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New Mexico Register

Volume XXXII, Issue 8
April 20, 2021

Table of Contents

Notices of Rulemaking and Proposed Rules

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

Other Material Related to Administrative Law

Notices of Rulemaking and Proposed Rules

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Early Childhood Education and Care Department (ECECD) hereby gives notice as required under NMSA 1978, § 14-4-5.2 and 1.24.25.11 NMAC that it proposes to issue new regulations for the following rules regarding SOCIAL SERVICES, EARLY CHILDHOOD EDUCATION AND CARE, REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES, as authorized by NMSA 1978, § 9-2A-7:

8.9.8 NMAC - REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES

No technical scientific information was consulted in drafting this rule.

Purpose of rule: The purpose of this rule is to govern the provision of early intervention services to eligible children and their families in New Mexico and to assure that such services meet the requirements of applicable state and federal statutes, such as the Individuals with Disabilities Education Act.

Copies of the rule may be found at end of this notice and at ECECD's website at https://www.newmexicokids.org/ 30 days prior to the Public Hearing.

Notice of public rule hearing: The public rule hearing will be held on May 25, 2021, at 1:00 p.m. The hearing will be held via internet, email, and telephonic means (see below) due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of Public Health Emergency and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the rule during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of acceptance of written public comment: Written public comment, including presentation of data, views, or arguments about the rule, from any interested member of the public, may be submitted via email to ECECD-ECS-PublicComment@state.nm.us with the subject line "8.9.8 NMAC Public Comment" or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Written comments may be delivered to the Old PERA building at 1120 Paseo De Peralta on May 25, 2021 from 1:00 pm to 3:00 pm. The comment period ends at the conclusion of the public hearing on May 25, 2021.

Any interested member of the public may attend the hearing via the internet or telephone and offer public comments on the rule during the hearing. To access the hearing by telephone: place call 1-346-248-7799, access code 919 1938 8049. You will be able to hear the full hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to https://zoom.us/j/91919388049?pwd=dWZ4VjZIWXJ3UHdRcll1WkJDbVVWdz09, and follow the instructions indicated on the screen – Passcode: 149616. This will be a live stream of the hearing. You may also provide comment via Chat during the live streaming.

NOTIFICACIÓN DE ELABORACIÓN DE REGLAMENTOS Y AUDIENCIA PÚBLICA SOBRE REGLAMENTOS

Por medio de la presente, el Departamento de Educación y Cuidado en la Primera Infancia de Nuevo México (ECECD, por sus siglas en inglés) anuncia, cumpliendo con lo dispuesto por NMSA 1978, secciones 14-4-5.2 y 1.24.25.11 del Código NMAC, que se propone emitir nuevos reglamentos para las siguientes normas sobre SERVICIOS SOCIALES, EDUCACIÓN Y CUIDADOS A LA PRIMERA INFANCIA, REQUISITOS PARA SERVICIOS DE INTERVENCIÓN TEMPRANA A NIÑOS PEQUEÑOS DE FAMILIAS, tal como lo autoriza NMSA 1978, Secciones 9-2A-7:

8.9.8 NMAC - REQUISITOS PARA SERVICIOS DE INTERVENCIÓN TEMPRANA A NIÑOS PEQUEÑOS DE FAMILIAS

Para la redacción de este reglamento no se consultó ninguna información técnica científica.

Objetivo del reglamento: El objetivo de esta norma es regir la provisión de servicios de intervención temprana a los niños elegibles y sus familias en Nuevo México, así como garantizar que dichos servicios cumplan los requisitos de la legislación estatal y federal aplicable, como la Ley de Educación para Personas con Discapacidad.

Al final de este anuncio se incluye una copia de este reglamento, el cual también estará en el sitio web del ECECD en https://www.newmexicokids.org/ 30 días antes de la audiencia pública.

