

New Mexico Register

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

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New Mexico Register

Volume XXXII, Issue 24

December 28, 2021

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Notices of Rulemaking and Proposed Rules

ENVIRONMENT DEPARTMENT

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.3.20 NMAC OF THE RADIATION PROTECTION REGULATIONS EIB 21-56

The Environmental Improvement Board ("EIB") will hold a public hearing March 25, 2022 beginning at 9:00 a.m.MDT via internet (Zoom) and via telephone.

If you would like to join the video conference online, go to:
<https://zoom.us/j/97661947432?pwd=N0xqMFIFcVplNk11RHJPOUgwcUNHQQT09>

When prompted, the meeting ID number is: 976 6194 7432

The password is: 491774

If you would like to join the meeting thru a telephone, please call:

+12532158782,,97661947432#,,,,*49 1774# US (Tacoma)

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+1 346 248 7799 US (Houston)

+1 408 638 0968 US (San Jose)

+1 669 900 6833 US (San Jose)

+1 646 876 9923 US (New York)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

Meeting ID: 976 6194 7432

Passcode: 491774

Find your local number: <https://zoom.us/j/97661947432>

Comments will be received via electronic mail through the conclusion of the hearing. To comment via electronic mail, send correspondence to: Pamela.Jones@state.nm.us.

The hearing is being held via internet, email and telephonic means due to

the concerns surrounding the Novel Coronavirus ("COVID-19") and in accord with Governor Michelle Lujan Grisham's Declaration of a Public Health Emergency in Executive Order 2020-004, and subsequent executive orders; various Public Health Emergency Orders limiting mass gatherings due to COVID-19; and the Office of the Attorney General's Open Government Division's Guidance to Public Entities Regarding the Open Meetings Act and Inspection of Public Records Act Compliance During COVID-19 State of Emergency.

At the public hearing the EIB will consider proposed amendments to 20.3.20 NMAC "Medical Imaging and Radiation Therapy Licensure", as proposed in the Petition to Amend 20.3.20 NMAC of the Radiation Protection Regulations and Request for Hearing ("Petition"), docket number EIB 21-56. The Petition has been filed by the Radiation Control Bureau ("Bureau") of the New Mexico Environment Department ("NMED"). The proposed amendments consist of the addition of a Computed Tomography ("CT") license and clarification of the requirements and scope of practice for the Provisional License. The Bureau will also take this opportunity to clarify existing requirements and fix minor and typographical errors. The addition of a CT license will maximize the protection practicable for the citizens of New Mexico from ionizing radiation in the practice of CT imaging by establishing requirements for appropriate education and training of these individuals operating CT medical equipment. Please note that formatting and minor technical changes in the regulations other than those proposed by NMED may be considered at the hearing. In addition, the EIB may make other changes as necessary to accomplish the purpose of protecting public health and safety in response to public comments and evidence presented at the hearing. The administration and enforcement

of the Medical Imaging and Radiation Therapy Health and Safety Act, NMSA 1978, Sections 61-14E-1 to -12 (1983, as amended through 2020) ("Act") and corresponding regulations is vested in NMED. NMSA 1978, § 61-14E-6. Pursuant to NMSA 1978, Section 74-1-7(A)(12) (2000), NMED has the authority to develop and enforce rules and standards for medical radiation, health and safety certification and standards for radiologic technologists.

Pursuant to NMSA 1978, Section 61-14E-5 (2009), the proposed amendments were provided to the Medical Imaging and Radiation Therapy Advisory Council ("MIRTAC") at its December 20, 2019 meeting. The MIRTAC has consented to the amendments. Finally, the EIB has the authority to amend the Radiation Protection Regulations, 20.3.20 NMAC, as provided by Section 61-14E-5 and NMSA 1978, Section 74-1-8(A)(12) (2020).

A copy of the proposed amendments is posted on the EIB website as attachments to the Petition under docket number EIB 21-56. <https://www.env.nm.gov/opf/docketed-matters/>

To obtain a physical or electronic copy of the proposed amendments contact: Pamela Jones, Board Administrator, P.O. Box 5469, 1190 St. Francis Drive, Suite S-2103, Santa Fe, New Mexico, 87502; Pamela.Jones@state.nm.us; (505) 660-4305. In your correspondence reference docket number EIB 21-56.

The hearing will be conducted in accordance with the EIB's Rulemaking Procedures found at 20.1.1 NMAC, the Environmental Improvement Act, NMSA 1978, Section 74-1-9 (1985), and other applicable procedures and procedural orders. Written comments regarding the proposed amendments will be posted on the docket page at <https://www.env.nm.gov/opf/docketed-matters/> and may also

be obtained from Pamela Jones, EIB Administrator, at the contact information listed above.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing via electronic mail to: Pamela.Jones@state.nm.us.

Persons wishing to present technical testimony must file with the EIB a written notice of intent to do so. Notices of intent for the hearing must be received by the EIB by 5:00 p.m. MST on March 4, 2022, and should reference the name of the regulations, the date of the hearing (March 25, 2022), and docket number EIB 21-56.

The requirements for a notice of intent can be found in 20.1.1.302 NMAC.

The notice of intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;
- (3) if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present;
- (4) include a copy of the direct testimony of each technical witness in narrative form;
- (5) include the text of any recommended modifications to the proposed regulatory change; and
- (6) list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

If you are an individual with a

disability and you require assistance or an auxiliary aid, e.g., sign language interpreter, to participate in any aspect of this process, please contact Pamela Jones, Board Administrator, at least 14 days prior to the hearing date at P.O. Box 5469, 1190 St. Francis Drive, Suite S-2103, Santa Fe, New Mexico, 87502, telephone (505) 660-4305 or email Pamela.Jones@state.nm.us. (TDD or TTY) users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

The EIB may make a decision on the proposed regulatory changes at the conclusion of the hearing or may convene a meeting after the hearing to consider action on the proposal.

STATEMENT OF NON-DISCRIMINATION

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations.

NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact:

Kathryn Becker, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us.

If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

AVISO DE LA JUNTA DE MEJORA AMBIENTAL DE NUEVO MÉXICO DE UNA AUDIENCIA PÚBLICA PARA CONSIDERAR LAS ENMIENDAS PROPUESTAS A 20.3.20 NMAC DEL REGLAMENTO DE PROTECCIÓN RADIOLÓGICA EIB 21-56

La Junta de Mejora Ambiental ("EIB" por sus siglas en inglés) celebrará una audiencia pública el 25 de marzo de 2022 a partir de las 9:00 a.m., MDT, por Internet (Zoom) y por teléfono.

Si desea unirse a la videoconferencia en línea, vaya a

<https://zoom.us/j/97661947432?pwd=N0xqMFIFcVpINk11RHJPOUgwcUNHQT09>

Cuando se le solicite, marque el número de identificación de la reunión: 976 6194 7432

La contraseña es: 491774

Si desea unirse a la reunión a través de un teléfono llame al:

+12532158782,,97661947432#,,, *49 1774# US (Tacoma)

+13462487799,,97661947432#,,, *49 1774# US (Houston)

Marque por su ubicación

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 408 638 0968 US (San Jose)

+1 669 900 6833 US (San Jose)

+1 646 876 9923 US (New York)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

Identificación de la reunión: 976 6194 7432

Código de acceso: 491774

Encuentre su número local: <https://zoom.us/j/97661947432>

Se recibirán comentarios por correo electrónico hasta la conclusión de la audiencia. Para hacer comentarios por correo electrónico, envíe la correspondencia a Pamela.Jones@state.nm.us.

La audiencia se va a llevar a cabo a través de Internet, correo electrónico y medios telefónicos debido a las preocupaciones que rodean al Nuevo Coronavirus (“COVID-19”) y de acuerdo con la Declaración de Emergencia de Salud Pública de la gobernadora Michelle Lujan Grisham en la Orden Ejecutiva 2020-004, y órdenes ejecutivas posteriores; varias órdenes de emergencia de salud pública que limitan las reuniones masivas debido al COVID-19; y la Guía de la División de Gobierno Abierto de la Oficina del Procurador General para Entidades Públicas con respecto a la Ley de Reuniones Abiertas y el Cumplimiento de la Ley de Inspección de Registros Públicos durante el Estado de Emergencia COVID-19.

En la audiencia pública, la EIB considerará las enmiendas propuestas a 20.3.20 NMAC “Licencia de Imágenes Médicas y Radioterapia”, según lo propuesto en la Petición para Enmendar 20.3.20 NMAC del Reglamento de Protección Radiológica y Solicitud de Audiencia (“Petición”), número de expediente EIB 21-56. La Petición ha sido presentada por la Oficina de Control de Radiación (“Oficina”) del Departamento de Medio Ambiente de Nuevo México (“NMED”) por sus siglas en inglés). Las modificaciones propuestas consisten en la adición de una Licencia de Tomografía Computarizada (“CT” por sus siglas en inglés) y la aclaración de los requisitos y el alcance de la práctica para la Licencia Provisional. La Oficina también aprovechará esta oportunidad para aclarar los requisitos existentes y corregir errores menores y tipográficos. La adición de una licencia TC maximizará la protección viable para los ciudadanos de Nuevo México contra la radiación ionizante en la práctica de obtención

de imágenes de TC mediante el establecimiento de requisitos para la educación y la capacitación adecuadas de estas personas que operan equipos médicos de TC. Tenga en cuenta que el formato y los cambios técnicos menores en el reglamento distintos de los propuestos por el NMED pueden ser considerados durante la audiencia. Además, la EIB puede realizar otros cambios según sea necesario para cumplir el propósito de proteger la salud y la seguridad pública en respuesta a los comentarios públicos y las pruebas presentadas en la audiencia.

La administración y el cumplimiento de la Ley de Salud y Seguridad de Imágenes Médicas y Radioterapia, NMSA 1978, Secciones 61-14E-1 a -12 (1983, enmendada hasta 2020) (“Ley”) y los reglamentos correspondientes se confieren al NMED. NMSA 1978, § 61-14E-6. De conformidad con NMSA 1978, Sección 74-1-7(A)(12) (2000), el NMED tiene autoridad para desarrollar y hacer cumplir las normas y estándares de radiación médica, la certificación de salud y seguridad y los estándares para tecnólogos radiológicos.

De acuerdo con NMSA 1978, Sección 61-14E-5 (2009), las enmiendas propuestas se proporcionaron al Consejo Asesor de Imágenes Médicas y Radioterapia (“MIRTAC”) por sus siglas en inglés) en su reunión del 20 de diciembre de 2019. El MIRTAC ha dado su consentimiento a las enmiendas. Por último, la EIB tiene autoridad para enmendar el Reglamento de Protección Radiológica, 20.3.20 NMAC, según lo dispuesto en la Sección 61-14E-5 y NMSA 1978, Sección 74-1-8(A)(12) (2020).

Una copia de las enmiendas propuestas está publicada en el sitio web de la EIB como anexos a la Petición bajo el número de expediente EIB 21-56. <https://www.env.nm.gov/opf/docketed-matters/>

Para obtener una copia impresa o una copia electrónica de las enmiendas propuestas, comuníquese con Pamela

Jones, administradora de la Junta, P.O. Box 5469, 1190 St. Francis Drive, Suite S-2103, Santa Fe, NM, 87502; Pamela.Jones@state.nm.us; (505) 660-4305. En su correspondencia haga referencia al número de expediente EIB 21-56.

La audiencia se llevará a cabo de acuerdo con los Procedimientos de Reglamentación de la EIB que se encuentran en 20.1.1 NMAC, la Ley de Mejora Ambiental, NMSA 1978, Sección 74-1-9 (1985), y otros procedimientos y órdenes de procedimiento aplicables. Los comentarios por escrito relativos a las enmiendas propuestas se publicarán en la página del expediente en <https://www.env.nm.gov/opf/docketed-matters/> y también podrán obtenerse comunicándose con Pamela Jones, administradora de la EIB, en la información de contacto indicada anteriormente.

Todas las personas interesadas tendrán una oportunidad razonable durante la audiencia para presentar pruebas, datos, puntos de vista y argumentos pertinentes, oralmente o por escrito, presentar pruebas instrumentales e interrogar a los testigos. Toda persona que desee presentar una declaración no técnica por escrito para que conste en acta en lugar de un testimonio oral deberá presentar dicha declaración antes del cierre de la audiencia por correo electrónico a: Pamela.Jones@state.nm.us.

Las personas que deseen presentar un testimonio técnico deben presentar a la EIB un aviso por escrito de su intención de hacerlo. Los avisos de intención para la audiencia deben ser recibidos por la EIB a más tardar hasta las 5:00 p.m., MST, del 4 de marzo de 2022, y deben hacer referencia al nombre de los reglamentos, la fecha de la audiencia (25 de marzo de 2022) y el número de expediente EIB 21-56.

Los requisitos para un aviso de intención se encuentran en 20.1.1.302 NMAC.

El aviso de intención deberá:

- (1) identificar a la persona para la que el testigo o testigos darán testimonio;
- (2) identificar cada uno de los testigos técnicos que la persona tiene intención de presentar e indicar las cualificaciones de dicho testigo, incluida una descripción de su historial educativo y laboral;
- (3) si la audiencia se lleva a cabo en varios lugares, indicar el lugar o lugares en los que estarán presentes los testigos;
- (4) incluir una copia del testimonio directo de cada testigo técnico en forma narrativa;
- (5) incluir el texto de cualquier modificación recomendada al propuesto cambio reglamentario; y
- (6) enumerar y adjuntar todas las pruebas instrumentales que se prevé que esa persona presentará en la audiencia, incluida cualquier declaración propuesta de motivos para la adopción de las normas.

Si usted tiene una discapacidad y necesita asistencia o ayuda auxiliar, por ejemplo, un intérprete de lenguaje de signos, para participar en cualquier aspecto de este proceso, comuníquese con Pamela Jones, administradora de la Junta, al menos 14 días antes de la fecha de la audiencia en P.O. Box 5469, 1190 St. Francis Drive, Suite S-2103, Santa Fe, NM, 87502; teléfono (505) 660-4305 o correo electrónico Pamela.Jones@state.nm.us. (TDD o TTY) los usuarios pueden acceder al número a través de la Red de Retransmisión de Nuevo México, 1-800-659-1779 (voz); usuarios de TTY: 1-800-659-8331).

La EIB podrá tomar una decisión sobre los cambios reglamentarios propuestos al término de la audiencia o podrá convocar una reunión después de la audiencia para considerar la adopción de medidas sobre la propuesta.

DECLARACIÓN DE NO DISCRIMINACIÓN

NMED no discrimina por motivos de raza, color, nacionalidad,

discapacidad, edad o sexo en la administración de sus programas o actividades, como lo exigen las leyes y reglamentos aplicables.

NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas sobre los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972 y la Sección 13 de las Enmiendas de la Ley Federal de Control de la Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o cualquiera de los programas, políticas o procedimientos de no discriminación de NMED, puede comunicarse con:

Kathryn Becker, coordinadora de no discriminación | NMED | 1190 St. Francis Dr., Suite N4050 | P.O. Box 5469 | Santa Fe, NM 87502 | (505) 827-2855 o nd.coordinator@state.nm.us

Si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con la coordinadora de no discriminación identificada más arriba o visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para aprender cómo y dónde presentar una queja de discriminación.

LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS, BOARD OF

AMENDED NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Licensure for Professional Engineers and Professional Surveyors has scheduled a rule hearing on Friday, February

4, 2022, at 9:00 a.m. to continue accepting public comment on proposed rules, which began with a public rule hearing held on Friday, December 4, 2021. Following the rule hearing, the Full Board will convene a regular board meeting to consider adoption of the rules and address regular business. Due to the COVID-19 pandemic and state of emergency, the rule hearing will be held online and telephonically utilizing the Zoom teleconferencing platform. A Board staff member will also be present on the day of the hearing, Friday, February 4, 2022, from approximately 8:00 a.m. to 9:00 a.m. at the Toney Anaya Building, located at 2550 Cerrillos Road, Santa Fe, 3rd floor, NM 87505, to accept comments in written form and submit those comments to the Hearing Officer during the hearing. To attend the hearing online, please use the following link:

<https://us02web.zoom.us/j/89653236490?pwd=WW5wTk45QXErd3lJMmpFb1l1K1R1UT09>

Meeting ID: 896 5323 6490
Passcode: 749785

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+1 346 248 7799 US (Houston)
+1 929 205 6099 US (New York)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)

Meeting ID: 896 5323 6490
Passcode: 749785
Find your local number: <https://us02web.zoom.us/j/89653236490>

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

12.8.2 NMAC - Minimum Standards for Surveying in New Mexico
 16.39.1 NMAC - General Provisions
 16.39.3 NMAC - Engineering Licensure, Disciplines, Applications, Exams, Practice, Seal of Licensee and Endorsements
 16.39.5 NMAC - Surveying
 16.39.6 NMAC - Licensure for Military Service Members, Spouses and Veterans
 16.39.7 NMAC - Misc.

To obtain and review copies of the proposed changes and public comments, you may download them from <https://www.sblpes.state.nm.us/>. A copy of the proposed rules may be requested by contacting BLPEPS via Isaac Maes at Isaac.maes@state.nm.us, via mail at New Mexico Board of Licensure for Professional Engineers and Surveyors ATTN: BLPEPS Request for Rule P.O. Box 25101, Santa Fe, NM 87504 (505) 476-4565 or (505) 476-4802.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes via email to board.licensurepeps@state.nm.us. Alternatively, members of the public may submit written comments by sending an original, signed copy to: New Mexico Board of Licensure for Professional Engineers and Surveyors ATTN: BLPEPS Public Comments P.O. Box 25101, Santa Fe, NM 87504. The Board will accept written public comment received on or before 5:00 PM on January 29, 2022, as well as written public comment hand-delivered between approximately 8:00 a.m. to 9:00 a.m. at the Toney Anaya Building, located at 2550 Cerrillos Road, Santa Fe, 3rd floor, NM 87505 on the date of the rule hearing, Friday, February 4, 2022. All written comments will be posted to the Board's website no later than three (3) business days following receipt to allow for public viewing. Persons will also be given the opportunity to present their oral or written comments at the public rule hearing via the Zoom teleconferencing platform.

The agenda for the Board meeting will be posted and available at least 72 hours before the meeting on the BLPEPS website at: <https://www.sblpes.state.nm.us/>.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Board office at (505) 476-4565 or (505) 476-4656. The BLPEPS requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Statutory Authority: Subsections B through E of Section 61-23-10 NMSA 1978 of the Engineering and Surveying Practice Act ("ES Practice Act"), Sections 61-23-1 to -36 NMSA 1978, specifically authorizes the Board, the Professional Engineering Committee, the Professional Surveying Committee, and the Joint Engineering and Surveying Committee to promulgate and amend rules of professional responsibility and to effect the provisions of the ES Practice Act. Section 61-23-14.1 NMSA 1978 of the ES Practice Act, provided additional grounds for reciprocity for engineers licensed in other jurisdictions. In addition, Section 61-23-17.4(A) NMSA 1978 of the ES Practice Act, changed the experience requirement for licensure as a professional surveyor and Section 14-4-5.7 of the State Rules Act, Sections 14-4-1 to -11 NMSA 1978 states "no rule is valid or enforceable if it conflicts with statute." Sections 61-1-31.1 and 61-1-34 of the Uniform Licensing Act ("ULA"), Sections 61-1-1 to -36 NMSA 1978, requires the Board to update its expedited licensure for military families. Further, Section 61-1-36 NMSA 1978 of the ULA, requires the Board to "promulgate and post on the board's website rules relating to licensing requirements to list the specific criminal convictions that could disqualify an applicant from receiving a license on the bases of a previous felony conviction." Sections 28-2-3 and 28-2-4 of the Criminal Offender

Employment Act, Sections 28-2-1 to -6 NMSA 1978, provide how certain criminal records should be viewed when obtaining a license or other authority to practice the profession pursuant to Section 61-23-4 NMSA 1978.

Purpose of the Proposed Rules:

The proposed amendment/repeal/replace of the rules is intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees and certification holders, and to generally satisfy the Board's obligation "to safeguard life, health and property and to promote the public welfare." Section 61-23-2 NMSA 1978. In addition, there are proposed rule changes intended to address statutory changes to the Engineering and Surveying Practice Act. See S.B. 447, 53rd Leg. (N.M. 2019) available at <https://nmlegis.gov/Sessions/19%20Regular/final/SB0447.pdf> and H.B. 105, 46th Leg. (N.M. 2012) available at <https://nmlegis.gov/sessions/12%20Regular/final/HB0105.pdf>. Further, several of the proposed rule changes are intended to address recent statutory changes to address recent statutory changes to the Uniform Licensing Act. See S.B. 2, 55th Leg., 1st S.S. (N.M. 2021) available at <https://nmlegis.gov/Sessions/21%20Special/final/SB0002.pdf>, H.B. 120, 55th Leg., 1st Sess. (N.M. 2021) available at <https://nmlegis.gov/Sessions/21%20Regular/final/HB0120.pdf>, and H.B. 30, 54th Legis., 1st Sess. (N.M. 2020) available at <https://nmlegis.gov/Sessions/20%20Regular/final/HB0030.pdf>. The proposed rules also incorporate statutory changes to the Criminal Offender Employment Act. See S.B. 2, 55th Leg., 1st S.S. (N.M. 2021) available at <https://nmlegis.gov/Sessions/21%20Special/final/SB0002.pdf>.

Summary of the Proposed Changes: **12.8.2 NMAC - Minimum Standards for Surveying in New Mexico**

The proposed amendment/repeal/

replace to this part is to add “Basis of Bearing” under the definitions by removing the term elevation from the definition.

16.39.1 NMAC - General Provisions

The proposed amendment/repeal/replace to this part is to insert language regarding the Intern certification status, that it would no longer be active once a person attained a professional license as the professional license supersedes the Intern designation, clarifying that a licensee who requests for retired or inactive status cannot be approved unless the licensee does not have any pending complaints, pending litigation, and has completed any imposed disciplinary actions, and modifying the requirements of the reactivation of an inactive license of six (6) years or more.

16.39.3 NMAC - Engineering Licensure, Disciplines, Applications, Exams, Practice, Seal of Licensee and Endorsements

The proposed amendment/repeal/replace to this part is to add definitions for electronic signature, engineering experience and signature as well as to move or create subsections to clarify the subject matter related to the practice of engineering and the industrial exemption, and when more than one electronic signature is required. The rule also incorporates additional grounds for reciprocity for engineers licensed in other jurisdictions as required by Section 61-23-14.1 NMSA 1978 of the Engineering and Surveying Practice Act.

16.39.5 NMAC - Surveying

The proposed amendment/repeal/replace to this part is clarify the use of acronyms by adding the definition of NCEES, and to align the rules with Section 61-23-17.4(A) NMSA 1978 of the ES Practice Act, which changed the experience requirement for licensure as a professional surveyor and in accordance with Section 14-4-5.7 of the State Rules Act, Sections 14-4-1 to -11 NMSA 1978. The rule also creates a new subsection and

clarifies the industrial exemption and when more than one electronic signature is required.

16.39.6 NMAC - Licensure for Military Service Members, Spouses and Veterans

The proposed amendment/repeal/replace to this part is to add subsections to include requiring certain documentation to qualify for expedited licensure for military service members, spouses and veterans, the absence of a license fee for the first three (3) years, and the requirement of the Board to issue the expedited license within 30 days of a completed application pursuant to the Uniform Licensing Act, Sections 61-1-31.1 and 61-1-34 NMSA 1978.

16.39.7 NMAC - Misc.

The proposed amendment/repeal/replace to this part is to modify subsections to comply with the statutory changes to the Criminal Offender Employment Act and the Uniform Licensing Act. 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 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.

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

PUBLIC EDUCATION COMMISSION

NOTICE OF PROPOSED RULEMAKING

Public Education Commission Procedural Rule regarding Policy-making, Forms and Procedure related to State-Chartered Charter Schools

Public Hearing. The New Mexico Public Education Commission (PEC) gives notice that it will conduct a public hearing on Friday, February 18, 2022 beginning at 9:15 a.m. (MDT) via Zoom and in -person in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501. The in-person aspect 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 PEC website. The purpose of the public hearing is to receive public input, discuss and take final action on the proposed new rule, **Public Education Commission Procedural Rule regarding Policy-making, Forms and Procedure related to State-Chartered Charter Schools.** At the hearing, the PEC will provide a verbal summary statement on record, take input, and review comments received and the most updated draft of the proposed rule. The PEC will then discuss and take possible action to adopt the rule on this same date.

Explanation and Summary of Purpose of Text

The PEC is undertaking a two-part process.

First, the PEC is proposing to adopt one rule. The purpose of new rule, **Public Education Commission Procedural Rule regarding Policy-making, Forms and Procedure related to State-Chartered Charter Schools**, establishes a process for reviewing and adopting the documents governing state-chartered charter schools each year as needed, in advance of the start of the school year. This will ensure that state-chartered charter schools and others contemplating requesting to be a state-chartered charter school know of, and have access to, all of the policies, forms and procedures used by the PEC as the authorizer for the upcoming school year. This rule establishes the procedure for review of all documents for the 2022-2023 school year and then a review of any identified changes, as needed, in future years. After its adoption, the PEC will follow this protocol for its review of policies, form approval and protocols.

Second, the PEC will utilize the process set forth in this one rule to look at its policies, forms and protocols. This second part of the process – to look at each specific policy, form and protocol - will take place during the spring, 2022. It will then be used for an annual review of the policies, forms and protocols as needed in each of the following years. Public comment and input will be accepted in the review of each document.

Statutory Authorization(s):

Pursuant to NMSA 22-8B-5.3, the Public Education Commission has authority to

F. monitor, in accordance with the requirements of the Charter Schools Act and the terms of the charter contract, the performance and legal compliance of charter schools under their authority; and
H. develop and maintain chartering

policies and practices consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing.

The rule is intended to provide a procedure to exercise this authority.

The Public Education Commission is administratively attached to the Public Education Department, and pursuant to NMSA 9-1-7 exercises its functions independently of the department and without approval or control of the department. Pursuant to NMSA 14-4-2 A. the commission is an “agency” under the State Rules Act for the purposes of promulgating a rule.

Documents to be later reviewed using the process set forth in this rule. No technical information serves as a basis for this proposed rule. However, many of the documents that the PEC will seek to approve pursuant to this rule have already been developed, approved at public meetings of the PEC, and are being used by the PEC now. These documents will serve as the initial drafts for the policies, forms and protocols to be adopted. These documents will each be reviewed again using the procedure set forth in the rule; however, this rule formalizes a multi-year process that has been in place for many years. The documents in their present form are posted on the PEC website. (*see e.g.* <https://webnew.ped.state.nm.us/bureaus/public-education-commission/policies-and-processes/>).

Please note that the process to review the specific state-chartered charter school policies, forms and protocols will be identified when this procedural rule is approved, including the schedule for discussion of each of these documents in spring, 2022 and the manner and timing in which comment specific to those documents may be provided.

Public Comment on the Proposed Rule. Interested parties may provide in-person comment at

either of two working sessions and written comment by mail to Beverly Friedman, New Mexico Public Education Department, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501 or by electronic mail to Bev.Friedman@state.nm.us. The PEC encourages the early submission of written comments; and written comments must be received no later than 5 p.m. (MDT) on Tuesday, February 1, 2022. The written public comment period is from Monday, December 13, 2021 to Tuesday, February 1, 2022 at 5:00 p.m. (MDT). The PEC will also accept oral comments at a working session on Thursday, January 13, 2022 during which session the PEC will discuss the rule and the comments. PLEASE NOTE that the draft rule may be updated during the comment period to reflect discussions of PEC members at the working sessions and based on comments received. Please check the draft periodically to see the updates and changes.

The PEC may discuss and take action on the proposed rule on February 18, 2022.

Copies of the proposed rules may be accessed through the PEC website <https://webnew.ped.state.nm.us/bureaus/public-education-commission/> or may be obtained from Julia Barnes, attorney for the PEC, jhbnm1@gmail.com or at (505) 470-7349 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 Beverly Friedman, New Mexico Public Education Department, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, by electronic mail to Bev.Friedman@state.nm.us as soon as possible before the date set for the working sessions or public hearing. The PEC requires at least 10 calendar days advance notice to provide any special accommodations requested.

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING DOCKET NO. 21-00266-UT

The New Mexico Public Regulation Commission (the “commission”) hereby gives notice of its initiation of a proposed rulemaking to repeal and replace rule, **17.9.568 NMAC**, “**Interconnection of Generating Facilities with a Rated Capacity up to and Including 10 MW Connecting to a Utility System.**”

Summary of the full text of the proposed rule and short explanation of its purpose: The purpose of this rulemaking is to revise and update Title 17.9.568 establishing the definitions, standards, procedures and screening processes for the interconnection of electric generating facilities with a rated capacity up to and including 10 MW. The rule provides guidance for the revision and updating of the New Mexico utility interconnection manual and technical guidelines documents, last revised in October 2008. The existing rule and associated manual no longer adequately accommodate evolving technologies and devices that are increasingly seeking behind-the-meter interconnection to utility distribution networks. Recently developed technical standards IEEE 1547-2018/ IEEE1547.1-2020/UL1741SB are adopted to provide for advanced functionalities for DC/AC inverters, and for testing and certification of interconnected devices. The revised rule modifies or adds technical and non-technical processes for interconnection, including: allowing for pre-application review of projects; refining technical screening criteria, determining categorization of projects by size; defining timelines for processing of interconnection applications; establishing a dispute resolution process; defining utility reporting requirements; and making additions or revisions to a set of definitions. It also sets out considerations governing non-export,

limited export, and inadvertent export of energy into the utility system. The rule directs utilities to provide the commission and the public with information about available hosting capacity or constraints on distribution circuits. Citing recently adopted statutes, including the Grid Modernization Act of 2019 (Section 62-8-13 NMSA 1978) the proposed rule provides the commission with options for future determinations of alternatives to the traditional cost-causation model for necessary interconnection-related system upgrades.

Legal authority authorizing the proposed rule and the adoption of the rule: The Commission has the authority to promulgate the Proposed Rule pursuant to the New Mexico Public Regulation Commission Act, Section 8-8-1 et seq. NMSA 1978, the Public Utility Act, Section 62-3-1 et seq. NMSA 1978; the Energy Transition Act, 62-18-1 et seq. NMSA 1978; the Grid Modernization Act, Section 62-8-13 NMSA 1978; and the Community Solar Act, Section 62-16B-1 NMSA 1978.

How a copy of the full text of the proposed rule can be obtained: A copy of the full text of the proposed rule and instructions for accessing the complete rulemaking record can be obtained from the rulemaking page on the commission’s website at <https://www.nm-prc.org/rulemaking-proceedings/> or by calling Isaac Sullivan-Leshin of the commission’s office of general counsel at (505) 670-4830. From the same sources, any person can obtain the commission’s *Additional Issues to be Addressed in Interconnection Rulemaking Formal Comment Process*, which should be reviewed and considered in conjunction with the proposed rule.

How a person can comment on the proposed rule, where comments will be received and when comments are due: Any person wishing to comment on the proposed rule or the *Additional Issues to be Addressed in Interconnection Rulemaking Formal*

Comment Process may do so by submitting written initial comments no later than **February 4, 2022**. Any person wishing to respond to initial comments may do so by submitting written response comments no later than **February 28, 2022**. Any person wishing to reply to response comments or comments made at the hearing may do so by submitting written reply comments no later than **March 22, 2022**. Comments can be electronically filed by sending them in PDF format to prc.records@state.nm.us. Comments must refer to Docket No. 20-00171-UT. All written comments will be posted on the commission’s website within three days of their receipt by the records bureau.

The record closure date for this proceeding is **March 29, 2022**. From that date through the completion of this proceeding, rulemaking participants will be forbidden from communicating with the commission or its representatives concerning substantive issues in this proceeding.

When and where a public rule hearing will be held and how a person can participate in the hearing: A public hearing on the proposed rule and the *Additional Issues to be Addressed in Interconnection Rulemaking Formal Comment Process*, to be presided over by the commission or its designee, will be held beginning at **10 a.m. on Thursday March 10, 2022**, via the Zoom online platform. Any person who wishes to make a comment at the hearing must contact Isaac Sullivan-Leshin at (505) 670-4830 or isaac.sullivan-leshin@state.nm.us by no later than **4:30 p.m. on March 9, 2022** to sign up as a hearing participant. The commission’s office of general counsel will email a Zoom invitation to all hearing participants the day before the hearing. The Zoom invitation will include a call-in number for those participants who are unable to access the Zoom platform via computer. The hearing will be held in order to receive oral comments. In the interest of administrative efficiency,

commenters who have submitted written comments may be restricted from making oral comments at the discretion subject to the discretion of the Commission or its designee. In addition, any commenter may be limited to five minutes to speak, subject to the discretion of the commission or its designee. The commission or its designee may also determine that a spokesperson should be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding. A court reporter will prepare a transcript of the hearing for filing the rulemaking docket, Docket No. 20-00171-UT. Any person with a disability requiring special assistance in order to participate in the hearing should contact Renada Peery-Galon at (505) 467-9116 at least 48 hours prior to the commencement of the hearing.

Technical information that served as a basis for the proposed rule and how the information can be obtained:

When adopting the proposed rule, the commission considered the report titled “*New Mexico Interconnection Rules: Report and Recommendations to the New Mexico Public Regulation Commission*,” prepared by the interconnection rulemaking working group, which was filed in Docket No. 20-00171-UT on October 15, 2021. The commission also considered the report titled “*New Mexico Community Solar - Stakeholder Participation Pre-Rulemaking Status Report*,” prepared by Strategen Consulting, LLC, which was filed in Docket No. 21-00112-UT on October 15, 2021. Copies of this technical information can be obtained from the rulemaking page on the commission’s website at <https://www.nm-prc.org/rulemaking-proceedings/> or by calling Isaac Sullivan-Leshin of the commission’s office of general counsel at (505) 670-4830.

The following codes and standards are also referenced in the proposed rule:

- IEEE Std 1547™, IEEE standard for interconnection and interoperability of distributed energy resources with associated electric power systems interfaces;
- IEEE Std 1547.1™, standard conformance test procedures for equipment interconnecting distributed energy resources with electric power systems and associated interfaces;
- ANSI C84.1, electric power systems and equipment - voltage ratings (60 Hertz);
- IEEE Std 1547.2™, application guide for IEEE 1547 standard for interconnecting distributed resources with electric power systems;
- IEEE Std 1547.6™, IEEE recommended practice for interconnecting distributed resources with electric power systems distribution secondary networks;
- IEEE Std 1547.7™, IEEE guide for conducting distribution impact studies for distributed resource interconnection;
- UL 1741, standard for inverters, converters, controllers and interconnection system equipment for use with distributed energy resources. UL 1741 compliance must be recognized or certified by a nationally recognized testing laboratory as designated by the U.S. Occupational Safety and Health Administration.

These codes and standards can be obtained from the Institute of Electrical and Electronic Engineers and the company known as UL.

Instructions on how to access the complete rulemaking record, reports and other items filed in the commission’s e-docket system can be found at <https://www.nm-prc.org/rulemaking-proceedings/>.

SECRETARY OF STATE, OFFICE OF THE

NOTICE OF PROPOSED RULEMAKING

The Office of the New Mexico Secretary of State (“Office”) hereby gives notice that the Office will conduct a public hearing on the described rule below.

The purpose of this hearing is to obtain public input on amendments to the Campaign Finance rule codified as Part 1.10.13 NMAC.

A public hearing will be held on February 8, 2022, from 9:00 am to 12:00 pm, at the PERA Building located at 33 Plaza La Prensa Santa Fe, NM 87507. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on the proposed rule changes detailed below. All comments will be transcribed by a court reporter or recorded by audio recording.

Authority: Section 1-19-26.2 NMSA 1978

1.10.13 Campaign Finance

Purpose: The objective of the rule is to conform the rule to changes made to the Campaign Reporting Act [Sections 1-19-25 through 1-19-36 NMSA 1978] based upon that passage of House Bill 244 during the 2021 Regular Legislative Session, to update procedures based upon the secretary of state implementing a new campaign finance information system, and to make additional clarifications to the rule regarding reporting and use of campaign funds.

Summary of Full Text: *Section 1.10.13.7 NMAC* removes definitions already defined in statute and adds a definition for “finding.” *Section 1.10.13.8 NMAC* provides updated procedures for candidate campaign registrations. *Section 1.10.13.10 NMAC* removes the political

committee type of ‘other’ and updates political committee registration procedures. *Section 1.10.13.11 NMAC* remove language already in statute and further clarifies reporting requirements for independent expenditures. *Section 1.10.13.12 NMAC* clarifies reporting deadlines if a deadline falls on a state holiday and clarifies the responsibility of campaigns when reporting in-kind contributions. *Section 1.10.13.13 NMAC* clarifies that candidates who do not raise or spend funds for the duration of a primary election cycle or a general election cycle will be administratively closed by the secretary of state. *Section 1.10.13.15 NMAC* is updated to remove arbitrator provisions to align with updates to the Act. *Section 1.10.13.18 NMAC* provides that a committee making an in-kind donation to another committee is required to disclose the name of the benefitting candidate or political committee. *Section 1.10.13.21 NMAC* is repealed as it is duplicative to statutory language. *Section 1.10.13.22 NMAC* clarifies the handling of refunds and the reporting of excess anonymous funds. *Section 1.10.13.25 NMAC* is updated to include a list of prohibited per se personal use expenditures, allows for the use of campaign funds for satisfying fines under the Act, and requires that the state ethics commission make a determination regarding the use of campaign funds for legal expenses, and conforms language to the statute regarding a candidate or committee seeking an advisory opinion. *Section 1.10.13.30 NMAC* updates the process utilized by the secretary of state during a report examination conducted pursuant to Section 1-19-32.1 NMSA 1978. *Section 1.10.13.32 NMAC* clarifies the update procedures for changing the designated leader of a legislative caucus committee. *Section 1.10.13.33 NMAC* provides that automatic recurring contributions are not impacted by the prohibited period.

Details for Obtaining a Copy of Rule and Submitting Oral or Written Comments: Copies of

the proposed rule are available on the Office’s website at www.sos.state.nm.us or can be obtained from the Bureau of Elections by calling (505) 827-3600 or emailing kari.fresquez@state.nm.us. The proposed rule is also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing. Before the public hearing, written comments may be sent to Kari Fresquez, Director of Legislative and Executive Affairs, via email at kari.fresquez@state.nm.us, fax (505) 827-8403, or by regular mail at Attn: Kari Fresquez – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. The deadline to receive written comment is February 7, 2022 by 5:00 pm. All written public comments will be posted on the website throughout the written comment period at: www.sos.state.nm.us.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email kari.fresquez@state.nm.us five business days prior to the hearing.

End of Notices of Proposed Rulemaking

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.

CULTURAL AFFAIRS DEPARTMENT

This is an amendment to 4.5.9 NMAC, Sections 10, 11 and 14, effective 12/28/2021.

4.5.9.10 FUNDING

SOURCE: Special grants may be funded with federal funds, state funds, and any other funds available to the state librarian and not otherwise restricted. Use of state funds for special grants shall not reduce state grants-in-aid. ~~[No more than twenty-five percent (25%) of federal funds received by the state library shall be used for special grants.]~~

[4.5.9.10 NMAC - N, 7/1/2015; A/E, 7/1/2021; A, 12/28/2021]

4.5.9.11 ELIGIBILITY:

Public libraries and developing libraries that are eligible for state grants-in-aid in a given fiscal year are also eligible for special grants, unless the grant guidelines ~~[otherwise restrict the library's eligibility]~~ provide otherwise.

[4.5.9.11 NMAC - N, 7/1/2015; A/E, 7/1/2021; A, 12/28/2021]

4.5.9.14 TRANSFER OF FUNDS:

Special grants shall only transfer to the grant recipient after the grant recipient signs a contract, agreeing to the terms applicable to the applicable special library program. ~~[The state library will reimburse grant recipients for expenses documented in their state-library approved budget for the special library program.]~~

[4.5.9.14 NMAC - N, 7/1/2015; A/E, 7/1/2021; A, 12/28/2021]

HEALTH, DEPARTMENT OF

The New Mexico Department of Health has approved the repeal of its rule 16.11.3 NMAC - Licensed Midwives (filed 10/18/1996 and recompiled 12/31/2001) and replaced it with 16.11.3 NMAC - Licensed Midwives adopted on 12/10/2021, and effective 12/28/2021.

HEALTH, DEPARTMENT OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 11 MIDWIVES PART 3 LICENSED MIDWIVES

16.11.3.1 ISSUING

AGENCY: New Mexico Department of Health, Public Health Division, Maternal Health Program.

[16.11.3.1 NMAC - Rp, 16.11.3.1 NMAC, 12/28/2021]

16.11.3.2 SCOPE: These regulations apply to any licensed midwife practicing in the state of New Mexico or licensed by the New Mexico department of health, public health division.

[16.11.3.2 NMAC - Rp, 16.11.3.2 NMAC, 12/28/2021]

16.11.3.3 STATUTORY

AUTHORITY: The regulations set forth herein are promulgated by the secretary of the department of health by authority of Subsection E of Section 9-7-6 NMSA 1978, Subsection V of Section 24-1-3 NMSA 1978, and Section 24-1-21 NMSA 1978. The public health division ("division") of the

department of health shall administer and enforce these regulations.

[16.11.3.3 NMAC - Rp, 16.11.3.3 NMAC, 12/28/2021]

16.11.3.4 DURATION:

Permanent.

[16.11.3.4 NMAC - Rp, 16.11.3.4 NMAC, 12/28/2021]

16.11.3.5 EFFECTIVE

DATE: December 28, 2021, unless a later date is cited at the end of a section. [16.11.3.5 NMAC - Rp, 16.11.3.5 NMAC, 12/28/2021]

16.11.3.6 OBJECTIVE:

The regulations establish policy, standards, and criteria relating to: the educational and examination requirements, issuing of permits and licenses, midwifery practice, and continuing education of persons who practice licensed midwifery.

[16.11.3.6 NMAC - Rp, 16.11.3.6 NMAC, 12/28/2021]

16.11.3.7 DEFINITIONS:

A. Definitions

beginning with "A": "Apprentice midwife" means a person age 18 years or older, holding a high school diploma or a GED as minimum educational requirement who:

(1) wishes

to make application in the state of New Mexico for basic education in midwifery by apprenticeship;

(2) has a

formal preceptor relationship defined in writing with a midwifery instructor who is in good standing with the midwife licensing authority of the public health division and who meets the requirements of Paragraph (2) of Subsection M of 16.11.3.7 NMAC and agrees in writing to fulfill the basic educational and clinical experience requirements described in Subsections A and B of 16.11.3.12 NMAC.

B. Definitions

beginning with “B”: “Board” means the licensed midwifery advisory board established under these regulations.

C. Definitions

beginning with “C”:

(1)

“Certified nurse-midwife (CNM)” means a graduate of a midwifery education program accredited by the accreditation commission for midwifery education (ACME) who, has been certified by the American midwifery certification board (AMCB) and licensed pursuant to laws, regulations, and procedures of the CNM’s jurisdiction.

(2) “Certified

professional midwife (CPM)” means an independent practitioner who has met the standards for certification set by the north American registry of midwives (NARM). A CPM may not practice in New Mexico unless the CPM holds a New Mexico license to practice midwifery.

(3) “Client”

means a person who has entered into a professional relationship for midwifery services from a LM for the purpose of maintaining the client’s well-being. At minimum, this relationship is an interactive encounter between the LM and client as set forth in the “department of health practice guidelines for New Mexico licensed midwives”.

(4) “Contact

hour” means a unit of 50 to 60 minutes of a formal organized learning experience that directly relates to maternal, infant, and reproductive health and related professional, ethical, legal, or business topics and is approved by an accredited continuing education (CE) sponsoring organization.

(5)

“Continuing education (CE)” means participation in a formal learning experience of which the CEs have been granted by an accrediting organization such as the midwifery education accreditation council (MEAC), American college of obstetricians and gynecologists (ACOG), American college of nurse-midwives (ACNM), association

of women’s health, obstetric and neonatal nurses (AWHONN), American academy of family physicians (AAFP), state health departments, nursing associations, or perinatal associations.

D. Definitions

beginning with “D”:

(1)

“Department” means the department of health.

(2) “Division”

means the public health division of the department of health.

E. Definitions

beginning with “E”: [RESERVED]

F. Definitions

beginning with “F”: “Formulary”

means a list of drugs approved by the department.

G. Definitions

beginning with “G”: [RESERVED]

H. Definitions

beginning with “H”: [RESERVED]

I. Definitions

beginning with “I”:

“Incompetence” is defined as follows: In performing midwifery functions, a midwife is under a legal duty to possess and to apply the knowledge, skill and care that is ordinarily possessed and exercised by other midwives of the same licensure status and required by the generally accepted standards of the profession including those standards set forth in these regulations and their referenced documents. The failure to possess or to apply such knowledge, skill and care constitutes incompetence for purposes of disciplinary proceedings.

J. Definitions

beginning with “J”: [RESERVED]

K. Definitions

beginning with “K”: [RESERVED]

L. Definitions

beginning with “L”:

(1) “License”

means a document issued by the department identifying a legal privilege and authorization to practice as a licensed midwife within the scope of this rule.

(2)

“Licensed midwife (LM)” means a person educated in the discipline of midwifery, who is licensed under this rule.

(3) “Licensed

midwifery” means the provision of health care and management of people in the antepartum, intrapartum, postpartum, and interconceptual periods, and infants up to six weeks of age. This care occurs within a health care system in a community setting which provides for midwifery protocols, medical consultation, co-management or referral and is in accord with the “standards and core competencies of practice for licensed midwives in New Mexico” and the “department of health practice guidelines for New Mexico licensed midwives”.

(4) “Licensing

period” means the period for which licenses are issued. Licenses may be issued at any time but shall expire on the last day of the licensee candidate’s birth month two years forward or on the last day of the month 24 months forward, whichever comes earliest.

M. Definitions

beginning with “M”:

(1) “MEAC”

means midwifery education accreditation council.

(2)

“Midwifery instructor” means a person who:

(a)

is credentialed as a LM, certified professional midwife (CPM), certified nurse-midwife (CNM), or certified midwife (CM) and must be a licensed provider by a state or jurisdiction to provide midwifery care;

(b)

has an additional two years of experience after credentialing or proof of 50 primary births beyond entry-level CPM requirements;

(c)

has 10 continuity of care births beyond entry-level CPM requirements;

(d)

has attended a minimum of 10 out-of-hospital births as primary midwife in the last two years;

(e)

has a formal training and supervisory relationship with an apprentice midwife that is documented in writing; and

(f) is approved and listed with the division per division protocol.

N. Definitions beginning with "N":

(1) **"National practitioner data bank (NPDB)"** means the web-based repository of reports containing information on medical malpractice payments and adverse actions related to health care practitioners, providers, and suppliers.

(2) **"NARM"** means the North American registry of midwives.

(3) **"New Mexico midwifery student workbook (student workbook)"** means an instrument used for the state apprenticeship process and approved by the division, in which the preceptor documents the successful completion of the student's theoretical and clinical education and attainment of safe beginning practice of core competencies.

O. Definitions beginning with "O": [RESERVED]

P. Definitions beginning with "P":

(1) **"Peer review"** means the process utilized by licensed midwives to discuss client cases in a professional forum, which includes support, feedback, follow-up, and learning objectives according to NARM, the state professional organization(s), or other division recognized institutional criteria.

(2) **"Permit"** means documentation issued by the department to a person meeting the requirements described in these regulations authorizing the practice of midwifery at the apprentice level described in 16.11.3.9 NMAC.

(3) **"Permitting period"** means a three year period for which permits are issued; permits may be renewed for an additional three years.

(4) **"Physician"** means a person who is currently practicing obstetrics with a specialty in obstetrics/gynecology or family medicine and is licensed and in

good standing in their jurisdiction to practice medicine or osteopathy.

(5) **"Portfolio Evaluation Process (PEP)"** means is an educational evaluation process through NARM that includes verification of knowledge and skills by qualified preceptors. Completion of this process qualifies applicants to sit for the NARM skills and written examinations.

(6) **"Preceptor"** means the same as "midwifery instructor".

Q. Definitions beginning with "Q": [RESERVED]

R. Definitions beginning with "R": [RESERVED]

S. Definitions beginning with "S":

(1) **"Student midwife"** means a person age 18 years or older, holding a high school diploma or a GED as minimum educational requirement who:

(a) wishes to make application for basic education in midwifery through the NARM portfolio evaluation process (PEP) or through a U.S. department of education accredited midwifery school enrollment;

(b) has a formal preceptor relationship defined in writing with a midwifery instructor who is in good standing with the midwife licensing authority of the public health division and who meets the requirements of Paragraph (2) of Subsection M of 16.11.2.7 NMAC and agrees in writing to fulfill the basic educational and clinical experience requirements described in Subsections A and B of 16.11.3.12 NMAC.

(2) **"Supervision"** means the instruction, guidance, and continued evaluation of an apprentice or student midwife in the practice of midwifery by a midwifery instructor or preceptor with whom the apprentice has a formal relationship defined in writing and who retains ultimate responsibility for clients seen by apprentices.

T. Definitions beginning with "T": [RESERVED]

U. Definitions beginning with "U": [RESERVED]

V. Definitions beginning with "V": [RESERVED]

W. Definitions beginning with "W": [RESERVED]

X. Definitions beginning with "X": [RESERVED]

Y. Definitions beginning with "Y": [RESERVED]

Z. Definitions beginning with "Z": [RESERVED]

[16.11.3.7 NMAC - Rp, 16.11.3.7 NMAC, 12/28/2021]

16.11.3.8 DOCUMENTS INCORPORATED BY REFERENCE ARE THE LATEST EDITIONS OF:

A. "Department of health practice guidelines for New Mexico licensed midwives"

B. "Standards and core competencies of practice for licensed midwives in New Mexico" [16.11.3.8 NMAC - Rp, 16.11.3.8 NMAC, 12/28/2021]

16.11.3.9 PERMITS

A. General provisions:
(1) If caring for New Mexico residents, an apprentice or student midwife must be on one of three pathways:

- (a) New Mexico state process;
- (b) NARM's portfolio evaluation process (PEP); or
- (c) accredited midwifery school enrollment.

(2) A permit or modified permit for an apprentice midwife or student midwife is required for any apprentice midwife or student midwife that will provide care for a New Mexico resident

(a) an apprentice midwife permit is required for those who are utilizing the New Mexico state process;

(b) a student midwife modified permit is required for those who are enrolled in a U.S. department of education accredited midwifery school or utilizing the NARM's PEP.

(3) A permitted apprentice midwife or student midwife may provide any care or services allowed by these regulations as set out in Subsection A of 16.11.3.14 NMAC only under the direct supervision of a midwifery instructor. The midwifery instructor reviews and evaluates all care provided by and attends every labor and delivery managed by the apprentice. The midwifery instructor retains the responsibility for clients seen by apprentice midwives and student midwives.

(4) The division requires full disclosure of any past professional licensure, suspensions, and revocations which will be considered before granting any permit.

B. Apprentice midwife permits:

(1) Application for apprentice midwife permit must include all of the following:

(a) proof of high school diploma or GED or higher educational attainment;

(b) a completed agreement by the midwifery instructor to the preceptor relationship on the division's form;

(c) a completed apprentice application on the electronic division form; and

(d) the fee designated in Subsection D of 16.11.3.9 NMAC.

(2) Upon submission of a complete permit application, the division will supply to qualifying apprentice midwife applicants an apprentice midwife permit and necessary regulatory information applicable to apprenticeship:

(a) an apprentice midwife permit;

(b) the student workbook;

(c) a copy of the "department of health practice guidelines for New Mexico licensed midwives";

(d) a copy of the "standards and core

competencies of practice for licensed midwives in New Mexico"; and

(e) a copy of Licensed Midwives regulations, 16.11.3 NMAC.

(3) A midwife apprentice must have successfully completed basic education requirements in midwifery and the requisite examination process, set forth in 16.11.3.12 NMAC, no sooner than the end of the second year but no later than the end of the sixth year after the initial apprentice permit is issued. Extensions beyond this period may be considered by the division on a case-by-case basis.

(a) Before receiving an endorsement from the division to take the division-approved written national examination for certification, an apprentice must successfully complete the following:

(i) a minimum of 24 months of theoretical and clinical education described in 16.11.3.12 NMAC; and

(ii) a completed student workbook submitted to the division;

(b) Upon passing of the division-approved written national examination for certification, the apprentice will be eligible for state licensure set forth in Paragraph (1) of Subsection B of 16.11.3.10 NMAC.

(4) Renewal of permits: An apprentice midwifery permit may be renewed once after the initial three years permit period. An apprentice applicant for renewal shall submit to the department:

(a) a completed renewal application on the division's electronic form;

(b) the renewal fee designated in Subsection D of 16.11.3.9 NMAC

(5) Lapse in permitted period: If there is a lapse greater than six months between first and second permitted period as defined in Paragraph (3) of Subsection P of 16.11.3.7 NMAC, an apprentice will need to restart the apprentice process.

(6) The division may revoke the permit at any time upon a finding of any act of incompetence or unprofessional conduct as defined in 16.11.3.11 NMAC.

