rld.state.nm.us/>.

**Statutory Authority.** Legal authority for this rulemaking may be found the Cannabis Regulation Act, NMSA 1978 Section 26-2C-1 through Section 26-2C-42 NMSA (2021). Additional authority may be found at NMSA 1978 Section 9-7-6(E) (2017) and at NMSA 9-16-6 (2021).

**Public Comment.** The Division will begin accepting public comment on the proposed rules beginning October 26, 2021. Please submit written comments on the proposed rules to Robert Sachs, Deputy Director of Policy for the Cannabis Control Division, via electronic mail at [ccd.publiccomment@state.nm.us](mailto:ccd.publiccomment@state.nm.us). Written comment may also be submitted by visiting the Division website at [ccd.rld.state.nm.us](https://ccd.rld.state.nm.us) or by mailing the comment to the following address:

Cannabis Control Division Public Comment  
c/o Robert Sachs  
P.O. Box 25101  
Santa Fe, NM 87504

All public comments must be received by the close of the public rule hearing on Wednesday, December 1, 2021. Persons will also be given the opportunity to present

their comments at the rule hearing. Comments received prior to the rule hearing will be posted to the RLD website at: [ccd.rld.state.nm.us](https://ccd.rld.state.nm.us).

No later than October 26, 2021, interested parties may obtain and review copies of the proposed rules and public comments by going to the Cannabis Control Division website at <https://ccd.rld.state.nm.us/> or by contacting the Cannabis Control Division at [rld.cannabiscontrol@state.nm.us](mailto:rld.cannabiscontrol@state.nm.us) or (505) 476-4995.

Any 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 should contact Julia Valdez, Executive Assistant for the Cannabis Control Division, [rld.cannabiscontrol@state.nm.us](mailto:rld.cannabiscontrol@state.nm.us) or (505) 362-2924 at least seven (7) days prior to the hearing.

### Summary of Proposed New Rules.

#### 16.8.1 NMAC: GENERAL PROVISIONS

Part 1 provides general requirements for licensees established under the Cannabis Regulation Act and required definitions. The amendment to be discussed at the hearing will propose a labor peace agreement between employers licensed by the Cannabis Control Division and their employees.

#### 16.8.2 NMAC: LICENSING AND OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS

Part 2 provides the requirements necessary for issuance of a license under the Cannabis Regulation Act. Part 2 governs the licensing and operational requirements for additional types of licensees. The proposed amendments to be discussed at the hearing will include a list of acceptable solvents for licensees engaged in manufacturing activities.

**REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION**

**NOTICE OF PUBLIC HEARING**

The Construction Industries Commission will convene a public hearing on the following proposed changes to the administrative code to include amendments to its rules 14.8.2 NMAC – 2015 NEW MEXICO PLUMBING CODE and 14.9.2 NMAC – 2015 NEW MEXICO MECHANICAL CODE. The hearing will be held before a hearing officer, at which time any interested person is invited to submit data, views or arguments on the proposed changes, either orally or in writing and to examine witnesses testifying at the hearing.

The hearing is scheduled as follows:

The hearing shall begin at 9:30 a.m., November 30, 2021 will remain open until 10:00 a.m. or until participants have an opportunity to make public comment, whichever is longer. Due to the ongoing public health concerns posed by the threat of the contagious disease COVID-19, the rule hearing will be virtual via an Internet-based video conference and via telephone.

Interested persons may secure copies of the proposed changes by accessing the Construction Industries Division website (<https://www.rld.nm.gov/construction-industries>) to download the proposed rules or by written request to the Santa Fe CID Office – Toney Anaya Building, 2550 Cerrillos Rd. Santa Fe, NM 87505, attention: Mary James.

In order to ensure that the rules hearing is open to the public in a manner allowing members of the public to participate while social distancing due to COVID-19, the division shall implement the following procedures: You may send written comments to: Construction Industries Division, P.O. Box 25101, Santa Fe, New Mexico 87504,

Attention: Public Comments. Written comments may also be faxed to (505) 476-4685/ (505) 476-4702 or submitted to Mary James at her email address: [mary.james2@state.nm.us](mailto:mary.james2@state.nm.us). All written comments must be received no later than 5:00p.m., on Monday, November 29, 2021. You may also review submitted comments by contacting Mary James at her email address above. All public comment received shall be admitted into the record during the public hearing.

Written comments may also be received on the day of the hearing as a division representative shall be stationed at the each of the division offices: Toney Anaya Building, Santa Fe; 5500 San Antonio NE- Suite F Albuquerque and 505 S. Main St – Suite 103 Las Cruces between 8:30 a.m. and 9:30 a.m. to receive written comments and to provide for the comments to be admitted into the record during the public hearing. Those desiring to participate in the public video/telephonic hearing process may do so by remote participation through livestreaming the meeting or becoming a participant by following these instructions:

Join via Video:  
<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=ea19db00ad35624a173d5cd01a09adf77>

Once you join through the above link you will be provided instructions for accessing the meeting. Event password not required.

Join via telephone:  
+1-415-655-0002  
Access Code: 2497 646 1323  
No password required.

You may also access the division’s website at <https://www.rld.nm.gov/construction-industries/> the day of the hearing to locate instructions for participating in the hearing. All persons desiring to make public comment during the hearing shall do so through the webex process notifying the host who shall then ensure the ability for recorded comment. If you have any issues

you may contact Kimberly Salazar at (575) 621-8351

All public comments and documentation will be entered into the record during the public rules hearing. If you require special accommodations to attend the hearing, please notify CID by phone, email, or fax, of such needs as soon as possible to ensure adequate accommodations. Telephone: (505) 476-4616. Email: [mary.james2@state.nm.us](mailto:mary.james2@state.nm.us); Fax No. (505) 476-4702.

**REGULATION AND LICENSING DEPARTMENT NURSING HOME ADMINISTRATORS**

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

The New Mexico Board of Nursing Home Administrators will hold a rule hearing on Wednesday, December 1, 2021, at 10:00 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=eaeda6ffc868a87a3fc9606145009a97>

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

Access Code: 2490 205 4571

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

16.13.1 NMAC – General Provisions  
 16.13.2 NMAC – Fees  
 16.13.3 NMAC – Application for Licensure by Examination  
 16.13.4 NMAC – Examination of Approved Applicants  
 16.13.5 NMAC – Application for Licensure by Reciprocity  
 16.13.6 NMAC – Licensure for Military Service Members, Spouses, Dependent Children and Veterans  
 16.13.8 NMAC – License Renewal  
 16.13.18 NMAC – Grounds for Disciplinary Action

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/nursing-home-administrators/nha-board-information/nha-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 Roxann Ortiz, Board Administrator, via electronic mail at: [Nursinghomeadminbd@state.nm.us](mailto:Nursinghomeadminbd@state.nm.us), or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Tuesday, November 30, 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/nursing-home-administrators/nha-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/nursing-home-administrators/nha-board-information/nha-board-meetings/>. Copies of the rules or the agenda may also be obtained by contacting Roxann Ortiz, 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 Roxann Ortiz, Board Administrator at (505) 476-4622.

**Statutory Authority:** Legal authority for this rulemaking can be found in the Nursing Home Administrators Act, NMSA 1978, Sections 16-13-1 to -17, which, among other provisions, specifically authorizes the Board to “formulate, adopt and regularly revise such rules and regulations not inconsistent with law as may be necessary to adopt and enforce standards for licensing nursing home administrators and to carry into effect the provisions of the Nursing Home Administrators Act.” NMSA 1978, Section 61-13-6(A). Additional legal authority for this rulemaking can be found in the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to -36.

**Purpose and Summary of the Proposed Rules Changes:**

**16.13.1 NMAC – General Provisions**

The amendments to this part include citation edits and revisions of some definitions in order to align with the current usage. Further, a new proposed section (16.13.1.9 NMAC) has been added which permits an applicant or licensee to request a waiver by the board of any requirement in Title 16, Chapter 13 NMAC.

**16.13.2 NMAC - Fees**

The amendments to this part include citation edits, removal of extraneous language with respect to the examination and computer based testing fees due to the fact that those fees are paid directly to NAB, as well as removal of hyperlinks to the board's website as the website location is subject to change.

**16.13.3 NMAC – Application for Licensure by Examination**

The amendments to this part include the revisions of some definitions

in order to align with current usage, as well as the addition of the condition that a NAB certified preceptor be utilized for the prerequisite requirement that an individual complete a board approved administrator in training program or board approved internship program. Further, proposed changes have been made to the method by which proof of completion of the required administrator in training program or internship program must be provided. Additional amendments to this part include the removal of exam related information that does not reflect the current examination process.

**16.13.4 NMAC – Examination of Approved Applicants**

This part is being repealed in its entirety due to the fact that the information does not reflect the current examination process.

**16.13.5 NMAC – Application for Licensure by Reciprocity**

The amendments to this part include the removal of the reference to the PES and NAB examination, as well as the addition of a requirement that an applicant for licensure by reciprocity either complete an approved administrator in training program or demonstrate proof that the applicant has worked full-time for twelve consecutive months as an administrator. Additional amendments to this part include the removal of the notary requirement for signature as well as minor grammatical revisions to 16.13.5.12(A)(4).

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

The amendments to this part includes a repeal and replace of the part 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.

**16.13.8 NMAC – Licensure Renewal**

The amendment to this part includes the removal of 16.13.8.10 NMAC due to the fact that licensing and renewal processes are being transitioned to an online format and mail notifications will no longer be sent to physical addresses.

**16.13.18 NMAC – Grounds for Disciplinary Actions**

The amendments to this part include the addition of new language to the rule to comply with the 2021 legislative change regarding SB2. The proposed rule sets out what criminal felony convictions directly relate to the particular profession of nursing home administration that may disqualify the applicant or licensee from holding a license. Amendments to this part also include the removal of the definition of “conviction”, as the term “disqualifying criminal conviction” is now defined in 1978 NMSA, Section 61-1-36(E).

**REGULATION AND LICENSING DEPARTMENT PHYSICAL THERAPY BOARD**

**PUBLIC RULE HEARING AND REGULAR BOARD MEETING**

The New Mexico Physical Therapy Board (“Board”) will hold a rule hearing on Wednesday, December 01, 2021, at 12:00 p.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 virtually at the Regulation and Licensing located at 2550 Cerrillos Road, Santa Fe, NM 87505, via Cisco WebEx Meetings.

To join the meeting online by Cisco WebEx Meeting, please use the following link:  
<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e38f66bf3dbfb2ca5c1d2efc4278722ec>

Event number: 2486 084 3221

United States Toll: 1-415-655-0002  
 Access code: 2486 084 3221

The purpose of the rule hearing is to consider proposed amendments, repealing and/ or replacing the following rules:

16.20.3 NMAC – Issuance of Licenses

16.20.8 NMAC – Renewal Requirements and Continuing Education

16.20.12 NMAC – Licensing of 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/physical-therapy/pt-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 Bertha Valerio, Board Administrator, via electronic mail (email) at [Physical.Therapy@state.nm.us](mailto:Physical.Therapy@state.nm.us) or by regular mail at Physical Therapy Board Rules, P.O. Box 25101, Santa Fe, NM 87504, no later than Tuesday, November 30, 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/physical-therapy/pt-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 Bertha Valerio, Board Administrator at (505) 476-4622 or [Physical.Therapy@state.nm.us](mailto:Physical.Therapy@state.nm.us).

**Statutory Authority:** The Physical

Therapy Act Subsections (C) of Section 61-12D-5 to 61-12D-18. NMSA 1978 of the Physical Therapy Act, Sections 61-12D-1 to -18 NMSA 1978, specifically authorizes the Board to file, adopt, amend or repeal and regulations in accordance with the Uniform Licensing Act, Sections 61-1-1 to -36, NMSA 1978.

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

**16.20.3 NMAC – Issuance of Licenses**

The proposed amendment repealing and replacing the current language includes the addition of the list of specific criminal convictions which could disqualify an applicant from receiving or renewing a license based on a previous felony conviction. The rule also adds new language governing the Board’s consideration of criminal convictions in applications and disciplinary matters, pursuant to Section 61-1-36, NMSA 1978 of the Uniform Licensing Act, listing the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction and adding related limitations on the Board’s consideration of such convictions. The purpose of the rule is to ensure that applications and complaints against licensees and certification holders are evaluated and adjudicated in a fair and impartial manner that complies with due process while ensuring the public’s continued confidence in the profession. In addition, the biennial licensing requirement referencing its 2009 introduction in 16.20.3.9 NMAC is being removed as it is now well-established and is moved to Section 8 of 16.20.8 as it relates to renewal requirements. The subsequent subsections following Section 9 of 16.20.3 NMAC are being renumbered due to the removal of this subsection.

**16.20.8 NMAC – Renewal Requirements and Continuing Education**

The proposed amendment repealing

and replacing the current language is to move the biennial licensing requirement from 16.20.3.9 NMAC into this Section 8 of 16.20.8 that pertains to the renewal of licenses. In addition, clarification is provided that no continuing education is required for licensees who are renewing their license for the first time in Subsection A, Section 9 of 16.20.8 NMAC.

### **16.20.12 NMAC – Licensing for Military Service Members, Spouses and Veterans**

The proposed amendment to this part includes a repeal and replace of its subsections to comply with the 2021 legislative change regarding HB120 Military Spouses Expedited Licensure. The proposed rule changes the time for approving an application for license from 60 days to 30 days and removes “recent” from the definition of veteran. The rule also sets out application and renewal requirements.

Technical Information: No technical information provided the basis for any of the proposed rules.

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## **REGULATION AND LICENSING DEPARTMENT SIGNED LANGUAGE INTERPRETING PRACTICES BOARD**

### **PUBLIC RULE HEARING AND REGULAR BOARD MEETING**

The New Mexico Signed Language Interpreting Practices Board (“Board”) will hold a rule hearing on Tuesday, November 30, 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 rule hearing and subsequent Board meeting will be held via Cisco Webex Meetings. To join the meeting, please visit: <https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e72>

63ace82440b9053632da14fbcdb7ec.

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

Access Code: 2482 696 1849

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

16.28.2 NMAC - Education Requirements;  
16.28.3 NMAC - Application and Licensure Requirements  
16.28.4 NMAC - Complaint Procedures; Adjudicatory Proceedings  
16.28.7 NMAC - Licensure for Military Service Members, Spouses and Veterans

The amendments to Parts 4 and 7 of the Board’s rules are primarily intended to address the legislative changes to the Uniform Licensing Act (“ULA”), NMSA, 1978, Sections 61-1-1 through -36, (1951, as amended through 2021), which occurred this past Legislative Session. *See* H.B. 120, 55th Leg., Reg. Sess. (N.M. 2021), available at: <https://www.nmlegis.gov/Sessions/21%20Regular/final/HB0120.pdf> and S.B. 2, 55th Leg., Reg. Sess. (N.M. 2021), available at: <https://www.nmlegis.gov/Sessions/21%20Special/final/SB0002.pdf>. The amendments to Part 4 are intended to incorporate the legislative changes required by SB 2, which include the adoption by the Board of a list of disqualifying criminal convictions which could disqualify an applicant for a prior felony convictions. Additionally, the amendments to Part 7 of the Board’s rules are intended to incorporate the legislative changes required by House Bill 120. The amendments to Parts 2 and 3 are intended to comply with the provisions of the Signed Language Interpreting Practices Act, Sections 61-34-1 through 17 NMSA 1978; and to clarify existing provisions.

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/signed-language-interpreting-practices/slip-board-information/slip-board-meetings/](https://nm.gov/boards-and-commissions/individual-boards-and-commissions/signed-language-interpreting-practices/slip-board-information/slip-board-meetings/) or contact the New Mexico Signed Language Interpreting Practices Board at (505)476-4622 or by email at [signlanguage.board@state.nm.us](mailto:signlanguage.board@state.nm.us).

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Theresa Montoya, Board Administrator, via electronic mail at [signlanguage.board@state.nm.us](mailto:signlanguage.board@state.nm.us) or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Monday, November 29, 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/signed-language-interpreting-practices/slip-board-information/slip-board-meetings/>, 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 Theresa Montoya, Board Administrator at (505) 476-4622.

**Statutory Authority:** The Signed Language Interpreting Practices Act, NMSA 1978, Sections 61-34-8, among other provisions, specifically authorizes the Board to “promulgate rules pursuant to the State Rules Act [Chapter 14, Article 4, 1978] to effectively carry out and enforce provisions of the Signed Language Interpreting Practices Act.”

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

**16.28.2 NMAC - Education Requirements**

The amendments to this part clarify which documents must be submitted by a provisional license application whose degree is pending.

**16.28.3 NMAC - Application and Licensure Requirements**

The amendment to this part clarifies the type of proof that may be submitted by a provisional license applicant in the event that applicant has not completed an interpreter training program.

**16.28.4 NMAC - Complaint Procedures; Adjudicatory Proceedings**

The amendments to this part add a new section to the rule so that it is in compliance with the 2021 legislative changes made under SB2. The proposed amendments to this rule establish which criminal felony convictions directly relate to the employment or profession of signed language interpreting that may disqualify an applicant or licensee from holding a license. The proposed amendment also defines how the conviction may and/or may not be used when reviewing an application for licensure or for violation of the Board's statute or rules by a current licensee.

**16.28.7.10 – Licensure for Military Service Members, Spouses and Veterans**

The amendments to this part includes new language so that the rule is in compliance with the 2021 legislative change regarding HB120 Military Spouses Expedited Licensure. The proposed amendments 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.

**SUPERINTENDENT OF INSURANCE, OFFICE OF THE  
NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the Superintendent of Insurance (“OSI” or “Superintendent”) will hold a public video/telephone hearing regarding proposed amendments to 13.14.4 and 13.14.9 NMAC and repealing of 13.14.10 NMAC. This hearing will commence on **November 29, 2021, at 1:30 p.m.**

**PURPOSE AND SUMMARY OF THE PROPOSED AMENDMENTS:**

The purpose of the proposed rule amendments is to implement the New Mexico Title Insurance Law regarding the establishment of rules, rates, charges, and requirements for title insurance in the State. The proposed rule amendments would affect: Part 4 by amending 13.14.4.8(G) to resolve a possible conflict with 12 C.F.R 1026.38(t)(5); and Part 9 by adding a new clause in 13.14.9.17 to clarify the requirement to charge premium and amending that Part throughout as needed to clean up certain language adopted in the last rulemaking, and to ensure that all monetary compensation elements, including premium and non-premium charges, are properly coordinated with the biennial rate case. The proposed rule amendments would repeal Part 10, “Endorsement Rates.”

**STATUTORY AUTHORITY:** Section 59A-2-9 and Subsection B of Section 59A-30-8 NMSA 1978.

**TO ATTEND THE HEARING:**  
Join via Video: <https://us02web.zoom.us/j/2916274744>  
Join via telephone: 1-312-626-6799  
Meeting ID: 291 627 4744

The Superintendent designates R. Alfred Walker to act as the hearing officer for this rulemaking. Oral comments will be accepted at the public hearing from members of the

public and other interested parties. Any updates concerning the hearing date, time, or location will be available by subscribing to the “Title Rates & Rules” newsletter at: <https://newsletter.osi.state.nm.us/>.

Copies of the Notice of Proposed Rulemaking and proposed amended rules are available by electronic download from the OSI eDocket <https://edocket.osi.state.nm.us/guest/case-view/5697> or the New Mexico Sunshine portal, or by requesting a copy by calling (505) 476-0333. Note: Due to the COVID-19 pandemic, the physical offices of the OSI remain closed to the public until further notice.

Written comments will be accepted through 4:00 p.m. on November 29, 2021. Responses to written comments or oral comments will be accepted through 4:00 p.m. on December 10, 2021. All comments shall be filed electronically through the OSI eDocket at <https://edocket.osi.state.nm.us/guest/case-view/5697> or received by mail to:

OSI Records and Docketing, NM Office of Superintendent of Insurance 1120 Paseo de Peralta, P.O. Box 1689, Santa Fe, NM 87504-1689. For help submitting a filing, please contact [OSI-docketfiling@state.nm.us](mailto:OSI-docketfiling@state.nm.us).

The below docket number must be indicated on filed comments.  
**Docket No. 2021-0074  
IN THE MATTER OF ADOPTION OF AMENDMENTS TO THE TITLE INSURANCE REGULATIONS CODIFIED AT TITLE 13, CHAPTER 14 NMAC**

All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. Any filings after 4:00 will be filed to the docket the next business day. The Superintendent will consider all oral comments and will review all timely submitted written comments and responses.

**SPECIAL NEEDS:** Any person with a disability requiring special assistance to participate in the hearing should contact Melissa Gutierrez at 505-476-0333 no later than ten (10) business days prior to the hearing.

DONE AND ORDERED this 26<sup>th</sup> day of October, 2021  
/S/RUSSELL TOAL

**SUPERINTENDENT OF  
INSURANCE,  
OFFICE OF THE**

**NOTICE OF PROPOSED  
RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the Superintendent of Insurance (“OSI” or “Superintendent”) will hold a public video/telephone hearing regarding a proposed repeal and replace of 13.10.30 NMAC PHARMACY BENEFITS MANAGERS. This hearing will be held on **December 2, 2021, at 9:00 a.m.**

**PURPOSE AND SUMMARY  
OF THE PROPOSED RULES:**

The proposed rules will establish operating standards, licensing, reporting and record retention requirements for Pharmacy Benefits Managers (“PBM”) to implement and promote the objectives and policies of the Pharmacy Benefits Manager Regulation Act, Chapter 59A, Article 61 NMSA 1978. These rules will clarify and streamline PBM licensing and reporting requirements, standardize grievance processes, enhance confidentiality protections, prohibit conflicts of interest and eliminate inconsistencies between PBM rules and applicable rules concerning health plan governance.

**STATUTORY AUTHORITY:**

Section 59A-2-9 NMSA 1978 and Subsection C of Section 59A-61-3 NMSA 1978.

**TO ATTEND THE HEARING:**

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

Join via telephone: 1-312-626-6799  
Meeting ID: 291 627 4744

The Superintendent designates R. Alfred Walker to act as the hearing officer for this rulemaking. Oral comments will be accepted at the public hearing from members of the public and other interested parties. Any updates concerning the hearing date, time, or location will be available by subscribing to the “Rulemaking & Ratemaking” newsletter at: <https://newsletter.osi.state.nm.us/>.

Copies of the Notice of Proposed Rulemaking and proposed amended rules are available by electronic download from the OSI eDocket <https://edocket.osi.state.nm.us/guest/case-view/5698> or the New Mexico Sunshine portal, or by requesting a copy by calling (505) 476-0333. Note: Due to the COVID-19 pandemic, the physical offices of the OSI remain closed to the public until further notice.

Written comments will be accepted through 4:00 p.m. on December 2, 2021. Responses to written comments or oral comments will be accepted through 4:00 p.m. on December 13, 2021. All comments shall be filed electronically through the OSI eDocket at <https://edocket.osi.state.nm.us/guest/case-view/5698> or delivered by mail to:

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

For help submitting a filing, please contact [OSI-docketfiling@state.nm.us](mailto:OSI-docketfiling@state.nm.us).

The below docket number must be indicated on filed comments.

**Docket No. 2021-0075  
IN THE MATTER OF  
REPEALING AND REPLACING  
RULES 13.10.30 NMAC  
PHARMACY BENEFITS  
MANAGERS**

All filings must be received between the hours of 8:00 a.m. and 4:00 p.m.

Monday through Friday except on state holidays. The Superintendent will consider all oral comments and will review all timely submitted written comments and responses.

**SPECIAL NEEDS:** Any person with a disability requiring special assistance to participate in the hearing should contact Melissa Gutierrez at 505-476-0333 no later than ten (10) business days prior to the hearing.

DONE AND ORDERED this 26<sup>th</sup> day of October, 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.

### HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.100.970 NMAC, Sections 3 and 6 - 15, effective 11/1/2021.

#### 8.100.970.3 STATUTORY AUTHORITY:

**A.** Section 27 NMSA 1978 (1992 Repl.) provides for the department to "...adopt, amend and repeal bylaws, rules and regulations..." It also provides for administration of public assistance programs.

**B.** The income support division (ISD) of the human services department (HSD) was created by the HSD secretary under authority granted by [Section 9-8-6-B-(3) NMSA 1978] Paragraph (3) of Subsection B of Section 9-8-6 NMSA 1978.

**C.** The New Mexico health insurance exchange (NMHIX) was established by Section 59A-23F-1 of NMSA 1978 *et al.* Pursuant to 45 CFR 155.505(c) and 155.510(a), NMHIX has designated to the New Mexico human services department the authority to conduct fair hearings of NMHIX eligibility appeals pursuant to 45 CFR 155 Subpart F. [8.100.970.3 NMAC - Rp, 8.100.970.3 NMAC, 11/27/2013, A/E, 11/1/2021]

**8.100.970.6 OBJECTIVE:** The objective of these regulations is to provide general policy and procedures for the public assistance programs administered by the department, as well as policy and procedures for the department to conduct hearings for claimants of adverse actions by NMHIX.

[8.100.970.6 NMAC - Rp,

8.100.970.6 NMAC, 11/27/2013; A/E, 11/1/2021]

#### 8.100.970.7 DEFINITIONS:

**A. Agency review conference (ARC):** means an optional conference offered by the department to households adversely affected by a department action that is normally held prior to a fair hearing. An ARC may be attended by all parties responsible for and affected by the adverse action taken by the department, including but not limited to, the ISD field office staff, the child support enforcement division (CSED), a New Mexico works (NMW) representative and the household or its authorized representative for the purpose of informally resolving the dispute. The ARC is optional and shall in no way delay or replace the fair hearing process. This subsection does not apply to appeals of adverse actions by NMHIX.

**B. Authorized representative:** means an individual designated by a household to represent and act on its behalf during the fair hearing process. The household must provide formal documentation authorizing the named individual(s) to access the identified case information for a specified purpose and time frame. An authorized representative may be an attorney representing a person or household, a person acting under the authority of a valid power of attorney, a guardian ad litem, or any other individual(s) designated by the household.

**C. Claimant or Appellant:** means the household requesting a fair hearing that is claiming to be adversely affected by an action(s) taken by the department or NMHIX.

**D. Informal resolution process:** means an

opportunity for informal resolution between NMHIX and a household adversely affected by an NMHIX action in accordance with the requirements of 45 CFR Section 155.535(a). The informal resolution process happens prior to a fair hearing. The appellant's right to a hearing is preserved in any case in which the appellant remains dissatisfied with the outcome of the informal resolution process. If the appeal does not advance to a hearing, the informal resolution is final and binding.

[8.100.970.7 NMAC - N, 11/27/2013; A/E, 11/1/2021]

#### 8.100.970.8 FAIR HEARINGS:

**A.** ~~[A household aggrieved by an adverse action taken by the department that affects the participation of the household in a department administered public assistance program may appeal the department's decision by requesting a fair hearing in accordance with federal and state laws and regulations. Medicaid recipients wanting to request a fair hearing due to termination, modification, reduction or suspension of services must do so in accordance with any applicable federal and state laws and regulations, including 8.200.430.12 NMAC and 8.352 NMAC, et seq.]~~ A household aggrieved by an adverse action taken by the department or NMHIX that affects the participation of the household in a department administered public assistance program or in the New Mexico health insurance exchange, if applicable, may appeal the department's or NMHIX's decision by requesting a fair hearing in accordance with federal and state laws and regulations.

**(1)** Medicaid recipients wanting to request a

fair hearing due to termination, modification, reduction or suspension of services must do so in accordance with any applicable federal and state laws and regulations, including 8.200.430.12 NMAC and 8.352 NMAC, et seq.

(2) Fair hearings related to adverse actions by NMHIX shall be held in accordance with any applicable federal and state laws and regulations, including those set forth in 45 CFR 155 Subpart F.

**B.** A household may designate an authorized representative to request a hearing on its behalf and to represent them during the fair hearing process. The claimant or his or her authorized representative must complete a request for access to a case record each time he or she wishes to have access to the record outside what is provided to the claimant in the summary of evidence (SOE). If the claimant wishes to have his or her authorized representative review the record in his or her absence, the claimant must provide formal documentation authorizing the named individual(s) to access the identified case information for a specified purpose and time frame.