Anuncio de audiencia pública: La audiencia pública se celebrará el 25 de mayo de 2021 a la 1:00 p.m. La audiencia será por Internet, por correo electrónico y teléfono (consulte más abajo) debido a las inquietudes por el COVID-19, y de conformidad con la Orden Ejecutiva 2020-004 de la gobernadora Michelle Lujan Grisham, la Declaración de emergencia de salud pública y la Orden del 12 de marzo de 2020 de emergencia pública de salud para limitar las asambleas masivas debido al COVID-19. La audiencia pública la conducirá de manera imparcial y equitativa un representante del ECECD o un funcionario de audiencias, y esta será grabada. Cualquier persona del público que tenga interés, podrá asistir a la audiencia y se le dará una oportunidad razonable de dar sus comentarios públicamente, ya sea de manera oral o por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre el reglamento en cuestión. A los individuos con discapacidades que necesiten cualquier forma de apoyo auxiliar para poder asistir o participar en la audiencia pública, se les solicita que contacten al ECECD a través de ECECD-ECS-PublicComment@state.nm.us o llamando al teléfono (505) 231-5820. El ECECD hará su mejor esfuerzo por adaptarse a las solicitudes razonables, pero no puede garantizar que se adaptará a solicitudes que no se reciban cuando menos diez días calendario antes de la audiencia programada.

Anuncio de aceptación de comentarios públicos por escrito: Los comentarios públicos por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre el reglamento en cuestión, de parte de cualquier interesado del público, pueden presentarse por correo electrónico a ECECD-ECS-PublicComment@state.nm.us con el asunto "8.9.8 NMAC Public Comment" o por correo postal de primera clase al apartado postal: Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Los comentarios por escrito se pueden entregar el 25 de mayo de 2021 de 1:00 p.m. a 3:00 p.m. en el edificio Old PERA en 1120 Paseo de Peralta. El período para presentar comentarios termina al concluir la audiencia pública el 25 de mayo de 2021.

Cualquier persona del público que esté interesada puede asistir a la audiencia por Internet o teléfono y ofrecer sus comentarios públicos sobre el reglamento en cuestión. Para participar por teléfono: llame al 1-346-248-7799, usando el código de acceso 919 1938 8049. Usted podrá escuchar toda la audiencia y sus comentarios telefónicos quedarán grabados. Para participar por Internet: visite https://zoom.us/j/91919388049?pwd=dWZ4VjZIWXJ3UHdRcll1WkJDbVVWdz09, y siga las instrucciones indicadas en la pantalla –contraseña: 149616. Esta será una transmisión en vivo de la audiencia. También puede hacer sus comentarios por medio del chat durante la transmisión en vivo.

TITLE 8 SOCIAL SERVICES
CHAPTER 9 EARLY CHILDHOOD EDUCATION AND CARE
PART 8 REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES

8.9.8.1 ISSUING AGENCY: Early Childhood Education and Care Department (ECECD)
[8.9.8.1 NMAC - N, 7/7/2021]

8.9.8.2 SCOPE: These regulations apply to all entities in New Mexico providing early intervention services to eligible children birth to three years of age and their families.
[8.9.8.2 NMAC - N, 7/7/2021]

8.9.8.3 STATUTORY AUTHORITY: Section 9-7-6 NMSA 1978, and Section 28-18-1 NMSA 1978.
[8.9.8.3 NMAC - N, 7/7/2021]

8.9.8.4 DURATION: Permanent
[8.9.8.4 NMAC - N, 7/7/2021]

8.9.8.5 EFFECTIVE DATE: June 29, 2012, unless a later date is cited at the end of a section.
[8.9.8.5 NMAC - N, 7/7/2021]

8.9.8.6 OBJECTIVE: These regulations are being promulgated to govern the provision of early intervention services to eligible children and their families and to assure that such services meet the requirements of state and federal statutes, in accordance with the Individuals with Disabilities Education Act.
[8.9.8.6 NMAC - N, 7/7/2021]

8.9.8.7 DEFINITIONS:

A. Definitions beginning with the letter "A":

(1) "Adaptive development" means the development of self-help skills, such as eating, dressing, and toileting.