C. Student midwife modified permit:

(1) Application for student midwife modified permit must include all of the following:

(a) proof of registration in a U.S department of education accredited midwifery school or proof of registration in the NARM's PEP;

(b) a completed agreement by any New Mexico approved midwifery instructor to the preceptor relationship on the division's form;

(c) a completed student midwife registration application on the electronic division form;

(d) the fee designated in Subsection D of 16.11.3.9 NMAC

(2) Upon proof of successful completion, the division will supply to qualifying student midwife applicants a student midwife modified permit.

(3) A student midwife modified permit is valid for three years.

(4) Renewal of modified permit: A student midwife modified permit may be renewed after the initial permitting period. A student midwife applicant for renewal shall submit to the department:

(a) a completed renewal application on the division's ELECTONIC form; and

(b) the fee designated in Subsection D of 16.11.3.9 NMAC.

D. Fees: All fees are non-refundable and shall be made by payment method designated by the department.

(1) Applications for initial midwife apprenticeship permit must be accompanied by payment to the division in the amount of sixty dollars (\$60).

<p>(2) Application for renewal of midwife apprentice permit shall be accompanied by a payment of sixty dollars (\$60).</p> <p>(3) Applications for student midwife modified permit must be accompanied by payment to the division in the amount of thirty dollars (\$30).</p> <p>(4) Application for renewal of a student midwife modified permit shall be accompanied by a payment of thirty dollars (\$30).</p> <p>(5) The late fee for renewing an apprentice permit or student midwife modified permit when the complete application is not electronically submitted by the fifth calendar day of the month of the current permit or modified permit's expiration date, or for voluntary lapse of a permit or modified permit, will be an additional fee of \$25; this fee is in addition to the renewal fee. [16.11.3.9 NMAC - Rp, 16.11.3.9 NMAC, 12/28/2021]</p>	<p>B. Initial licensure:</p> <p>(1) An applicant for midwifery licensure must submit to the division the following:</p> <p>(a) if a new applicant for midwifery licensure:</p> <p>(i) evidence of a passing score on the division-approved national examination no more than one year before applying for licensure or proof of CPM certification; and</p> <p>(ii) evidence of a passing score on the division-approved jurisprudence examination;</p> <p>(b) if a new applicant for midwifery licensure who is already practicing midwifery in another state:</p> <p>(i) proof of CPM certification; and</p> <p>(ii) evidence of a passing score on the division-approved jurisprudence examination;</p> <p>(c) evidence of:</p> <p>(i) current certification in cardiopulmonary resuscitation of the adult and infant/child by the American Heart Association, the Red Cross, the American Safety and Health Institute (ASHI) Basic Life Support, or pre-approved by the department, that includes a hands-on skills component;</p> <p>(ii) competency in IV therapy via certification course that includes a hands-on skills component; and</p> <p>(iii) current certification in neonatal resuscitation program of the American academy of pediatrics, the Canadian paediatric society, or pre-approved by the department, that includes a hands-on skills component;</p> <p>(d) a complete application on the division's electronic forms which shall include the applicant's licensing and disciplinary history;</p> <p>(e) the fee designated in Subsection G 16.11.3.10 NMAC.</p>	<p>(2) An initial LM license may be issued at any time upon submission and verification of the materials required in Paragraph (1) of Subsection B 16.11.3.10 NMAC and shall expire on the last day of the month of the LM's birth date. A LM license shall be valid for a maximum of two years.</p> <p>(3) After reviewing and approving the submitted application, the division shall issue to qualifying applicants a license.</p> <p>(4) If a license is denied on initial application, the applicant may reapply after six months and upon meeting all the requirements under Subsection B of 16.11.2.10 NMAC.</p> <p>(5) Any final action denying a license to an applicant is an event reportable to the NPDB.</p> <p>C. Renewal of licensure: A LM license shall expire on the last day of the month of the LM's birth month of the second year after it is issued. A completed renewal application must be received by the division by the fifth day of the month of expiration of the current license. An applicant for renewal shall submit to the division:</p> <p>(1) a completed renewal application on the division's electronic form;</p> <p>(2) evidence of successful completion of 30 contact hours of continuing education that conforms with the definitions of "contact hour" and of "continuing education" in topics focused on midwifery care, reproductive health, or the evaluation and care of the newborn. CEUs taught by midwifery associations or non-accredited educational programs will not count unless accredited as CEUs by a third party.</p> <p>(a) A minimum of two of the 30 contact hours should be pharmacology related with emphasis on the division-approved drug formulary.</p> <p>(b) The following options, subject to audit and approval by the division,</p>
<p>16.11.3.10 LICENSURE:</p> <p>A. General provisions:</p> <p>(1) A licensed midwife may provide any care or services allowed by these regulations.</p> <p>(2) The division requires full disclosure of past midwifery or other professional licensure, suspensions, and revocations which will be considered before granting any license. The department may deny licensure, including renewal, reactivation, or reinstatement of licensure, to a LM whose midwifery or other license has been subject to disciplinary action in any jurisdiction. If denied, re-application will only be considered after a minimum of six months from date of initial denial, and the re-application must be accompanied by full disclosure and complete record of previous actions.</p> <p>(3) Practicing midwifery in New Mexico for compensation or using the initials LM after one's name without a current New Mexico midwifery license is grounds for disciplinary action.</p>		

may be accepted in place of continuing education contact hours, except for the pharmacology-related contact hours requirement:

(i) preparation and presentation of a midwifery topic that has received contact hour approval by an accredited CE sponsoring agency will count for twice the number of contact hours for which the presentation is approved with a maximum award of 15 contact hours per licensure period; the same presentation cannot be credited more than once;

(ii) sole or primary authorship of one midwifery related article published in a department-approved professional medical or midwifery journal may be accepted in place of 10 contact hours per licensure period;

(iii) completion of a formal university or college course directly related to midwifery or clinical practice; each university or college unit shall be credited as 15 hours of continuing education; and

(iv) acting as primary preceptor for a midwifery student; each 10 hours of precepting shall be credited as one continuing education hour, and up to five contact hours will be allowed per student, with a maximum award of ten (10) contact hours; verification shall be provided on division-approved form.

(3) an annual report of practice data in a format as directed by the division

(4) evidence of current certification that includes a hands-on component in cardiopulmonary resuscitation of the adult, infant/child, current recognition by the neonatal resuscitation program of the American academy of pediatrics, and current competency in IV therapy via certification course as outlined in Item (ii) of Subparagraph (c) of Paragraph (1) of Subsection B of 16.11.3.10 NMAC;

(5) evidence of peer review participation within the two years preceding application;

(6) renewal payment designated in Subsection G 16.11.3.10 NMAC.

D. Reactivation of a LM license:

(1) A lapsed license occurs on the first day of the month following the expiration date of the current license, if license not renewed on time, and a LM must reinstate the license, paying all added fees before being allowed to practice. A LM may not work with a lapsed license or disciplinary action will be taken.

(2) The requirements for reactivation of a LM license that has voluntarily lapsed in status or for an applicant that is returning to New Mexico are the same as those for license renewal, listed in Subsection C of 16.11.2.10 NMAC, except the applicant must pay the additional fee for reactivation pursuant to Subsection G of 16.12.2.10 NMAC.

(3) The license will be reactivated with the original license number.

E. Reinstatement of a LM license:

(1) The requirements for reinstatement of a revoked or suspended LM license are the same as those for license renewal, listed in Subsection C of 16.11.2.10 NMAC, except that the fee is higher than a renewal, as designated in Subsection G of 16.11.2.10 NMAC.

(2) The license will be reinstated with the original license number.

F. Reciprocity: There is no reciprocity with other jurisdictions.

G. Fees: All fees are non-refundable and shall be made by the method designated by the division.

(1) Applications for initial licensure shall be accompanied by payment to the division in the amount of one-hundred dollars (\$100).

(2) Application for renewal of licenses shall be accompanied by a payment of fifty dollars (\$50).

(3) The late fee for renewing a license when the complete application is not electronically submitted by the fifth calendar day of the month of the current license's expiration date or for voluntary lapse of a license will incur an additional fee of seventy-five dollars (\$75); this fee is in addition to the renewal fee.

(4) Reinstatement of a revoked or suspended license or reactivation of a lapsed license will incur an additional fee of one-hundred dollars (\$100); this fee is in addition to the renewal fee.

(5) Application for examination shall be accompanied by the fee designated by the division. This amount does not include the licensing fee.

(6) Hard copy of a license certificate (8 ½ x 11" size) can be requested for a fee of thirty dollars (\$30).

(7) Verification of license by FAX or letter can be requested for a fee of twenty-five dollars (\$25). [16.11.3.10 NMAC - Rp, 16.11.3.10 NMAC, 12/28/2021]

16.11.3.11 DISCIPLINARY ACTION:

A. Grounds for action:
(1)

Incompetence. Charges of incompetence may be based upon a single act of incompetence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions so long as the conduct is of such a character that harm could have resulted to the client or to the public from the act or omission or series of acts or omissions.

(2) Unprofessional conduct. For purposes of these regulations "unprofessional conduct" includes, but is not limited to, the following:

(a) dissemination of a client's health information or treatment plan acquired during the course of employment to individuals not entitled to such information and where such information is protected by law or hospital/agency policy from disclosure;

(b) falsifying or altering client records or personnel records for the purpose of reflecting incorrect or incomplete information;

(c) misappropriation of money, drugs or property;

(d) obtaining or attempting to obtain any fee for client services for one's self or for another through fraud, misrepresentation, or deceit;

(e) aiding, abetting, assisting or hiring an individual to violate any duly promulgated regulation of the department's midwife licensing authority;

(f) obtaining, possessing, administering or furnishing prescription drugs not on the department formulary listed in the "department of health practice guidelines for New Mexico licensed midwives" to any person, including but not limited to one's self;

(g) failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of midwifery;

(h) obtaining or attempting to obtain a license to practice midwifery through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the licensure by examination or endorsement process, or relicensure process;

(i) practicing midwifery in New Mexico without a valid, current New Mexico license, permit, or modified permit or aiding, abetting or assisting another to practice midwifery without a valid, current New Mexico license;

(j) intentionally engaging in sexual

contact with or toward a client in a manner that is commonly recognized as outside the scope of the individual midwife's practice;

(k) failure to care for a non-adherent client(s) as required in the "department of health practice guidelines for New Mexico licensed midwives" when the failure to care results or may result in potential or actual harm or danger to the client(s);

(l) engaging in the practice of midwifery when judgment or physical ability is impaired by alcohol or drugs or controlled substances;

(m) practice which is beyond the scope of LM licensure;

(n) delegation of medication administration, assessment, evaluation and judgment to non-licensed persons, or non-permitted apprentices/student midwives;

(o) verbally or physically abusing a client;

(p) failure to meet the documentation requirements of the bureau of vital records and health statistics regulations;

(q) violation of the department's regulations governing the practice of licensed midwifery;

(r) failure to provide the division in a timely manner with requested information.

(3) Failure to comply with the New Mexico Parental Responsibility Act, Section 40-5A-1 through 40-5A-13, NMSA 1978.

(4) Dereliction of any duty imposed by law.

(5) Conviction of a felony pursuant to Paragraph (1) of Subsection A of 28-2-4 NMSA 1978.

(6) Conviction, or entered into an agreed disposition, of a misdemeanor offense related to the practice of midwifery as determined on a case-by-case basis.

(7) Failure to report in writing to the division any complaint or claim made against the LM's practice as a registered, certified, or licensed health care provider in any jurisdiction. Such notification shall include the credentialing jurisdiction and the location, time, and content of the complaint or claim. It shall be made within 20 business days of the LM becoming aware of the complaint or claim.

(8) Conduct resulting in the suspension or revocation of a registration, license, or certification to perform as a health care provider.

(9) Failure to report a LM who appears to have violated the rule for the practice of licensed midwifery. Anyone reporting an alleged violation of this rule shall be immune from liability under this rule unless the person acted in bad faith or with malicious purpose.

(10) Violation of any of the provisions of this rule.

B. Non-disciplinary proceedings: For non-disciplinary actions involving denial of renewal of a license the applicant will be provided a notice of contemplated action and the right to the hearing or request for settlement procedures set forth in Paragraphs (3) and (4) of Subsection C of 16.11.3.11 NMAC.

C. Disciplinary proceedings: Disciplinary proceedings are conducted in accordance with the Uniform Licensing Act (ULA), 61-1-1 et seq., NMSA 1978 and Open Meetings Act 10-15-1 et seq., NMSA 1978.

(1) Filing of a complaint:

(a) A written complaint must be filed with the division before a disciplinary proceeding can be initiated.

(i) A complaint is an allegation of a wrongful act(s) or an omission(s).

(ii) A complaint may include knowledge of a judgment or settlement against a licensee.

(b)
A written complaint may be filed by any person, including a member of the division's licensed midwifery advisory board.

(2)
Investigation of a complaint:

(a)
All complaints alleging a violation of the regulations adopted by the public health division will be investigated to determine whether a violation of applicable law or rule has occurred.

(b)
The complainant will receive from the division a notification of receipt of the complaint.

(c)
The investigation may result in a notice of contemplated action (NCA), per the ULA, being issued by the division if a violation exists; or a dismissal of the complaint because no actionable violation can be substantiated. Once dismissal of a complaint is made following an investigation, the licensee will be notified of the dismissal.

(d)
The department will notify the complainant of conclusion of the investigation and provide information as to public notification of any disciplinary action that has been taken as set forth in Subsection D of 16.11.3.11 NMAC.

(3) Notice of contemplated action:

(a)
The NCA shall be drafted by the department.

(b)
The director of the division, or the director's designee, shall sign all NCAs.

(c)
The NCAs shall contain written information in accordance with the requirements of the ULA and shall be served on the licensee in accordance with the ULA.

(4) Request for a hearing, notice of hearing and request for continuance:

(a)
Every licensee shall be afforded notice and an opportunity to be heard, as set forth in ULA at section 61-1-3

NMSA 1978, before the department has authority to take any action that would result in disciplinary action.

(b)
Within 20 days of receiving the NCA, a licensee may request a hearing in writing by certified mail. The department shall notify the licensee of the time and place of hearing within 20 days of receipt of the request. The hearing shall be held no more than 60 nor less than 15 days from the date of service of the notice of hearing. However, if the ULA designates time requirements different from the above stated time requirements, the ULA time requirements shall prevail. The department shall notify the licensee of these prevailing time requirements when it sends the NCA.

(c)
The licensee may request to explore a settlement by negotiating a stipulation and agreement with the administrative prosecuting attorney at any time prior to the hearing.

(i)
If a settlement is negotiated, the proposed stipulation and agreement shall be presented to the department for final approval.

(ii)
The proposed stipulation and agreement does not divest the department of the authority to require a formal hearing or final approval, amendment, or rejection.

(iii)
If a settlement is not reached, a hearing shall be held.

(d)
Once a hearing has been scheduled, any requests for a continuance must be presented to the division's hearing officer, in writing, at least 10 days prior to the scheduled hearing. The hearing officer may approve or deny the request.

(e)
If a person fails to appear after requesting a hearing, the department may proceed to consider the matter as a default and make a decision.

(f)
If no request for a hearing is made within the time and manner required by the ULA, the division may take the action contemplated in the

NCA. Such action shall be final and reportable to NPDB.

(g)
The department shall keep a record of the number of complaints received and the disposition of said complaints as either substantiated or unsubstantiated in accordance with 1.21.2 et al NMAC, Retention and Disposition of Public Records.

(5)
Administrative hearing:

(a)
All hearings shall be conducted by a hearing officer designated by the secretary or authorized representative of the department. The hearing officer shall have authority to rule on all non-dispositive motions.

(b)
All hearings before the department shall be conducted in the same manner as a hearing in a court of law with the exception that the rules of evidence may be relaxed in the hearing pursuant to the ULA.

(i)
Hearsay evidence is admissible if it is of a kind commonly relied upon by reasonable prudent people in the conduct of serious affairs.

(ii)
Disciplinary action against a LM license must not be based solely on hearsay evidence.

(c)
The hearing officer may take testimony, examine witnesses and direct a continuance of any case.

(d)
The hearing officer shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books, documents or records pertinent to the matter of a case before the division's licensing authority.

(e)
The hearing officer shall issue a report and recommended finding to the department secretary in accordance with the ULA.

(f)
Decision of the department: the secretary of the department shall render a final administrative determination after reviewing the report and recommended findings

issued by the hearing officer. Copies of the written decision shall be mailed via certified mail to the licensee in accordance with the ULA, Section 61-1-14 NMSA 1978, and placed in the LM's licensure file. The department shall mail a copy of the written decision to any authority(ies) that license(s) the LM as a healthcare provider and shall report the decision to the NPDB if the decision is to uphold the disciplinary action.

D. Public notification of disciplinary action: The following are means in which disciplinary actions are made available to the public.

(1)

Information regarding disciplinary actions shall be entered into the license file or applicant's file.

(2)

Submission of disciplinary action to any appropriate disciplinary data bank or notification to each state in which the licensee holds a license or has been licensed.

E. Reinstatement of license:

(1) Individuals

who request reinstatement of their license or who request that their probation be lifted must be prepared to provide the division with substantial evidence to support their request. This evidence must be in the form of notarized written reports or sworn written testimony from individuals who have personal knowledge of the licensee's activities and progress during the period of probation, suspension or revocation.

(2) Requests

for reinstatement of a revoked license for reasons other than noncompliance with Section 40-5A-1 to -13 NMSA 1978, Parental Responsibility Act, shall not be considered by the department prior to the expiration of one year from the date of the order of revocation. The date at which time the secretary of the department's signature is affixed to the order of revocation or suspension is the controlling date, unless otherwise specified in the order.

(3) Requests

for reinstatement of a suspended

license shall be considered at such time as provided by the department in the order of suspension.

(4)

Reinstatement of a revoked or suspended license requires proof of meeting the renewal requirements as set forth in these regulations, any remedial education or supervised practice required by division, and payment of the reinstatement of a revoked license fee as set forth in Subsection G of 16.11.3.10 NMAC.

(5)

When a license is revoked solely because the licensee is not in compliance with the Parental Responsibility Act, Section 40-5A-1 to 13 NMSA 1978, the license shall be reinstated upon presentation of a subsequent statement of compliance.

[16.11.3.11 NMAC - Rp, 16.11.3.11 NMAC, 12/28/2021]

16.11.3.12 COURSE OF

EDUCATION: New Mexico retains a state apprentice process to become a midwife; the division will provide a division-approved student workbook as a tool in determining the acceptability of an applicant's educational experience. The main purpose of the education program is to establish entry-level knowledge, skills, and abilities necessary to practice competently; this is established through training, education and supervised clinical experience, followed by successful completion of a division-approved written examination. The midwifery instructor will use the student workbook to conduct the course of education for the apprentice as set out below.

A. Theoretical

instruction: Theoretical instruction must include, but is not limited to, these areas of study:

(1) Human life

science: Anatomy and physiology, pathophysiology, fetal development, genetic screening, applied microbiology;

(2) Psycho/

social issues: Communication and counseling, cultural concerns, human sexuality, perinatal education;

(3)

Antepartum management: History taking, physical assessment, risk screening, provision of care, normal course, complications, pharmacology, nutrition, diagnostic laboratory tests and procedures, and consultation and transfer;

(4)

Intrapartum management: History taking, physical assessment, risk screening, provision of care, normal course, complications, pharmacology, diagnostic laboratory tests and procedures, consultation and transfer, and adult cardiopulmonary resuscitation;

(5) Postpartum

management: History taking, physical assessment, risk screening, provision of care, normal course, complications, pharmacology, consultation and transfer, diagnostic laboratory tests and procedures, and family planning;

(6) Newborn

management: History taking, physical assessment, risk screening, provision of care, normal course, complications, diagnostic laboratory tests and procedures, consultation and transfer, and neonatal resuscitation;

(7)

Reproductive health care: History taking, physical assessment, risk screening, provision of care, diagnostic laboratory tests and procedures, non-pharmacological treatment, consultation or transfer for treatment, and family planning;

(8)

Professional issues: History of midwifery, division regulations regarding prevention of infant blindness; newborn screening for certain congenital diseases and other inborn metabolic errors; registration of births, neonatal and maternal deaths, including stillbirths, and control of diseases and conditions of public health significance; ethics, laws and regulations, starting a small business.

(9)

Pharmacological management: Safely procure, carry, and administer medications, per the Drug and Cosmetic Act (Definition K), listed on the department formulary.

B. Clinical experience: Permitted apprentice midwives should refer to the division's student workbook for details on clinical experiences and skills required to complete training including but not limited to:

(1) Skills and knowledge:

(a) professional issues, knowledge, and skills;

(b) general healthcare skills;

(c) maternal health assessment;

(d) prenatal care;

(e) labor, birth, and immediate postpartum;

(f) postpartum;

(g) well-baby care.

(2) Clinical experiences:

(a) births as an observer;

(b) births as an assistant under supervision;

(c) prenatal exams as an assistant under supervision;

(d) newborn exams as an assistant under supervision;

(e) postpartum exams as an assistant under supervision;

(f) birth as a primary under supervision;

(g) initial prenatal exams as a primary under supervision;

(h) prenatal exams as a primary under supervision;

(i) newborn exams as a primary under supervision;

(j) postpartum exams as a primary under supervision;

(k) continuity of care.

[16.11.3.12 NMAC - Rp, 16.11.3.12 NMAC, 12/28/2021]

16.11.3.13 EXAMINATION:

The division will administer a state jurisprudence examination for licensure of midwives at least quarterly. This examination must be taken by all applicants applying for licensure in New Mexico. Proof of passing NARM exam within one year or current CPM certification is required to sit for this examination.

A. A candidate for examination who receives a failing score shall be eligible to retake the examination by meeting the following requirements:

(1) If an applicant fails the examination, the applicant must wait a period of three months from examination date before retaking the examination, and must take the examination again within six months after the three month waiting period.

(2) Submitting the examination fee for each examination as outlined in Subsection G of 16.11.3.10 NMAC.

B. If an applicant fails the examination more than three times, further application for the examination will be at the discretion of the department.

[16.11.3.13 NMAC - Rp, 16.11.3.13 NMAC, 12/28/2021]

16.11.3.14 RESPONSIBILITIES AND SCOPE OF PRACTICE:

A. Scope of practice: The licensed midwife may independently manage health care services related to the antepartum, intrapartum, and postpartum period for people without general health or obstetrical complications. The LM may provide normal newborn care for up to six weeks of age. The LM may provide non-pharmacological family planning and routine reproductive health care with training and experience. A LM will consult, collaborate, or refer to other health professionals for client care issues outside of their area of competency. LMs have authority to purchase and use specific drugs and medications as

outlined in the department-approved formulary as set forth in "department of health practice guidelines for New Mexico licensed midwives".

A LM practices in accordance with the "department of health practice guidelines for New Mexico licensed midwives" and the "standards and core competencies of practice for licensed midwives in New Mexico".

B. Responsibility to consult: It shall be the responsibility of the midwife to develop a means for consultation with or referral/transfer to a physician, certified nurse-midwife (CNM), or hospital if there are significant deviations from the normal in the health status of either birthing persons or newborns as set out in the "department of health practice guidelines for New Mexico licensed midwives".

C. Informed consent: If the LM is providing birth care, the LM must obtain written, informed consent regarding the care to be provided by the licensed midwife from the client upon accepting the client into care. The signed informed consent form must be filed in the client's record, and a copy must be provided to the client. Informed consent shall be a written statement signed by the licensee and the client, in which the licensee certifies that full disclosure of the following information, at a minimum, has been made and acknowledged by the client:

(1) the LM's educational background and credentials;

(2) whether the LM has professional liability insurance coverage;

(3) a description of the procedures, benefits and risks of community setting births;

(4) the nature and scope of the care to be given;

(5) the nature and terms of the financial agreement;

(6) the plan for consultation and for non-emergent and emergent transfer and transport of client or newborn; and

(7) information regarding where complaints may be filed.

D. The licensed midwife may not accept a client for care who does not meet the minimum criteria set out in the “department of health practice guidelines for New Mexico licensed midwives”.

E. Birth registration: The licensed midwife must complete a New Mexico certificate of live birth registration and file it with the bureau of vital records and health statistics of the department of health within 10 days of the birth of any child in the state of New Mexico. No licensed midwife shall register nor enable any other party to register as a New Mexico birth any child not born in the state. Failure to meet the vital records regulations shall be grounds for disciplinary action.

F. Records: The licensed midwife will document and maintain clients’ records according to current “department of health practice guidelines for New Mexico”. Inactive records shall be maintained no less than 25 years.

G. Mortality reporting: The licensed midwife must report within 48 hours to the division any neonatal or maternal mortality, including stillbirths, in clients for whom the LM has cared for in the perinatal period as set forth in the “department of health practice guidelines for New Mexico licensed midwives”.

H. Reportable diseases: The licensed midwife must report any reportable contagious disease to the public health officer pursuant to the Public Health Act, Section 24-1-15 NMSA 1978.

I. The licensed midwife shall participate in peer review at least once every two years in accordance with the requirements of the division.

J. Annual reports: At time of license renewal, each licensed midwife shall submit a report on a division-approved form of the disposition of each client the LM has given care to for the previous 24 months. Note that this annual reporting does not preclude the immediate reporting of maternal or neonatal mortality or stillborn cases.

K. Changes of contact information: A licensed midwife must report a change of name, address, phone number, email, or other contact information within 30 days of the change.

L. Other rules: a LM shall fulfill the requirements of all relevant department rules including:

(1) “bureau of vital records and health statistics,” 7.2.2 NMAC;

(2) “control of disease and conditions of public health significance,” 7.4.3 NMAC;

(3) “newborn genetic screening,” 7.30.6 NMAC;

(4) “prevention of infant blindness,” 7.30.7 NMAC; and

(5) “requirement for freestanding birth centers,” 7.10.2 NMAC.

M. Guidelines: In the absence of specific direction in these regulations as to standard of practice or ethics, the “standards and core competencies of practice for licensed midwives in New Mexico” and the “department of health practice guidelines for New Mexico licensed midwives” approved by the division, which contains the procedures and policies of the department of health and division which are adopted as standards of practice and are incorporated by reference herein. [16.11.3.14 NMAC - Rp, 16.11.3.14 NMAC, 12/28/2021]

16.11.3.15 ADVISORY

BOARD: The division shall appoint a licensed midwifery advisory board to make recommendations to the department regarding the regulation of LMs.

A. The board’s activities will be:

(1) review complaints and mortalities, set forth in Subsection G of 16.11.3.14 NMAC, involving LMs as requested by the division and make recommendations to the division;

(2) remain current in clinical practice and professional issues and advise the division accordingly;

(3) recommend updates in the “department of health practice guidelines for New Mexico licensed midwives” and the “standards and core competencies of practice for licensed midwives in New Mexico”;
(4) conduct other relevant business as requested by the division.

B. Advisory board membership: The licensed midwifery advisory board shall be composed of nine members; the membership shall be as follows:

(1) three state licensed midwives, at least two of whom shall be actively practicing;

(2) one state licensed certified nurse-midwife actively practicing midwifery;

(3) three members of the general public, who shall not have any significant financial interest, direct or indirect, in the profession regulated;

(4) one state licensed physician actively practicing obstetrics; and

(5) one employee of the division.

C. Board members other than the department representative shall be appointed for staggered terms up to three years in length. Board members shall serve on a voluntary basis without compensation. They shall not serve for more than two consecutive terms. The department representative shall not be subject to term limits.

D. The board shall meet a minimum of two times a year when a meeting of the board is called by the director of the division.

E. Board members may submit requests for reimbursement of in-state travel and per diem for attending board meetings in accordance with the Per Diem and Mileage Act, Section 10-8-1 to -8 NMSA 1978 department of finance administration rules, 2.42.2 NMAC.

F. Any member failing to attend two consecutive board meetings without good cause and an absence excused prior to the meetings

shall be considered for removal from the board.

[16.11.3.15 NMAC - Rp, 16.11.3.15 NMAC, 12/28/2021]

16.11.3.16 SEVERABILITY:

If any part or application of the regulations governing the practice of licensed midwifery is held invalid, the remainder or its application to other situations or persons shall not be affected.

[16.11.3.16 NMAC - Rp, 16.11.3.16 NMAC, 12/28/2021]

HISTORY OF 16.11.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

HED-80-3 (HSD), Regulations Governing the Practice of Lay Midwifery, filed 2/5/1980.

HED-80-3A (HSD), Regulations Governing the Practice of Lay Midwifery, filed 3/12/1980.

HED-82-1 (HSD), Regulations Governing the Practice of Lay Midwifery, filed 1/19/1982.

HED-87-1 (HSD), Regulations Governing the Practice of Lay Midwifery, filed 3/19/1987.

HED 89-10 (PHD), Regulations Governing the Practice of Lay Midwifery, filed 11/16/1989.

HED-93-9 (PHD), Regulations Governing the Practice of Lay Midwifery, filed 7/12/1993.

History of Repealed Material:

16 NMAC 11.3, Licensed Midwives (filed 10/18/1996) Repealed effective 12/28/2021.

Other: 16 NMAC 11.3, Licensed Midwives (filed 10/18/1996) Replaced by 16.11.3 NMAC, Licensed Midwives effective 12/28/2021.

**HEALTH,
DEPARTMENT OF**

**TITLE 7 HEALTH
CHAPTER 1 HEALTH-
GENERAL PROVISIONS**

**PART 32 LONG-TERM
CARE FACILITY DEMENTIA
TRAINING**

7.1.32.1 ISSUING

AGENCY: New Mexico Department of Health, Division of Health Improvement.

[7.1.32.1 NMAC - N, 12/28/2021]

7.1.32.2 SCOPE:

These regulations apply to any long-term care facility and long-term care facility contractor in the state of New Mexico or licensed by the New Mexico department of health, division of health improvement.

[7.1.32.2 NMAC - N, 12/28/2021]

7.1.32.3 STATUTORY

AUTHORITY: The regulations set forth herein are promulgated by the secretary of the department of health by authority of Subsection E of Section 9-7-6 NMSA 1978, Section 24-17B-1 through Section 24-17B-4 NMSA 1978. The division of health improvement (“divison”) of the department of health shall administer and enforce these regulations.

[7.1.32.3 NMAC - N, 12/28/2021]

7.1.32.4 DURATION:

Permanent.

[7.1.32.4 NMAC - N, 12/28/2021]

7.1.32.5 EFFECTIVE

DATE: December 28, 2021, unless a later date is cited at the end of a section. [7.1.32.5 NMAC - N, 12/28/2021]

7.1.32.6 OBJECTIVE:

The regulations establish policy, standards, and criteria relating to: the educational and certification requirements, issuing of certifications, and continuing education of persons who provide direct care service to long-term care facility residents in order to maintain or improve the health and quality of life of the residents.

[7.1.32.6 NMAC - N, 12/28/2021]

7.1.32.7 DEFINITIONS:

A. “Act” shall mean the Long-Term Care Facility

Dementia Training Act Section 24-17B-1, et seq NMSA 1978.

B. “Certificate” shall mean the training certificate issued by the provider of training pursuant to 7.1.32 NMAC and the Long-Term Care Facility Dementia Training Act Section 24-17B-1, et seq NMSA 1978.

C. “Continuing education” means participation in a formal learning experience of which the course topics have been approved by the department as set forth in 7.1.32.9 NMAC.

D. “Department” means the department of health.

E. “Direct care service” means services provided to long-term care facility residents that maintain or improve the health and quality of life of the residents.

F. “Direct care service staff member” means a person:

(1) employed by or contracted with a long-term care facility, either directly or through a third-party agreement, to provide in-person direct care services to long-term care facility residents; or

(2) contracted with a long-term care facility, either directly or through a third-party agreement, to provide at least ten hours per week in direct care services by video, audio or telephonic means.

G. “DCSSM” means direct care service staff member.

H. “Division” means the division of health improvement of the department of health.

I. “In-person instructor” means the in-person dementia training instructor who will conduct dementia training pursuant to the requirements of 7.1.32 NMAC.

J. “Long-term care facility” means every long-term care facility licensed by the state of New Mexico.

K. “Long-term care facility contractor” as used within this regulation means an entity that employs direct care service staff members.

[7.1.32.7 NMAC - N, 12/28/2021]

7.1.32.8 TRAINING REQUIREMENT:

A. Every direct care service staff member shall complete the requirements for and obtain certification as provided in 7.1.32.9 NMAC.

B. Every direct care service staff member is required to complete the training and written examination set forth in 7.1.32.9 NMAC pursuant to the following requirements:

(1) if hired after January 1, 2022, shall complete the training required within 60 days of the start of employment;

(2) if hired prior to January 1, 2022, shall complete the training required if the direct care service staff member has not received training in the past 24 months equivalent to the training set forth in 7.1.32.9 NMAC within sixty days of January 1, 2022;

(3) if the direct care service staff member had successfully obtained a training certificate but has had a lapse of dementia-related direct care service employment for 24 consecutive months or more then the direct care service staff member shall complete the training and examination set forth in 7.1.32.9 NMAC within 60 days of the start of employment.

C. Exception to initial training: A direct care service staff member (DCSSM) hired prior to January 1, 2022, who received equivalent training within the past 24 months equivalent to the requirements set forth in Subsection A of 7.1.32.9 NMAC shall be issued a training certificate by the department upon receipt from a facility of a written attestation that the DCSSM has received such training within the 24 months prior to January 1, 2022. A direct care service staff member (DCSSM) hired after January 1, 2022, who received equivalent training within the 24 months prior to the hiring date equivalent to the requirements set forth in Subsection A of 7.1.32.9 NMAC shall be issued a training certificate by the department upon receipt from a facility of a

written attestation that the DCSSM has received such training within the 24 months prior to the date of hire. The facility attestation shall be provided to the department's train division email at: DOH-TRAIN.Support@state.nm.us for issuance of a training certificate by the department. [7.1.32.8 NMAC - N, 12/28/2021]

7.1.32.9 COURSE OF EDUCATION:

New Mexico requires a state training education process to become a certified direct care staff member. The education program shall provide knowledge on the skills and abilities necessary to perform as a competent direct care service staff member; this is established through training education, provided either on-line or in person, followed by successful completion of a division-approved written examination. The in-person instructor will conduct the course of education for the direct care staff member as set out below. Each long-term facility and long-term care facility contractor shall provide training either on-line or in-person as set forth in this section to each DCSSM that it employs.

A. Instruction:

Instruction by the on-line provider or in-person instructor must be at least four hours in length, either in-person or on-line, and include these department-approved areas of study:

(1) identify cognitive, functional, and behavioral changes of normal aging and those associated with mild cognitive impairment and dementia;

(2) identify and understand the various types of dementia;

(3) identify the prevalence, risk factors, signs and symptoms, and rate of progression of dementia;

(4) identify and understand the stages of dementia;

(5) describe and understand when to refer people living with dementia (PLwD) to a neurologist, geriatric psychiatrist, neuropsychologist, or a national Alzheimer's disease center;

(6) diagnosing dementia & discussing dementia diagnosis;

(7) patient centered care;

(8) activities of daily living in people living with dementia and Alzheimer's disease;

(9) identify common components of an individualized primary care plan for persons with middle stage dementia;

(10) identify common components of an individualized primary care plan for persons with late stage dementia;

(11) identify and understand common medical issues related to early-stage dementia;

(12) identify and understand common medical issues related to middle-stage dementia;

(13) identify and understand common medical issues related to late-stage dementia;

(14) effective care transitions to and from acute care hospitals;

(15) interprofessional team roles and dementia;

(16) describe how responsibilities may evolve as the disease progresses;

(17) list legal and financial considerations to discuss with a patient and appropriate care partner(s) upon a diagnosis of dementia;

(18) identify domains that are included in a capacity assessment for a person living with dementia;

(19) ethics and capacity issues;

(20) responding to abuse, neglect & exploitation of people living with dementia and Alzheimer's disease.

(21) identify signs and symptoms of end-stage dementia;

(22) identify and understand barriers to optimal care among various ethnic groups;

(23) identify and understand techniques for

effective communications with diverse populations;

(24) pain assessment in people living with dementia;

(25) resident rights;

(26) palliative care & end of life care.

B. Trainer

requirements: A person conducting training of the required topics set forth in 7.1.32.9 NMAC shall have:

(1) at least two years of work experience related to Alzheimer's disease, dementia, health care, gerontology or other related field; and

(2) successfully completed training requirement to the requirements provided in Subsection A of 7.32.1.9 NMAC, including passage of the knowledge test required in Subsection D of 7.1.32.9 NMAC; and

C. Training on-line:

Training on-line shall be provided by the department through the train program at www.train.org/nm or through a department -approved on-line curriculum and knowledge test which shall include the department-approved areas of study set forth in Subsection A of 7.1.32.9 NMAC and shall be at least four hours in length. After completion of the on-line training and successful passage of a knowledge test, a certificate shall be issued to the DCSSM.

D. Evaluation of training topics:

The department shall review and evaluate the training areas of study in Subsection A of 7.1.32.9 NMAC every two years or as determined necessary by the department based upon current research and best practices.

E. Testing: The in-person or on-line training must be followed by successful completion of a division-approved written examination which shall cover the areas of study set forth in Subsection A of 7.1.32.9 NMAC before a training certificate will be issued by the in-person or on-line training program.

F. Training

certificates: The provider of on-

line or in-person training conducted pursuant to 7.1.32.9 NMAC shall issue a certificate to the DCSSM upon completion of initial training, or the department shall issue a certificate upon receipt of facility attestation of exemption from training as set forth in Subsection D of 7.1.32.8 NMAC. The certificate shall be valid so long as the certificate holder meets the continuing education requirement set forth in 7.32.1.9 NMAC and the certificate holder has not had a lapse of dementia-related direct care service employment for 24 consecutive months or more. The certificate shall be valid among long-term care facilities.

G. Continuing

education: Proof must be maintained by the facility of four hours of training by the DCSSM every two years on topics set forth in 7.1.32.9 NMAC for treatment and care of persons with Alzheimer's disease or dementia, in order to maintain the certificate issued to the individual DCSSM.

H. Maintenance of

certification records: Each long-term care facility and long-term care facility contractor subject to 7.1.32.1 et.seq NMAC shall be responsible for maintaining documentation regarding completed long-term care facility dementia training, evaluation and continuing education for each DCSSM. Each long-term care facility contractor subject to 7.1.32.1 et.seq NMAC shall provide a copy of each DCSSM'S dementia training certificate to every long-term care facility where the DCSSM provides direct care service, pursuant to Subsection F of Section 24-17B-3 NMSA 1978.

[7.1.32.9 NMAC - N, 12/28/2021]

7.32.1.10 SEVERABILITY:

If any part or application of the long-term care facility dementia training regulation is held invalid, the remainder or its application to other situations or persons shall not be affected.

[7.1.32.10 NMAC - N, 12/28/2021]

HISTORY OF 7.32.10 NMAC:

[RESERVED]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.400 NMAC, Sections 8, 10 and 14, effective 1/1/2022.

8.200.400.8 [RESERVED]

MISSION: To transform lives.

Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.200.400.8 NMAC - Rp, 8.200.400.8 NMAC, 1/1/2019; A, 1/1/2022]

8.200.400.10 BASIS FOR DEFINING GROUP - MEDICAID CATEGORIES:

A. Except where noted, the HSD income support division (ISD) determines eligibility in the categories listed below:

(1) other adult (Category 100);

(2) parent caretaker (Category 200);

(3) pregnant women (Category 300);

(4) pregnancy-related services (Category 301);

(5) loss of parent caretaker due to earnings from employment or due to spousal support (Categories 027 and 028);

(6) newborn (Category 031);

(7) children under age 19 (Categories 400, 401, 402, 403, 420, and 421);

(8) children, youth, and families department medicaid (Categories 017, 037, 046, 04, 066, and 086); and

(9) family planning (Category 029).

B. Medicare savings program (MSP): MSP assists an eligible recipient with the cost of medicare.

(1) Medicare is the federal government program that provides health care coverage

for individuals 65 or older; or under 65 who have a disability. Individuals under 65 who have a disability are subject to a waiting period of 24 months from the approval date of social security disability insurance (SSDI) benefits before they receive medicare coverage. Coverage under medicare is provided in four parts.

(a)

Part A hospital coverage is usually free to beneficiaries when medicare taxes are paid while working.

(b)

Part B medical coverage requires monthly premiums, co-insurance and deductibles to be paid by the beneficiary.

(c)

Part C advantage plan allows a beneficiary to choose to receive all medicare health care services through a managed care organization.

(d)

Part D provides prescription drug coverage.

(2) The

following MSP programs can assist an eligible recipient with the cost of medicare.

(a)

Qualified medicare beneficiaries (QMB) - Categories 041 and 044:

QMB covers low income medicare beneficiaries who have or are conditionally eligible for medicare Part A. QMB benefits are limited to the following:

(i)

cost for the monthly medicare Part B premium;

(ii)

cost of medicare deductibles and coinsurance; and

(iii)

cost for the monthly medicare Part A premium (for those enrolling conditionally).

(b)

Specified low-income medicare beneficiaries (SLIMB) - Category 045:

SLIMB medicare covers low-income medicare beneficiaries who have medicare Part A. SLIMB is limited to the payment of the medicare Part B premium.

(c)

Qualified individuals 1 (QI1s) -

Category 042: QI1 medicare covers low-income medicare beneficiaries who have medicare Part A. QI1 is limited to the payment of the medicare part B premium.

(d)

Qualified disabled working individuals (QDI) - Category 050:

QDI medicare covers low income individuals who lose entitlement to free medicare Part A hospital coverage due to gainful employment. QDI is limited to the payment of the monthly Part A hospital premium.

(e)

Medicare Part D prescription drug coverage - low income subsidy (LIS) - Category 048:

LIS provides individuals enrolled in medicare Part D with a subsidy that helps pay for the cost of Part D prescription premiums, deductibles and co-payments. An eligible recipient receiving medicare through QMB, SLMB or QI1 is automatically deemed eligible for LIS and need not apply. Other low-income medicare beneficiaries must meet an income and resource test and submit an application to determine if they qualify for LIS.

C. Supplemental security income (SSI) related medicare:

(1) SSI

- Categories 001, 003 and 004:

Medicaid for individuals who are eligible for SSI. Eligibility for SSI is determined by the social security administration (SSA). This program provides cash assistance and medicare for an eligible recipient who is:

(a)

aged (Category 001);

(b)

blind (Category 003); or

(c)

disabled (Category 004).

(2) SSI

medicaid extension - Categories 001, 003 and 004:

MAD provides coverage for certain groups of applicants or eligible recipients who have received supplemental security income (SSI) benefits and who have lost the SSI benefits for specified reasons listed below and pursuant to 8.201.400 NMAC:

(a)

the pickle amendment and 503 lead;

(b)

early widow(er);

(c)

disabled widow(er) and a disabled surviving divorced spouse;

(d)

child insurance benefits, including disabled adult children (DAC);

(e)

nonpayment SSI status (E01);

(f)

revolving SSI payment status "ping-pongs"; and

(g)

certain individuals who become ineligible for SSI cash benefits and, therefore, may receive up to two months of extended medicare benefits while they apply for another MAD category of eligibility.

(3) **Working**

disabled individuals (WDI) and medicare wait period - Category 074:

There are two eligibility types:

(a) a

disabled individual who is employed; or

(b) a

disabled individual who has lost SSI medicare due to receipt of SSDI and the individual does not yet qualify for medicare.

D. Long term care medicare:

(1) medicare

for individuals who meet a nursing facility (NF) level of care (LOC), intermediate care facilities for the intellectually disabled (ICF-ID) LOC, or acute care in a hospital. SSI income methodology is used to determine eligibility. An eligible recipient must meet the SSA definition of aged (Category 081); blind (Category 083); or disabled (Category 084).

(2)

Institutional care (IC) medicare - Categories 081, 083 and 084:

IC covers certain inpatient, comprehensive and institutional and nursing facility benefits.

(3) **Program**

of all-inclusive care for the elderly (PACE) - Categories 081, 083 and 084:

PACE uses an interdisciplinary team

of health professionals to provide dual medicaid/medicare enrollees with coordinated care in a community setting. The PACE program is a unique three-way partnership between the federal government, the state, and the PACE organization. The PACE program is limited to specific geographic service area(s). Eligibility may be subject to a wait list for the following:

- (a) the aged (Category 081);
- (b) the blind (Category 083); or
- (c) the disabled (Category 084).

(4) Home and community-based 1915 (c) waiver services (HCBS) - Categories 090, 091, 092, 093, 094, 095 and 096:

A 1915(c) waiver allows for the provision of long term care services in home and community based settings. These programs serve a variety of targeted populations, such as people with mental illnesses, intellectual disabilities, or physical disabilities. Eligibility may be subject to a wait list.

(a) There are two HCBS delivery models:

- (i) traditional agency delivery where HCBS are delivered and managed by a MAD enrolled agency; or
- (ii) mi via self-directed where an eligible recipient, or his or her representative, has decision-making authority over certain services and takes direct responsibility to manage the eligible mi via recipient's services with the assistance of a system of available supports; self-direction of services allows an eligible mi via recipient to have the responsibility for managing all aspects of service delivery in a person-centered planning process.

(b) HCBS waiver programs include:

- (i) elderly (Category 091), blind (Category 093) and disabled (Category 094);
- (ii) medically fragile (Category 095);

(iii) developmental disabilities (Category 096); and

(iv) self-directed model for Categories 090, 091, 093, 094, 095, 096 and 092).

E. Emergency medical services for ~~aliens~~ (EMSA) non-citizens (EMSNC): [EMSA] EMSNC medicaid covers certain non-citizens who either are undocumented or who do not meet the qualifying non-citizen criteria specified in 8.200.410 NMAC. Non-citizens must meet all eligibility criteria for one of the medicaid categories noted in 8.285.400 NMAC, except for citizenship or qualified non-citizen status. Medicaid eligibility for and coverage of services under [EMSA] EMSNC are limited to the payment of emergency services from a medicaid provider.

F. Refugee medical assistance (RMA) - Categories 049 and 059: RMA offers health coverage to certain low income refugees during the first eight months from their date of entry to the United States (U.S.) when they do not qualify for other medicaid categories of eligibility. A RMA eligible refugee recipient has access to a benefit package that parallels the full coverage medicaid benefit package. RMA is funded through a grant under Title IV of the Immigration and Nationality Act (INA). A RMA applicant who exceeds the RMA income standards may "spend-down" below the RMA income standards for Category 059 by subtracting incurred medical expenses after arrival into the U.S.

G. Breast and cervical cancer (BCC) - Category 052: BCC medicaid provides coverage to an eligible uninsured woman, under the age of 65 who has been screened and diagnosed by the department of health (DOH) as having breast or cervical cancer to include pre-cancerous conditions. The screening criteria are set forth in the centers for disease control and prevention's national breast and cervical cancer early detection program (NBCCEDP).

Eligibility is determined using DOH notification and without a separate medicaid application or determination of eligibility.

[8.200.400.10 NMAC - Rp, 8.200.400.10 NMAC, 1/1/2019; A, 1/1/2022]

8.200.400.14 RETROACTIVE MEDICAID:

A. HSD must make eligibility for medicaid effective no later than the first or up to the third month before the month of application if the individual:

(1) Requested coverage for months prior to the application month;

(2) received medicaid services, at any time during that period, of a type covered under the plan and;

(3) would have been eligible for medicaid at the time he or she received the services, if he or she had applied (or an authorized representative has applied for him or her) regardless of whether the individual is alive when application for medicaid is made.

B. Eligibility for medicaid is effective on the first day of the month if an individual was eligible at any time during that month.

C. Eligibility for each retroactive month is determined separately. Retroactive medicaid must be requested within 180 days of the date of the medicaid application.

D. Retroactive medicaid is allowed for up to three months prior to the application month for the following medicaid categories:

- (1) other adults (COE 100);
- (2) parent caretaker (COE 200);
- (3) pregnant women (COE 300);
- (4) pregnancy-related services (COE 301);
- (5) children under age 19 (COEs 400, 401, 402, 403, 420, and 421);
- (6) family planning (COE 029);
- (7) children, youth and families department

(CYFD COEs 017, 037, 046, 047, 066, and 086);

(8)

supplemental security income (SSI COEs 001, 003, and 004);

(9)

SSI (COEs 001, 003, and 004, e.g. 503s, disabled adult children, ping pongs, and early widowers);

(10) working

disabled individuals (COE 074);

(11) breast and

cervical cancer (BCC COE 052);

(12) specified

low income beneficiaries (SLIMB COE 045);

(13) qualified

individuals (QI1 COE 042);

(14) qualified

disabled working individuals (COE 050);

(15) refugees

(COE 049); and

(16)

institutional care medicaid (COEs 081, 083, and 084) excluding the program for all-inclusive care for the elderly (PACE).

E. The following categories do not have retroactive medicaid:

(1) emergency

medical services for ~~[aliens]~~ non-citizens ([EMSA] EMSNC COE 085). [EMSA] EMSNC provides coverage for emergency services, which may be provided prior to the application month, but is not considered retroactive medicaid. Eligibility is determined in accordance with 8.285.400, 8.285.500, and 8.285.600 NMAC;

(2) home and

community based-services waivers (COEs 091, 093, 094, 095, and 096);

(3) PACE

(COEs 081, 083, and 084);

(4) qualified

medicare beneficiaries (COEs 041 and 044); and

(5) transitional

medicaid (COEs 027 and 028).

F. Newborns (COE 031) are deemed to have applied and been found eligible for the newborn category of eligibility from birth through the month of the child's first birthday. This applies in instances

where the labor and delivery services were furnished prior to the date of the application and covered by medicaid based on the mother applying for up to three months of retroactive eligibility.

[8.200.400.14 NMAC - Rp, 8.200.400.14 NMAC, 1/1/2019; A, 2/1/2020; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.410 NMAC, Sections 8, 11 and 12, effective 1/1/2022.

8.200.410.8 [RESERVED]

MISSION: To transform lives.

Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.200.410.8 NMAC - A, 1/1/2022]

8.200.410.11 CITIZENSHIP:

To be eligible for medicaid, an individual must be a citizen of the United States; United States national or a non-citizen who meets the requirements set forth in either Subsection A or B of 8.200.410.11 NMAC.

A. Non-citizens who entered the United States prior to August 22, 1996: Non-citizens who entered the United States prior to August 22, 1996, will not be subject to the five-year bar for purposes of medicaid eligibility. These classes of non-citizens are as follows.

(1) Qualified non-citizens who entered the United States prior to August 22, 1996, and obtained their qualified non-citizen status prior to that date, are eligible for medicaid without the five year waiting period.

(2) Non-citizens who entered the United States prior to August 22, 1996, and remained continuously present in the United States until the date

they obtained qualified non-citizen status on or after August 22, 1996; any single absence from the United States of more than 30 days, or a total aggregate of absences of more than 90 days, is considered to interrupt "continuous presence".

(3) Lawful

Permanent Residents (LPRs) are qualified non-citizens per 8 USC 1641.

(4) A non-

qualified non-citizen who was permanently residing in the United States under color of law (PRUCOL) on or before August 22, 1996, does not lose ~~[Medicaid]~~ medicaid eligibility provided all other factors of eligibility continue to be met. These non-citizens are "grandfathered". For these individuals, non-citizen eligibility may continue to be based on the PRUCOL standard. An individual eligible under the PRUCOL standard retains his or her grandfathering rights even if benefits terminate.

B. Qualified non-citizens who entered the United States on or after August 22, 1996:

(1) Qualified non-citizens who entered the United States on or after August 22, 1996, are barred from medicaid eligibility for a period of five years, other than emergency services (under Category 085), unless meeting an exception below. LPRs who adjust from a status exempt from the five-year bar are not subject to the five-year bar. The five-year bar begins on the date the non-citizen obtained qualified status. The following classes of qualified non-citizens are exempt from the five-year bar:

(a)

a non-citizen admitted to the United States as a refugee under Section 207 of the Immigration and Nationality Act;

(b)

a non-citizen granted asylum under Section 208 of the Immigration and Nationality Act;

(c)

a non-citizen whose deportation is withheld under Section 243(h) of the Immigration and Nationality Act;

(d)
a non-citizen who is lawfully residing in the state and who is a veteran with an honorable discharge not on account of non-citizen status; is on active duty other than on active duty for training, in the armed forces of the United States; or the spouse or unmarried dependent child under the age of 18 of such veteran or active duty non-citizen;

(e)
a non-citizen who was granted status as a Cuban and Haitian entrant, as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;

(f)
a non-citizen granted Amerasian immigrant status as defined under Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988;

(g)
victims of a severe form of trafficking, in accordance with ~~[Section 107(b)(1)]~~ Paragraph (1) of Subsection B of Section 107 of the Trafficking Victims Protection Act of 2000, P.L. 106-386;

(h)
members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e);

(i)
American Indians born in Canada to whom Section 289 of the Immigration and Nationality Act applies;

(j)
Afghan and Iraqi special immigrants under Section 8120 of Pub. L. 111-118 of the Department of Defense Appropriations Act, 2010;

(k)
non-citizens receiving SSI; and

(l)
battered non-citizens who meet the conditions set forth in Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) as added by Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208 (IIRIRA), and amended by Section 5571 of the Balanced Budget Act of 1997, P.L. 105-33 (BBA), and Section 1508 of

the Violence Against Women Act of 200, P.L. 106-386; Section 431(c) of PRWORA, as amended, is codified at 8 USC 1641(c). HSD covers battered non-citizens with state general funds until the five-year bar is met.