**C. Hearing rights:**

Each household has the right to request a fair hearing and:

(1) to be advised of the nature and availability of a fair hearing and an ARC, if applicable;

(2) to be represented by counsel or other authorized representative of the claimant's choice;

(3) to receive reasonable assistance in completing procedures necessary to request a fair hearing; and

(4) to receive a copy of the SOE and any document contained in the claimant's case record in order to prepare for the fair hearing in accordance with Subsection B of 8.100.970.8 NMAC; the department shall forward the SOE and any other document(s) submitted to the fair hearings bureau for admission into the fair hearing record to the claimant's authorized

representative once the department or NMHIX becomes aware that an authorized representative has been designated by the claimant;

(5) to have a fair hearing that safeguards the claimant's opportunity to present a case;

(6) where applicable/for non-NMHIX matters, to elect to continue to receive the current level of benefit, provided the request for hearing is received by the department before the close of business of the [~~thirteenth~~(13th)] 13th day immediately following the date of the notice of adverse action; a claimant that elects to continue to receive the same level of benefit pending the fair hearing decision shall be informed that a hearing decision in favor of the department may result in an overpayment of benefits and a requirement that the household repay the benefits; a claimant may waive a continuation of benefits pending the outcome of the fair hearing;

(7) in matters involving NMHIX, to be considered eligible while an appeal is pending, in accordance with the provisions of 45 CFR Section 155.525;

~~(7)~~ (8) to have prompt notice and implementation of the final fair hearing decision; and

~~(8)~~ (9) to be advised that judicial review may be invoked to the extent such review is available under state or federal law; and

(10) in matters involving NMHIX, to be advised that a second-tier appeal to the United States department of health and human services is available.

**D.** The department and NMHIX will neither provide representation for, nor pay for any costs incurred by a claimant or the authorized representative in preparation for, or attendance at an ARC, fair hearings or judicial appeals.

**E. Notice of rights:**

(1) At the time of application for assistance, the department shall inform each applicant of the applicant's right to request a fair hearing if the applicant

disagrees with an action taken by the department. In matters involving NMHIX, NMHIX shall provide notice of appeal rights and appeal procedures, including the right to request a fair hearing, at the time that the applicant submits an application and the notice of eligibility determination is sent under 45 CFR Section 155.310(g), 155.330(e)(1)(ii), 155.335(h)(1)(ii), and 155.610(i). The applicant may choose to receive the notice by mail or in electronic format.

(2) The notice shall inform the applicant of the procedure by which a fair hearing may be requested and that the claimant's case may be presented by the claimant or an authorized representative.

(3) The department shall remind the household of its right to request a fair hearing any time the household expresses disagreement with an action taken on its case by the department.

(4) Each county office shall post a notice of the right to request a fair hearing and an ARC, and a copy shall be given, upon request, to any person that has requested a hearing.

(5) Each notice provided to a claimant pursuant to this section shall include a statement that free legal assistance, by an individual or organization outside of the department, may be available to assist with the fair hearing process.

(6) A claimant may request special accommodations for a disability or a language or speech interpreter be available during [a] an informal resolution process, a fair hearing or ARC. An interpreter or special accommodations shall be provided by the department or NMHIX, as applicable, at no cost to the claimant. A request for a language interpreter, a speech interpreter or other disability accommodation must be made within [~~ten~~(10)] 10 days of the date of the fair hearing. If an interpreter or disability accommodations are not requested timely, the claimant can request postponement of the hearing

in accordance with Subsection B of 8.100.970.10 NMAC.

**F. Special provisions pertaining to mass changes:**

Special provisions apply in situations involving mass changes. These provisions are contained at 8.100.180.12 and 15 NMAC, 8.139.120.13 NMAC, 8.139.500.8 and 9 NMAC, 8.106.630.10 and 11 NMAC, 8.102.501.9 NMAC and 8.102.630.10 NMAC.

**G. Continuing benefit for cash assistance:**

If a claimant who is a cash assistance recipient requests a fair hearing before the close of business of the [~~thirteenth~~ (13th)] 13th day immediately following the date of the notice of adverse action, the claimant may elect to waive or continue receiving the same amount of cash assistance and services issued immediately prior to the notice of adverse action until a final decision is issued. If there is no indication that the claimant has waived a continuation of benefits, the department will assume a continuation of benefits is desired. The household is required to comply with the reporting and renewal provisions at 8.102.120 NMAC and 8.106.120 NMAC. Cash assistance recipients are to continue compliance with the NMW compliance requirements at 8.102.460 NMAC.

**H. Continuing SNAP benefits:**

If a claimant who is a SNAP recipient requests a fair hearing before the close of business of the [~~thirteenth~~ (13th)] 13th day immediately following the date of the notice of adverse action, the claimant may elect to waive or continue receiving the same amount of SNAP benefits issued immediately prior to the adverse action until a final decision is issued. If there is no indication that the claimant has waived a continuation of benefits, the department will assume a continuation of benefits is desired. The claimant is required to comply with the reporting and renewal provisions at 8.139.120 NMAC.

**I. Continuing eligibility for a medical assistance program:**

If a claimant who is a

recipient of a medical assistance program requests a fair hearing before the close of business of the [~~thirteenth~~ (13th)] 13th day immediately following the date of the notice of adverse action, the claimant may elect to waive or continue receiving the same medical assistance benefit issued immediately prior to the adverse action until a final decision is issued. If there is no indication that the claimant has waived a continuation of benefits, the department will assume a continuation of benefits is desired. If the hearing is regarding the termination, modification, reduction or suspension of medical assistance program services, a continuation of services is governed by all applicable federal and state laws and regulations, including 8.352 NMAC, et seq.

**J. Continuing eligibility in cases involving NMHIX:** In matters involving NMHIX, eligibility pending appeal is governed by the provisions of 45 CFR Section 155.525.

[8.100.970.8 NMAC - Rp, 8.100.970.8 NMAC, 11/27/2013; A/E, 11/1/2021]

**8.100.970.9 THE HEARING PROCESS:**

**A. Initiation of the hearing process:**

(1) A request for a fair hearing can be made by the claimant or an authorized representative orally or in writing.

(2) If a claimant requests a fair hearing orally, the department shall take such actions as are necessary to initiate the fair hearing process.

(3) The fair hearings bureau shall promptly send written acknowledgement to the claimant and the authorized representative upon its receipt of a written or oral hearing request.

**B. Time limits:**

(1) A household or its authorized representative shall request a fair hearing no later than close of business on the [~~ninetieth~~ (90th)] 90th day following the date of the notice of adverse action. If the [~~ninetieth~~

(90th)] 90th day falls on a weekend, holiday or other day the department is closed, a request received the next business day will be considered timely.

(2) The department shall assure that the fair hearing is conducted, a fair hearing decision is reached and the claimant and the authorized representative are notified of the decision within the specified program time limit set forth below, except in instances where the time limit may be extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(a) **SNAP program:** The final fair hearing decision shall be issued to the claimant and the authorized representative within [~~sixty~~ (60)] 60 days from the date the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(b) **Cash assistance programs:** The final fair hearing decision shall be issued to the claimant and the authorized representative within [~~ninety~~ (90)] 90 days from the date that the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(c) **LIHEAP:** The final fair hearing decision shall be issued to the claimant and the authorized representative within [~~sixty~~ (60)] 60 days from the date that the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(d) **Medical assistance programs:** The final fair hearing decision shall be issued to the claimant and the authorized representative within [~~ninety~~ (90)] 90 days from the date that the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC. Fair hearing

decisions regarding the termination, modification, reduction or suspension of services is governed by all applicable federal and state laws and regulations, including 8.352 NMAC, et seq.

(e)

**NMHIX matters:** The final fair hearing decision shall be issued to the claimant and the authorized representative within 90 days from the date of the appeal request. Fair hearing decisions regarding adverse actions by NMHIX are governed by all applicable federal and state laws and regulations, including 45 CFR 155 Subpart F. In the case of an appeal request submitted under 45 CFR 155.540 that the department determines meets the criteria for an expedited appeal, the department must issue the notice fair hearing decision notice as expeditiously as reasonably possible.

**C. Jurisdiction of the fair hearings bureau:**

(1) An

applicant for, or recipient of, a department administered public assistance program may request a fair hearing, and the department's fair hearings bureau shall have jurisdiction over the matter, if:

(a)

an application for benefits or services is denied in whole or in part, or not processed timely;

(b)

assistance or services are reduced, modified, terminated, suspended or not provided, or the form of payment is changed;

(c)

a good cause request for not participating in the work program or CSED is denied in whole or in part;

(d)

the department refuses or fails to approve a work program participation plan, or the supportive services related to it, that have been developed by a participant; or

(e)

the claimant is aggrieved by any other action affecting benefit level or participation in an assistance program administered by HSD.

(2) An

applicant for, or enrollee in, health insurance coverage or insurance affordability programs through the New Mexico health insurance exchange may request a fair hearing, and the department's fair hearings bureau shall have jurisdiction over the matter, if the applicant or enrollee is appealing:

(a)

An eligibility determination made in accordance with 45 CFR Subpart D, including:

(i)

an initial determination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, made in accordance with the standards in 45 CFR Section 155.305(a) through (h); and

(ii)

a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, made in accordance with 45 CFR Section 155.330 and 155.335;

(iii)

a determination of eligibility for an enrollment period, made in accordance with 45 CFR Section 155.305(b); and

(b) A

failure by NMHIX to provide timely notice of an eligibility determination in accordance with 45 CFR Section 155.310(g), 45 CFR Section 155.330(e)(1)(ii), 45 CFR Section 155.335(h)(1)(ii), or 45 CFR Section 155.610(i).

[~~2~~] (3) Fair

hearing requests submitted to the local county office shall be immediately forwarded to the fair hearings bureau for scheduling. The fair hearings bureau shall promptly inform the applicable local county office upon its receipt of a written or oral fair hearing request submitted directly to the fair hearings bureau to ensure timely scheduling of an ARC.

**D. Denial or dismissal of request for hearing:** The fair hearings bureau shall deny or dismiss, as applicable, a request for a fair hearing when:

(1) the

request is not received by the close of business on the [~~ninetieth (90th)~~] 90th day following the date of the notice of adverse action; in instances where the fair hearings bureau schedules a hearing prior to becoming aware of the lateness of the fair hearing request, the fair hearings bureau shall, upon learning of the late request, promptly dismiss the matter and provide notice thereof to all parties;

(2)

the request for a fair hearing is withdrawn or canceled, either orally or in writing, by the claimant or claimant's authorized representative; if withdrawn orally, the claimant and the authorized representative shall be provided written verification of the withdrawal and given [~~ten (10)~~] 10 calendar days from the date of the notification to request reinstatement of the hearing;

(3) the sole

issue presented concerns a federal or state law requiring an adjustment of assistance for all or certain classes of clients, including but not necessarily limited to a reduction, suspension or cancellation of benefits, unless the reason for the hearing request involves alleged error in the computation of benefits (e.g. mass changes);

(4) the

claimant fails to appear, without good cause, at a scheduled fair hearing;

(5) the same

issue has already been appealed and a hearing decision made;

(6) there is no

adverse action or delay of benefits or services for which a fair hearing may be requested; or

(7) the issue is

one that the fair hearings bureau does not have jurisdiction as provided by federal or state laws and regulations.

(8) Requests

for fair hearings for medical assistance cases involving the termination, modification, reduction or suspension of services are governed by all applicable federal and state laws and regulations, including 8.352 NMAC, et seq.

(9) In matters involving NMHIX, an appeal will be dismissed if the appellant:

(a) withdraws the appeal request in writing or orally;

(b) fails to appear at a scheduled hearing without good cause;

(c) fails to submit a valid appeal request as specified in Section 155.520(a)(4); or

(d) dies while the appeal is pending, except if the executor, administrator, or other duly authorized representative of the estate requests to continue the appeal.

**E. Good cause for failing to appear:**

(1) If the claimant or the claimant's authorized representative fails to appear for a fair hearing at the scheduled time and place, the claimant's appeal will be considered abandoned and the fair hearings bureau shall dismiss the matter, unless the claimant or authorized representative presents good cause. A claimant or authorized representative may present good cause for failing to appear to the scheduled fair hearing at any time no later than close of business on the [~~tenth~~ (~~10th~~)] 10th calendar day immediately following the scheduled hearing date. If the [~~tenth~~ (~~10th~~)] 10th calendar day falls on a weekend, holiday or other day that the department is closed, a request received the next business day will be considered timely. If good cause is submitted timely and permitted, the fair hearings bureau shall reschedule the hearing or, where appropriate, reinstate a matter previously dismissed.

(2) If the department fails to appear due to circumstances beyond its control, the department may present good cause within [~~ten~~ (~~10~~)] 10 calendar days after the scheduled hearing. If good cause is submitted timely and permitted, the fair hearings bureau shall reschedule the fair hearing.

(3) Good cause includes, but is not limited

to, a death in the family, disabling personal illness, or other significant emergencies. At the discretion of the hearing officer, other exceptional circumstances may be considered good cause.

[8.100.970.9 NMAC - Rp, 8.100.970.9 NMAC, 11/27/2013; A/E, 11/1/2021]

**8.100.970.10 PRE-HEARING PROCEDURE**

**A. Notice of hearing:**

Unless the claimant or authorized representative requests an expedited scheduling of a fair hearing, the fair hearings bureau shall provide written notice of the scheduling of a fair hearing to all parties not less than [~~ten~~ (~~10~~)] 10 calendar days prior to date of the fair hearing, or not less than 15 calendar days prior to the date of the fair hearing if the hearing involves an adverse action by the New Mexico health insurance exchange (NMHIX).

The notice of hearing shall include:

(1) the date, time and place of the hearing;

(2) the name, address and phone number of the hearing officer;

(3) information regarding the fair hearing process and the procedures to be followed by the respective parties;

(4) the right of the claimant and the authorized representative to receive a copy of the SOE and any document, not specifically prohibited by federal and state law and regulation, contained in the claimant's case record in order to prepare for the fair hearing in accordance with Subsection B of 8.100.970.8 NMAC;

(5) notice that the appeal will be dismissed if the claimant or the authorized representative fails to appear without good cause;

(6) information about resources in the community that may provide free legal assistance with the fair hearing process; and

(7) notice that the department will not pay for any costs of the claimant or

authorized representative, including legal counsel, that are incurred in the preparation for, or attendance at, an ARC, fair hearing or judicial appeal.

**B. Postponement:** A claimant or authorized representative is entitled to, and the fair hearings bureau shall grant, at least one postponement of a scheduled fair hearing. The department may request and be approved for one postponement at the discretion of the fair hearings bureau due to the unavailability of any department witness to appear at the scheduled fair hearing. Requests for more than one postponement are considered at the discretion of the fair hearings bureau, on a case-by-case basis. A request for postponement must be submitted not less than [~~one~~ (~~1~~)] one business day prior to the scheduled fair hearing, unless otherwise allowed by the fair hearings bureau, and is subject to the following limitations:

(1) **SNAP and LIHEAP cases:** A postponement may not exceed [~~thirty~~ (~~30~~)] 30 days and the time limit for action on the decision is extended for as many days as the fair hearing is postponed.

(2) **Cash assistance cases:** The fair hearing may be postponed, but must be rescheduled to assure a final decision is made no more than [~~ninety~~ (~~90~~)] 90 days from the date of the request for fair hearing.

(3) **Medical assistance cases:** The fair hearing may be postponed, but must be rescheduled to assure a final decision is made no more than [~~ninety~~ (~~90~~)] 90 days from the date of the request for fair hearing. Fair hearings for medical assistance cases involving the termination, modification, reduction or suspension of services are governed by all applicable federal and state laws and regulations, including 8.352 NMAC, et seq.

(4) **NMHIX cases:** The fair hearing may be postponed but must be rescheduled to assure a final decision is made not more than 90 days from the date of the appeal request.

~~(4)~~ (5) The fair hearings bureau shall issue notice of the rescheduling of a postponed fair hearing not less than ~~[ten-(10)]~~ 10 calendar days before the rescheduled date, unless oral agreements are obtained from all parties to reschedule the fair hearing with less notice in an effort to meet the required timeframes. Documentation of the oral agreement shall be maintained in the fair hearing record.

**C. Expedited hearing:**  
**(1) SNAP**

**cases:** Hearing requests from SNAP households, such as migrant farm workers that plan to move out of the state before the hearing decision would normally be made should be scheduled on an expedited basis.

**(2) NMHIX**

**cases:** an appellant may request an expedited appeals process where there is an immediate need for health services because a standard appeal could jeopardize the appellant's life, health, or ability to attain, maintain, or regain maximum function. If the request for an expedited appeal is denied, the appeal request must be handled under the standard process and the appellant must be promptly informed of the denial, through electronic or oral notification, if possible. If notification is oral, the appeals entity must follow up with the appellant by written notice. Written notice of the denial must include:

**(a)**

the reason for the denial;

**(b)**

an explanation that the appeal request will be transferred to the standard process; and

**(c)**

an explanation of the appellant's rights under the standard process.

**D. Group hearings:**

A hearing officer may respond to a series of individual requests for hearings by conducting a single group hearing. Group hearing procedures apply only to cases in which individual issues of fact are not disputed and where related issues of state or federal law, regulation or policy are the sole issues being raised. In all group hearings, the regulations

governing individual hearings are followed. Each individual claimant is permitted to present the claimant's own case or to be represented by an authorized representative. If a group hearing is scheduled, any individual claimant may withdraw from the group hearing and request an individual hearing. The confidentiality of client records is to be maintained in accordance with federal and state laws and regulations.

**E. Agency review conference (ARC):** ~~[The]~~ Except in matters involving NMHIX, the

department and the claimant are encouraged to meet for an ARC before the scheduled fair hearing to discuss the department's action(s) that the claimant has appealed. The ARC is optional and does not delay or replace the fair hearing process. An ARC will be held within ~~[ten-(10)]~~ 10 calendar days from the date of the fair hearing request. If the claimant submits a hearing request to the field office, in person or by telephone, the ARC may, at the claimant's option, be conducted at that time. An appeal may not be dismissed by the department for failure of the claimant or authorized representative to appear at a scheduled ARC.

**(1)**

The department shall send a written notice of the scheduled ARC to the claimant and authorized representative. The claimant may choose to receive the notice by mail or in electronic format.

**(2)**

An ARC may be attended by all parties responsible for and affected by the adverse action taken by the department, including but not limited to, the ISD field office staff, the CSED, a NMW representative and the claimant or its authorized representative.

**(3)**

The purpose of the ARC is to informally review the adverse action taken by the department and to determine whether the dispute can be resolved in accordance with federal and state law and regulation. The ARC is optional and shall in no way delay or replace the fair hearing process, unless the

outcome of the ARC is the claimant withdrawing the fair hearing request.

**(4)**

For cases in which the household appeals a denial of expedited SNAP service, the ARC shall be scheduled within ~~[two-(2)]~~ two business days, unless the household requests that it be scheduled at a later date or does not wish to have an ARC.

**(5)**

A household may request an ARC in order to discuss an adverse action taken by the department against the household, regardless of whether or not a fair hearing is requested.

**F. Summary of evidence (SOE):**

An SOE shall be prepared by the department or NMHIX, if applicable, and submitted to the fair hearings bureau and the claimant and authorized representative no less than ~~[ten-(10)]~~ 10 calendar days prior to the date of the fair hearing. Failure to provide the SOE within the prescribed timeframe may result in its exclusion or a postponement or continuance of the hearing at the discretion of the hearing officer pursuant to Subsection B of 8.100.970.10 NMAC and Subsection D of 8.100.970.12 NMAC. Unless the hearing request is withdrawn by the claimant or authorized representative, an SOE shall be prepared and submitted in accordance with this paragraph, regardless of the results of an ARC. The SOE shall contain at least the following information:

**(1)**

identifying information, including but not limited to, claimant's name, at least the last four digits of the claimant's social security number, the claimant's individual identification number, ~~[or]~~ case identification number or reference identification number, the claimant's last known address, and the type of assistance involved, if applicable;

**(2)**

the issue(s) on appeal that outlines the adverse action taken by the department against the household;

**(3)**

documentation in support of the department's adverse action,

including any facts, information and department findings related to the fair hearing issue(s);

(4) applicable federal and state laws and regulations, internal department policy documents, and any additional supportive legal documentation; and

(5) results of the ARC, if completed at the time of submission of the SOE.

**G. Availability of information:** The department staff shall:

(1) allow the claimant and the authorized representative to examine the case record and provide the claimant and the authorized representative a copy of the SOE and any document, not specifically prohibited by federal and state laws and regulations, contained in the claimant's case record in order to prepare for the fair hearing in accordance with Subsection B of 8.100.970.8 NMAC; and

(2) provide accommodations for a disability or a language or speech interpreter in accordance with Paragraph (6) of Subsection E of 8.100.970.8 NMAC and 45 CFR Section 155.505(f), as applicable.

[8.100.970.10 NMAC - Rp, 8.100.970.10 NMAC, 11/27/2013; A/E, 11/1/2021]

**8.100.970.11 HEARING STANDARDS**

**A. Rights during the fair hearing:** The claimant or authorized representative shall be given an opportunity to:

(1) examine the SOE and case record prior to, and during, the hearing in accordance with Subsection B of 8.100.970.8 NMAC;

(2) present his or her case or have it presented by an authorized representative;

(3) introduce witnesses;

(4) establish all pertinent facts and circumstances;

(5) advance any arguments without undue interference; and

(6) question or refute any testimony or evidence, including an opportunity to confront and cross-examine the department's witnesses.

**B. Hearing officer:** Fair hearings are conducted by an impartial official who:

(1) does not have any personal stake or involvement in the case;

(2) was not directly involved in the initial determination of the action which is being contested;

(3) was not the immediate supervisor of the worker who took the action that is being contested and, in hearings involving adverse actions by NMHIX, has not been directly involved in the eligibility determination or any prior appeal decisions in the same matter;

(4) may not discuss the merits of any pending fair hearing with anyone outside the fair hearings bureau, unless all parties or their authorized representatives are present.

**C. Disqualification and withdrawal:** If the appointed hearing officer had any involvement with the department action(s) being appealed, including giving advice or consulting on the issue(s) presented, or is related in any relevant degree to the claimant, the claimant's authorized representative, or ISD worker that took the action being appealed, the appointed hearing officer shall be disqualified as the hearing officer for that case. In addition, an appointed hearing officer shall, prior to the date of the fair hearing, withdraw from participation in any proceedings that the hearing officer determines that he cannot afford a fair and impartial hearing or where allegations of bias have arisen and have not been resolved prior to the deadline for a fair hearing decision to be issued pursuant to Paragraph (2) of Subsection B of 8.100.970.9 NMAC.

**D. Authority and duties of the hearing officer:** The authority and duties of the hearing officer are to:

(1) explain how the fair hearing will be conducted to participants at the start of the hearing;

(2) administer oaths and affirmations;

(3) insure that all relevant issues are considered during the fair hearing;

(4) request, receive and make part of the fair hearing record all evidence necessary to decide the issues being raised;

(5) regulate the content, conduct and the course of the hearing to ensure an orderly hearing; if a claimant, the claimant's authorized representative, any witness or other participant in the fair hearing refuses to cooperate or comply with rulings on the procedures and issues as determined by the hearing officer, or acts in such a manner that an orderly fair hearing is not possible, the hearing officer may take appropriate measures to ensure that order is fully restored so that the claimant's opportunity to fairly present his or her case is safeguarded; such measures shall include, but not be limited to, excluding or otherwise limiting the presentation of irrelevant evidence, or terminating the fair hearing and making the recommendation based on the record that has been made up to the point that the fair hearing was terminated;

(6) limit cross-examination that is repetitive or harassing;

(7) request, if appropriate, and except in matters involving NMHIX, an independent medical assessment or professional evaluation from a source mutually satisfactory to the claimant and the department; and

(8) provide a fair hearing record and report and recommendation for review and final decision by the appropriate division director; and

(9) in matters involving adverse action by NMHIX, provide a written final decision.

**E. Appointment of hearing officer:** A hearing officer is appointed by the fair hearings



bureau upon receipt of the request for hearing.

**F. Process:** Formal rules of evidence and civil procedure do not apply to the fair hearing process. All relevant evidence is admissible, subject to the hearing officer’s authority to limit evidence that is repetitive or unduly cumulative. Evidence that is not available to the claimant may not be presented to the hearing officer or used in making the final fair hearing decision, unless the unavailability of evidence was in accordance with federal and state laws and regulations.

**(1)**

**Confidentiality:** The confidentiality of client records is to be maintained in accordance with federal and state laws and regulations. Confidential information that is protected from release and other documents or records that the claimant will not otherwise have an opportunity to contest or challenge shall not be introduced at the fair hearing or affect the hearing officer’s recommendation.

**(2)**

**Administrative notice:** The hearing officer may take administrative notice of any matter for which judges of this state may take judicial notice.

**(3) Privilege:**

The rules of privilege apply to the extent that they are requested and recognized in civil actions in New Mexico.

**(4) Medical**

**issues:** In a case involving medical care or a medical condition, the claimant waives confidentiality and both parties shall have the right to examine any medical documents that are admitted into evidence.

**(5)** When

the evidence presented at the fair hearing does not adequately address the relevant medical issues, additional medical information may be obtained at the discretion of the hearing officer. The additional medical information may include, but is not limited to, a medical evaluation or analysis obtained at the department’s expense, from a source satisfactory to the claimant.

**G. Motions:** Motions shall be decided by the hearing officer without a hearing, unless permitted by the hearing officer upon written request of the department, the claimant or the authorized representative.

**H. Burden of proof:**

The department has the burden of proving the basis for its action, proposed action or inaction by a preponderance of the evidence.

**I. Record of the fair hearing:** A record of each fair hearing shall be made by the hearing officer, in accordance with the following.

**(1)** The fair

hearing proceedings, including testimony and exhibits, shall be recorded electronically.

**(2)** The

hearing officer’s electronic recording shall be the official transcript of the fair hearing, and shall be retained by the fair hearings bureau in accordance with all federal and state laws and regulations.

**(3)** The

record of the fair hearing includes: the recorded fair hearing, including testimony and exhibits, any pleadings filed in the proceeding, any and all papers and requests filed in the proceeding, the report and recommendation of the hearing officer, except in matters involving NMHIX; and, the final fair hearing decision made by the division director, or the hearing officer in matters involving NMHIX. The fair hearing record will be maintained in the department’s secure electronic data management system, but may be made available to the claimant or the authorized representative for copying and inspection at a reasonable time.

**(4)** If a final

fair hearing decision is appealed, a written verbatim transcript of the fair hearing shall be prepared by the department and a copy of the transcript shall be provided to the claimant or authorized representative, free of charge.

[8.100.970.11 NMAC - Rp, 8.100.970.11 NMAC, 11/27/2013; A/E, 11/1/2021]

**8.100.970.12 CONDUCTING**

**THE FAIR HEARING: A**

fair hearing is conducted in an orderly manner and in an informal atmosphere. The fair hearing is not open to the public. The fair hearing is conducted by telephone, unless the claimant or the authorized representative makes a special request for the fair hearing to be held in person and the request is justified by special circumstances, as determined by the hearing officer on a case-by-case basis. In cases involving NMHIX, the fair hearings shall also be conducted in accordance with 45 CFR 155.535(c)-(f).

**A. Opening the**

**fair hearing:** The fair hearing is opened by the hearing officer who will explain the telephonic fair hearing procedures to all present at the fair hearing. The hearing officer will then explain his or her role in the proceedings, and that the final fair hearing decision on the issue(s) appealed will be made by the appropriate department division director after review of the hearing officer’s report and recommendation, including the fair hearing record. On the record, the individuals present are asked to identify themselves, the order of testimony is explained, the oath is administered to all witnesses who will testify during the hearing, the issue is identified, and all pleadings, papers, and requests, including but not limited to, the SOE and any evidence being presented, will be identified and entered into the record with any objections handled in accordance with applicable federal and state laws and regulations.

**B. Order of**

**testimony:** The order of testimony is as follows:

**(1)**

**Presentation of the department’s case:** The department or NMHIX will present its case and the evidence, including testimony and exhibits, in support of the adverse action taken against the household, and:

**(a)**

the claimant or authorized representative may cross-examine the department representative;

(b) the hearing officer may ask further clarifying questions; and

(c) if the department calls other witnesses, the order of examination of each witness is as follows:

(i) direct testimony by the witness(es);

(ii) cross-examination by the claimant or the authorized representative; and

(iii) examination or further clarifying questions by the hearing officer or, if requested, follow up questions from the department representative.

(2) **Presentation of the claimant's/ appellant's case:** The claimant or the authorized representative will present its case and the evidence, including testimony and exhibits, in support of its position, and:

(a) the department may cross-examine the claimant or the authorized representative;

(b) the hearing officer may ask further clarifying questions; and,

(c) if the claimant calls other witnesses, the order of examination of each witness is as follows:

(i) direct testimony by the witness(es);

(ii) cross-examination by the department representative; and

(iii) examination or further clarifying questions by the hearing officer or, if requested, follow up questions from the claimant or the authorized representative.