(2) "Adjusted age (corrected age)" means adjusting / correcting the child's age for children born prematurely (i.e. born less than 37 weeks gestation). The adjusted age is calculated by subtracting the number of weeks the child was born before 40 weeks of gestation from their chronological age. Adjusted Age (Corrected Age) should be used until the child is 24 months of age.

(3) "Assessment" means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility for FIT services. Assessment includes observations of the child in natural settings, use of assessment tools, informed clinical opinion, and interviews with family members. Assessment includes ongoing identification of the concerns, priorities, and resources of the family.

B. Definitions beginning with the letter "B":

"Biological/medical risk" means diagnosed medical conditions that increase the risk of developmental delays and disabilities in young children.

C. Definitions beginning with the letter "C":

(1) "Child find" means activities and procedures to locate, identify, screen and refer children from birth to three years of age with or at risk of having a developmental delay or developmental disabilities.

(2) "Child record" means the early intervention records (including electronic records) maintained by the early intervention provider and are defined as educational records in accordance with the Family Educational Rights and Privacy Act (FERPA). Early intervention records include files, documents, and other materials that contain information directly related to a child and family, and are maintained by the early intervention provider agency. Early intervention records do not include records of instructional, supervisory, and administrative personnel, which are in the sole possession of the maker and which are not accessible or revealed to any other person except to substitute staff.

(3) "Cognitive development" means the progressive changes in a child's thinking processes affecting perception, memory, judgment, understanding and reasoning.

(4) "Communication development" means the progressive acquisition of communication skills, during pre-verbal and verbal phases of development; receptive and expressive language, including spoken, non-spoken, sign language and assistive or augmentative communication devices as a means of expression; and speech production and perception. It also includes oral-motor development, speech sound production, and eating and swallowing processes. Related to hearing, communication development includes development of auditory awareness; auditory, visual, tactile, and kinesthetic skills; and auditory processing for speech or language development.

(5) "Confidentiality" means protection of the family's right to privacy of all personally identifiable information, in accordance with all applicable federal and state laws.

(6) "Consent" means informed written prior authorization by the parent(s) to participate in the early intervention system. The parent has been fully informed of all information relevant to the activity for which consent is sought in the parent's native language and mode(s) of communication and agrees to the activity for which consent is sought. The parent(s) shall be informed that the granting of consent is voluntary and can be revoked at any time. The revocation of consent is not retroactive.

D. Definitions beginning with the letter "D":

(1) "Days" means calendar days, unless otherwise indicated in these regulations.

(2) "Developmental delay" means an evaluated discrepancy between chronological age and developmental age of twenty-five percent, after correction for prematurity, in one or more of the following areas of development: cognitive, communication, physical/motor, social or emotional, and adaptive.

(3) "Developmental specialist" means an individual who meets the criteria established in these regulations and is certified to provide 'developmental instruction'. A developmental specialist works directly with the child, family and other personnel to implement the IFSP. The role and scope of responsibility of the developmental specialist with the family and the team shall be dictated by the individual's level of certification as defined in early childhood education and care department, family support and early intervention division policy and service standards.

(4) "Dispute resolution process" means the array of formal and informal options available to parents and providers for resolving disputes related to the provision of early intervention services and the system responsible for the delivery of those services.

(5) "Due process hearing" means a forum in which all parties present their viewpoint and evidence in front of an impartial hearing officer in order to resolve a dispute.

(6) "Duration" means the length of time that services included in the IFSP will be delivered.

E. Definitions beginning with the letter "E":

(1) "Early intervention services" means any or all services specified in the IFSP that are designed to meet the developmental needs of each eligible child and the needs of the family related to enhancing the child's development, as identified by the IFSP team. (Early intervention services are described in detail in the service delivery provisions of this rule.)

(2) "ECO (early childhood outcomes)" means the process of determining the child's development compared to typically developing children of the same age. The information is used to measure the child's developmental progress over time.

(3) "Eligible children" means children birth to three years of age who reside in the state and who meet the eligibility criteria within this rule.

(4) "Environmental risk" means the presence of adverse family factors in the child's environment that increases the risk of developmental delays and disabilities in young children.