(m)
effective December 27, 2020, per section 208 of the Consolidated Appropriations Act, 2021 individuals who are considered compact of free association migrants (COFA) are also referred to as compact citizens. COFA is an agreement between the United States and the three Pacific Island sovereign states of Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau known as Freely Associated States.

(2)
Qualified non-citizen: A “qualified non-citizen”, for purposes of this regulation, is a non-citizen, who at the time the non-citizen applies for, receives, or attempts to receive a federal public benefit, is:

(a) a non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act;

(b) a non-citizen who is granted asylum under Section 208 of such act; or

(c) a refugee who is admitted to the United States under Section 207 of the act; or

(d) an Amerasian who is admitted to the United States under Section 207 of the act; or

(e) a non-citizen who is paroled into the United States under Section 212(d)(5) of such act for a period of at least one year; or

(f) a non-citizen whose deportation is being withheld under Section 243(h) of such act or under Section 241(b) (3); or

(g) a non-citizen who is granted conditional entry pursuant to 203(a)(7) or such act as in effect prior to April 1, 1980; or

(h) a non-citizen who is a Cuban or Haitian entrant (as defined in Section 501(e)

of the Refugee Education Assistance Act of 1980); or

(i) certain battered women and non-citizen children of battered parents (only those who have begun the process of becoming a lawful permanent resident under the Violence Against Women Act); or

(j) victims of a severe form of trafficking and their spouses, children, siblings, or parents; or

(k) members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e); or

(l) American Indians born in Canada to whom Section 289 of the Immigration and Nationality Act applies; or

(m) Afghan and Iraqi special immigrants under Section 8120 of Pub. L. 111-118 of the Department of Defense Appropriations Act, 2010.

(3) Children under age 21 and pregnant women exempt from the five year bar: As authorized by CHIPRA 2009 legislation, New Mexico medicaid allows lawfully residing children under age 21 and pregnant women, if otherwise eligible including meeting state residency and income requirements, to obtain medicaid coverage. Lawfully residing children under age 21 and pregnant women must meet the residency requirement as set forth in 8.200.410.12 NMAC. A child or pregnant woman is considered lawfully present if he or she is:

(a) a qualified non-citizen as defined in Section 431 of PRWORA (8 USC Section 1641);

(b) a non-citizen in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission as defined under 8 USC 1101(a)(15);

(c) a non-citizen who has been paroled into the United States pursuant to Section 212(d)(5) of the Immigration

and Nationality Act (8 U.S.C. Section 1182(d)(5)) for less than one year, except for a non-citizen paroled for prosecution, for deferred inspection or pending removal proceedings;

(d) a non-citizen who belongs to one of the following classes:

(i) non-citizens currently in temporary resident status pursuant to Section 210 or 245A of the Immigration and Nationality Act (8 U.S.C. Section 1160 or 1255a, respectively);

(ii) non-citizens currently under temporary protected status (TPS) pursuant to Section 244 of the Immigration and Nationality Act (8 U.S.C. Section 1254a), and pending applicants for TPS who have been granted employment authorization;

(iii) non-citizens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);

(iv) family unity beneficiaries pursuant to Section 301 of Pub. L. 101-649, as amended;

(v) non-citizens currently under deferred enforced departure (DED) pursuant to a decision made by the president;

(vi) non-citizens currently in deferred action status except those with deferred action under "Defined Action for Childhood Arrivals" who are not considered lawfully present.

(vii) non-citizens whose visa petitions have been approved and who have a pending application for adjustment of status;

(e) a non-citizen with pending applicants for asylum under Section 208(a) of the INA (8 U.S.C. Section 1158) or for withholding of removal under Section 241(b)(3) of the INA (8 U.S.C. Section 1231) or under the convention against torture who has been granted employment authorization, or is an applicant under the age of 14 and has had an application pending for at least 180 days;

(f) non-citizens whose applications for withholding of removal under the convention against torture have been granted;

(g) children who have pending applications for special immigrant juvenile status as described in Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. Section 1101(a)(27)(J));

(h) non-citizens who are lawfully present in American Samoa under the immigration laws of American Samoa; or

(i) victims of trafficking.

(4) Non-citizen sponsors (where an affidavit of sponsorship was executed pursuant to Section 213 of the Immigration and Nationality Act subsequent to August 22, 1996): The income and resources of a non-citizen sponsor, of any individual applying for medicaid, are deemed available to the applicant, when an affidavit of support is executed pursuant to Section 213 of the Immigration and Nationality Act, on or after August 22, 1996. This counting of non-citizen sponsor income and resources is effective until the sponsored non-citizen achieves citizenship.

(5) The state assures that it provides limited medicaid services for treatment of an emergency medical condition, not related to an organ transplant procedure, as defined in 1903(v)(3) of the social security act and 8.285.400 NMAC and implemented at 42 CFR 440.255, to the following individuals who meet all medicaid eligibility requirements, except documentation of citizenship or satisfactory immigration status or present an SSN.

(a) qualified non-citizens subject to the five-year waiting period described in 8 USC 1613; or

(b) non-qualified non-citizens, unless covered as a lawfully residing child or pregnant woman by the state under the option in accordance with 1903(v)

(4) and implemented at 42 CFR 435.406(b).

[8.200.410.11 NMAC - Rp, 8.200.410.11 NMAC, 10/1/2017; A/E, 1/18/2018; A, 8/1/2018; A, 1/1/2022]

8.200.410.12 TYPES OF ACCEPTABLE DOCUMENTARY EVIDENCE OF CITIZENSHIP (42 CFR 435.407):

A. Stand-alone evidence of citizenship: The following must be accepted as sufficient documentary evidence of citizenship:

(1) A U.S. passport, including a U.S. passport card issued by the department of state, without regard to any expiration date as long as such passport or card was issued without limitation.

(2) A certificate of naturalization.

(3) A certificate of U.S. citizenship.

(4) A valid state-issued driver's license if the state issuing the license requires proof of U.S. citizenship, or obtains and verifies a SSN from the applicant who is a citizen before issuing such license.

(a) A real ID issued on or after November 14, 2016 is sufficient documentary evidence of citizenship.

(b) A driver authorization card (DAC) is not sufficient documentary evidence of citizenship.

(5) Documentary evidence issued by a federally recognized ~~[indian]~~ Indian tribe identified in the federal register by the bureau of Indian affairs within the U.S. department of the interior, and including tribes located in a state that has an international border, which;

(a) Identifies the federally recognized ~~[indian]~~ Indian tribe that issued the document;

(b) Identifies the individual by name; and

(c) Confirms the individual's membership, enrollment, or affiliation with the tribe.

(d) Documents described in Paragraph (5) of Subsection A of 8.200.410.12 NMAC include, but are not limited to:

(i) A tribal enrollment card;

(ii) A certificate of degree of [indian] Indian blood;

(iii) A tribal census document;

(iv) Documents on tribal letterhead, issued under the signature of the appropriate tribal official, that meet the requirements of Paragraph (5) of Subsection A of 8.200.410.12 NMAC.

(6) A data match with the SSA.

B. Evidence of citizenship: If an applicant does not provide documentary evidence from the list in Subsection A of 8.200.410.12 NMAC, the following must be accepted as satisfactory evidence to establish citizenship if also accompanied by an identity document listed in Subsection C of 8.200.410.12 NMAC:

(1) A U.S. public birth certificate showing birth in one of the 50 States, the District of Columbia, Guam, American Samoa, Swain's Island, Puerto Rico (if born on or after January 13, 1941), the Virgin Islands of the U.S. or the Commonwealth of the Northern Mariana Islands (CNMI) (if born after November 4, 1986, (CNMI local time)). The birth record document may be issued by a state, commonwealth, territory, or local jurisdiction. If the document shows the individual was born in Puerto Rico or the Northern Mariana Islands before the applicable date referenced in Paragraph (1) of Subsection B of 8.200.410.12 NMAC, the individual may be a collectively naturalized citizen. The following will establish U.S. citizenship for collectively naturalized individuals:

(a) Puerto Rico: Evidence of birth in Puerto Rico and the applicant's statement that he or she was residing in the U.S., a U.S. possession, or Puerto Rico on January 13, 1941;

(b) Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI));

(i) Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. Territory or possession on November 3, 1986, (NMI local time) and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time);

(ii) Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration before January 1, 1975, and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time);

(iii) Evidence of continuous domicile in the NMI since before January 1, 1974, and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time). Note: If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

(2) A certification of report of birth, issued to U.S. citizens who were born outside the U.S.

(3) A report of birth abroad of a U.S. citizen.

(4) A certification of birth in the U.S.

(5) A U.S. citizen identification card.

(6) A Northern Marianas identification card issued by the U.S. department of homeland security (or predecessor agency).

(7) A final adoption decree showing the child's name and U.S. place of birth, or if an adoption is not final, a statement from a state-approved adoption agency that shows the child's name and U.S. place of birth.

(8) Evidence of U.S. civil service employment before June 1, 1976.

(9) U.S. military record showing a U.S. place of birth.

(10) A data match with the Systematic Alien Verification for Entitlements (SAVE) Program or any other process established by the department of homeland security (DHS) to verify that an individual is a citizen.

(11) Documentation that a child meets the requirements of section 101 of the Child Citizenship Act of 2000 as amended (8 U.S.C. 1431).

(12) Medical records, including, but not limited to, hospital, clinic, or doctor records or admission papers from a nursing facility, skilled care facility, or other institution that indicate a U.S. place of birth.

(13) Life, health, or other insurance record that indicates a U.S. place of birth.

(14) Official religious record recorded in the U.S. showing that the birth occurred in the U.S.

(15) School records, including pre-school, head start and daycare, showing the child's name and U.S. place of birth.

(16) Federal or state census record showing U.S. citizenship or a U.S. place of birth.

(17) If the applicant does not have one of the documents listed in Subsection A or Paragraph (1) through (17) of Subsection B of 8.200.410.12 NMAC, he or she may submit an affidavit signed by another individual under penalty of perjury who can reasonably attest to the applicant's citizenship, and that contains the applicant's name, date of birth, and place of U.S. birth. The affidavit does not have to be notarized.

C. Evidence of identity:

(1) HSD will accept the following as proof of identity, provided such document has a photograph or other identifying information sufficient to establish identity, including, but not limited to, name, age, sex, race, height, weight, eye color, or address:

(a) Identity documents listed at 8 CFR 274a.2 (b)(1)(v)(B)(1), except a driver's license issued by a Canadian government authority.

(b) Driver's license issued by a state or territory.

(c) School identification card.

(d) U.S. military card or draft record.

(e) Identification card issued by the federal, state, or local government.

(f) Military dependent's identification card.

(g) U.S. coast guard merchant mariner card.

(h) For children under age 19, a clinic, doctor, hospital, or school record, including preschool or day care records.

(i) Two other documents containing consistent information that corroborates an applicant's identity. Such documents include, but are not limited to, employer identification cards; high school, high school equivalency and college diplomas; marriage certificates; divorce decrees; and property deeds or titles.

(2) Finding of identity from a federal or state governmental agency. The agency may accept as proof of identity a finding of identity from a federal agency or another state agency including but not limited to a public assistance, law enforcement, internal revenue or tax bureau, or corrections agency, if the agency has verified and certified the identity of the individual.

(3) If the applicant does not have any document specified in Paragraph (1) of Subsection C of 8.200.410.12 NMAC and identity is not verified under Paragraph (2) of Subsection C of 8.200.410.12 NMAC, the agency must accept an affidavit signed, under penalty of perjury, by a person other than the applicant who can reasonably attest to the applicant's

identity. Such affidavit must contain the applicant's name and other identifying information establishing identity, as described in Paragraph (1) of Subsection C of 8.200.410.12 NMAC. The affidavit does not have to be notarized.

D. Verification of citizenship by a federal agency or another state: HSD may rely, without further documentation of citizenship or identity, on a verification of citizenship made by a federal agency or another state agency, if such verification was done on or after July 1, 2006.

E. Assistance with obtaining documentation: HSD will provide assistance to individuals who need assistance in securing satisfactory documentary evidence of citizenship in a timely manner.

F. Documentary evidence: A photocopy, facsimile, scanned or other copy of a document must be accepted to the same extent as an original document under this section, unless information on the copy submitted is inconsistent with other information available to HSD or HSD otherwise has reason to question the validity of, or the information in, the document.
[8.200.410.12 NMAC - N, 10/1/2017; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.231.400 NMAC, Sections 8, 9 and 10, effective 1/1/2022.

8.231.400.8 [RESERVED]
MISSION: To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.
[8.231.400.8 NMAC - Rp, 8.231.400.8 NMAC, 10/1/2017; A, 1/1/2022]

8.231.400.9 NEWBORN - CATEGORY 031: The New Mexico medicaid program covers infants for 13 months born to mothers who are eligible for and receiving New Mexico medicaid at the time of the child's birth including during a period of retroactive eligibility. Mothers eligible to receive emergency medical services for [~~aliens~~ (EMSA)] non-citizens (EMSNC) at the time of labor and delivery are considered to meet the standard of medicaid eligibility for the mother.

[8.231.400.9 NMAC - Rp, 8.231.400.9 NMAC, 10/1/2017; A, 1/1/2022]

8.231.400.10 BASIS FOR DEFINING THE GROUP (42 CFR 435.177):

A. Eligibility: HSD provides medicaid to children from birth through the month of the child's first birthday without application if, for the date of the child's birth, the child's mother was eligible for and received covered services under:

(1) the medicaid state plan (including during a period of retroactive eligibility under 42 CFR 435.915) regardless of whether payment for services for the mother is limited to services necessary to treat an emergency medical condition, as defined in section 1903(v)(3) of the Act and 8.285.400.10 NMAC under the emergency medical services for [~~aliens~~ (EMSA)] non-citizens (EMSNC) program.

(2) the child is deemed to have applied and been determined eligible under the medicaid state plan effective as of the date of birth, and remains eligible regardless of changes in circumstances through the month of the child's first birthday, unless the child dies or ceases to be a resident of the state or the child's representative requests a voluntary termination of eligibility.

B. Medicaid identification number: The medicaid identification number of the mother serves as the child's identification number, and all claims

for covered services provided to the child may be submitted and paid under such number, unless and until the state issues the child a separate identification number. HSD will issue a separate medicaid identification number for the child prior to the effective date of any termination of the mother's eligibility or prior to the date of the child's first birthday, whichever is sooner, except that HSD will issue a separate medicaid identification number in the case of a child born to a mother:

(1) whose coverage is limited to services necessary for the treatment of an emergency medical condition, consistent with 42 CFR 435.139 or 435.350 and 8.285.400.10 NMAC under the [EMSA] EMSNC program; or

(2) who received medicaid in another state on the date of birth.
[8.231.400.10 NMAC - Rp, 8.231.400.10 NMAC, 10/1/2017; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.231.600 NMAC, Sections 8 and 10, effective 1/1/2022.

8.231.600.8 [RESERVED]
MISSION: To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.231.600.8 NMAC - Rp, 8.231.600.8 NMAC, 1/1/2019; A, 1/1/2022]

8.231.600.10 BENEFIT DETERMINATION:

A. Medical service providers must give the name and case number of the New Mexico medicaid eligible mother and the name, birth date, sex of the newborn,

and the name of the hospital where the birth occurred to local county income support division (ISD) office. Within three days after receipt of this information, the income support specialist (ISS):

(1) determines if the mother was eligible for New Mexico medicaid at the time of birth or if the birth and delivery was covered by emergency medical services to undocumented [~~aliens~~ (EMSA)] non-citizens (EMSNC);

(2) registers the newborn for medicaid on the system; a signed application is not required;

(3) provides eligibility information to the hospital; and

(4) notifies the mother that a signed application is necessary to establish the newborn's eligibility for temporary assistance for needy families (TANF), if applicable.

B. Processing time limit: All applications must be processed within 45 days from the date of application. The time limit begins on the day the signed application is received. Applications must be acted upon and notice of approval, denial or delay sent out within the required time limit. The ISS explains the time limit and that the applicant may request an administrative hearing if the application pends longer than the time limit allows.

[8.231.600.10 NMAC - Rp, 8.231.600.10 NMAC, 1/1/2019; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.234.400 NMAC, Sections 8, 9, 15 and 19, effective 1/1/2022.

8.234.400.8 MISSION: [~~To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of~~

~~dependency on public assistance.]~~
To transform lives. Working with our partners we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.200.400.8 NMAC - N, 1/1/2014; A, 1/1/2022]

8.234.400.9 MEDICAID ELIGIBILITY FOR INDIVIDUALS INELIGIBLE FOR SSI DUE TO DEEMED INCOME OR RESOURCES FROM [AN ALIEN] A NON-CITIZEN SPONSOR - CATEGORY 034:

A. An individual must meet specific eligibility requirements. These include:

(1) an individual meets the social security administration (SSA) definitions of aged, blind, or disabled and is ineligible for supplemental security income (SSI) solely because of deemed income or resource considered available from [~~an alien~~] a non-citizen sponsor;

(2) an individual who meets the eligibility requirements pursuant to 8.200.410 NMAC and 8.200.420 NMAC for citizenship or [~~alien~~] non-citizen status, enumeration, residence; non-concurrent receipt of assistance, and applications for other benefits;

(3) an applicant or recipient must assign medical support rights to HSD and agree to cooperate with third party liability responsibilities pursuant to 8.200.430 NMAC; and

(4) appropriate to the budget group size, countable income must be less than the SSI federal benefit rate (FBR) income pursuant to 8.200.520 NMAC, 8.215 NMAC and 8.234.500 NMAC.

B. Individuals may have other creditable health insurance coverage.

C. An individual who is an inmate of a public institution is not eligible pursuant to 8.200.410 NMAC.

[8.234.400.9 NMAC - Rp,
8.234.400.9 NMAC, 1/1/2014; A,
1/1/2022]

8.234.400.15 SSI STATUS:

A. An applicant or re-determining recipient for Category 034 must meet all other SSI eligibility standards, including:

- (1) applicant or re-determining recipient's own income and resources must be below SSI standards;
- (2) nonconcurrent receipt of assistance;
- (3) residence;
- (4) aged, blind, or disabled status; and
- (5) citizenship or permanent [alien] non-citizen status.

B. See 8.215.500.11 NMAC and 8.215.500.18 NMAC for information on SSI income and resource standards.

[8.234.400.15 NMAC - Rp,
8.234.400.15 NMAC, 1/1/2014; A,
1/1/2022]

8.234.400.19 BUDGET

GROUP: The budget group includes all members of the assistance unit. Additional budget group members include individuals who live in the household with the assistance unit and have a financial obligation of support.

A. Except for an SSI recipient, the following individuals have a financial obligation of support for medicaid eligibility:

(1) spouses: married individuals as defined under applicable New Mexico state law (New Mexico recognizes common law and same sex marriages established in other states); and

(2) parents for children: there is a presumption that a child born to a married woman is the child of the spouse, or if the individual established parentage by some other legally recognized process.

B. The following individuals do not have a financial obligation of support for medicaid eligibility:

- (1) an SSI recipient to the assistance unit;
 - (2) a father of the unborn child who is not married to the pregnant woman;
 - (3) a stepparent to a stepchild;
 - (4) a grandparent to a grandchild;
 - (5) a legal guardian or conservator of a child;
 - (6) [an alien] a non-citizen sponsor to the assistance unit; and
 - (7) a sibling to a sibling.
- [8.234.400.19 NMAC - N, 1/1/2014; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.234.500 NMAC, Sections 8, 10 and 11, effective 1/1/2022.

8.234.500.8 MISSION: [~~To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.~~] To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.
[8.234.500.8 NMAC - N, 1/1/2014; A, 1/1/2022]

8.234.500.10 RESOURCE STANDARDS: The resource standards for establishing eligibility are described in 8.215.500 NMAC. The resources of [an alien] a non-citizen sponsor are not considered when determining eligibility.
[8.234.500.10 NMAC - Rp,
8.234.500.10 NMAC, 1/1/2014; A, 1/1/2022]

8.234.500.11 INCOME STANDARDS: The income

standards for establishing eligibility are described in 8.215.500 NMAC. The income of [an alien] a non-citizen sponsor is not considered when determining eligibility.
[8.234.500.11 NMAC - Rp,
8.234.500.11 NMAC, 1/1/2014; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.243.400 NMAC, Sections 8, 12, 13, 14, 18 and 19, effective 1/1/2022.

8.243.400.8 [RESERVED] MISSION: To transform lives. Working with our partners we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.
[8.243.400.8 NMAC - Rp,
8.243.400.8 NMAC, 1/1/2019; A, 1/1/2022]

8.243.400.12 ENUMERATION: To be eligible an individual must report [his/her] their social security account number(s) to the human services department (HSD). If an individual does not have a valid social security number, [he/she] the individual must apply for one as a condition of medicaid eligibility. Applications for social security numbers can be made by completing an application form, and providing proof of application to local Income support division (ISD) offices.
[8.243.400.12 NMAC - Rp,
8.243.400.12 NMAC, 1/1/2019; A, 1/1/2022]

8.243.400.13 CITIZENSHIP: To be eligible for medicaid, an individual must be:
A. a citizen of the United States; or
B. [an alien] a non-citizen who entered the United States prior to August 22, 1996, as one of the classes of [aliens] non-

citizens described in Subsection A of 8.200.410.11 NMAC, or ~~[an alien]~~ a non-citizen who entered the United States as a qualified ~~[alien]~~ non-citizen on or after August 22, 1996, and who has met the five-year bar, or are exempt as listed in Subsection B of 8.200.410.11 NMAC.

C. Refer to 8.200.410.11 NMAC. [8.243.400.13 NMAC - Rp, 8.243.400.13 NMAC, 1/1/2019; A, 1/1/2022]

8.243.400.14 RESIDENCE: To be eligible for medicaid, individuals must be living in New Mexico on the date of application or final determination of eligibility and have demonstrated intent to remain in the state.

A. **Establishing residence:** Residence in New Mexico is established by living in the state and carrying out the types of activities normally indicating residency, such as occupying a home, enrolling child(ren) in school, getting a state driver's license, or renting a post office box. An individual who is homeless is considered to have met the residence requirements if ~~[he/she]~~ the individual intends to remain in the state.

B. **Recipients receiving benefits out-of-state:** Individuals who receive medical assistance in another state are considered residents of that state until the ISD staff receives verification from the other state agency indicating that it has been notified by an individual of the abandonment of residence in that state.

C. **Abandonment:** Residence is not abandoned by temporary absences. Temporary absences occur when recipients leave New Mexico for specific purposes with time-limited goals. Residence is considered abandoned when any of the following occurs:

(1) the individual leaves New Mexico and indicates that ~~[he/she]~~ they intend to establish residence in another state;

(2) the individual leaves New Mexico for

no specific purpose with no clear intention of returning;

(3) the individual leaves New Mexico and applies for financial, food or medical assistance in another state. [8.243.400.14 NMAC - Rp, 8.243.400.14 NMAC, 1/1/2019; A, 1/1/2022]

8.243.400.18 RECIPIENT RIGHTS AND RESPONSIBILITIES:

The individual is responsible for establishing ~~[his/her]~~ their eligibility for medicaid. As part of this responsibility, the individual must provide required information and documents or take the actions necessary to establish eligibility. Failure to do so must result in a decision that eligibility does not exist. The individual must also grant the human services department (HSD) permission to contact other persons, agencies or sources of information which are necessary to establish eligibility.

[8.243.400.18 NMAC - Rp, 8.243.400.18 NMAC, 1/1/2019; A, 1/1/2022]

8.243.400.19 ASSIGNMENT OF MEDICAL SUPPORT: The individual must assign ~~[his/her]~~ their right to medical support or other third party payments to the state.

A. Assignment of medical support rights occurs through the application for medicaid benefits.

B. Medicaid is not denied to an otherwise eligible individual solely because ~~[he/she]~~ they cannot legally assign ~~[his/her]~~ their own medical support rights and the party who is legally able to assign those rights refuses to assign or cooperate, as required by law. [8.243.400.19 NMAC - Rp, 8.243.400.19 NMAC, 1/1/2019; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.249.400 NMAC, Sections 8, 9, 18 and 23, effective 1/1/2022.

8.249.400.8 MISSION: ~~[To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.]~~ To transform lives. Working with out partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities. [8.249.400.8 NMAC - N, 1/1/2014; A, 1/1/2022]

8.249.400.9 REFUGEE MEDICAL ASSISTANCE ONLY - CATEGORY 049 AND 059:

A. A medicaid eligible refugee recipient must meet the following non-financial eligibility requirements:

(1) is ineligible for full medicaid coverage;

(2) is not a full-time student in an institution of higher education, except where enrollment is part of an individual employability plan for a refugee enrolled in the refugee cash assistance program;

(3) is in the U.S. fewer than eight months and meets one of the following statuses:

(a) is admitted as a refugee under Section 207 of the Immigration and Nationality Act;

(b) is paroled into the U.S. as a refugee or asylee under Section 212 (d)(5) of the Immigration and Nationality Act;

(c) is granted asylum under Section 208 of the Immigration and Nationality Act;

(d) is admitted as an Amerasian immigrant from Vietnam through the orderly

departure program, under Section 584 of the Foreign Operations Appropriations Act, incorporated in the fiscal year 1988 Continuing Resolution P.L. 100-212;

(e)

is a Cuban-Haitian entrant who was admitted as a public interest parolee under Section 212 (d)(5) of the Immigration and Nationality Act;

(f)

is certified as a victim of human trafficking by the federal office of refugee resettlement (ORR);

(g)

is an eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 Visa;

(h)

is admitted as a special immigrant from Iraq or Afghanistan under Section 101 (a)(27) of the Immigration and Nationality Act; or

(i)

is a lawful permanent resident (LPR) when the individual had previously met a status as listed in Subparagraphs (a) through (h) above;

(4)

an individual who meets the following eligibility requirements pursuant to 8.200.410 NMAC and 8.200.420 NMAC of citizenship or alien non-citizen status, enumeration, residence, non-concurrent receipt of assistance and applications for other benefits;

(5)

appropriate to the size of the budget group (not including the ineligible parent due to citizenship or alien non-citizen status or enumeration), countable gross income must be less than [485] one hundred and eighty-five percent of the standard of need (SON) countable net income must be less than the SON pursuant to 8.200.520 NMAC and 8.202.500 NMAC; and

(6)

an applicant or an eligible recipient may have other creditable health insurance coverage.

B. An eligible recipient may have other creditable health insurance coverage. If the eligible recipient has other creditable health insurance coverage, RMA is the second payor.

C. An individual who is an inmate of a public institution is not eligible pursuant to 8.200.410 NMAC.

[8.249.400.9 NMAC - Rp, 8.249.400.9 NMAC, 1/1/2014; A, 1/1/2022]

8.249.400.18 [ALIEN] NON-CITIZEN SPONSORSHIP: The income support division (ISD) caseworker must notify the refugee's sponsor or local affiliate which provided for the resettlement of the refugee, when a refugee applies for refugee medical assistance.

[8.249.400.18 NMAC - Rp, 8.249.400.18 NMAC, 1/1/2014; A, 1/1/2022]

8.249.400.23 BUDGET

GROUP: The budget group includes all members of the assistance unit. Additional budget group members include individuals who live in the household with the assistance unit and have a financial obligation of support.

A. Except for an supplemental security income (SSI) recipient, the following individuals have a financial obligation of support for medicaid eligibility:

(1) spouses: married individuals as defined under applicable New Mexico state law (New Mexico recognizes common law and same sex marriages established in other states); and

(2) parents for children: there is a presumption that a child born to a married woman is the child of the spouse, or if the individual established parentage by some other legally recognized process.

B. The following individuals do not have a financial obligation of support for medicaid eligibility:

(1) an SSI recipient to the assistance unit;

(2) a father of the unborn child who is not married to the pregnant woman;

(3) a stepparent to a stepchild;

(4) a grandparent to a grandchild;

(5) a legal guardian or a conservator of a child;

(6) [an alien] a non-citizen sponsor to the assistance unit; and

(7) a sibling to a sibling.

C. Budget group earned income disregards and child care deductions vary based on the age group of the child. Refer to 8.232.500 NMAC.

[8.249.400.23 NMAC - N, 1/1/2014; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.249.500 NMAC, Sections 8, 9, 14 and 16, effective 1/1/2022.

8.249.500.8 MISSION: [To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.] To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.
[8.249.500.8 NMAC - N, 1/1/2014; A, 1/1/2022]

8.249.500.9 NEED DETERMINATION:

A. Financial need: The budget group's eligibility is based on financial need. See Section 1931 of the Social Security Act, the rules in this chapter and in 8.200.520 NMAC.

B. Financial eligibility: Pursuant to Section 1931 of the Social Security Act, enacted by Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), a new medicaid financial eligibility standard was created. Refugee medical assistance (RMA) uses this same standard.

(1) Income eligibility criteria: The income eligibility criteria for Category 049 are based on New Mexico's aid to families with dependent children (AFDC) program as of July 16, 1996. This is defined as the standard of need (SON) used in AFDC as of July 16, 1996. A refugee can be eligible for Category 059 if income would be below AFDC after deducting medical expenses incurred and paid in that month. Eligibility for Category 059 is determined on a month-to-month basis.

(2) Less restrictive income and resource methodology: Pursuant to Section 1931 of the Social Security Act, as a state option, New Mexico may use income and resource eligibility methodologies that are less restrictive than the AFDC methodologies used as of July 16, 1996. This chapter defines less restrictive methodologies to be used by New Mexico for resources, countable and excluded earned or unearned income, available or unavailable income and income deductions or disregards.

C. Gross and net income tests: Determining financial need is a two-step process. When the countable gross or net income is exactly equal to the income eligibility standards, eligibility does not exist.

(1) Gross income test: The first step is determining the countable gross income of the budget group. Gross income includes all countable income before taking into account taxes or deductions. Only self employment deductions are allowed in the gross income test. The calculated gross income must be less than [185] one hundred and eighty-five percent of the SON. If the budget group's income is more than [185] one hundred and eighty-five percent of the SON, the assistance unit is not eligible.

(2) Net income test: The second step is determining the countable net income of the budget group. From the countable gross income in step one, deduct all allowable work related expenses (WRE) and unearned income

deductions/disregards. The countable net income must be less than the SON appropriate to the budget group size. If the budget group's income is more than the SON, the assistance unit is not eligible.

[8.249.500.9 NMAC - Rp, 8.249.500.9 NMAC, 1/1/2014; A, 1/1/2022]

8.249.500.14 UNAVAILABLE INCOME:

A. Individuals included in the budget group may have a legal right to income but not access to it; such income is not counted as available income:

(1) old age, survivors, and disability insurance (OASDI);

(2) railroad retirement benefits (RRB);

(3) veterans administration (VA) benefits:

(a) income available to veterans and their dependents from the VA as compensation for service-connected disability;

(b) pension for non-service connected disability;

(c) dependency and indemnity compensation; and

(d) death benefits paid from a government issue (GI) life insurance;

(4) unemployment compensation benefits (UCB);

(5) military allotments;

(6) worker's compensation;

(7) pension, annuity, and retirement benefits;

(8) union benefits;

(9) lodge or fraternal benefits;

(10) real property income that is not earned income;

(11) shared shelter and utility payments when the budget group shares shelter with others:

(a) payments which exceed the budget group's cost are considered income;

(b) payments which are less than the budget group's cost are not considered; these are the others' share of the shelter cost and are treated as pass-through payments;

(12) income from the sale of goods or property which are obtained in finished condition;

(13) child support payments received directly by the budget group and retained for its use;

(14) settlement payments which are received from worker's compensation settlements, insurance claims, damage claims, litigation, trust distributions which are made on a recurring basis;

(15) individual Indian monies (IIM) payments received and distributed by the bureau of Indian affairs (BIA) as a trustee for an individual member of a tribe;

(16) bureau of Indian affairs (BIA) or tribal general assistance (GA) payments; and

(17) income that is not listed as available in this chapter where the budget group cannot gain access to the income; this includes wages withheld by an employer that refuses to pay.

B. Individuals may receive payment of funds "passed through" the individual for the benefit of someone other than themselves. Such pass through payments are not considered available.

C. A recipient of supplemental security income (SSI) is not part of the budget group. His other income is not considered available to the budget group.

D. [Alien] Non-citizen sponsor deeming is not applicable pursuant to 8.200.410 NMAC. [8.249.500.14 NMAC - N, 1/1/2014; A, 1/1/2022]

8.249.500.16 EARNED INCOME DEDUCTIONS/ DISREGARDS:

A. Self employment: Certain self-employment deductions allowed by the federal internal revenue service (IRS) are allowed in the net and gross income test.

(1) Self-employment income will be annualized for income projection purposes. If the IRS Form 1040 has been filed, the previous year's tax return is used to anticipate future income, if no significant changes in circumstances have occurred. An alternative method of income anticipation should be used when the amount of self employment income reported on tax returns would no longer be a good indicator of expected income, i.e., loss of cattle or crops due to disease.

(2) If tax returns are used for annualized projected income, self-employment expenses listed on the return are allowable except:

(a) the mileage allowance is the New Mexico department of finance and administration (DFA) rate as detailed in 2.42.2 NMAC unless proof that the actual expense is greater; and

(b) no deduction is allowed for rent or purchase of the place of business if the individual operates the business out of his or her residence, unless the individual can demonstrate that the expense has been allowed under federal income tax guidelines.

(3) The following deductions are not allowed:

(a) depreciation;

(b) personal business and entertainment expenses;

(c) personal transportation to and from work;

(d) purchase of capital equipment; and

(e) payments on the principal of loans for capital assets or durable goods.

B. WRE income disregards: The WRE disregard of \$120 and one third of the remaining balance is disregarded from earned income during the net income test.

C. Child care expenses:

(1) To be eligible for a child care deduction, the child receiving the care must be:

(a) a dependent of the employed person;

(b) younger than 13; and

(c) included in the budget group.

(2) Standards: Actual costs of child care, not to exceed the applicable limits set forth below are deducted from earnings. The amount to be deducted depends upon whether the person is employed full or part-time and the age of the child. Full-time employment is considered to be 30 hours or more of employment per week; part time is any employment of less than 30 hours per week.

(a) up to \$200 per month per child if the person is employed full-time and the child is under age two;

(b) up to \$100 per month per child if the person is employed part-time and the child is under age two;

(c) up to \$175 per month per child if the person is employed full-time and the child's age is two through 12; and
(d) up to \$87.50 per month per child if the person is employed part-time and the child's age is two through 12.

(3) Third party child care payments: Child care costs paid by third parties directly to the child care provider cannot be used as child care deductions. Such payments are classified as vendor payments and are not counted as income. If such payments do not meet the full cost of child care, the difference between the deduction and the vendor payment is the amount allowed, up to the stated child care deductions in Paragraph (2) of [this subsection] Subsection C of 8.249.500.16 NMAC. If the third party child care payments are made to the budget group, the payments would be treated as pass through payments and not counted.

[8.249.500.16 NMAC - N, 1/1/2014; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.250.400 NMAC, Sections 8, 9, 10 and 13, effective 1/1/2022.

8.250.400.8 MISSION: [~~To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.~~] To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.250.400.8 NMAC - Rp, 8.250.400.8 NMAC, 1/1/2014; A, 1/1/2022]

8.250.400.9 QUALIFIED INDIVIDUALS 1 (QI1s) - CATEGORY 042: Medical assistance division (MAD) pays the monthly medicare Part B insurance premium for eligible recipients with income between [~~+20~~] one hundred and twenty percent and [~~+35~~] one hundred and thirty-five percent of the federal poverty level (FPL) who are not otherwise eligible for another medical assistance program category of eligibility (QI1s). A QI1 recipient must be covered by medicare Part A. The Part A insurance is a free entitlement to social security beneficiaries who are 65 years of age or older or who have received social security disability payments for 24 months. Fully or currently insured workers, or their dependents, with end-stage renal disease are also covered under medicare. Eligible recipients will be served on a first come, first served basis, contingent upon availability of federal funds. Eligibility will be offered to individuals on a yearly basis. After

1998, eligible recipients currently enrolled in the program will get the first opportunity to continue to receive benefits under this program.
[8.250.400.9 NMAC - Rp,
8.250.400.9 NMAC, 1/1/2014; A,
1/1/2022]

8.250.400.10 BASIS FOR DEFINING THE GROUP: QIIs are individuals who would be qualified medicare beneficiaries (QMB) but for the fact that their income exceeds the income levels established for QMB and specified low income medicare beneficiaries (SLIMB). Income eligibility for the QIIs is at least ~~[120]~~ one hundred and twenty percent of the FPL, but less than ~~[135]~~ one hundred thirty-five percent. The state of New Mexico (the state) will permit all individuals to apply for assistance during a calendar year beginning 1998. However, because of the capped allotments, the state shall limit the number of participants in QIIs selected in a calendar year so that the aggregate amount of benefits provided to such individuals in the calendar year is estimated not to exceed the state's allocation for the fiscal year ending in that calendar year. The state shall select QIIs on a first-come, first-served basis (in the order in which they apply). For calendar years after 1998, the state shall give preference to individuals who were QIIs, QMBs, SLIMBs, or qualified disabled working individuals (QDWI) in the last month of the previous year and who continue to be or become QIIs.

[8.250.400.10 NMAC - Rp,
8.250.400.10 NMAC, 1/1/2014; A,
1/1/2022]

8.250.400.13 CITIZENSHIP:

A. Undocumented ~~[aliens]~~ non-citizens cannot purchase medicare coverage and, therefore, are not eligible for QII benefits. To be eligible for QII an applicant or re-determining recipient must be one of the following:

- (1) a citizen of the United States; or
- (2) ~~[an alien]~~ a non-citizen who entered the United

States prior to August 22, 1996, as one of the classes of ~~[aliens]~~ non-citizens described in 8.200.410 NMAC or ~~[an alien]~~ a non-citizen who entered the United States as a qualified ~~[alien]~~ non-citizen on or after August 22, 1996, and who has met the five year bar listed in 8.200.410 NMAC.

B. Verification of citizenship: Individuals entitled to or receiving medicare already meet citizenship and identity requirements.
[8.250.400.13 NMAC - Rp,
8.250.400.13 NMAC, 1/1/2014; A,
1/1/2022]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.252.400 NMAC, Sections 8, 9, 13 and 21, effective 1/1/2022.

**8.252.400.8 [RESERVED]
MISSION:** To transform lives.

Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.252.400.8 NMAC - N, 7/1/2002, A,
1/1/2022]

8.252.400.9 BREAST AND CERVICAL CANCER (BCC) -

Category 052: The human services department (HSD) is the single state agency designated to administer the medicaid program in New Mexico. The department of health (DOH) and the HSD are charged with developing and implementing a program for uninsured women under the age of 65 years, who have met screening criteria as set forth in the centers for disease control and prevention's (CDC) national breast and cervical cancer early detection program (NBCCEDP). The DOH is responsible for verifying that women referred for treatment have met screening requirements that include an income test of ~~[250%]~~ two hundred and fifty percent of

the federal poverty guidelines, and diagnostic testing by a contracted CDC provider resulting in a diagnosis of breast or cervical cancer including pre-cancerous conditions. Women who have met CDC screening criteria and identified as needing treatment for a diagnoses of breast or cervical cancer, including pre-cancerous conditions will be referred for treatment that includes the completion of a medicaid application for the BCC program. The Breast and Cervical Cancer Prevention and Treatment Act allows states to extend presumptive eligibility to applicants in order to ensure that needed treatment begins as early as possible.

[8.252.400.9 NMAC - N, 7/1/2002; A,
1/1/2022]

8.252.400.13 CITIZENSHIP:

Refer to medical assistance program manual Section MAD 412, 412.1, and 412.2 (Section 11 of 8.200.410 NMAC). Women who do not meet citizenship eligibility criteria may be eligible to receive coverage for emergency services under the emergency medical services for undocumented ~~[aliens (EMSA)]~~ non-citizens (EMSNC) program.

[8.252.400.13 NMAC - N, 7/1/2002;
A, 1/1/2022]

8.252.400.21 REPORTING

REQUIREMENTS: A woman ~~[and/or]~~ or any other responsible party must:

A. report any changes in circumstances, which may affect the woman's eligibility within ~~[ten (10)]~~ 10 days of the date of the change to the county ISD office;

B. the ISD worker must evaluate the effect of the change and take any required action as soon as possible; however, the action must take effect no later than the end of the month following the month in which the change took place.

[8.252.400.21 NMAC - N, 7/1/2002;
A, 1/1/2022]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.280.400 NMAC, Section 11, effective 1/1/2022.

8.280.400.11 APPLICANT AND RECIPIENT REQUIREMENTS:

Applicants must live within the designated PACE service area and meet all of the criteria listed below at the time of application and enrollment.

A. Applicants must be 55 years of age or older. Applicants/recipients must be determined blind or disabled if under the age of 65 years.

(1) To be considered blind, an applicant/recipient must have central visual acuity of 20/200 or less with corrective lenses or must be considered blind for practical purposes.

(2) To be considered disabled, an applicant/recipient must be unable to engage in any substantial gainful activity, because of any medically determinable physical, developmental, or mental impairment which has lasted, or is expected to last, for a continuous period of at least 12 months.

(3) If a determination of blindness or disability has not been made, the income support division worker will submit medical reports to the disability determination unit.

B. Level of care requirements must be met in addition to all other requirements. An applicant or recipient must be eligible for institutional nursing facility level of care as determined by the medical assistance division (MAD) utilization review contractor. An institutional level of care must be recommended for the applicant or recipient by a PACE physician licensed to practice medicine or osteopathy in the state of New Mexico. Institutions are defined as acute care hospitals, nursing facilities (either high NF or low NF

as defined by medicaid regulations) and intermediate care facilities for individuals with intellectual disabilities (ICF/IID). Level of care determinations are performed by the MAD utilization review contractor. Level of care for approved recipients will be determined on an annual basis.

C. An interview is not required [at initial application] in accordance with 8.281.400.11 NMAC.

D. Upon enrollment, applicants must be able to live in a community setting without jeopardizing their individual health and safety. The ability to live safely in the home and community is determined by the PACE organization's interdisciplinary team. [8.280.400.11 NMAC - Rp, 8.280.400.11 NMAC, 1/1/2019; A, 2/1/2021, A, 1/1/2022]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.285.400 NMAC, Section 9, effective 1/1/2022.

8.285.400.9 EMERGENCY MEDICAL SERVICES FOR [ALIENS] NON-CITIZENS - CATEGORY 085:

Certain non-citizens who are undocumented or who do not meet the qualifying immigration criteria specified in 8.200.410 NMAC, but who meet all eligibility criteria for the following medical assistance categories of eligibility (COEs): other adults (COE 100), parent/caretaker (COE 200), pregnant women (COE 300), pregnancy-related services (COE 301), children under age 19 (COEs 400, 401, 402, 403, 420, and 421) or supplemental security income (COEs 001, 003, and 004) can receive coverage for emergency services. See 42 CFR Section 440.225. [8.285.400.9 NMAC - Rp, 8.285.400.9 NMAC, 1/1/2014; A, 5/1/2020; A, 1/1/2022]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.285.500 NMAC, Sections 8, 10 and 11, effective 1/1/2022.

8.285.500.8 [RESERVED]

MISSION: To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

8.285.500.10 RESOURCE

STANDARDS: [Aliens] Non-citizens who receive emergency services must meet the applicable resource standards for an existing medicaid category.

[2/1/1995; 4/30/98; 8.285.500.10 NMAC - Rn, 8 NMAC 4.ESA.510, 12/1/2008; A, 1/1/2022]

8.285.500.11 INCOME

STANDARDS: [Aliens] Non-citizens who receive emergency services must meet the income standards for an existing medicaid category.

[2/1/1995; 4/30/98; 8.285.500.11 NMAC - Rn, 8 NMAC 4.ESA.520, 12/1/2008; A, 1/1/2022]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.285.600 NMAC, Sections 10 and 11, effective 1/1/2022.

8.285.600.10 BENEFIT DETERMINATION:

A. Subsequent to the receipt of emergency services, an applicant must apply through the local county income support division (ISD) office. The application must be filed at the ISD office no later than the last day of the third month following

the month the presumed emergency services were received.

B. Documentation requirements: The applicant must bring a completed emergency medical services for [aliens] non-citizens (EMSNC) referral for eligibility determination form (MAD 308) to the ISD office for the financial eligibility determination. The emergency services provider must complete the referral form. ~~[Financial documents: The applicant must provide all necessary documentation to prove that he/she meets all financial and non-financial eligibility standards. Medical providers cannot submit eligibility applications on behalf of the applicant. The applicant is financially responsible for any services not covered by medicaid. A completed and signed application form must be submitted for each request for emergency medical services for aliens.]~~

C. Financial documents: The applicant must provide all necessary documentation to prove that they meet all financial and non-financial eligibility standards. Medical providers cannot submit eligibility applications on behalf of the applicant. The applicant is financially responsible for any services not covered by medicaid. A completed and signed application form must be submitted for each request for EMSNC. [2/1/1995; 4/30/1998; 8.285.600.11 NMAC - Rn, 8 NMAC 4.ESA.620 & A, 12/1/2008; A, 5/1/2020; A, 1/1/2022]

8.285.600.11 INITIAL BENEFITS: Applications for medicaid must be acted on within 45 days of the date of application.

A. If an applicant is eligible for medicaid, the individual is sent a notice of case action (NOCA) form. The approval of financial eligibility is not a guarantee that medicaid will pay for the services. The NOCA form also serves as notice of case closure, since medicaid covers only emergency services received during the specified term of the emergency. The provider is sent

the decision for emergency medical services for ~~[aliens (EMSA)] non-citizens (EMSNC)~~ application (MAD 778) form. The provider must use the MAD 778 form to submit claims to the medicaid utilization review contractor for emergency review.

B. If an applicant is ineligible for medicaid or a decision on the application is delayed beyond the 45 day time limit, the individual is sent a NOCA form regarding the application for ~~[emergency medical services for aliens]~~ EMSNC. The NOCA form explains the reason for denial or delay and informs the applicant of ~~[his/her]~~ their right to an administrative hearing. If the application is denied, the applicant must notify providers of the denial.

C. The applicant is responsible for payment for the medical services if ~~[he/she fails]~~ they fail to apply promptly for coverage, verify eligibility for coverage, or notify the provider of the approval or denial of the application. [2/1/1995; 4/30/1998; 8.285.600.11 NMAC - Rn, 8 NMAC 4.ESA.623 & A, 12/1/2008; A, 5/1/2020; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.291.410 NMAC, Sections 8 and 14, effective 1/1/2022.

8.291.410.8 [RESERVED]
MISSION: To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.
[8.291.410.8 NMAC - Rp, 8.291.410.8 NMAC, 10/1/2017; A, 1/1/2022]

8.291.410.14 [CITIZENSHIP/ALIEN] CITIZENSHIP/NON-CITIZEN STATUS: Refer to 8.200.410.12 NMAC.

[8.291.410.14 NMAC - Rp, 8.291.410.14 NMAC, 10/1/2017; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.292.500 NMAC, Sections 8 and 12, effective 1/1/2022.

8.292.500.8 MISSION: [To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.] To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.
[8.292.500.8 NMAC - Rp, 8.292.500.8 NMAC, 1/1/2014; A, 1/1/2022]

8.292.500.12 INCOME ELIGIBILITY: [Income from a 30-day period is used to determine eligibility. Income from a terminated source is not counted. If an amount of income is received less frequently than monthly, that amount is converted by dividing the total income by the number of months the income is intended to cover. Income received more frequently than monthly will be converted using the following multipliers:

_____A._____ four (paid weekly);
_____B._____ two (paid biweekly/semi-monthly).] Income methodology is based on modified adjusted gross income (MAGI) in accordance with 42 Code of Federal Regulations (CFR) 435.603. Per 42 CFR 435.603(h)(2) HSD bases financial eligibility on current monthly household income and family size. Current monthly household income is defined as a 30-day period. If an amount of income is received less frequently than monthly, that amount

is converted by dividing the total income by the number of months the income is intended to cover.

[8.292.500.12 NMAC - Rp, 8.292.500.12 NMAC, 1/1/2014; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.293.500 NMAC, Sections 8 and 12, effective 1/1/2022.

8.293.500.8 MISSION: [~~To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.~~] To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.293.500.8 NMAC - Rp, 8.293.500.8 NMAC, 1/1/2014; A, 1/1/2022]

8.293.500.12 INCOME ELIGIBILITY: [~~Income from a 30-day-period is used to determine eligibility. Income from a terminated source is not counted. If an amount of income is received less frequently than monthly, that amount is converted by dividing the total income by the number of months the income is intended to cover to determine a modified adjusted gross income for financial eligibility. For the purposes of this calculation, a partial month is considered to be one full month. Income received more frequently than monthly will be converted using the following multipliers:~~

~~_____A._____ four (paid weekly);~~
~~_____B._____ two (paid biweekly/semi-monthly).]~~ Income methodology is based on modified adjusted gross income (MAGI) in accordance with 42 Code of Federal Regulations

(CFR) 435.603. Per 42 CFR 435.603(h)(2) HSD bases financial eligibility on current monthly household income and family size. Current monthly household income is defined as a 30-day period. If an amount of income is received less frequently than monthly, that amount is converted by dividing the total income by the number of months the income is intended to cover. [8.293.500.12 NMAC - Rp, 8.293.500.12 NMAC, 1/1/2014; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.294.500 NMAC, Sections 8, 10, 12 and 13, effective 1/1/2022.

8.294.500.8 MISSION: [~~To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.~~] To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.294.500.8 NMAC - Rp, 8.294.500.8 NMAC, 1/1/2014; A, 1/1/2022]

8.294.500.10 INCOME STANDARD:

A. Financial eligibility: An individual's financial eligibility is based on the rules in this chapter and 8.291.430 NMAC.

B. Income test: In order to become eligible for pregnancy medicaid, the total countable income of the budget group must be less than [250] two hundred and fifty percent of the federal poverty guidelines found at 8.291.430 NMAC.

[8.294.500.10 NMAC - Rp, 8.294.500.10 NMAC, 1/1/2014; A, 1/1/2022]

8.294.500.12 INCOME

ELIGIBILITY: [~~Income from a 30-day-period is used to determine eligibility. Income from a terminated source is not counted. If an amount of income is received less frequently than monthly, that amount is converted by dividing the total income by the number of months the income is intended to cover. Income received more frequently than monthly will be converted using the following multipliers:~~

~~_____A._____ four (paid weekly);~~
~~_____B._____ two (paid biweekly/semi-monthly).]~~ Income methodology is based on modified adjusted gross income (MAGI) in accordance with 42 Code of Federal Regulations (CFR) 435.603. Per 42 CFR 435.603(h)(2) HSD bases financial eligibility on current monthly household income and family size. Current monthly household income is defined as a 30-day period. If an amount of income is received less frequently than monthly, that amount is converted by dividing the total income by the number of months the income is intended to cover. [8.294.500.12 NMAC - Rp, 8.294.500.12 NMAC, 1/1/2014; A, 1/1/2022]

8.294.500.13 DISREGARDS:

An income disregard according to 8.291.430 NMAC will be given only to individuals whose countable MAGI income is at or above [250] two hundred and fifty percent of the federal poverty level for the size of the budget group. [8.294.500.13 NMAC - Rp, 8.294.500.13 NMAC, 1/1/2014; A, 1/1/2022]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.295.500 NMAC, Sections 8, 10, 11 and 12, effective 1/1/2022.

8.295.500.8 MISSION: ~~[To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.]~~ To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.295.500.8 NMAC - Rp,
8.295.500.8 NMAC, 1/1/2014; A,
1/1/2022]

**8.295.500.10 INCOME
STANDARD:**

A. Financial eligibility:
An individual's financial eligibility is based on the rules in this chapter and 8.291.430 NMAC.

B. Income test: In order to become eligible for children's medicaid, the total countable income of the budget group must be less than the income standard for eligibility found at 8.291.430 NMAC.

(1) If the assistance unit consists of a child under the age of six, the assistance unit and budget group's countable income must be less than [300] three hundred percent of FPL for the countable household size.

(2) If the assistance unit consists of a child age six to age 19, the assistance unit and budget group's countable income must be less than [240] two hundred and forty percent of FPL for the countable household size.

[8.295.500.10 NMAC - Rp,
8.295.500.10 NMAC, 1/1/2014; A,
1/1/2022]

**8.295.500.11 INCOME
ELIGIBILITY:** ~~[Income from a~~

~~30-day-period is used to determine eligibility. Income from a terminated source is not counted. If an amount of income is received less frequently than monthly, that amount is converted by dividing the total income by the number of months the income is intended to cover. Income received more frequently than monthly will be converted using the following multipliers:~~

~~**A.** four (paid weekly);~~

~~**B.** two (paid biweekly/semi-monthly);]~~ Income methodology

is based on modified adjusted gross income (MAGI) in accordance with 42 Code of Federal Regulations (CFR) 435.603. Per 42 CFR 435.603(h)(2) HSD bases financial eligibility on current monthly household income and family size. Current monthly household income is defined as a 30-day period. If an amount of income is received less frequently than monthly, that amount is converted by dividing the total income by the number of months the income is intended to cover.