(3) The claimant may offer evidence on the points at issue without undue interference, may request proof or verification of evidence or statements submitted by the department or its witnesses, and may present evidence in rebuttal.

(4) The hearing officer may ask the parties to summarize and present closing arguments.

**C. Written closing argument:** If the claimant or the department is represented by legal counsel, the hearing officer may request that the closing argument be submitted in writing to the fair hearings bureau.

**D. Continuance:** The hearing officer may continue the hearing upon the request of either party, or on the hearing officer's own motion, for admission of additional testimony or evidence. A party seeking a continuance in order to obtain additional evidence must make a showing that the evidence was not available at the time of the hearing despite a reasonable attempt having been made to obtain it. The granting of a continuance is at the discretion of the hearing officer is subject to the same limitations set forth in Subsection B of 8.100.970.10 NMAC. The reason(s) for the continuance and if any oral agreements were reached in regards to the continuance shall be stated for the hearing record. The fair hearings bureau shall issue notice of the rescheduling of a continued fair hearing not less than [~~ten~~(+10)] 10 calendar days before the rescheduled date, unless oral agreements are obtained from all parties to reschedule the fair hearing with less notice in an effort to meet the required timeframes.

**E. Additional documentary evidence:** If the hearing officer requests additional documentary evidence based on testimony heard during the fair hearing, the hearing officer may close the fair hearing but keep the record open subject to production of the additional evidence being submitted by a party or parties.

(1) The hearing officer shall set a date and time for production of the requested evidence, not to exceed [~~ten~~(+10)] 10 calendar days; the party producing the additional evidence shall submit copies to the hearing officer and each party.

(2) Within [~~ten~~(+10)] 10 calendar days of its receipt of the additional evidence, the non-producing party may submit a written

response to the hearing officer and each party that will become part of the fair hearing record; or, the hearing officer may continue the hearing until such a date and time that the non-producing party may respond to the additional evidence on the record.

(3) The hearing officer shall close the record at the close of business on the [~~tenth~~(+10th)] 10th calendar day following its receipt of the additional evidence.

(4) The hearing officer may only request additional evidence pursuant to this paragraph if it will not result in a violation of the limitations set forth in Subsection B of 8.100.970.10 NMAC.

**F. Re-opening a fair hearing:** The hearing officer, at the hearing officer's discretion, may re-open a fair hearing when the evidentiary record fails to address an issue that is relevant to resolution of a fair hearing request. The fair hearing can only be re-opened if the parties have agreed to an extension of the timeframes in accordance with Paragraph (2) of Subsection B of 8.100.970.9 NMAC and the limitations set forth in Subsection B of 8.100.970.10 NMAC. Written notice of the date, time and place of the re-opened fair hearing is sent to the parties, not less than [~~ten~~(+10)] 10 days before the date of the re-opened hearing, or not less than 15 days in matters involving NMHIX, unless oral agreements are obtained from all parties to reschedule the fair hearing with less notice in an effort to meet the required timeframes. [8.100.970.12 NMAC - Rp, 8.100.970.12 NMAC, 11/27/2013; A/E, 11/1/2021]

**8.100.970.13 FAIR HEARING DECISION:** The final fair hearing decision shall be made by the appropriate department division director after review of the fair hearing record and the hearing officer's report and recommendation.

**A. Hearing officer recommendation:** The hearing officer reviews the record of the fair hearing and all appropriate regulations, and evaluates the

testimony and evidence admitted during the hearing. The hearing officer submits the complete record of the fair hearing, along with the hearing officer's report and recommendation, in a standard format to the appropriate division director(s) within [~~fifteen (15)~~] 15 days of the hearing, or sooner, to ensure the timeframes set forth in Paragraph (2) of Subsection B of 8.100.970.9 NMAC are met.

**B. Content of recommendation:** The hearing officer specifies the reason(s) for all factual conclusions, identifies the supporting evidence, references the relevant federal and state laws and regulations, along with appropriate department policy and procedural guidance, and responds to the arguments of the parties in a written report and recommendation. The hearing officer shall submit a recommendation:

- (1) in favor of the claimant when the adverse action taken by the department is not supported by a preponderance of the evidence available as a result of the fair hearing;
- (2) in favor of the department when the preponderance of the evidence, available as a result of the fair hearing, supports the adverse action taken by the department in accordance with federal and state laws and regulations; or
- (3) any other result supported by the fair hearing record.

**C. Review of recommendation:** The fair hearing record and report and recommendation are reviewed by the appropriate department division director(s) or designee to ensure conformity with applicable federal and state laws and regulations.

**D. Final decision:** The hearing officer's recommendation may be adopted or rejected, in whole or in part, in a final written decision by the appropriate department division director. The final fair hearing decision shall be based solely on the fair hearing record as defined

in Paragraph (3) of Subsection I of 8.100.970.11 NMAC. The final fair hearing decision must summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and relevant federal and state laws and regulations. No person who participated in the original action under appeal may participate in arriving at the final fair hearing decision. The final fair hearing decision becomes part of the fair hearing record.

**E. Notice to claimant:** The claimant, the authorized representative and the department shall be notified in writing of the final fair hearing decision and its effect on the benefits. If a claimant has an authorized representative, the authorized representative is mailed a copy of the final fair hearing decision. When a final fair hearing decision is adverse to the claimant, the decision shall include:

- (1) a statement that the claimant has exhausted all administrative remedies available;
- (2) the claimant's right to pursue judicial review of the final fair hearing decision; and
- (3) information on how to file an appeal of the final fair hearing decision, the timeframe for filing an appeal and where the appeal may be filed.

**F. Fair hearing decisions involving adverse actions by NMHIX:** The provisions of Subsections A through E of 8.100.970.13 NMAC do not apply to fair hearings involving adverse actions by NMHIX. For hearings involving adverse actions by NMHIX, there shall be no recommendation by the hearing officer. The hearing officer shall instead issue a written final fair hearing decision, which shall become part of the fair hearing record, and which shall:

- (1) be based exclusively on:
  - (a) the information used to determine the appellant's eligibility as well as any additional relevant evidence presented

during the course of the appeals process, including at the hearing; and  
(b)

the eligibility requirements under Subpart D or G of 45 CFR Part 155, as applicable.

(2) state the decision, including a plain language description of the effect of the decision on the appellant's eligibility;

(3) summarize the facts relevant to the appeal;

(4) identify the legal basis, including the regulations that support the decision;

(5) state the effective date of the decision;

(6) provide an explanation of the appellant's right to pursue the appeal before the HHS appeals entity, including the applicable timeframe, if the appellant remains dissatisfied with the eligibility determination; and

(7) indicate that the decision of the fair hearing officer is final, unless the appellant pursues a second-tier appeal before the United States department of health and human services.

[8.100.970.13 NMAC - Rp, 8.100.970.13 NMAC, 11/27/2013; A/E, 11/1/2021]

**8.100.970.14 IMPLEMENTATION OF DECISION:** Unless stayed by court order, the department's final fair hearing decision is binding on all issues that have been the subject of the fair hearing as to that claimant. The local county office is responsible for assuring that decisions are implemented within the timeframes specified below. The final fair hearing decision serves as advanced notice for changes in benefits or services.

**A. Decision favorable to the department:** If assistance or benefits have been continued pending the outcome of the fair hearing and the decision is favorable to the department, the department shall take immediate action to adjust the payment and submit a claim for the excess benefit amount(s) paid pending the outcome of the fair hearing.

**B. Decision favorable to the claimant:**

**(1) Cash assistance programs:** When a fair hearing decision is favorable to the claimant, the department authorizes corrective payment. For incorrectly denied cases, corrected benefits are issued retroactively in the following manner:

**(a)** to the date of adverse action or to the [thirtieth (30th)] 30th day from the application date, whichever is earlier; or

**(b)** to the first day of the month that the case is actually eligible for benefits;

**(c)** for ongoing cases, the corrected cash assistance payments are retroactive to the first day of the month that the incorrect action became effective.

**(2) SNAP:** Decisions that result in an increased benefit shall be reflected in the claimant's next authorized allotment. The final fair hearing decision serves as verification for increased benefits.

**(3) Medical assistance programs:** When a fair hearing decision is favorable to the claimant and a case was incorrectly denied, corrected benefits are issued retroactively in the following manner:

**(a)** to the date of adverse action or to the [thirtieth (30th)] 30th day from the application date, whichever is earlier; or

**(b)** to the first day of the month that the case is actually eligible for benefits;

**(c)** for ongoing cases, the corrected benefit is retroactive to the first day of the month that the incorrect action became effective;

**(d)** fair hearings for medical assistance programs involving the termination, modification, reduction or suspension of services are governed by applicable federal and state law and regulations, including 8.352 NMAC, et seq.

**C. Implementation of decisions related to NMHIX:** Unless stated by court order, the

department's final fair hearing decision is binding on all issues that have been the subject of the fair hearings as to that claimant. NMHIX, upon receiving notice of the final fair hearing decision, must promptly:

**(1) Implement the decision effective:**

**(a)** Prospectively, on the first day of the month following the date of the notice of appeal decision, or consistent with 45 CFR Section 155.330(f)(2), (3), (4), or (5), if applicable; or

**(b)** Retroactively, to the coverage effective date the appellant did receive or would have received if the appellant had enrolled in coverage under incorrect eligibility determination that is the subject of the appeal, at the option of the appellant.

**(2)** Redetermine the eligibility or household members who have not appealed their own eligibility determinations but whose eligibility may be affected by the appeal decision, in accordance with the standards specified in 45 CFR Section 155.305.

[8.100.970.14 NMAC - Rp, 8.100.970.14 NMAC, 11/27/2013; A/E, 11/1/2021]

**8.100.970.15 JUDICIAL REVIEW**

**A. Right of appeal:** If a final fair hearing decision upholds the department's or NMHIX's original action, the claimant has the right to pursue judicial review of the final fair hearing decision and is notified of that right in the department's final fair hearing decision. In matters involving NMHIX, the claimant may submit a second-tier appeal to the United States department of health and human services and is notified of that right in the department's final fair hearing decision.

**B. Timeliness:**  
**(1) SNAP, LIHEAP, general assistance (GA), and medical assistance programs:** Unless otherwise provided by law, within [thirty (30)] 30 days of the issuance of the department's final fair

hearing decision, the claimant may appeal the final fair hearing decision by filing a notice of appeal with the appropriate district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**(2) NMW:** Unless otherwise provided by law, within [thirty (30)] 30 days of the issuance of the department's final fair hearing decision, the claimant may appeal the final fair hearing decision by filing a notice of appeal with the court of appeals pursuant to the provisions of Section 27-2B-13 NMSA 1978.

**C. Jurisdiction and standard of review:**

**(1)** The district court's jurisdiction is defined by statute at Section 27-3-3 NMSA 1978 and Section 39-3-1.1 NMSA 1978. The court of appeals jurisdiction is defined by statute at Section 27-2B-13 NMSA 1978.

**(2)** The court of appeals or district court may set aside, reverse or remand the department's final fair hearing decision if it determines that:

**(a)** the department acted fraudulently, arbitrarily or capriciously;

**(b)** the final fair hearing decision was not supported by substantial evidence; or,

**(c)** the department did not act in accordance with federal and state laws and regulations.

**D. Benefits pending an appeal:** If the court decides in favor of the claimant, the department must immediately act in accordance with the court's final hearing decision. If the decision is in favor of the department, the department shall take any and all appropriate actions in accordance with Subsection A of 8.100.970.14 NMAC and 8.100.640 NMAC.

**E. Effect of appeal:** If the court of appeals decides in favor of the claimant, the HSD office of general counsel immediately notifies the county office as to the appropriate benefit issuance and adjustments, if any. If the decision is in favor

of HSD, and a reduction has been pending the decision on appeal, an overpayment claim retroactive to the date the change should have been made is filed.

**F. Appealing the appellant court's decision:**

**(1) SNAP, LIHEAP, GA and medical assistance programs:** A party to the appeal to district court may appeal the district court's decision by filing a petition for writ of certiorari with the court of appeals, which may exercise its discretion to grant review. A party may seek further review by filing a petition for writ of certiorari with the supreme court. Section 39-3-1.1 NMSA 1978.

**(2) NMW:** A party may seek further review by filing a petition for writ of certiorari with the supreme court. [8.100.970.15 NMAC - Rp, 8.100.970.15 NMAC, 11/27/2013; A/E, 11/1/2021]

**PUBLIC REGULATION COMMISSION**

This is an amendment to 17.7.2 NMAC, Sections 3, 5, 7, 8, 9, 12, 13 and 17 NMAC effective 10/26/2021.

**17.7.2.3 STATUTORY AUTHORITY:** Sections 8-8-16, [63-3-1] 62-3-1, 62-8-6, 62-17-1 *et. seq.*, NMSA 1978.

[17.7.2.3 NMAC - Rp. 17.7.2.3 NMAC, 9/26/2017; A, 10/26/2021]

**17.7.2.5 EFFECTIVE DATE:** September 26, 2017 unless a later date is cited at the end of a section. Applications filed prior to this effective date shall be governed by the specific orders related to those applications.

[17.7.2.5 NMAC - Rp. 17.7.2.5 NMAC, 9/26/2017; A, 10/26/2021]

**17.7.2.7 DEFINITIONS:** In addition to the definitions used in Section 62-17-4 NMSA 1978, the following definitions apply to this rule:

**A. application** means a utility application for commission approval of proposed energy efficiency measures or programs and load management measures or programs;

**B. estimate or estimated** means a projection or forecast utilizing well known, commercially available or standard engineering, economic and financial calculations, ratings and simulations, or other reasonable means;

**C. life-cycle basis** means utilizing the expected useful life of the energy efficiency and load management measures or programs and applying the net present value methodology in order to estimate the associated monetary costs and avoided monetary costs of the measure or program being evaluated;

**D. low income customer** means a customer with an annual household income at or below two hundred percent of the federal poverty level, as published annually by the United States department of health and human services;

**E. measure or program** means an energy efficiency measure or program or a load management measure or program;

**F. measurement and verification** means an analysis performed by an independent evaluator that estimates, consistent with Subsection B of 17.7.2 NMAC, reductions of energy usage or peak demand and determines any actual reduction of energy usage or peak demand that directly results from the utility's implementation of particular energy efficiency measures or programs or of particular load management measures or programs;

**G. plan year** means the calendar year for which commission approval is being sought;

**H. plan year overage** means the public utility's actual prior plan year expenditures that exceeded the same plan year's actual collections;

**I. plan year underage** means the public utility's actual prior plan year collections that

exceeded the same plan year's actual expenditures.];

**A. Definitions beginning with "A": application** means a utility application for commission approval of proposed energy efficiency measures or programs and load management measures or programs;

**B. Definitions beginning with "B": [RESERVED]**

**C. Definitions beginning with "C": [RESERVED]**

**D. Definitions beginning with "D": [RESERVED]**

**E. Definitions beginning with "E": estimate or estimated** means a projection or forecast utilizing well known, commercially available or standard engineering, economic and financial calculations, ratings and simulations, or other reasonable means;

**F. Definitions beginning with "F": [RESERVED]**

**G. Definitions beginning with "G": [RESERVED]**

**H. Definitions beginning with "H": [RESERVED]**

**I. Definitions beginning with "I": [RESERVED]**

**J. Definitions beginning with "J": [RESERVED]**

**K. Definitions beginning with "K": [RESERVED]**

**L. Definitions beginning with "L":**

**(1) life-cycle basis** means utilizing the expected useful life of the energy efficiency and load management measures or programs and applying a net present value methodology that does not adjust a discount rate for taxes in order to estimate the associated monetary costs and avoided monetary costs of the measure or program being evaluated;

**(2) low income customer** means a customer with an annual household income at or below two hundred percent of the federal poverty level, as published annually by the United States department of health and human services;

**M. Definitions beginning with "M":**

**(1) measure or program** means an energy efficiency measure or program or a load management measure or program;

**(2) measurement and verification** means an analysis performed by an independent evaluator that estimates, consistent with Subsection B of 17.7.2 NMAC, reductions of energy usage or peak demand and determines any actual reduction of energy usage or peak demand that directly results from the utility’s implementation of particular energy efficiency measures or programs or of particular load management measures or programs;

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

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

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

**(1) plan year** means the calendar year for which commission approval is being sought;

**(2) plan year overage** means the public utility’s actual prior plan year expenditures that exceeded the same plan year’s actual collections;

**(3) plan year underage** means the public utility’s actual prior plan year collections that exceeded the same plan year’s actual expenditures.

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

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

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

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

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

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

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

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

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

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

[17.7.2.7 NMAC - Rp. 17.7.2.7 NMAC, 9/26/2017; A, 10/26/2021]

**17.7.2.8 PUBLIC UTILITY FILING REQUIREMENTS FOR APPLICATIONS AND ANNUAL REPORTS:**

**A. Timing.** Beginning in the year specified below, each public utility shall file an application every three years

<b><u>2021</u> [<del>2018</del>]</b>	<b><u>2022</u> [<del>2019</del>]</b>	<b><u>2023</u> [<del>2020</del>]</b>
El Paso Electric Company (and its successors)	Southwest Public Service Company (and its successors)	Public Service Company of New Mexico (and its successors)
Zia Natural Gas Company (and its successors)	New Mexico Gas Company (and its successors)	Raton Natural Gas Company (and its successors)
		Any other public utility

[Each of the three years covered by an application shall, for the purposes of 17.7.2.7 NMAC, be treated as a plan year. Each public utility may, but is not required to, file an application prior to the year specified in this subsection. If a utility does not elect to file an application prior to the year specified in this subsection, the measures, programs and incentive approved in the utility’s last energy efficiency case shall continue in effect until modified or terminated. If a utility does elect to file an application prior to the year specified in this subsection, the measures, programs and incentive approved in that case shall continue in effect as provided by the commission. All utilities shall file their annual reports each year and in the same docket as the application that covered the period of the annual report. Public service company of New Mexico (and its successors) shall file its application and its annual reports on April 15 of the applicable year. Southwestern public service company (and its successors) shall file its application and its annual reports on May 15 of the applicable year. El Paso electric company (and its successors) shall file its application and its annual reports on June 1 of the applicable year. A natural gas company shall file its annual report on or before July 1 of each year, and shall file its application on or before August 31 of the applicable year in which it is required to file an application. If a specified filing date falls on a weekend or legal holiday, the public utility shall file on the next business day.]

Each of the three years covered by an application shall, for the purposes of 17.7.2.7 NMAC, be treated as a plan year. Each public utility may, but is not required to, file an application prior to the year specified in this subsection. If a utility does not elect to file an application prior to the year specified in this subsection, the measures, programs and incentive

approved in the utility's last energy efficiency case shall continue in effect until modified or terminated. If a utility does elect to file an application prior to the year specified in this subsection, the measures, programs and incentive approved in that case shall continue in effect as provided by the commission. All utilities shall file their annual reports each year and in the same docket as the application that covered the period of the annual report. Public Service Company of New Mexico (and its successors) shall file its application and its annual reports on April 15 of the applicable year. Southwestern Public Service Company (and its successors) shall file its application and its annual reports on May 15 of the applicable year. El Paso Electric Company (and its successors) shall file its application and its annual reports on June 1 of the applicable year. A natural gas company shall file its annual report on or before July 1 of each year, and shall file its application on or before August 31 of the applicable year in which it is required to file an application. If a specified filing date falls on a weekend or legal holiday, the public utility shall file on the next business day.

**B. Compliance with pre-filing requirements.**

Applications shall describe how the public utility has met the pre-filing requirements of Subsection E of Section 62-17-5 NMSA 1978, including descriptions of the process used to solicit non-binding recommendations, and any competitive bids required by the commission for good cause. The public utility shall identify by name, association, and contact information, each interested party that participated in the process, including commission staff, the attorney general, and the energy, minerals and natural resources department. The public utility shall summarize each participant's non-binding recommendation on the design, implementation, and use of third-party energy service contractors through competitive bidding for programs and measures.

[C. The public utility

shall identify within its application its estimated plan year funding for energy efficiency and load management program costs for each year during the plan period:

(1) Estimated plan year funding for electric public utilities' energy efficiency and load management program costs shall be three percent of billing revenues from all of its customers' bills that the public utility estimates to be billed during the plan year, excluding:

(a) gross receipts taxes and franchise and right-of-way access fees;

(b) revenues that the public utility estimates to bill during the plan year to any single customer that exceed seventy five thousand (\$75,000);

(c) any customer's plan year self-directed program credits approved by the public utility or by a commission-approved self-direct administrator; and

(d) any customer's plan year self-directed program exemptions approved by the public utility or by a commission-approved self-direct administrator.]

C. The public utility shall identify within its application, its estimated plan year funding for energy efficiency and load management program costs for each year during the plan period.

(1) Estimated plan year funding for electric public utilities energy efficiency and load management program costs shall be expressed in dollars and shall be no less than three percent and no more than five percent of billing revenues from all of its customers' bills that the public utility estimates to be billed during the plan year to customer classes with the opportunity to participate, excluding:

(a) gross receipts taxes and franchise and right-of-way access fees;

(b) revenues that the public utility estimates to bill during the plan year to any single customer that exceed \$75,000.00;

(c) any customer's plan year self-directed program credits approved by the public utility or by a commission approved self-direct administrator; and

(d) any customer's plan year self-directed program exemptions approved by the public utility or by a commission approved self-direct administrator.

(2) Estimated plan year funding for gas public utilities' energy efficiency and load management program costs shall be expressed in dollars and shall not exceed [three] five percent of customers' bills that the public utility estimates to be billed during the plan year, excluding:

(a) gross receipts taxes and franchise and right-of-way access fees;

(b) revenues that the public utility estimates to bill during the plan year to any single customer that exceed seventy five thousand (\$75,000);

(c) any customer's plan year self-directed program credits approved by the public utility or by a commission-approved self-direct administrator; and

(d) any customer's plan year self-directed program exemptions approved by the public utility or by a commission-approved self-direct administrator.

D. The public utility's application shall calculate and provide the difference between its actual prior plan year expenditures for measures and programs and the same plan year's applicable funding required by statute. At the end of each plan year, the public utility shall calculate the following applicable values:

(1) any plan year overage; or

(2) any plan year underage.

E. In each plan year, a public utility shall make its best efforts to expend its applicable plan funding as calculated in Subsection C of 17.7.2.8 NMAC above subtracting any applicable prior plan year overage

or adding any applicable prior plan year underage; provided, however, that a public utility may periodically adjust its plan year expenditures by an amount not greater than ten percent of the approved [applicable] funding level [required by statute] if the adjustment will result in aligning plan year expenditures more closely with projected plan year collections [~~under the utility's energy efficiency rider~~]. By motion in the docket of its most recent energy efficiency case a utility may seek approval to adjust its plan year expenditures by more than ten percent of the approved [applicable] funding level [required by statute].

**F.** The application shall include an executive summary to facilitate commission review.

**G.** The utility shall utilize well known, commercially available or standard engineering, economic and financial calculations, ratings, and simulations, or other reasonable methods, to determine monetary costs and avoided monetary costs of measures and programs.

**H.** For each proposed measure or program, including previously approved measures and programs submitted for reauthorization, the application shall provide:

(1) the public utility's statement that the measure or program is estimated to be cost-effective and meets the utility cost test;

(2) a detailed description of the proposed measure or program;

(3) the expected useful life of the measure or program;

(4) any participation requirements and restrictions of the measure or program;

(5) the time period during which the measure or program will be offered;

(6) a description of any competitive bid process for utility measures or programs;

(7) the estimated number of measure or

program participants, supported by written testimony and exhibits;

(8) the estimated economic benefit to the participants attributable to the measure or program, supported by written testimony and exhibits;

(9) the estimated annual energy savings and the estimated energy savings over the useful life for the measure or program (expressed in kilowatt hours and dollars for electric utilities or in terms and dollars for gas utilities), supported by written testimony and exhibits;

(10) the estimated annual demand savings and the estimated demand savings over the useful life for the measure or program (expressed in kilowatts and dollars), supported by written testimony and exhibits;

(11) the proposed program costs to be incurred by the utility to support more than one measure or program, along with the associated allocation of this cost to each measure or program, and the method used to determine each allocation, supported by written testimony and exhibits;

(12) a detailed separate measure or program budget that identifies the estimated monetary program costs to be incurred by the public utility in acquiring, developing, and operating each measure and program on a life cycle basis, for each year of the expected useful life of the measure or program;

(13) the estimated monetary program costs to be incurred by the public utility in acquiring, developing, and operating each measure or program on a life cycle basis, supported by written testimony and workpapers that:

(a) demonstrate and justify how the estimated monetary program costs will be equal to or greater than the actual monetary program costs; and

(b) explain the public utility's rationale and methodology used to determine the estimated monetary program costs.

(14) the estimated avoided monetary cost associated with developing, acquiring and operating associated supply side resources, supported by written testimony and exhibits that:

(a) demonstrate and justify how the estimated avoided monetary cost will be equal to or greater than the actual avoided monetary cost; and

(b) explain the public utility's rationale and methodology used to estimate the avoided monetary cost associated with acquiring, developing, and operating the associated supply side resource.

(15) supporting documentation, underlying data, calculations, estimates and other items shall be presented in a manner that facilitates the preparation of a measurement and verification report by an independent program evaluator, along with compilation and preparation of the public utility's reporting requirements, and that facilitates a simple comparison of measure or program estimated results to actual results, including the public utility's cost of capital and discount rate; and

(16) if the utility cost test is not met, justify why the utility is proposing to implement the program within its portfolio of proposed programs.

**I.** The public utility shall demonstrate, and has the burden to demonstrate, that it has evaluated and determined that the proposed measure or program is cost-effective and will reduce energy usage or energy demand or both, if approved by the commission and implemented by the utility.

**J.** The public utility shall demonstrate that its portfolio of proposed measures and programs are cost-effective, meets the utility cost test as defined by Subsection C of Section 62-17-4 NMSA 1978 and are designed to provide every affected customer class with the opportunity to participate and benefit economically.

**K.** The public utility shall demonstrate that no less than



five percent of the funding for measure and program costs shall be specifically directed to measures or programs for low-income customers.

~~L. [As stated in Subsection F of Section 62-17-5 NMSA 1978, applications may include a proposal for an opportunity to earn a profit on cost effective energy efficiency and load management resource development that, with satisfactory program performance, is financially more attractive to the public utility than a supply-side utility resource. Accordingly, any application that includes a proposed annual incentive award shall:]~~ Any application that includes a proposed annual incentive award shall:

- (1) be based on the utility's costs;
- (2) be based on satisfactory performance of measures and programs;
- (3) be supported by written testimony and exhibits; and
- (4) shall not exceed the product (expressed in dollars) of:
  - (a) its weighted cost of capital (expressed as a percent), and
  - (b) its approved annual program costs.

**M.** For each approved large customer self-directed program, the utility's application shall describe, in an annual report, the process that enabled the utility to determine that a large customer self-directed program met the cost-effective definition set forth in Subsection B of Section 62-17-9 NMSA 1978 and merited the credit or exemption.

**N.** The commission shall act expeditiously on the public utility's request for approval of its energy efficiency and load management measures and programs. [17.7.2.8 NMAC - Rp. 17.7.2.8 NMAC, 9/26/2017; A, 10/26/2021]

**17.7.2.9 RESIDENTIAL PROGRAMS:**

**A.** The programs should enable residential customers or

households to conserve energy, reduce demand, or reduce residential energy bills.

**B.** Provided that the public utility's total portfolio of programs remains cost-effective, no less than five percent of the amount received by the public utility for program costs shall be specifically directed to energy efficiency programs for low-income customers.

(1) A public utility may coordinate with existing community resources, including affordable housing programs, and low-income weatherization programs managed by other utilities and federal, state, county, or local governments. This section does not preclude the public utility from designing and proposing other low-income programs.

(2) Whenever possible, providers of low-income energy efficiency measures or programs should have demonstrated experience and effectiveness in the design, administration and provision of low-income measures and programs, along with experience in identifying and conducting outreach to low-income households. In the absence of qualified independent agencies, a public utility that does not provide measures or programs directly, may solicit qualified competitive bids for these services.

(3) ~~[Public utilities shall notify customers experiencing ability-to-pay problems of the availability of energy efficiency and load management measures and programs, as well as hardship funds:~~

~~(4)]~~ In developing the utility cost test for energy efficiency and load management measures and programs directed to low-income customers, unless otherwise quantified in a commission proceeding, the public utility shall assume that twenty percent of the calculated energy savings is the reasonable value of reductions in working capital, reduced collection costs, lower bad-debt expense, improved customer service, effectiveness, and other appropriate factors qualifying as utility system

economic benefits.