(5) "Established condition" means a diagnosed physical, mental, or neurobiological condition that has a high probability of resulting in developmental delay or disability.

(6)
"Evaluation" means the procedures used by qualified personnel to determine a child's initial and continuing eligibility for FIT services. It includes a review of records pertinent to the child's current health status and medical history; parent interview and parent report; observation of the child in natural settings; informed clinical opinion; use of FIT Program approved assessment tool(s); and identification of the level of functioning of the child in each developmental area -- cognitive, communication, physical/ motor (including vision and hearing), social or emotional, and adaptive. An initial evaluation refers to the child's evaluation to determine his or her initial eligibility for FIT services.

F. Definitions beginning with the letter "F:

(1) "Family" means a basic unit of society typically composed of adults and children having as its nucleus one or more primary nurturing caregivers cooperating in the care and rearing of their children. Primary nurturing caregivers may include, but are not limited to, parents, guardians, siblings, extended family members, and others defined by the family.

(2) "Family infant toddler (FIT) program" means the program within state government that administers New Mexico's early intervention system for children (from birth to age three) who have or are at risk for developmental delay or disability and their families. The FIT program is established in accordance with 28-18-1 NMSA, Chapter 178, and administered in accordance with the Individuals with Disabilities Education Act (IDEA), Part C as amended, and other applicable state and federal statutes and regulations.

(3) "Family service coordinator" means the person responsible for coordination of all services and supports listed on the IFSP and ensuring that they are delivered in a timely manner. The initial family service coordinator assists the family with intake activities such as eligibility determination and development of an initial individualized family service plan (IFSP) The ongoing family service coordinator is selected at the initial IFSP meeting and designated on the IFSP form.

(4) "FIT-KIDS (key information data system)" means the online data collection and billing system utilized by the FIT program.

(5)
"Frequency" means the number of times that a service is provided or an event occurs within a specified period.

G. Definitions beginning with the letter "G":
[**Reserved**]

H. Definitions beginning with the letter "H":

(1) "Head start/early head start" means a comprehensive child development program for children of low income families established under the Head Start Act, as amended.

(2)
"Homeless" means lacking a fixed, regular, and adequate nighttime residence.

I. Definitions beginning with the letter "I":

(1) "IFSP team" means the persons responsible for developing, reviewing the IFSP. The team shall include the parent(s), the family service coordinator, person(s) directly involved in conducting evaluations and assessments, and, as appropriate, persons who will be providing services to the child or family, an advocate or other persons, including family members, as requested by the family.

(2) "Inclusive setting" means a setting where the child with a developmental delay or disability participates in a setting with typically developing children. A classroom in an early head start, child care or preschool classroom must have at least fifty-one percent non disabled peers in order to be considered an inclusive setting.

(3) "Indian tribe" means any federal or state recognized Indian tribe.

(4)
"Individualized education program (IEP)" means a written plan developed with input from the parents that specifies goals for the child and the special education and related services and supplementary aids and services to be provided through the public school system under IDEA Part B.

(5)
"Individualized family service plan (IFSP)" means the written plan for providing early intervention services to an eligible child and the child's family. The plan is developed jointly with the family and appropriate qualified personnel involved. The plan is developed around outcomes and includes strategies to enhance the family's capacity to meet the developmental needs of the eligible child.

(6)
"Individualized family service plan process (IFSP process)" means a process that occurs from the time of referral, development of the IFSP, implementation of early intervention services, review of the IFSP, through transition. The family service coordinator facilitates the IFSP process.

(7)
"Individuals with Disabilities Education Act (IDEA) – Part C" means the federal law that contains requirements for serving eligible children. Part C of IDEA refers to the section of the law entitled "The Early Intervention Program for Infants and Toddlers with Disabilities".

(8) "Informed clinical opinion" means the knowledgeable perceptions of the evaluation team who use qualitative and quantitative information regarding aspects of a child's development that are difficult to measure in order to make a decision about the child's eligibility for the FIT program.

(9)
"Intensity" means the length of time the service is provided during each session.