[8.295.500.11 NMAC - Rp,
8.295.500.11 NMAC, 1/1/2014; A,
1/1/2022]

8.295.500.12 DISREGARDS:

An income disregard according to 8.291.430 NMAC, will be given only to the following:

A. individuals whose budget group's countable MAGI income is at or above [190] one hundred and ninety percent of the FPL if the assistance unit consists of a child age six to age 19, or [240] two hundred and forty percent of the FPL if the assistance unit consists of a child under the age of six; when a child has a QHP, an income disregard will be given when the existence of the QHP makes the individual ineligible due to CHIP requirements found at 8.295.400 NMAC; or

B. individuals whose budget group's countable MAGI income is at or above [240] two hundred and forty percent of the FPL if the assistance unit consists of a child age six to age 19, or [300] three hundred percent of the FPL if the assistance unit consists of a child

under the age of six.

[8.295.500.12 NMAC - Rp,
8.295.500.12 NMAC, 1/1/2014; A,
1/1/2022]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.296.500 NMAC, Sections 8, 10, 11 and 12, effective 1/1/2022.

8.296.500.8 MISSION: ~~[To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.]~~ To transform lives. Working with our partners we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.296.500.8 NMAC - Rp,
8.296.500.8 NMAC, 1/1/2014; A,
1/1/2022]

**8.296.500.10 INCOME
STANDARD:**

A. Financial eligibility:
An individual's financial eligibility is based on the rules in this chapter and 8.291.430 NMAC.

B. Income test: In order to become eligible for other adult medicaid, the total countable income of the budget group must be less than [133] one hundred and thirty-three percent of the federal poverty guidelines found at 8.291.430 NMAC.

[8.296.500.10 NMAC - Rp,
8.296.500.10 NMAC, 1/1/2014; A,
1/1/2022]

8.296.500.11 INCOME

ELIGIBILITY: ~~[Income from a 30-day-period is used to determine eligibility. Income from a terminated source is not counted even in the month of application. If an amount of income is received less frequently than monthly, that amount~~

is converted by dividing the total income by the number of months the income is intended to cover to determine a modified adjusted gross income for financial eligibility. For the purposes of this calculation, a partial month is considered to be one full month. Income received more frequently than monthly will be converted using the following multipliers:

_____ **A.** _____ four (paid weekly);
 _____ **B.** _____ two (paid biweekly/
 semi-monthly).] Income methodology is based on modified adjusted gross income (MAGI) in accordance with 42 Code of Federal Regulations (CFR) 435.603. Per 42 CFR 435.603(h)(2) HSD bases financial eligibility on current monthly household income and family size. Current monthly household income is defined as a 30-day period. If an amount of income is received less frequently than monthly, that amount is converted by dividing the total income by the number of months the income is intended to cover. [8.296.500.11 NMAC - Rp, 8.296.500.11 NMAC, 1/1/2014; A, 1/1/2022]

8.296.500.12 DISREGARD:
 An income disregard according to 8.291.430 NMAC will be given only to individuals whose countable MAGI income is at or above [133] one hundred and thirty-three percent of federal poverty level for the size of the budget group. [8.296.500.12 NMAC - Rp, 8.296.500.12 NMAC, 1/1/2014; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.299.500 NMAC, Sections 8 and 11, effective 1/1/2022.

8.299.500.8 [RESERVED]
MISSION: To transform lives. Working with our partners, we design and deliver innovative, high quality

health and human services that improve the security and promote independence for New Mexicans in their communities. [8.299.500.8 NMAC - N, 10/1/2017; A, 1/1/2022]

8.299.500.11 INCOME ELIGIBILITY: [Income methodology is based on modified adjusted gross income (MAGI) found at 8.291.430.15 NMAC. Income from a 30-day period is used to determine eligibility. If an amount of income is received less frequently than monthly, that amount is converted by dividing the total income by the number of months the income is intended to cover. Income received more frequently than monthly will be converted using the following multipliers:

_____ **A.** _____ four (paid weekly);
 _____ **B.** _____ two (paid biweekly/
 semi-monthly).] Income methodology is based on modified adjusted gross income (MAGI) in accordance with 42 Code of Federal Regulations (CFR) 435.603. Per 42 CFR 435.603(h)(2) HSD bases financial eligibility on current monthly household income and family size. Current monthly household income is defined as a 30-day period. If an amount of income is received less frequently than monthly, that amount is converted by dividing the total income by the number of months the income is intended to cover. [8.299.500.10 NMAC - N, 10/1/2017; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.325.10 NMAC, Sections 9, 11, 12, 13, 15 and 16, effective 1/1/2022.

8.325.10.9 EMERGENCY MEDICAL SERVICES FOR [ALIENS (EMSA)] NON-CITIZENS (EMSNC): The New Mexico medical assistance division (MAD) is required to pay for

necessary emergency medical services furnished to individuals who are non-citizens, reside in New Mexico and meet the requirements for medicaid eligibility per 42 CFR 440.255(c). [2/1/1995; 8.325.10.9 NMAC - Rn, 8 NMAC 4.MAD.769, 12/1/2003; A, 10/15/2008; A, 11/15/2010; A, 5/1/2020; A, 1/1/2022]

8.325.10.11 PROVIDER RESPONSIBILITIES:

A. A provider who furnishes services to a medicaid or other health care program eligible recipient must comply with all federal and state laws, regulations, and executive orders relevant to the provision of services as specified in the MAD provider participation agreement. A provider also must conform to MAD program rules and instructions as specified in the provider rules manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or upcoding services. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor's instructions for billing and for authorization of services.

B. A provider may encourage a non-citizen to apply for [EMSA] EMSNC eligibility through the local county income support division (ISD) office when the provider believes the service may qualify as an [EMSA] EMSNC emergency service. A provider must inform the individual if the provider is unwilling to receive medicaid payment for the service when the service meets the [EMSA] EMSNC emergency criteria for coverage. A provider must determine if the recipient has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to a non-citizen recipient. [2/1/1995; 8.325.10.11 NMAC - Rn, 8 NMAC 4.MAD.769.2 & A, 12/1/2003; A, 10/15/2008; A, 11/15/2010; A, 5/1/2020; A, 1/1/2022]

8.325.10.12 ELIGIBLE INDIVIDUALS:

A. An applicant must be a noncitizen who is undocumented or who does not meet the qualifying immigration criteria specified in 8.200.410 NMAC, *General Recipient Requirements*, and in 8.285.400 NMAC, *Medicaid Eligibility-Emergency Medical Services for [Aliens] Non-Citizens - Category 085*.

B. Eligibility determinations are made by local county income support division (ISD) offices after the receipt of emergency services. The individual is responsible for completing an application through the local county ISD office and for providing all necessary documentation to prove that he or she meets the applicable eligibility criteria.

(1) An individual must apply for coverage through the ISD office no later than the last day of the third month following the month in which the presumed emergency services were received.

(2) If eligibility is granted or denied, the medical provider will be notified with a decision for [EMSA] EMSNC form, MAD 778 or its successor.

(3) If an application is denied or an application for coverage is not filed by the last day of the third month following the month in which the presumed emergency services were received, the non-citizen recipient is responsible for payment of the provider bill.

(4) If reimbursement for services is denied by MAD or its designee, the non-citizen is responsible for payment and can be billed directly for payment by the provider.

[2/1/1995; 8.325.10.12 NMAC - Rn, 8 NMAC 4.MAD.769.3 & A, 12/1/2003; A, 10/15/2008; A, 11/15/2010; A, 5/1/2020; A, 1/1/2022]

8.325.10.13 COVERAGE CRITERIA:

A. "Emergency" as defined for [EMSA] EMSNC includes labor and delivery including

inductions and cesarean sections, as well as any other medical condition, manifesting itself with acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (1) the recipient's death;
- (2) placing the recipient's health in serious jeopardy;
- (3) serious impairment to bodily functions; or
- (4) serious dysfunction of any bodily organ or part.

B. Services are covered only when necessary to treat or evaluate a condition meeting the definition of emergency and are covered only for the duration of that emergency.

C. Labor and delivery services provided by an out of state border hospital or emergency transfers from an in state acute care hospital to a border acute care hospital are covered. The out of state border provider must be enrolled with the New Mexico medicaid program.

D. After delivery, a child can have legally documented or citizenship status because of its birth in the United States and, therefore, is not eligible for [EMSA] EMSNC. The child may be eligible for another MAD category of eligibility on his or her own.

E. Determination of coverage is made by MAD or its designee.
[2/1/1995; 8.325.10.13 NMAC - Rn, 8 NMAC 4.MAD.769.4 & A, 12/1/2003; A, 10/15/2008; A, 11/15/2010; A, 5/1/2020; A, 1/1/2022]

8.325.10.15 NONCOVERED SERVICES:

MAD does not cover any medical service that is not necessary to treat or evaluate a condition for an individual who is a non-citizen that does not meet the definition of [EMSA] EMSNC emergency. Additionally, MAD does not cover the following specific services:

- A.** long term care;
- B.** organ transplants;
- C.** rehabilitation services;
- D.** elective surgical procedures;
- E.** psychiatric or psychological services;
- F.** durable medical equipment or supplies;
- G.** eyeglasses;
- H.** hearing aids;
- I.** outpatient prescriptions;
- J.** podiatry services;
- K.** prenatal and postpartum care;
- L.** well child care;
- M.** routine dental care;
- N.** routine dialysis services;
- O.** any medical service furnished by an out-of-state provider;
- P.** non-emergency transportation; and
- Q.** preventive care.

[2/1/1995; 8.325.10.15 NMAC - Rn, 8 NMAC 4.MAD.769.6 & A, 12/1/2003; A, 10/15/2008; A, 11/15/2010; A, 5/1/2020; A, 1/1/2022]

8.325.10.16 UTILIZATION

REVIEW: Claims for services furnished to a non-citizen recipient are reviewed by MAD or its designee before payment to determine if the circumstances warrant coverage.

A. Eligibility determination: A non-citizen recipient who requests MAD coverage for services must meet specific categorical eligibility requirements. Eligibility determinations by local county ISD offices must be made before the review for medical necessity.

B. Reconsideration: A provider and the non-citizen recipient are given notice of the denial when the [EMSA] EMSNC emergency criteria are not met. A provider who is dissatisfied with a medical necessity decision by MAD, its UR contractor or a MAD designee, can request a reconsideration. A non-citizen recipient who is dissatisfied with a medical necessity decision by MAD, its UR contractor or a MAD

designee, can request the provider to pursue reconsideration on his or her behalf. Requests for reconsiderations must be in writing and received by MAD, its UR contractor or a MAD designee within 30 calendar days after the date on the initial notice of action. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions*. A non-citizen recipient can also request a hearing. See 8.352.2 NMAC, *Claimant Hearings*.
[2/1/1995; 8.325.10.16 NMAC - Rn, 8 NMAC 4.MAD.769.7 & A, 12/1/2003; A, 10/15/2008; A, 11/15/2010; A, 5/1/2020; A, 1/1/2022]

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 64 SCHOOL PERSONNEL – COMPETENCIES FOR LICENSURE PART 20 COMPETENCIES FOR SECONDARY COMPUTER SCIENCE TEACHERS

6.64.20.1 ISSUING
AGENCY: Public Education
Department, hereinafter the
department.
[6.64.20.1 NMAC – N, 12/28/2021]

6.64.20.2 SCOPE: This
rule applies to all institutions of
higher education in New Mexico that
establish or maintain a curriculum for
persons seeking a secondary computer
science endorsement to a state
educator license.
[6.64.20.2 NMAC – N, 12/28/2021]

6.64.20.3 STATUTORY
AUTHORITY: Sections 22-2-1, 22-
2-2, and 22-10A-6 NMSA 1978.
[6.64.20.3 NMAC – N, 12/28/2021]

6.64.20.4 DURATION:
Permanent.
[6.64.20.4 NMAC – N, 12/28/2021]

6.64.20.5 EFFECTIVE
DATE: December 28, 2021, unless

a later date is cited at the end of a
section.
[6.64.20.5 NMAC – N, 12/28/2021]

6.64.20.6 OBJECTIVE:
This rule establishes pathways
and competencies for secondary
teachers to earn an endorsement
in computer science, supporting
effective computer science instruction
in seventh through 12th grade.
The competencies align with the
New Mexico content standards and
benchmarks for computer science and
the national standards of the computer
science teachers' association
[6.64.20.6 NMAC – N, 12/28/2021]

6.64.20.7 DEFINITIONS:
**A. “Professional
development”** means training
held by the department or another
instructional support provider
designed to improve participants’
understanding of computer science
content and pedagogy.

**B. “Culturally
and linguistically responsive
learning experiences”** means
learning environments, instructional
materials, curriculum, support
services, activities, and professional
development that inform culturally
and linguistically responsive
pedagogy; reflect the cultures,
languages, and lived experiences of a
multicultural society; address multiple
ethnic descriptions, interpretations,
or perspectives of events and
experiences; and encourage critical
pedagogy.
[6.64.20.7 NMAC – N, 12/28/2021]

**6.64.20.8 PATHWAYS
FOR ENDORSEMENT:** Teachers
seeking a secondary computer science
endorsement shall:

- A.** Hold a teaching
license in secondary education as
provided by 6.61.4 NMAC; and
- B.** Complete one of the
following pathways:
 - (1)** earn 15
postsecondary course credit hours in
computer science coursework;
 - (2)** pass
the department-approved teacher
licensure exam for computer science

or an approved comparable licensure
test from another state;

(3) possess
a minimum of two years of work
experience in an industry related to
computer science, which the applicant
must validate using a verifiable list of
references;

(4) possess
an industry certification in a field
related to computer science, which
the applicant must validate using
official documentation of the industry
certification;

(5) prior to
January 1, 2025, have completed 60
hours of professional development
within the three years immediately
prior to applying for a computer
science endorsement, which the
applicant must validate using
documentation from the organization
that provided the professional
development, including the number of
hours of each training; or

(6) prior to
January 1, 2025, possess three or
more years of computer science
teaching experience including
computer coding program
structure in one or more languages,
debugging computer programs,
computer modeling and skills
relevant to applications such as
data management, graphics and text
processing, which the applicant must
validate with a letter signed by a
school district administrator, charter
school administrator, or secondary
school principal.
[6.64.20.8 NMAC – N, 12/28/2021]

**6.64.20.9 COMPETENCIES
FOR COMPUTER SCIENCE
TEACHERS:** Secondary computer
science teachers shall demonstrate
mastery of:

- A.** Computer science
knowledge and skills.
- (1)** Computer
science teachers apply computer
science and computational thinking
in appropriate and flexible ways,
which includes demonstrating and
continuously developing a knowledge
of core concepts and practices in
computer science, including the
following:

(a) designing, implementing, debugging, and reviewing programs in an iterative process using appropriate computer science tools and technologies;

(b) interpreting algorithms and explaining tradeoffs associated with different algorithms; and

(c) fostering a computing culture of inclusivity;

(d) collaborating around computing;

(e) modeling how computing devices connect through networks and the internet to facilitate communication;

(f) collecting, storing, and analyzing data;

(g) creating, combining, and modifying artifact-based products.

(2) Computer science teachers apply knowledge of how hardware and software function within computing systems, including:

(a) hardware components;

(b) operating systems and programs;

(c) computer networks; and

(d) mobile computing devices.

(3) Computer science teachers model how computing devices connect via networks and the internet to facilitate communication and explain tradeoffs between usability and security.

(4) Computer science teachers demonstrate learning and modeling the collection, storage, transformation, and analysis of digital data to better understand the world and make more accurate predictions to advance solutions.

(5) Computer science teachers design, implement, debug, and review programs in an iterative process using appropriate computer science tools and technologies.

(6) Computer science teachers interpret algorithms

and explain tradeoffs associated with different algorithms.

(7) Computer science teachers analyze how people influence computing through their behaviors, cultural norms, and social interactions, and how computing impacts society in positive and negative ways.

B. Equitable and inclusive learning environment. Computer science teachers proactively advocate for equity and inclusion in the computer science classroom, making an intentional commitment to improve access, engagement, and achievement for all students by:

(1) examining equity issues, including the contributions of systemic barriers, social factors, and psychological factors to inequitable access, engagement, and achievement in computer science among marginalized groups;

(2) reflecting on how equity issues manifest in the teachers' own context;

(3) developing purposeful, proactive strategies that minimize threats to inclusion and challenge stereotypes and unconscious bias;

(4) representing and incorporating diverse perspectives and experiences of individuals from underrepresented groups in instructional materials and instruction;

(5) using tools to evaluate accessible instructional materials and leverage those resources to improve accessibility for all students; and

(6) creating and implementing a plan that uses classroom data to make informed instructional decisions.

C. Personal growth and identity. Computer science teachers take an active role in their personal growth and understanding of computer science content and pedagogy and commit to continuously improving their computer science skills, including:

(1) pursuing targeted professional development to continuously deepen pedagogical knowledge, content knowledge, and skills;

(2) modeling continuous improvement by demonstrating perseverance as it pertains to the problem-solving process;

(3) leveraging professional and community resources to support student learning in computer science, such as mentors, colleagues, and local industry professionals; and

(4) collaborating through professional learning communities.

D. Designing learning experiences. Computer science teachers model evidence-based pedagogy to facilitate equitable and meaningful learning experiences for students, including:

(1) analyzing whether computer science curriculum enables effective pedagogy for student learning, with a focus on the following characteristics: inquiry-based learning, alignment to standards, problem-solving opportunities, and application of computational and critical thinking skills;

(2) designing inclusive culturally and linguistically relevant learning experiences that support student engagement; and

(3) building connections between computer science, other disciplines, and the real-world contexts in which students will engage.

[6.64.20.9 NMAC – N, 12/28/2021]

HISTORY OF 6.64.20 NMAC:
[RESERVED]

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.100 NMAC, Sections 1 and 7, effective 12/28/2021.

2.80.100.1 ISSUING

AGENCY: Public Employees Retirement Association, [P. O. Box 2123] 33 Plaza La Prensa, Santa Fe, New Mexico [87504-2123] 87507. [10/15/1997; 2.80.100.1 NMAC - Rn, 2 NMAC 80.100.1, 12/28/2000; A, 12/28/2021]

2.80.100.7 DEFINITIONS:

As used in the Public Employees Retirement Act:

A. “Accumulated member contributions” means amounts deducted from the salary of a member and credited to the member’s individual account, together with interest if any, credited to that account; it also includes repaid withdrawn contributions not including interest paid thereon, or amounts paid to purchase service credit as allowed under the PERA Act.

B. “Active duty” for purposes of acquiring service credit under Section 10-11-7 NMSA 1978, as amended, for periods of active duty with uniformed service of the United States, means full-time duty in the active uniformed service of the United States, including full-time training duty, annual training duty, and attendance while in the active military service, at a school designated as a service school by law or by the secretary of the military department concerned. “Active duty” does not include full-time national guard duty, which is training or other duty performed by a member of the air or army national guard of a state or territory, for which the member is entitled to pay from the United States or for which the member has waived pay from the United States. “Active duty” includes duty in the full-time military service reserve components activated pursuant to a federal call to duty, deployment for a peacekeeping mission or other declared national emergency.

C. “Adult correctional officer member” means a person who is an adult correctional officer or an adult correctional officer specialist employed by the corrections department or its successor agency.

D. “Adult probation

and parole officer member” means a person who is an adult probation and parole officer employed by the corrections department or its successor agency.

[D:] E. “Another retirement program” means retirement plans established by the Judicial Retirement Act, Magistrate Retirement Act, and the Educational Retirement Act.

[E:] F. “Elected official” means a person elected to a public office by registered voters, who is paid a salary; “elected official” includes a person who is appointed to fill an unexpired term of an elected public office, who is paid a salary.

[F:] G. “Filed” means that PERA has received the complete document as evidenced by a writing on the document indicating the date of receipt by PERA.

[G:] H. “Fire member” means any member who is employed as a firefighter by an affiliated public employer, is paid a salary and has taken the oath prescribed for firefighters. The term shall not include volunteer firefighters or any civilian employees of a fire department.

[H:] I. “Juvenile correctional officer member” means a member who is employed as a juvenile correctional officer by the children, youth and families department or its successor agency, but does not include any member who is a “police member” or a “fire member”.

[I:] J. “Juvenile probation and parole officer member” means a person who is a juvenile probation and parole officer employed by the children, youth and families department or its successor agency.

[J:] K. “Leave office” means an elected official’s successor has been duly elected or appointed and qualified for office, or upon the date of death of an elected official.

[K:] L. “Legal representative” means “personal representative” as defined in the Probate Code of New Mexico which includes executor, administrator,

successor personal representative, special administrator and persons who perform substantially the same functions under the law governing their status, or an attorney or a person acting pursuant to a power of attorney for a member, retired member or beneficiary.

[L:] M. “Municipal detention officer” means a member who is employed by an affiliated public employer other than the state who has inmate custodial responsibilities at a facility used for the confinement of persons charged or convicted of a violation of a law or ordinance. “Municipal detention officer” includes both juvenile and adult municipal detention officers.

[M:] N. “Permissive service credit” means service credit recognized by the retirement system for purposes of calculating a member’s retirement benefit, which is available only by making a voluntary additional contribution which does not exceed the amount necessary to fund the benefit attributable to such service credit.

[N:] O. “Police member” means any member who is employed as a police officer by an affiliated public employer, who is paid a salary, and who has taken the oath prescribed for police officers. The term shall not include volunteers, juvenile correctional officer members, or employees who do not perform primarily police functions including, but not limited to jailers, cooks, matrons, radio operators, meter checkers, pound employees, crossing guards, police judges, park conservation officers, and game wardens. A member who is employed by an affiliated public employer as a police officer and as a non-police officer employee shall be regarded as a police member if more than fifty percent of the member’s total salary is paid as a police officer.

[O:] P. “Private retirement program” for the purpose of exclusion from membership under Paragraph (5) of Subsection B of Section 10-11-3 NMSA 1978, means a retirement program of the affiliated public employer which

meets the internal revenue service minimum standards regarding benefits as outlined in 26 C.F.R. Section 31.3121(b) (7)F of the Employment Tax Regulations and IRS Rev. Proc. 91-40.

[P] Q. “**Reenlistment**” as used in Paragraph (3) of Subsection A of Section 10-11-6 NMSA 1978, means enlistment or voluntary entry into one of the armed services as either enlisted personnel or as a commissioned officer.

[Q:] R. “**Retired member**” means a person who is being paid a normal, deferred or disability pension on account of that person’s membership in the association. “Retired member” shall not include any persons receiving a pre-retirement survivor pension, post-retirement survivor pension, or reciprocity retirement pension where the payer system is not PERA, or any other person unless specifically included by definition as a “retired member”.

[R:] S. “**Salary**” means the base salary or wages paid a member, including longevity pay, for personal services rendered to an affiliated public employer. “Salary” includes a member’s fixed, periodical compensation from full or part time employment; shift differentials; and wages paid while absent from work on account of vacation, holiday, injury or illness, which means payment made by continuing the member on the regular payroll. “Salary” includes incentive pay that is not temporary and becomes part of member’s base salary. “Salary” also includes temporary promotions, temporary salary increases, but no other temporary differentials. “Salary” shall not include overtime pay, unless the overtime payment is required for a regular scheduled tour of duty as set forth in Section 207 (k) of Title 29 of the United States code and is made on the regular payroll for the period represented by the payment. “Salary” for overtime pay required for a regular tour of duty does not include on-call or special events duty, or other duty performed by a member on a voluntary or ad hoc basis, which is temporary and does not become

part of the member’s base salary. “Salary” shall not include allowances for housing, clothing, equipment or travel, payments for unused sick leave, unless the unused sick leave payment is made through continuation of the member on the regular payroll for the period represented by that payment. “Salary” also [does] shall not include lump sum payments which are not part of the member’s fixed periodical compensation, such as lump sum annual and sick leave or occasional payments to elected officials for attending meetings, allowances for any purpose, employer contributions to a private retirement program, or other fringe benefits, even if they are paid to or for a member on a regular basis, and any other form of remuneration not specifically designated by law as included in salary for Public Employees Retirement Act purposes.

[S:] T. “**State legislator member**” means a person who is currently serving or who has served as a state legislator or lieutenant governor and who has elected to participate in a state legislator member coverage plan. A former legislator or former lieutenant governor may be a “state legislator member” whether or not currently receiving a pension under a state legislator member coverage plan.

[T:] U. “**State system**” means a retirement program provided for in the Public Employees Retirement Act, Magistrate Retirement Act, or Judicial Retirement Act.

[U:] V. “**Terminate employment**” means that a member has a complete break in service and an absolute cessation of employment with all affiliated public employers, including employment as an elected official, as evidenced by a personnel action form or other equivalent document, and the member is not reemployed by an affiliated public employer for 30 days; or upon the date of death of a member.

[10/15/1997; 11/15/1997; 1/15/1999; 12/15/1999; 2.80.100.7 NMAC - Rn & A, 2 NMAC 80.100.7, 12/28/2000;

A, 12/28/2001; A, 9/30/2003; A, 6/30/2005; A, 12/15/2009; A, 12/30/2013; A, 12/28/2021]

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.200 NMAC, Sections 50, 60 and 70, effective 12/28/2021.

2.80.200.50 COMMITTEES:

A. The chair shall appoint no more than six board members to each of the following standing committees: rules and administration, audit and budget, legislative, investments, [and] deferred compensation, investment plan, and governance. The disability review committee shall have at least three but no more than five board members. The chair of the board shall appoint the chair of each committee. Though the board shall have standing committees, the board chair reserves the right to cancel any committee meeting and allow the entire board to discuss and act on matters that may be within the subject matter of standing committees.

(1) The rules and administration committee shall consider and recommend to the board new rules and amendments to or repeal of existing rules governing the organization and operation of the board and the association. Administrative matters requiring specific direction from the board may also be considered by the committee.

(2) The audit and budget committee shall provide policy assistance to the board and the executive director of PERA in fulfilling PERA’s responsibilities for accounting, auditing, budgeting, and the quality and integrity of the financial reports of the association.

(3) The legislative committee shall consider and recommend to the board proposals for new statutes and amendments to or repeal of existing statutes. The committee shall also monitor the introduction and progress

of proposed legislation affecting the board or association and report this information to the board.

(4) The disability review committee is described in 2.80.1000.20 NMAC.

(5) The investment committee shall review and monitor the administration of the investment policy adopted by the board.

(6) The deferred compensation committee shall review and monitor the administration of the deferred compensation plan investment policy adopted by the board.

(7) The governance committee shall develop, review and monitor compliance with the board's policies and procedures, code of conduct, and board complaint procedure and recommend to the board proposed board disciplinary actions.

B. The chair, with the advice and consent of the board, ~~shall~~ may appoint an election committee to consist of nine members of the association: four members from state departments, two members from non-county municipal employers, one member from a county employer and two retired members.

(1) The election committee shall serve until replaced by the chair and shall receive no compensation other than that authorized by the Per Diem and Mileage Act.

(2) The duties of the election committee are described in 2.80.200.60, 2.80.200.70 and 2.80.200.80 NMAC.

C. From time to time, the board may authorize, and the chair may appoint, such ad hoc committees as the board finds necessary.

D. Board members appointed to committees shall adhere to the standards set forth in and be subject to the enforcement provisions of the New Mexico Governmental Conduct Act.

[2.80.200.50 NMAC - Rp, 2.80.200.50 NMAC, 12/30/2015; A, 12/28/2021]

2.80.200.60 ELECTION OF RETIRED BOARD MEMBERS:

A. During the January monthly meeting, the retirement board shall adopt a resolution specifying when nominating petitions are due to be returned to PERA or an independent contractor hired by PERA to assist with the election.

These nominating petitions are due not earlier than six months prior and not later than one month prior to the election for the position of retired board member. The resolution shall also specify whether the method of voting shall include mailed paper ballots, online electronic ballots or other method approved by the board.

B. Any retired member who is receiving a disability or normal retirement pension under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act is eligible for election to a retired board member position.

C. Nominating petitions shall be signed only by retired members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act. To be eligible, a candidate must have a minimum of 50 nominations. A valid nomination shall include a signature, legible printing of the retiree's name, and one of the following:

(1) the last four digits of the retiree's social security number;

(2) the retiree's date of birth;

(3) the retiree's PERA identification number.

A nomination that does not include at least one of these elements may not be counted. For purposes of this subsection, "signature" shall include an electronic signature, in any digital format, from a single identifiable e-mail address. A retired member may sign more than one nominating petition for different candidates. The five candidates with the highest number of nominations shall be included on the ballot and the other or others shall be eliminated. The names of the five retired members receiving

the highest number of nominations shall be placed on the election ballot in descending order according to the number of signatures received. In case of a nominating tie, the election committee shall determine the names and order in which they are placed on the ballot by lottery or similar method.

D. In the event any nominee is unable or unwilling to accept a nomination, that nominee's name shall be removed from the ballot and the resulting vacancy on the ballot shall not be filled. If the inability or unwillingness to accept a nomination occurs after the ballots have been printed the election committee shall treat all votes cast for that nominee as void.

E. If only one retiree is nominated for a retired board member position, the election shall be cancelled and that retiree shall automatically be declared the winner for the retired board member position pursuant to 2.80.200.80 NMAC.

F. Only retired members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act shall be eligible to participate in the election of retired board members.

G. The campaign contribution limit of \$25.00 contained in Subsection B of Section 10-11-130.1 NMSA 1978 (2000) shall apply to each four year term retired board member election.

[2.80.200.60 NMAC - Rp, 2.80.200.60 NMAC, 12/30/2015; A, 3/14/2017; A, 12/28/2021]

2.80.200.70 ELECTION OF NON-RETIRED BOARD MEMBERS:

A. During the January monthly meeting, the retirement board shall adopt a resolution specifying when nominating petitions are due to be returned to PERA or an independent contractor hired by PERA to assist with the election. These nominating petitions are due not earlier than six months prior and not later than one month prior to the election for the position of non-retired board member. The resolution shall

also specify whether the method of voting shall include mailed paper ballots, online electronic ballots or other method approved by the board.

(1) Candidates nominated for any non-retired board member position shall be vested members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act.

(2) Only state members, including members under the Judicial Retirement Act or the Magistrate Retirement Act, may nominate candidates for state board member positions. Only county members may nominate candidates for the county board member position. Only non-county municipal members may nominate candidates for the remaining municipal board member positions.

(3) To be eligible, a candidate must have a minimum of 150 valid nominations of non-retired PERA members from the candidate's membership group on his or her nominating petition. A valid nomination shall include a signature, a legible printing of the member's name, the member's current employer and one of the following:

(a) the last four digits of the member's social security number;

(b) the member's date of birth; or

(c) the member's PERA identification number.

A nomination that does not include at least one of these elements may not be counted. For purposes of this subsection, "signature" shall include an electronic signature, in any digital format, from a single identifiable e-mail address. A member may sign more than one nominating petition for different candidates.

(4) The five candidates with the highest number of nominations for each non-retired position shall be included on the ballot and the other or others shall be eliminated. The names of the five non-retired members receiving the highest number of nominations for a position shall be placed on the

election ballot in descending order according to the number of signatures received. In case of a nominating tie, the election committee shall determine the names and order in which they are placed on the ballot by lottery or similar method.

(5) In the event any nominee is unable or unwilling to accept the nomination, his or her name shall be removed from the ballot and the vacancy on the ballot shall not be filled. If such a vacancy occurs after the ballots have been printed, the election committee shall treat all votes cast for that candidate as void.

(6) If only one member is nominated for a non-retired board member position, the election shall be cancelled and that member shall automatically be declared the winner for the non-retired board member position pursuant to 2.80.200.80 NMAC.

(7) All members of record of the membership group for which the election is held shall be eligible to receive a ballot as provided in Subparagraph (a) of Paragraph (8) below, except that only county members shall vote in elections for the county member position, and shall not be eligible to vote in elections for non-county municipal positions. The applicable membership group for any member who is no longer a currently employed, contributing employee of an affiliated public employer shall be determined as of the last date on which the member was a currently employed, contributing employee of an affiliated public employer.

(8) For purposes of the election of non-retired board members, "member of record" shall mean the following:

(a) all persons listed in PERA electronic membership history records as members, including members covered under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act, no more than 60 days prior to the date of mailing ballots;

(b) all persons who have filed with PERA a valid application for membership form 60 days or more prior to the date of mailing ballots;

(c) while members of record shall qualify to receive a ballot, in the case of those new members listed in Subparagraph (b) of Paragraph (8) of Subsection A of 2.80.200.70 NMAC, a written request for a ballot must be made to PERA.

(9) For purposes of the election of non-retired board members:

(a) ballots shall be mailed to all non-county municipal members of record in the case of an election of a non-county municipal board position;

(b) ballots shall be mailed to all county municipal members of record in the case of an election of the county municipal board position; and

(c) ballots shall be mailed to all state members of record in the case of an election of a state board position.

B. The campaign contribution limit of \$25.00 contained in Subsection B of Section 10-11-130.1 NMSA 1978 (2000) shall apply to each four year term non-retired board member election.

[2.80.200.70 NMAC - Rp, 2.80.200.70 NMAC, 12/30/2015; A, 3/14/2017; A, 12/28/2021]

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.1800 NMAC, Sections 1, 8, 9, 10 and 11, effective 12/28/2021.

2.80.1800.1 ISSUING

AGENCY: Public Employees Retirement Association, [P.O. Box 2423] 33 Plaza La Prensa, Santa Fe, New Mexico [87504-2423] 87507. [10/15/1997; 2.80.1800.1 NMAC - Rn, 2 NMAC 80.1800.1, 12/28/2001; A, 12/28/2021]

2.80.1800.8 GENERAL PROVISIONS

A. The board, at a regular meeting, shall employ an executive director who shall serve at the pleasure of the board and at a salary set by the board. The executive director shall be the chief administrative officer of the board and of the association and serve as a fiduciary to the retirement fund. [He or she] The executive director shall attest to official actions of the board when required [and shall serve at the pleasure of the board].

B. The executive director is authorized to approve duly executed applications for affiliation by public employers, and applications for normal, disability and survivor pensions in order to insure timely processing of retirement pensions. In cases of disability retirement applications, approval by the disability review committee is necessary prior to approval by the executive director. All approvals by the executive director for pensions must be submitted for ratification by the board at its next regular meeting.

C. The executive director is authorized to perform any acts required of the board pursuant to a proper delegation of authority and rules and policies and procedures adopted by the board.

D. The board shall conduct an annual written evaluation of the executive director by the anniversary date of the appointment of the executive director.

E. The executive director shall adhere to the standards set forth in and be subject to the enforcement provisions of the New Mexico Governmental Conduct Act. [10/15/1997; 11/15/1997; 2.80.1800.8 NMAC - Rn, 2 NMAC 80.1800.8, 12/28/2001; A, 12/28/2021]

2.80.1800.9 CONDUCT OF BUSINESS

A. The business affairs of the board shall be conducted by the executive director within the authority outlined by the public employees retirement act and rules and policies and procedures adopted by the board.

B. On behalf of the board, the executive director is authorized to execute vouchers, delegate others to execute vouchers, buy and sell, or assign, or otherwise acquire or dispose of stocks, bonds, notes, or other securities held by the board, and execute such other documents as may be necessary to the administration of the public employees retirement act.

C. The executive director shall obtain the board's approval before requesting a formal opinion interpreting the law from the attorney general. The director may, however, obtain advice, either oral or written, from the attorney general as the need may arise.

D. The executive director is authorized to decide whether the association will seek lead plaintiff status in securities class action lawsuits in order to ensure a timely decision is made in accordance with applicable deadlines set out by the court. The executive director shall promptly apprise the board chair of such decisions. All such decisions shall be presented at the next board meeting and the board may ratify or reject the executive director's decision. If the board rejects the executive director's decision, the association shall seek to remove itself from lead plaintiff status.

E. The executive director may recommend and propose repeal, replacement, amendments, or new rules for action by the board. Any such recommendation shall be provided to each board member with the agenda for the meeting at which the recommendation will be considered, within a reasonable time, prior to being considered by the board. [2.80.1800.9 NMAC – N, 12/28/2021]

2.80.1800.10 ADMINISTRATIVE BUDGETS:

A. The executive director shall prepare budgets and requests for appropriations, which shall be considered and approved by the board prior to submission to the department of finance and administration or legislature.

B. The executive director shall annually prepare an organizational chart coincident with the adoption of the budget. This chart shall include a description of all positions required for the operation of the association, and the executive director shall be responsible for staffing these positions. This responsibility shall include the authority for the employment, promotion, demotion and dismissal of all employees.

[2.80.1800.10 NMAC – N, 12/28/2021]

2.80.1800.11 ACTUARY:

The executive director shall contract with an actuarial firm to be engaged for the purpose of performing routine actuarial services and annual actuarial valuations to be provided for in a contract to be approved by the board, subject to compliance with the procurement code rules and procedures.

[2.80.1800.11 NMAC – N, 12/28/2021]

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.2100 NMAC, Section 9, effective 12/28/2021.

2.80.2100.9 UNCLAIMED CONTRIBUTIONS:

A. A member's accumulated member contributions, plus interest, shall constitute unclaimed member contributions pursuant to Section 10-11-128 NMSA 1978 if the following conditions are met:

(1) the member has applied for and received a refund of member contributions;

(2) a balance of five hundred dollars (\$500) or less remains on the member's account;

(3) PERA has sent a letter to the member's last known address on file with the association notifying the member that the funds are available for

disbursement and received no response within 60 days of the mailing.

B. A deceased member's accumulated member contributions, plus interest, shall constitute unclaimed member contributions, pursuant to Section 10-11-128 NMSA 1978, if the following conditions are met:

(1) PERA has received notification of the member's death through an authorized death notification provider or a certified copy of the member's death certificate;

(2) a survivor pension benefit is not payable;

(3) a balance of member contributions, plus interest, remains in the deceased member's account;

(4) PERA has sent an initial letter to the deceased member's last known address on file with the association and to the address of the member's refund beneficiary or estate, if known, notifying the deceased member's refund beneficiary or estate that the funds are available for disbursement and if no response is received within 60 days of mailing the initial letter, PERA has sent a final letter the following year to the deceased member's last known address on file with the association and to the address of the member's refund beneficiary or estate, if known, notifying the deceased member's refund beneficiary or estate that the funds are available for disbursement.

(5) PERA has received no response within two years of the date of the member's death.

C. Unclaimed member contributions, plus interest, shall be credited to the income fund, and the member's account shall be closed.

D. PERA shall perpetually maintain a list of members and the value of the accounts which were closed in accordance with this provision.

E. No interest shall accrue on unclaimed member contributions which have been credited to the income fund.

F. A member, beneficiary or estate of a member may at any time apply to receive a refund of unclaimed member contributions and interest accrued before the account was closed in accordance with the provisions of this rule.

G. For the limited purpose of receiving a form 1099 to file taxes for a deceased member, PERA will accept a notarized affidavit from the member's surviving representative. The affidavit shall include the deceased member's social security number, an identification of the relationship between the deceased member and surviving representative, and an affirmation that the request for the form 1099 is for the purpose of settling the affairs or filing taxes for the deceased member.

[G:] H. If a member whose account has been closed is subsequently employed by an affiliated public employer, the member's account shall be reopened effective the date of reemployment, and the account balance, accrued interest and service credit shall be restored to the amounts in effect at the time the account was closed. [2.80.2100.9 NMAC - Rp, 2.80.2100.9 NMAC, 12/30/2015; A, 12/28/2021]

RACING COMMISSION

This is an amendmen to 15.2.1 NMAC Sections 7 and 9, effective 12/28/2021.

Explanatory paragraph: This is a short-form amendment to 15.2.1 NMAC, Sections 7 and 9, effective December 28, 2021. For Section 7 of 15.2.1 NMAC, Subsections A thru L and N thru Z were not published as there were no changes. For Section 9 of 15.2.1 NMAC, Subsection A; Subsection B, Paragraphs (1) through (8) and (10); and Subsection C were not published as there were no changes.

15.2.1.7 DEFINITIONS:

M. Definitions
beginning with the letter "m":

(1) **"Maiden"**
is a horse, which shows in the *daily racing form* or the *American quarter horse chart book* as never having won a race at a recognized meeting. A maiden, which has been disqualified after finishing first in a race, is still a maiden.

(2) **"Maiden race"** is a race restricted to maidens.

(3) **"Match race"** is a race between two horses under conditions agreed to by their owners.

(4) **"Meeting"**
is ~~[the specified]~~ an entire period [and dates each year during which] of consecutive days that an association which is issued a racetrack license, is authorized by the commission to conduct live racing [by approval of the commission]. For purposes of this rule, the ~~[meeting begins on the first date prior to actual racing that entries are accepted by the racing secretary. Entries shall be accepted no sooner than seven days before racing commences.]~~ commission shall determine the beginning and end dates of the race meet as well as the dates in which live racing will be conducted within the determined consecutive days.

(5) **"Minus pool"** occurs when the payout is in excess of the net pool.

(6) **"Month"**
is a calendar month.

(7) **"Mutuel field"** refers to two or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes because the number of betting interests exceeds the number that can be handled individually by the pari-mutuel system.

[15.2.1.7 NMAC - Rp, 15 NMAC 2.1.7, 3/15/2001; A, 2/14/2002; A, 8/30/2007; A, 12/1/2010; A, 1/1/2013; A, 5/1/2013; A, 8/15/2014; A, 7/1/2017; A, 3/14/2018; A, 9/26/2018; A, 12/19/2019; A, 12/28/2021]

15.2.1.9 DUE PROCESS
AND DISCIPLINARY ACTION:

B. Proceedings before the stewards:

**(9) Appeals.
(a)**

A person who has been aggrieved by a ruling of the stewards may appeal to the commission. A person who fails to file an appeal by the deadline and in the form required by this section waives the right to appeal the ruling.

(b)

An appeal under this section must be filed not later than 10 days after the date of the ruling. If the deadline falls on a Saturday, Sunday or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday or legal holiday. The appeal must be received by noon, at the main commission offices or with the stewards who issued the ruling and must be accompanied by a fee in the amount of [~~\$500~~] \$400. The fee must be in the form of a money order, cashier's check or a corporate check.

(c)

The commission may fine a license holder in the amount up to \$2,500 after considering an appeal if based on the evidence the appeal is frivolous, unreasonable or unnecessary or determined to be an abuse of process or malicious. Failure of an appealing party to appear at a noticed hearing or withdraw their appeal without providing five business days notice prior to the hearing date may result in the non appearing appealing party being fined up to \$1,000.

(d)

An appeal must be in writing on a form prescribed by the commission. The appeal must include the name, address, telephone number and signature of the person making the appeal; and a statement of the basis for the appeal.

(e)

On notification by the commission that an appeal has been filed, the stewards shall forward to the commission the record of the proceeding on which the appeal is based, and a statement of the reasons for their rulings.

(f) If

a person against whom a fine has been assessed files an appeal of the ruling that assesses the fine, the person shall pay the fine in accordance with these rules.

[15.2.1.9 NMAC - Rp, 15 NMAC 2.1.9, 3/15/2001; A, 3/31/2003; A, 5/30/2003; A, 6/15/2004; A, 6/30/2009; A, 9/15/2009; A, 12/1/2010; A, 5/1/2013; A, 1/1/2014; A, 3/16/2015; A, 5/1/2015; A, 9/16/2015; A, 3/15/2016; A/E, 6/28/2016; A, 9/16/2016; A, 12/16/2016; A, 7/1/2017; A, 3/14/2018; A, 9/26/2018; A, 4/9/2019; A, 12/28/2021]

RACING COMMISSION

This is an amendment to 15.2.3 NMAC Section 8, effective 12/28/2021.

Explanatory paragraph: This is a short-form amendment to 15.2.3 NMAC, Section 8, effective 12/28/2021. Subsections A through B; Subsection C, Paragraphs (1) through (3) and (5) through (9); Subsection D, Paragraphs (1) through (3); and Subsections E through P were not published as there were no changes.

15.2.3.8 FLAT RACING OFFICIALS GENERAL PROVISIONS:

C. Racing secretary:

(4)

Conditions:

(a)

The racing secretary shall establish the conditions and eligibility for entering races and cause them to be published to owners, trainers and the commission and be posted in the racing secretary's office.

(b)

Any conditions that are based on a participating horse's use or non-use of a drug substance or medication, or the presence or lack of presence of a drug substance or medication

in a biological test sample taken from a participating horse, shall be ~~[agreed to in advance in writing by the acknowledged horsemen's organization, and]~~ approved by the commission before entries are taken for the race. If such conditions are based on the results of a biological test sample other than an official test sample collected by the commission, a description of the testing methods and procedures the racing association will use to collect and analyze the biological test samples shall be submitted to the commission for approval. For purposes of this section, "biological test sample" refers to any biological sample, including, but not limited to, blood, urine, hair, tissue, or saliva that is taken from a horse.

(c)

For the purpose of establishing conditions, winnings shall be considered to include all monies won up to the time of the start of a race.

(d)

Winnings during the year shall be calculated by the racing secretary from the preceding January 1.

(e)

A minimum of three races restricted to registered New Mexico bred horses shall be offered daily in the condition book excluding trials.

D. Horsemen's bookkeeper:

(4) Payment

of purses:

(a)

~~[The]~~ Upon approval of the commission the horsemen's bookkeeper shall receive, maintain and disburse only the following from the purse accounts: the purses earned ~~[of]~~ for each race; ~~[and all stakes, entrance money,]~~ entry, nomination, supplemental and starter fees in stakes races; jockey fees~~[-];~~ lasix fees; win picture fees; and purchase money in claiming races, along with all applicable taxes ~~[and other monies]~~ that properly come into their possession in accordance with the provision of commission rules.

~~(b)~~ —

The horsemen's bookkeeper may accept monies due belonging to other organizations or recognized meetings, provided prompt return is made to the organization to which the money is due.]

~~(c)~~ (b)

The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered, in violation of these rules, to the horse earning such purse money.

~~(d)~~ (c)

The horsemen's bookkeeper shall disburse only the purse [of] earned for each race, entry, nomination, supplemental and starter fees in stakes races, [and all stakes, entrance money,] jockey fees, lasix fees, win picture fees and purchase money in claiming races, along with all applicable taxes, upon request, within 48 hours of the completion of the race with respect to all horses not tested and when no timely appeal has been filed, and where a horse has been tested within 48 hours of receipt of notification that all tests with respect to such races have cleared the drug testing laboratory(ies) as reported by the stewards or the commission, except that minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory(ies).

~~(e)~~ (d)

Absent a prior request, the horsemen's bookkeeper shall disburse monies to the persons entitled to receive same within 15 days after the last race day of the race meeting, including purses for official races, provided that all tests with respect to such races have cleared the drug testing laboratory(ies) as reported by the stewards, and provided further that no protest or appeal has been filed with the stewards or the commission.

~~(f)~~ (e)

In the event a protest or appeal has been filed with the stewards or the commission, the horsemen's bookkeeper shall disburse the purse within 48 hours of receipt of dismissal or a final non-appealable order

disposing of such protest or appeal.

[15.2.3.8 NMAC - Rp, 15 NMAC 2.3.8, 4/13/2001; A, 11/15/2001; A, 8/30/2007; A, 6/15/2009; A, 6/30/2009; A, 12/1/2010; A, 5/1/2015; A/E, 6/28/2016; A, 9/15/2016; A, 12/16/2016; A, 7/1/2017; A, 9/26/2018; A, 5/1/2019; A, 12/19/2019; A, 12/28/2021]

RACING COMMISSION

This is an amendment to 15.2.6 NMAC Sections 8 and 9, effective 12/28/2021.

Explanatory paragraph: This is a short-form amendment to 15.2.6 NMAC, Sections 8 and 9, effective December 28, 2021. For Section 9 of 15.2.6 NMAC, Subsection A; Subsection B; Paragraphs (3) thru (12) of Subsection C; and Subsections D thru O were not published as there were no changes.

15.2.6.8 VETERINARY PRACTICES:

A. Veterinarians under authority of official veterinarian: Veterinarians licensed by the commission and practicing at any location under the jurisdiction of the commission are under the authority of the official veterinarian and the stewards.

B. Treatment restrictions:

(1) Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the commission.

(2) This subsection does not apply to the administration of the following substances pursuant to the restrictions set forth in 15.2.6.9 NMAC or as they may interfere with post-race testing:

(a) a

recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;

(b)

a non-injectable substance on the direction or by prescription of a licensed veterinarian;

(c)

a non-injectable non-prescription medication or substance.

(3)

No person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission, or a veterinary assistant licensed by the commission acting under the direct supervision of a licensed veterinarian, shall possess on any location under the jurisdiction of the commission any of the following unless approved by the commission:

(a)

any drug which is a narcotic, stimulant, or depressant, or any other substance or medication that has been prepared or packaged for injection by a hypodermic syringe, or hypodermic needle;

(b)

any hypodermic syringe, hypodermic needle or any equipment associated with the aid of intravenous administration.

(c)

No veterinary assistant licensed by the commission shall be allowed to administer a prohibited item pursuant to Paragraph (3) of Subsection B of 15.2.6.8 NMAC.

(4)

At any location under the jurisdiction of the commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the commission.

(5)

If a [person] licensee has a medical condition which makes it necessary to possess or use a prohibited [item] substance, prescribed, or controlled substance pursuant to Paragraph (3) of Subsection B of 15.2.6.8 NMAC, that person [may:] shall provide to the stewards:

(a)

[request permission of the stewards or the commission in writing;]

A letter signed by a licensed physician, physician assistant, or nurse practitioner certifying that the consumption of the prohibited, prescribed, or controlled substances will not adversely affect the divided attention, psychophysical abilities of the licensee, to include but not limited to reaction time and the ability to judge time and distance. The letter must certify that the prohibited, prescribed, or controlled substance will not affect a licensee's ability to carry out their responsibilities properly and safely while in the performance of their duties which includes being in actual physical control of a large equine animal or operating mechanical equipment on the grounds of the association and will not jeopardize the health, safety and welfare of the other individuals participating.

~~[(b)]~~ —

~~furnish a letter from a licensed physician explaining why it is necessary for the person to possess a prohibited item; and]~~

~~[(c)]~~ **(b)**

A licensee must comply with any conditions and restrictions set by the stewards or the commission.

(6) The recommended penalty (in absence of mitigating circumstances) for a violation of Paragraph (3) of Subsection B of 15.2.6.8 NMAC is a \$1,500 fine and a six month suspension. Additionally, the commission may order all horses under the trainer's care that are entered to race to be tested with the cost of testing borne by the trainer.

(7)

Veterinarians shall not have contact with an entered horse on race day except for the administration of furosemide under the guidelines set forth in Subsection D of 15.2.6.9 NMAC unless approved by the official veterinarian or in an emergency situation. Should an emergency occur during evening hours, the veterinarian shall notify the official veterinarian as soon as possible the following morning.

(8)

Veterinarians may employ persons

licensed by the commission as veterinary assistants to work under their direct supervision. Veterinary assistants shall not inject, directly treat, or diagnose any animal. The practicing veterinarian must be present on the grounds if a veterinary assistant has access to injection devices or injectable substances. The practicing veterinarian shall assume all financial and regulatory responsibility for the actions of their licensed veterinary assistant.

(9)

Veterinarians who possess any pre-drawn injectable syringes containing any substance must also possess the partially filled or empty labeled source container from which the injectable substance was drawn. Pre-drawn syringes and the labeled source container from which it was drawn are subject to confiscation by the commission and are subject to testing by the official laboratory. The injectable substance must be clearly identified on each pre-drawn syringe.

(10)

Veterinarians may possess and dispense compounded medications on association grounds under the following conditions:

(a)

The medication is prepared and prescribed in a manner that meets the criteria for compounding established by the federal "Animal Medicinal Drug Use Clarification Act of 1994" (21 CFR 530) and any current food and drug administration compliance policy guides.

(b)

The medication is prepared and prescribed in a manner that meets the criteria established in 16.19.30 NMAC by the New Mexico board of pharmacy.

(c)

The medication is labeled in accordance with Subsection H of 15.2.6.9 NMAC.

C. Extracorporeal shock wave therapy or radial pulse wave therapy:

The use of extracorporeal shock wave therapy or radial pulse wave therapy shall not be permitted unless the following conditions are met:

(1) Any

extracorporeal shock wave therapy or radial pulse wave therapy machine, whether in operating condition or not, must be registered with and approved by the commission or its designee before such machine is brought to or possessed on any racetrack or training center within the jurisdiction of the commission.

(2) The use of

extracorporeal shock wave therapy or radial pulse wave therapy within the jurisdiction shall be limited to veterinarians licensed to practice by the commission. Extracorporeal shock wave therapy or radial pulse wave therapy may only be performed with machines that are registered and approved for use by the commission; used at a previously-disclosed location that is approved by the commission; and must be reported within 24 hours prior to treatment on a prescribed form to the official veterinarian.

(3) Any

treated horse shall not be permitted to race or breeze for a minimum of 10 days following treatment.

(4) Any horse

treated with extracorporeal shock wave therapy or radial pulse wave therapy shall be added to a list of ineligible horses. This list shall be kept in the race office and accessible to the jockeys and their agents during normal business hours and be made available to other regulatory jurisdictions.