[17.7.2.9 NMAC - Rp. 17.7.2.9 NMAC, 9/26/2017; A, 10/26/2021]

**17.7.2.12 MODIFICATION OR TERMINATION OF PROGRAMS:**

~~[Within each plan year, the utility, commission staff, attorney general, energy, minerals and natural resources department, or any other interested party, may petition the commission to modify or terminate a measure or program, or to approve a new program, for good cause by filing a motion in the same docket in which the public utility filed its most recent application. Program modification or termination shall not nullify any preexisting obligations of the utility, alternative energy efficiency provider, or contractor, for performance or failure to perform. Termination of a program or programs shall be accomplished in a manner that allows the utility to fully recover its prudent and reasonable program costs.]~~

A. Within each plan year, the utility, commission staff, attorney general, energy, minerals and natural resources department, or any other interested party, may petition the commission to modify or terminate a measure or program, or to approve a new program, for good cause by filing a motion in the same docket in which the public utility filed its most recent application. Program modification or termination shall not nullify any preexisting obligations of the utility, alternative energy efficiency provider, or contractor, for performance or failure to perform. Termination of a program or programs shall be accomplished in a manner that allows the utility to fully recover its prudent and reasonable program costs.

B. Within each plan year, a utility may add or subtract measures within a program, modify customer incentive levels, or make other adjustments to an approved program if necessary for the overall success of the program and so long as the portfolio of programs remains cost effective under the utility cost test.

[17.7.2.12 NMAC - Rp. 17.7.2.12 NMAC, 1/1/2015, A, 9/26/2017, 9/26/2017; A, 10/26/2021]

**17.7.2.13 FILING REQUIREMENTS FOR COST RECOVERY:**

**A.** Electric [Public] utility recovery of program costs shall only be from customer classes with an opportunity to participate in approved measures and programs, and shall be three percent to five percent of customers' bills or seventy-five thousand dollars (\$75,000) per customer per plan year, whichever is less. For gas utilities, recovery of program costs shall be no more than five percent of total annual revenues adjusted to maximize the impact on any single customer to \$75,000.00 per plan year.

**B.** The public utility, at its option, may recover its prudent and reasonable program costs and approved incentives, either through an approved tariff rider, in base rates or by combining recovery through a tariff rider and base rates.

**C.** If a public utility seeks recovery of costs through a tariff rider, a utility shall present the proposed ratemaking treatment to the commission for approval. The proposal shall reconcile recovery of any costs currently being recovered through a tariff rider or in base rates, or by a combination of the two, as well as any new costs proposed to be recovered through a tariff rider or in base rates, or by a combination of the two.

(1) The tariff rider shall be applied on a monthly basis, unless otherwise allowed by the commission.

(2) Unless otherwise ordered by the commission, a tariff rider approved by the commission shall require language on customer bills explaining program benefits.

(3) A public utility seeking approval of a tariff rider shall file an advice notice containing the information required by 17.1.2.210.11 NMAC and served upon the individuals and entities set forth in that rule. The proposed tariff rider shall go into effect 30 days after filing, unless suspended by the commission for a period not to exceed

180 days. If the commission has not acted to approve or disapprove the tariff rider by the end of an ordered suspension period, or within 30 days of filing, it shall be deemed approved as a matter of law.

**D.** If base rate recovery of costs is sought, a utility shall present the proposed ratemaking treatment to the commission for approval. The proposal shall reconcile recovery of any costs currently being recovered through a tariff rider or in base rates, or by a combination of the two, as well as any new costs proposed to be recovered through a tariff rider or in base rates, or by a combination of the two.

**E.** Program costs and incentives may be deferred for future recovery through creation of a regulatory asset. Prior commission approval is required for the public utility to create a regulatory asset and to establish any associated carrying charge.

[17.7.2.13 NMAC - Rp. 17.7.2.13 NMAC, 9/26/2017; A, 10/26/2021]

**17.7.2.17 ~~[REGULATORY DISINCENTIVES:~~** The commission shall, upon petition or its own motion, identify regulatory disincentives or barriers for public utility expenditures on energy efficiency and load management measures and ensure that they are removed in a manner that balances the public interest, consumers' interests and investors' interests. Public utility petitions for regulatory disincentive removal shall be supported by testimony and exhibits.] **[RESERVED]**

[17.7.2.17 NMAC - Rp. 17.7.2.17 NMAC, 9/26/2017; Repealed, 10/26/2021]

**REGULATION AND LICENSING DEPARTMENT PRIVATE INVESTIGATIONS ADVISORY BOARD**

**This is an amendment and Part name change to 16.48.2 NMAC, Sections 1, 3, 6, 8 through 21, 23 and 26, effective 10/26/2021.**

**16.48.2.1 ISSUING**

**AGENCY:** Regulation and Licensing Department [~~Private Investigations Advisory Board~~].

[16.48.2.1 NMAC - Re-pr, 16.48.2.1 NMAC, 9/24/2008; A, 10/26/2021]

**16.48.2.3 STATUTORY**

**AUTHORITY:** These rules are promulgated pursuant to the Private Investigations Act, [~~Sections 61-27B-7, 61-27B-8, 61-27B-9, 61-27B-10, 61-27B-11, 61-27B-12, 61-27B-13, 61-27B-14, 61-27B-15, 61-27B-16, 61-27B-17, 61-27B-18, 61-27B-19, 61-27B-24, 61-27B-31 and 61-27B-35~~] Section 61-27B-5 NMSA 1978.

[16.48.2.3 NMAC - Re-pr, 16.48.2.3 NMAC, 9/24/2008; A, 10/26/2021]

**16.48.2.6 OBJECTIVE:**

To establish the procedures and outline the documents and information necessary to complete the application process for licensure and registration.

[16.48.2.6 NMAC - Re-pr, 16.48.2.6 NMAC, 9/24/2008; A, 10/26/2021]

**16.48.2.8 BOND AND GENERAL LIABILITY INSURANCE REQUIREMENT:**

**A.** All [~~private investigators, private patrol operators~~] private patrol companies and private investigation companies seeking to obtain or retain a license under the provisions of the Private Investigations Act shall file with the department and retain in full force and effect, a surety bond in the amount of ten thousand dollars (\$10,000) executed by a surety company authorized to do business in this state on a form prescribed by the department.

**B.** The owner or the chief executive officer of a private investigation company or private security company that provides personal protection or bodyguard services or the owner or the chief executive office of a private patrol company shall maintain a general liability certificate of insurance in the amount of not less than one million dollars (\$1,000,000).

**C.** A surety bond in the amount of ten thousand dollars

(\$10,000) or a general liability certificate of insurance executed and filed with the department pursuant to the Private Investigations Act shall remain in force until the surety company issuing the bond or the certificate has terminated future indemnity by notice to the department.

**D.** Any failure to furnish and maintain such bond in such form shall be grounds for denial or revocation of any license of a private investigator, private patrol operator, or private investigation company.

**E.** In the event a bond is offered which varies from the department form the department shall determine whether bond is in substantial conformance with the Private Investigations Act and department rules.

**F.** The duration of each bond shall, unless sooner terminated in accordance with law, be for the term of the license issued as set forth on the face thereof and 30 days thereafter.

**G.** Such bond shall also be filed and maintained for each period of renewal of license and the duration thereof shall be for the renewal period specified on the face of the license and 30 days thereafter.

**H.** Any claim filed or made against any private investigator, private patrol operator, or private investigation company shall be reported by him forthwith to his surety company.

**I.** Upon receipt of notice of any claim made against any private investigator, private patrol operator, or private investigation company the surety insurance company bonding such private investigator, private patrol operator, or private investigation company shall forthwith report the same to the department.

**J.** All complaints filed, judgments rendered or injunctions issued, whether temporary or final, against any private investigator, private patrol operator, private investigation company or their surety insurance company shall be reported

to department, within 10 days after receipt of the same by such private investigator, private patrol operator, private investigation company, surety company, or their agents, attorneys, or employees, together with the name of the court where filed and the name and address of the attorney for claimant, or the claimant if he has no attorney.

**K.** A private investigator or private patrol operator or private investigation company or licensee or registrant shall furnish the department with any information requested by the department pursuant to a claim or complaint or suit filed alleging a violation of any rule or statute governing private investigators, private patrol operators, private investigation companies, licensees or registrants when requested to do so by the department. Failure to comply with this request may result in disciplinary action. No payment may be made by a surety insurance company pursuant to a claim or complaint filed with the department unless the department directs such payment to be made.

**L.** The failure to furnish such notice of claims or suits or such information shall be deemed sufficient to revoke or suspend any license of a private investigator, private patrol operator or private investigation company or to deem any bond for such private investigator, private patrol operator or private investigation company insufficient.

**M.** The department may determine that any claim made or suit filed against any private investigator, private patrol operator or private investigation company has reduced the amount of the bond of such investigator, patrol operator or private investigation company in full force and effect to such extent as the department shall, in its discretion, determine. Any judgment obtained against any private investigator or private patrol operator or private investigation company or their surety insurance company shall be deemed to reduce the amount of their bond insurance in full force and effect by the amount of the judgment. In

the event the amount of the bond in full force and effect shall be so reduced, such private investigator or private patrol operator or private investigation company shall, within 10 days, file a new or supplemental bond insurance sufficient to meet the requirements of law as to the amount of bond insurance in full force and effect.

**N.** If any claim is made or suit filed against any private investigator or private patrol operator or private investigation company for his actions, or the actions of any of his employees, and any portion of such act or acts as a private investigator or private patrol operator or private investigation company took place or occurred during the period for which a bond was in force, such surety shall be deemed liable for the whole of such claim to the extent of the total amount of the bond, provided that if more than one bond was in effect during the performance of all or any part of such acts, the liability shall be pro-rated among such sureties. [16.48.2.8 NMAC - Re-pr & A, 16.48.2.8 NMAC, 9/24/2008; A, 1/15/2019; A, 10/26/2021]

**16.48.2.9 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATOR LICENSE:**

**A.** Applicants for licensure as a private investigator must meet the qualifications and requirements described in Section 61-27B-7 NMSA 1978, and must submit the following:

- (1) a  
completed application, which includes applicant's:
- (a)  
full name;
- (b)  
current mailing address;
- (c)  
current electronic mail address;
- (d)  
date of birth;
- (e)  
two 2X2 inch recent photographs or an upload of a recent electronic headshot photograph;

(f)  
Certificate in Support of Experience  
Qualification;

(g)  
signed Release of Information;

(h)  
fingerprints for federal background  
investigation, see application for  
specific instructions on submitting  
fingerprints; and

(i)  
employment record for the most  
recent five years.

~~[(2)]~~ proof of age indicating applicant is at least 21 years of age (copy of birth certificate, driver's license, state issued identification card, military identification, U.S. passport or baptismal certificate);

~~[(3)]~~ (2) proof of successfully passing a jurisprudence examination to be administered by the department;

~~[(4)]~~ a surety bond in the amount of ten thousand dollars (\$10,000) executed by a surety company authorized to do business in this state on a form prescribed by the department; however, private investigators who provide personal protection or bodyguard services shall maintain general liability insurance in the amount not less than one million dollars (\$1,000,000) in lieu of the surety bond required by the provisions of this paragraph;

~~[(5)]~~ (3) proof of experience that has been acquired within the five years preceding the filing of the application with the department which shall consist of not less than 6,000 hours of actual work performed in:

(a) investigation for the purpose of obtaining information with reference to a crime or wrongs done or threatened against the United States;

(b) investigation of persons;

(c) the location, disposition or recovery of lost or stolen property;

(d) the cause or responsibility for fire, losses, motor vehicle or other accidents or damage or injury to persons or property; or

(e) securing evidence to be used before a court, administrative tribunal, board or investigating committee or for a law enforcement officer;

~~[(6)]~~ (4) non-refundable license fee as set forth in Part 5; and

~~[(7)]~~ (5) criminal history background check as set forth in Subsection C of 16.48.2.9 NMAC.

**B.** Years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from employers on a form provided by the department and shall be subject to independent verification by the department as it deems warranted. In the event of inability of applicants to supply such written certifications from employers in whole or in part, applicants may offer other written certifications from others than employers covering the same subject matter for consideration by the department. The burden of proving necessary experience is on the applicant.

**C.** Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance [~~reinstatement or renewal~~] of a private investigator license in New Mexico shall be required to be fingerprinted to establish positive identification for a [~~state and~~] federal criminal history background check pursuant to the instructions within the application provided by the department.

~~[(1)]~~  
Fingerprints shall be taken:  
(a) under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police;

(b) by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the

agencies referenced in Subparagraphs (a) and (b) above:

~~[(2)]~~ Completed fingerprint cards shall be submitted to the department or department designee with a check, money order, or cashier's check for the prescribed fee.]

**D.** If applicant elects to be firearm certified, [Proof] proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC and completing a psychological evaluation pursuant to Subsection C of 16.48.2.19 NMAC.

[16.48.2.9 NMAC - Re-pr & A, 16.48.2.9 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021]

**16.48.2.10 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATION COMPANY LICENSE:**

**A.** [Applicants] An application for licensure as a private investigation company must be [submit] submitted by a person that provides the following:

(1) completed application which includes the person's:

(a) full name;

(b) current electronic mail address;

(c) date of birth;

(d) full business name as sole proprietorship, partnership, limited liability company, or corporation;

(e) current business mailing address and physical business address;

(f) signed Release of Information for each owner, officer, and director;

(g) full name of each business owner, officer, director, partner, or member of the business entity; and

(h) completed and signed Attachment A for each owner, officer, and director.

(2) [a surety

bond in the amount of ten thousand dollars (\$10,000); however, private investigators who provide personal protection or bodyguard services shall maintain general liability insurance as specified in the Private Investigations Act in lieu of the surety bond required by the provisions of this paragraph; a private investigator or private patrol operator holding a certificate of deposit or surety bond prior to July 1, 2007 in the sum of two thousand dollars (\$2,000) shall be exempt from the bond provisions of the Private Investigations Act, provided that the private investigator's or private patrol operator's license remains current and the holder remains in good standing with the regulation and licensing department] Proof of compliance with 16.48.2.8 NMAC;

(3) proof of an owner or a licensed private investigations manager who is licensed as a private investigator and who certifies that they will manage the daily operations of the private investigation company;

(4) proof of a physical location in New Mexico where records are maintained and made available for department inspection;

(5) proof of a New Mexico registered agent if the applicant is a private investigation company located outside of New Mexico;

(6) non-refundable license fee as set forth in Part 5; ~~and~~

(7) criminal history background check as set forth in Subsection C of 16.48.2.10 NMAC ; and

(8) proof of New Mexico residency for the private investigations manager.

**B.** The owner or the chief executive officer of a private investigation company that provides personal protection or bodyguard services shall provide proof of an active and current general liability certificate of insurance in the amount of no less than one million dollars.

**C.** Pursuant to Section 61-27B-34 of the act, all applicants,

including all owners, officers, directors, partners, or members for initial issuance [~~reinstatement or renewal~~] of a private investigation company license in New Mexico shall be required to be fingerprinted to establish positive identification for a [~~state and~~] federal criminal history background check. A legal business entity must submit a fingerprint packet for each owner, and officers or directors pursuant to the instructions within the application provided by the department.

~~(1)~~ Fingerprints shall be taken: ~~(a)~~ under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police;

~~(b)~~ by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or

~~(c)~~ at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above.

~~(2)~~ Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashier's check for the prescribed fee. [16.48.2.10 NMAC - Re-pr & A, 16.48.2.10 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021]

**16.48.2.11 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE ~~INVESTIGATIONS~~ INVESTIGATION MANAGER LICENSE:** Applicants for licensure as a private investigations manager [license] must submit the following:

**A.** proof of a current license in good standing as a private investigator;

**B.** proof of successfully passing a jurisprudence

examination to be administered by the department;

**C.** proof of employment with the private investigation company that the applicant is being licensed to manage;

**D.** a completed application [~~;~~] which includes the applicant's:

(1) full name;

(2) current

mailing address;

(3) current

electronic mail address;

(4) employer

business name, phone contact

information, and physical address;

(5) employer

company license number;

(6) two,

2X2 inch recent photographs or an

upload of a recent electronic headshot

photograph;

(7) signed

Release of Information;

(8) completed

certificate of employment or contract,

completed by the company owner;

and

(9) proof of

New Mexico residency.

**E.** non-refundable license fee as set forth in Part 5;

**F.** pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance [~~or reinstatement~~] of a private investigations manager license in New Mexico shall be required to be fingerprinted to establish positive identification for a [~~state and~~] federal criminal history background check pursuant to the instructions within the application provided by the department;

~~(1)~~ fingerprints shall be taken:

~~(a)~~ under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police;

~~(b)~~ by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or

~~(c)~~ at the discretion of the department, by a

private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above;

(2) completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashier's check for the prescribed fee.;

G. if applicant elects to be firearm certified, proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC and completing a psychological evaluation pursuant to Subsection C of 16.48.2.19 NMAC, or a letter stating they will not be carrying a firearm if they elect not to do so.

[16.48.2.11 NMAC - Re-pr & A, 16.48.2.11 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021]

**16.48.2.12 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATIONS EMPLOYEE REGISTRATION:**

A. On or after July 1, 2007, every individual who seeks employment or is currently employed as a private investigations employee or who provides services on a contract basis to a private investigation company shall file an application for registration as a private investigations employee with the department.

B. Applicants for registration as a private investigations employee must submit the following:

(1) completed application [;], which includes the applicant's:

- (a) full name;
- (b) current mailing address;
- (c) current electronic mail address;
- (d) date of birth;
- (e) employer business name, phone

contact information, and physical address;

(f) employer company license number;

(g) two, 2X2 inch recent photographs or an upload of a recent electronic headshot photograph; and

(h) signed Release of Information;

(2) non-refundable registration fee as set forth in Part 5;

(3) proof of age indicating applicant is at least 21 years of age (copy of birth certificate, driver's license, state-issued identification card, military identification, U.S. passport or baptismal certificate);

(4) proof of a high school diploma or its equivalent;]

(5) (3) proof of successfully passing a jurisprudence examination to be administered by the board;

(6) (4) proof of employment or contract with a private investigation company to provide investigation services for, a private investigation company, under the direct control and supervision of a private investigator; and

(7) (5) criminal history background check as set forth in Subsection C of 16.48.2.12 NMAC.

C. Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance [or reinstatement] of a private investigations employee registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check pursuant to the instructions within the application provided by the department.

(1) Fingerprints shall be taken: (a) under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police; (b) by comparable officers in the applicant's

state of residence if the applicant is not a resident of New Mexico; or

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above.

(2) Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashier's check for the prescribed fee.;

D. [Proof] If applicant elects to be firearm certified, proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC and completing a psychological evaluation pursuant to Subsection C of 16.48.2.19 NMAC, or a letter stating they will not be carrying a firearm if they elect not to do so.

[16.48.2.12 NMAC - Re-pr & A, 16.48.2.12 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021]

**16.48.2.13 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL OPERATOR LICENSE:**

A. Applicants for licensure as a private patrol operator must submit the following:

(1) proof of age indicating applicant is at least 21 years of age (copy of birth certificate, driver's license, state-issued identification card, military identification, U.S. passport or baptismal certificate);

(2) (1) completed application, which includes the applicant's:

- (a) full name;
- (b) mailing address;
- (c) electronic mail address;
- (d) date of birth;

(e)  
employment record for the most recent five years;

(f)  
signed Release of Information; and

(g)  
certificate in support of experience qualification to be completed by former or present employer.

~~[(3)]~~ (2) proof of successfully passing a jurisprudence examination to be administered by the department;

~~[(4)]~~ (3) proof of experience of actual work performed as a security guard consisting of not less than 4,000 hours of actual work performed as a guard, watchman, or patrolman or an equivalent position, one year of which shall have been in a supervisory capacity; the experience shall have been acquired within five years preceding the filing of the application with the department; years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from the applicant's employers and shall be subject to independent verification by the department as it determines is warranted; the burden of proving necessary experience is on the applicant;

~~[(5)]~~ proof of being firearm certified as required by 16.48.4.8 NMAC, if the position will require being armed with a firearm;]

~~[(6)]~~ (4) non-refundable application fee as set forth in Part 5; and

~~[(7)]~~ (5) criminal history background check as set forth in Subsection C of 16.48.2.13 NMAC.

**B.** Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance [~~reinstatement or renewal~~] of a private patrol operator license in New Mexico shall be required to be fingerprinted to establish positive identification for a [~~state and~~] federal criminal history background check pursuant to the instruction within the application provided by the department.

~~[(1)]~~ —  
Fingerprints shall be taken:  
(a) —

under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police;

(b) — by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or

(c) — at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above.

(2) — Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashier's check for the prescribed fee.]

**C.** If applicant elects to be firearm certified, proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC and completing a psychological evaluation pursuant to Subsection C of 16.48.2.19 NMAC, or a letter stating they will not be carrying a firearm if they elect not to do so.

[16.48.2.13 NMAC - Re-pr & A, 16.48.2.13 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021]

**16.48.2.14 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL COMPANY LICENSE:**

**A.** [Applicants] An application for licensure as a private patrol company must be [submit] submitted by an individual that provides the following:

(1) completed application [;] which includes the person's:

(a) —  
full name;

(b) —  
current electronic mail address;

(c) —  
date of birth;

(d) —  
full business name as sole

proprietorship, partnership, limited liability company, or corporation;

(e) —  
current business mailing address and physical business address;

(f) —  
signed release of information for each owner, officer, and director;

(g) —  
full name of each business owner, officer, director, partner, or member of the business entity;

(h) —  
completed and signed Attachment A for each owner, officer, and director;

(i) —  
uniform description and photographs of uniforms; and

(j) —  
proof of New Mexico residency for the private patrol operations manager.

(2) proof of an owner licensed as a private patrol operator or registered as a level three security guard or proof of an individual [a] licensed as a private patrol operations manager who certifies they will manage the daily operations of the private patrol company;

(3) proof of a physical location in New Mexico where records are maintained and made available for department inspection;

(4) proof of a New Mexico registered agent if the applicant is a private patrol company located outside of New Mexico; and

(5) criminal history background check as set forth in Subsection C of 16.48.2.14 NMAC.

**B.** [The owner or the chief executive officer of a private patrol company shall provide proof of a current and active general liability certificate of insurance in an amount not less than one million dollars (\$1,000,000).] Proof of compliance with 16.48.2.8 NMAC.

**C.** Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance [~~reinstatement or renewal~~] of a private patrol company license in New Mexico shall be required to be fingerprinted to establish positive identification for a [~~state and~~] federal

criminal history background check. A legal business entity must submit a fingerprint packet for each owner, and officers or directors pursuant to the instructions within the application provided by the department.

~~(1)~~ Fingerprint(s) shall be taken: ~~(a)~~ under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police; ~~(b)~~ by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or ~~(c)~~ at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in subparagraphs (a) and (b) above.

~~(2)~~ Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashier's check for the prescribed fee. [16.48.2.14 NMAC - Re-pr & A, 16.48.2.14 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021]

**16.48.2.15 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL OPERATIONS MANAGER LICENSE:**

Applicants for licensure as a private patrol operations manager must submit the following:

- A. proof of a current license in good standing as a private patrol operator or a registration as a level three security guard;
- B. proof of successfully passing a jurisprudence examination to be administered by the department;
- C. proof of employment with the private patrol company that the applicant is being licensed to manage;

**D.** completed application [~~and~~] which includes the following:  
~~(1)~~ full name;  
~~(2)~~ date of birth;  
~~(3)~~ mailing address;  
~~(4)~~ electronic mail address;  
~~(5)~~ two, 2X2 inch recent photographs or an upload of a recent electronic headshot photograph;  
~~(6)~~ private patrol company business name and physical address;  
~~(7)~~ private patrol company license number;  
~~(8)~~ certificate of employment signed by the employer;  
~~(9)~~ signed release of information; and  
~~(10)~~ proof of New Mexico residency.

**E.** non-refundable application fee as set forth in Part 5; and

**F.** pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance of a private patrol operations manager license in New Mexico shall be required to be fingerprinted to establish positive identification for a federal criminal history background check pursuant to the instructions within the application provided by the department.

[16.48.2.15 NMAC - Re-pr & A, 16.48.2.15 NMAC, 9/24/2008; A, 5/1/2010; A, 10/26/2021]

**16.48.2.16 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A POLYGRAPH EXAMINER LICENSE:**

A. Applicants for licensure as a polygraph examiner must submit the following:  
~~(1)~~ proof of age indicating applicant is at least 18 years of age (copy of birth certificate, driver's license, state issued identification card, military

identification, U.S. passport or baptismal certificate);  
~~(2)~~ ~~(1)~~ completed application which includes the following, applicant's:  
~~(a)~~ full name;  
~~(b)~~ date of birth;  
~~(c)~~ mailing address;  
~~(d)~~ electronic mail address;  
~~(e)~~ two, 2X2 inch recent photographs or an upload of a recent electronic headshot photograph;  
~~(f)~~ list of states in which you are or have been licensed in another jurisdiction;  
~~(g)~~ signed Release of Information; and  
~~(h)~~ proof of successfully passing a jurisprudence exam administered by the department.

~~(3)~~ proof of a high school diploma or its equivalent;

~~(4)~~ ~~(2)~~ proof of graduation from an accredited polygraph examiners course approved by the department;

~~(5)~~ ~~(3)~~ proof of:  
~~(a)~~ completing a probationary operational competency period and passing an examination of ability approved by the department to practice polygraphy; or  
~~(b)~~ holding, for a minimum of two years immediately preceding the date of application, a current active license to practice polygraphy in another jurisdiction whose standards are equal to or greater than those in New Mexico; the applicant must have no pending disciplinary actions and no formal disciplinary actions issued against the license in the last five years;

~~(6)~~ ~~(4)~~ non-refundable application fee as set forth in Part 5; and  
~~(7)~~ ~~(5)~~ criminal history background check as set forth in Subsection C of 16.48.2.16 NMAC.



**B.** Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance [~~reinstatement or renewal~~] of a polygraph examiner license in New Mexico shall be required to be fingerprinted to establish positive identification for a [~~state and~~] federal criminal history background check pursuant to the instructions within the application provided by the department.

~~[(1)]~~ Fingerprints shall be taken: ~~(a)~~ under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police; ~~(b)~~ by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or ~~(c)~~ at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) of Paragraph (2) of this subsection.

~~(2)~~ Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashier's check for the prescribed fee:]

**C.** Probationary operational competency period.

~~[(1)]~~ Under successful completion of a written examination, a provisional license may be issued:]

~~[(2)]~~ **(1)** During the probationary period, consisting of [~~at least~~] six months, the polygraph examinations administered by the provisional licensee shall be reviewed for operational competency by a licensed polygraph examiner appointed by [~~a board member or~~] the superintendent to serve as a sponsor for the provisional licensee. During the probationary period, the provisional licensee must conduct a minimum of 30 polygraph examinations, a minimum of five

of which must be examinations, two of the "specific" examinations, and three of the "screening type" examinations must be performed in the presence of his or her sponsor, or recorded in their entirety for review by the sponsor or the [~~board member~~] superintendent. In the case of an applicant who conducts only "specific" examinations, a minimum of five "specific" examinations must be conducted in the presence of his or her sponsor, or recorded in their entirety for review by the sponsor [~~or~~] appointed by the [board member] superintendent.

~~[(3)]~~ **(2)** The sponsor appointed shall submit a progress report regarding the progress of the provisional licensee every 60 days on forms provided by the [~~board~~] department.

~~[(4)]~~ **(3)** If an unsatisfactory report is submitted, the [~~board member~~] sponsor or the superintendent shall review the polygraph examinations administered by the provisional licensee for operational competency. Upon such review, the [~~board member~~] superintendent at his or her discretion may revoke the provisional license or take such action as it deems necessary to assure operational competency. Any revocations under this subsection shall be subject to the Uniform Licensing Act, Section 61-1-1 et. seq., NMSA 1978 [~~Comp~~].

~~(4)~~ Under successful completion of a written examination, a provisional license may be issued.

**(5)** The [~~board member~~] superintendent may at any time review the polygraph examinations administered by the provisional licensee for operational competency for any reason. [16.48.2.16 NMAC - Re-pr & A, 16.48.2.16 NMAC, 9/24/2008; A, 08/30/09; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021]

**16.48.2.17 LEVEL ONE SECURITY GUARD APPLICANT QUALIFICATIONS AND EXPERIENCE REQUIREMENTS:**

**A.** Every individual seeking employment or employed as

a level one security guard shall file an application for registration with the department.