(10) "Interim IFSP" means an IFSP that is

developed prior to the completion of the evaluation and assessments in order to provide early intervention services that have been determined to be needed immediately by the child and the child's family. Use of an Interim IFSP does not extend the 45-day timeline for completion of the evaluation process.

J. Definitions beginning with the letter "J":

[**Reserved**]

K. Definitions beginning with the letter "K":

[**Reserved**]

L. Definitions beginning with the letter "L":

(1) "Lead agency" means the agency responsible for administering early intervention services under the Individuals with Disabilities Education Act (IDEA) Part C. The early childhood education and care department, family infant toddler (FIT) program, is designated as the lead agency for IDEA Part C in New Mexico.

(2) "Local education agency (LEA)" means the local public school district.

(3) "Location" means the places in which early intervention services are delivered.

M. Definitions beginning with the letter "M":

(1) "Mediation" means a method of dispute resolution that is conducted by an impartial and neutral third party, who without decision-making authority will help parties to voluntarily reach an acceptable settlement on issues in dispute.

(2) "Medicaid" means the federal medical assistance program under Title XIX of the Social Security Act. This program provides reimbursement for some services delivered by early intervention provider agencies to medicaid-eligible children.

(3) "Method" means the way in which a specific early intervention service is delivered. Examples include group and individual services.

(4) "Multidisciplinary" means personnel from more than one discipline who work with the child and family, and who coordinate with other members of the team.

N. Definitions beginning with the letter "N":

(1) "Native language" with respect to an individual who is limited English proficient, means the language normally used by a child or their parent(s) or mode of communication normally used by a child or their parents. Native language when used with respect to evaluations and assessments is the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment. Native language, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

(2) "Natural environments" means places that are natural or normal for children of the same age who have no apparent developmental delay, including the home, community and inclusive early childhood settings. Early intervention services are provided in natural environments in a manner/method that promotes the use of naturally occurring learning opportunities and supports the integration of skills and knowledge into the family's typical daily routine and lifestyle.

O. Definitions beginning with the letter "O":

(1) "Other services" means services that the child and family need, and that are not early intervention services, but should be included in the IFSP. Other services does not mean routine medical services unless a child needs those services and the services are not otherwise available or being provided. Examples include, but are not limited to, child care, play groups, home visiting, early head start, WIC, etc.

(2) "Outcome" means a written statement of changes that the family desires to achieve for their child and themselves as a result of early intervention services that are documented on the IFSP.

P. Definitions beginning with the letter "P":

(1) "Parent(s)" means a biological or adoptive parent(s) of a child; a guardian; a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or a surrogate parent who has been assigned in accordance with these regulations. A foster parent may act as a parent under this program if the natural parents' authority to make the decisions required of parents has been removed under state law and the foster parent has an ongoing, long-term parental relationship with the child; is willing to make the decisions required of parents under the Federal Individual with Disabilities Education Act; and has no interest that would conflict with the interests of the child.

(2) "Participating agency" means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements of this rule with respect to a particular child.

(3) "Permission" means verbal authorization from the parents to carry out a function and shall be documented. Documentation of permission does not constitute written consent.

(4) "Personally identifiable information" means that information in any form which includes the names of the child or family members, the child's or family's address, any personal identifier of the child and family such as a social security number, or a list of personal characteristics or any other information that would make it

possible to identify the child or the family.

(5) **"Personnel"** means qualified staff and contractors who provide early intervention services, and who have met state approved or recognized certification or licensing requirements that apply to the area in which they are conducting evaluations, assessments or providing early intervention services.

(6) "Physical/ motor development" means the progressive changes to a child's vision, hearing, gross and fine motor development, quality of movement, and health status.

(7) "Primary referral source" means parents, physicians, hospitals and public health facilities (including prenatal and postnatal care facilities), child care programs, home visiting providers, schools, local education agencies, public health care providers, children's medical services, public agencies and staff in the child welfare system (including child protective service and foster care), other public health or social services agencies, early head start, homeless family shelters, domestic violence shelters and agencies, and other qualified individuals or agencies which have identified a child as needing evaluation or early intervention services.