(5) A horse

that receives any such treatment without full compliance with this section and similar rules in any other jurisdiction in which the horse was treated shall be placed on the stewards' list.

(6) Any

person participating in the use of extracorporeal shock wave therapy or the possession of extracorporeal shock wave therapy machines in violation of this rule shall be considered to have committed a prohibited practice and is subject to a class A penalty.

D. Veterinarian's reports:

(1) Every veterinarian who treats a race horse at any location under the jurisdiction of the commission shall, in writing on a form approved by the commission, report to the official veterinarian the name of the horse treated, any medication, drug or substance administered or prescribed or administered, the name of the trainer of the horse, the date and time of treatment and any other information requested by the official veterinarian.

(2) The report shall be signed by the practicing veterinarian.

(3) The report will be made available to racing officials on request within a 48-hour period. Any such report is confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of these rules or in a proceeding before the stewards or the commission, or to the trainer or owner of record at the time of treatment.

E. Veterinary compliance: The official veterinarian, racing veterinarian, and each practicing veterinarian shall comply with all federal and state statutes and applicable rules regulating veterinary practices as may be promulgated by the New Mexico board of veterinary medicine and the New Mexico board of pharmacy. [15.2.6.8 NMAC - Rp, 15 NMAC 2.6.8, 4/13/2001; A, 7/15/2002; A, 2/15/2012; A, 7/31/2012, A, 5/16/2014; A, 12/16/16; A, 9/26/2018; A, 5/1/2019; A, 12/28/2021]

15.2.6.9 MEDICATIONS AND PROHIBITED

SUBSTANCES: The classification guidelines contained within the "uniform classification guidelines for foreign substances and recommended penalties and model rule", December 2020 version 14.4 and "association of racing commissioners international controlled therapeutic medication schedule for horses", version 4.2, revised December, 2020 by the association of racing commissioners international, are incorporated by reference. Any threshold herein

incorporated by reference by inclusion in one of the documents above shall not supersede any threshold or restriction adopted by the commission as specified by this section.

C. Medication restrictions:

(1) A finding by the commission approved laboratory of a prohibited substance in an official sample of a horse is prima facie evidence that the prohibited substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race.

(2) [Nothing] Subject to the approval of the commission nothing in this part shall prevent a racing association from setting eligibility conditions[~~as agreed to with the acknowledged horsemen's organization,~~] for individual races, or for its entire race meet, that prohibit the use or the presence of drug substances or medications in biological test samples collected from participating horses [are] or detection levels lower than what is authorized by the commission. Such conditions if established in accordance with [1.2.3.5] Paragraph (4) of Subsection C of 15.2.3.8 NMAC shall not be deemed in conflict with the rules and regulations of the commission.

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 4/13/2001; A, 8/30/2001; A, 7/15/2002; A, 8/15/2002; A, 9/29/2006; A, 10/31/2006; A, 8/30/2007; A, 1/31/2008; A, 3/01/2009; A, 6/15/2009; A, 6/30/2009; A, 9/15/2009; A, 12/15/2009; A, 3/16/2010; A, 7/05/2010; A, 9/1/2010; A, 12/1/2010; A, 11/1/2011; A, 2/15/2012; A, 4/30/2012; A, 7/31/2012; A, 12/14/2012; A, 5/1/2013; A/E, 5/2/2013; A, 9/30/2013; A, 4/1/2014; A, 5/16/2014; A, 8/15/2014; A, 9/15/2014; A, 3/16/2015; A, 9/16/15; A, 3/15/2016; A, 6/15/2016; A/E, 6/28/2016; A, 9/15/2016; A, 12/16/2016; A, 7/1/2017; A, 10/31/17; A, 3/14/2018; A, 9/26/2018;

A, 5/1/2019; A, 12/19/2019; A, 4/20/2021; A, 12/28,2021]

RACING COMMISSION

16.47.1 NMAC

This is an amendment to 16.47.1 NMAC Sections 10 and 12, effective 12/28/2021.

Explanatory paragraph: This is a short-form amendment to 16.47.1 NMAC, Sections 10 and 12, effective December 28, 2021. For Section 10 of 16.47.1 NMAC, Paragraph (1) thru (4) of Subsection A and Subsections B thru F were not published as there were no changes. For Section 12 of 16.47.1 NMAC, Subsections A thru C and Subsections E thru G were not published as there were no changes.

16.47.1.10 TRAINERS: A. Eligibility:

~~[(5)]~~ Beginning no later than June 1, 2016, in order to maintain a current license, trainers must complete at least four hours per calendar year of continuing education courses approved by the association of racing commissioners international, incorporated or the New Mexico racing commission.]

~~[(6)]~~ (5) Failure to start a minimum of one horse [very] every six months while holding a [trainers'] trainer's license will subject licensee to retest or interview before the board of stewards.

[16.47.1.10 NMAC - Rp, 16 NMAC 47.1.10, 3/15/2001; A, 11/15/2001; A, 3/30/2007; A, 8/30/2007; A, 6/30/2009; A, 9/15/2009; A, 7/5/2010; A, 5/16/2014; A, 9/15/2014; A, 3/15/2016; A, 6/1/2016; A, 12/16/16; A, 3/14/2018; A, 2/25/2020; A, 12/28/2021]

16.47.1.12 JOCKEYS: ***

D. Jockeys responsibility:

(1) A jockey shall not have a valet-attendant except one provided and compensated by the association.

(2) No person other than the licensed contract employer, or a licensed jockey agent, may make riding engagements for a rider, except that a jockey not represented by a jockey agent may make his own riding engagements.

(3) A jockey shall have no more than one jockey agent.

(4) No revocation of a jockey agent's authority is effective until the jockey notifies the stewards in writing of the revocation of the jockey agent's authority.

(5) A jockey who has a medical condition which makes it necessary to possess or use a prescribed, prohibited, or controlled substance pursuant to Paragraph (3) of Subsection B of 15.2.6.8 NMAC, that jockey shall provide to the stewards a letter signed by a licensed physician, physician assistant, or nurse practitioner certifying that the consumption of the prohibited, prescribed, or controlled substances will not adversely affect the divided attention, psychophysical abilities of a jockey, to include but not limited to reaction time and the jockey's ability to accurately judge time and distance. The letter must certify that the prohibited, prescribed, or controlled substance will not affect a jockey's ability to carry out their responsibilities properly and safely while in the performance of their duties which includes being in actual physical control of a large equine animal while in close physical competition on a racetrack surface and will not jeopardize the health, safety and welfare of the other individuals participating.

[16.47.1.12 NMAC - Rp, 16 NMAC 47.1.12, 3/15/2001; A, 8/31/2004; A, 10/31/2006; A, 6/15/2009; A, 12/14/2012; A, 12/16/2016; A, 9/26/2018; A, 12/28/2021]

REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

This is an amendment to 16.8.1 NMAC, Section 7, effective 12/28/2021.

16.8.1.7 DEFINITIONS:

Unless otherwise defined below, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.

A. Definitions beginning with "A":

(1) "Advisory committee" means the cannabis regulatory advisory committee.

(2) "Applicant" means any person who is seeking to become licensed pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

B. Definitions
beginning with "B": "Batch" means, with regard to cannabis, an identified quantity of cannabis no greater than 15 pounds that is of the same strain of cannabis, that is harvested during the same specified time period from the same specified cultivation area, and with respect to which the same agricultural practices were utilized, including the use of any pesticides; and with regard to concentrated and cannabis product, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol.

C. Definitions beginning with "C":

(1) "Cannabis Regulation Act" means the Cannabis Regulation Act, as enacted in Chapter 4, Sections 1 through 42 of New Mexico Laws of 2021, and as may be amended thereafter.

(2) "Cannabis Waste" means all parts of the plant genus Cannabis which

may or may not contain a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination which has been designated as no longer usable cannabis.

(3) "Carbon dioxide solvent" means carbon dioxide in a liquid or supercritical state.

(4) "Closed loop extraction system" means a commercially manufactured extraction system that is sealed during operation and designed to recover all solvents used during the extraction process through a feedback loop.

~~(3)~~ (5) "Concentrated cannabis product ("concentrate")" means a cannabis product that is manufactured by a division approved mechanical or chemical process that separates any cannabinoid from the cannabis plant, and that contains or that is intended to contain at the time of sale or distribution, no less than thirty-percent THC by weight.

D. Definitions beginning with "D":

(1) "Delivery agreement" means a contract between a licensed cannabis establishment and a licensed cannabis courier to deliver cannabis or cannabis products from the cannabis establishment directly to consumers as permitted under the provisions of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rule.

~~(1)~~ (2) "Division" means the cannabis control division.

~~(2)~~ (3) "Diversion" means the unlawful transfer of a cannabis plant, plant material, or cannabis product.

~~[(3)]~~ ~~(4)~~ **“Dried cannabis”** means the dried leaves, flowers, and trim of the female cannabis plant, but does not include the seeds, stalks, or roots of the cannabis plant.

E. Definitions

beginning with “E”:

~~[(RESERVED)]~~ **“Extraction area”** means the area of a licensed manufacturer’s processing facility that is designed for solvent-based extraction, which the division has inspected and approved for the area’s designated use.

F. Definitions

beginning with “F”: ~~[(RESERVED)]~~

G. Definitions

beginning with “G”: ~~[(RESERVED)]~~

H. Definitions

beginning with “H”:

~~[(RESERVED)]~~ **“Hydrocarbon solvent”** means N-butane, isobutene, propane, pentane, heptane, or any isomer or combination thereof.

I. Definitions

beginning with “I”: ~~[(RESERVED)]~~ **“Independent professional engineer”** means an engineer licensed pursuant to the Engineering and Surveying Practice Act, Section 61-23-1 *et seq.*, NMSA 1978, that is not an employee, owner, officer, controlling person, board member, or manager of the cannabis establishment licensee.

J. Definitions

beginning with “J”: ~~[(RESERVED)]~~

K. Definitions

beginning with “K”: ~~[(RESERVED)]~~

L. Definitions

beginning with “L”:

(1)

“Licensee” means any person who holds a license issued by the division pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

(2) **“Limited-**

access area” means an indoor or outdoor area on the premises of a licensed cannabis establishment where cannabis or cannabis products are cultivated, stored or held, weighed, packaged, manufactured, disposed or wasted, all point-of-sale (POS) areas, and any room or area

storing a digital video surveillance system storage device.

~~(3)~~ **“Liquor**

Control Act” mean the Liquor Control Act, Chapter 60, Articles 3A, 5A, 6A, 6B, 6C, 6E, 7A, 7B and 8A, NMSA 1978.

~~[(3)]~~ ~~(4)~~ **“Lot”**

means an identified portion of a batch, that is uniform and that is intended to meet specifications for identity, strength, and composition; or, in the case of a cannabis product or concentrate, an identified quantity produced in a specified period of time in a manner that is uniform and that is intended to meet specifications for identity, strength, and composition.

~~[(4)]~~ ~~(5)~~ **“Lynn and**

Erin Compassionate Use Act” means the Lynn and Erin Compassionate Use Act, Section 26-2B-1 *et seq.*, NMSA 1978.

M. Definitions

beginning with “M”: **“Minor”**

means an individual who is less than 18 years of age.

N. Definitions

beginning with “N”: ~~[(RESERVED)]~~

O. Definitions

beginning with “O”: ~~[(RESERVED)]~~

P. Definitions

beginning with “P”:

(1)

“Pesticide” means a pesticide as defined by the New Mexico Pesticide Control Act, Section 76-4-1 *et seq.*, NMSA 1978.

(2) **“Plant”**

means any cannabis plant, cutting, or clone that has roots or that is cultivated with the intention of growing roots.

~~(3)~~ **“Plant**

material” means leaves, stalks, stems, roots, and any other part of the cannabis plant.

(4) **“Pressure**

vessel” means a component of a closed loop system containing cannabis plant material and solvents used during solvent-based extraction and designed to withstand pressure greater than 15 psi.

~~[(3)]~~ ~~(5)~~ **“Policy”**

means a written statement of principles that guides and determines present and future decisions and actions of the licensed person.

~~[(4)]~~ ~~(6)~~ **“POS”**

means point of sale system.

~~[(5)]~~ ~~(7)~~ **“Person”**

means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.

~~[(6)]~~ ~~(8)~~ **“Produce”**

means to engage in any activity related to the planting or cultivation of cannabis.

Q. Definitions

beginning with “Q”: ~~[(RESERVED)]~~

R. Definitions

beginning with “R”:

(1) **“Recall”**

means to request the return of a product after the discovery of a safety issue or product defect.

(2) **“RLD”**

means the regulation and licensing department.

S. Definitions

beginning with “S”:

(1) **“Safe**

moisture level” means a level of moisture low enough to prevent the growth of undesirable microorganisms in the finished produce.

~~[(4)]~~ ~~(2)~~ **“Security**

alarm system” means any device or series of devices capable of alerting law enforcement, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to detect or report an emergency or unauthorized intrusion.

~~[(2)]~~ ~~(3)~~

“Segregate” means to separate and withhold from use or sale batches, lots, cannabis, usable cannabis, or cannabis products in order to first determine its suitability for use through testing by an approved laboratory.

~~[(3)]~~ ~~(4)~~ **“Solvent”**

means a hydrocarbon solvent, carbon dioxide solvent, or organic solvent, which is used to dissolve or disperse chemical compounds from cannabis plant material in a closed loop system.

~~[(4)]~~ ~~(5)~~ **“Solvent-**

based extraction” means the process of dissolving or dispersing specific chemical compounds from the

cannabis plant material using a solvent in a closed loop system.

T. Definitions beginning with “T”:

(1) **“THC”**
means tetrahydrocannabinol, a cannabinoid that is the primary psychoactive ingredient in cannabis.

(2) **“Testing”**
means testing of cannabis and cannabis products consistent with division rules.

(3) **“Track and trace system”** means the electronic system designated by the division to track and trace the production, transportation, sale, and wastage of cannabis and cannabis products.

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

V. Definitions beginning with “V”: **“Vault”**
means a limited access storage room that is within a licensed cannabis establishment and is outfitted with adequate security features for the purposes of storing cannabis, cannabis products, or cash.

W. Definitions beginning with “W”:

(1) **“Waste” or “wastage”** means the process of rendering cannabis or cannabis products unusable and unrecognizable, including the destruction of cannabis or cannabis products.

(2) **“Water activity”** means the measure of the free moisture in a manufactured cannabis product and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

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

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

Z. Definitions beginning with “Z”: [RESERVED]
[16.8.1.7 NMAC - N, 08/24/2021; A, 12/28/2021]

REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

This is an emergency amendment to 16.8.2 NMAC amending Sections 8, 9, 21, 22, 23, and 26, effective 12/06/2021.

16.8.2.8 GENERAL OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS:

A. State and local laws: Pursuant to the Cannabis Regulation Act, applicants and licensees shall comply with all applicable state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act, including laws governing food and product safety, occupational health and safety, environmental impacts, natural resource protection, construction and building codes, operation of a cannabis establishment, employment, zoning, building and fire codes, water use and quality, water supply, hazardous materials, pesticide use, wastewater discharge, and business or professional licensing.

B. Licensure on federally recognized Indian Nation, Tribe or Pueblo: The division shall not approve an application for licensure to operate within the exterior boundaries of a federally recognized Indian Nation, Tribe or Pueblo located wholly or partially in the state, unless the tribal government and the department have entered an intergovernmental agreement to coordinate the cross-jurisdictional administration of the laws of New Mexico and the laws of a tribal government relating to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

C. Age requirements: All applicants for licensure, including controlling persons of applicants, must be at least 21 years of age. All employees of a commercial cannabis establishment must be at least 21 years of age.

D. Consumption prohibited: Licensees shall prohibit the consumption of cannabis or

cannabis products on or within the licensed premises unless a cannabis consumption area has been approved by the division.

E. Illegal sale or distribution: Licensees shall not knowingly and intentionally sell, deliver, or transport cannabis or cannabis products to any person that is not authorized to possess and receive the cannabis or cannabis products pursuant to state law or division rules.

F. Sales of alcoholic beverages prohibited: Licensees are allowed to conduct other licensed activities, including activities pursuant to the Hemp Manufacturing Act, Section 76-24-3 *et seq.*, NMSA 1978, except for sales of alcoholic beverages.

G. No guarantee of licensure: An applicant may not exercise any of the privileges of licensure until the division approves the license application and issues a license. The submission of an application is in no way a guarantee that the application will be accepted as complete. A license shall be granted or denied within 90 days upon acceptance of a completed application. Information provided by the applicant and used by the division for the licensing process shall be accurate and truthful. The division may initiate action to deny licensure, or other administrative action against an applicant or licensee, pursuant to the Uniform Licensing Act.

[H] H. Computation of time: The word “days” as used in this rule means calendar days unless otherwise noted.

[I] I. Display of license: A division license shall be displayed in a conspicuous place on the licensed premises and must be made available upon request by state and local agencies. If the licensed premises is open to the public, the license shall be displayed in an area that is within plain sight of the public.

[K] J. Inventory and sales equipment: The division shall require licensees to utilize division approved track and trace equipment, software, and services.

[L] K. Limitation of

licensed premises: Licensees shall conduct cannabis establishment operations solely on licensed premises approved by the division.

[M:] L. Multiple licensee premises: Multiple licensees may occupy a single licensed premises, provided each is individually licensed by the division.

[N:] M. Reporting of theft or security incident to division: Licensees shall submit to the division written notification of any attempted theft, theft, assault of employees or patrons, robbery or attempted robbery, break-in, or security breach that occurs on the licensee's premises, no later than 24 hours after the licensee first becomes aware of the event. The description shall include a description of any property that was stolen or destroyed, and the quantity of any cannabis plants, cannabis and cannabis products that were stolen. The licensee must provide a copy of the police report, video footage and any other supporting evidence requested by the division. The premises must be secured prior to continuing operations, including the replacement of locks, doors, windows, repair of damaged structures or access points with comparable or more secure replacement material.

[O:] N. Non-transferable or assignable license: A license shall not be transferred by assignment or otherwise to other persons or locations. Unless the licensee applies for and receives an amended license, the license shall be void and returned to the division when any one of the following situations occurs:

- (1) location of the licensed premises changes;
- (2) the discontinuance of operation at a licensed premises; or
- (3) suspension or revocation of the license by the division.

[P:] O. Online application: All applications for initial licensure, amended licensure, additional premises, and renewal must be completed using the online application portal available on the division website. Applicants shall first register for a user account.

[Q:] P. Complete application and fees required:

Applicants must submit a completed application to the division before it will be accepted by the division as complete and considered for approval or denial. License and additional premises application or renewal fees must be paid at the time of application submission. Annual plant fees must be paid upon the division's approval of the initial application or renewal application and approval of the number of cannabis plants that a licensee may produce.

[R:] Q. Process for incomplete application: In the event that an application for licensure is determined by the division to be incomplete, the division shall notify the applicant by email and specify the information or materials that remain to be submitted. ~~[If the applicant does not submit the required information or materials within 90 days of receiving notice of the deficiency, the application shall be closed as incomplete and the applicant will be required to submit a new application in order to resume the application process.]~~ All licensing or renewal fees are non-refundable and must be paid for each new application.

[S:] R. Provisional license with contingencies: Upon written request of the applicant, the division may issue a provisional license letter with defined contingencies that the applicant must obtain documents that may be pending approval of a cannabis establishment license or must be obtained from other state agencies or local jurisdictions for the application to be considered complete. The provisional license letter shall list the remaining items necessary for the application to be complete and shall expire six-months from the date the provisional license letter was issued to the applicant. Upon written request of the applicant, the division may extend a provisional license letter for an additional six-months. Final approval or denial of a license shall be stated on the provisional license letter as contingent on the applicant submitting all remaining items. Such a provisional license letter shall

not authorize an applicant to begin licensed cannabis activity.

[T:] S. Request for clarifying information: Upon request of the division, an applicant shall provide additional information required to process and fully review the application. If the requested information is not received by the division within 90 days from the date the application was deemed to be complete, the division shall initiate action to deny licensure pursuant to the Uniform Licensing Act.

[U:] T. Physical and email address: Applicants and licensees must provide a physical mailing address and an email address. General correspondence from the division will be sent to the applicant or licensee's email address of record. Legal notice and determinations regarding an application, renewal or an administrative action, including an action taken by the division to deny, suspend, or revoke a license or impose a sanction and civil monetary penalty, shall be sent to the last mailing address and to the last email address furnished to the division. Licensees must inform the division in writing of any change to its physical mailing address or email address within 10 days of the change. If applicable, such changes may be submitted via the online licensing portal. An applicant or licensee's failure to notify the division of a change in physical or email address does not relieve the applicant or licensee from the obligation of responding to a division communication.

[V:] U. Electronic signature: The division will accept an electronic signature that complies with the Uniform Electronic Transactions Act, Section 14-16-1 *et seq.*, NMSA 1978, or the Revised Uniform Law on Notarial Acts, or rules promulgated pursuant thereto, on any documents required to be submitted to the division and that are submitted electronically.

[W:] V. Withdrawal of Application: An applicant may withdraw an application at any time prior to the division's issuance of a

license or denial of a license. Requests to withdraw an application must be submitted to the division in writing, dated, and signed by the applicant. Withdrawal of an application shall not, unless the division has consented in writing to such withdrawal, deprive the division of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground. The division shall not refund application fees for a withdrawn application. An applicant may reapply at any time following the withdrawal of an application and shall be required to submit a new application and fee.

[X:] W. Closure of a licensed cannabis establishment: A licensee that anticipates permanently ceasing its business operations shall notify the division no later than 30 days prior to closure. The licensee shall post public notice of the anticipated closure at all licensed premises that are accessible to the public at least 14 days prior to the closure. Any cannabis or cannabis products that are held by a licensee on behalf of the licensee ceasing its business operations shall be returned to the licensee ceasing business operations. Any cannabis or cannabis products that are held by the licensee ceasing its business operations on behalf of another licensee shall be returned to the originating licensee. Cannabis or cannabis products that are otherwise held by a licensee shall, prior to the licensee's closure, be surrendered to either state or local law enforcement, destroyed by the licensee in accordance with the wastage standards of this rule, or donated to patients via a licensed cannabis establishment, provided that the donation has been approved in writing by the division and that the licensee has submitted documentation of the donation to the division. State and local law enforcement are authorized to remove and destroy any cannabis or cannabis products that are held by a person who has ceased to be licensed by the division.

[Y:] X. Persons licensed pursuant to the medical cannabis program: In order to be entitled to continue operating as a cannabis establishment, a person properly licensed and in good standing pursuant to the Lynn and Erin Compassionate Use Act on June 29, 2021, must submit a completed renewal application for a cannabis establishment license, along with required fees, within 30 days of the [effective date of this rule] division notifying the licensee that a renewal application is available. In the event the person does not apply for such a license renewal within the required timeframe, the person shall cease all production operations immediately. Upon approval, the licensee shall operate pursuant to the Cannabis Regulation Act and rules adopted by the division pursuant thereto, provided that the licensee shall continue to operate pursuant to rules promulgated by the department of health for activities authorized by virtue of the licensee's medical program license to the extent they do not conflict with rules adopted by the division pursuant to the Cannabis Regulation Act.

[Z:] Y. Application for variance:

(1) Any applicant or licensee may seek a variance from division rule(s) and shall do so by filing a written petition with the division. The petitioner may submit with the petition any relevant documents or material, which the petitioner believes would support the petition.

(2) Petitions shall:

(a) state the petitioner's name and address;

(b) state the date of the petition;

(c) describe the facility or activity for which the variance is sought;

(d) state the address or description of the premises upon which the cannabis establishment or activity is located;

(e) identify the rule(s) from which the variance is sought;

(f) state in detail the extent to which the petitioner wishes to vary from the rule(s) and how the petitioner will ensure public health and safety is not negatively impacted;

(g) state why the petitioner believes that compliance with the regulation will impose an unreasonable regulatory burden upon the cannabis establishment or activity; and

(h) state the period of time for which the variance is desired, including all reasons, data, reports and any other information demonstrating that such time period is justified and reasonable.

(3) At the discretion of the division, the adjudicatory procedures of the Uniform Licensing Act may be used for guidance and shall not be construed to limit, extend, or otherwise modify the authority and jurisdiction of the division. The division shall deny any request for a waiver related to a legal right to water pursuant to Paragraphs (3) and (4) of Subsection B of Section 26-2C-7 NMSA 1978.

(4) Prior to a final decision, the division will hold a public hearing pursuant to the Open Meetings Act, Section 10-15-1 *et seq.*, NMSA 1978. The purpose of the hearing is to provide interested persons a reasonable opportunity to submit data, views or arguments orally or in writing on the proposed variance. The division, at its sole discretion, may determine whether to hold more than one hearing. The division may act as the hearing officer or designate an individual hearing officer to preside over the hearing. The hearing officer may ask questions and provide comments for clarification purposes. The hearing officer shall identify and mark all written comments submitted during the hearing. The public comments should be labeled as exhibits for reference, but do not require formal

admission into the hearing record. Individuals wishing to provide public comment or submit information at the hearing must state their name and any relevant affiliation for the record and be recognized before presenting. Public comment shall not be taken under oath. Any individual who provides public comment at the hearing may be questioned by the hearing officer. The hearing shall be conducted in a fair and equitable manner. The hearing officer may determine the format in which the hearing is conducted, but the hearing should be conducted in a simple and organized manner that facilitates public comment. The rules of evidence shall not apply and the hearing officer may, in the interest of efficiency, exclude or limit comment or questions deemed irrelevant, redundant, or unduly repetitious.

(5) The division may grant the requested variance, in whole or in part, subject to conditions, if the variance is not contrary to the Cannabis Regulation Act, or public interest, does not have a negative environmental impact, and is not detrimental to public health and safety, or the division may deny the variance. If the variance is granted in whole or in part, or subject to conditions, the division shall specify the length of time that the variance shall be in place. A permanent variance may be granted. If a permanent variance is not granted, a petitioner may reapply for a variance once the time period expires.

(6) The division shall set forth in the final order the reasons for its actions and shall not be subject to review.

[AA:] Application for additional licensed premises:

Licensees must apply for the specific cannabis establishment license type intended for each additional licensed premises as defined in the Cannabis Regulation Act.

[BB:] AA. Vertically integrated cannabis establishment and integrated cannabis establishment microbusiness:

(1) Applicants for a vertically integrated cannabis

establishment or integrated cannabis establishment microbusiness must meet all qualifications for each type of cannabis establishment that is authorized pursuant to the Cannabis Regulation Act.

(2) An initial applicant for an integrated cannabis microbusiness or a vertically integrated cannabis establishment license, must submit an application for authorization to conduct one or more of the following:

- (a) production of cannabis;
- (b) manufacturing of cannabis products;
- (c) retail establishment; or
- (d) courier of cannabis products.

(3) Applicants or licensees shall request authority to add or remove a cannabis establishment activity by submitting an amended application, and any required additional fees.

(4) If a vertically integrated cannabis establishment applicant or licensee will not conduct all cannabis establishment activity on a single premises, each additional premises shall require an additional premises fee.

(5) An applicant or licensee shall not conduct any activity for which additional authority is required until it has received written approval from the division.

[16.8.2.8 NMAC - N 08/22/2021; A/E 12/06/2021]

16.8.2.9 CRIMINAL HISTORY SCREENING REQUIREMENTS:

A. Initial licensure: Applicants for initial licensure shall [consent to and undergo a national criminal history background check and department of public safety (DPS) statewide criminal history screening background check no more than ninety days prior to submitting an application] submit to a criminal history screening. For purposes of this rule, [background checks] a criminal

history screening shall be required for:

- (1) each partner of a limited partnership;
- (2) each member of a limited liability company;
- (3) each director, officer, or trustee of a corporation or trust; and
- (4) any controlling person of the applicant.

B. Authorized change: If there is a change in membership of any of the above listed person(s), an amended application and [background check documentation] a criminal history screening shall be submitted, and each new member must be approved by the division prior to a person assuming any duties or responsibilities for a licensee.

C. [Procedure] Criminal history screening procedure for applicants and the division:

(1) an applicant shall submit a background screening request, including an authorization for release of information, to the [federal bureau of investigation, the] New Mexico department of public safety [or a designee vendor] for a current New Mexico state criminal history report; [through the national crime information center (NCIC)]

(2) the division shall provide applicants the division's originating agency identification (ORI) number;

(3) an applicant shall provide to the department of public safety, or its designated vendor, a criminal background screening request, fingerprints, and supporting documentation, including an authorization for release of information to the division in accordance with the procedures of the department of public safety or its designated vendor;

(4) (2) the New Mexico department of public safety [or its designated vendor] will review state records; [and shall transmit the fingerprints to the federal bureau of

investigation for a national screening and]

~~(5)~~ **(3)** the results of the screening will be made available to the division for review;

~~(4)~~ the applicant shall submit a signed and sworn affidavit, witnessed and notarized by a notary public with a valid commission, affirming that the applicant has or has not been convicted of the following offenses:

~~(a)~~ a felony conviction involving fraud, deceit, or embezzlement;

~~(b)~~ a felony conviction for hiring, employing, or otherwise using a person younger than 18 years of age to:

~~(i)~~ prepare for sale, transport or carry a controlled substance; or

~~(ii)~~ sell, give away or offer to sell a controlled substance to any person; or

~~(c)~~ a felony conviction for the possession, use, manufacture, distribution, or dispensing or possession with the intent to manufacture, distribute or dispense a controlled substance, which no longer includes cannabis.

D. Fees: All applicable fees associated with the [national criminal history background check and] New Mexico department of public safety [statewide] state criminal history background checks shall be paid by the applicant or licensee.

~~[E. Substantially related convictions:~~ The division shall review felony convictions pursuant to the Cannabis Regulation Act and the Criminal Offender Employment Act. The following are considered substantially related to the qualifications, functions, or duties of an applicant or person:

~~(1)~~ a felony conviction involving fraud, deceit, or embezzlement;

~~(2)~~ a felony conviction for hiring, employing, or otherwise using a person younger than eighteen years of age to:

~~(a)~~ prepare for sale, transport or carry a controlled substance; or

~~(b)~~ sell, give away or offer to sell a controlled substance to any person; and

~~(3)~~ a felony offense for the possession, use, manufacture, distribution or dispensing or possession with the intent to manufacture, distribute or dispense a controlled substance. For purposes of this rule, a controlled substance shall not include cannabis.

~~F.] E.~~ Duty to report potentially disqualifying event: Applicants and licensees must notify the division in writing within seven days of any change of fact that would potentially result in the applicant or licensee, including any of the persons listed in Subsection A of this section, being disqualified from holding a license pursuant to the Cannabis Regulation Act or division rules, including a conviction for any [crime] offense specified in this section. Failure to make required notification to the division may be grounds for administrative disciplinary action. If the division has determined that the person's conviction does not disqualify the licensee from licensure, the division shall notify the licensee in writing. The division may also initiate administrative disciplinary action pursuant to the Uniform Licensing Act.

[16.8.2.9 NMAC - N 08/22/2021; A/E 12/06/2021]

16.8.2.21 CANNABIS PRODUCER LICENSURE; GENERAL PROVISIONS:

A. License types: The division may license two classes of producers:

- (1)** A cannabis producer; and
- (2)** A cannabis producer microbusiness.

B. Division application forms: All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division using the online application portal.

C. License required:

Unless licensed pursuant to the Cannabis Regulation Act or division rules, a person shall not cultivate cannabis, including planting, growing, and harvesting cannabis, except for personal use as provided by the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.

D. Other activities prohibited: Except as provided in Subsection BB of 16.8.2.8 NMAC, no cannabis producer establishment licensee may manufacture cannabis products, courier cannabis or cannabis products, or engage in the retail sale of cannabis or cannabis products unless the licensee has properly applied for, and the division has approved, the applicable license type required for those activities.

~~[E. Vertically integrated cannabis establishment and integrated cannabis establishment microbusiness:~~ Applicants for a vertically integrated cannabis establishment or integrated cannabis establishment microbusiness must meet all qualifications for a cannabis producer or cannabis producer microbusiness to be approved for, and authorized to conduct, cannabis producer activities.] [16.8.2.21 NMAC - N 08/22/2021; A/E 12/06/2021]

16.8.2.22 APPLICATION REQUIREMENTS FOR CANNABIS PRODUCER LICENSE:

A. An initial application or renewal for cannabis producer licensure shall include the following:

- (1)** Contact information for the applicant and the cannabis establishment, to include:
 - (a)** applicant's full legal name;
 - (b)** applicant's date of birth, if applicable;
 - (c)** applicant's mailing address;
 - (d)** applicant's contact telephone number;
 - (e)** applicant's contact email address;

(f) applicant's business physical address and mailing address, if different;

(g) applicant's business legal name, including a DBA name if applicable;

(h) applicant's business web address, if applicable;

(i) applicant's business hours of operation;

(j) name and contact information for each controlling person; and

(k) demographic data pursuant to the Cannabis Regulation Act;

(2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

(3) legible and accurate diagram and description of the location of the land or facility to be used for the cannabis establishment and the method(s) to be used to produce cannabis in a portable document format (.pdf), and if requested by the division, digital photographic photos;

~~[(4)]~~ fully executed and dated documentation of the applicant's ownership or legal authority to use the property, buildings, or other facilities, establishing the applicant is, or will be, entitled to possession of the premises for which the application is made;

~~(5)]~~ (4) demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis production, as evidenced by either:

(a) documentation from a water provider that the applicant has the right to use water from the provider and that the use of water from cannabis production is compliant with provider's rules, or

(b) documentation from the office of the state engineer showing that the applicant has a valid and existing water right, or a permit to develop a water right, for irrigation purposes for outdoor cultivation, or a commercial

purpose for indoor cultivation at the proposed place of use of the cannabis establishment. The documentation may include any of the following:

(i) a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, -1.1, -1.2, or -1.3, NMSA 1978;

(ii) a subfile order or decree issued by a water rights adjudication court;

(iii) the findings of an office of the state engineer hydrographic survey; or

(iv) other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state engineer under this rule.

~~[(6)]~~ (5) a plan to use, or certification that the applicant cannot feasibly use, energy and water reduction opportunities, including:

(a) drip irrigation and water collection;

(b) natural lighting and energy efficiency measures;

(c) renewable energy generation; and

(d) estimated water and energy use related to the applicants cultivation plan;

~~[(7)]~~ a copy of a current business license, fire inspection report, and zoning approval;

~~(8)]~~ (6) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

~~[(9)]~~ (7) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

~~[(10)]~~ (8) a detailed description of any criminal convictions of the applicant and any controlling person, including

the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

~~[(11)]~~ if applicable, a description and legible electronic image of the labeling and packaging of the cannabis or cannabis products that the producer shall utilize, which satisfies the labeling requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and other state or federal rules applicable to labeling and packaging;

~~(12)]~~ if applicable, a sample of the record form(s), which shall identify (among other items) the name of the wholesale purchaser, the date of the sale, the quantity, and price of medical or commercial cannabis sold;

~~[(13)]~~ (9) the initial number of mature cannabis plants, and immature cannabis plants, the applicant proposes for production and the amount of water the applicant plans to use on a monthly basis for a twelve month period;

~~[(14)]~~ a summary of the proposed operations, including a list of cannabis or cannabis products produced at the location;

~~(15)]~~ (10) certification the applicant will adhere to production requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including creating and maintaining a cultivation plan, and cannabis waste procedures for cannabis or cannabis products;

~~[(16)]~~ (11) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including the transport of unprocessed cannabis or cannabis products to other cannabis establishments;

~~[(17)]~~ (12) certification the applicant will adhere to New Mexico department of agriculture (NMDA) pesticide registration, licensing, and use

requirements to ensure a safe product and environment;

~~[(18)]~~ (13)

certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to safety and security procedures, security devices to be used, placement of security devices, personal safety, and crime prevention techniques;

~~[(19)]~~ (14)

certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to routine testing by a licensed testing laboratory, division inspection of licensed premises during normal business hours, and testing of cannabis;

~~[(20)]~~ (15)

certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

~~[(21)]~~ (16)

certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed medical or commercial cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

~~[(22)]~~ (17)

applicant's social and economic equity plan to encourage economic

and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merged, federally designated opportunity zone, or other rural historic communities;

(18)

certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;

~~[(23)]~~ (19)

an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

~~[(24)]~~ (20)

payment of any required application or licensure fees as set forth in 16.8.11 NMAC. Cannabis plant fees, if applicable, shall be assessed by the division upon approval of an initial application, additional premises application or renewal application. The division must receive payment of cannabis plant fee prior to cultivation of cannabis plants or, if applicable, at the time of renewal.

B. Verification of information: The division may verify information contained in each application and accompanying documentation, including:

- (1) contacting the applicant or controlling person by telephone, mail, or electronic mail;
- (2) conducting an on-site visit;
- (3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.
[16.8.2.22 NMAC - N 08/22/2021; A/E 12/06/2021]

16.8.2.23 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS PRODUCER LICENSE:

A. Application: A licensed producer shall submit to the division an application form for an amended license, pay the required fee, and must obtain approval from the division, prior to implementing any of the following:

- (1) material or substantial change of the size ~~[or location]~~ of the premises;
- (2) change of licensee's legal or business name;
- (3) change in water source, or licensee's water and energy conservation plan, including, the reuse of water and disposal of effluent;
- (4) increase in plant count beyond which licensee is currently licensed to produce;
- (5) addition or ~~elimination~~ of a controlling person;
- (6) material or substantial change to a licensee's security system; or
- (7) material or substantial modification of the premises ~~[-or~~
- ~~(8) engaging in an activity which requires an addition or change of a license type].~~

B. Amended license not required: Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

C. Requirements and processing of application for amended license: The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. ~~[The division shall prorate required fees-~~

to align with the expiration date of the licensee's original license, which shall be the expiration date of the licensee's amended license, if approved.] The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval include:

(1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, or the purchase of additional property for the use of the cannabis establishment [or a change in the location of the cannabis establishment];

(2) a change in the licensee's access to the water source submitted with an application for initial, amended, or renewal licensure or a ten percent, or more, increase in the licensee's water usage;

(3) change to a license's security system, including relocation or security points or installation of a new security system; or

(4) modification of the premises to relocate cannabis activities.
[16.8.2.23 NMAC - N 08/22/2021; A/E 12/06/2021]

16.8.2.26 CANNABIS PRODUCER POLICIES AND PROCEDURES:

A. Minimum policy and procedure requirements: A producer shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

(1) cannabis testing criteria and procedures, which shall be consistent with the testing requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:

(a) employee health and safety training materials;

(b) training requirements for the proper use of health and safety measures and controls;

(c) representative sampling and analytical testing of cannabis or cannabis products for contaminants prior to wholesale or transfer to another cannabis establishment;

(d) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory;

(e) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis products to another cannabis establishment for any purpose;

(f) protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion;

(g) protocols for testing sample collection that ensures accurate test results; and

(h) procedures for remedial measures to bring cannabis or cannabis products into compliance with division standards or destruction of a tested batch of cannabis or cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;

(2) employee policies and procedures to address the following minimum requirements:

(a) adherence to state and federal laws;

(b) responding to an emergency, including robbery or a serious accident;

(c) alcohol and drug-free workplace policies and procedures;

(d) safety and security procedures;

(e) occupational safety;

(f) crime prevention techniques; and

(g) if applicable, confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and

(3) [training] documentation prepared for each employee and statements signed by employees indicating [the topics discussed, names and titles of presenters, and the date, time, and place the employee received said [training] receipt of policies and procedures.

[B. Retention of training documentation: Licensees shall maintain documentation of an employee's training for a period of five years for current employees and at least six months after the termination of an employee's employment.]

B. Training program:

(1) Licensee shall implement a training program, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:

(a) employee health and safety training materials;

(b) health and safety hazards;

(c) hazard communication training for all solvents or chemicals used at the licensed premises and as described in the safety data sheet for each solvent or chemical;

(d) training requirements for the proper use of health and safety measures and controls;

(e) emergency procedures;

(f) security procedures; and

(g) record keeping requirements.

(2) A licensee, or employee, involved in the handling, transportation, manufacture, extraction, testing, or packaging of cannabis products must successfully complete a food handler course accredited by the American National Standards Institute (ANSI) prior to conducting any related activities. Such training shall be maintained while employed under a manufacturing licensee. The licensee shall obtain documentation evidencing the fulfillment of this requirement.

C. Training documentation:

(1) Licensee shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section. The licensee shall maintain a record, which contains at minimum:

(a) a list of all personnel at the premises, including at minimum, name and job duties of each;

(b) documentation of training topics and dates of training completion for all personnel;

(c) dates of refresher training completion for all personnel;

(d) the signature of verifying receipt and understanding of each training or refresher training completed.

(2) Licensee may designate supervisory personnel with responsibility to oversee the requirements of this section.

D. Retention of training documentation: Licensees shall maintain documentation of an employee's training for a period of two years for current employees and at least six months after the termination of an employee's employment.

[16.8.2.26 NMAC – N, 08/22/2021; A/E, 12/06/2021]

**REGULATION AND
LICENSING DEPARTMENT
CANNABIS CONTROL DIVISION**

This is an amendment to 16.8.2 NMAC, amending and renumbering Sections 29 to Section 43 and adding new Sections 36 through 43, effective 12/28/2021.

**16.8.2.29 CANNABIS
MANUFACTURER
LICENSURE;
GENERAL
PROVISIONS:**

[A. License Types: The division may license four classes of manufacture:

(1) Class I:
A licensee that only packages or repackages cannabis products, or labels or relabels the cannabis product container;

(2) Class II:
A licensee that conducts Class I activities, and manufactures edible products or topical products using infusion processes, or other types of cannabis products other than extracts or concentrates, and does not conduct extractions;

(3) Class III:
A licensee that conducts Class I and Class II activities, and extracts using mechanical methods or nonvolatile solvents; and

(4) Class IV:
A licensee that conducts Class I, Class II, and Class III activities, and extracts using volatile solvents or supercritical CO₂.

B. Division application forms: All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division using the online application portal:

C. License required: Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not manufacture cannabis extract, unless for personal use pursuant to Section 26-2C-31, NMSA:

D. Other activities prohibited: Except as provided in Subsection BB of 16.8.2.8 NMAC, no

cannabis manufacturer establishment licensee may produce cannabis, courier cannabis or cannabis products, or engage in the retail sale of cannabis or cannabis products unless the licensee has properly applied for, and the division has approved, the applicable license type required for those activities:

E. Prohibited additives: A manufacturer shall not manufacture or distribute a product that is intended to be consumed by inhalation that includes polyethylene glycol, polypropylene glycol, vitamin E acetate, or medium chain triglycerides. A manufacturer shall not combine nicotine, caffeine, or any other addictive substance with a cannabis product. This prohibition shall not apply to the combination of cannabis with sugar, or a product in which caffeine is naturally occurring, such as coffee, tea, or chocolate.]

A. License Types: The division may license four classes of manufacture:

(1) Class I:
A licensee that only packages or repackages cannabis products, or labels or relabels the cannabis product container;

(2) Class II:
A licensee that conducts Class I activities, and manufactures edible products or topical products using infusion processes, or other types of cannabis products other than extracts or concentrates, and does not conduct extractions;

(3) Class III:
A licensee that conducts Class I and Class II activities, and extracts using mechanical methods or nonvolatile solvents; and

(4) Class IV:
A licensee that conducts Class I, Class II, and Class III activities, and extracts using volatile solvents or supercritical CO₂.

B. Division application forms: All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division using the online application

portal.

C. License required:

Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not manufacture cannabis extract, unless for personal use pursuant to Section 26-2C-31, NMSA.

D. Other activities

prohibited: Except as provided in Subsection BB of 16.8.2.8 NMAC, no cannabis manufacturer establishment licensee may produce cannabis, courier cannabis or cannabis products, or engage in the retail sale of cannabis or cannabis products unless the licensee has properly applied for, and the division has approved, the applicable license type required for those activities.

E. Prohibited additives:

A manufacturer shall not manufacture or distribute a product that is intended to be consumed by inhalation that includes polyethylene glycol, polypropylene glycol, vitamin E acetate, or medium chain triglycerides. A manufacturer shall not combine nicotine, caffeine, or any other addictive substance with a cannabis product. This prohibition shall not apply to the combination of cannabis with sugar, or a product in which caffeine is naturally occurring, such as coffee, tea, or chocolate.

[16.8.2.29 NMAC – N/E, 09/08/2021; N, 12/28/2021]

16.8.2.30 APPLICATION REQUIREMENTS FOR CANNABIS MANUFACTURER LICENSE:

[A. — An initial

application or renewal for cannabis manufacturer licensure shall include the following:

(1) — Contact information for the applicant and the cannabis establishment, to include:

(a) — applicant's full legal name;

(b) — applicant's mailing address;

(c) — applicant's contact telephone number;

(d) — applicant's contact email address;

(e) — applicant's business physical address

and mailing address, if different;

(f) — applicant's business legal name, including a DBA name if applicable;

(g) — applicant's business web address, if applicable;

(h) — applicant's business hours of operation;

(i) — name and contact information for each controlling person;

(j) — demographic data pursuant to the Cannabis Regulation Act; and

(k) — license type sought (Class I, Class II, Class III, or Class IV);

(2) — proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

(3) — legible and accurate diagram containing information required by Subsection 16.8.2.32 NMAC and description of the location of the land or facility to be used for the cannabis establishment and the method(s) to be used to manufacture cannabis (extraction, infusion, packaging, labeling), including a description of extraction and infusion methods, in a portable document format (.pdf), and if requested by the division, digital photographic photos;

(4) — fully executed and dated documentation of the applicant's ownership or legal authority to use the property, buildings, or other facilities, establishing the applicant is, or will be, entitled to possession of the premises for which the application is made;

(5) — demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis manufacturing, as evidenced by either:

(a) — documentation from a water provider that the applicant has the right to use water from the provider and that the use of water for cannabis manufacturing is compliant with

provider's rules, or

(b) — documentation from the office of the state engineer showing that the applicant has a valid and existing water right, or a permit to develop a water right, at the proposed place of use of the cannabis establishment. The documentation may include any of the following:

(i) — a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, -1.1, -1.2, or -1.3, NMSA 1978;

(ii) — a subfile order or decree issued by a water rights adjudication court;

(iii) — the findings of an office of the state engineer hydrographic survey; or

(iv) — other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state engineer under this rule.

(6) — a copy of a current business license, fire inspection report, and zoning approval;

(7) — if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(8) — a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(9) — a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(10) — a list of the types of products that will be manufactured, packaged, or labeled;

(11) — a complete written description of goods

manufacturing practices (GMPs):

_____(12)_____ a complete written description of the means that the manufacturer shall employ to safely manufacture cannabis products, including hygiene standards consistent with the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and other state or federal rules applicable to manufacturing;

_____(13)_____ A detailed description of the licensee's proposed plan for obtaining cannabis from a licensed cannabis producer or cannabis microproducer.

_____(14)_____ legible electronic images of the labeling and packaging of the cannabis or cannabis products that the manufacturer shall utilize, which satisfies the labeling and packaging requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and other state or federal rules applicable to labeling and packaging;

_____(15)_____ if applicable, proof of prior approval by the New Mexico regulation and licensing department for the use of any compressed gas extraction equipment to be utilized by the manufacturer;

_____(16)_____ if applicable, a sample of the record form(s), which shall identify (among other items) the name of the wholesale purchaser, the date of the sale, the quantity, and price of cannabis sold;

_____(17)_____ certification the applicant will adhere to manufacturing requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

_____(18)_____ certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

_____(19)_____ certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use

Act, or division rules;

_____(20)_____ certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

_____(21)_____ certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

_____(22)_____ certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

_____(23)_____ certification the applicant is not licensed under the Liquor Control Act.

_____(24)_____ applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

_____(25)_____ an

attestation that the manufacturer will not use dimethylsulfoxide (DMSO) in the production of cannabis products, and will not possess DMSO on the premises of the manufacturer:

_____(26)_____ an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

_____(27)_____ for a class IV license, a signed attestation from a licensed engineer stating the chemical extraction equipment is a closed loop system, is being utilized for its intended use and meets requirements of subsection I of 16.8.2.34 NMAC;

_____(28)_____ for class H, III, and IV licenses, evidence that the applicant has completed the self-certification required for the production of edibles and topicals from the New Mexico environment department and provide confirmation from the New Mexico environment department at the time the license application is submitted; and

_____(29)_____ payment of any required fees as set forth in 16.8.11 NMAC.

B. Verification of information: The division may verify information contained in each application and accompanying documentation by:

_____(1)_____ contacting the applicant or controlling person by telephone, mail, or electronic mail;

_____(2)_____ conducting an on-site visit;

_____(3)_____ requiring a face-to-face or virtual meeting and the production of additional documentation; or

_____(4)_____ consulting with state or local governments.

C. Trade secrets: Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and

Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret or confidential by clearly identifying such information as “confidential” on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant’s good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to -7, NMSA 1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within five days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act.]

A. An initial application or renewal for cannabis manufacturer licensure shall include the following:

- (1)** Contact information for the applicant and the cannabis establishment, to include:
 - (a)** applicant’s full legal name;
 - (b)** applicant’s mailing address;
 - (c)** applicant’s contact telephone number;
 - (d)** applicant’s contact email address;
 - (e)** applicant’s business physical address and mailing address, if different;
 - (f)** applicant’s business legal name, including a DBA name if applicable;
 - (g)** applicant’s business web address, if applicable;
 - (h)** applicant’s business hours of operation;
 - (i)** name and contact information for each controlling person;
 - (j)** demographic data pursuant to the Cannabis Regulation Act; and
 - (k)** license type sought (Class I, Class II,

Class III, or Class IV):

(2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

(3) legible and accurate diagram containing information required by 16.8.2.32 NMAC and description of the location of the land or facility to be used for the cannabis establishment and the method(s) to be used to manufacture cannabis (extraction, infusion, packaging, labeling), including a description of extraction and infusion methods, in a portable document format (.pdf), and if requested by the division, digital photographic photos;

(4) demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis manufacturing, as evidenced by either:

(a) documentation from a water provider that the applicant has the right to use water from the provider and that the use of water for cannabis manufacturing is compliant with provider’s rules, or

(b) documentation from the office of the state engineer showing that the applicant has a valid and existing water right, or a permit to develop a water right, at the proposed place of use of the cannabis establishment. The documentation may include any of the following:

- (i)** a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, -1.1, -1.2, or -1.3, NMSA 1978;
- (ii)** a subfile order or decree issued by a water rights adjudication court;
- (iii)** the findings of an office of the state engineer hydrographic survey; or
- (iv)** other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state

engineer under this rule;

(5) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(6) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant’s or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(7) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(8) if applicable, proof of prior approval by the New Mexico regulation and licensing department for the use of any compressed gas extraction equipment to be utilized by the manufacturer;

(9) if applicable, a sample of the record form(s), which shall identify (among other items) the name of the wholesale purchaser, the date of the sale, the quantity, and price of cannabis sold;

(10) for class II, III, and IV licenses, documentation that the applicant has obtain all necessary authority required for the production of edibles and topicals from the New Mexico environment department and that such authority is valid at the time the license application is submitted;

(11) certification the applicant will adhere to manufacturing requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(12) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis

Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(13)

certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(14)

certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(15)

certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(16)

certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(17)

certification the applicant is not licensed under the Liquor Control Act.

(18) applicant's

social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or

the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

(19) an

attestation that the manufacturer will not use dimethylsulfoxide (DMSO) in the production of cannabis products, and will not possess DMSO on the premises of the manufacturer;

(20)

certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;

(21)

an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(22) payment

of any required fees as set forth in 16.8.11 NMAC.

B. Verification of

information: The division may verify information contained in each application and accompanying documentation by:

(1) contacting

the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting

an on-site visit;

(3) requiring

a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting

with state or local governments.

C. Trade secrets:

Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret or confidential by

clearly identifying such information as "confidential" on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant's good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to 7, NMSA 1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within ten days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act. [16.8.2.30 NMAC – N/E, 09/08/2021; A/E, 12/02/2021; N, 12/28/2021]

16.8.2.31 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS MANUFACTURER LICENSE:

[A. Application:

A licensed manufacturer shall submit to the division an application form for an amended license, if applicable, pay the required fee, and obtain approval from the division, prior to implementing any of the following:

(1) material

or substantial change of the size or location of the premises;

(2) change of

licensee's legal or business name;

(3) change or

modification in extraction type(s) or equipment;

(4) material or

substantial change in water source;

(5) addition of

a controlling person;

(6) material

or substantial change to a licensee's security system;

(7) material

or substantial modification of the premises; or

(8) engaging

in an activity which requires an addition or change of a license type.

B. Amended license

not required: Changes to standard operating policies and procedures

may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

C. Requirements and processing of application for amended license: The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall prorate required fees to align with the expiration date of the licensee's original license, which shall be the expiration date of the licensee's amended license, if approved. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval include:

(1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, the purchase of additional property for the use of the cannabis establishment, or a change in the location of the cannabis establishment;

(2) a modification in the licensee's access to the water source submitted with an application for initial or renewal licensure or a ten percent, or more, increase in the licensee's water usage;

(3) change to a license's security system, including relocation or security points or installation of a new security system; or

(4) modification of the premises to relocate cannabis activities.]