**B.** Applicants for registration as a level one security guard shall submit the following:

**(1)** a completed application [~~with two passport type photos taken within the prior six months;~~] that includes the applicant's:

(a)

full name;

(b)

date of birth;

(c)

mailing address;

(d)

electronic mail address;

(e)

two, 2X2 inch recent photographs

or an upload of a recent electronic

headshot photograph;

(f)

signed Release of Information; and

(g)

proof of successfully passing a

jurisprudence exam administered by

the department.

**(2)** non-refundable registration fee as defined in 16.48.5 NMAC;

~~[(3)]~~ proof of age indicating applicant is at least 18 years of age (copy of driver's license, state issued identification card, military identification, baptismal certification or U.S. passport);

~~(4)~~ achievement of a passing score of not less than ninety percent on the board approved jurisprudence examination, provided by the board, covering the Private Investigations Act and the rules;

~~(5)~~ department's release of information form; and]

~~[(6)]~~ **(3)** proof of completing a department approved training program as defined in Subsection D of 16.48.2.17 NMAC prior to being placed on a guard post for the first time as a level one security guard; that training may be provided by:

**(a)** a public educational institution in New

Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act (21-23-1 NMSA 1978);

(b) an in-house training program provided by a licensed private patrol company using a curriculum provided by the department and taught by an instructor who has been [reviewed and recommended by the board and] approved by the superintendent; or

(c) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been [reviewed and recommended by the board and] approved by the superintendent.

**C. BACKGROUND CHECK:** Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance[; reinstatement or renewal] of a level one security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a [state and] federal criminal history background check pursuant to the instructions within the application provided by the department.

(1) All applicants for licensure or registration shall be fingerprinted electronically as required for submission to the federal bureau of investigation to conduct a national criminal history investigation and for submission to the department of public safety to conduct a state criminal history investigation.

(2) Initial and renewal applicants will need to register on-line with the agent for New Mexico department of public safety prior to going to an electronic fingerprinting location:

(a) at the electronic fingerprinting location, the applicant will need to provide the electronic fingerprinting technician with a registration number they received after registering online;

(b) a designated fee determined by the New Mexico department of public safety

shall be paid at the time of registration by credit card or at the fingerprinting site by cashier's check or money order; and

(c) fingerprint results will be sent electronically to the department.]

**D. TRAINING REQUIREMENTS:** [The following] An eight hour curriculum is the minimum training required and must be completed within twelve months prior to application for security guard level one registration. The training shall be taught by a department approved instructor that has been [recommended by the board and] approved by the superintendent. [Training shall be taught by an in-person instructor;] Training and examination shall be conducted pursuant to the curriculum provided by the department. Training shall be taught by an in-person instructor. Curriculum may be reviewed by the department at the direction of the superintendent. This rule adopts and hereby incorporates by reference the Level One Training Curriculum first edition 2020 approved by the advisory board on February 26, 2021, and with the same effective date of this rule.

(1) legal training for security guards;

(a) legal responsibilities, qualifications, restrictions and liability of level one security guard;

(b) introduction to use of force continuum, appropriate use of force and de-escalation techniques;

(c) appropriate search and seizure, legal restrictions and civil liability, and;

(d) New Mexico laws on trespass pursuant to the act, Section 30-14-1 NMSA 1978;

(2) authority and responsibility of the security guard;

(a) communication with local law enforcement;

(b) radio dispatch protocol and other communication tools;

(c) image, professional communication, note-taking and report writing;

(3) incident scene management and preservation;

(a) identifying evidence;

(b) care and handling of evidence;

(c) securing the immediate area, and;

(d) witness/participant identification.]

[16.48.2.17 NMAC - Re-pr & A, 16.48.2.17 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2015; A, 1/15/2019; A, 10/26/2021]

**16.48.2.18 LEVEL TWO SECURITY GUARD APPLICANT QUALIFICATIONS AND EXPERIENCE REQUIREMENTS:**

**A.** Every individual seeking employment or employed as a level two security guard shall file an application for registration with the department. To carry a specific endorsement weapon, not including a firearm, will require successful completion of the specific weapon curriculum as defined in Subsection E of 16.48.2.18 NMAC.

**B.** Applicants for registration as a level two security guard shall submit the following:

(1) completed application [with two passport type photos taken within the prior six months;] that includes the applicant's:

(a) full name;

(b) date of birth;

(c) mailing address;

(d) electronic mail address;

(e) two, 2X2 inch recent photographs or an upload of a recent electronic headshot photograph; and

(f) signed Release of Information.

(2) non-refundable registration fee as defined in 16.48.5 NMAC;

(3) proof of age indicating applicant is at least

21 years of age (copy of driver's license, state issued identification card, military identification, baptismal certification or U.S. passport);

~~[(4)] (3)~~ proof of a current registration in good standing as a level one security guard or proof of completing department approved level one security guard training;

~~[(5)] (4)~~ achievement of a passing score of not less than ninety percent on the board approved jurisprudence examination, provided by the board, covering the Private Investigations Act and the rules;

~~[(6)]~~ proof of a high school diploma or its equivalent;

~~(7)~~ department's release of information form; and]

~~[(8)] (5)~~ proof of completing a department approved weapon training program as defined in Subsection D of 16.48.2.18 NMAC for level two security guard training prior to being placed on a guard post for the first time as a level two security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act 21-23-1 NMSA 1978;

(b) an in-house training program provided by a licensed private patrol company using a curriculum provided by the department and taught by an instructor who has been ~~[reviewed and recommended by the board and]~~ approved by the superintendent;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been ~~[reviewed and recommended by the board and]~~ approved by the superintendent.

**C. BACKGROUND CHECK:** Pursuant to Section 61-

27B-34 of the act, NMSA 1978, all applicants for initial issuance ~~[or reinstatement]~~ of a level two security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a ~~[state and]~~ federal criminal history background check pursuant to the instructions within the application provided by the department.

~~[(1)]~~ All applicants for licensure or registration shall be fingerprinted electronically as required for submission to the federal bureau of investigation to conduct a national criminal history investigation and for submission to the department of public safety to conduct a state criminal history investigation.

(2) Initial and renewal applicants will need to register on-line with the agent for New Mexico department of public safety prior to going to an electronic fingerprinting location:

(a) at the electronic fingerprinting location, the applicant will need to provide the electronic fingerprinting technician with a registration number they received after registering online;

(b) a designated fee determined by the New Mexico department of public safety shall be paid at the time of registration by credit card or at the fingerprinting site by cashier's check or money order; and

(c) fingerprint results will be sent electronically to the department.]

**D. TRAINING REQUIREMENTS:** ~~[The following]~~ A 20 hour curriculum is the minimum training required and must be completed within twelve months prior to application for security guard level two registration. The training shall be taught by a department approved instructor that has been ~~[recommended by the board and]~~ approved by the superintendent. ~~[Training shall be taught by an in-person instructor.]~~ Training and examination shall be conducted pursuant to the curriculum provided by the department. Training shall be taught by an in-person instructor.

Curriculum may be reviewed by the department at the direction of the superintendent. This rule adopts and hereby incorporates by reference the *Level Two Training Curriculum* first edition 2020 approved by the advisory board on February 26, 2021, and with the same effective date of this rule.

~~[(1)]~~ legal and practical aspects of use of force and personal/employer liability;

(2) verbal and written communication and conflict management;

(3) restraint and control devices training shall include, but not be limited to, the following subjects:

(a) handcuffing nomenclature;

(b) daily maintenance and safety checks;

(c) applying and removing handcuffs;

(d) potentially uncooperative and uncooperative handcuffing;

(e) handcuffing from control holds;

(f) handcuffing from standing and prone;

(g) dangers of positional asphyxia and excited delirium;

(h) standing a prone handcuffed subject;

(i) conflict resolution;

(j) handcuffing guidelines and best practice; and

(k) use of force and justification for handcuffing;

(4) defensive impact tools training shall include, but not be limited to, the following subjects:

(a) moral and legal aspects of baton usage;

(b) use of force;

(c) baton familiarization and uses;

(d) first aid for baton injuries;

\_\_\_\_\_ (e) \_\_\_\_\_  
 fundamentals of baton injuries;  
 \_\_\_\_\_ (f) \_\_\_\_\_  
 stances and grips;  
 \_\_\_\_\_ (g) \_\_\_\_\_  
 target areas;  
 \_\_\_\_\_ (h) \_\_\_\_\_  
 defensive techniques;  
 \_\_\_\_\_ (i) \_\_\_\_\_  
 control techniques;  
 \_\_\_\_\_ (j) \_\_\_\_\_  
 arrest and control techniques, and;  
 \_\_\_\_\_ (k) \_\_\_\_\_  
 skill practice;  
 \_\_\_\_\_ (5) \_\_\_\_\_  
 chemical agents training shall include, but not be limited to the following subjects:  
 \_\_\_\_\_ (a) \_\_\_\_\_  
 effects of chemical agents;  
 \_\_\_\_\_ (b) \_\_\_\_\_  
 avoiding bad positions;  
 \_\_\_\_\_ (c) \_\_\_\_\_  
 disengagement;  
 \_\_\_\_\_ (d) \_\_\_\_\_  
 proper defensive positions;  
 \_\_\_\_\_ (e) \_\_\_\_\_  
 shielding;  
 \_\_\_\_\_ (f) \_\_\_\_\_  
 drawing techniques;  
 \_\_\_\_\_ (g) \_\_\_\_\_  
 defense against moving attacks;  
 \_\_\_\_\_ (h) \_\_\_\_\_  
 spraying techniques;  
 \_\_\_\_\_ (i) \_\_\_\_\_  
 using OC spray with light;  
 \_\_\_\_\_ (j) \_\_\_\_\_  
 multiple opponent defense;  
 \_\_\_\_\_ (k) \_\_\_\_\_  
 proper weapon retention and disarming;  
 \_\_\_\_\_ (l) \_\_\_\_\_  
 cautions and hazards;  
 \_\_\_\_\_ (m) \_\_\_\_\_  
 recovery and decontamination;  
 \_\_\_\_\_ (n) \_\_\_\_\_  
 functioning when contaminated, and;  
 \_\_\_\_\_ (o) \_\_\_\_\_  
 storage and maintenance;]

**E. ADDITIONAL ENDORSEMENTS:** An applicant for weapon endorsement must successfully complete training for the specific weapon endorsement. The following endorsement for level two applicants [; eight hour electronic non-lethal device training shall include, but is not limited to, the following subjects:] for electronic

non-lethal device training shall be done in accordance with manufacturer requirements for any device carried or utilized by the registrant.  
 \_\_\_\_\_ [(1) \_\_\_\_\_  
 technology overview ;  
 \_\_\_\_\_ (2) \_\_\_\_\_  
 electrical and medical background;  
 \_\_\_\_\_ (3) \_\_\_\_\_  
 specifications how electronic non-lethal devices work;  
 \_\_\_\_\_ (4) \_\_\_\_\_  
 practical hands-on training;  
 \_\_\_\_\_ (5) \_\_\_\_\_  
 changing batteries and air cartridges;  
 \_\_\_\_\_ (6) \_\_\_\_\_  
 firing drills;  
 \_\_\_\_\_ (7) \_\_\_\_\_  
 drive stun;  
 \_\_\_\_\_ (8) \_\_\_\_\_  
 tactical considerations;  
 \_\_\_\_\_ (9) \_\_\_\_\_  
 field applications  
 \_\_\_\_\_ (10) \_\_\_\_\_  
 safety considerations and associated risks; and  
 \_\_\_\_\_ (11) \_\_\_\_\_  
 how an electronic non-lethal device overrides the central nervous system.]  
 [16.48.2.18 NMAC - Re-pr & A, 16.48.2.18 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2015; A, 1/15/2019; A, 10/26/2021]

**16.48.2.19 LEVEL THREE SECURITY GUARD APPLICANT QUALIFICATIONS AND EXPERIENCE REQUIREMENTS:**

**A.** Every individual seeking employment or employed as a level three security guard or level three armored vehicle security guard shall file an application for registration with the department.

**B.** Applicants for registration as a level three security guard shall submit the following:

- (1) completed application [with two passport type photos taken within the prior six months;] that includes the applicant's:
  - \_\_\_\_\_ (a) \_\_\_\_\_  
full name;
  - \_\_\_\_\_ (b) \_\_\_\_\_  
date of birth;
  - \_\_\_\_\_ (c) \_\_\_\_\_  
mailing address;
  - \_\_\_\_\_ (d) \_\_\_\_\_  
electronic mail address;

\_\_\_\_\_ (e) \_\_\_\_\_  
 two, 2X2 inch recent photographs or an upload of a recent electronic headshot photograph; and  
 \_\_\_\_\_ (f) \_\_\_\_\_  
 signed Release of Information.  
 \_\_\_\_\_ (2) \_\_\_\_\_  
 non-refundable registration fee as defined in 16.48.5 NMAC;  
 \_\_\_\_\_ [(3) \_\_\_\_\_  
 proof of age indicating applicant is at least 21 years of age (copy of driver's license, state issued identification card, military identification, baptismal certification or U.S. passport);]  
 \_\_\_\_\_ [(4) (3) \_\_\_\_\_  
 copy of a current registration in good standing as a level two security guard or proof of completing department approved level one and level two security guard training;  
 \_\_\_\_\_ [(5) (4) \_\_\_\_\_  
 achievement of a passing score of not less than ninety percent on the board approved jurisprudence examination, provided by the board, covering the Private Investigations Act and the rules;  
 \_\_\_\_\_ [(6) \_\_\_\_\_  
 proof of a high school diploma or its equivalent;  
 \_\_\_\_\_ (7) \_\_\_\_\_  
 department's release of information form;]  
 \_\_\_\_\_ [(8) (5) \_\_\_\_\_  
 proof of completing a department approved firearm training program as defined in Subsection C of 16.48.2.19 NMAC prior to being placed on a guard post for the first time as a level three security guard; that training must be provided by:  
 \_\_\_\_\_ (a) \_\_\_\_\_  
 a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act;  
 \_\_\_\_\_ (b) \_\_\_\_\_  
 an in-house training program provided by a licensed private patrol company using a curriculum provided by the department and taught by an instructor who has been [reviewed and recommended by the board and] approved by the superintendent;  
 \_\_\_\_\_ (c) \_\_\_\_\_  
 the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been ~~reviewed and recommended by the board and~~ approved by the superintendent;

(9) proof of being firearm certified by an instructor recognized and certified by the New Mexico law enforcement academy or the national rifle association (NRA) law enforcement activities division;

(10) proof of level two weapon endorsement or proof of completing department approved weapon training as defined in Subsection E of 16.48.2.18 NMAC; and

(11) successful completion of a psychological evaluation as prescribed by the department to determine suitability for carrying firearms.

**C. PSYCHOLOGICAL EVALUATION**

(1) **Requirements:** Prior to certification as a level three security guard in the state of New Mexico, upon initial licensure only, it shall be necessary for each applicant to be examined by a licensed psychologist regarding the individual's mental suitability to carry a firearm within the individual's scope of duty as a licensed level three security guard. ~~[A list of licensed psychologists who are able to administer the exam will be available on the website or from the board office.]~~ Any psychologist licensed and in good standing in the state of New Mexico or other United States jurisdiction, is able to administer the exam.

(a) All psychological evaluations shall be on a form provided by the department and must state if the applicant is recommended or not recommended to carry a firearm. If an applicant is not recommended to carry a firearm, the psychologist shall specify the reason(s) the applicant is not recommended to carry a firearm.

(b) Evaluations cannot be more than one year old for certification purposes.

(c) The original evaluation form shall be signed and transmitted directly to the ~~board~~ department within thirty days by the psychologist that performed the psychological evaluation

~~(d) [The willful providing of false information or willful failure to disclose information that the applicant knows or should have known is necessary to a complete and accurate evaluation shall be grounds for denial of licensure.]~~ The applicant knowingly providing false information or knowingly failing to disclose information shall be grounds for denial of licensure.

~~(e) Any examinee who fails the psychological evaluation shall not complete another psychological evaluation for at least ninety days from the date indicated on the original evaluation form signed and transmitted directly to the department by the psychologist that performed the psychological evaluation. If an examinee fails the evaluation, the department will make an electronic annotation in the candidate's file to ensure compliance with this rule.~~

(2) **Evaluation standards:** The psychological evaluation shall consist of at least one of the following psychological assessment to include the Minnesota multi-phasic inventory-2 restructured form [or MMPI-2RF], the Minnesota Multi-Phasic Inventory 2, or the Personality Assessment Inventory, as well as two additional measures of emotional functioning (Beck Depression Inventory-II, Beck Anxiety Inventory, PTSD Checklist-C). ~~[The report shall incorporate all information gathered in the interview and testing, and shall contain a specific recommendation on a form provided by the department as to the applicant's suitability to carry a fire arm as a level three security guard. All psychologists performing evaluations must be licenses and conform to the guidelines of the American psychological association regarding storage of records.]~~

**D. FIREARM TRAINING:** ~~[The following]~~ A minimum 16 hour curriculum, to include the laws pertaining to firearms and deadly physical force, is the minimum training required and must be completed within twelve months prior to application for security guard level three registration. The training shall be taught by a department approved instructor that has been ~~recommended by the board and~~ approved by the superintendent. ~~[Training shall be taught by an in-person instructor:]~~ Training and examination shall be conducted pursuant to the curriculum provided by the department. Training shall be taught by an in-person instructor. Curriculum may be reviewed by the department at the direction of the superintendent. This rule adopts and hereby incorporates by reference the Level Three Training Curriculum first edition 2020 approved by the advisory board on February 26, 2021, and with the same effective date of this rule.

- ~~(1) the four general firearms safety rules;~~
- ~~(2) weapon manipulation;~~
- ~~(3) types of sidearms;~~
- ~~(4) firearm retention and equipment;~~
- ~~(5) firearm storage devices;~~
- ~~(6) locking devices;~~
- ~~(7) ammunition and storage;~~
- ~~(8) training household members;~~
- ~~(9) hazards of loaded firearms in the home;~~
- ~~(10) mental conditioning and tactics;~~
- ~~(11) weapon manipulation and marksmanship;~~
- ~~(12) threat recognition and judgmental shooting;~~
- ~~(13) laws pertaining to firearms, deadly physical force and the exercise of the powers of arrest.]~~

**E. BACKGROUND CHECK:** Pursuant to Section 61-27B-34 of the act, NMSA 1978, all

applicants for initial issuance [~~or reinstatement~~] of a level three security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a [~~state and~~] federal criminal history background check pursuant to the instructions within the application provided by the department.

~~(1)~~ All

applicants for licensure or registration shall be fingerprinted electronically as required for submission to the federal bureau of investigation to conduct a national criminal history investigation and for submission to the department of public safety to conduct a state criminal history investigation.

~~(2)~~ Initial

and renewal applicants will need to register on-line with the agent for New Mexico department of public safety prior to going to an electronic fingerprinting location:

~~(a)~~ at

the electronic fingerprinting location, the applicant will need to provide the electronic fingerprinting technician with a registration number they received after registering online;

~~(b)~~ a

designated fee determined by the New Mexico department of public safety shall be paid at the time of registration by credit card or at the fingerprinting site by cashier's check or money order; and

~~(c)~~

fingerprint results will be sent electronically to the department.]

[16.48.2.19 NMAC - Re-pr & A, 16.48.2.19 NMAC, 9/24/2008; A, 11/28/2009; A, 5/1/2010; A, 1/15/2015; A, 1/15/2019; A, 10/26/2021]

**16.48.2.20 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR SECURITY GUARD INSTRUCTOR REGISTRATIONS:**

On or after February 28, 2015, every individual seeking to be an approved training instructor, shall complete an application for approval on a form provided by the department. The application shall include, but not be limited to, all of the following information:

~~[A.]~~ ~~electronic~~ fingerprints to establish positive identification for a state and federal criminal history background check;

~~(1)~~ All

applicants for licensure or registration shall be fingerprinted electronically as required for submission to the federal bureau of investigation to conduct a national criminal history investigation and for submission to the department of public safety to conduct a state criminal history investigation.

~~(2)~~ Initial

and renewal applicants will need to register on-line with the agent for New Mexico department of public safety prior to going to an electronic fingerprinting location:

~~(a)~~ at

the electronic fingerprinting location, the applicant will need to provide the electronic fingerprinting technician with a registration number they received after registering online;

~~(b)~~ a

designated fee determined by the New Mexico department of public safety shall be paid at the time of registration by credit card or at the fingerprinting site by cashier's check or money order; and

~~(c)~~

fingerprint results will be sent electronically to the department; and]

~~[B:]~~ ~~A.~~ Proof of

professional [~~training~~] certification specific to each level of [~~instructor registration applied for~~] instruction;

~~(1)~~ Level One

Instructor: [~~On or after February 28, 2015;~~] every individual seeking to be an approved training instructor for level one security guards, an individual shall submit proof of instructor certification issued by a law enforcement academy (LEA), federal government entity, military or the federal law enforcement training center (FLETC) [~~or one year of verifiable training experience or the equivalent thereof to be reviewed and recommended by the board and approved by the superintendent~~] the current certification must take place within four years preceding the instructor approval request; or

~~(2)~~ Level Two

Instructor: [~~On or after February 28, 2015;~~] every individual seeking to be a level two security guard instructor, offering training in chemical agents, defensive impact tools, restraint and control devices or electronic non-lethal devices, the application shall provide proof of level one instructor requirements and, proof of the specific weapon instructor certification issued by the weapon manufacturer [~~or one year of verifiable weapons training or training experience or the equivalent thereof to be reviewed and recommended by the board and approved by the superintendent~~] the current certification must take place within four years preceding the instructor approval request; or

~~(3)~~ Level

Three Instructor: [~~On or after February 28, 2015;~~] every individual seeking to be a level three security guard instructor offering training in firearms and deadly physical force, an individual shall submit proof of instructor certification issued by a law enforcement academy (LEA), federal government entity, military or the federal law enforcement training center (FLETC), the national rifle association law enforcement activities division [~~or one year of verifiable training experience or the equivalent thereof to be reviewed and recommended by the board and approved by the superintendent. If the level three training instructor offers firearms certification, proof of the instructor's current certification by the department is required.~~] The current certification must take place within four years preceding the instructor approval request.

~~B.~~ Every four years

from the approval date, the instructors must resubmit current certification in order to remain approved.

~~C.~~ Anyone approved

as an instructor must complete a minimum of four hours of continuing education specific to instructor development and case law specific to security during the renewal period.

[16.48.2.20 NMAC - N, 1/15/2019; A, 10/26/2021]

**16.48.2.21 [QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A SPECIAL EVENT PERMIT:**

**A.** A private patrol company employing a nonresident security guard temporarily for a special event shall apply to the department for and may be issued a special event permit for each nonresident security guard qualified to be employed at the special event.

**B.** A special event permit is issued for a specific nonresident security guard and a specific special event and shall not be transferred to another security guard or used for a special event other than for the special event for which the permit is issued.

**C.** To be issued a special event permit, a private patrol company shall provide the department with a description of the special event, its location and the dates on which the temporary nonresident security guard will be employed to provide services at the special event. A special event permit shall bear the name of the private patrol company and contact information, the name of the nonresident security guard, the name of the special event for which it is issued, the dates of the special event and other pertinent information required by the department.

**D.** A special event permit shall be issued only to an individual who qualifies for a level one or higher security guard registration and who:

- (1)** is not a resident of New Mexico;
- (2)** does not hold a registration as a security guard in New Mexico; and
- (3)** meets other requirements specified by the department.

**E.** A special event permit requiring a security guard to carry a firearm shall only be issued to an individual who is qualified to be registered as a level three security guard.

**F.** It is a violation of the Private Investigations Act (61-

27B-1 NMSA 1978) for a private patrol company to circumvent the registration process for permanent or long-term part-time employment of security guards through use of the provisions of this section.]

**[RESERVED]**

[16.48.2.21 NMAC - Rn, 16.48.2.20 NMAC, 1/15/2019; Repealed, 10/26/2021]

**16.48.2.23 [GENERAL QUALIFICATIONS FOR REGISTRATION AND LICENSE OF APPLICANTS:**

**A.** Must be a citizen of the United States.

**B.** Cannot have been convicted of a felony offense, an offense involving dishonesty or an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards as defined by the department.

**C.** Must have reached the age of majority (18 years) or 21 years if required by law or rule.]

**[RESERVED]**

[16.48.2.23 NMAC - Rn, 16.48.2.22 NMAC, 1/15/2019; A, 10/26/2021]

**16.48.2.26 INCOMPLETE INITIAL APPLICATIONS**

**A.** Initial applications for any license or registration type will expire twelve months from the date the application is stamped "received" by the department.

**B.** The fingerprint background check required for initial application expires after ninety days from the date it is issued. If the applicant wants to continue with the application process, and the fingerprint background check has expired, the applicant will be required to submit a new fingerprint background check to continue the application process.

**C.** After the expiration of the twelve month period, applicant will be required to submit a new initial application.

[16.48.2.26 NMAC - N, 10/26/2021]

**REGULATION AND LICENSING DEPARTMENT PRIVATE INVESTIGATIONS ADVISORY BOARD**

This is an amendment to 16.48.3 NMAC, Section 1, 8, 9, 10 and 11, effective 10/26/2021.

**16.48.3.1 ISSUING**

**AGENCY:** Regulation and Licensing Department [-Private Investigations Advisory Board].

[16.48.3.1 NMAC - Re-pr, 16.48.3.1 NMAC, 9/24/2008; A, 10/26/2021]

**16.48.3.8 [INTERVIEW OF APPLICANTS:**

At the discretion of the department, any applicant for license or registration may be required to present himself for interview prior to approval of his application.]

**[RESERVED]**

[16.48.3.8 NMAC - Re-pr, 16.48.3.8 NMAC, 9/24/2008; Repealed, 10/26/2021]

**16.48.3.9 [ALCOHOLIC BEVERAGES:**

**A.** Any uniformed registrant or licensee shall not consume alcoholic beverages or controlled substances while on duty.

**B.** When not in uniform, any registrant or licensee, while on duty, shall not consume alcoholic beverages or any controlled substance in such a manner as to adversely affect his performance under the capacity for which license or registration is issued.]

**[RESERVED]**

[16.48.3.9 NMAC - Re-pr, 16.48.3.9 NMAC, 9/24/2008; Repealed, 10/26/2021]

**16.48.3.10 DEPUTY SHERIFF COMMISSIONS:**

**A.** No licensee subject to the Private Investigators Act shall require any employee, as a condition or requirement of the employee's hiring or continued employment, to obtain a deputy sheriff's commission from any county sheriff, or to obtain a similar commission from any federal, state or local law enforcement agency.

**B.** No licensee subject to the Private Investigators Act nor

any of [his] their employees shall, during the pursuit of [his] their licensed activities, display any deputy sheriff's or similar commission or badge issued pursuant to that commission in a manner likely to cause confusion between the licensed business and any city, local, federal or state police organization, or any branch of the United States military. [16.48.3.10 NMAC - Re-pr, 16.48.3.10 NMAC, 9/24/2008; A, 10/26/2021]

**16.48.3.11 FICTITIOUS NAMES AND TITLES:**

**A.** Fictitious names under which licensees conduct businesses shall not contain words which may foster confusion with city, local, state or federal law enforcement agencies, such as "police".

**B.** The terms, "police", "sheriff", "peace officer", or "law enforcement", shall not be used as part of any business name and shall not be displayed or used on business cards, stationary, advertisements, badges, uniforms, emblems, insignia or identification. No person licensed or required to be licensed under this act shall in any way give the impression that [he is] they are connected with the federal government, state government or any political subdivision of a state government. [16.48.3.11 NMAC - Re-pr, 16.48.3.11 NMAC, 9/24/2008; A, 10/26/2021]

**REGULATION AND LICENSING DEPARTMENT PRIVATE INVESTIGATIONS ADVISORY BOARD**

**This is an amendment to Section 16.48.4 NMAC, Section 1 and 8, effective 10/16/2021.**

**16.48.4.1 ISSUING AGENCY:** Regulation and Licensing Department [~~Private Investigations Advisory Board~~]. [16.48.4.1 NMAC - Re-pr, 16.48.4.1 NMAC, 9/24/2008; A, 10/26/2021]

**16.48.4.8 MANDATORY FIREARMS TRAINING:**

**A.** [~~After July 1, 2007, any~~] A private investigator, a private patrol operator, a private investigations employee, or a level three security guard or a private patrol operations employee may carry a firearm upon successful completion of the mandatory firearm training required by the department. Any licensee who carries a firearm on duty shall be required to provide proof of being firearm certified by an instructor recognized [~~and certified by the New Mexico law enforcement academy or the national rifle association law enforcement activities division~~] by the department pursuant to Paragraph (3) of Subsection A, of 16.48.2.20 NMAC prior to carrying a weapon on duty, and annually thereafter.