(8) "Prior written notice" means written notice given to the parents a reasonable time before the early intervention provider agency, either proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family. Prior notice must contain the action being proposed or refused, the reasons for taking the action and all procedural safeguards that are available.

(9) **"Procedural safeguards"** means the requirements set forth by IDEA, as amended, which specify families' rights and protections relating to the provision of early intervention services and the process for resolving individual complaints related to services for a child and family.

(10) "Provider agency" means a provider that meets the requirements established for early intervention services, and has been certified as a provider of early intervention services by the early childhood education and care department and that provides services through a provider agreement with the department.

(11) "Public agency" means the lead agency and any other political subdivision of the state government that is responsible for providing early intervention services to eligible children and their families.

Q. Definitions beginning with the letter "Q": [**Reserved**]

R. Definitions beginning with the letter "R":

(1) "Referral" means the process of informing the FIT program regarding a child who may benefit from early intervention, and giving basic contact information regarding the family.

(2) **"Reflective supervision"** means planned time to provide a respectful, understanding and thoughtful atmosphere where exchanges of information, thoughts, and feelings about the things that arise around the person's work in supporting healthy parent-child relationships can occur. The focus is on the families involved and on the experience of the supervisee.

S. Definitions beginning with the letter "S":

(1) "School year" means the period of time between the fall and spring dates established by each public school district which mark the first and last days of school for any given year for children ages three through twenty-one years. These dates are filed each year with the public education department.

(2) **"Scientifically based practices"** means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs.

(3) **"Screening"** means the use of a standardized instrument to determine if there is an increased concern regarding the child's development when compared to children of the same age, and whether a full evaluation would therefore be recommended.

(4) **"Significant atypical development"** means the eligibility determination under developmental delay made using informed clinical opinion, when twenty-five percent delay cannot be documented through state approved evaluation tool, but where there is significant concern regarding the child's development.

(5) "Social or emotional development" the developing capacity of the child to: experience, regulate, and express emotion; form close and secure interpersonal relationships; explore the environment and learn.

(6) "State education agency" means the public education department responsible for administering special education and related serves under IDEA Part B.

(7) **"Strategies"** means the section of the IFSP that describes how the team, including the parents, will address each outcome. Strategies shall include the methods and activities developed by the IFSP team to achieve functional outcomes. Strategies shall include family routines, times and locations where activities will occur, as well as accommodations to be made to the environment and assistive technology to be used. Strategies shall also include how members of the team will work together to meet the outcomes on the IFSP.

(8) **"Supervision"** means defining and communicating job requirements; counseling, mentoring and coaching for improved performance; providing job-related instruction; planning,

organizing, and delegating work; evaluating performance; providing corrective and formative feedback; providing consequences for performance; and arranging the environment to support performance.

(9) **"Surrogate parent"** means the person appointed in accordance with these regulations to represent the eligible child in the IFSP Process when no parent can be identified or located, or the child is a ward of the state. A surrogate parent has all the rights and responsibilities afforded to a parent under Part C of IDEA.

T. Definitions beginning with the letter "T":

(1) **"Transition"** means the process for a family and eligible child of moving from services provided through the FIT program at age three. This process includes discussions with, and training of, parents regarding future placements and other matters related to the child's transition; procedures to prepare the child for changes in service delivery, including steps to help the child adjust to and function in a new setting; and with parental consent, the transmission of information about the child to a program into which the child might transition to ensure continuity of services, including evaluation and assessment information required and copies of IFSPs that have been developed and implemented.

(2) **"Transition plan"** means a component of the IFSP that addresses the process of a family and eligible child of moving from one service location to another. The plan defines the roles, responsibilities, activities and timelines for ensuring a smooth and effective transition.

U. Definitions beginning with the letter "U": [**Reserved**]

V. Definitions beginning with the letter "V": [**Reserved**]

W. Definitions beginning with the letter "W":

"Ward of the state" means a child who is in foster care or in the custody of the child welfare agency.