A. Application: A licensed manufacturer shall submit to the division an application form for an amended license, if applicable, and obtain approval from the division, prior to implementing any of the following:

(1) material or substantial change of the size of the premises;

(2) change of licensee's legal or business name;

(3) change or modification in extraction type(s) or equipment;

(4) material or substantial change in water source;

(5) addition or elimination of a controlling person;

(6) material or substantial change to a license's security system; or

(7) material or substantial modification of the premises.

B. Amended license not required: Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

C. Requirements and processing of application for amended license: The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval include:

(1) increase or decrease in the size of the premises;

(2) a modification in the licensee's access to the water source submitted with an application for initial or renewal licensure or a 10 percent, or more, increase in the licensee's water usage;

(3) change to a license's security system, including relocation or security points or installation of a new security system; or

(4) modification of the premises to relocate cannabis activities. [16.8.2.31 NMAC – N/E, 09/08/2021; N, 12/28/2021]

16.8.2.32 PREMISES DIAGRAM:

A. An applicant must submit to the division, with the application, a complete and detailed diagram of the proposed premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules. The division shall deny an application if the premises does not qualify for licensure pursuant to federal, state or local laws.

B. The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be manufactured. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

D. The diagram shall be to scale.

E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

~~H. If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.]~~

~~A. An applicant must submit to the division, with the application, a complete and detailed diagram of the proposed premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules. The division shall deny an application if the premises does not qualify for licensure pursuant to federal, state or local laws.~~

~~B. The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be manufactured, and the location of the extraction area. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.~~

~~C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.~~

~~D. The diagram shall be to scale.~~

~~E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.~~

~~F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.~~

~~G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.~~

~~H. If a proposed~~

premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

[16.8.2.32 NMAC – N/E, 09/08/2021; N, 12/28/2021]

16.8.2.33 CANNABIS MANUFACTURER POLICIES AND PROCEDURES:

[A. Minimum policy and procedure requirements:]

~~A manufacturer shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:~~

~~(1) cannabis testing criteria and procedures, which shall be consistent with the testing requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:~~

~~(a) representative sampling and analytical testing of cannabis or cannabis products for contaminants prior to wholesale or transfer to another cannabis establishment;~~

~~(b) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory;~~

~~(c) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis products to another cannabis establishment for any purpose;~~

~~(d) protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion;~~

~~(e) protocols for testing sample collection that ensures accurate test results; and~~

~~(f) procedures for destruction of a tested batch of cannabis or cannabis products if the testing samples from the tested batch indicate~~

~~noncompliance with applicable health and safety standards;~~

~~(2) employee policies and procedures to address the following minimum requirements:~~

~~(a) adherence to state and federal laws;~~

~~(b) responding to an emergency, including robbery or a serious accident or incident;~~

~~(c) alcohol and drug-free workplace policies and procedures;~~

~~(d) safety and security procedures;~~

~~(e) occupational health and safety;~~

~~(f) crime prevention techniques; and~~

~~(g) if applicable, confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and~~

~~(3) documentation prepared for each employee and statements signed by employees indicating receipt and understanding of policies and procedures.~~

B. Training program:

~~(1) Licensee shall implement a training program, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:~~

~~(a) employee health and safety training materials;~~

~~(b) health and safety hazards;~~

~~(c) hazard communication training for all solvents or chemicals used at the licensed premises and as described in the safety data sheet for each solvent or chemical;~~

~~(d) training requirements for the proper use of health and safety measures and controls;~~

_____(e)_____
 emergency procedures;
 _____(f)_____
 security procedures; and
 _____(g)_____
 record-keeping requirements.
 _____(2)_____
 Prior to independently engaging in any cannabis manufacturing process, including but not limited to extraction:
 _____(a)_____
 an overview of the process and standard operating procedure(s);
 _____(b)_____
 quality control procedures;
 _____(c)_____
 hazard analysis and control procedures as appropriate;
 _____(d)_____
 proper and safe usage of equipment or machinery;
 _____(e)_____
 safe work practices applicable to an employee's job tasks, including appropriate use of any necessary safety or sanitary equipment;
 _____(f)_____
 cleaning and maintenance requirements;
 _____(g)_____
 emergency operations, including shutdown; and
 _____(h)_____
 any additional information reasonably related to an employee's job duties.
 _____(3)_____
 A licensee, or employee, involved in the handling, transportation, manufacture, extraction, testing, or packaging of cannabis products must successfully complete a food handler course accredited by the American National Standards Institute (ANSI) prior to conducting any related activities. Such training shall be maintained while employed under a manufacturing licensee. The licensee shall obtain documentation evidencing the fulfillment of this requirement.
C. Training documentation:
 _____(1)_____
 Licensee shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section. This annual refresher training

must be completed within 12 months of the previous training completion date. The licensee shall maintain a record which contains at minimum:
 _____(a)_____
 an annual attestation by licensee that they received and understood all information and training provided in the training program;
 _____(b)_____
 a list of all personnel at the premises, including at minimum, name and job duties of each;
 _____(c)_____
 documentation of training topics and dates of training completion for all personnel;
 _____(d)_____
 training topics and dates of refresher training completion for all personnel;
 _____(e)_____
 the signature of the individual personnel and the licensee verifying receipt and understanding of each training or refresher training completed by the personnel;
 _____(f)_____
 any official documentation attesting to the successful completion of required training by personnel.

_____(2)_____
 Licensee may designate supervisory personnel with responsibility to oversee the requirements of this section. Assigned supervisory personnel must have the education, training, or experience (or a combination thereof) necessary to ensure the production of clean and safe cannabis products by all personnel. The designated training personnel shall sign and date a document on an annual basis attesting that they have received and understood all information and training provided in the training program. This documentation shall be maintained as part of the record requirements.

D. Retention of training documentation: Licensees shall maintain documentation of an employee's training for a period of five years for current employees and at least six months after the termination of an employee's employment.

A. Minimum policy and procedure requirements:

A manufacturer shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

_____(1)_____
 cannabis testing criteria and procedures, which shall be consistent with the testing requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:

_____(a)_____
 representative sampling and analytical testing of cannabis or cannabis products for contaminants prior to wholesale or transfer to another cannabis establishment;

_____(b)_____
 recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory;

_____(c)_____
 recordkeeping and chain of custody protocols for transportation of cannabis or cannabis products to another cannabis establishment for any purpose;

_____(d)_____
 protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion;

_____(e)_____
 protocols for testing sample collection that ensures accurate test results; and

_____(f)_____
 procedures for destruction of a tested batch of cannabis or cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;

_____(2)_____
 employee policies and procedures to address the following minimum requirements:

_____(a)_____
 adherence to state and federal laws;

_____(b)_____
 responding to an emergency, including robbery or a serious accident or incident;

_____(c)_____

alcohol and drug-free workplace policies and procedures;

(d)

safety and security procedures;

(e)

occupational health and safety;

(f)

crime prevention techniques; and

(g)

if applicable, confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and

(3)

documentation prepared for each employee and statements signed by employees indicating receipt and understanding of policies and procedures.

B. Training

program:

(1) Licensee

shall implement a training program, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:

(a)

employee health and safety training materials;

(b)

health and safety hazards;

(c)

hazard communication training for all solvents or chemicals used at the licensed premises and as described in the safety data sheet for each solvent or chemical;

(d)

training requirements for the proper use of health and safety measures and controls;

(e)

emergency procedures;

(f)

security procedures; and

(g)

record keeping requirements.

(2) Prior

to independently engaging in any cannabis manufacturing process, including but not limited to extraction:

(a) an

overview of the process and standard operating procedure(s);

(b)

quality control procedures;

(c)

hazard analysis and control procedures as appropriate;

(d)

proper and safe usage of equipment or machinery;

(e)

safe work practices applicable to an employee's job tasks, including appropriate use of any necessary safety or sanitary equipment;

(f)

cleaning and maintenance requirements;

(g)

emergency operations, including shutdown; and

(h)

any additional information reasonably related to an employee's job duties.

(3) A

licensee, or employee, involved in the handling, transportation, manufacture, extraction, testing, or packaging of cannabis products must successfully complete a food handler course accredited by the American national standards institute (ANSI) prior to conducting any related activities. Such training shall be maintained while employed under a manufacturing licensee. The licensee shall obtain documentation evidencing the fulfillment of this requirement.

C. Training

documentation:

(1) Licensee

shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section. The licensee shall maintain a record, which contains at minimum:

(a)

a list of all personnel at the premises, including at minimum, name and job duties of each;

(b)

documentation of training topics and dates of training completion for all personnel;

(c)

dates of refresher training completion for all personnel;

(d)

the signature of verifying receipt and

understanding of each training or refresher training completed.

(2) Licensee

may designate supervisory personnel with responsibility to oversee the requirements of this section.

D. Retention of training documentation: Licensees shall maintain documentation of an employee's training for a period of two years for current employees and at least six months after the termination of an employee's employment.

[16.8.2.33 NMAC – N/E, 09/08/2021; N, 12/28/2021]

16.8.2.34 MINIMUM STANDARDS FOR THE MANUFACTURE OF CANNABIS PRODUCTS:

[A. General

requirements: Licensees shall ensure the following:

(1)

manufacturing shall be done in premises that are in compliance with state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act;

(2) the

licensee's right to use the quantity of water sufficient to meet the manufacturing facility's needs remains in good standing;

(3) weighting

or measuring devices that are used in the wholesale of cannabis be appropriately documented as having undergone certified registration and calibration that is in accordance with applicable requirements of the New Mexico department of agriculture; and

(4) licensee

shall notify the division of any changes to the days or hours of business operation;

B. Permissible Extractions:

(1) Except as provided in Subsection (2), cannabis extraction shall only be conducted using the following methods:

(a)

Mechanical extraction, such as screens or presses;

(b)

chemical extraction using a nonvolatile solvent such as a nonhydrocarbon-based or other solvent such as water, vegetable glycerin, vegetable oils, animal fats, or food-grade glycerin, (nonhydrocarbon-based solvents shall be food grade);

(c)

chemical extraction using a professional closed loop CO₂ gas extraction system;

(d)

chemical extraction using a volatile solvent; or

Each applicant or licensee shall submit a detailed description of the extraction method, including any documentation that validates the method and any safety procedures to be utilized to mitigate any risk to public or worker health and safety.

(3) Extraction equipment shall be used and operated in accordance with its intended manufacturer use and design.

C. Volatile Solvent

Extractions: Chemical extractions using volatile solvents shall be subject to the following requirements:

(1)

hydrocarbon-based solvents shall be at least ninety-nine percent purity;

(2)

ethyl alcohol must be food grade, and non-denatured in composition;

(3)

all extractions shall be performed in a closed loop extraction system as described in subsection I of 16.8.2.34 NMAC; and

(4)

Manufacturers shall not use ignition sources including but not limited to a heat gun or any open flame source next to extraction equipment that utilizes volatile solvents, including in rooms designated solely for extraction or in areas that contain or uses flammable liquids and gasses.

D. Closed-Loop

Extraction System Requirements:

(1)

Chemical extractions using CO₂ or a volatile solvent shall be conducted in a professional closed loop extraction system. The system shall be

commercially manufactured and bear a permanently affixed and visible serial number. The system shall be certified by a licensed engineer that the system was commercially manufactured, safe for its intended use, and built to codes of recognized and generally accepted good engineering practices, or listed, or approved by a nationally recognized testing laboratory.

(2)

The certification document must contain the signature and stamp of a professional engineer and the serial number of the extraction unit being certified.

(3)

Professional closed loop systems, other equipment used, the extraction operation, and facilities must be approved for use by the local fire code official and meet any required fire, safety, and building code requirements specified in:

(a)

National Fire Protection Association (NFPA) standards;

(b)

International Building Code (IBC);

(c)

International Fire Code (IFC); or

(d)

Other applicable standards including all applicable fire, safety, and building codes related to the processing, handling and storage of the applicable solvent or gas.]

A. General

requirements: Licensees shall ensure the following:

(1)

manufacturing shall be done in premises that are in compliance with state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act;

(2)

the licensee's right to use the quantity of water sufficient to meet the manufacturing facility's needs remains in good standing;

(3)

weighting or measuring devices that are used in the wholesale of cannabis be appropriately documented as having undergone certified registration and

calibration that is in accordance with applicable requirements of the New Mexico department of agriculture; and

(4)

licensee shall notify the division of any changes to the days or hours of business operation;

B. Permissible

Extractions:

(1)

Except as provided in Paragraph (2), cannabis extraction shall only be conducted using the following methods:

(a)

Mechanical extraction, such as dry screens, sieves, or presses, potable water and ice made from potable water, cryogenic or subzero manufacturing not involving a solvent, or pressure and temperature;

(b)

Chemical extraction using a nonvolatile solvent such as a nonhydrocarbon-based or other solvent such as water, vegetable glycerin, vegetable oils, animal fats, or food-grade glycerin, (nonhydrocarbon-based solvents shall be food grade);

(c)

Chemical extraction using a division approved closed loop extraction system; or

(d)

A method authorized by the division pursuant to Paragraph (2) below.

(2)

To request authorization from the division to conduct cannabis extraction using a method other than those specified in Subparagraphs (a) – (c) above, the applicant or licensee shall submit a detailed description of the extraction method, including any documentation that validates the method and any safety procedures to be utilized to mitigate any risk to public or worker health and safety.

(3)

Extraction equipment shall be used and operated in accordance with its intended manufacturer use and design.

(4)

Current safety data sheets shall be kept on the premises for all chemicals used in the extraction process.

C. Volatile Solvent

Extractions: Chemical extractions

using volatile solvents shall be subject to the following minimum requirements:

(1) hydrocarbon-based solvents shall be at least 99.5 percent purity with a certificate of analysis from the manufacturer to confirm purity;

(2) ethyl alcohol must be food grade, and non-denatured in composition;

(3) solvents shall be free of odorants, bitterants, or other additives and stored, handled, and disposed of in accordance with local, state, and federal regulations,

(4) all extractions shall be performed in a closed loop extraction system, unless approved by the division, as described in Subsection B of 16.8.2.34 NMAC; and

(5) licensees shall not use ignition sources including but not limited to a heat gun or any open flame source next to extraction equipment that utilizes volatile solvents, including in rooms designated solely for extraction or in areas that contain or uses flammable liquids and gasses.

D. Closed-Loop Extraction System Requirements:

(1) Closed loop systems, other equipment used, the extraction operation, and facilities must be approved for use by the local fire code official and meet any required fire, safety, and building code requirements specified in:

(a) National Fire Protection Association (NFPA) standards;

(b) International Building Code (IBC);

(c) International Fire Code (IFC); or

(d) Other applicable standards including all applicable fire, safety, and building codes related to the processing, handling and storage of the applicable solvent or gas.

(2) All pressure vessels must comply with the Construction Industries Licensing Act, Section 60-13-1 *et seq.*, NMSA

1978, including associated rules, applicable codes, and standards.

(3) A list of the name(s) of all trained employees must be prominently displayed inside or immediately outside of the extraction area.

(4) A licensee that is currently approved to use CO₂ or a volatile solvent for extraction has 6 months from the effective date of this rule to comply with the applicable requirements. Nothing in this subsection is intended to relieve a licensee of its obligation to comply with any applicable federal, state, or local laws and regulations.

[16.8.2.34 NMAC – N/E, 09/08/2021; N, 12/28/2021]

16.8.2.35 [SEVERABILITY:

If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.]

CANNABIS RETAIL LICENSURE; GENERAL PROVISIONS:

A. Division application forms: All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division using the online application portal.

B. License required: Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not sell cannabis products to qualified patients, primary caregivers or reciprocal participants, or directly to consumers.

[16.8.2.35 NMAC - N, 12/28/2021]

16.8.2.36 APPLICATION REQUIREMENTS FOR CANNABIS RETAILER LICENSE:

A. An initial application or renewal for cannabis retailer licensure shall include the following:

(1) Contact information for the applicant and the cannabis establishment, to include:

(a) applicant's full legal name;

(b) applicant's date of birth, if applicable;

(c) applicant's mailing address;

(d) applicant's contact telephone number;

(e) applicant's contact email address;

(f) applicant's business physical address and mailing address, if different;

(g) applicant's business legal name, including a DBA name if applicable;

(h) applicant's business web address, if applicable;

(i) applicant's business hours of operation;

(j) name and contact information for each controlling person;

(k) demographic data pursuant to the Cannabis Regulation Act; and

(l) license type sought;

(2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

(3) legible and accurate diagram and description of the location of the land or facility to be used for the cannabis establishment, including a description of each retail area and all security requirements, in a portable document format (.pdf), and if requested by the division, digital photographic photos;

(4) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(5) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set

forth in 16.8.2.9 NMAC and the Cannabis Regulation Act:

(6) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(7) certification the applicant will adhere to retail requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(8) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(9) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(10) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(11) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(12) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions

for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(13) certification the applicant is not licensed under the Liquor Control Act;

(14) certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;

(15) if applicable, certification the applicant will adhere to courier requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(16) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

(17) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(18) payment of any required fees as set forth in 16.8.11 NMAC.

B. Verification of information: The division may

verify information contained in each application and accompanying documentation by:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments. [16.8.2.36 NMAC – N, 12/28/2021]

16.8.2.37 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS RETAILER LICENSE:

A. Application: A licensed retailer shall submit to the division an application form for an amended license, if applicable, pay the required fee, and obtain approval from the division, prior to implementing any of the following:

(1) material or substantial change of the size;

(2) change of licensee's legal or business name;

(3) addition or elimination of a controlling person;

(4) material or substantial change to a licensee's security system; or

(5) material or substantial modification of the premises.

B. Amended license not required: Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current operating policies and procedures.

C. Requirements and processing of application for amended license: The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall approve or deny an application for amended license within 90 days of receiving a

completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval include:

(1) increase or decrease in the size of the premises;

(2) change to a license's security system, including relocation or security points or installation of a new security system; or

(3) modification of the premises to relocate cannabis activities.
[16.8.2.37 NMAC – N, 12/28/2021]

16.8.2.38 PREMISES DIAGRAM:

A. An applicant must submit to the division, with the application, a complete and detailed diagram of the proposed premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules. The division shall deny an application if the premises does not qualify for licensure pursuant to federal, state or local laws.

B. The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be stored and available to the public. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

D. The diagram shall be to scale.

E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

H. If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.
[16.8.2.38 NMAC – N, 12/28/2021]

16.8.2.39 CANNABIS RETAILER POLICIES AND PROCEDURES:

A. Minimum policy and procedure requirements:

A licensed retailer shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

(1) cannabis handling criteria and procedures, which shall be consistent with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:

(a) employee health and safety training materials;

(b) training requirements for the proper use of health and safety measures and controls;

(c) if applicable, recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory;

(d) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis products to another cannabis establishment for any purpose;

(e) protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion;

(g) if applicable, protocols for testing sample collection that ensures accurate test results; and

(h) if applicable, procedures for remedial measures to bring cannabis or cannabis products into compliance with division standards or destruction of a tested batch of cannabis or cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;

(2) employee policies and procedures to address the following minimum requirements:

(a) adherence to state and federal laws;

(b) responding to an emergency, including robbery or a serious accident;

(c) alcohol and drug-free workplace policies and procedures;

(d) safety and security procedures;

(e) occupational safety;

(f) crime prevention techniques; and

(g) confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and

(3) documentation prepared for each employee and statements signed by employees indicating receipt and understanding of policies and procedures.

B. Training program:

(1) Licensee shall implement a training program, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of

the start of employment:

(a)

health and safety hazards:

(b)

security procedures; and

(c)

record keeping requirements.

(2) Prior

to engaging in any cannabis retail process:

(a) an

overview of the process and standard operating procedure(s);

(b)

safe work practices applicable to an employee's job tasks, including appropriate use of any necessary safety or sanitary equipment;

(c)

cleaning and maintenance requirements;

(d)

emergency operations, including shutdown; and

(e)

any additional information reasonably related to an employee's job duties.

(3) A licensee

that retails edible cannabis products shall ensure that all personnel who handle edible products successfully complete a food handler course accredited by the American national standards institute (ANSI). The licensee shall obtain documentation evidencing the fulfillment of this requirement.

C. Training

documentation:

(1) Licensee

shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section. The licensee shall maintain a record which contains at minimum:

(a)

a list of all personnel at the premises, including at minimum, name and job duties of each;

(b)

documentation of training topics and dates of training completion for all personnel;

(c)

dates of refresher training completion for all personnel; and

(d)

the signature of each employee

verifying receipt and understanding of each training or refresher training completed.

(2) Licensee

may assign responsibility for ensuring compliance by individual personnel with the requirements of this section to supervisory personnel.

D. Retention of

training documentation: Licensees shall maintain documentation of an employee's training for a period of two years for current employees and at least six months after the termination of an employee's employment.

[16.8.2.39 NMAC - N 12/28/2021]

16.8.2.40 MINIMUM STANDARDS FOR RETAIL OF CANNABIS PRODUCTS:

A. Access to retailer

premises prior to authorization of retail sale of commercial cannabis:

Prior to the division authorizing the retail sale of commercial cannabis, pursuant to Subsection K of Section 26-2C-6 and Paragraph (5) of Subsection (B) of Section 26-2C-7 of the Cannabis Regulation Act, NMSA 1978, access to the licensed premises of a retailer shall be limited to individuals who are at least 18 years of age and possess a valid qualified patient, primary caregiver, or reciprocal participant registry identification card from the department of health medical cannabis program.

B. Access to retailer

premises upon authorization of retail sale of commercial cannabis:

Upon the division authorizing the retail sale of commercial cannabis, pursuant to Subsection K of Section 26-2C-6 and Paragraph (5) of Subsection B of Section 26-2C-7 of the Cannabis Regulation Act NMSA 1978, access to the licensed premises of a retailer shall be limited to the following:

(1) individuals

who are at least 21 years of age and possess a valid form of identification; and

(2) individuals

who are at least 18 years of age and

possess a valid qualified patient, primary caregiver, or reciprocal participant registry identification card from the department of health medical cannabis program.

C. Customer access to

the retail area:

(1) Individuals

shall be granted access to purchase cannabis goods only after the licensed retailer or an employee of the licensed retailer has confirmed the individual's age and identity, and if applicable, the individual's status as a qualified patient, primary caregiver, or reciprocal participant.

(2) The

licensed retailer or at least one employee shall be physically present in the retail area at all times when individuals who are not employees of the licensed retailer are in the retail area.

(3) All sales of

cannabis goods, with the exception of cannabis goods sold through delivery, must take place within the retail area of the retailer's licensed premises.

(4) A licensed

retailer shall sell and deliver cannabis goods only between the hours reported to the division as regular business hours.

D. Requirements

While Not Open for Business:

(1) At any

time the licensed premises is not open for retail sales, a licensed retailer shall ensure that:

(a)

the licensed premises is securely locked with commercial-grade, nonresidential door locks;

(b)

the licensed premises is equipped with an active alarm system pursuant to Section 10 of this rule, which shall be activated when the licensed retailer or its employees are not on the licensed premises; and

(c)

only employees of the licensee and other authorized individuals are allowed access to the licensed premises. For the purposes of this section, authorized individuals include individuals employed by the licensee as well as any outside vendors.

contractors, or other individuals conducting business that requires access to the licensed premises.

E. Commercial and medical retail customers:

(1)

Commercial sales: A licensed retailer shall only sell cannabis and cannabis products to individuals who are at least 21 years of age after confirming the customer's age and identity by inspecting a valid form of identification provided by the customer as required by subsection B of this section.

(2) Medical

sales: A licensed retailer shall only sell cannabis and cannabis products to individuals who are at least 18 years of age and possess a valid qualified patient, primary caregiver, or reciprocal participant registry identification card from the department of health medical cannabis program, after confirming the customer's age, identity, and valid registry identification.

(3) Acceptable

forms of identification include the following

(a)

a document issued by a federal, state, county, or municipal government, or a political subdivision or agency thereof, including, but not limited to, a valid motor vehicle operator's license, that contains the name, date of birth, and photo of the person;

(b)

a valid identification card issued to a member of the Armed Forces that includes the person's name, date of birth, and photo of the person; or

(c)

a valid passport issued by the United States or by a foreign government.

F. Cannabis product display:

(1) Cannabis

and cannabis products for customer inspection and sale shall only be displayed in the retail area.

(2) Cannabis

and cannabis products may be removed from their packaging and placed in containers to allow for customer inspection. The containers shall not be readily accessible to

customers without assistance of retailer personnel. A container must be provided to the customer by the licensed retailer or its employees, who shall remain with the customer at all times that the container is being inspected by the customer.

(3) Cannabis

and cannabis products removed from their packaging for display shall not be sold, shall not be consumed, and shall be destroyed, pursuant to Section 15 of this rule, when the cannabis or cannabis products are no longer used for display.

G. Cannabis and cannabis products for sale:

(1) A licensed

retailer shall not make any cannabis or cannabis products available for sale or delivery to a customer unless:

(a)

the cannabis or cannabis products were received by the retail licensee from a licensed producer, licensed producer microbusiness, licensed manufacturer, licensed vertically integrated cannabis establishment, or licensed integrated cannabis microbusiness;

(b)

the licensed retailer has verified that the cannabis or cannabis products have not exceeded their expiration or sell-by date if one is provided;

(c)

in the case of manufactured cannabis products, the cannabis product complies with all requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules;

(d)

the cannabis or cannabis products have undergone laboratory testing as required by the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules;

(e)

the packaging and labeling of the cannabis or cannabis product complies with Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules; and

(f)

the cannabis or cannabis product

complies with all applicable requirements found in the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules.

H. Commercial and medical cannabis purchase limits and excise tax:

(1) A licensed

retailer shall not sell more than the following amounts at one time to a single commercial cannabis customer:

(a)

two ounces of cannabis;

(b) 16

grams of cannabis extract;

(c)

800 milligrams of edible cannabis; and

(d)

six immature cannabis plants.

(2) A licensed

retailer shall adhere to department of health medical cannabis rules related to the sale of cannabis and cannabis products to qualified individuals who are at least 18 years of age and possess a valid qualified patient, primary caregiver, or reciprocal participant registry identification card from the department of health medical cannabis program.

(3) Pursuant

to the Cannabis Tax Act, Section 7-42-2 NMSA 1978, cannabis excise tax shall not apply to retail sale of medical cannabis or cannabis products. Cannabis excise tax shall apply to commercial sales of cannabis and cannabis products.

(4) The

limits provided in Paragraph (1) and Paragraph (2) of this subsection shall not be combined to allow a customer to purchase cannabis or cannabis products in excess of the limits provided in this section.

(5) The

prohibition set forth in paragraph one above shall not prohibit the sale of different product types to a single customer, as long as the total amount sold does not exceed the limits set forth above.

I. Customer Return of Cannabis Goods:

(1) For the

purposes of this subsection, "customer

return” means a customer’s return of cannabis or cannabis products that were purchased from a licensed retailer, back to the licensed retailer the cannabis or cannabis products were purchased from.

(2) A licensed retailer may accept customer returns of cannabis or cannabis products that were previously sold to a customer.

(3) A licensed retailer shall not resell cannabis or cannabis products that have been returned.

(4) A licensed retailer shall treat any cannabis or cannabis products abandoned on the licensed retailer premises as a customer return.

(5) A licensed retailer shall destroy all cannabis or cannabis products that have been returned to the licensed retailer by a customer, pursuant to Section 15 of this rule.

J. Free cannabis or cannabis products:

(1) A licensed retailer shall not provide free cannabis or cannabis product(s) to any person. A licensed retailer shall not allow individuals who are employed or not employed by the licensed retailer to provide free cannabis or cannabis product(s) to any person on the licensed premises.

(2) Notwithstanding Paragraph (1) of this section, in order to provide access to medicinal cannabis patients who have difficulty accessing medicinal cannabis or cannabis product(s), a licensee may provide free cannabis or cannabis product(s) if all of the following criteria are met:

(a) free cannabis or cannabis products are provided only to a qualified patient, primary caregiver, or a reciprocal participant in possession of a valid registry identification card from the department of health medical cannabis program;

(b) the cannabis or cannabis products comply with all applicable requirements of the Cannabis Regulation Act, the Lynn and Erin

Compassionate Use Act and division rules:

(c) the cannabis or cannabis products have been properly recorded in the track and trace system as belonging to the licensed retailer;

(d) the cannabis or cannabis products shall be applied toward the adequate supply for a medicinal cannabis customer pursuant to department of health rules;

(e) the transaction shall be properly recorded in the licensed retailer’s inventory records and the track and trace system.

K. Inventory reconciliation:

(1) A licensed retailer shall perform a reconciliation of its inventory at least once every calendar month.

(2) In conducting an inventory reconciliation, a licensed retailer shall verify that the licensed retailer’s physical inventory is consistent with the licensed retailer’s records pertaining to inventory.

(3) The result of inventory reconciliation shall be retained in the licensed retailer’s records and shall be made available to the division upon request.

(4) If a licensed retailer identifies any evidence of theft, diversion, or loss, the licensed retailer shall notify the division pursuant to Subsection N of 16.8.2.8 NMAC.

L. Record of Sales:

(1) A licensed retailer shall maintain an accurate record of every sale of cannabis and cannabis product made to a customer.

(2) A record of cannabis or cannabis product sold to a customer shall contain the following minimum information:

(a) the first name and employee number of the employee who processed the sale;

(b) the date and time of the transaction;

(c) a list of all the cannabis or cannabis product purchased, including the quantity purchased; and

(d) the total amount paid for the sale including the individual prices paid for each cannabis or cannabis product purchased and any amounts paid for cannabis excise tax.

(3) For the purposes of this section, an employee number is a distinct number assigned by a licensed retailer to their employees that would allow the licensed retailer to identify the employee on documents or records using the employee number rather than the employee’s full name. A licensed retailer shall be able to identify the employee associated with each employee number upon request from the division.

(4) All licensed retailer-specific records shall be maintained for at least 12 months.

M. Retailer premises to retailer premises transfer:

(1) A licensee who has multiple licensed retail premises may arrange for the transfer or sale of cannabis or cannabis products from one licensed retail premises to another licensed retail premises if both licensed retail premises are held under the same ownership.

(2) A licensee may arrange for the transfer or sale of cannabis or cannabis products to another cannabis retailer if both licensees properly record the transaction in the licensed retailer’s inventory records and the track and trace system

(3) Cannabis or cannabis product transferred to a licensed retail premises under this subsection may be sold by the licensed retailer receiving the cannabis or cannabis product only if the cannabis or cannabis products comply with all requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.

N. Use of licensed cannabis couriers:

(1) A retail cannabis licensee may, consistent with this rule, and with the consent of a qualifying patient, primary caregiver, reciprocal participant, or an individual who is at least 21 years of age, utilize a license cannabis courier to deliver cannabis or cannabis products to a qualifying patient, primary caregiver, reciprocal participant, or an individual who is at least 21 years of age;

(2) A retail cannabis licensee shall require a consumer making a purchase for delivery by a cannabis courier licensee to have the valid government-issued identification card, the consumer intends to use to verify their age at the time of delivery, and if applicable, a medical cannabis program registry identification card, examined and authenticated by the retail cannabis licensee prior to the order; and

(3) Pre-verification of the consumer's identity shall be performed through a division approved electronic means, which may include a third-party technology platform, and shall include examination of a consumer's valid, unexpired, medical cannabis identification card, if applicable, and photo identification issued by a federal or state government that includes the name, date of birth, and picture of the intended recipient.
[16.8.2.40 NMAC – N, 12/28/2021]

**16.8.2.41 CANNABIS
COURIER LICENSURE;
GENERAL PROVISIONS:**

A. Division application forms: All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division using the online application portal.

B. License required: Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not transport cannabis products directly to qualified patients, primary caregivers or reciprocal participants, or directly to consumers.

C. Consumer delivery:

(1) A licensee

may deliver cannabis or cannabis products directly to a qualified patient who is at least 18 years of age, a primary caregiver or a reciprocal participant, or directly to a consumer who is at least 21 years of age.

(2) Licensees shall only deliver cannabis or cannabis products to the person who is identified by the retail cannabis licensee as an intended, authorized recipient.

D. Operational requirements:

(1) All cannabis and cannabis products delivered by a licensed cannabis courier shall be obtained from a retail cannabis licensee with which the cannabis courier is employed or has a delivery agreement.

(2) All delivery agreements between a retail cannabis licensee and a cannabis courier licensee shall be disclosed to the division. The division shall be notified in writing of a new delivery agreement or modification to a delivery agreement prior to delivery of cannabis or cannabis products under a new or modified delivery agreement.

(3) Licensees shall not transport or deliver cannabis or cannabis products that are not individually packaged, or that are not labeled in accordance with the Cannabis Regulation Act and division rules.

(4) Upon obtaining a package of cannabis or cannabis product from a retail cannabis licensee, the cannabis courier shall hold the package in a secure area or areas that are locked and otherwise resistant to tampering or theft, until the package is delivered to its intended recipient or returned to the retail cannabis licensee.

(5) Licensees shall not relinquish possession of cannabis or cannabis products unless and until the package of cannabis or cannabis products is either successfully delivered to its intended recipient or returned to the retail cannabis licensee. For purposes of this section, a package of cannabis

or cannabis product is successfully delivered only upon the licensee's verification that an intended recipient has taken actual, physical possession of the package. Licensees shall not leave a package at any location for any reason, unless the package is successfully delivered to its intended recipient.

(6) At the time of delivery, a licensee shall verify the recipient's identity by requiring presentation of the recipient's photo identification issued by a federal or state government that includes the name, date of birth, and picture of the intended recipient. Identification must match the pre-verified identification of the consumer who placed the order for delivery. Licensees shall not deliver cannabis or cannabis product to any person whose identity is not verified in accordance with this rule. Upon delivery to the intended recipient, the licensee shall certify having verified the recipient's identification in accordance with this rule for each transaction. Licensee shall view proof of the order generated at the time of the order and receive the signature of the consumer who ordered the cannabis or cannabis product.

(7) Licensees shall not possess a delivery package of cannabis or cannabis product for a time period greater than 24 hours. Licensees shall return any cannabis or cannabis product that is not successfully delivered to its intended recipient to the originating retail cannabis licensee within this time-period.

(8) Licensees shall not, when transporting cannabis or cannabis products utilize a delivery vehicle that advertises or otherwise displays signage, logos, or symbols that would indicate that the vehicle is used for the transport of cannabis.

(9) Only cannabis and cannabis product that is shelf-stable may be delivered. Products that are perishable or time and temperature controlled to prevent deterioration may not be delivered.

E. Confidentiality: Licensees shall at all times take

measures to ensure confidentiality and safety in the transport and delivery of cannabis and cannabis product. A licensee may obtain contact information of a purchasing qualified patient or primary caregiver, and a reciprocal participant, as permitted by agreement between the licensee and a respective retail cannabis licensee, and may utilize such information solely for the purpose of arranging a delivery location and time with the qualified patient or primary caregiver, or reciprocal participant. Licensees shall not otherwise disseminate, disclose, or use identifying information or contact information concerning a qualified patient or primary caregiver, or reciprocal participant.

F. Maximum retail value: The maximum retail value of cannabis and cannabis product allowed in a cannabis courier's vehicle at any one time shall be \$10,000 and each product shall be associated with a specific order for delivery. For purposes of this provision, "maximum retail value" shall mean the aggregate value of cannabis and cannabis product as priced on the day of the order for delivery.

G. Track and trace: All cannabis and cannabis product deliveries shall be tracked using the track and trace system as designated by the division. Records of sales of cannabis accessories shall be maintained by the cannabis courier, but may not be tracked in the track and trace system designated by the division.

H. Record retention: Delivery records, including certification of delivery, the cannabis and cannabis product delivered, the date of delivery, and the time of delivery, shall be maintained by the cannabis courier for a minimum of 12 months.

I. Delivery time and location:

(1) Limitations on the time of delivery shall comply with all local laws.

(2) Licensees shall only deliver packages of

cannabis or cannabis products to the address provided by the retail cannabis licensee.

(3) Licensees are prohibited from delivery to an individual consumer of more than two ounces of cannabis, 16 grams or cannabis extract and 800 milligrams of edible cannabis. [16.8.2.41 NMAC – N, 12/28/2021]

16.8.2.42 APPLICATION REQUIREMENTS FOR CANNABIS COURIER LICENSE:

A. An initial application or renewal for cannabis courier licensure shall include the following:

(1) Contact information for the applicant, to include:

(a) applicant's full legal name;

(b) applicant's date of birth, if applicable;

(c) applicant's mailing address;

(d) applicant's contact telephone number;

(e) applicant's contact email address;

(f) physical address and mailing address, if different; and

(g) demographic data pursuant to the Cannabis Regulation Act;

(2) proof the applicant is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

(3) criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(4) a detailed description of any criminal convictions of the applicant, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(5) certification the applicant will adhere to courier requirements pursuant to

the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(6) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(7) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(8) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(9) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(10) certification the applicant is not licensed under the Liquor Control Act;

(11) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(12) payment of any required fees as set forth in 16.8.11 NMAC.

B. Verification of information: The division may verify information contained in each application and accompanying documentation by:

(1) contacting the applicant by telephone, mail, or electronic mail;

(2) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(3) consulting with state or local governments.

[16.8.2.42 NMAC – N, 12/28/2021]

16.8.2.43 SEVERABILITY:
If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.2.43 NMAC – Rp, 16.8.2.35 NMAC, 12/28/2021]

History of 16.8.2 NMAC:
[RESERVED]

REGULATION AND LICENSING DEPARTMENT FUNERAL SERVICES BOARD

This is an amendment to 16.64.3 NMAC, Sections 3, 6, 7 and 8, effective 12/28/2021.

16.64.3.3 STATUTORY AUTHORITY: [16.64.3 NMAC is issued pursuant to the Funeral Services Act, Sections 61-32-2, 61-32-4, 61-32-6, 61-32-7, 61-32-9, 61-32-10, 61-32-11, 61-32-14, 61-32-15, 61-32-16 and 61-32-17 NMSA 1978.] These rules are promulgated pursuant to the Funeral Services Act, Chapter 61, Article 32 NMSA 1978.

[6/15/1996; 16.64.3.3 NMAC - Rn, 16 NMAC 64.3.3, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

16.64.3.6 OBJECTIVE:
16.64.3 NMAC [is to establish] establishes the requirements [pertaining to application for licensure

and academic requirements] for professional licensure under the New Mexico Funeral Services Act.

[6/15/1996; 16.64.3.6 NMAC - Rn, 16 NMAC 64.3.6, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

16.64.3.7 DEFINITIONS:

A. “Accredited college or university” means [a ~~college or university~~] an institution that was accredited by the American board of funeral service education (ABFSE) at the time of the applicant’s graduation or completion of the required funeral service education courses.

B. [RESERVED]
[6/15/1996; 16.64.3.7 NMAC - Rn & A, 16 NMAC 64.3.7, 9/15/2001; A, 8/8/2012; A, 10/6/2012, A, 12/28/2021]

16.64.3.8 APPLICATIONS:

A. An applicant applying for a funeral service intern license must:

(1) submit a completed application form supplied by the board office;

(2) pay applicable fees as set forth in 16.64.2.8 NMAC;

(3) submit satisfactory evidence that the applicant is at least 18 years of age;

(4) submit satisfactory evidence that the applicant has graduated from high school or the equivalent;

(5) submit satisfactory proof of employment and proof of supervision;

(6) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;

(7) submit a release of information form directly to the Department of public safety with fees as required by the Department of public safety; and

(8) provide proof of any disqualifying criminal convictions as defined in 16.64.11.14 NMAC.

B. An applicant applying for a direct disposer license

in the state of New Mexico must:

(1) submit a completed application form supplied by the board office;

(2) pay applicable fees as set forth in 16.64.2.8 NMAC;

(3) submit satisfactory evidence that the applicant is at least 18 years of age;

(4) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;

(5) submit satisfactory evidence that the applicant has obtained an associate’s degree in funeral science requiring the completion of at least 60 semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government;

(6) submit a release of information form directly to the Department of public safety with fees as required by the Department of public safety; and

(7) provide proof of any disqualifying criminal convictions as defined in 16.64.11.14 NMAC.

C. An applicant applying for an embalming license in the state of New Mexico must:

(1) submit a completed application form supplied by the board office;

(2) pay applicable fees as set forth in 16.64.2.8 NMAC;

(3) submit satisfactory evidence that the applicant is at least 18 years of age;

(4) submit satisfactory evidence that the applicant has served as a licensed funeral service intern for not less than 12 months, under the supervision of a licensed funeral service practitioner. During this training period, the applicant shall have assisted in making of at least 50 funeral arrangements, and the directing of at least 50 funerals;

(5) submit satisfactory evidence that the applicant has obtained an associate's degree in funeral science requiring the completion of at least 60 semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government;

(6) submit satisfactory evidence that the applicant has passed the science section of the national board examination;

(7) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;

(8) submit a release of information form directly to the department of public safety with fees as required by the department of public safety; and

(9) provide proof of any disqualifying criminal convictions as defined in 16.64.11.14 NMAC.

D. An Applicant applying for a funeral arranger license in the state of New Mexico must:

(1) submit a completed application form supplied by the board office;

(2) pay applicable fees as set forth in 16.64.2.8 NMAC;

(3) submit satisfactory evidence that the applicant is at least 18 years of age;

(4) submit satisfactory evidence that the applicant has served as a licensed funeral service intern for not less than 12 months, under the supervision of a licensed funeral service practitioner. During this training period, the applicant shall have assisted in making of at least 50 funeral arrangements, and the directing of at least 50 funerals;

(5) submit satisfactory evidence that the applicant has obtained an associate's degree in funeral science requiring

the completion of at least 60 semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government;

(6) submit satisfactory evidence that the applicant has passed the arts section of the national board examination;

(7) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;

(8) submit a release of information form directly to the department of public safety with fees as required by the department of public safety; and

(9) provide proof of any disqualifying criminal convictions as defined in 16.64.11.14 NMAC.

E. An applicant applying for a funeral service practitioner license must:

(1) submit a completed application form supplied by the board office;

(2) pay applicable fees as set forth in 16.64.2.8 NMAC;

(3) submit satisfactory evidence that the applicant is at least 18 years of age;

(4) submit satisfactory evidence that the applicant has served as a licensed funeral service intern for not less than 12 months, under the supervision of a licensed funeral service practitioner. During this training period, the applicant shall have assisted in embalming at least 50 bodies, making of at least 50 funeral arrangements, and the directing of at least 50 funerals;

(5) submit satisfactory evidence that the applicant has obtained an associate's degree in funeral science requiring the completion of at least 60 semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor

institution offering funeral service education recognized by the United States government;

(6) submit satisfactory evidence that the applicant has passed both sections of the national board examination;

(7) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;

(8) submit a release of information form directly to the department of public safety with fees as required by the department of public safety; and

(9) provide proof of any disqualifying criminal convictions as defined in 16.64.11.14 NMAC.

F. An applicant applying for an embalmer, funeral arranger or funeral practitioner license based on credentials from another state must:

(1) submit a completed application form supplied by the board office;

(2) pay applicable fees as set forth in 16.64.2.8 NMAC;

(3) submit a verification of licensure and good standing;

(4) submit satisfactory evidence that the applicant has obtained an embalmer, funeral arranger or funeral practitioner license or one of the license equivalents, in a state or jurisdiction with equal or greater requirements than initial licensure in New Mexico;

(5) submit satisfactory evidence that the applicant has passed the national board examination;

(6) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;

(7) submit a release of information form directly to the department of public safety with fees as required by the department of public safety; and

(8) provide proof of any disqualifying criminal convictions as defined in 16.64.11.14 NMAC;

G. The board, in its sole discretion, may require an applicant for licensure to present whatever evidence or affidavits as it deems necessary to establish that the applicant is qualified for licensure.

H. The board may require applicants for licensure to personally appear before the board at the time the application is scheduled to be considered.

I. The burden of knowing and complying with the requirements necessary for licensure rests entirely on the applicant.

J. Applicants for licensure shall be required to provide evidence satisfactory to the board of completion of a course or other training approved by the board concerning contagious and infectious diseases, with the exception of:

(1) funeral service practitioner applicants who have graduated from an accredited school of funeral service education within five years prior to application; and

(2) funeral service intern applicants who are applying under general supervision, provided that the funeral service intern previously met the requirement of Subsection F of 16.64.3.8 NMAC at the time of application for funeral service intern licensure under direct supervision, and provided that the funeral service intern has actively maintained a license under direct supervision for no more than five years.

K. If the application for licensure is deemed to be incomplete when 12 months has elapsed from the date stamped on the application or document the application and documents will be deemed null and void and any fees paid will be forfeited. Application and documents for licensure submitted to the board will be considered filed as of the date stamped on the application or documents by the board office, which shall be the date received by the board.

[2/7/1976...6/15/1996, 1/22/1999; 16.64.3.8 NMAC - Rn & A, 16

NMAC 64.3.8, 9/15/2001; A, 04/02/2010; A, 10/6/2012; A, 11/1/2019; A, 12/28/2021]

REGULATION AND LICENSING DEPARTMENT FUNERAL SERVICES BOARD

This is an amendment to 16.64.7 NMAC, Sections 3, 6, 9 and adding new Section 10, effective 12/28/2021.

16.64.7.3 STATUTORY AUTHORITY: ~~[16.64.7 NMAC is adopted pursuant to the Funeral Services Act, Section 61-32-4, 61-32-6, 61-32-7, 61-32-11, 61-32-21 and 61-32-22 NMSA 1978.]~~ These rules are issued pursuant to the Funeral Services Act, Chapter 61, Article 32 NMSA 1978.

[6/15/1996; 16.64.7.3 NMAC - Rn, 16 NMAC 64.7.3, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

16.64.7.6 OBJECTIVE: 16.64.7 NMAC ~~[is to establish]~~ establishes the requirements for license renewal, ~~[and]~~ placement of license on inactive status and reinstatement of an inactive license. [6/15/1996; 16.64.7.6 NMAC - Rn, 16 NMAC 64.7.6, 9/15/2001; A, 12/28/2021]

16.64.7.9 INACTIVE STATUS:

A. Any licensee, excluding funeral service intern licensees, who wishes to place his or her license on inactive status shall notify the board in writing, on a form prescribed by the board, prior to the expiration of his or her current license.

B. ~~[The board administrator shall determine if the inactive status of any license will be approved until the next scheduled board meeting.]~~ A license placed on inactive status by the board may be renewed within a period not to exceed five years following the date the board granted the inactive status.

C. Upon approval by the board of an inactive request, the

licensee shall be exempt from the payment of the annual renewal fee during the period of inactive status.

D. No license will automatically be placed on inactive status by failure of the licensee to renew his or her license.

E. No license shall be placed on inactive status if the licensee is under investigation or if disciplinary proceedings have been initiated.

F. Disciplinary proceedings may be initiated or continued against a licensee who has been granted inactive status.

[F] G. Any licensee who has placed his or her license on inactive ~~[may, within five (5) years from the date of acceptance by the board of the inactive status;]~~ status shall notify the board of his or her desire to reinstate the inactive license. Upon receipt of such notice, the board administrator shall send to the inactive licensee an application for reinstatement.

[G] H. ~~[The applicant shall submit the application to the board together with the applicable fee(s) and proof of completion of one (1) CEU, as outlined in 16.64.6 NMAC, for the year in which reinstatement is sought.]~~ A licensee may reactivate the license upon submission of the following:

- (1) a reinstatement application;
- (2) payment of the renewal and reinstatement fee listed in 16.64.2 NMAC;
- (3) proof of continuing education units listed in 16.64.6 NMAC; and
- (4) successful completion of the written jurisprudence examination listed in Subsection B of 16.64.7 NMAC.

[H.] ~~— If the board finds the application in order, the applicant shall be issued a license after successfully completing the written jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC. No person whose license is on inactive status shall practice funeral service in this state until receiving a reinstated license.]~~

I. Any person who, after five ~~(5)~~ years of inactive status, desires to reinstate his or her license, must make application to the board and comply with the same requirements as any previously unlicensed applicant.

J. If a request for reinstatement of an inactive license occurs in the same renewal period, as defined in Subsection C of 16.64.6.7 NMAC, that the inactive status was granted, the applicant shall not be required to complete additional continuing education requirements or the jurisprudence exam in order for the inactive license to be reinstated. [9/27/1990...9/26/1993; 16.64.7.9 NMAC - Rn & A, 16 NMAC 64.7.9, 9/15/2001; A, 4/2/2010; A, 8/8/2012, A, 12/28/2021]

16.64.7.10 LICENSE RENEWAL:

A. All licensees shall renew their license on or before June 30th of each year.

B. Application for renewal shall be completed on a form provided by the board.

C. A license may be renewed upon submission of the following:

(1) a completed renewal application;

(2) payment of the renewal and reinstatement fee outlined in 16.64.2 NMSA;

(3) proof of continuing education units outlined in 16.64.6 NMAC.

D. A licensee who is age is 65 or above and who has been licensed by the board for at least 20 consecutive years shall not be required to meet continuing education requirements.

E. Failure to submit the required documents and fees by June 30th shall cause the license to expire and the license holder must refrain from practicing.

F. The licensee may renew within a 60-day grace period, by submitting payment of the renewal fee and late fee outlined in 16.64.2 NMAC and compliance with all renewal requirements.

G. A license that has not renewed within the 60-day grace period shall be expired and invalid. A holder of an expired license shall be required to reapply as a new applicant.

H. The board will send by electronic mail, license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the board. 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. [16.64.7.10 NMAC, N, 12/28/2021]

REGULATION AND LICENSING DEPARTMENT FUNERAL SERVICES BOARD

This is an amendment to 16.64.11 NMAC, Sections 2, 3, 6, 7, 8, 10, 13 and new Section 14, effective 12/28/2021.

16.64.11.2 SCOPE: 16.64.11 NMAC applies to ~~[the board,]~~ licensees, applicants for licensure, and the general public. [2/21/1997; 16.64.11.2 NMAC - Rn & A, 16 NMAC 64.11.2, 9/15/2001; A, 12/28/2021]

16.64.11.3 STATUTORY AUTHORITY: ~~[16.64.11 NMAC is adopted pursuant to the Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7, 61-32-24 and the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978.]~~ These rules are promulgated pursuant to the Funeral Services Act, Chapter 61, Article 32 NMSA 1978. [2/21/1997; 16.64.11.3 NMAC - Rn, 16 NMAC 64.11.3, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

16.64.11.6 OBJECTIVE: 16.64.11 NMAC ~~[is to establish]~~ establishes the procedures for filing and processing complaints, and for taking disciplinary action against licensees and applicants for licensure, for violations of provisions in the Funeral Services Act or ~~[any]~~

provisions of 16.64 NMAC] any rule or regulation issued pursuant to the Act.

[2/21/1997; 16.64.11.6 NMAC - Rn, 16 NMAC 64.11.6, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

16.64.11.7 DEFINITIONS:

A. "Complaint"
means a complaint filed with the board.

B. "Complainant"
means the complaining party of a complaint filed against a licensee(s), or applicant for licensure, who is/are governed under the Funeral Services Act.

C. "Disqualifying criminal conviction" has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

~~[E]~~ **D. "Respondent"**
means ~~[a licensee, or]~~ an applicant for licensure, a licensee or other person subject to the provisions of ~~[who is governed under]~~ the Funeral Services Act, and who is the subject of a complaint for claimed violations of the Act or any rule or regulation issued pursuant to the Act.

~~[D]~~ **E. "Notice of contemplated action"** means the administrative process used by the board for a licensee or applicant for licensure to be afforded notice and an opportunity to be heard in a formal hearing setting before the board has authority to take any action which would have the effect of denying, revoking, or suspending a license or application for licensure governed by the Uniform Licensing Act. [2/21/1997; 16.64.11.7 NMAC - Rn, 16 NMAC 64.11.7, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

16.64.11.8 GENERAL PROVISIONS:

A. [Inquiries regarding making a complaint:]
Any person, including any member of the board or board staff, may initiate a complaint in writing. Complaints should be submitted on a form prescribed by the board.

B. Complaints ~~[must]~~ shall contain factual allegations constituting ~~[the alleged]~~ violations of any provisions of the Funeral Services

Act or [16.64 NMAC] any rule or regulation issued pursuant to the Act. [2/21/1997; 16.64.11.8 NMAC - Rn & A, 16 NMAC 64.11.8, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

16.64.11.10 COMPLAINT COMMITTEE:

A. The board chair will appoint a complaint committee consisting of at least one person, who will be a professional member on the board. The board chair may also appoint to the complaint committee the board administrator [and/or] or a complaint manager.

B. The complaint committee will handle complaints in a confidential manner as required by law.

C. The complaint committee will review all complaints received by the board, conduct whatever action it deems necessary in the course of gathering information, and make recommendations for disposition of the complaint to the full board in executive session to maintain the confidentiality of the complaint.

D. No complaint committee meeting will be held without the presence of the professional board member.

E. A complaint committee member who is partial or who believes he or she is not capable of judging a particular controversy fairly on the basis of its own circumstances will not participate and another member will be appointed by the chair to serve on the committee if required.