**B.** The licensee or registrant will be required to qualify with the same type of [~~weapon and~~ he] weapon(s) and caliber(s) they will be carrying while on duty.

**C.** Specific course requirements and verification of completion forms will be posted on the [~~board~~] department's website and are available [~~on~~] upon request [~~from the board office~~].

**D.** The firearms qualification [~~form~~] forms issued by an instructor recognized and certified by the New Mexico law enforcement academy, federal government entity, military or the national rifle association law enforcement activities division shall at all times be in the possession of and located on the person of a registrant when working.

**(1) Handgun:**  
**(a)**

Ability to recite the four firearms safety rules.  
**(b)**

Ability to safely present (draw) and re-holster.  
**(c)**

Ability to safety load and unload.  
**(d)**

Ability to describe and perform immediate corrective action for class 1, 2, and 3 malfunctions.  
**(e)**

Ability to describe and perform

tactical and emergency (speed) reloading.

**(f)**  
Obtain a minimum passing score of eighty percent (40 hits) on the "50 Round Day Qualification Course of Fire – Handgun." All rounds are fired to the body from a standing position unless otherwise specified herein:

**(i)**  
Draw, shoot a failure drill in seven seconds, re-holster – seven yard line.

**(ii)**  
Draw, shoot a failure drill in seven seconds, re-holster – seven yard line.

**(iii)**  
Draw, shoot two rounds in 10 seconds, re-holster – 25 yard line.

**(iv)**  
Draw, move to kneeling position of choice and shoot two rounds in 12 seconds, recover to a standing position and re-holster – 25 yard line.

**(v)**  
Draw, shoot two rounds in 8 seconds, re-holster – 15 yard line.

**(vi)**  
Draw, shoot two rounds, move to kneeling position of choice, reload and empty firearm and shoot two rounds from kneeling in 12 seconds, recover to a standing low-ready position – 15 yard line.

**(vii)**  
From a low-ready position shoot two rounds in five seconds, re-holster – 15 yard line.

**(viii)**  
Draw, shoot two rounds, reload an empty firearm and shoot two rounds in 12 seconds, re-holster – 10 yard line

**(ix)**  
Draw, shoot two rounds, reload an empty firearm and shoot two rounds in 12 seconds, re-holster – 10 yard line.

**(x)**  
From a low-ready strong hand only position shoot two rounds in four seconds, recover to a low-ready position – seven yard line.

**(xi)**  
From a low-ready strong hand only position shoot two rounds in four seconds, recover to a low-ready position – seven yard line.



(xii) From a low-ready support hand only position shoot two rounds in four seconds, recover to a low-ready position – seven yard line.

(xiii) From a low-ready support hand only position shoot two rounds in four seconds, transition and re-holster – seven yard line.

(xiv) Draw, shoot two rounds in four seconds, recover to a low-ready position- five yard line.

(xv) From a low-ready position shoot two rounds in three seconds, re-holster – five yard line.

(xvi) Draw, shoot two rounds to the body, take one step to the right, shoot one round to the head in 10 seconds – five yard line.

(xvii) Draw, shoot two rounds to the body, take one step to the right, shoot one round to the head in 10 seconds, re-holster – five yard line.

(xviii) Draw to weapon retention position, shoot two rounds to the body, take one step back, assume a two-handed shooting stance and shoot one round to the head in seven seconds, re-holster – one yard line.

(xix) Draw to weapon retention position, shoot two rounds to the body, take one step back, assume a two-handed shooting stance and shoot one round to the head in seven seconds, re-holster – one yard line.

(2) Rifle:  
(a)

Ability to recite the four firearms safety rules.  
(b)

Ability to safely use a sling, and present to low ready and high ready positions.  
(c)

Ability to safely load and unload.  
(d)

Ability to describe and perform immediate corrective action for class 1, 2, and 3 malfunctions.  
(e)

Ability to describe and perform

tactical and emergency (speed) reloading.

(f) Obtain a minimum passing score of eighty percent (24 hits) on the “30 Round Day Qualification Course of Fire – Rifle”. All rounds are fired to the body from a standing position unless otherwise specified herein:

(i) From a low-ready half-load position, shoot two rounds in 4 seconds, recover to a low-ready position – 15 yard line.

(ii) From a low-ready full-load position, shoot two rounds in 3 seconds, recover to a low-ready position – 15 yard line.

(iii) From a low-ready full-load position, shoot two rounds in three seconds, recover to a safe low-ready or slung position – 15 yard line.

(iv) From a low-ready half-load position, shoot two rounds in five seconds, recover to a low-ready position – 25 yard line.

(v) From a low-ready full-load position, shoot two rounds in three seconds, recover to a low-ready position – 25 yard line.

(vi) From a low-ready full-load position, shoot two rounds in three seconds, recover to a low-ready or slung position – 25 yard line.

(vii) From a low-ready half-load position, assume a kneeling position of choice and shoot two rounds in seven seconds, recover to a standing low-ready position – 25 yard line.

(viii) From a low-ready full-load position, assume a kneeling position of choice and shoot two rounds in five seconds, recover to a standing low-ready position – 25 yard line.

(ix) From a low-ready full-load position, assume a kneeling position of choice and shoot two rounds in five seconds, recover to a standing safe low-ready or slung position – 25 yard line.

(x) From a low-ready half-load position, assume a kneeling position of choice and shoot two rounds in nine seconds, recover to a standing low-ready position – 50 yard line.

(xi) From a low-ready full-load position, assume a kneeling position of choice and shoot two rounds in seven seconds, recover to a standing safe low-ready or slung position – 50 yard line.

(xii) From a low-ready half-load position, assume a prone position, shoot two rounds, reload an empty firearm, and fire two rounds in 20 seconds, recover to a standing safe low-ready or slung position – 50 yard line.

(xiii) From a low-ready half-load position, assume a prone position, shoot two rounds, reload an empty firearm, and fire two rounds in 25 seconds, recover to a standing safe low-ready or slung position – 100 yard line.

(x) From a low-ready half-load position, assume a kneeling position of choice and shoot two rounds in nine seconds, recover to a standing low-ready position – 50 yard line.

(xi) From a low-ready full-load position, assume a kneeling position of choice and shoot two rounds in seven seconds, recover to a standing safe low-ready or slung position – 50 yard line.

(xii) From a low-ready half-load position, assume a prone position, shoot two rounds, reload an empty firearm, and fire two rounds in 20 seconds, recover to a standing safe low-ready or slung position – 50 yard line.

(xiii) From a low-ready half-load position, assume a prone position, shoot two rounds, reload an empty firearm, and fire two rounds in 25 seconds, recover to a standing safe low-ready or slung position – 100 yard line.

(3) Shotgun:  
All rounds are fired to the body unless otherwise specified herein.

(a) Ability to recite the four firearms safety rules.

(b) Ability to safely use a sling, and present to low ready and high ready positions.

(c) Ability to safely load and unload.

(d) Ability to describe and perform immediate corrective action for class 1, 2, and 3 malfunctions.

(e) Ability to describe and perform tactical and emergency (speed) reloading.

(f) Obtain a minimum passing score of eighty percent (16 hits) on the “20 Round Day Qualification Course of Fire – Shotgun”. All rounds are fired to the body from a standing position unless otherwise specified herein:

(i) From a low-ready half-load position, shoot two rounds, load one round, and shoot two rounds in 12 seconds,

recover to a safe low-ready or slung position – seven yard line - .00 buckshot rounds.

(ii)

From a low-ready half-load position, shoot two rounds, assume a kneeling position of choice, speed load an empty firearm, tactically load one round and shoot two rounds from kneeling in 15 seconds, recover to a safe low ready or slung position – 15 yard line - .00 buckshot rounds.

(iii)

From a low-ready half-load position, shoot one round, assume a kneeling position of choice, and shoot one round from kneeling in seven seconds, recover to a safe low ready or slung position – 25 yard line - .00 buckshot rounds.

(iv)

From a low-ready half-load position, select load one round and shoot one head shot in six seconds, recover to a safe low-ready or slung position – 10 yard line – slug round.

(v)

From a low-ready half-load position, shoot two rounds in four seconds, recover to a safe low ready or slung position – 15 yard line – slug rounds.

(vi)

From a low-ready bolt open position, speed load an empty firearm and shoot one round in four seconds, recover to a safe low-ready or slung position – 25 yard line – slug round.

(vii)

From a low-ready bolt open position, assume a kneeling position of choice, speed load an empty firearm, tactically load one round and shoot two rounds in two seconds, recover to a safe low-ready or slung position – 25 yard line – slug rounds.

**E.** Optional, non-mandatory night/low light courses of fire acceptable for use in conducting qualification courses of fire pursuant to the above three categories of firearms will be posted on the department's website and are available upon request for internal industry use as desired.

**F.** Authorized targets and scoring process

(1) Instructors will only use a "TQ-19" style target,

which depicts an average adult human-sized silhouette comprised of torso, neck, and head zones. There shall be clearly designated body/neck and head zones as scoring areas outlined by a colored perimeter line for each zone. Only body-designated rounds impacting within the outlined body and neck area will be scored as "hits". Only headshot-designated rounds impacting within the outlined head area will be scored as "hits". All other rounds that impact outside of the outlined strike areas will be scored as "misses". For clarification, an actual round impact which breaks the primer line of the designated target zone will scored as a "hit", paper tears around the perimeter of a round impact that break the perimeter line are not sufficient to be scored as a "hit".

(2) Alibis

will only be considered for firearm malfunctions that the shooter immediately and properly employs an action drill to correct.

(3)

Ammunition management is the shooter's responsibility.

**G.** All shooters must adhere to the safety rules and directions of the attending range and the approved firearm instructor(s) providing the training.

[16.48.4.8 NMAC - Re-pr & A, 16.48.4.8 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021]

## REGULATION AND LICENSING DEPARTMENT PRIVATE INVESTIGATIONS ADVISORY BOARD

**This is an amendment to 16.48.6 NMAC, Section 1, 2, 3, 6, 7 and 8, effective 10/26/2021.**

### 16.48.6.1 ISSUING

**AGENCY:** Regulation and Licensing Department [~~Private Investigations-Advisory Board~~].

[16.48.6.1 NMAC - N, 9/24/2008; A, 10/26/2021]

**16.48.6.2 SCOPE:** This part applies to [the] licensees and registrants pursuant to the Private Investigations Act.  
[16.48.6.2 NMAC - N, 9/24/2008; A, 10/26/2021]

**16.48.6.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-5[~~61-27B-21 & 61-27B-26~~] NMSA 1978.

[16.48.6.3 NMAC - N, 9/24/2008; A, 10/26/2021]

**16.48.6.6 OBJECTIVE:** The objective of Part 6 is to inform licensees and registrants of continuing education [hours] required for license renewal. Additionally, Part 16 established acceptable standards for continuing education.

[16.48.6.6 NMAC - N, 9/24/2008; A, 10/26/2021]

**16.48.6.7 DEFINITIONS:** For purposes of continuing education requirements, "renewal period" shall mean the [current one year-renewal period of July 1 thru June 30] period between issuance of license or registration to expiration of license or registration.

[16.48.6.7 NMAC - N, 9/24/2008; A, 10/26/2021]

[Refer to 16.48.1.7 NMAC]

### 16.48.6.8 CONTINUING EDUCATION:

**A.** Continuing education is required for renewal of an individual license [and] or registration.

**B.** Private investigators and private patrol operators must complete a minimum of four hours of continuing education training from an approved source, during the renewal period to maintain their license.

**C.** Security guards must complete a minimum of four hours of continuing education training from an approved source, during the renewal period to maintain their license.

**D.** Polygraph licensees must complete a minimum of twenty

hours of continuing education training from an approved source, during the renewal period to maintain their license.

**E.** Proof of participation in or presentation of continuing education activity must be submitted with the license or registration renewal request if the licensee or registrant is audited.

**F.** All continuing education hours must be earned during the [~~current one year~~] renewal period [~~of July 1 thru June 30~~]; no carryover will be permitted.

**G.** Firearms requalification courses will not count towards mandatory training.

**H.** Approved sources for continuing education are:  
**(1)** college level courses;  
**(2)** in-house training provided by a private patrol company licensed by the department;  
**(3)** the New Mexico law enforcement academy; or  
**(4)** any other department-approved educational institution.

**I.** One hour of continuing education credit will be granted for each hour attended in a topic which directly relates to the performance of duties under the respective license or registration. College level courses will be granted fifteen hours of continuing education credit for each successfully completed college credit.

**J.** Completion of training courses required for initial licensing will satisfy the continuing education requirements for the first licensing period of an initial license or registration.

**K.** No license or registration shall be renewed without proof of required continuing education credits.  
 [16.48.6.8 NMAC - N, 9/24/2008; A, 10/26/2021]

**REGULATION AND LICENSING DEPARTMENT  
 PRIVATE INVESTIGATIONS  
 ADVISORY BOARD**

**This is an amendment and Part name change to 16.48.7 NMAC, Section 1, 2, 6, 8, 10, 11, 13 and 14, effective 10/26/2021.**

**16.48.7.1 ISSUING AGENCY:** Regulation and Licensing Department [~~Private Investigations-Advisory Board~~].  
 [16.48.7.1 NMAC - N, 9/24/2008; A, 10/26/2021]

**16.48.7.2 SCOPE:** This part applies to the licensees and registrants licensed and registered pursuant to the Private Investigations Act.  
 [16.48.7.2 NMAC - N, 9/24/2008; A, 10/26/2021]

**16.48.7.6 OBJECTIVE:** This part establishes the procedures for license expiration and license and registration renewal.  
 [16.48.7.6 NMAC - N, 9/24/2008; A, 10/26/2021]

**16.48.7.8 LICENSE AND REGISTRATION RENEWAL:** Licensees and registrants shall renew their licenses issued pursuant to the Private Investigations Act biennially by [~~remitting to the board office a renewal fee, renewal application form provided by the board, completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check. Renewal documents must be postmarked no later than the expiration date or a late fee will be assessed without exception. Continuing education hours shall be documented as described in Part 6.~~] submitting the renewal application and all required forms by the department as described in the application.

**A.** The completed application shall include applicant's:  
**(1)** full name;  
**(2)** current

mailing address;  
**(3)** current electronic mail address, if any;  
**(4)** current license or registration number, and any expired license or registration numbers issued to the applicant by the department;  
**(5)** two, 2X2 inch recent photographs or an upload of a recent electronic headshot photograph;  
**(6)** proof of required continuing education;  
**(7)** firearms qualification, if required;  
**(8)** department of public safety background check;  
**(9)** any required fees;  
**(10)** general liability insurance, if required; and  
**(11)** surety bond, if required.

**B.** Renewal documents must be postmarked or submitted online no later than the expiration date of a late fee will be assessed without exception. Continuing education hours shall be documented as described in Part 6.  
 [16.48.7.8 NMAC - N, 9/24/2008; A, 1/15/2019; A, 10/26/2021]

**16.48.7.10 LICENSE RENEWAL NOTICES:** [~~Renewal~~] Courtesy renewal notices will be electronically mailed to each current licensee and registrant at least 30 days prior to the expiration date of the license.  
 [16.48.7.10 NMAC - N, 9/24/2008; A, 1/15/2019; A, 10/26/2021]

**16.48.7.11 LICENSEE RESPONSIBILITY:** Renewal notices will be electronically mailed to the last known electronic mail address on file with the [~~board~~] department. It is the responsibility of the licensee and registrant to keep the [~~board~~] department informed of any changes in electronic mail, physical mail address and phone numbers. Failure to receive the renewal [~~application~~] notice shall not relieve the licensee or registrant of the responsibility of renewing his license

before the expiration date.  
[16.48.7.11 NMAC - N, 9/24/2008; A, 1/15/2019; A, 10/26/2021]

**16.48.7.13 INACTIVE STATUS:**

**A.** A licensed or registered person in good standing may request up to five years of inactive status by notifying the department in writing before the expiration of their current license.

**B.** An inactive status license or registration may be restored within the five year period upon receiving a completed reinstatement application [~~which shall be~~ provided by the department.

**C.** A completed reinstatement application must include the appropriate [~~reinstatement~~ application fee, two current passport type photographs and [~~a completed fingerprint package~~ required background check form.

**D.** A license or registration not restored within five years is automatically expired without notice from the [~~board or~~ department. [16.48.7.13 NMAC - N, 9/24/2008; A, 10/26/2021]

**16.48.7.14 REINSTATEMENT OF INACTIVE LICENSURE OR REGISTRATION:** Reinstatement of a license or registration that is in inactive status requires the following:

~~[A. — Reinstatement of a license or registration that has expired for more than one year, but less than 10 requires the following:]~~

~~[(1) A. completion of a [new license] reinstatement application relevant to the license or registration in [expired] inactive status;~~

~~[(2) — payment of late fee;]~~

~~[(3) B. payment of the application fee;~~

~~[(4) C. submission of [a completed fingerprint package] required background check form; and~~

~~[(5) D. [passage of the jurisprudence examination] proof of completion of two hours of continuing education for each year the license or registration was inactive.~~

~~[B. — A license or registration that has been expired for more than 10 years must apply as a new licensee or registrant and meet all the current requirements for licensure or registration.]~~

~~[16.48.7.14 NMAC N, 9/24/2008; A, 5/10/2010; A, 10/26/2021]~~

**REGULATION AND LICENSING DEPARTMENT PRIVATE INVESTIGATIONS ADVISORY BOARD**

**This is an amendment to 16.48.8 NMAC, Section 1, 2, 3, 6, 7, 8 and 9, effective 10/26/2021.**

**16.48.8.1 ISSUING**

**AGENCY:** Regulation and Licensing Department [~~Private Investigations Advisory Board~~].

[16.48.8.1 NMAC - N, 1/15/2015; A, 10/26/2021]

**16.48.8.2 SCOPE:** This part sets forth application procedures to expedite licensure and registration for military service members, their spouses, dependent children, and veterans.

[16.48.8.2 NMAC - N, 1/15/2015; A, 10/26/2021]

**16.48.8.3 STATUTORY**

**AUTHORITY:** These rules are promulgated pursuant to and in accordance with the Private Investigations Act, [Sections 61-27B-1 to -36 NMSA 1978, (specific authority to promulgate rules is Subsection C of Section 61-27B-5 and Section 61-1-34 NMSA 1978)] Section 61-27B-5 NMSA 1978.

[16.48.8.3 NMAC - N, 1/15/2015; A, 10/26/2021]

**16.48.8.6 OBJECTIVE:**

The purpose of this part is to expedite licensure for military service members, their spouses, their dependent children, and veterans pursuant to 61-1-34 NMSA 1978 [~~Subsection 34, of Section 1 of Chapter 61~~].

[16.48.8.6 NMAC - N, 1/15/2015; A, 10/26/2021]

**16.48.8.7 DEFINITIONS:**

~~[A. — “Military service member” means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.~~

~~B. — “Recent veteran” means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.]~~

~~A. “License” has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.~~

~~B. “Licensing fee” has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA 1978.~~

~~C. “Military service member” has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.~~

~~D. “Substantially equivalent” means the determination by the department that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination and experience requirement of the Private Investigations Act.~~

~~E. “Veteran” has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.~~

[16.48.8.7 NMAC - N, 1/15/2015; A, 10/26/2021]

**16.48.8.8 APPLICATION REQUIREMENTS:**

~~[A. — Applications for licensure shall be completed on a form provided by the board.~~

~~B. — The applicant shall provide:~~

~~(1) — completed application and corresponding fee pursuant to 16.48.5.8 NMAC;~~

~~(2) — satisfactory evidence that the applicant is currently licensed in another~~

jurisdiction, including a branch of the United States armed forces; and holds a current license in good standing; the applicant further must provide satisfactory evidence that he has met the minimal licensing requirements in that jurisdiction and that they are substantially equivalent to the licensing requirements for the occupational or professional license the applicant applies for pursuant to Chapter 61, Articles 27B NMSA 1978; and

(3) proof of honorable discharge (DD214) or military ID card or accepted proof of military spouse status;]

**A.** Applications for registration shall be completed on a form provided by the department.

**B.** The applicant shall provide a completed application that includes the following information:

(1) applicant's full name;

(2) current mailing address;

(3) current electronic mail address, if any;

(4) date of birth;

(5) two, 2X2 in recent photographs or upload of a recent electronic headshot photograph;

(6) copy of completion of polygraph school diploma, if required;

(7) completed jurisprudence examination for the license or registration, if required;

(8) firearms qualification, if required;

(9) information on any past disciplinary action;

(10) fingerprinting receipt to establish positive identification for a federal criminal history background check;

(11) any required fees; and

(12) proof as described in Subsection C below.

**C.** The applicant shall provide the following satisfactory evidence as follows:

(1) applicant is currently licensed and in good

standing in another jurisdiction, including a branch of the United States armed forces;

(2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and

(3) the following documentation:

(a) for military service member: copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders and copy of marriage license;

(c) for spouses of deceased military services members: copy of decedent's DD214 and copy of marriage license;

(d) for dependent children of military service members: copy of military orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD214 showing proof of honorable discharge.

**D.** The license or registration shall be issued by the department as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

**E.** Military service members and veterans shall not pay and the department shall not charge a licensing fee for the first three years for a license or registration issued pursuant to this rule.

**F.** A license or registration issued pursuant to this section shall be valid for the time period that is specified in the Private

Investigations Act.

[~~C~~] **G.** Electronic signatures will be acceptable for applications submitted pursuant to section 14-16-1 through section 14-16-19 NMSA 1978. [16.48.8.8 NMAC - N, 1/15/2015; A, 10/26/2021]

**16.48.8.9 RENEWAL REQUIREMENTS:**

[~~A~~.] A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance set forth in 16.48.2 NMAC and for the renewal of a license set forth in 16.48.7 NMAC pursuant to Chapter 61, Articles 2 through 36 NMSA 1978.

**B.** A license issued pursuant to this section shall be valid for two years.

**C.** The board office mails license renewal notifications to licensees before the license expiration date. Failure to receive the renewal notification shall not relieve the licensee of the responsibility of renewing the license by the expiration date.

**D.** The renewal application will be available online at the board's website and in paper copy if requested from the board office and must be received at the board office on or before the expiration date.]

**A.** A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.48.7 NMAC pursuant to Chapter 61, Article 27B NMSA 1978.

**B.** As a courtesy, the department will send via electronic mail license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the department. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.

[16.48.8.9 NMAC - N, 1/15/2015; A, 10/26/2021]

**STATE ETHICS COMMISSION**

**This is amendment to 1.8.1 NMAC, amending Sections 9 & 13, effective 10/26/2021.**

**1.8.1.9 ADVISORY OPINIONS AND INFORMAL ADVISORY OPINIONS:**

**A. Advisory opinions.**

The commission may issue advisory opinions on matters related to ethics upon request.

(1) A request for an advisory opinion must be in writing, and must be submitted by a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist's employer. The request is confidential and not subject to the provisions of the Inspection of Public Records Act.

(2) Upon receiving a request for an advisory opinion, the ~~commission~~ director or the director's designee:

(a) must provide the requester with a written confirmation of receipt; and

(b) may ask the requester if the requester would prefer to receive an informal advisory opinion.

(3) Within sixty days of receiving a request for an advisory opinion, the commission must either:

(a) issue an advisory opinion;

(b) inform the requester that the commission will not be issuing an advisory opinion and provide an explanation for the commission's decision; or

(c) inform the requester that the commission requires more than sixty days to issue an advisory opinion, and notifies the requester about the status of the request every thirty days thereafter.

(4) Unless amended or revoked, an advisory opinion shall be binding on the commission in any subsequent

commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion.

(5) At the request of any commissioner, the director or the director's designee shall draft an advisory opinion based on any legal determination issued by the director, the general counsel, or a hearing officer for the commission to consider for issuance as an advisory opinion.

**B. Informal advisory opinions.** A person may submit the request for an informal advisory opinion to the director or general counsel, who may answer the request.

(1) A request for an informal advisory opinion must be in writing, and must be submitted by a public official, public employee, candidate, person subject to the Campaign Reporting Act or the Governmental Conduct Act, government contractor, lobbyist or lobbyist's employer. The request is confidential and not subject to the provisions of the Inspection of Public Records Act.

(2) An informal advisory opinion is specific to the person who requests the advice and the facts presented in the request.

(3) An informal advisory opinion is not binding on the commission unless and until the commission votes to adopt the informal advisory opinion as an advisory opinion. The director, based on any informal advisory opinion issued, may draft an advisory opinion for the commission to consider for issuance as an advisory opinion.

(4) If the commission determines that a person committed a violation after reasonably relying on an informal advisory opinion and the violation is directly related to the informal advisory opinion, the commission may consider that the person acted in good faith.

[1.8.1.9 NMAC-N, 10/15/2020; A, 10/26/2021]

**1.8.1.13 ADDRESS [FOR FILING DOCUMENTS]:**

**A.** By mail: Director, State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, NM 87106.

**B.** In person: State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, NM 87106.

**C.** By email: ethics.commission@state.nm.us. [1.8.1.13 NMAC-N, 1/1/2020; Rn & A, 10/15/2020; A, 10/26/2021]

**TRANSPORTATION, DEPARTMENT OF**

**TITLE 18 TRANSPORTATION AND HIGHWAYS  
CHAPTER 11 AIRPORTS  
PART 10 RURAL AIR SERVICE ENHANCEMENT GRANT PROGRAM**

**18.11.10.1 ISSUING AGENCY:** Aviation Division of the New Mexico Department of Transportation, 3501 Access Road C, Albuquerque, New Mexico 87106. [18.11.10.1 NMAC - N, 10/26/2021]

**18.11.10.2 SCOPE:** Municipalities and counties located within the state of New Mexico who owns and operates an airport which is located either within its jurisdiction or the jurisdiction of any other political subdivision. [18.11.10.2 NMAC - N, 10/26/2021]

**18.11.10.3 STATUTORY AUTHORITY:** Adoption of this regulation is pursuant to authority granted to the aviation division of department of transportation under Section 64-1-13, Sections 67-3-11, 67-3-28 NMSA 1978 and SB 133, Laws 2021, Chapter 47. [18.11.10.3 NMAC - N, 10/26/2021]

**18.11.10.4 DURATION:** Permanent. [18.11.10.4 NMAC - N, 10/26/2021]

**18.11.10.5 EFFECTIVE DATE:** October 26, 2021, unless a later date is cited at the end of a

section or paragraph.  
[18.11.10.5 NMAC - N, 10/26/2021]

**18.11.10.6 OBJECTIVE:**  
The objective of 18.11.3 NMAC is to establish eligibility requirements, including the maximum amount a recipient may receive, under the Rural Air Service Enhancement Act. The purpose of this regulation is to describe the eligibility requirements of an eligible recipient, and the process for the application, evaluation, awarding of grants under the Rural Air Service Enhancement Act.  
[18.11.10.6 NMAC - N, 10/26/2021]

**18.11.10.7 DEFINITIONS:**

**A. "Aircraft"** means airplane.

**B. "Air carrier"** has the same meaning as defined in 49 U.S.C §40102 (a) (2).

**C. "Department"** has the same meaning as defined in Subsection D of Section 64-1-12 NMSA 1978 (2020).

**D. "Director"** has the same meaning as defined in Subsection F of Section 64-1-12 NMSA 1978 (2020).

**E. "Division"** has the same meaning as defined in Subsection E of Section 64-1-12 NMSA 1978 (2020).

**F. "Eligible recipient"** means a municipality or county located within the state of New Mexico who owns and operates an airport which is located either within its jurisdiction or the jurisdiction of any other political subdivision and have a minimum population of twenty thousand persons residing within a fifty-mile radius of the airport.

**G. "Enhancement Grant"** means an award of financial assistance of rural air service enhancement funds to an eligible entity. Individual grants shall not exceed one million two hundred fifty thousand dollars (\$1,250,000) per year for municipalities or counties with existing scheduled air service; or exceed one million seven hundred fifty thousand dollars (\$1,750,000) per year for municipalities or counties

not served by existing scheduled air service.

**H. "Grant" or "grant award"** means an award of financial assistance through the rural air service enhancement program.

**I. "Grant Agreement"** means a legal instrument of financial assistance between the division and an eligible recipient. "Grant agreement" and "agreement" are used interchangeably.

**J. "Grantee" or "grant recipient"** means the direct recipient of a grant award. The grantee is legally accountable to the department for the use of grant funds and is bound by the provisions and terms and conditions of the grant agreement. The grantee is responsible for ensuring that the selected air carrier carrying out activities under the award comply with the provisions and terms and conditions of the grant agreement.

**K. "Grant term"** means the timeframe for the use of the grant award as set forth in the grant award agreement. Grant awards shall cover a timeframe of at least two years.

**L. "In-kind contribution"** means any non-monetary contribution. Goods or services offered free or at less than the usual charge are considered in an in-kind contribution. Similarly, when a person or entity pays for services on the committee's behalf, the payment is an in-kind contribution.

**M. "Minimum level of airline service"** means:

- (1) service for one or more New Mexico municipalities or counties to one or more airports by a reliable airline;
- (2) flights that are at reasonable times considering the needs of passengers and at prices that are not excessive compared to the generally prevailing prices of other air carriers for like service between similar places; and
- (3) operated by pilots that meet the minimum requirements of the federal aviation

administration based on the type of service provided.

**N. "Licensed by the state"** for purposes of the Rural Air Service Enhancement Act means a common carrier who has obtained from the United States department of transportation economic authority from the office of the secretary of transportation in the form of a certificate for interstate or foreign passenger and a safety authority in the form of an air carrier certificate and operations specifications from the federal aviation administration.

**O. "Passenger"** has the same meaning as defined in Section 64-1-12.C NMSA 1978 (2020).

**P. "Pilot"** means any person including a co-pilot participating in the operation of an aircraft while it is in flight.

**Q. "Scheduled air service or "scheduled operation"** means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier for which the air carrier or its representatives offers in advance the departure location, departure time, and arrival location.  
[18.11.10.7 NMAC - N, 10/26/2021]

**18.11.10.8 ELIGIBILITY FOR ASSISTANCE:** Applicants shall meet the following minimum criteria to be eligible for a grant:

- (1) the municipality or county shall have a minimum population of 20,000 persons residing within a 50 mile radius of the airport unless the municipality or county has existing scheduled air service;
- (2) the aircraft to be used to service proposed new air routes served by the rural air service enhancement grant program shall have a passenger capacity of not more than nine persons;
- (3) the route or routes to be served by the program shall be a new air route or routes that were not served at the time the grant was made; and
- (4) the selected air carrier must be licensed by the state.  
[18.11.10.8 NMAC - N, 10/26/2021]

**18.11.10.9 AIR CARRIER PROCUREMENT REQUIREMENTS:**

**A.** In selecting an air carrier, an eligible recipient must comply with:

(1) the requirements of the New Mexico Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978, as amended, or

(2) if exempted from complying with the Procurement Code pursuant to Section 13-1-98K, their own purchasing ordinances. Such an eligible recipient must provide a copy of those ordinances to the division.

(3) Applicants will be required to provide proof of compliance with the New Mexico Procurement Code or its own purchasing ordinances if exempted from complying with the Procurement Code.

(4) An eligible entity must award a contract only to an air carrier who is licensed by the state.

**B.** The division may make available to eligible recipients upon request suggested forms and documents for use in the procurement of the airline services.

**C.** At a minimum an eligible entity should consider including the following in its solicitation:

- (1) a description of the airport or airports that will serve the proposed new scheduled air service;
- (2) an estimate of the demand for the proposed new scheduled air service routes;
- (3) a description of any existing air service, including the carrier(s) providing the service, service frequency, direct and connecting destinations offered, available fares, and equipment types;
- (4) a description of the requested service options for proposed air service routes;
- (5) a justification for the new proposed scheduled air service routes;

- (6) a commitment from the selected air carrier that if a grant is awarded to the municipality or county the air carrier will enter into a written operating agreement with the eligible recipient to provide the air service described;
  - (7) a draft operating agreement;
  - (8) a requirement that the air carrier discuss its requested revenue guarantee as well as supporting data for the request, such as traffic assumptions, revenue forecasts, estimated operating costs and potential route profitability.
  - (9) a requirement that the air carrier provide a description of the aircraft to be used on the new scheduled air service route(s);
  - (10) a description by the air carrier of its demonstrated reliability in providing scheduled air service;
  - (11) disclosure on the part of the air carrier of the existence of interline agreements that the air service provider has made with larger carriers to allow passengers and cargo of the air service provider at the hub airport to be transported by the larger carrier(s) through one reservation, ticket, and baggage check in.
- [18.11.10.9 - N, 10/26/2021]

**18.11.10.10 AIR CARRIER CONTRACT REQUIREMENTS:**

**A.** The following provisions shall be required in the contract between grant recipient and the air carrier:

- (1) Payment to the air carrier shall be made in arrears on a per-flight-completed basis.
- (2) The air carrier should submit an invoice at the beginning of each month for the prior month based on the number of flights that it actually completed in conformance with the contract.
- (3) Submitted invoices should request an amount in accordance with the allowances stipulated by the parties' contract, detailing the service actually completed, including date of service,

aircraft type, routing, and frequency of service, and any actual variations from the service contemplated by the contract.

(4) If a carrier is forced by operational exigencies to make ad hoc service adjustments to its service, such as aircraft type or routing, the carrier should report those deviations on its invoice with the appropriate adjustments. For instance, if the carrier substituted a smaller, less expensive aircraft type than agreed to, due to mechanical or other problems involving the larger aircraft, the subsidy rate should be reduced accordingly.

(5) Flights that did not conform to the terms and stipulations of the contract between the grant recipient and the air carrier will not be compensable unless approved in advance by the grant recipient.

(6) Only completed flights are considered eligible for payment unless otherwise excused under the terms of the contract between the grant recipient and the air carrier. For example, weather conditions may require the aircraft to return to its airport of origin before reaching its scheduled destination.

(7) Flights that never take-off because of weather, mechanical problems, air traffic control issues, crew shortages/flight and duty time issues, are not compensable.

(8) All flights that can be safely operated must be completed to be compensable; flights that overfly points for lack of traffic will not be compensated.

[18.11.10.10 NMAC - N, 10/26/2021]

**18.11.10.11 APPLICATION FOR GRANT:**

**A.** In any fiscal year in which funds will be available for distribution from the rural service enhancement fund the director will request applications from eligible recipients interested in receiving a rural air service enhancement grant.

**B.** Two or more communities may enter into a shared



or common services arrangements, memorandum of understanding, intergovernmental agreement, joint powers agreements, or other similar agreement to provide air service over a linear route, e.g., community A to community B. The applicant shall submit a fully executed letter of intent together with its application defining the respective responsibilities of the communities in implementing the project and to define the requirements, terms, conditions, type of funds, and considerations attendant upon each party to the agreement. If awarded a grant, prior to the disbursement of any funds by the division, the communities shall execute the agreement in a manner provided by law for entering into binding contractual agreements. Two or more communities entering into such an agreement need to make their own determination of the legality of such a relationship and the form and the content of the agreement.

**C.** Eligible recipients shall submit a single application to the division in a format provided by the division. An applicant shall comply with deadlines and guidelines published by the director. The director shall reject any application that is not submitted by the deadline. Each applicant is solely responsible for soliciting, reviewing and selecting an air carrier for inclusion in the application.

[18.11.10.11 NMAC - N, 10/26/2021]

**18.11.10.12 ELIGIBLE INFRASTRUCTURE**

**IMPROVEMENTS:** To be eligible for grant funding for infrastructure improvements, the improvements must be an integral part of, or necessary for the development, or the provision of scheduled air service. Infrastructure grants will be processed in accordance with 18.11.9 NMAC Governing the Approval of Grants.

[18.11.10.12 NMAC - N, 10/26/2021]

**18.11.10.13 CRITERIA FOR EVALUATING GRANT APPLICATIONS:**

**A.** The division shall give priority for the award of grants

based on the division's determination that the application meets the following criteria and subject to the availability of funds. It should be emphasized that the ranking process does not require that the director fund projects in order of their ranking. The ranking is a means to help the director generally prioritize projects.

**B.** The minimum criteria is as follows:

(1) the demand for service on the proposed air routes;

(2) the economic impact on the eligible recipient of the proposed new air routes; and

(3) the feasibility of a common carrier licensed by the state servicing the proposed new air routes.

(4) the amount of the requested enhancement grant and the corresponding matching funds above the minimum requirement to be provided by the applicant; and

(5) the existence of a plan by the municipality or county to market the service to the community.

**C.** The division will carefully review each application and the staff may contact applicants and discuss their applications if clarification or more information is needed.

**D.** Applicants may amend their applications at any time prior to the division's decision, and those amendments will be considered.

**E.** Applications should be fully thought out and are designed to meet the individualized needs of a community. The division will notify the applicants of the selection results in a timely manner. Projects not selected for funding may be re-submitted in subsequent funding cycles.

**G.** The division retains the discretion to reject outright all unreasonable or unrealistic proposals and solicit a new round of applications. The director's decision will be final.

[18.11.10.13 NMAC - N, 10/26/2021]

**18.11.10.14 APPROVAL OF GRANT:**

**A.** If the division approves an application for a grant, the recipient of the grant must enter into an agreement with the division. The agreement must specify:

(1) The amount of the grant;

(2) The amount of the matching funds from the eligible recipient. Minimum matching funds shall not be less than:

(a) ten percent if the eligible recipient has no existing scheduled air service at the time of application; and

(b) fifty percent if the eligible recipient has existing scheduled air service at the time of application. In-kind contributions may not be used in satisfying the required minimum matching funds.

(3) the proper use of the money obtained from the grant;

(4) the date on which the division approved the grant;

(5) the specific indicators of performance by which the division and the recipient of the grant will measure the progress of the project;

(6) the projected estimates of costs;

(7) a requirement that the recipient of the grant report to the division on an annual basis.

**B.** If the eligible entity fails to execute and return the grant agreement within 60 days of receiving the notice of award, the project shall be considered lapsed.

[18.11.10.14 NMAC - N, 10/26/2021]

**18.11.10.15 REPORTING:**

Each grant recipient must submit annual reports on the progress made during the previous period in implementing its grant no later than 90 days after the end of the each 12 month period. These reports must include:

(1) a description of the air service, including the frequency of flight

operations from the applicant’s airport to regional airport hubs, its consistency of service, on-time performance, reliability, and the number of enplanements;

(2) a

description of the economic benefit, or any new business opportunities or an expansion of existing business resulting from the availability of the air service; and

(3) a

description of the benefits to the community, the convenient travel times for both business and leisure travelers data and quantitative information about the project’s impact.

[18.11.10.15 NMAC - N, 10/26/2021]

**18.11.10.16 FUNDING**

**RESTRICTIONS:** Each eligible recipient awarded a grant will be expected to execute a grant agreement with the division before it begins spending funds under a grant award. Applicants should therefore not assume they have received grants, nor obligate or spend local funds, prior to receiving and fully executing grant agreements. Funding from the grant may not be used to pay for expenditures made prior to the execution of the grant agreements. The division may not disburse any money from a grant until approval and execution by all required parties and the division has received a request to draw money from the grant from the recipient of the grant.

[18.11.10.16 NMAC - N, 10/26/2021]

**18.11.10.17 GRANT REIMBURSEMENTS:**

**A.** The recipient of a grant must make a request to draw money from the grant on a form prescribed by the director. The division shall reimburse the grantee in accordance with the terms of agreement. Claims for reimbursement shall be completed on form A-1159, Request for Reimbursement. Each request for reimbursement shall contain proof of payment for valid expenditures for services rendered by a third party or items of tangible property received by the grantee

for the implementation of the grant. The division reserves the right to withhold reimbursement on requests that are incorrect or incomplete. The Final reimbursement request must be received no later than 30 days after the expiration of the grant. The grantee shall not be reimbursed for any costs incurred prior to the full execution of the grant, after the expiration of the grant or in excess of the maximum dollar amount of the grant unless the maximum dollar amount is duly amended prior to incurring the service or deliverable. Any unexpended portion of funds subject to this grant shall revert to the state aviation fund.

**B.** The director shall review and approve or deny a request to draw money from a grant within 10 working days after the date on which the director receives the request. If the director approves a request to draw money from a grant, the director shall cause a check to be issued to the recipient of the grant in the amount requested by the recipient. If the director denies a request to draw money from a grant, the director shall provide the recipient who made the request with a written statement:

(1) stating the reason for the denial of the request; and

(2) describing any actions the recipient must take to receive approval of the request from the director.

**C.** If the director awards a grant to a recipient and, after the recipient receives a disbursement of the grant pursuant to this section, the director determines that the recipient no longer needs the grant or any portion of the grant, the director may:

(1) cease making any further disbursements of the grant to the recipient of the grant; or

(2) require the recipient of the grant to repay any unused portion of the grant.

[18.11.10.17 NMAC - N, 10/26/2021]

**18.11.10.18 PROJECT DOCUMENTATION:** The eligible

entity shall maintain a complete set of project files for a period of not less than six years following the completion of the grant term. The project files shall contain all documents that are specified as required by the grant agreement. [18.11.10.18 NMAC - N, 10/26/2021]

**18.11.10.19 NON-COMPLIANT GRANTEES:**

**A.** The division shall, at its discretion, investigate noncompliant grantees and pursue all appropriate legal means including termination of any grant agreement and any or all items and shall seek remediation for monies expended by the division and received by non-compliant grantee.

**B.** If the division finds that the recipient of a grant is not using money from the grant in accordance with the provisions of the grant agreement, the division will immediately cease providing the recipient with money from the grant and may determine that the agreement is void.

**C.** If the division finds that money from the grant is not used in accordance with the agreement, the division may require the repayment of the grant or any portion of the grant.

**D.** The division reserves the right to audit any rural air service enhancement grant. The eligible entity must make records available for review or audit upon request by the department. The division is entitled to recover amounts based on the results of an audit.

**E.** The department reserves the right to request the eligible entity to submit additional documentation to demonstrate completion of the terms and conditions required by the grant program. It is the responsibility of the eligible entity to comply in full with all such requests and to submit the requested documentation in a timely manner.

[18.11.10.19 NMAC - N, 10/26/2021]

**HISTORY OF 18.11.10 NMAC:**

**VETERINARY MEDICINE,  
BOARD OF**

**This is an amendment to 16.24.7 NMAC, Sections 7, 8, 11 and 14, effective 11/1/2021**

**16.24.7.7 DEFINITIONS:**

**A. Words starting with the letter A:**

(1) **“Act”**  
means the Veterinary Practice Act, Section 77-1-1 through 77-1-12 NMSA 1978.

(2) **“Animal”**  
means any animal, except humans, not defined as “livestock” in Subsection L of this section.

(3) **“Animal shelter”** means:

(a)  
a county or municipal facility that provides shelter to animals on a regular basis; and

(b)  
a private humane society or a private animal shelter that temporarily houses stray, unwanted or injured animals through administrative or contractual arrangements with a local government agency; and

(c)  
does not include a municipal zoological park.

**B. Words starting with the letter B: “Board”** means the board of veterinary medicine.

**C. Words starting with the letter C:**

(1) **“Capacity for Care”** means the overall ability of an animal shelter to provide humane care of animals.

(2) **“Colony housing”** means housing two or more animals in the same primary enclosure or playgroups.

(3) **“Companion animal”** means any vertebrates commonly kept as domestic pets, excluding man, and those under the jurisdiction of the New Mexico department of game and fish and those under the jurisdiction of the New Mexico livestock board.

(4) **“Consulting pharmacist”** means a pharmacist whose services are

engaged on a routine basis by a euthanasia agency and who is responsible for the distribution, receipt and storage of drugs according to the state and federal regulations.

**D. Words starting with the letter D:**

(1) **“Dangerous drug”** means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, that because of a potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe, except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use cannot be prepared. **“Adequate directions for use”** means directions under which the layperson can use a drug or device safely and for the purposes for which it is intended.

(2) **“DEA”** means United States drug enforcement administration.

(3) **“Disposition”** means the adoption of an animal; return of an animal to the owner; return to field; release of an animal to a rescue organization; release of an animal to another animal shelter or to a rehabilitator licensed by the department of game and fish or the United States fish and wildlife service; or euthanasia of an animal.

**E. Words starting with E:**

(1) **“Emergency field euthanasia”** means the process defined by rule of the board to cause the death of an animal in an emergency situation when the safe and humane transport of the animal is not possible.

(2) **“Enrichment”** means improving the environment and behavioral care for confined animals.

(3) **“Euthanasia”** means to produce the humane death of an animal by standards deemed acceptable to the board as set forth in its rules.

(4) **“Euthanasia agency”** means a

facility licensed by the board that provides shelter to animals on a regular basis, including a humane society or a public or private shelter facility that temporarily houses stray, unwanted or injured animals, and that performs euthanasia.

(5) **“Euthanasia drugs”** means non-narcotic schedule II or schedule III substances and chemicals as set forth in the Controlled Substances Act, Section 30-31-1 NMSA 1978, that are used for the purposes of euthanasia and pre-euthanasia of animals.

(6) **“Euthanasia instructor”** means a euthanasia technician or a veterinarian certified by the board to instruct other individuals in euthanasia techniques.

(7) **“Euthanasia technician”** means a person licensed by the board to euthanize animals for a euthanasia agency.

(8) **“Exotic”**  
means any vertebrate animals, excluding man, wild animals, livestock and companion animals.

**F. Words starting with F: “FDA”** means United States food and drug administration.

**G. Words starting with G: “Group Housing”** means housing two or more animals in the same primary enclosure or playgroups.

**H. Words starting with H: “Humanely”** means actions marked by compassion, sympathy or consideration, especially for the prevention of the suffering of the animal.

**I. Words starting with I: “Isolation”** means to separate apart from others.

**J. Words starting with J: [Reserved]**

**K. Words starting with K: [Reserved]**

**L. Words starting with L: “Livestock”** means all domestic or domesticated animals that are used or raised on a farm or ranch and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and

farmed cervidae but does not include canine or feline animals.

**M. Words starting with M:** “May” means permissive and a possible means to best practices.

**N. Words starting with N:** **“Non-livestock”** means any animal not covered under the definition of livestock in Subsection L of Section 77-1B-2 NMSA 1978.

**O. Words starting with O:** [RESERVED]

**P. Words starting with P:**

**(1) “Personal protective equipment”** means items such as gloves, eye protection, gowns, and boots that protect a person from exposure to chemical or biological agents.

**(2) “Population management”** means a proactive process of planning, ongoing daily evaluations and responses to changing conditions as an organization cares for multiple animals, based on that organization’s capacity for care and statistical data.

**(3) “Potable water”** means clean, fresh water that is suitable for drinking.

**(4) “Primary enclosure”** means an animal enclosure in which the animal normally eats, eliminates, rests, and sleeps.

**Q. Words starting with Q:** **“Quarantine”** means restriction of activity, enforced isolation. As defined by Subsection Q of Section 7.4.2.7 NMAC quarantine means the strict containment of all animals specified in the order of the district health officer upon the private premises of the owner, or under restraint by leash, or within a closed cage or paddock and shall include other measures ordered by the district health officer to control the spread of rabies.

**R. Words starting with R:** **“Rescue organization”** means an organization that rescues animals and is not involved in the breeding of animals.

**S. Words starting with S:**

**(1) “Sharps”** means any discarded article that may cause punctures or cuts. Such wastes may include, but are not limited to needles, scalpel blades, glass slides, glassware, suture needles and trocars.

**(2) “Spot-cleaning”** means using cleaning solution and a paper towel or rag to remove any smudges or contaminants in lieu of total disinfection.

**(3) “Supervising veterinarian”** means a person who is a New Mexico-licensed veterinarian, who holds both a valid New Mexico controlled substance license and a valid federal drug enforcement agency license and who approves the drug protocols and the procurement and administration of all pharmaceuticals at a euthanasia agency.

**T. Words starting with T:** [RESERVED]

**U. Words starting with U:** [RESERVED]

**V. Words starting with V:**

**(1) “Ventilation”** means the circulation of air; a system or means of providing fresh air.

**(2) “Veterinarian”** means a person who is licensed as a doctor of veterinary medicine by the board of veterinary medicine pursuant to the Veterinary Practice Act, Section 61-14-1 et. seq. NMSA 1978.

**(3) “Veterinary facility”** means any building, mobile unit, vehicle or other location where services included within the practice of veterinary medicine are provided.

**W. Words starting with W:** **“Wild animal”** means any vertebrate animals under the jurisdiction of the New Mexico game and fish department.

**X. Words starting with X:** [Reserved]

**Y. Words starting with Y:** [Reserved]

**Z. Words starting with Z:** [Reserved] [16.24.7.7 NMAC - N, 5/25/2021; A, 11/1/2021]

**16.24.7.8 SHELTERING CAPACITY STANDARDS:**

**A.** The delivery of sheltering services shall be provided in a competent and humane matter.

**B.** Sheltering services shall be performed in a manner ensuring the health and well-being of animals while in the care of sheltering providers. The recommended standard of care is [a minimum of] 15 minutes per animal per day.

**C.** Sheltering providers shall practice active population management within the balance of decisions and practices that support the overall population of the shelter. [16.24.7.8 NMAC - N, 5/25/2021; A, 11/1/2021]

**16.24.7.11 ANIMAL ENCLOSURE AND HOUSING STANDARDS:**

**A.** General indoor enclosures.

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

- (a)** Turn freely.
- (b)** Easily stand.
- (c)** Sit.
- (d)** Stretch.
- (e)** Move their head without touching the top or sides of the enclosure.
- (f)** Lie in a comfortable position with limbs extended.

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

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

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

**(3)** Animals housed shall be confined to a primary enclosure at all times unless under the

direct supervision of shelter personnel or a designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Floors of outdoor enclosures may be constructed of gravel, sand or soil; a solid material such as concrete

is preferable. It is not possible to sanitize or disinfect gravel, sand or soil.

C. Enclosure Requirements for Cats

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

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

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

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

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

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

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

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

(4) Fencing or other materials that allow for airflow may be used, horizontally and vertically, above the solid walls

providing a protective barrier at least six feet high between runs to prevent dogs from jumping over.

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

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

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

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

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

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

(a) Wild birds. The U.S. fish and wildlife service shall be contacted.

(b) For any other wild animals, N.M. department of game and fish shall be contacted.

**F. Foster housing standards.**

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

(2) Guidelines addressing the following may be established:

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

(b) Maximum number of animals allowed.

(c) Housing and care standards.

(d) Maximum length of foster stay.

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

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

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

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

**G. Colony/group housing standards - Dogs.** Dogs housed in the same primary enclosure may be maintained in compatible groups with the following restrictions:

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

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

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

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

(5) Nursing mothers and their puppies may be removed from other animals. Removal will allow privacy, protection from unwanted intrusion and noise, alleviates fear/aggression,

and to promote general well-being.

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

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

**H. Colony/group housing standards – Cats.** When housing cats in colony rooms, the following guidelines may be followed:

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

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

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

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

(5) One 12 inch by eight inch cat litter pan for every three cats or five kittens may be provided.

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

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

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

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

[16.24.7.11 NMAC - N, 5/25/2021; A, 11/1/2021]

**16.24.7.14 DISEASE CONTROL, HEALTH AND VETERINARY CARE STANDARDS:**

- A. No animal shall be allowed to suffer due to lack of veterinary care.
- B. Shelters shall not fail to provide treatment for pain.
- C. Shelters shall ensure compliance with all federal, state and local laws concerning reportable diseases.
- D. Animals may be examined for injury and signs of disease at the time of impound under the guidance of a veterinarian, if possible, and treated immediately if animal is in pain or distress. If injured or sick animals cannot be provided veterinary care in a timely manner to stop their pain and suffering, the animal shall be humanely euthanized or immediately transferred to another facility where veterinary care can be timely provided.
- E. Common signs of illness, injury or parasitic infestation in dogs and cats that warrant veterinary care:
  - (1) Eyes are watery, appear swollen or show discharge.
  - (2) Ears are red or inflamed, show discharge or have a foul odor.
  - (3) Nose shows mucous, blood or pus discharge, or is crusty, congested or blocked.
  - (4) Gums are swollen or inflamed, teeth are loose or brown, or mouth has a foul odor.
  - (5) Animal is sneezing, coughing or wheezing.
  - (6) Animal has fleas or ticks, skin shows swelling or lesions.
  - (7) Animal limps or does not place weight on a limb.
  - (8) Animal is thin or obese.
  - (9) Animal has wounds, abscesses, cuts, or abrasions.
  - (10) Body temperature is abnormal.

(11) Animal is vomiting or has diarrhea.

- F. Shelter may have a trained and experienced staff member, a veterinary technician or a veterinarian available to check animals and to provide care. Symptoms of possible illness shall be noted, recorded and brought to a supervisor's attention immediately.
- G. Animals may be observed daily for signs of disease or distress. An animal suspected of having an infectious disease may be physically separated from other susceptible animals until the animal is determined to be non-infectious.
- H. A system may be in place to care for injured and sick animals brought to the shelter after normal working hours. Shelters may enter into a written contract with a local veterinarian to be available on call for treatment after hours.
- I. Animals with obvious signs of serious disease, injury or distress that cannot be addressed shall be humanely euthanized or be immediately transferred to another facility where veterinary care can be timely provided shall be humanely euthanized.
- J. For humane reasons, it may be necessary to euthanize an animal despite the holding time requirements not having been met. An animal shall not be allowed to suffer while in the shelter's care.
- K. Dogs and cats may be dipped or sprayed, top spotted or given oral treatment for fleas, ticks or internal parasites, as necessary. Methods shall be used according to the season, region of state and according to manufacturer's instructions concerning treatment strengths depending on size, age or health of animal.

[16.24.7.14 NMAC - N, 5/25/2021; A, 11/1/2021]

**End of Adopted Rules**

## Other Material Related to Administrative Law

**GOVERNOR,  
OFFICE OF THE**

**EXECUTIVE ORDER 2021-057**

**SECOND AMENDED  
ORDER REQUIRING STATE  
EMPLOYEES  
TO COMPLY WITH  
CERTAIN PUBLIC HEALTH  
REQUIREMENTS**

**WHEREAS**, on January 30, 2020, the World Health Organization (“WHO”) announced the emergence of a novel Coronavirus Disease 2019 (“COVID-19”) that had not previously circulated in humans, but has been found to have adopted to humans such that it is contagious and easily spread from one person to another and one country to another;

**WHEREAS**, COVID-19 cases had been confirmed in New Mexico since March 11, 2020, when the New Mexico Department of Health confirmed the first cases of individuals infected with COVID-19 in New Mexico and additional cases have been confirmed each day since then;

**WHEREAS**, on March 11, 2020, because of the spread of COVID-19, I issued Executive Order 2020-004 declaring a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked my authority under the All Hazards Emergency Management Act;

**WHEREAS**, I have renewed the declaration of a Public Health Emergency through August 16, 2021;

**WHEREAS**, the currently available COVID-19 vaccines are a safe and effective way of preventing serious illness or death;

**WHEREAS**, the refusal to receive the COVID-19 vaccine not only endangers the individual but the entire community, and further jeopardizes the progress the State

has made against the pandemic by allowing the virus to transmit more freely and mutate into more transmissible or deadly variants;

**WHEREAS**, one such highly-transmissible variant, B.1.617.2, commonly known as the Delta variant, now accounts for the majority of new infections;

**WHEREAS**, the State has recorded a significant increase in new COVID-19 cases in recent weeks, with cases expected to rise even further in the Fall and Winter months;

**WHEREAS**, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, and wellbeing of all New Mexicans;

**WHEREAS**, state employees who become ill cannot adequately perform their duties, which disrupts the orderly operation of State government; and

**WHEREAS**, regular testing, masks, and social-distancing remain some of the most effective ways to minimize the spread of COVID-19.

**NOW THEREFORE, I**, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby **ORDER** and **DIRECT** as follows:

1. State employees shall comply with the provisions regarding the use of masks contained in the operative Public Health Order issued by the Secretary of the Department of Health during the course and scope of their employment.

2. State employees who are not fully vaccinated against COVID-19, as defined by the Centers for Disease Control and Prevention, and willing and able to provide adequate proof or such vaccination shall:

A. Provide adequate proof that the employee has tested negative for COVID-19 on a weekly basis; and

B. Wear a mask or multilayer face covering at all times during the course and scope of their employment except when eating or drinking or when the employee provides adequate proof that he or she has been instructed otherwise by a bona fide healthcare provider.

C. Any state employee who is not fully vaccinated and who tests positive for COVID-19 may return to work following the completion of any mandatory isolation period prescribed by the New Mexico Department of Health. A negative COVID-19 test result is not required to return to work, provided the employee completes the mandatory isolation period. All such employees who test positive for COVID-19 shall be exempt from the testing requirement in Paragraph 2(A) for a period of 90 days following the date of the employee’s positive COVID-19 result.

3. Employees who refuse to abide by the above requirements may be subject to disciplinary action, up to and including termination, in accordance with applicable law.