F. For any complaint which the complaint committee reasonably anticipates may be referred to the board for consideration of the issuance of a notice of contemplated action, the respondent will be provided a copy of the complaint and will be allowed a reasonable time in which to respond to the allegations in the complaint. The foregoing notwithstanding, the complaint committee will not be required to provide the respondent with a copy of the complaint, or with notice of the filing of a complaint or any related investigation, prior to the

issuance of a notice of contemplated action if the committee determines that disclosure may impair, impede or compromise the efficacy or integrity of the investigation.

G. If the complaint committee determines that further information is needed, it may issue investigative subpoenas, pursuant to the Uniform Licensing Act; employ an investigator, or experts, or other persons whose services are determined to be necessary, in order to assist in the processing and investigation of the complaint. The complaint committee will have independent authority to employ such persons, without prior approval of the board. The board administrator will determine budgetary availability, and will contract for investigative services.

H. Upon completion of its review or investigation of a complaint, the complaint committee will present a summary of the case to the board for the purpose of enabling the board to decide whether to proceed with the case or to dismiss the case. The summary will be identified by complaint number without identifying the complainant(s) or respondent(s) by name.

[2/21/1997; 1/22/1999; 16.64.11.10 NMAC - Rn & A, 16 NMAC 64.11.10, 9/15/2001; A, 12/28/2021]

16.64.11.13 NOTICE OF CONTEMPLATED ACTION:

A. All disciplinary proceedings will be conducted in accordance with the Uniform Licensing Act.

B. The chair of the board, or [his/her] its designee, will serve as hearing officer for disciplinary proceedings for the purpose of administering pre-hearing procedural matters. The hearing officer will be fully authorized to make all necessary procedure decisions on behalf of the board, including, but not limited to, matters related to discovery, continuances, time extensions, amendments, pre-hearing conferences, and proposed findings of fact and conclusions of law.

C. The hearing officer may make such orders as [he/she determines may be] deemed necessary to implement the authority conferred by Subsection B of 16.64.11.13 NMAC, including, but not limited to, discovery schedules, pleading schedules, and briefing schedules.

D. No party will engage in ex-parte communications with the hearing officer or any member of the board in any matter in which a notice of contemplated action has been issued.

E. Licensees and applicants for licensure who have been found culpable and sanctioned by the board will be responsible for the payment of all costs of the disciplinary proceedings.

F. Any license, including a wall certificate, issued by the board and subsequently suspended or revoked, will be promptly returned to the board office, in person or by registered mail, no later than 30 days of receipt of the board's order suspending or revoking the license. [2/21/1997; 1/22/1999; 16.64.11.13 NMAC - Rn & A, 16 NMAC 64.11.13, 9/15/2001, A, 12/28/2021]

16.64.11.14 DISQUALIFYING CRIMINAL CONVICTIONS:

A. Convictions for any of the following criminal offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that could disqualify an applicant from receiving a license, or a licensee from retaining a license, issued by the board:

- (1) murder;
- (2) manslaughter;
- (3) assisting suicide;
- (4) aggravated assault;
- (5) assault with intent to commit a violent felony;
- (6) aggravated battery inflicting great bodily harm or with deadly weapon;
- (7) injury to a pregnant woman;
- (8) aggravated assault upon a school employee;

(9) assault with intent to commit a violent felony upon a school employee;
 (10) aggravated battery upon a school employee;
 (11) aggravated battery upon a sports official;
 (12) aggravated assault upon a health care worker;
 (13) assault with intent to commit a violent felony upon a health care worker;
 (14) battery upon a health care worker;
 (15) aggravated battery upon a health care worker;
 (16) assisting or being assisted by one or more other persons to commit a battery upon a health care worker;
 (17) assault against a household member with intent to commit a violent felony;
 (18) aggravated battery against a household member;
 (19) 3rd or subsequent conviction for battery against a household member;
 (20) 2nd or subsequent conviction for stalking;
 (21) aggravated stalking;
 (22) kidnapping;
 (23) criminal use of ransom;
 (24) abandonment of a child resulting in death or great bodily harm;
 (25) abuse of a child;
 (26) negligent abuse of a child resulting in death;
 (27) intentional abuse of a child 12 to 18 years old resulting in death;
 (28) intentional abuse of a child less than 12 years old resulting in death;
 (29) sexual exploitation of children;
 (30) sexual exploitation of children by prostitution;
 (31) seizing or exercising control of a bus by force or violence or by threat of force or violence;

(32) intimidating, threatening or assaulting any driver, attendant, guard or passenger of a bus with the intent of seizing or exercising control of a bus;
 (33) a felon in possession of a firearm;
 (34) false reporting, causing great bodily harm, of a fire or explosion or the placement of any incendiary device;
 (35) promoting prostitution;
 (36) accepting the earnings of a prostitute;
 (37) criminal sexual penetration;
 (38) criminal sexual contact;
 (39) criminal sexual contact of a minor;
 (40) aggravated indecent exposure;
 (41) incest;
 (42) disturbing a marked burial ground;
 (43) desecration of a church;
 (44) larceny;
 (45) robbery;
 (46) burglary;
 (47) aggravated burglary;
 (48) fraud;
 (49) unlawful dealing in federal food coupons or WIC checks;
 (50) embezzlement;
 (51) extortion;
 (52) forgery;
 (53) receiving stolen property;
 (54) falsely obtaining services or accommodations;
 (55) improper sale, disposal, removal or concealing of encumbered property;
 (56) shoplifting;
 (57) theft of identity;
 (58) theft of a credit card by taking or retaining possession of card taken;
 (59) fraudulent transfer or receipt of a credit card;
 (60) dealing in

credit cards of another;
 (61) forgery of a credit card;
 (62) fraudulent signing of credit cards or sales slips or agreements;
 (63) fraudulent use of a credit card;
 (64) certain fraudulent acts by merchants or their employees;
 (65) possession of 4 or more incomplete credit cards or machinery, plates or other contrivance;
 (66) fraudulent acts to obtain or retain possession of rented or leased vehicle or other personal property;
 (67) fraudulent refusal to return a leased vehicle or other personal property;
 (68) unlawful taking of a vehicle or motor vehicle;
 (69) embezzlement of a vehicle or motor vehicle;
 (70) fraudulently obtaining a vehicle or motor vehicle;
 (71) receiving or transferring a stolen vehicle or motor vehicle;
 (72) altering or changing engine or other numbers of vehicle or motor vehicle;
 (73) arson or negligent arson;
 (74) aggravated arson;
 (75) transporting stolen livestock;
 (76) 3rd conviction for unlawful demonstrations or protests at funerals and memorial services;
 (77) sabotage;
 (78) escape from penitentiary;
 (79) possession of deadly weapon or explosive by prisoner in lawful custody;
 (80) assault with intent to commit a violent felony upon a peace officer;
 (81) battery upon a peace officer;
 (82) aggravated battery upon a peace officer;

(83) disarming a peace officer;
(84) paying or receiving public money for services not rendered;
(85) unlawful interest in a public contract;
(86) bribery of public officer or public employee;
(87) demanding or receiving bribe by public officer or public employee;
(88) bribery or intimidation of a witness;
(89) retaliation against a witness;
(90) acceptance of a bribe by a witness;
(91) perjury;
(92) tampering with public records;
(93) attempt to commit a felony;
(94) conspiracy;
(95) criminal solicitation;
(96) intentionally trafficking controlled substances;
(97) intentionally distributing a controlled substance to a person under the age of eighteen years;
(98) intentionally distributing or possessing with intent to distribute a controlled substance;
(99) manufacturing, distributing or possessing with intent to distribute an imitation controlled substance;
(100) intentionally selling an imitation controlled substance to a person under the age of eighteen years;
(101) intentionally possessing an imitation controlled substance with the intent to distribute;
(102) issuing a worthless check;
(103) child solicitation by electronic communication device;
(104) criminal sexual communication with a child;
(105) 2nd or subsequent unauthorized distribution

of sensitive images;
(106) failing to disclose facts or change of circumstances to obtain public assistance;
(107) unlawful use of food stamp identification card or medical identification card;
(108) misappropriating public assistance;
(109) making or permitting a false claim for reimbursement of public assistance services;
(110) failure to reimburse the human services department upon receipt of third party payment;
(111) soliciting or receiving illegal kickback;
(112) offering or paying illegal kickback;
(113) engaging in a pattern of racketeering activity;
(114) making, conspiring, or attempting to make an extortionate extension of credit;
(115) knowingly advancing money or property to any person with reasonable grounds to believe that it is the intention of that person to use the money or property so advanced for the purpose of making extortionate extensions of credit;
(116) knowingly participating, conspiring, or attempting to participate in the use of any extortionate means to collect any extensions of credit or to cause harm to the person, reputation or property of any person for the nonpayment thereof;
(117) falsification of documents in connection with the Medicaid Fraud Act;
(118) obstruction of investigation in connection with the Medicaid Fraud Act;
(119) medicaid fraud;
(120) computer access with intent to defraud or embezzle;
(121) computer abuse;
(122) abuse of a care facility resident;

(123) neglect of a care facility resident;
(124) exploitation of a care facility resident's property;
(125) fraudulent telemarketing;
(126) money laundering;
(127) human trafficking;
(128) willfully or knowingly failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;
(129) willfully or knowingly providing false information when complying with the registration or verification requirements of the Sex Offender Registration and Notification Act;
(130) homicide by vehicle;
(131) great bodily harm by vehicle;
(132) injury to pregnant woman by vehicle;
(133) 4th or subsequent driving under the influence of intoxicating liquor or drugs;
(134) practicing medicine without a license;
(135) making a false statement under oath, or submitting a false affidavit, in connection with the Medical Practice Act;
(136) knowingly and willfully obtain information on a consumer from a credit bureau under false pretenses; or knowingly and willfully provide information concerning a consumer from the credit bureau's files to a person or firm not authorized to receive that information;
(137) knowingly and willfully obtain information on a consumer from a credit bureau under false pretenses; or knowingly and willfully provide information concerning a consumer from the credit bureau's files to a person or firm not authorized to receive that information;
(138) offering a

bribe connected with or incidental to any election;

(139) willful violation of any provision of the Model State Commodity Code;

(140) willful violation of the New Mexico Uniform Securities Act;

(141) an act or omission, with intent to defraud, expressly declared to be unlawful by the Banking Act;

(142) knowing violation of any provision of the Savings and Loan Act, with intent to defraud;

(143) certain acts by credit union executive officer, director, committee member, employee or agent;

(144) maliciously and knowingly spreading false reports or uttering false statements about the management or finances of any credit union;

(145) making a false statement in writing for the purpose of obtaining credit union funds;

(146) the supervisor or any examiner, inspector, deputy, assistant or clerk appointed or acting under the provisions of the Savings and Loan Act who fails to keep secret any facts or information regarding an association obtained in the course of an examination or by reason of his official position, except when the public duty of the officer or employee requires him to report upon or take official action regarding the affairs of the association examined, or who willfully makes a false official report as to the condition of an association;

(147) any person who knowingly makes, utters, circulates or transmits to another, or others, any statement untrue in fact, derogatory to the financial condition of any association subject to the Savings and Loan Act or any federal association in this state with intent to injure the financial institution, or who counsels, aids, procures or induces another to originate, make, utter, transmit or circulate any such statement with like intent;

(148) any person who knowingly makes, utters, circulates or transmits to another, or others, any statement untrue in fact, derogatory to the financial condition of any association subject to the Savings and Loan Act or any federal association in this state with intent to injure the financial institution, or who counsels, aids, procures or induces another to originate, make, utter, transmit or circulate any such statement with like intent;

(149) certain violations of the Mortgage Loan Company Act;

(150) second or subsequent conviction for unlicensed activity contrary to the New Mexico Mortgage Loan;

(151) violation of the Endowed Care Cemetery Act;

(152) certain violations of the Mortgage Loan Company Act;

(153) certain violations of the Uniform Money Services Act;

(154) making an unauthorized withdrawal from the account of another person with a financial institution, or stealing the card of another, or making an unauthorized use of the card of another;

(155) use of a name or title containing the phrase "credit union" or any derivation thereof, representing a business or individual as a credit union or conducting business as a credit union except as permitted by law;

(156) practicing or attempting to practice dentistry without complying with the Dental Health Care Act and without holding license to practice dentistry in New Mexico;

(157) practicing, attempting or offering to practice osteopathic medicine with a suspended or revoked osteopathic medicine license;

(158) practicing or attempting to practice osteopathic medicine without complying with the Osteopathic Medicine Act and

without holding a license;

(159) intent to defraud uses on a public security or instrument of payment;

(160) misuse of public funds;

(161) bribery of public officer or public employee;

(162) misuse of public funds;

(163) tax Fraud;

(164) requesting money, thing of value or promise in exchange for performance of official act;

(165) official act for personal gain;

(166) excavation of unmarked burials w/o permit;

(167) provides false information or violates provisions of Vital Statistics Act;

(168) intentionally falsifies, forges, conceals, defaces or obliterates a document of anatomical gift, an amendment or revocation of a document of an anatomical gift, or a refusal, for personal gain, commits a third degree felony;

(169) knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death;

(170) making false statement in claim for payment under Indigent Hospital and County Health Care Act;

(171) unauthorized obtain or use of DNA samples or DNA records;

(172) sex offender who fails to comply with SORNA re moving to another state;

(173) certain violations of the Hazardous Waste Act;

(174) certain violations of the Air Quality Control Act;

(175) certain violations of the Solid Waste Act;

(176) injuring or threatening to injure a customer's credit because the customer refuses to pay charges resulting from cramming

or slamming (telecommunications services);

(177) giving false testimony or information as to any matter material to an examination by the Superintendent of Insurance;

(178) willfully making a false or fraudulent statement in any verified report or declaration under oath in connection with fraternal benefit societies;

(179) making a false entry in a book, report or statement of an insurer with intent to injure, defraud, or deceive;

(180) unlawfully removing or attempting to remove records, assets, or material from a domestic insurer;

(181) certain violations of the Sale of Insurance Securities Law;

(182) making a false statement in connection with insurance with the effect of causing a loss to the insurer;

(183) improper disposition of certain court funds;

(184) jury tampering;

(185) an officer of a company who certifies that a document is true and correct, knowing the same to be false, or any person who forges the name of an officer the seal of a company

B. The board shall not consider the fact of a criminal conviction as part of an application for licensure or for renewal of licensure unless the conviction under consideration is one of the disqualifying criminal convictions listed in Subsection A of this rule.

C. The board shall not deny, suspend, revoke, not renew a license or otherwise exclude from licensure a person on the sole basis of a criminal conviction unless the conviction under consideration is one of the disqualifying criminal convictions listed in Subsection A of this rule.

D. Nothing in this rule shall prevent the board from denying an application for licensure or for renewal of licensure, or from

disciplining a licensee, on the basis of a person's conduct, to the extent that such conduct violated the Funeral Services Act, regardless of whether the person was convicted of a crime for such conduct or whether the crime for which the person was convicted is listed as one of the disqualifying criminal convictions in Subsection A of this rule.

E. In connection with an application for licensure or for renewal of licensure, the board shall not use, distribute, disseminate, or admit into evidence at an administrative proceeding criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

[16.64.11.14 NMAC, N, 12/28/2021]

REGULATION AND LICENSING DEPARTMENT FUNERAL SERVICES BOARD

This is an amendment to 16.64.13 NMAC, Sections 2, 3, 6, 7, 8 and 9, effective 12/28/2021.

16.64.13.2 SCOPE: This part sets forth application procedures to expedite licensure for military service members, their spouses, their dependent children, and for veterans pursuant to Section 61-1-34 NMSA 1978.

[16.64.13.2 NMAC - N, 4/30/2015, A, 12/28/2021]

16.64.13.3 STATUTORY AUTHORITY: These rules are promulgated issued pursuant to Funeral Services Act, Chapter 61, Article 32 NMSA 1978.

[16.64.13.3 NMAC - N, 4/30/2015, A, 12/28/2021]

16.64.13.6 OBJECTIVE:

The purpose of this part is to expedite licensure for military service members, their spouses, their dependent children, and for veterans pursuant to 61-1-34 NMSA 1978. [16.64.13.6 NMAC - N, 4/30/2015, A, 12/28/2021]

16.64.13.7 DEFINITIONS:

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.

[A] C. "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:] has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

[B] D. ["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:] **"Substantially equivalent"** means the determination by the board 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 requirements of the Funeral Services Act.

E. "Veteran" has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

[16.64.13.7 NMAC - N, 4/30/2015, A, 12/28/2021]

16.64.13.8 APPLICATION REQUIREMENTS:

A. Applications for registration shall be completed on a form provided by the board.

B. The applicant shall provide a complete application that includes the following information:

(1) [a completed application and corresponding fee pursuant to 16.64.2.8 NMAC;] applicant's full name;

(2) [satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States, that has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license the applicant applies for;] current mailing address;

(3) current electronic mail address, if any;

(4) pay applicable fees as set forth in 16.64.2.8 NMAC;

(5) date of birth;

(6) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC.

(7) background check; and

(8) proof as described in Subsection C below.

C. [Electronic signatures will be acceptable for applications submitted pursuant to section 14-16-1 through section 14-16-19 NMSA 1978.] The applicant shall provide to the board the following satisfactory evidence:

(1) applicant is currently licensed and in good standing in another jurisdiction;

(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 service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members: copy of military service member's 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 DD 214 showing proof of honorable discharge.

D. The license or registration shall be issued by the board 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 board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

F. A license issued pursuant to this section shall be valid for the time period that is specified in the Funeral Services Act. [16.64.13.8 NMAC - N, 4/30/2015; A, 12/28/2021]

16.64.13.9 RENEWAL REQUIREMENTS:

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for [the issuance and for the] renewal [of a license pursuant to 16.64.3 NMAC, requirements for licensure and] set forth in 16.64.7 NMAC [license renewal] pursuant to Chapter 61, Article 32 NMSA 1978.

B. [The licensee must submit the following documents at the time of renewal:

(1) A completed license renewal application;

(2) Verification of continuing education;

(3) The applicable renewal fee.] The board will send by electronic mail, license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the board. 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.

[C. Original and renewed registrations shall be valid until June 30 unless renewed.] [16.64.13.9 NMAC - N, 4/30/2015; A, 12/28/2021]

REGULATION AND LICENSING DEPARTMENT PRIVATE INVESTIGATIONS ADVISORY BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 48 PRIVATE LAW ENFORCEMENT PRACTITIONERS PART 9 DISCIPLINARY PROCEEDINGS

16.48.9.1 ISSUING
AGENCY: New Mexico Regulation and Licensing Department
[16.48.9.1 NMAC - N, 12/28/2021]

16.48.9.2 SCOPE: This part applies to applicants, licensees, registrants and to anyone wishing to file a complaint against a licensee or registrant licensed or registered pursuant to the Private Investigations Act.
[16.48.9.2 NMAC - N, 12/28/2021]

16.48.9.3 STATUTORY
AUTHORITY: These rules are promulgated pursuant to the Private Investigations Act, Sections 61-27B-5 and 61-27B-26 NMSA 1978, and the Uniform Licensing Act, Sections 61-

1-1 through 61-1-36 NMSA 1978.
[16.48.9.3 NMAC – N, 12/28/2021]

16.48.9.4 DURATION:

Permanent.

[16.48.9.4 NMAC – N 12/28/2021]

16.48.9.5 EFFECTIVE

DATE: December 28, 2021, unless a later date is cited in the history note at the end of a Section.

[16.48.9.5 NMAC – N, 12/28/2021]

16.48.9.6 OBJECTIVE:

The objective of Part 9 of Chapter 48 is to set forth the procedures for filing complaints, for initiating disciplinary action against applicants, licensees, and registrants, to lay out the investigative procedures available to the department and to further define actions by an applicant, licensee or registrant considered as violations of the Private Investigations Act, the Uniform Licensing Act, and these rules.

[16.48.9.6 NMAC – N, 12/28/2021]

16.48.9.7 DEFINITIONS:

As used in this Section, the following words and phrases have the following meanings:

A. “Applicant”

has the same meaning as defined in Subsection B of Section 61-1-2 NMSA 1978.

B. “Complaint”

means a written complaint on a form provided by the department and filed with the department against a licensee or registrant.

C. “Complainant”

means the party who files a complaint against a licensee or registrant.

D. “Disqualifying criminal conviction” has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

E. “Hearing”

means a formal evidentiary hearing conducted pursuant to the Uniform Licensing Act, whereby the respondent is afforded due process and the opportunity to be heard by the department, or its designated hearing officer, before the department takes action which might result in disciplinary action against the

respondent’s application for license or registration, or respondent’s license or registration issued pursuant to the Private Investigations Act.

F. “Hearing officer”

means the person designated by the department at its discretion, to conduct hearings under the Uniform Licensing Act.

G. “Notice of contemplated action” or “NCA” means the administrative pleading required by the Uniform Licensing Act whereby initiating a formal disciplinary proceeding and notifying a respondent of the department’s intent to take action based upon the violations of practice charged in the subject complaint, and providing the respondent the opportunity to request a hearing before the department.

H. “Pre-NCA settlement agreement” means an agreement reached between the department and the respondent as an option in lieu of the department proceeding with referring the matter for issuance of a notice of contemplated action.

I. “Respondent”

means an applicant, licensee, or registrant that is the subject of complaint filed with the department.

J. “Revoke a license”

has the same meaning as defined in Subsection D of Section 61-1-2 NMSA 1978.

K. “Subject matter expert” means a member of the private investigations profession or an advisory board member who has been designated to review complaints at the request of the superintendent.

L. “Suspend a license” has the same meaning as defined in Subsection E of Section 61-1-2 NMSA 1978.

M. “Violation” means a violation of the Private Investigations Act or the rules duly adopted by the department pursuant to the Private Investigations Act.
[16.48.9.7 NMAC – N, 12/28/2021]

16.48.9.8 GENERAL PROVISIONS:

A. A complaint may

be initiated in writing by any person on a complaint form provided by the department. A complaint must be legible, signed by the complainant under penalty of perjury, and must include the following information:

(1) full name, mailing address, electronic mail address, and phone number of the complainant;

(2) clearly stated factual allegations including the date, time, and location of the incident that is the subject matter of the complaint constituting the alleged violations of any provisions of the Private Investigations Act or Code of Ethics and Creed of Conduct, 16.48.1 NMAC;

(3) a list of any other people that have information about the subject matter in the complaint, if any, and their full name, mailing addresses, and phone numbers, including electronic mail addresses if available; and

(4) any documentation available to support the allegations in the complaint, any photographs submitted must be in color.

B. Only complaints written on the official complaint form will be formally addressed by the department. The form required for an official complaint may be obtained from the department’s website under the “file a complaint” tab, then select “boards and commissions complaint form”.

C. Private cause of action: Neither the action nor inaction of the department on any complaint shall preclude the initiation of any private cause of action by the complainant.

[16.48.9.8 NMAC – N, 12/28/2021]

16.48.9.9 PROCEDURES FOR RECEIPT OF A COMPLAINT:

A. The department’s assigned compliance staff will maintain a written log of all complaints received which records at a minimum, the date the complaint was received; name, electronic mail and physical mailing address(es) of

the complainant(s) and respondent(s); and the name, electronic mail and physical address(es) of all possible witnesses listed on the complaint.

B. Upon receipt of a complaint the department's compliance staff will:

(1) log in the date the complaint was received;

(2) determine whether the respondent is licensed, registered or is an applicant for licensure or registration with the department;

(3) assign a complaint number and create an individual file. Complaint numbering shall begin with 01 each calendar year;

(4) after a legal review, send complainant written acknowledgment of receipt of the complaint and any follow up questions needed to clarify the complaint; and

(5) send a copy of the complaint to the respondent(s) via electronic mail or certified U.S. mail to the address of record in the respondent's file, unless the department reasonably determines that disclosure of the information in the complaint at that time, will substantially and materially impair the integrity or efficacy of the investigation.

[16.48.9.9 NMAC – N, 12/28/2021]

16.48.9.10 RESPONDING TO COMPLAINT:

A. The respondent must submit a written response to the department within 20 business days of receipt the complaint, and shall provide all necessary documents and exhibits in support of the response.

B. A failure to submit a written response to the department within the time frame specified may result in disciplinary action up to and including revocation of the license or registration at the discretion of the department.

[16.48.9.10 NMAC – N, 12/28/2021]

16.48.9.11 DEPARTMENT REVIEW AND INVESTIGATION OF COMPLAINTS:

A. The department will review and investigate all written, signed complaints against a respondent unless it is determined that there is insufficient evidence, cause, or jurisdiction to proceed.

B. If the department determines that further information is needed, the department may utilize an investigator or subject matter expert to review complaints as part of its investigation. The purpose of an investigation is to gather information regarding the complaint and to verify facts in the complaint.

C. Investigative Subpoenas: The department is authorized to issue investigative subpoenas prior to the issuance of a notice of contemplated action and to employ experts with regard to pending investigations.

D. Upon completion of the investigation, the compliance staff or investigator will prepare a report which includes its factual findings and conclusions on any violations of the Private Investigations Act and rules, all relevant exhibits, and a recommendation to the superintendent as to a course of action regarding the compliant.

[16.48.9.11 NMAC – N, 12/28/2021]

16.48.9.12 DEPARTMENT ACTION ON A COMPLAINT:

A. If the department determines after investigation, that there is not sufficient evidence or cause to issue a notice of contemplated action, or other disciplinary action, the case shall be closed and the department's assigned compliance staff shall send a letter of the decision to both the complainant and respondent. The letter will state the department's decision and that the decision is final unless new evidence is presented.

B. If the department determines that there is sufficient evidence or cause to issue a notice of contemplated action, the department may send a referral to the office of the attorney general by forwarding a complete copy of the investigation file, including exhibits, for assignment of an administrator prosecutor.

C. The department may take any other action with regard to a complaint which is within its authority, including referring the complaint to the attorney general for injunctive proceedings; or referring the complaint to the attorney general or a district attorney for criminal prosecution of persons alleged to be engaging in business regulated by the Private Investigations Act who fraudulently makes a representation as being a licensee or registrant, represents employment by a licensee, or violates a mandatory requirement set forth in statute or rule subject to criminal penalties.

D. At the discretion of the superintendent, the complaint may be referred to a subject matter expert or to the advisory board for review.

(1) Any appointed subject matter expert or advisory board member who believes that they are not capable of judging a particular complaint fairly on the basis of the member's own circumstances shall not participate in the decision to consider the facts and circumstances of the complaint or to issue a notice of contemplated action and must not participate in the final recommendation to the superintendent.

(2) Where the appearance of impropriety or any violation of the government conduct act may occur, an advisory board member shall recuse from any consideration of the complaint, the hearing, deliberation or recommendation to the decision of the department.

E. Before the issuance of a notice of contemplated action, the superintendent may authorize department staff to confer with the respondent for the purpose of seeking a pre-NCA settlement agreement. Any proposed pre-NCA settlement agreement must be approved by the superintendent and must be negotiated with the consent of the respondent, and shall include a knowing and intentional waiver by the respondent of the right to a hearing under the Uniform Licensing Act. The respondent's attorney should sign the

pre-NCA settlement agreement or the respondent must acknowledge that the respondent has been advised to seek the advice of an attorney and has waived the right to do so.

F. After issuance of a notice of contemplated action, the administrative prosecutor may negotiate a settlement agreement with the respondent. Any proposed settlement agreement must be approved by the superintendent and must be negotiated with the consent of the respondent, and shall include a knowing and intentional waiver by the respondent of the right to a hearing under the Uniform Licensing Act. The respondent's attorney should sign the settlement agreement or the respondent must acknowledge that the respondent has been advised to seek the advice of an attorney and has waived the right to do so.

G. All disciplinary hearings shall be conducted in accordance with the Uniform Licensing Act. The superintendent will appoint a hearing officer to conduct the hearing.

(1) The hearing officer will be fully authorized to make all necessary procedural and evidentiary decisions on behalf of the department, including, but not limited to, matters related to discovery, continuances, time extensions, amendment, pre-hearing conferences, and proposed findings of fact and conclusions of law.

(2) The hearing officer may make such orders the hearing officer determines may be necessary to including but not limited to discovery schedules, pleading schedules, and briefing schedules.

(3) No party will engage in ex-parte communications with the hearing officer or any member of the advisory board or department staff in any matter in which a notice of contemplated action has been issued.

(4) Respondents who have been found culpable and sanctioned by the department may be responsible for the payments of all administrative

and investigative costs, and costs of conducting the hearing.

H. Pursuant to the Private Investigations Act and the Uniform Licensing Act, the department, in its sole and sound discretion, may impose any of the following penalties against a respondent upon a finding of a violation of the Private Investigations Act, the rules promulgated under the Private Investigations Act, or the Code of Ethics and Creed of Conduct adopted by the department, including for those acts of "unprofessional conduct" defined in 16.48.1.8 NMAC:

- (1)** denial of application for licensure;
- (2)** refusal to renew licensure;
- (3)** written reprimand;
- (4)** written censure;
- (5)** imposition of probationary conditions on a license for a specified time period;
- (6)** the requirement that the licensee or applicant complete a program of remedial education;
- (7)** corrective action as specified by the superintendent;
- (8)** suspension of a license;
- (9)** revocation of a license; and
- (10)** in addition to or in lieu of any of the foregoing, payment of a fine for each violation found, not to exceed \$1000 for a violation of the Private Investigations Act or against a person to have engaged in practice regulated by the department without appropriate license or registration in an amount not to exceed \$2000, unless a greater amount is provided by law.

I. A respondent whose license has been revoked may reapply for licensure one year from the effective date of the revocation.

(1) The department shall have discretion to approve or to reject any application for reinstatement of the license following the one year period of revocation.

(2) If the department determines that rejection of the application for reinstatement of the license will be considered, it shall do so only in accordance with the notice and hearing provisions of the Uniform Licensing Act.

(3) No application for reinstatement shall be granted unless all fines and costs assessments related to the license revocation proceeding shall have been paid in full.

[16.48.9.12 NMAC – N, 12/28/2021]

16.48.9.13 DEPARTMENT REVIEW AND ACTION UPON APPLICANT BACKGROUND CHECK RESULTS:

A. The department will review each application received pursuant to 16.48.2 NMAC.

B. If the department determines that additional documentation is required because the application is not complete, or if the department has any questions about the application, the department may request that the applicant provide a written clarifying statement or additional documentation including any additional documents or written clarifying statements related to federal or department of public safety background check results.

C. The department will refer to the office of the attorney general for notice of contemplated action, any applications that produce evidence of a violation of the Private Investigations Act.

[16.48.9.13 NMAC – N, 12/28/2021]

16.48.9.14 CRIMINAL CONVICTIONS:

A. Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an individual from receiving or retaining a license or registration issued by the department, for:

(1) private investigations company, and private patrol company, includes individuals or all owners, officers or directors

or members of the entity: a felony offense including an offense involving dishonesty or involving an intentional violent act or illegal use or possession of a deadly weapon;

(2) private investigator, and private investigations manager: a felony offense including an offense involving dishonesty or an intentional violent act or illegal use or possession of a deadly weapon;

(3) polygraph examiner: a felony involving an intentional violent act or the illegal use or possession of a deadly weapon;

(4) private patrol operator or private patrol operations manager: a felony offense including an offense involving dishonesty or intentional violent act or illegal use or possession of a deadly weapon;

(5) private investigations employee: a felony involving an intentional violent act or illegal use or possession of a deadly weapon; and

(6) security guard level one, level two, and level three: a felony offense, including an offense involving dishonesty or involving an intentional violent act or illegal use or possession of a deadly weapon.

B. The department shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

C. Nothing in this rule prevents the department from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violates the Private Investigations Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

D. In connection with an application for licensure, the department shall not use, distribute, disseminate, or admit into evidence at

an adjudicatory proceeding criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule. [16.48.9.14 NMAC – N, 12/28/2021]

16.48.9.15 DISCIPLINARY ACTIONS ARE PUBLIC

RECORD: Any disciplinary action including complaints, witness statements, supporting documents, pre-NCA settlement agreements, or post-NCA settlement agreements, are public record unless expressly exempt under the Inspection of Public Records Act. Final pre-NCA settlement agreements and final orders issued by the superintendent may be posted on the department's website. [16.48.9.15 NMAC – N, 12/28/2021]

16.48.9.16 UNIFORM LICENSING ACT PROTECTION FROM LIABILITY FOR COMPLAINANT:

Pursuant to Subsection G of Section 61-1-7 NMSA 1978, There shall be no liability on the part of, and no action for damages against, a person who provides information to the department in good faith and without malice in the reasonable belief that such information is accurate. An applicant, a licensee or registrant, who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing information to the department shall be subject to disciplinary action. [16.48.9.16 NMAC – N, 12/28/2021]

History of 16.48.9 NMAC:
[RESERVED]

SECRETARY OF STATE, OFFICE OF THE

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS PART 31 FINANCIAL DISCLOSURE REPORTING PROCEDURES

1.10.31.1 ISSUING

AGENCY: Office of the Secretary of State
[1.10.31.1 NMAC - N, 1/1/2022]

1.10.31.2 SCOPE: The rule applies to all persons required to file financial disclosure statements in accordance with the Financial Disclosure Act, Chapter 10, Article 16A NMSA 1978.
[1.10.31.2 NMAC - N, 1/1/2022]

1.10.31.3 STATUTORY

AUTHORITY: This rule is authorized by Section 10-16A-9 NMSA 1978.
[1.10.31.3 NMAC - N, 1/1/2022]

1.10.31.4 DURATION:

Permanent
[1.10.31.4 NMAC - N, 1/1/2022]

1.10.31.5 EFFECTIVE

DATE: January 1, 2022, unless a later date is cited at the end of a section.
[1.10.31.5 NMAC - N, 1/1/2022]

1.10.31.6 OBJECTIVE:

The objective of the rule is to establish uniform procedures for the filing of financial disclosure statements and clarify undefined terms.
[1.10.31.6 NMAC - N, 1/1/2022]

1.10.31.7 DEFINITIONS:

A. "Business interest"
means any direct or indirect financial interest or financial obligation of \$10,000 or more such as an owner, member, partner, lessor, investor, or shareholder in a business or where the filer is at risk of losing \$10,000 or more.

B. “Consulting”

means giving expert advice in professional, technical, financial, legal, and business matters.

C. “Employer” means a person or organization that hires and pays another person in exchange for work.

D. “External complaint” means a complaint filed by a person and not instituted by either the secretary of state or the state ethics commission.

E. “Filer” means the person obligated to file a financial disclosure statement.

F. “Financial disclosure statement (FDS)” means the pdf form prescribed by the secretary of state that is generated upon a filer filing a report in the electronic system provided by the secretary of state.

G. “Income” means money that a person receives in exchange for working, producing a product or service, or investing capital. For purposes of financial disclosure statements, per diem is considered income when it is deemed taxable by the Internal Revenue Service.

H. “Income source” means the broad categories as described pursuant Paragraph (2) of Subsection D of Section 10-16A-3 NMSA 1978.

I. “Internal compliance violation” means a violation of the Financial Disclosure Act identified by the secretary of state or the state ethics commission based on incomplete, misleading, false, or incorrect financial disclosure statement.

J. “Major areas of specialization” means the areas of law or consulting for which a person concentrates to earn an income.

K. “State agency head” means the principal officer of any executive or legislative agency receiving an annual appropriation in either Section 4 of the General Appropriations Act or an annual appropriations bill appropriating funds to legislative agencies.

L. “Title” means the name given to a position of employment by an employer.

M. “Professional license” means an official process, administered by a state-level authority, that is required by law for an individual to practice or work in a regulated profession.

N. “Voluntary compliance” means a filer’s correction of all violations alleged in a complaint or a notification from the secretary of state or the state ethics commission of an internal compliance violation.
[1.10.31.7 NMAC - N, 1/1/2022]

1.10.31.8 REQUIRED DISCLOSURES

A. The proper filing officer for filing a FDS is the secretary of state. The secretary of state has prescribed the use of an electronic filing system which shall be used by all persons required to file a FDS. Paper form submissions will not be accepted.

B. Contact information (Section 1). The filer shall disclose the filer’s full name, residential address, and mailing address on the FDS. If a filer is currently married, the filer shall disclose the full name of the filer’s spouse on the FDS.

C. Current filing status (Section 2). The FDS shall disclose:
(1) if the filer is a candidate or public official, the name of the office held or sought and the start date of the first term of office held or sought;

(2) if the filer is a state agency head, the name of the agency and the first day the filer held the position of state agency head;

(3) if the filer is a member of a board or commission, the name of the board or commission and the first day the filer held the position as a board or commission member;

(4) if the filer is a member of the insurance nominating committee or member of the state ethics commission, the name of the commission and the first day the filer held the position on the commission; or

(5) if the filer is an employee of the state and is required to file pursuant to Subsection A of Section 10-16A-4 NMSA 1978, the name of the state agency and the first day the filer held a position at the state agency.

D. Employer information (Section 3). The filer shall disclose the employer’s name, phone number, address, title, and nature of business or occupation for every employer of the filer on the FDS. The filer shall include the filer’s current employer(s) and any previous employer(s) from the prior calendar year.

E. Spouse’s employer information (Section 4). If the filer is married, the filer shall disclose the employer’s name, phone number, address, title, and nature of business or occupation for every employer of the filer’s spouse on the FDS. The filer shall include the current employer(s) and any previous employer(s) from the prior calendar year.

F. Sources of gross income over \$5,000 (Section 5). The filer shall disclose all sources of gross income over \$5,000 during the prior calendar year for the filer and the filer’s spouse listed by income source and whether the income was earned by the filer or the filer’s spouse on the FDS. For example, if the filer makes over \$5,000 on two different real estate holdings, the filer must list the income source category of “real estate” once. If both the filer and the filer’s spouse each earn an income source from the same category, the filer shall list one line item for each, the filer and the filer’s spouse. In the case that a single income source is earned jointly, the filer shall list the income source once and list the filer as the income holder.

G. Law practice, consulting operation, or similar business (Section 6). If a filer or filer’s spouse is employed as an attorney or a consultant, the filer shall describe each major area of specialization for the filer and filer’s spouse. Using the general term of “law” or “consulting” is not

descriptive enough for this section of the FDS. The filer shall use the income sources listed pursuant to Paragraph (2) of Subsection D of Section 10-16A-3 NMSA 1978 or a description that is equally or more descriptive.

H. Lobbying clients (Section 7). If a filer, filer's spouse, or other person associated with a business interest of the filer or filer's spouse is a registered lobbyist in the current or prior calendar year, the filer shall disclose the following on the FDS:

- (1) the name of the lobbyist; and
- (2) the name and address of the client represented by the lobbyist.

I. Real estate owned in New Mexico (Section 8). The filer shall disclose a general description of the type of property and the county in which it is located for all real estate owned by the filer and the filer's spouse in New Mexico other than the filer's personal residence. If a property is owned jointly with other persons, the filer shall list the owner as the filer on the FDS. The use of "house," "farmland," or "vacant lot" are acceptable examples of a general description pursuant to this section.

J. Other New Mexico business interests over \$10,000 (Section 9). The filer shall disclose all business interests not already listed in another section of the FDS for the filer and the filer's spouse. The information required for a business interest is the name of the business, the position held by the filer or filer's spouse, a description of the business purpose, and whether the business interest is that of the filer or the filer's spouse. If both the filer and the filer's spouse hold a business interest in the same business, the filer shall make an entry for each person on the FDS for that business.

K. For-profit board membership (Section 10). The filer shall disclose the name of all for-profit business(es) for which the filer or the filer's spouse are a board member regardless of any financial interest.

L. New Mexico professional licenses (Section 11). The filer shall disclose the type of license(s) held at the time the FDS is filed by the filer or the filer's spouse.

M. Goods or services to state agency over \$5,000 (Section 12). The filer shall disclose the name of every state agency that the filer or filer's spouse provided over \$5,000 in goods or services in the prior calendar year.

N. State agency representation (Section 13). The filer shall disclose the name of every state agency, other than a court, in which a person listed on the FDS either represented or assisted clients in the course of the filer's employment in the prior calendar year.

O. General information/memo field (Section 14). The filer may provide further details regarding any financial or business interests not otherwise disclosed on the FDS.

P. This rule shall not be construed to prohibit a filer from disclosing more information than is required on their FDS.

Q. The FDS shall be electronically signed by the filer under penalty of perjury that the information provided is true, accurate and complete to the best of the filer's knowledge.

[1.10.31.8 NMAC - N, 1/1/2022]

1.10.31.9 TIME OF FILING

A. A filer shall file an amended FDS at any time to reflect a significant change in the filer's or filer's spouse's business and financial interests in the current calendar year.

B. A person holding a legislative or statewide office shall file a FDS in January of every year by January 31 at midnight.

C. A candidate for legislative or statewide office, that has not already filed a FDS in the same year, shall file a FDS with the secretary of state within three days of filing a declaration of candidacy. Pursuant to Subsection H of Section 10-16A-2 NMSA 1978, a candidate for legislative or statewide offices who does not file a FDS before the

date for qualification of the person as a candidate shall be disqualified by the proper filing officer as a candidate.

D. A state agency head or board or commission member required to file a FDS, shall file within 30 days of being hired or appointed and by January 31 at midnight each year thereafter as long as the filer holds the same position.

E. A person who is required to file a FDS for more than one reason, for example the filer is appointed to multiple boards, shall only file one FDS upon the filer's first appointment and in January each year thereafter for as long as the filer maintains at least one position that requires a FDS. The filer shall list all positions held or offices sought on the filer's FDS.

[1.10.31.9 NMAC -N, 1/1/2022]

1.10.31.10 RESPONSIBILITIES OF THE SECRETARY OF STATE:

A. The secretary of state shall maintain training materials regarding compliance with the Financial Disclosure Act and the use of the electronic filing system used to file a FDS on the secretary of state's website.

B. If the secretary of state receives an external complaint about a person required to file under the Financial Disclosure Act or otherwise becomes aware of a potential violation or discrepancy, the secretary of state shall provide the filer ten business days to come into voluntary compliance with the Financial Disclosure Act before referring the matter to the state ethics commission.

C. The secretary of state shall notify the filer of an internal compliance violation and provide the person ten business days to correct the matter. If the filer responsible for the internal compliance violation does not correct the matter within ten business days of receiving a notice from the secretary of state, the secretary of state shall notify the state ethics commission and transmit to the state ethics commission any documents related to the internal compliance violation.

D. The secretary of state shall conduct annual reviews for compliance with the Financial Disclosure Act.
[1.10.31.10 NMAC -N, 1/1/2022]

SUPERINTENDENT OF INSURANCE, OFFICE OF THE

TITLE 13 INSURANCE CHAPTER 10 HEALTH INSURANCE PART 39 PATIENTS' DEBT COLLECTION PROTECTIONS

13.10.39.1 ISSUING
AGENCY: Office of Superintendent of Insurance ("OSI").
[13.10.39.1 NMAC - N, 12/28/2021]

13.10.39.2 SCOPE: This rule applies to health care facilities, third-party health care providers, medical creditors, medical debt collectors and medical debt buyers subject to Sections 57-32-1 to 57-32-10 NMSA 1978.
[13.10.39.2 NMAC - N, 12/28/2021]

13.10.39.3 STATUTORY
AUTHORITY: Sections 59A-2-9 NMSA 1978 and sections 57-32-1 to 57-32-10 NMSA 1978.
[13.10.39.3 NMAC - N, 12/28/2021]

13.10.39.4 DURATION:
Permanent.
[13.10.39.4 NMAC - N, 12/28/2021]

13.10.39.5 EFFECTIVE
DATE: December 28, 2021 unless a later date is cited at the end of a section.
[13.10.39.5 NMAC - N, 12/28/2021]

13.10.39.6 OBJECTIVE: To ensure that health care facilities offer and provide screenings to uninsured patients who may be eligible for Medicaid or other public health insurance, and to ensure that medical debt incurred by indigent patients will not be pursued through certain proscribed collection actions.
[13.10.39.6 NMAC - N, 12/28/2021]

13.10.39.7 DEFINITIONS:
For definitions of terms contained in this rule, refer to the Patients' Debt Collection Protection Act Sections 57-32-1 to 57-32-10 NMSA 1978 and in Chapter 59A NMSA 1978, unless otherwise noted below.

A. "Culturally and linguistically appropriate" means communication that meets the following requirements:

(1) the provision of oral and hearing-impaired language services (such as the telephone customer assistance hotline) that includes answering questions in any applicable non-English language, including American sign language (ASL), and providing assistance with filing claims and reviews in any applicable non-English language;

(2) the provisions of, upon request, verbal interpretation or translation of a notice into any applicable non-English language;

(3) the inclusion of, in the English version of all notices, a statement prominently displayed in any applicable non-English language clearly indicating how to access the language services provided by the health care facility;

(4) applicable non-English language is as defined by the centers for Medicare and Medicaid Services; and

(5) any written notice required by this rule must include the required information in English and Spanish.

B. "Day" or "days"
means, unless otherwise specified:

(1) one – five days excludes weekends and state holidays; and

(2) six days or more includes weekends and holidays.

C. "Deliver" or "delivery" means email and retain an email delivery confirmation; written documentation of a verbal communication; electronic transmission through a dedicated two-way communication portal and retain delivery confirmation; fax and retain a fax delivery confirmation; regular

mail; or personal delivery. Written documentation may be maintained in a patient's electronic health record.

D. "Disclose" or "disclosure" means the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.

E. "Episode of care"
means all emergency or medically necessary health care services related to the treatment of a condition or a service category for such treatment and for acute conditions, includes health care service and treatment provided from the onset of the condition to its resolution or a service category for such treatment and, for chronic conditions, includes health care services and treatment provided over a given period of time.

F. "Federal poverty guidelines" means the poverty guidelines issued annually by the U.S department of health and human services at aspe.hhs.gov/poverty-guidelines/.

G. "Household"
means the countable members of the patient's household as defined by modified adjusted gross income.

H. "Medicaid"
means the federal health program administered by the New Mexico human services department and established by the federal department of health and human services under Title XIX of the Social Security Act and by state statute, Section 27-1-12 NMSA 1978 et. seq., and regulations, including 8.391.430 NMAC.

I. "Modified adjusted gross income" or "MAGI"
means household size and income calculated to determine eligibility for a Medicaid program as set forth by the New Mexico human services department.

J. "Patients' Debt Collection Protection Act" ("the Act") means Sections 1 through 10 of Chapter 57-32 NMSA 1978 and Section 61-18A-2 NMSA 1978.

K. "Public insurance" or "public health insurance"
means Medicare, Medicaid, or any other government-supported health

insurance and includes insurance offered on the New Mexico insurance exchange or by the New Mexico medical insurance pool.

L. “Screen” or “Screening” means a culturally and linguistically appropriate verbal or written inquiry to the patient about the patient’s insured status for purposes of determining presumptive eligibility for Medicaid, eligibility for Medicaid or other public insurance programs, and eligibility for public financial assistance programs, including but not limited to the health care facility’s own programs, or county or state indigency assistance.

M. “Uninsured” means that a patient who does not have major medical insurance compliant with the provisions of the Affordable Care Act.
[13.10.39.7 NMAC - N, 12/28/2021]

13.10.39.8 SCREENING FOR INSURANCE AND PROGRAM ELIGIBILITY:

A health care facility shall screen all patients and offer to assist uninsured patients in obtaining or accessing Medicaid, public insurance, public programs that assist with health care costs, and other financial assistance offered by the health care facility, before seeking payment for emergency or medically necessary care. A health care facility shall include a written notification regarding screening with any forms presented to patients for completion prior to service. No collection action shall occur during the screening process or while the patient’s financial status or application for insurance or financial assistance is under review or in process. During a screening or provision of application assistance under this section, a health care facility shall not request or require information or documentation that is not necessary to determine eligibility for public insurance, public programs that may assist with health care costs, or financial assistance.

A. Timing. Health care facilities shall affirmatively offer to screen patients and, if the patient accepts the offer, screen patients when

the patient is registered or within the following time periods:

(1) a patient who is admitted for emergency care shall be screened when the patient’s condition has been stabilized through treatment and prior to discharge;

(2) a patient who is admitted for inpatient care shall be screened at the time that the inpatient care is scheduled or within 48 hours of admission;

(3) a patient who receives outpatient care shall be screened at the time that the outpatient care is scheduled or prior to completion of treatment;

(4) upon request of a patient who is scheduled to receive or has received health care services from the health care facility; or

(5) an incapacitated patient, including unconscious or otherwise unable to communicate, shall be screened when the patient is able to effectively communicate, if such status is achieved prior to discharge. The health care facility shall offer screening to parents, spouses, persons with healthcare powers of attorney or guardians of the patient, on the incapacitated patient’s behalf.

(6) screening shall be provided upon request and shall be offered at least once for every episode of care within a 12 month period of time;

(7) completion of the screening process may occur outside of the specified time frames if the facility has made a documented good faith effort to complete the screening timely but is unable to do so due to availability of its screening personnel, inability of the patient to provide necessary documentation, or lack of cooperation of the patient.

B. Scope. Screening for public health insurance and health cost assistance eligibility must be offered to every patient and if requested by the patient, the health care facility shall:

(1) verify whether a patient is uninsured;

(2) if the

patient is uninsured, offer information about, offer to screen for and screen the patient for:

(a) all available public insurance including Medicaid, Medicare, New Mexico’s children’s health insurance program and Tricare;

(b) public programs that may assist with health care costs including but not limited to the New Mexico health insurance exchange, the New Mexico medical insurance pool, county indigent care programs, COVID-19 claims reimbursement programs, and the Indian health service purchased/referred care program; and

(c) financial assistance offered by the health care facility.

C. Assistance. Health care facilities shall offer to provide assistance to uninsured patients with the application process for programs identified in the screening and, if requested, provide the assistance. Providing assistance means having adequate staff, systems, and equipment available to enable the completion and submission of any Medicaid, financial assistance or other health insurance application(s) within 15 days after receipt from the patient, or his or her representative, of the information necessary to complete the application.

D. Notification. The health care facility must provide notification regarding the screening to patients who are uninsured as follows.

(1) provide information about the insurance for which the patient appears to be eligible and the contact information for the program to which any application was submitted;

(2) the results of the screening must be delivered to the patient, or the patient’s legal guardian or parent, if the patient is a minor or disabled, in writing within 15 days of the completion of the screening.

(3) if the patient declines screening, notification must be delivered to the patient with information about how to apply for

health insurance, including Medicaid and the New Mexico health insurance exchange within 15 days of the patient's discharge.

(4) if during the screening the health care facility determines that the patient is indigent, the patient must be notified in writing within 30 days of screening, that the medical cost for the health care services may not be the subject of prohibited collection action, although the health care facility may bill the patient for the health services as permitted by law.

(5) if the patient is determined indigent during the screening process the health care facility must take steps to ensure that any subsequent medical debt collection efforts do not include prohibited collection action. Such steps may include notifying the health care facility's billing department and any debt collectors or attorneys acting on behalf of the health care facility; and

(6) if the patient is found presumptively eligible for Medicaid, or eligible for any other public health insurance or financial assistance program, written notification of eligibility must be provided to the patient within 30 days of discharge;

(7) notwithstanding Paragraphs (1) through (6) above, notification shall not be required if the patient has not provided a valid telephone number or mailing address or if, after three documented attempts, the facility has been unable to contact the patient.

E. Coordination. If the patient's treatment will include a third-party health care provider who will bill the patient, the information gathered in the screening process will be provided by the health care facility to the third-party health care provider within five business days through a secure method of transmission protecting the confidentiality of the patient's information.

(1) if the patient is uninsured, the third-party health care provider will notify the health care facility that results of

the screening must be provided to it, and provide the secure method of transmission for such notification.

(a) the third-party healthcare provider will provide contact information to the health care facility for receipt of screening information.

(b) the health care facility will provide contact information to all third-party providers with privileges at its health care facility for the purpose of notification of patient screening.

(2) the information transmitted shall include the patient's identifying information, whether the patient participated in the screening, the outcome of the screening and any application process, the status of the patient's application for assistance with health care costs, and whether the screening identified the patient as indigent.

(3) if the health care facility has determined that the patient is indigent and provides that information to the third-party health care provider, neither the health care facility nor the third-party health care provider may engage in prohibited collection action to collect unpaid medical debt.

(4) the third-party health care provider shall not seek payment for emergency or medically necessary care until the health care facility has provided the screening information to the third-party healthcare provider. When the third-party health care provider has received the screening information, it will notify the patient that it has received the results and, if in the process of screening for insurance eligibility it was determined that the patient was found indigent, that it will not pursue any prohibited collection action for the medical costs related to the health care services.

F. Confidentiality.

A health care facility or third-party health care provider shall not disclose or use information a patient provides during the screening and application process except as permitted or required in the Act and

its implementing regulations and as further provided below:

(1) as needed to facilitate the application process for health insurance or financial assistance as described in Paragraph C of this section;

(2) upon request, a health care facility or third-party health care provider shall disclose information obtained during a screening or application assistance conducted pursuant to this rule or during an indigency determination pursuant to Section 9 of this rule to the patient; or

(3) a health care facility or third-party health care provider is required to disclose information provided during screening or application assistance when required by the human services department or the attorney general's office to investigate or determine the health care facility's or third-party health care provider's compliance with the Act; provided, that such information shall not be used or disclosed by the human services department or attorney general's office for any purpose other than the investigation or determination of the health care facility's or third party health care provider's compliance with the Act.