4. State agencies shall ensure, consistent with law, that any documentation related to vaccination status, healthcare directives, or test results are not disclosed to individuals other than those necessary to ensure compliance with this Order.

5. The New Mexico State Personnel Office shall provide agencies with guidance on the full implementation and administration this Order.

**I FURTHER ORDER** and **DIRECT** as follows:

1. This Order supersedes any previous orders, proclamations, policies or directives to the extent they are in conflict.

2. This Order shall take effect on October 15, 2021 and shall remain in effect until renewed, modified, or rescinded.



**ATTEST:  
DONE AT THE EXECUTIVE  
OFFICE  
THIS 15TH DAY OF OCTOBER  
2021**

**/ S /  
MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE**

**WITNESS MY HAND AND THE  
GREAT SEAL OF THE STATE  
OF NEW MEXICO**

**/ S /  
MICHELLE LUJAN GRISHAM  
GOVERNOR**

**GOVERNOR,  
OFFICE OF THE**

**EXECUTIVE ORDER 2021-058**

**RENEWING THE STATE  
OF PUBLIC HEALTH  
EMERGENCY INITIALLY  
DECLARED IN EXECUTIVE  
ORDER 2020-004, OTHER  
POWERS INVOKED IN  
THAT ORDER, AND ALL  
OTHER ORDERS AND  
DIRECTIVES CONTAINED IN  
EXECUTIVE ORDERS TIED  
TO THE ONGOING PUBLIC  
HEALTH EMERGENCY**

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China, and reported to the World Health Organization (“WHO”). The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease which has been referred to as “COVID-19.”

By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1,000 cases in the United States, spread out over 39 states. The President of the United

States declared a national state of emergency for COVID-19 on March 13, 2020. As of October 14, 2021 the Centers for Disease Control and Prevention (“CDC”) reported over 44 million people have been infected in the United States, with over 700,000 related deaths, and the New Mexico Department of Health has reported 262,954 positive COVID-19 cases and 4,919 related deaths in New Mexico.

Public health organizations have implemented emergency measures intended to slow the spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly thereafter. All of our sister states subsequently declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19; many, if not most, have kept such states of emergency in place.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its impacts. I have been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19. Various state agencies have been at the forefront of our State’s response to COVID-19, particularly the New Mexico Department of Health. The hard work of a variety of state employees has made a difference in our fight against COVID-19. Due to the continued spread of COVID-19, it is necessary for all branches of State government to continue taking actions to minimize transmission of COVID-19 and to reduce its attendant physical and economic harms.

Therefore, for the reasons above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico,

hereby **ORDER** and **DIRECT**:

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-55, 2020-059, 2020-064, 2020-073, 2020-080, 2020-085, 2021-001, 2021-004, 2021-010, 2021-011, 2021-012, 2021-023, 2021-030, 2021-044, 2021-049 and 2021-054 shall be renewed and extended through October 15, 2021.

2. All other powers, directives, and orders invoked in Executive Order 2020-004 remain in effect.

3. All other Executive Orders with a duration that was tied to the COVID-19 public health emergency or that was not explicitly stated shall continue with the same effect, including any orders appropriating emergency funding as well as Executive Orders 2020-016, 2020-020, 2020-021, 2020-025, and 2020-039.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Order shall take effect on October 15, 2021 and shall remain in effect until November 12, 2021 unless renewed, modified, or until the Governor rescinds it.

**ATTEST:  
DONE AT THE EXECUTIVE  
OFFICE  
THIS 15TH DAY OF OCTOBER  
2021**

**/ S /  
MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE**

**WITNESS MY HAND AND THE  
GREAT SEAL OF THE STATE  
OF NEW MEXICO**

**/ S /  
MICHELLE LUJAN GRISHAM  
GOVERNOR**

**GOVERNOR,  
OFFICE OF THE**

**EXECUTIVE ORDER 2021-059**

**AUTHORIZING THE  
SECRETARY OF THE  
DEPARTMENT OF HEALTH TO  
ESTABLISH CREDENTIALING  
AND APPROVAL OF STATE  
CREDENTIALLED  
PHYSICIANS AND  
CREDENTIALLED ADVANCED  
PRACTICE CLINICIANS IN  
RESPONSE TO MEDICAL  
STAFF SHORTAGES**

**WHEREAS**, on January 30, 2020, the World Health Organization announced the emergence of a novel Coronavirus Disease 2019 (“COVID-19”) that had not previously circulated in humans, but has been found to have adopted to humans such that it is contagious and easily spread from one person to another and one country to another;

**WHEREAS**, COVID-19 has been confirmed in New Mexico since March 11, 2020, when the New Mexico Department of Health confirmed the first cases of individuals infected with COVID-19 in New Mexico and additional cases have been confirmed each day since then;

**WHEREAS**, on March 11, 2020, because of the spread of COVID-19, I issued Executive Order 2020-004 declaring that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked my authority under the All Hazards Emergency Management Act;

**WHEREAS**, I have renewed and extended the public health emergency in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-55, 2020-059, 2020-064, 2020-073, 2020-080, 2020-085, 2021-001, 2021-004, 2021-010, 2021-011, 2021-012, 2020-023, 2021-030, 2021-044, 2021-049, 2021-054, and 2021-058;

**WHEREAS**, the public health emergency declaration is likely

to be extended and renewed on an ongoing basis for the foreseeable future;

**WHEREAS**, surges in cases of COVID-19 and deaths related to COVID-19 continue to proliferate due to more transmissible and deadly variants of the virus;

**WHEREAS**, as of October 15, 2021, the New Mexico Department of Health reported 263,755 confirmed cases of COVID-19 in New Mexico and 4,930 related deaths;

**WHEREAS**, the limitations posed on non-medically necessary procedures in the past and the hesitance of the general public to seek preventative and routine medical care during the pandemic has resulted in a significant subsequent increase in non-COVID related patients seeking medical care, forcing acute care facilities in the state to expand far beyond normal capacity;

**WHEREAS**, New Mexico is in the midst of an urgent medical crisis which has strained the ability of both institutional and individual providers to deliver the quality of care New Mexicans due to the ongoing COVID-19 pandemic;

**WHEREAS**, the State is now experiencing a drastic shortage in the number of acute care medical providers available as a result of high patient censuses and fatigue;

**WHEREAS**, this crisis and shortage of medical professionals has created extraordinary medical circumstances, and it will require providers to change their normal perspective to a crisis perspective;

**WHEREAS**, many providers may need to provide care within the scope of practice of their license but beyond their normal scope or practice to assist patients in acute care hospital facilities throughout the state;

**WHEREAS**, due to the nature of the public health emergency and the impact on medical resources, the State has convened a Medical Advisory Team of experts in health, ethics, and law to, inter alia, address best practices in the treatment and care of New Mexicans suffering from COVID-19;

**WHEREAS**, the Medical Advisory Team notified the Secretary of Health on October 15, 2021, that acute care medical staffing conditions for the possible implementation of “crisis standards of care” are present within the State, and that it is appropriate to apply crisis standards of care in some acute care hospital settings;

**WHEREAS**, if crisis standards of care are implemented, healthcare professionals may be asked to assist in areas outside their scope of practice to provide medical care in an acute care hospital setting, or as a triage officer or member of a triage board with respect to the treatment decisions related to the care of a patient; and

**WHEREAS**, for these reasons, I find that it is in the public interest to invoke certain provisions of All Hazards Emergency Management Act and Emergency Licensing Act to ensure physicians will not hesitate to respond and provide necessary assistance if crisis standards of care are brought into effect.

**NOW, THEREFORE, I**, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution, the All Hazards Emergency Management Act, and the laws of the State of New Mexico do hereby **ORDER** and **DIRECT** as follows:

1. Pursuant to the authority vested in me by NMSA 1978, Section 12-10-4 (2007), and in accordance with NMSA 1978, Sections 12-10-4, -11, and -13 (2007), the New Mexico Department of Health is hereby directed to undertake all steps necessary to credential physicians and other licensed healthcare providers with authority under New Mexico law to provide medical care independently and not under the supervision of a physician (i.e., “advanced practice clinicians”) who are providing care to a person in an acute care hospital setting, or when the physician serves as a triage officer or member of a triage board with respect to the treatment decisions related to the

care of a person. Such physicians shall be identified as “Credentialed Physicians.” Such advanced practice clinicians shall be identified as “Credentialed Advanced Practice Clinicians.” For purposes of this Order, “physicians” include medical doctors and doctors of osteopathic medicine. For purposes of this Order, “advanced practice clinicians” include certified nurse practitioners (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978, § 61-3-23.2 (2014)), certified registered nurse anesthetists (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978, § 61-3-23.3 (2014)), clinical nurse specialists (licensed by the Board of Nursing in accordance with NMSA 1978, § 61-3-23.4 (2014)), and certified nurse-midwives (licensed by the Board of Nursing pursuant to the Nursing Practice Act and licensed by the Department of Health as a certified nurse-midwife pursuant to NMSA 1978, § 24-1-3(V) (2017) and NMAC 16.11.2).

2. The Secretary of the Department of Health (the “Secretary”) shall designate physicians as “Credentialed Physicians” and advanced practice clinicians as “Credentialed Advanced Practice Clinicians” based upon findings that: (1) the physician/advanced practice clinician services will materially further the State interest in public health and welfare and (2) the physician/advanced practice clinician possesses the requisite skills and background necessary to provide care during the pendency of the existing health emergency. The Secretary may weigh and consider any additional factors the Secretary deems appropriate given the operative facts and circumstances.

3. “Credentialed Physicians” and “Credentialed Advanced Practice Clinicians” shall only be considered public employees for purposes of the Tort Claims Act to the limited extent and in the limited circumstance in which such Credentialed Practitioners provide medical care outside of their non11al and privileged scope of practice, and/

or are serving as a triage officer or triage board member, in a hospital acute care setting. See NMSA 1978, §§ 41-4-1 to -27; §§ 12-10-4, - 11, -13.

4. The directives contained in paragraphs 1-3 within this Order become effective and may be invoked only after the Secretary, upon consultation with the New Mexico Medical Advisory Team, declares that it is necessary for the State to recognize that conditions requiring the potential implementation of crisis-level standards of care are present.

**I FURTHER ORDER and DIRECT as follows:**

1. This Order supersedes any previous orders, proclamations, policies, or directives to the extent they are in conflict.

2. This Order shall take effect on October 18, 202 1, and shall remain in effect until November 17, 2021.

**ATTEST:  
DONE AT THE EXECUTIVE OFFICE  
THIS 18TH DAY OF OCTOBER 2021**

**/ S /  
MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE**

**WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO**

**/ S /  
MICHELLE LUJAN GRISHAM  
GOVERNOR**

**HEALTH,  
DEPARTMENT OF  
PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT  
OF HEALTH  
ACTING SECRETARY DAVID  
R. SCRASE, M.D.**

**October 15, 2021**

**Public Health Emergency Order  
Clarifying that Current Guidance**

**Documents, Advisories, and  
Emergency Public Health Orders  
Remain  
in Effect; and Amending Prior  
Public Health Emergency Orders  
to  
Impose Certain Public Health  
Measures**

**PREFACE**

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). While vaccines are the most effective method to prevent the spread of COVID-19, masks, social distancing and self-isolation measures continue to be necessary to protect New Mexicans who are ineligible to receive a COVID-19 vaccine or who choose not to receive a vaccine. All New Mexicans should continue to adhere to social distancing protocols when required to protect our State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans continue social distancing measures.

It is hereby **ORDERED** that

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. December 15, 2020 Amended Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition COVID- 19 Test Results to the

New Mexico Epidemiology and Response Division;

B.

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

C. April

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

D. February

26, 2021 Public Health Emergency Order Implementing Administration Requirements for all COVID-19 Vaccine Providers and Requiring Accurate Information be Provided by Individuals Registering to Receive the COVID-19 Vaccine; and

E. September

15, 2021 Amended Public Health Emergency Order Requiring All School Workers Comply with Certain Health Requirements and Requiring Congregate Care Facility Workers, Hospital Workers, and Employees of the Office of the Governor Be Fully Vaccinated.

3. The September

15, 2021 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Impose Certain Public Health Measures is hereby amended as follows:

**ORDER**

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

**WHEREAS**, Governor Michelle Lujan Grisham has renewed the declaration of a

Public Health Emergency through November 12, 2021;

**WHEREAS**, confirmed cases in the United States have risen to more than 44 million and confirmed COVID-19 infections in New Mexico have risen to over 262,000;

**WHEREAS**, COVID-19 is a deadly virus and has taken the lives of over 700,000 Americans and over 4,900 New Mexicans;

**WHEREAS**, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

**WHEREAS**, vaccination, social distancing and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate the potentially devastating impact of this pandemic in New Mexico; and

**WHEREAS**, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

**NOW, THEREFORE**, I, David R. Scrase, M.D., Acting Secretary of the New

Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in NMSA 1978, Section 24-1-2(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) Unless a healthcare provider instructs otherwise, all individuals ages 2 years and older shall wear a mask or multilayer cloth face covering in all indoor public settings except when eating or drinking. Nothing in this Order shall be construed as prohibiting any business, house of worship, non-profit entity, or other entity from imposing more stringent requirements.

(2) Any business, establishment, or non-profit (other than those which are a healthcare operation, utility, or indigent care services) which members of the public regularly visit must report to the New Mexico Environment Department when there is an occurrence of a rapid response. The New Mexico Environment Department shall monitor when an entity has four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Businesses, establishments, or non-profits with four or more rapid responses shall not be required to cease operations. However, the rapid responses must be reported to the Environment Department so that

the public may be made aware of the positive cases.

(3) All businesses, establishments, and non-profit entities must adhere to the pertinent COVID-Safe Practices

(4) Private educational institutions serving children and young adults from pre-Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in person instruction contained in the New Mexico’s Public Education Department’s “Reentry Guidance” and “COVID-19 Response Toolkit for New Mexico’s Public Schools”, available at <https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>, and may operate up to maximum capacity. Private educational institutions shall follow the reporting, testing, and closure requirements set forth by the Public Education Department in the Reentry Guidance and COVID-19 Response Toolkit for New Mexico’s Public Elementary Schools.

**I FURTHER DIRECT** as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect immediately and remain in effect through November 12, 2021.

(5) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico

Department of Homeland Security and Emergency Management, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(6) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under NMSA 1978, Section 12-10A-19.

**ATTEST:**  
**DONE AT THE EXECUTIVE OFFICE**  
**THIS 15TH DAY OF OCTOBER 2021**  
 / S /  
**MAGGIE TOULOUSE OLIVER**  
**SECRETARY OF STATE**

**WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO**

/ S /  
**DAVID R. SCRASE, M.D.**  
**ACTING SECRETARY OF THE NEW MEXICO DEPARTMENT OF HEALTH**

**HEALTH,**  
**DEPARTMENT OF**  
**PUBLIC HEALTH ORDER**  
**NEW MEXICO DEPARTMENT OF HEALTH**  
**ACTING SECRETARY DR.**  
**DAVID R. SCRASE, M.D.**

**OCTOBER 18, 2020**

**Public Health Emergency Order Regarding Crisis Care and Establishing the Credentialing and Approval of State Credentialed Physicians and Credentialed Advanced Practice Clinicians in Response to Medical Staff Shortages**

**ORDER**

**WHEREAS,** COVID-19 has been confirmed in New Mexico since March 11, 2020, when the New Mexico Department of Health (“NMDOH” or the “Department”) confirmed the first cases of individuals infected with COVID-19 in New Mexico and additional cases have been confirmed each day since then;

**WHEREAS,** on March 11, 2020, because of the spread of COVID-19, Michelle Lujan Grisham, the Governor of the State of New Mexico, issued Executive Order 2020-004 declaring that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

**WHEREAS,** the State issued a Public Health Order on December 9, 2020, activating Crisis Standards of Care in response to the overwhelming burden placed on medical institutions responding to the pandemic. Contemporaneously, the State also issued a Public Health Order temporarily limiting non-essential medical procedures to devote maximum resources towards intensive care units dealing with a surge in COVID-19 cases. These two Public Health Orders expired on January 5, 2021, and January 4, 2021, respectively;

**WHEREAS,** ongoing surges in COVID-19 cases and novel strains of the virus continue to stress the ability of both institutional and individual providers to deliver the quality of care New Mexicans ordinarily expect, thus causing an urgent medical crisis;

**WHEREAS,** the limitations posed on non-medically necessary procedures in the past and the hesitance of the general public to seek preventive and routine medical care during the pandemic has resulted in a significant

subsequent increase in non-COVID related patients seeking medical care, forcing every acute care facility in the State to expand far beyond normal capacity;

**WHEREAS**, the State is now experiencing a drastic shortage in the number of acute care medical workers available as a result of high patient censuses, fatigue, and higher wages being offered in other states;

**WHEREAS**, nurses in the State have been carrying unprecedented patient loads for the duration of the pandemic, forcing some nurses to retire or move away from the profession;

**WHEREAS**, this shortage of medical professionals not only threatens the State's immediate ability to respond to the pandemic, but also threatens medical care access in the State for many years to follow;

**WHEREAS**, the State is securing resources and funding from the Federal Emergency Management Agency to obtain contract nurses and other medical personnel to assist acute care hospitals throughout the State, but given that this personnel shortage is a national issue, few nurses and other medical professionals have been available to come to New Mexico;

**WHEREAS**, a host of modifications of normal medical practice will be necessitated to address the ongoing surge of both COVID-related and non-COVID related hospitalizations in the New Mexico and the attendant detrimental consequences to medical practice and medical service availability within the State;

**WHEREAS**, it is prudent and crucial to ensure that primary care and outpatient clinics throughout the state continue to operate to provide preventative and routine care to lower the number of

inpatient hospitalizations caused by delays in care;

**WHEREAS**, on October 18, 2021, Governor Michelle Lujan Grisham issued Executive Order 2021-059 ("EO 2021-059"), recognizing that crisis care standards may need to be implemented due to the shortage of acute care medical providers;

**WHEREAS**, EO 2021-059 orders and directs the New Mexico Department of Health to undertake all steps necessary to credential and approve certain physicians and other licensed healthcare providers as "Credentialed Physicians" and certain advance practice clinicians as "Credentialed Advanced Practice Clinicians" so that such individuals shall be considered public employees for purposes of the Tort Claims Act under the All Hazards Emergency Response Act;

**WHEREAS**, the Department of Health finds that it is necessary and appropriate under the current circumstances for certain physicians and other medical clinicians who evidence the meeting of certain qualifications to become approved to perform certain medical duties by the Cabinet Secretary and to become credentialed for the purpose of being deemed public employees for purposes of the New Mexico Tort Claims Act.

**WHEREAS**, on October 15, 2021, the New Mexico Medical Advisory Team notified the Secretary of Health that acute care medical staffing conditions for the possible implementation of "Crisis Care Standards" are present within the State and that it is appropriate to apply Crisis Care Standards in hospital settings; and

**WHEREAS**, during a declared Public Health Emergency, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Emergency Response Act to

"utilize, secure or evacuate health care facilities for public use." NMSA 1978, § 12-10A-6(A)(1). The Department of Health also possesses the legal authority under the Public Health Act to "respond to public health emergencies," "ensure the quality and accessibility of health care services and the provision of health care when health care is otherwise unavailable," "control and abate the causes of disease, especially epidemics," and "maintain and enforce rules for the control of conditions of public health importance." NMSA 1978, § 24-1-3.

**NOW, THEREFORE**, I, David R. Scrase, M.D., Acting Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to Executive Order 2021-059 under the full scope of her emergency powers under the All Hazard Emergency Management Act and the Emergency Licensing Act, do hereby **DECLARE** that it is necessary for the State to recognize that conditions requiring the potential implementation of crisis-level standards of care are present, and hereby **ORDER** and **DIRECT** as follows:

1, Prior to the implementation and application of any crisis care plans or standards, an acute care hospital facility must first (1) temporarily suspend any non-medically necessary procedures taking place within the facility, and (2) maintain compliance with all licensure requirements prescribed by NMDOH and Centers for Medicare and Medicaid Services ("CMS"). The Department shall provide information and training to acute care facilities regarding the effect of implementing crisis standards of care and the process for requesting any necessary licensure waivers from CMS.

2. For purposes of this Order, “medically necessary procedures” include those services which cannot be delayed without undue risk to the patient’s health, as determined by a qualified medical professional. Examples of criteria to consider in distinguishing between medical necessary and non-medically necessary procedures include: (a) threat to a patient’s life; (b) threat of permanent dysfunction of an extremity, including teeth, jaws and eyes; (c) risk of metastasis or progression of staging; (d) prenatal and postnatal care; and (e) any other factors that will conserve medical resources without creating undue risk of permanent harm to patients.

3. This Order’s guidance on medically necessary procedures is not meant to apply to (a) the provision of emergency medical care or any actions necessary to provide treatment to patients with emergency or urgent medical needs; and (b) any surgery that if not performed would result in a serious condition of a patient worsening (e.g., removing a cancerous tumor or a surgery intended to manage an infection).

4. This Order is not intended to and shall not direct or authorize a facility or individual physician to change their standard of care. Each acute care facility, facility triage board, and individual physician shall remain responsible for applying the standard of care applicable in their individual circumstance.

**I FURTHER DIRECT**

that the credentialing and approval of providers credentialed under this Order shall be conducted as follows:

**1. Definitions**

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

(a) “Applicant”

means a natural person who is licensed as a medical practitioner and who applies for credentialing and approval as a Credentialed Physician or an Advanced Practice Clinician.

(b) “Application” means an application for credentialing and approval of a person to be a Credentialed Physician or Advanced Practice Clinician that is completed utilizing the Department-approved application form.

(c) “Application form” means the form available online at [www.mnhealth.org](http://www.mnhealth.org).

(d) “Credentialed Advanced Practice Clinician” means a natural person who is licensed as a healthcare provider, who is credentialed and approved by the New Mexico Department of Health for the purpose of deeming the person to be a public employee pursuant to the Emergency Licensing Act and the New Mexico Tort Claims Act. Credentialed Advanced Practice Clinicians are limited to the following:

(i) certified nurse practitioners (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978, § 61-3-23.2);

ii) certified registered nurse anesthetists (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978, § 61-3-23.3);

iii) clinical nurse specialists (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978, § 61-3-23.4); and

iv) certified nurse-midwives (licensed by the New Mexico Board of Nursing pursuant to the Nursing Practice Act and licensed by the Department of Health as a certified nurse-midwife pursuant to NMSA 1978, § 24-1-3(R) and NMAC 16.11.2).

(e) “Credentialed Physician” means a medical doctor or doctor of osteopathic medicine who holds authority under New Mexico law to provide medical care,

who is credentialed and approved by the New Mexico Department of Health for the purpose of deeming the person to be a public employee pursuant to the Emergency Licensing Act and the New Mexico Tort Claims Act.

(f) “Credentialed Practitioner” means a Credentialed Physician or an Advanced Practice Clinician.

(g) “Facility” means the acute care hospital facility or institution at which an applicant intends to provide medical services, whether for consideration or on a voluntary basis.

(h) “Licensed” means licensed, certified, or permitted to provide medical care to a person by an authorized governmental licensing authority in the State of New Mexico.

**2. Designation of Credentialed Practitioners; Effect**

The Secretary of Health shall designate a physician as a Credentialed Physician, or a clinician as a Credentialed Advanced Practice Clinician, based upon findings that: (1) the physician/advanced practice clinician services will materially further the State’s interest in public health and welfare, and (2) the physician/advanced practice clinician possesses the requisite skills and background necessary to provide care during the pendency of the existing health emergency. The Secretary may weigh and consider any additional factors the Secretary deems appropriate given the operative facts and circumstances. The Secretary shall implement an application process, as more set forth more fully herein, for the purpose of identifying eligible medical practitioners and assessing their scopes of current practice and clinical services proposed for approval by the Department.

**Credentialed Physicians and Credentialed Advanced Practice Clinicians shall only be considered public employees for**

**purposes of the Tort Claims Act to the limited extent and in the limited circumstance in which such Credentialed Practitioners provide medical care outside of their normal and privileged scope of practice, and/or are serving as a triage officer or triage board member, in a hospital acute care setting.** NMSA 1978, §§ 41-4-1 to -27; NMSA 1978, §§ 12-10-4, -11, -13.

**(a) Application Process**

An applicant or a facility affiliated with an applicant shall submit a completed application to the e-mail address that is identified on the application form. The Secretary or his or her designee(s) shall review the application and render a determination of whether to grant or deny the application in whole or in part based on operative facts and circumstances, including, but not limited to, the nature of the applicant’s current primary scope of medical practice, the nature of the applicant’s proposed scope of practice, the extent of deviation between the applicant’s primary scope of practice and proposed scope of practice, and other factors as the Secretary may deem appropriate.

**(b) Content of Application**

The information required to be submitted in the application shall include, but need not be limited to, the following:

1. Identity and contact information of the applicant;
2. Professional qualifications of the applicant, including the applicant’s professional degree;
3. Main location of the facility;
4. Main scope of current practice;
5. Proposed practice locations, including name and contact information for associated facilities;
6. Proposed scope of clinical services;

7. Request for designation as a Credentialed Physician or Credentialed Advanced Practice Clinician;

8. Name and signature of applicant; and

9. Proof of: agreement between the applicant and the associated facility, that the facility is willing to permit the performance of the identified proposed clinical services on the facility’s premises, and that the applicant is willing to perform such services.

**(c) Disclaimer**

The Secretary or his or her designee may rescind approval of an application upon notice to an affected applicant and associated facility for cause, which includes, but is not limited to, falsification of any information included within the application or any other information or material submitted to the Department. A previously issued approval of an application shall be deemed automatically rescinded upon the suspension or revocation of an applicant’s medical license by the applicant’s professional licensing authority.

A Credentialed Practitioner and an associated facility shall at all times adhere to applicable ethical standards.

**I FURTHER DIRECT** as follows:

1. This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

2. This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.

3. This Order shall take effect on October 18, 2021 and remain in effect through November 17, 2021.

**THIS ORDER** supersedes any other previous orders, proclamations, or directives in conflict. This Order shall take effect

immediately and shall remain in effect for the duration indicated in the Order unless otherwise rescinded.

**ATTEST:**

**DONE AT THE EXECUTIVE OFFICE THIS 18TH DAY OF OCTOBER 2021**

/ S /

**MAGGIE TOULOUSE OLIVER SECRETARY OF STATE**

**WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO**

/ S /

**DAVID R. SCRASE, M.D. ACTING SECRETARY OF THE NEW MEXICO DEPARTMENT OF HEALTH**

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



# 2021 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXXII, Issues 1-24

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

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

The New Mexico Register is available free online at: <http://www.srca.nm.gov/new-mexico-register/>. For further information, call 505-476-7941.

# 2022 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXXIII, Issues 1-24

<b>Issue</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
<b>Issue 1</b>	<b>January 4</b>	<b>January 11</b>
<b>Issue 2</b>	<b>January 13</b>	<b>January 25</b>
<b>Issue 3</b>	<b>January 27</b>	<b>February 8</b>
<b>Issue 4</b>	<b>February 10</b>	<b>February 22</b>
<b>Issue 5</b>	<b>February 24</b>	<b>March 8</b>
<b>Issue 6</b>	<b>March 10</b>	<b>March 22</b>
<b>Issue 7</b>	<b>March 24</b>	<b>April 5</b>
<b>Issue 8</b>	<b>April 7</b>	<b>April 19</b>
<b>Issue 9</b>	<b>April 21</b>	<b>May 3</b>
<b>Issue 10</b>	<b>May 5</b>	<b>May 24</b>
<b>Issue 11</b>	<b>May 26</b>	<b>June 7</b>
<b>Issue 12</b>	<b>June 9</b>	<b>June 21</b>
<b>Issue 13</b>	<b>July 1</b>	<b>July 12</b>
<b>Issue 14</b>	<b>July 14</b>	<b>July 26</b>
<b>Issue 15</b>	<b>July 28</b>	<b>August 9</b>
<b>Issue 16</b>	<b>August 11</b>	<b>August 23</b>
<b>Issue 17</b>	<b>August 25</b>	<b>September 13</b>
<b>Issue 18</b>	<b>September 15</b>	<b>September 27</b>
<b>Issue 19</b>	<b>September 29</b>	<b>October 11</b>
<b>Issue 20</b>	<b>October 13</b>	<b>October 25</b>
<b>Issue 21</b>	<b>October 27</b>	<b>November 8</b>
<b>Issue 22</b>	<b>November 17</b>	<b>November 29</b>
<b>Issue 23</b>	<b>December 1</b>	<b>December 13</b>
<b>Issue 24</b>	<b>December 15</b>	<b>December 27</b>

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

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