[13.10.39.8 NMAC - N, 12/28/2021]

13.10.39.9 INDIGENT PATIENT DETERMINATION:

Collection action based on charges for health care services and medical debt may not be pursued against an indigent patient. A determination whether a patient is an indigent patient shall be made before collection action is pursued against the patient.

A. Prohibited activity. Medical creditors and medical debt collectors shall not pursue collection action against indigent patients.

(1) A medical creditor may engage in a determination of indigency at the time of service or at any time during or after the provision of services. If the patient is determined to be indigent the medical creditor may not engage in prohibited collection action.

(2) A failure to make a determination of indigency does not waive the prohibition on collection action against indigent patients unless the failure to make the determination is due to noncooperation by the patient. Noncooperation must be documented and the medical creditor or debt collector must be able to demonstrate a minimum of three efforts to contact the patient.

(3) Any bill or statement to a patient must be accompanied by a notice, in English and Spanish, in at least 14-point font in the form prescribed by the superintendent. The superintendent will publish the required notice on its website.

(4) If the patient contacts the medical creditor or medical debt collector to request a determination of indigency, the medical creditor or medical debt collector must make a determination using the methodology set forth below.

B. Methodology.

The medical creditor or medical debt collector shall make a determination as to whether the patient is indigent using the following methodology:

(1) household income will be calculated using the methods used to determine Medicaid eligibility by the New Mexico human services department, Title 8 Chapter 200 NMAC, and by the federal Medicaid program utilizing the MAGI protocols promulgated by the New Mexico human services department;

(2) utilizing the most recent federal poverty guidelines, the patient household income and household size, the medical creditor or medical debt collector shall determine whether the patient's income is less than or equal to two hundred percent of the federal poverty guidelines;

(3) in determining household income, the medical creditor or medical debt collector will consider both permanent and temporary income as defined by MAGI;

(4) the inquiry as to indigency is restricted to the categories of income subject to inclusion in the MAGI guidelines;

(5) information obtained from the patient or the patient's household during the determination of indigency shall be considered confidential and may not be used or disclosed for any other purpose; and

(6) the determination of a patient's indigency is valid for 24 months.

C. Indigency tool. The superintendent on an annual basis will provide an optional on-line tool for calculation of indigency for purposes of this section. The superintendent will publish a self-attestation form on its website for use by medical creditors, medical debt collectors and patients in establishing indigency.

D. Use of screening information. If the medical creditor is a health care facility or third-party provider, it may use the information gathered during the screening process to determine whether the patient is indigent. If the patient is indigent based on information gathered during the screening process, then the health care facility or third-party provider shall ensure that its efforts to collect unpaid medical debt do not include prohibited collection action. The health care facility and third-party provider will also inform any medical debt buyer or medical debt collector that collection action is prohibited against that patient.

E. Medical creditors. Medical creditors will make the determination of indigency based on verbal or written communication with the patient, in which the patient will be asked to prove household income and household size consistent with the MAGI protocols.

(1) the verbal or written communication will inform the patient that the purpose of the communication is to determine indigency for the purpose of whether collection action may be pursued.

(2) if the patient is a minor or incapacitated, the communication should be with the

parent(s), spouse, or legal guardian(s) of the patient;

(3) the verbal or written communication with the patient will be documented, including date, time, identity of person engaged in the communication, and complete contents of the information obtained from the communication; and

(4) the patient may respond to the communication by providing a signed attestation as to household income and size, or through provision of documentation such as pay stubs, at the election of the patient.

F. Notification.

The patient will be provided with notification of the results of the determination of indigency in writing within 30 days of the date the medical creditor made the determination but in no event more than 60 days after the determination was initiated.

(1) if the patient is determined to be indigent, the notice shall inform the patient that certain collection action for the health care services and medical debt are prohibited by the Act.

(2) the notice will provide information to the patient about how to apply for Medicaid, public insurance, and insurance through the New Mexico health insurance exchange.

(3) the notice shall inform the patient of the right to complain to the New Mexico attorney general and shall include the website and telephone number of that office.

G. Medical debt collectors. A medical debt collector shall inquire of the medical creditor on behalf of whom it is pursuing collection against a patient, whether that patient had been determined indigent. If the patient has been determined indigent, then certain collection action as defined herein is prohibited.

(1) the action of selling medical debt of an indigent patient to a medical debt buyer or medical debt collector constitutes prohibited collection action.

(2) medical creditors, including but not limited

to health care facilities and third-party health providers, shall not hire or otherwise engage third parties to use prohibited collection action or otherwise recover debts from indigent patients. These third parties, including debt collectors and debt buyers, are prohibited from recovering debts from indigent persons, to include activity intended to collect an unpaid medical debt.

[13.10.39.9 NMAC - N, 12/28/2021]

History of 13.10.39 NMAC: [RESERVED]

WORKFORCE SOLUTIONS, DEPARTMENT OF

This is an amendment to 11.1.2 NMAC Sections 20 and 21 to be effective 1/1/2022.

11.1.2.20 PREVAILING WAGE AND FRINGE BENEFIT AND APPRENTICESHIP CONTRIBUTION

RATES: Pursuant to 11.1.2.13 NMAC, the director of the labor relations division of the department of workforce solutions hereby publishes the proposed [2021] 2022 prevailing wage and fringe benefit rates and apprenticeship contributions that will apply to all wage rate decisions issued from January 1, [2021] 2022 through December 31, [2021] 2022.

A. TYPE A: STREET, HIGHWAY, UTILITY AND LIGHT ENGINEERING			
Trade Classification	Base Rate	Fringe Rate	Apprenticeship
Bricklayer / block layer/ stonemason	24.46	8.81	
Carpenter / lather	[25.63] <u>26.48</u>	[11.74] <u>12.14</u>	
Carpenter – Los Alamos county	[28.37] <u>29.24</u>	[13.44] <u>13.94</u>	
Cement mason	[17.42] <u>17.74</u>	[6.81] <u>7.41</u>	
<u>Drywall Finisher/Taper</u>	<u>25.21</u>	<u>8.00</u>	
<u>Glazier</u>			
<u>Glazier/Fabricator</u>	<u>21.00</u>	<u>6.45</u>	
<u>Delivery Driver</u>	<u>11.50</u>	<u>6.45</u>	
Ironworker	[27.35] <u>27.70</u>	[17.49] <u>17.89</u>	
Painter – Commercial	[17.25] <u>17.75</u>	[7.75] <u>8.20</u>	
Paper Hanger	<u>17.75</u>	<u>8.20</u>	
Plumber / pipefitter	[31.52] <u>33.10</u>	[12.90] <u>13.10</u>	
Electricians – outside classifications: Zone 1			
Ground man	[23.74] <u>24.57</u>	[13.16] <u>11.74</u>	
Equipment operator	[34.06] <u>35.25</u>	[15.94] <u>16.06</u>	
Lineman [/-technician]	[40.07] <u>44.32</u>	[17.57] <u>18.08</u>	
<u>Journeyman technician</u>	<u>41.47</u>	<u>17.37</u>	
Cable splicer	[44.08] <u>48.75</u>	[18.65] <u>19.19</u>	
Electricians – outside classifications: Zone 2			
Ground man	[23.74] <u>24.57</u>	[13.16] <u>11.74</u>	
Equipment operator	[34.06] <u>35.25</u>	[15.94] <u>16.06</u>	
Lineman[/-technician]	[40.07] <u>44.32</u>	[17.57] <u>18.08</u>	
<u>Journeyman technician</u>	<u>41.47</u>	<u>17.37</u>	
Cable splicer	[44.08] <u>48.75</u>	[18.65] <u>19.19</u>	
Electricians – outside classifications: Los Alamos county			
Ground man	[24.42] <u>25.27</u>	[13.34] <u>11.76</u>	
Equipment Operator	[35.04] <u>36.27</u>	[16.21] <u>16.09</u>	
Lineman/Technician	[41.22] <u>45.47</u>	[17.88] <u>18.36</u>	
<u>Journeyman technician</u>	<u>42.41</u>	<u>17.60</u>	
Cable Splicer	[45.34] <u>49.59</u>	[18.99] <u>19.40</u>	
Laborers			
Group I	[12.26] <u>14.79</u>	[6.22] <u>6.93</u>	
Group II	[12.56] <u>15.29</u>	[6.22] <u>6.93</u>	

Group III	[12.96] 16.79	[6.22] 6.93	
Group IV	[13.21] 17.29	[6.22] 6.93	
Operators			
Group I	[19.15] 19.93	[6.54] 6.74	
Group II	[20.11] 20.92	[6.54] 6.74	
Group III	[20.21] 21.02	[6.54] 6.74	
Group IV	[20.33] 21.14	[6.54] 6.74	
Group V	[20.43] 21.24	[6.54] 6.74	
Group VI	[20.62] 21.44	[6.54] 6.74	
Group VII	[20.78] 21.61	[6.54] 6.74	
Group VIII	[21.08] 21.92	[6.54] 6.74	
Group IX	[28.80] 29.87	[6.54] 6.74	
Group X	[32.15] 33.32	[6.54] 6.74	
Soft Floor Layer	20.75	8.45	
Truck drivers			
Group I – IX	[16.67] 17.65	[8.27] 8.72	
B. TYPE B: GENERAL BUILDING			
Trade Classification	Base Rate	Fringe Rate	Apprenticeship
Asbestos workers/heat & frost insulators	[33.01] 34.51	12.06	.60
Asbestos workers/heat & frost insulators: Los Alamos county	[35.44] 36.94	12.06	.60
Boilermaker / blacksmith	[34.97] 34.88	[28.85] 32.28	.60
Boilermaker/blacksmith: San Juan county	35.83	31.88	.60
Bricklayer / block layer / stonemason	24.97	9.50	.60
Carpenter / lather	[25.63] 26.48	[11.74] 12.14	.60
Carpenter – Los Alamos county	[28.37] 29.24	[13.44] 13.94	.60
Millwright / pile driver	[33.16] 35.08	[27.24] 27.57	.60
Cement mason	[21.07] 22.04	[10.33] 10.73	.60
Electricians – outside classifications: Zone 1			
Ground man	[23.74] 24.57	[13.16] 11.74	.60
Equipment operator	[34.06] 35.25	[15.94] 16.06	.60
Lineman/ technician	[40.07] 44.32	[17.57] 18.08	.60
Cable splicer	[44.08] 48.75	[18.65] 19.19	.60
Electricians – outside classifications : Zone 2			
Ground man	[23.74] 24.57	[13.16] 11.74	.60
Equipment operator	[34.06] 35.25	[15.94] 16.06	.60
Lineman / technician	[40.07] 44.32	[17.57] 18.08	.60
Cable splicer	[44.08] 48.75	[18.65] 19.19	.60
Electricians – outside classifications: Los Alamos county			
Ground man	[24.42] 25.27	[13.34] 11.76	.60
Equipment operator	[35.04] 36.27	[16.21] 16.09	.60
Lineman / technician	[41.22] 45.47	[17.88] 18.36	.60
Cable splicer	[45.34] 49.59	[18.99] 19.40	.60
Electricians – inside classifications: Zone 1			
Wireman / low voltage technician	[33.65] 35.20	[12.01] 12.21	.60
Cable splicer	[37.02] 38.72	[12.11] 12.31	.60
Electricians – inside classifications: Zone 2			
Wireman / low voltage technician	[36.68] 38.37	[12.10] 12.30	.60
Cable splicer	[40.04] 41.89	[12.20] 12.41	.60
Electricians – inside classifications: Zone 3			
Wireman / low voltage technician	[38.70] 40.48	[12.16] 12.36	.60
Cable splicer	[42.06] 44.00	[12.26] 12.47	.60
Electricians – inside classifications: Zone 4			

Wireman / low voltage technician	[42.40] <u>44.35</u>	[12.27] <u>12.48</u>	.60
Cable splicer	[45.75] <u>47.87</u>	[12.37] <u>12.58</u>	.60
Electricians – inside classifications: Dona Ana county, Hidalgo county, Luna county and Otero county			
Wireman / low voltage technician	<u>31.42</u>	<u>8.87</u>	<u>.60</u>
Cable splicer	<u>30.77</u>	<u>8.64</u>	<u>.60</u>
Electricians – inside classifications: Los Alamos county			
Wireman / low voltage technician	[38.70] <u>40.48</u>	[14.09] <u>14.38</u>	.60
Cable splicer	[42.06] <u>44.00</u>	[14.36] <u>14.67</u>	.60
Elevator constructor	[43.25] <u>46.54</u>	[36.37] <u>37.49</u>	.60
Elevator constructor helper	[36.19] <u>37.48</u>	[36.37] <u>37.49</u>	.60
Glazier			
Journeyman / Fabricator	[20.50] <u>21.00</u>	[6.20] <u>6.45</u>	.60
Delivery driver	[9.00] <u>11.50</u>	[5.35] <u>6.45</u>	.60
Ironworker	[27.35] <u>27.70</u>	[17.49] <u>17.89</u>	.60
Painter (brush/roller/spray)	[17.25] <u>17.75</u>	[7.75] <u>8.20</u>	.60
Paper Hanger	[17.25] <u>17.75</u>	[7.75] <u>8.20</u>	.60
Drywall [4] Finisher/Taper – Light commercial & residential			
Ames tool operator	[25.63] <u>26.21</u>	[7.60] <u>8.00</u>	.60
Hand finisher/machine texture	[24.63] <u>25.21</u>	[7.60] <u>8.00</u>	.60
Plasterer	[23.56] <u>23.95</u>	[9.39] <u>9.59</u>	.60
Plumber / pipefitter	[31.52] <u>33.10</u>	[12.90] <u>13.10</u>	.60
Roofer	[25.74] <u>26.34</u>	[7.97] <u>9.16</u>	.60
Sheet metal worker			
Zone 1	[33.38] <u>34.54</u>	[17.64] <u>17.92</u>	.60
Zone 2 – Industrial	[34.38] <u>35.54</u>	[17.64] <u>17.92</u>	.60
Zone 3 – Los Alamos county	[35.38] <u>36.54</u>	[17.64] <u>17.92</u>	.60
Soft floor layer	[20.30] <u>20.75</u>	[8.10] <u>8.45</u>	.60
Sprinkler fitter	[31.57] <u>32.67</u>	23.46	.60
Tile setter	24.46	8.81	.60
Tile setter helper / finisher	16.53	8.81	.60
Laborers			
Group I – Unskilled and Semi-Skilled	[18.25] <u>18.75</u>	[7.12] <u>7.52</u>	.60
Group II – Skilled	[19.25] <u>19.75</u>	[7.12] <u>7.52</u>	.60
Group III – Specialty	[21.50] <u>22.00</u>	[7.12] <u>7.52</u>	.60
Masonry Laborers			
Group I – Unskilled and Semi-Skilled	[18.75] <u>19.75</u>	[7.34] <u>7.75</u>	.60
Group II – Skilled	[20.50] <u>21.50</u>	[7.34] <u>7.75</u>	.60
Group III – Specialty	[21.00] <u>22.00</u>	[7.34] <u>7.75</u>	.60
[Reinforcing iron workers and post-tension]	[24.75]	[7.12]	[-.60]
Operators			
Group I	[21.96] <u>22.63</u>	[7.47] <u>7.67</u>	.60
Group II	[24.12] <u>24.79</u>	[7.47] <u>7.67</u>	.60
Group III	[24.58] <u>25.25</u>	[7.47] <u>7.67</u>	.60
Group IV	[25.02] <u>25.69</u>	[7.47] <u>7.67</u>	.60
Group V	[25.21] <u>25.88</u>	[7.47] <u>7.67</u>	.60
Group VI	[25.42] <u>26.09</u>	[7.47] <u>7.67</u>	.60
Group VII	[25.53] <u>26.20</u>	[7.47] <u>7.67</u>	.60
Group VIII	[28.58] <u>29.24</u>	[7.47] <u>7.67</u>	.60
Group IX	[30.96] <u>31.63</u>	[7.47] <u>7.67</u>	.60
Group X	[34.36] <u>35.03</u>	[7.47] <u>7.67</u>	.60

Truck drivers			
Group I – VII	16.65	8.27	.60
Group VIII	16.71	8.27	.60
Group IX	18.65	8.27	.60
C. TYPE C: RESIDENTIAL			
Trade classification	Base rate	Fringe rate	Apprenticeship
Asbestos workers/heat & frost insulators	[33.01] <u>34.51</u>	12.06	.60
Asbestos workers/heat & frost insulators – Los Alamos county	[35.44] <u>36.94</u>	12.06	.60
Boilermaker/blacksmith	[21.77] <u>34.88</u>	[3.98] <u>32.28</u>	.60
Boilermaker/blacksmith: San Juan county	<u>35.83</u>	<u>31.88</u>	.60
Bricklayer / block layer / stonemason	24.46	8.81	.60
Carpenter / lather	[25.63] <u>26.48</u>	[11.74] <u>12.14</u>	.60
Carpenter – Los Alamos county	[28.37] <u>29.24</u>	[13.44] <u>13.94</u>	.60
Cement mason	17.96	9.73	.60
Electricians – outside classifications: Zone 1			
Ground man	[23.74] <u>24.57</u>	[13.16] <u>11.74</u>	.60
Equipment operator	[34.06] <u>35.25</u>	[15.94] <u>16.06</u>	.60
Lineman / technician	[40.07] <u>44.32</u>	[17.57] <u>18.08</u>	.60
Cable splicer	[44.08] <u>48.75</u>	[18.65] <u>19.19</u>	.60
Electricians – outside classifications: Zone 2			
Ground man	[23.74] <u>24.57</u>	[13.16] <u>11.74</u>	.60
Equipment operator	[34.06] <u>35.25</u>	[15.94] <u>16.06</u>	.60
Lineman / technician	[40.07] <u>44.32</u>	[17.57] <u>18.08</u>	.60
Cable splicer	[44.08] <u>48.75</u>	[18.65] <u>19.19</u>	.60
Electricians – outside classifications: Los Alamos county			
Ground man	[24.42] <u>25.72</u>	[13.34] <u>11.67</u>	.60
Equipment operator	[35.04] <u>36.27</u>	[16.21] <u>16.09</u>	.60
Lineman / technician	[41.22] <u>45.47</u>	[17.88] <u>18.36</u>	.60
Cable splicer	[45.34] <u>49.59</u>	[18.99] <u>19.40</u>	.60
Electricians – inside classifications: Zone 1			
Wireman / low voltage technician	[33.65] <u>35.20</u>	[12.01] <u>12.21</u>	.60
Cable splicer	[37.02] <u>38.72</u>	[12.11] <u>12.31</u>	.60
Electricians – inside classifications: Zone 2			
Wireman / low voltage technician	[36.68] <u>38.37</u>	[12.10] <u>12.30</u>	.60
Cable splicer	[40.04] <u>41.89</u>	[12.20] <u>12.41</u>	.60
Electricians – inside classifications: Zone 3			
Wireman / low voltage technician	[38.70] <u>40.48</u>	[12.16] <u>12.36</u>	.60
Cable splicer	[42.06] <u>44.00</u>	[12.26] <u>12.47</u>	.60
Electricians – inside classifications: Zone 4			
Wireman / low voltage technician	[42.40] <u>44.35</u>	[12.27] <u>12.48</u>	.60
Cable splicer	[45.75] <u>47.87</u>	[12.37] <u>12.58</u>	.60
Electricians – inside classifications: Dona Ana county, Hidalgo county, Luna county and Otero county			
Wireman / low voltage technician	<u>31.42</u>	<u>8.87</u>	.60
Cable splicer	<u>30.77</u>	<u>8.64</u>	.60
Electricians – inside classifications: Los Alamos county			
Wireman / low voltage technician	[38.70] <u>40.48</u>	[14.09] <u>14.38</u>	.60
Cable splicer	[42.06] <u>44.00</u>	[14.36] <u>14.67</u>	.60
Elevator constructor	[45.23] <u>46.54</u>	[36.37] <u>37.49</u>	.60

Elevator constructor helper	[36.19] 37.48	[36.37] 37.49	.60
Glazier			
Glazier / Fabricator	[20.50] 21.00	[6.20] 6.45	.60
Delivery driver [Driver]	[9.25] 11.50	[6.20] 6.45	.60
Ironworker	[27.35] 27.70	[17.49] 17.89	.60
Painter – Residential	[12.25] 12.75	[7.75] 8.20	.60
Drywall Finisher/Taper– Light commercial & residential			
Ames tool operator	[22.26] 22.84	[7.60] 8.00	.60
Hand finisher/machine texture	[21.26] 21.84	[7.60] 8.00	.60
Paper hanger	[13.25] 13.75	[7.75] 8.20	.60
Plasterer	[19.75] 20.60	[7.92] 8.52	.60
Plumber/pipefitter	[31.52] 26.30	[12.90] 7.30	.60
Roofer	[25.74] 26.34	[7.97] 9.16	.60
Sheet metal worker			
Zone 1	[33.38] 34.54	[17.64] 17.92	.60
Zone 2 – Industrial	[34.38] 35.54	[17.64] 17.92	.60
Zone 3 – Los Alamos county	[35.38] 36.54	[17.64] 17.92	.60
Soft floor layer	[20.30] 20.75	[8.10] 8.45	.60
Sprinkler fitter	[31.57] 32.67	23.46	.60
Tile setter	24.46	8.81	.60
Tile setter help/finisher	16.53	8.81	.60
Laborers			
Group I – Unskilled and Semi-Skilled	[11.25] 11.75	[5.93] 7.52	.60
Group II – Skilled	[12.25] 12.75	[5.93] 7.52	.60
Group III – Specialty	[13.25] 13.75	[5.93] 7.52	.60
Operators			
Group I	[17.29] 17.93	[8.00] 8.20	.60
Group V	[19.03] 19.67	[8.00] 8.20	.60
Group VII	[23.24] 23.88	[8.00] 8.20	.60
Group VIII	[25.34] 25.98	[8.00] 8.20	.60
Truck drivers			
Group I – IX	20.75	6.27	.60
D. TYPE H: HEAVY ENGINEERING			
Trade Classification	Base Rate	Fringe Rate	Apprenticeship
Asbestos workers/heat & frost insulators	[33.01] 34.51	12.06	.60
Asbestos workers/heat & frost insulators: Los Alamos county	[35.44] 36.94	12.06	.60
Boilermaker/blacksmith	[34.97] 34.88	[27.35] 32.28	.60
Boilermaker/blacksmith: San Juan county	35.83	31.88	.60
Bricklayer/block layer/stonemason	25.54	8.81	.60
Carpenter/lather	[25.63] 26.48	[11.74] 12.14	.60
Carpenter – Los Alamos county	[28.37] 29.24	[13.44] 13.94	.60
Millwright/pile driver	[33.16] 35.08	[27.24] 27.57	.60
Cement mason	[21.00] 22.30	[9.38] 7.41	.60
Electricians - outside classifications: Zone 1			
Ground man	[23.74] 24.57	[13.16] 11.74	.60
Equipment operator	[34.06] 35.25	[15.94] 16.06	.60
Lineman/ technician	[40.07] 44.32	[17.57] 18.08	.60

Cable splicer	[44.08] 48.75	[18.65] 19.19	.60
Electricians - outside classifications: Zone 2			
Ground man	[23.74] 24.57	[13.16] 11.74	.60
Equipment operator	[34.06] 35.25	[15.94] 16.06	.60
Lineman/ technician	[40.07] 44.32	[17.57] 18.08	.60
Cable splicer	[44.08] 48.75	[18.65] 19.19	.60
Electricians – outside classifications: Los Alamos county			
Ground man	[24.42] 25.27	[13.34] 11.76	.60
Equipment operator	[35.04] 36.27	[16.21] 16.09	.60
Lineman / technician	[41.22] 45.47	[17.88] 18.36	.60
Cable splicer	[45.34] 49.59	[18.99] 19.40	.60
Electricians – inside classifications: Zone 1			
Wireman/low voltage technician	[33.65] 35.20	[12.01] 12.21	.60
Cable splicer	[37.02] 38.72	[12.11] 12.31	.60
Electricians - inside classifications: Zone 2			
Wireman/low voltage technician	[36.68] 38.37	[12.10] 12.30	.60
Cable splicer	[40.04] 41.89	[12.20] 12.41	.60
Electricians - inside classifications: Zone 3			
Wireman/low voltage technician	[38.70] 40.48	[12.16] 12.36	.60
Cable splicer	[42.06] 44.00	[12.26] 12.47	.60
Electricians - inside classifications: Zone 4			
Wireman/low voltage technician	[42.40] 44.35	[12.27] 12.48	.60
Cable splicer	[45.75] 47.87	[12.37] 12.58	.60
<u>Electricians – inside classifications: Dona Ana county, Hidalgo county, Luna county and Otero county</u>			
Wireman/low voltage technician	31.42	8.87	.60
Cable splicer	30.77	8.64	.60
<u>Electricians – inside classifications: Los Alamos county</u>			
Wireman/low voltage technician	[38.70] 40.48	[14.09] 14.38	.60
Cable splicer	[42.06] 44.00	[14.36] 14.67	.60
Glazier			
Glazier/Fabricator	[20.50] 21.00	[6.20] 6.45	.60
Delivery driver	[9.25] 11.50	[6.20] 6.45	.60
Ironworker	[27.35] 27.70	[17.49] 17.89	.60
Painter – Industrial	[21.50] 22.00	[9.77] 10.05	.60
Paperhanger	[19.00] 19.50	[9.77] 10.05	.60
Drywall [f] Finisher/Taper – Industrial			
Ames tool operator	[26.48] 27.06	[7.60] 8.00	.60
Hand finisher/machine texture	[25.48] 26.06	[7.60] 8.00	.60
Plumber/pipefitter	[31.52] 36.40	[12.90] 14.25	.60
Roofer	[25.74] 26.34	[7.97] 9.16	.60
Sheet metal worker	[33.38] 34.54	[17.64] 17.92	.60
Operators			
Group I	[20.97] 21.81	[6.54] 6.74	.60
Group II	[21.17] 22.01	[6.54] 6.74	.60
Group III	[21.36] 22.22	[6.54] 6.74	.60
Group IV	[21.51] 22.36	[6.54] 6.74	.60
Group V	[21.63] 22.47	[6.54] 6.74	.60
Group VI	[21.81] 22.67	[6.54] 6.74	.60
Group VII	[21.83] 22.69	[6.54] 6.74	.60
Group VIII	[23.79] 24.71	[6.54] 6.74	.60
Group IX	[29.63] 30.72	[6.54] 6.74	.60

Group X	[32.96] 34.15	[6.54] 6.74	.60
Laborers			
Group I – Unskilled	[17.06] 19.18	[6.22] 6.93	.60
Group II – Semi-Skilled	[17.81] 20.06	[6.22] 6.93	.60
Group III – Skilled	[19.32] 21.93	[6.22] 6.93	.60
Group IV- Specialty	[19.72] 22.30	[6.22] 6.93	.60
Laborers – Underground			
Group I	[18.97] 21.43	[6.22] 6.93	.60
Group II	[19.34] 21.85	[6.22] 6.93	.60
Group III	[19.69] 22.26	[6.22] 6.93	.60
Soft Floor Layer	20.75	8.45	.60
Truck drivers			
Group I	[16.97] 17.65	[6.25] 8.72	.60
Group II	[17.25] 17.65	[6.25] 8.72	.60
Group III	[17.72] 17.65	[6.25] 8.72	.60
Group IV	[17.74] 17.65	[6.25] 8.72	.60
Group V	[17.80] 17.65	[6.25] 8.72	.60
Group VI	[17.97] 17.65	[6.25] 8.72	.60
Group VII	[18.11] 17.65	[6.25] 8.72	.60
Group VIII	[18.31] 17.71	[6.25] 8.72	.60
Group IX	[18.45] 19.65	[6.25] 8.72	.60
Maintenance Sub Group IX			
Rate I	20.90	9.00	.60
Rate II	21.77	9.00	.60
Rate III	22.24	9.00	.60

[11.1.2.20 NMAC - N, 02-29-2016; Rp, 1/1/2017; A, 1/1/2018, A, 1/1/2019; A, 1/1/2020; A, 1/1/2021; A, 1/1/2022]

11.1.2.21 Subsistence, zone, and incentive pay rates. All contractors are required to pay subsistence, zone, and incentive pay according to the particular trade.

A. Asbestos workers or heat and frost insulators

(1) Zone 1 shall consist of the area lying within the city limits of a circle whose radius is 66 miles from the city hall in Albuquerque or the city hall in El Paso - \$0.00 per day.

(2) Zone 2 shall consist of Los Alamos county - \$40.00 per day if not furnished a company owned vehicle.

(3) Zone 3 shall consist of the area lying beyond a circle whose radius is over 66 miles from the city hall in Albuquerque or the city hall in El Paso - \$85.00 per day.

B. Boilermakers/
blacksmiths

(1) [From] Per diem is calculated from city hall of the dispatch city or the employee's home address, whichever is closer to the job location[;].

(2) Per diem is

\$55.00 per day for travel between 70 and 120 miles and \$85.00 per day for travel over 120 miles.

[2] —

For employers based outside of Albuquerque, employees traveling more than 50 miles from the employer's main office, \$30 per day.]

C. Bricklayers

(1) Between 70 and 120 miles, [\$55] \$55.00 per day

(2) 121 or more miles, [\$70] \$70.00 per day

D. Cement Masons

(1) For employees who travel to Santa Fe from Albuquerque or vice versa, [\$20] \$20.00 per day.

(2) In all other work performed more than 50 miles from the employer's main office, [\$50] \$50.00 per day.

(3) Mutually agreed-upon lodging or transportation paid for by the employer will substitute for subsistence pay.

E. Drywall Finishers and Tapers:

(1) [\$40]

\$40.00 per day ([5] \$5.00 per hour for eight hours work) for over [sixty] 60 miles over the most typically traveled route, or other mutually agreed upon suitable lodging or transportation.

(2)

Special provision for Santa Fe and Albuquerque: Employees who travel between Santa Fe and Albuquerque will be paid [\$15] \$15.00 per day or other mutually agreed upon lodging or transportation.

F. Electricians (inside classifications)

(1) For Albuquerque only:

(a) Zone 1 is classified as being within 40 miles from the main post office.

(b) Zone 2 shall extend up to 10 miles beyond zone 1. Work performed within zone 2 shall be compensated nine percent above the journeyman rate for zone 1.

(c) Zone 3 shall extend up to 20 miles beyond zone 1. Work performed

within zone 3 shall be compensated fifteen percent above the journeyman rate for zone 1.

(d)

Zone 4 shall extend 20 miles or more beyond zone 1. Work performed within zone 4 shall be compensated twenty six percent above the journeyman rate for zone 1.

(2) For

Los Alamos county only: work performed within the county shall be compensated fifteen percent above the zone 1 journeyman rate.

(3) For all

other counties:

(a)

Zone 1 is:

(i)

within six miles from the main post office for Raton, Tucumcari, and Farmington.

(ii)

within eight miles from the main post office for Las Vegas.

(iii)

within ten miles from the main post office for Santa Fe and Gallup.

(iv)

within twelve miles from the main post office for Belen, Carrizozo, Clovis, Los Lunas, Portales, Roswell, Ruidoso, Artesia, Carlsbad, Hobbs, and Lovington.

(v)

within fourteen miles from the main post office for Espanola.

(b)

Zone 2 shall extend up to 20 miles beyond zone 1. Work performed within zone 2 shall be compensated nine percent above the journeyman rate for zone 1.

(c)

Zone 3 shall extend up to 30 miles from zone 1. Work performed within zone 3 shall be compensated fifteen percent above the journeyman rate for zone 1.

(d)

Zone 4 shall extend beyond 30 miles from zone 1. Work performed within zone 4 shall be compensated twenty six percent above the journeyman rate for zone 1.

G. Electricians (outside classification - Zone 2): [\$50] \$50.00 per diem to be paid for work 30 miles

outside of Santa Fe and 60 miles outside of Albuquerque.

H. Glaziers

(1) When

out-of-town travel is required, the employer shall pay the employee for suitable lodging with no more than two people per room and \$20.00 per night for food.

(2) Employees

required to use a personal vehicle for travel to a jobsite beyond a 30 mile radius of the main post office in town where the employer's shop is located shall be compensated at the current Internal Revenue Service (IRS) rate for actual mileage incurred beyond the 30 mile radius, plus their regular rate of pay for travel time.

I. Ironworkers:

(1) Travel

more than 50 miles from the interchange of Interstate 40 and Interstate 25 or from the employee's home should be paid at [~~\$7.00~~] \$8.00 per hour.

(2) If travel

is within Santa Fe county, travel time shall be paid at \$3.00 per hour [~~above~~ scale].

J. Laborers:

(1) Type A

(a)

Work travel between 50 and 85 miles from the employer's primary address should be compensated at \$3.50 per hour.

(b)

Work travel 86 miles or greater from the employer's primary address should be compensated at \$5.00 per hour.

(2) Types B

and C [~~work travel over 50 miles from the employer's primary address should be compensated at \$5.00 per hour.~~]

(a)

Work travel under 50 miles is a "free zone";

(b)

the municipal limit of the city of Santa Fe is \$30.00 per day;

(c)

work travel between 50 and 75 miles from the union hall to include the municipal limits of Estancia, Grants, and Socorro is \$40.00 per day;

(d)

all work over 75 miles from the union hall is \$50.00 per day.

(3) Type H -

no zone subsistence pay

(4) If an

employer provides the employee transportation and mutually agreeable, suitable lodging in areas where overnight stays are necessary, subsistence rates do not apply.

K. Millwrights

(1) Work

travel between 76 and 150 miles should be compensated at \$50.00 per day.

(2) Work

travel greater than 150 miles should be compensated at \$75.00 per day.

L. Operating

Engineers

(1) Type A

operators should be compensated for zone and subsistence as follows:

(a)

Work travel between 50 and 85 miles from the interchange of Interstate 25 and Interstate 40 in Albuquerque, or from the Farmington City Hall in Farmington, should be compensated at \$2.50 per hour.

(b)

Work travel 86 miles or more from the interchange of Interstate 25 and Interstate 40 in Albuquerque or from the Farmington City Hall in Farmington, should be compensated at \$4.00 per hour.

(2) Type B and

C operators:

(a)

Base points for operators are 30 miles and beyond:

(i)

Bernalillo county courthouse in Albuquerque;

(ii)

state capital building in Santa Fe;

(iii)

city hall in Farmington.

(b)

Zone and subsistence for Albuquerque and Santa Fe are as follows:

(i)

work travel between 30 and 50 miles from the base point compensated at \$20 per day;

(ii) work travel between 51 and 100 miles from the base point compensated at \$45 per day;

(iii) work travel over 100 miles from the base point that involves an overnight stay compensated at \$75 per day.

(c) Zone and subsistence for Los Alamos county, [~~\$50~~] \$50.00 per day.

(d) If an employer provides the employee transportation and mutually agreeable, suitable lodging in areas where overnight stays are necessary, subsistence rates do not apply.

~~(2)~~ (3) Type H operators are not eligible for zone and subsistence pay.

M. Painters

(1) Zone 1:
Base pay for an area within a 30 mile radius from the main post office in the city or town where the employee permanently resides. Albuquerque, Santa Fe, and Belen shall be considered Zone 1.

(2) Zone 2:
Work travel between 30 and 75 miles from the main post office in the town where an employee permanently resides shall be compensated at \$1.00 per hour above base pay.

(3) Zone 3:
Work travel 75 miles or more from the main post office in the town where an employee permanently resides shall be compensated at \$2.50 per hour above base pay.

(4) When the employee is required to stay overnight, the employer should provide and pay for suitable lodging.

(5) Employer will furnish transportation or gasoline for all work performed beyond the 30 mile radius that encompasses the free cities of Albuquerque, Santa Fe, or Belen.

N. Paper hangers

(1) Zone 1:
Base pay for an area within a 30 mile radius from the main post office in the city or town where the employee permanently resides. Albuquerque, Santa Fe, and Belen shall be considered Zone 1.

(2) Zone 2:
Work travel between 30 and 75 miles from the main post office in the town where an employee permanently resides shall be compensated at \$1.00 per hour above base pay.

(3) Zone 3:
Work travel 75 miles or more from the main post office in the town where an employee permanently resides shall be compensated at \$2.50 per hour above base pay.

(4) When the employee is required to stay overnight, the employer should provide and pay for suitable lodging.

(5) Employer will furnish transportation or gasoline for all work performed beyond the 30 mile radius that encompasses the free cities of Albuquerque, Santa Fe, or Belen.

O. Plasterers

(1) Employees who travel from Albuquerque to Santa Fe should be compensated at [~~\$15.00~~] \$20.00 per day.

(2) Except for employees who travel from Santa Fe to Albuquerque, work travel [~~60~~] 75 miles or more from the employer's office over the most typically traveled route should be compensated at \$5.00 per hour and capped at \$40.00 per day.

P. Plumbers and pipefitters

(1) Work travel for [~~Type H workers only~~] 90 or more miles from an employee's primary residence, and involving an overnight stay, should be compensated at [~~\$50.00~~] \$80.00 per day.

(2) No zone or subsistence pay is required should the employer elect to cover the room cost.

(3) Los Alamos county workers receive \$0.80 per hour incentive pay plus base and fringe.

Q. Roofers - work
travel requiring an overnight stay should be compensated at [~~\$35~~] \$35.00 per day for food. Employer should provide and pay for a suitable hotel. When employees are assigned to jobs located 60 or more miles from

the employer's place of business, transportation to and from the job site must be provided.

R. Sheet metal workers

(1) Work travel 90 miles or more from the contractor's home base and employee's home, should be paid at \$80.00 per day subsistence pay plus base and fringe, regardless of county.

(2) Los Alamos county: \$2.00 per hour incentive pay plus base and fringe.

(3) Workers living 60 or more miles from a San Juan county job site shall receive \$3.00 per hour subsistence pay plus base and fringe.

S. Soft floor layer

(1) Zone 1:
Base pay for an area within a 30 mile radius from the main post office in the city or town where the employee permanently resides. Albuquerque, Santa Fe, and Belen shall be considered Zone 1.

(2) Zone 2:
Work travel between 30 and 75 miles from the main post office in the town where an employee permanently resides shall be compensated at \$1.00 per hour above base pay.

(3) Zone 3:
Work travel 75 miles or more from the main post office in the town where an employee permanently resides shall be compensated at \$3.13 per hour above base pay.

(4) Employer will furnish transportation or gasoline for all work performed beyond the 30 mile radius that encompasses the free cities of Albuquerque, Santa Fe, or Belen.

T. Sprinkler fitters

(1) Work travel between 60 and 80 miles from the employee's primary residence should be compensated at [~~\$19.00~~] \$21.00 per day.

(2) Work travel between 81 and 100 miles from the employee's primary residence should be compensated at [~~\$29.00~~] \$31.00 per day.

(3) Work travel of 101 miles or more from the employee's primary residence should

be compensated at [~~\$105.00~~] \$115.00
per day, plus \$.54 per mile when
driving directly from home to the
job site, and directly from job site to
home or next job site, as assigned by
the employer.

(4) No zone
or subsistence pay shall be paid
when the employer provides daily
transportation.

[11.1.2.21 NMAC - N, 1/1/2019; A,
1/1/2020; A, 1/1/2021; A, 1/1/2022]

End of Adopted Rules

Other Material Related to Administrative Law

**GOVERNOR,
OFFICE OF THE
EXECUTIVE ORDER 2021-066**

**THIRD 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 December 17, 2021;

WHEREAS, the currently available COVID-19 vaccines are a safe and effective way of preventing serious illness or death;

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 (i) are not fully vaccinated against COVID-19, as defined by the Centers for Disease Control and Prevention; (ii) have not received a booster dose of the vaccine, if eligible according to the FDA, by January 7, 2022, or within four weeks of becoming eligible; or (iii) are not willing and able to provide adequate proof or such vaccination shall:

A. Provide adequate proof that the employee has tested negative for COVID-19 on a weekly basis; and

B. Wear a mask or multilayer face covering at all times during the course and scope of their employment except when eating or drinking or when the employee provides adequate proof that he or she has been instructed otherwise by a bona fide healthcare provider.

3. Any state employee who is not fully vaccinated or has not received a booster dose of the vaccine, if eligible, 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.

4. 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.

5. 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.

6. 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 December 2, 2021 and shall remain in effect until renewed, modified, or rescinded.

ATTEST:

**DONE AT THE EXECUTIVE
OFFICE**

**THIS 2ND DAY OF DECEMBER
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 2021-067

**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 December 9, 2021 the Centers for Disease Control and Prevention (“CDC”) reported over 46 million people have been infected in the United States, with over 790,000 related deaths, and the New Mexico Department of Health has reported 328,332 positive COVID-19 cases and 5,459 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, 2020-055, 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, 2021-054, 2021-058, and 2021-061 shall be renewed and extended through January 7, 2022.

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 December 10, 2021 and shall remain in effect until January 7, 2022 unless renewed, modified, or until the Governor rescinds it.

ATTEST:

**DONE AT THE EXECUTIVE
OFFICE**

**THIS 10TH DAY OF
DECEMBER 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.**

December 2, 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**

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, Governor Michelle Lujan Grisham 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, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through December 17, 2021;

WHEREAS, over 48 million people have been infected with COVID-19 in the United States, with over 770,000 related deaths, and the New Mexico Department of Health has reported 314,000 positive COVID-19 cases and 5,369 related deaths in New Mexico;

WHEREAS, the currently available COVID-19 vaccines are safe and the most effective way of preventing infection, serious illness, and death;

WHEREAS, widespread vaccination protects New Mexico’s health care system as vaccines decrease the need for emergency services and hospitalization;

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 in the United States;

WHEREAS, new scientific data demonstrates waning immunity after six months after the primary series of the Pfizer-BioNTech and Moderna vaccines and two months after the Johnson & Johnson’s Janssen vaccine, and those with a booster vaccine have reduced risk for a breakthrough infection;

WHEREAS, New Mexico 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 children who are not yet eligible to receive a vaccine; persons who cannot be vaccinated due to medical reasons; immunocompromised individuals; and vulnerable persons including persons in hospitals, long-term care facilities, and other congregate care facilities;

WHEREAS, the Food and Drug Administration (FDA) has approved every adult for a booster dose six months after the completion of the individual’s primary series of vaccination with Pfizer-BioNTech and Moderna vaccines or two months after the completion of the individual’s primary series of vaccination with Johnson & Johnson’s Janssen vaccine, and the Centers for Disease Control and Prevention (CDC) has stated recently that all adults 18 and over should receive a booster vaccine;

WHEREAS, it is of critical importance to ensure that workers in hospitals, long-term care facilities, and other congregate care facilities receive booster doses of COVID-19 vaccine, if eligible, to fight rising rates of spread in these situations; 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 maintain and enforce rules for the control of a condition of public health importance, and issue rules for immunization against conditions of public health importance.

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 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), and hereby **ORDER** and **DIRECT** as follows:

DEFINITIONS

For the purposes of this Order, the following term shall have the meaning given to them, except where the context clearly requires otherwise:

(1) “Congregate care facility” means nursing homes, assisted living facilities, adult day cares, hospice facilities, rehabilitation facilities, State correctional facilities, juvenile justice facilities, residential treatment centers, the New

Mexico State Veterans' Home, and community homes.

(2) "Congregate care facility worker" means any paid or unpaid individuals working in a congregate care facility. This includes workers providing services who have the potential for direct or indirect exposure to patients or residents in a congregate care facility. A congregate care facility worker includes contractors who perform services on-site at the congregate care facility.

(3) "Fully vaccinated" means two weeks after an individual completed the entire recommended series of vaccination with a vaccine approved by the Food and Drug Administration (FDA), including on an emergency use basis, to prevent COVID-19. An individual will be fully vaccinated two weeks after the second dose of the Pfizer-BioNTech or Moderna COVID-19 vaccines. An individual will be fully vaccinated two weeks after a single-dose Johnson and Johnson's Jassen COVID-19 vaccine.

(4) "Hospital" means any public hospital, profit or nonprofit private hospital, general hospital, or special hospital.

(5) "Hospital Worker" means all paid and unpaid individuals who work on-site in a hospital in a setting where care is provided to patients or patients have access for any purpose. This includes workers who have the potential for direct or indirect exposure to patients or COVID-19 airborne aerosols. Hospital workers include, but are not limited to, nurses, physicians nursing assistants, technicians, therapists, phlebotomists, pharmacists, students and trainees, contractual staff not employed by the hospital, and persons not directly involved in patient care, but who could be exposed to infection agents that can be transmitted in the hospital (e.g. clerical, dietary, environmental services, laundry, security, and volunteer personnel).

(6) "School worker" means all paid and unpaid adults serving in a private school, public

school, or charter school.

(7) "Partially vaccinated" means an individual who has started, but not completed, their primary series of vaccination.

(8) "Primary series of vaccinations" means the first and second doses of the Pfizer-BioNTech and Moderna COVID-19 vaccines or the first dose of the Johnson & Johnson's Janssen COVID-19 vaccine.

(9) "Qualifying medical condition" means a permanent or temporary medical condition recognized by the FDA or Centers for Disease Control and Prevention (CDC) as a contra-indication to COVID-19 vaccination.

DIRECTIVES

I HEREBY DIRECT AS FOLLOWS:

(1) All school workers in any private school, public school, or charter school who (i) are not fully vaccinated against COVID-19; (ii) have not received a booster dose, if eligible according to the FDA, by January 17, 2022, or within four weeks of becoming eligible; and/or (iii) are unwilling to provide proof of such vaccination to their respective supervisors shall:

a. Provide adequate proof that the school worker has tested negative for COVID-19 on a weekly basis; and
b. Wear a mask or multilayer cloth face covering at all times indoors during the course and scope of their employment except when eating or drinking. An unvaccinated school worker will only be exempt from wearing a mask indoors if adequate proof is provided that the school worker has been instructed otherwise by a licensed healthcare provider.

(2) All private schools, public schools, and charter schools shall maintain records of school worker vaccination status in accordance with applicable privacy laws and regulations. The records regarding a worker's vaccination

status shall be provided to the Department of Health promptly upon request.

(3) All hospital workers, congregate care facility workers, and employees of the Office of the Governor Michelle Lujan Grisham are required to be fully vaccinated against COVID-19 unless they qualify for an exemption. Further, all such individuals are required to receive a booster dose of the vaccine, if eligible according to the FDA, unless they qualify for an exemption. If an individual does not qualify for an exemption, the individual shall:

a. Receive their primary series of vaccination by October 6, 2021, and if eligible, receive a booster dose no later than January 17, 2022, or within four weeks of becoming eligible; and

b. Provide proof of vaccination to the appropriate person or supervisor:

i. Hospital workers and congregate care facility workers shall provide proof of vaccination or exemption to their respective supervisors.

ii. Contractors who are hospital workers shall provide proof of vaccination to the operator of the hospital in which the contractor provides on-site services.

iii. Employees of the Office of Governor Michelle Lujan Grisham shall provide proof of vaccination to the Chief Operations Officer.

(4) The workers subject to Section (3) of this Order may be exempt from the COVID-19 vaccination requirement set forth above if they have a qualifying medical condition which immunization would endanger their health, or they are entitled under the Americans With Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964 (Title VII), or any other applicable law to a disability-related reasonable accommodation or a sincerely held religious belief accommodation. Nothing in this Order precludes the entities which

employ or contract with these workers from providing disability-related reasonable accommodations and religious accommodations to the requirements of this Order as required by law.

a. To be eligible for an exemption due a qualifying medical condition, the individual must provide their employer or operator of the facility they contract with a statement from a physician, nurse practitioner, or other medical professional licensed to practice in New Mexico stating that the individual qualifies for the exemption and indicating the probable duration of the individual's inability to receive the vaccine;

b. To be eligible for an exemption due to a disability, the individual must provide their employer or the operator of the hospital or congregate care facility they contract with accommodation documentation from a physician, nurse practitioner, or other medical professional licensed to practice in New Mexico stating that the individual has a disability that necessitates an accommodation and the probable duration of the individual's inability to receive the vaccine; or

c. To be eligible for an exemption due to a sincerely held religious belief, the individual must document that the request for an accommodation has been made and provide their employer or the operator of the facility they contract with a statement regarding the manner in which the administration of a COVID-19 vaccine conflicts with the religious observance, practice, or belief of the individual.

(5) If an operator of a hospital, operator of a congregate care facility, or the Office of Governor Michelle Lujan Grisham determines a worker to have met the requirements of an exemption pursuant to Section (4), the unvaccinated exempt worker shall:

a. Provide adequate proof that the individual has tested negative for COVID- 19

on a weekly basis; and

b. Wear a mask or multilayer cloth face covering at all times indoors at the hospital or congregate care facility except when eating or drinking. An unvaccinated worker will only be exempt from wearing a mask indoors if adequate proof is provided that the individual has been instructed otherwise by a licensed healthcare provider.

(6) The operator of a hospital, operator of a congregate care facility, and the Office of Governor Michelle Lujan Grisham shall maintain records of all workers' vaccination or exemption status in accordance with applicable privacy laws and regulations. If a worker is exempt pursuant to Section (4), then the operator or employer also must maintain records of the worker's testing results pursuant to Section (5). The operator of a hospital is required to report to the Department of Health the total number of (i) workers who are subject to this Order, (ii) fully vaccinated workers, (iii) fully vaccinated workers who have received a booster dose; (iv) fully vaccinated workers who are eligible for, but have not yet received, a booster dose; (v) partially vaccinated workers, (vi) unvaccinated workers, (vii) unvaccinated workers who have been granted an exemption from the COVID-19 vaccination requirement. The number of hospital workers shall be submitted to the Department of Health's Hospital Reporting Portal (<https://nm.readyop.com/fs/4cjm/d866>) monthly or at an interval to be determined by the Department. The operator of a congregate care facility shall provide the Department of Health records regarding a worker's vaccination or exemption status promptly upon request.

(7) Hospital workers, congregate care facility workers, and employees of the Office of the Governor Michelle Lujan Grisham shall provide proof of vaccination or records of their exemption status

to the Department of Health, if requested.

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) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(3) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Public Education Department and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(4) Any person, hospital, or congregate care facility who willfully violates this Order may be subject to civil administrative penalties available at law.

(5) This Order shall take effect on December 2, 2021 and remain in effect for the duration of the public health emergency first declared in Executive Order 2020-004 and any subsequent renewals of that public health emergency declaration, unless otherwise rescinded.

ATTEST:

DONE AT THE EXECUTIVE OFFICE

THIS 2ND DAY OF DECEMBER 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 DAVID
R. SCRASE, M.D.**

December 10, 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 November 12, 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 January 7, 2022;

WHEREAS, confirmed cases in the United States have risen to more than 49 million and confirmed COVID-19 infections in New Mexico have risen to over 325,000;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 790,000 Americans and over 5,400 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 January 7, 2022.

(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 10TH DAY OF DECEMBER 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

**NURSING,
 BOARD OF**

**NOTICE OF MINOR,
 NONSUBSTANTIVE
 CORRECTION**

The New Mexico Board of Nursing gives Notice of a Minor, Nonsubstantive Correction to 16.12.1 NMAC.

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

Section 9: The numbering for Subsections B and C are out of order. Those subsection numberings were corrected to proceed sequentially.

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

**SUPERINTENDENT OF
INSURANCE,
OFFICE OF THE

NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Office of the Superintendent of Insurance gives Notice of a Minor, Nonsubstantive Correction to 13.21.2 NMAC and 13.21.5 NMAC.

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

13.21.2 NMAC

Sections 12 & 19: Statutory citations were corrected to reflect correct legislative style.

Sections 13: In Subsection C, the internal citation was changed from "...Paragraph..." to "...Subsection...".

13.21.5 NMAC

Sections 2, 9 & 12: In each of these sections, internal citations were changed from "...Paragraph..." to "...Subsection...".

A copy of this Notification will be

filed with the official version of each of the above rules.

**SUPERINTENDENT OF
INSURANCE,
OFFICE OF THE**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Office of Superintendent of Insurance gives Notice of a Minor, Nonsubstantive Correction to 13.10.39 NMAC.

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

Sections 8 and 9: The following incorrect internal citations were changed from "...subparagraph..." to "...Paragraph..."; from "...items..." to "subparagraphs..."; and "...sections..." to "Paragraphs...".

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

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

2022 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXIII, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 11
Issue 2	January 13	January 25
Issue 3	January 27	February 8
Issue 4	February 10	February 22
Issue 5	February 24	March 8
Issue 6	March 10	March 22
Issue 7	March 24	April 5
Issue 8	April 7	April 19
Issue 9	April 21	May 3
Issue 10	May 5	May 24
Issue 11	May 26	June 7
Issue 12	June 9	June 21
Issue 13	July 1	July 12
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Issue 15	July 28	August 9
Issue 16	August 11	August 23
Issue 17	August 25	September 13
Issue 18	September 15	September 27
Issue 19	September 29	October 11
Issue 20	October 13	October 25
Issue 21	October 27	November 8
Issue 22	November 17	November 29
Issue 23	December 1	December 13
Issue 24	December 15	December 27

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.