[8.9.8.7 NMAC - N, 7/7/2021]

8.9.8.8 ADMINISTRATION:

A. Supervisory authority.

(1) Any agency, organization, or individual that provides early intervention services to eligible children and families shall do so in accordance with these regulations and under the supervisory authority of the lead agency for Part C of IDEA, the New Mexico early childhood education and care department.

(2) An agency that has entered into a contract or provider agreement or an inter-agency agreement with the New Mexico early childhood education and care department to provide early intervention services shall be considered an "early intervention provider agency" under these regulations.

B. Provider requirements.

(1) All early intervention provider agencies shall comply with these regulations and all other applicable state and federal regulations. All early intervention provider agencies that provide such services shall do so under the administrative oversight of the lead agency for IDEA, Part C, the New Mexico early childhood education and care department through the family infant toddler (FIT) program.

(2) All early intervention provider agencies shall establish and maintain separate financial reporting and accounting procedures for the delivery of early intervention services and related activities. They shall generate and maintain documentation and reports required in accordance with these regulations, the provisions of the contract/provider agreement or an inter-agency agreement, medicaid rules and early childhood education and care department service definitions and standards. This information shall be kept on file with the early intervention provider agencies and shall be available to the New Mexico early childhood education and care department or its designee upon request.

(3) All early intervention provider agencies shall employ individuals who maintain current licenses or certifications required of all staff providing early intervention services. Documentation concerning the licenses and certifications shall be kept on file with the early intervention provider agency and shall be available to the New Mexico early childhood education and care department or its designee upon request. The provider of early intervention services cannot employ an immediate family member of an eligible and enrolled child to work directly with that child. Exceptions can be made with prior approval by the New Mexico early childhood education and care department.

(4) Early intervention provider agencies shall ensure that personnel receive adequate training and planned and ongoing supervision, in order to ensure that individuals have the information and support needed to perform their job duties. The early intervention provider agency shall maintain documentation of supervision activities. Supervision shall comply with requirements of appropriate licensing and regulatory agencies for each discipline.

(5) Early intervention provider agencies shall provide access to information necessary for the New Mexico early childhood education and care department or its designee to monitor compliance with applicable state and federal regulations.

(6) Failing to comply with these regulations on the part of early intervention provider agencies will be addressed in accordance with provisions in the contract/provider agreement or interagency agreement and the requirements of state and federal statutes and regulations.

C. Financial matters.

(1) Reimbursement for early intervention

services to eligible children and families by the family infant toddler program shall conform to the method established by the New Mexico early childhood education and care department, as delineated in the early intervention provider agency's provider agreement and in the service definitions and standards.

(2) Early intervention provider agencies shall only bill for early intervention services delivered by personnel who possess relevant, valid licenses or certification in accordance with personnel certification requirements of this rule.

(3) Early intervention provider agencies shall enter delivered services data into the FIT-KIDS (key information data system), which is generated into claims for medicaid, private insurance and invoices for the early childhood education and care department.

(4) Early intervention provider agencies shall maintain documentation of all services provided in accordance with service definitions and standards and provider agreement / contract requirements.

(5) The FIT program and early intervention provider agencies shall not implement a system of payments or fees to parents.

(6) Public and private insurance.

(a) The parent(s) will not be charged any co-pay or deductible related to billing their public insurance (including medicaid) and private insurance.

(b) The parent(s) shall provide written consent before personally identifiable information is disclosed for billing purposes to public insurance (including medicaid) and private insurance.

(c) The parent(s) may withdraw consent at any time to disclose personally identifiable information to public insurance (including medicaid) and private insurance for billing purposes.

(d) The parent(s) shall provide written consent to use their private insurance to pay for FIT program services. Consent shall be obtained prior to initial billing of their private insurance for early intervention services and each time consent for services is required due to an increase (in frequency, length, duration, or intensity) in the provision of services on the IFSP.

[8.9.8.8 NMAC - N, 7/7/2021]

8.9.8.9 PERSONNEL:

A. Personnel requirements.

(1) Early intervention services shall be delivered by qualified personnel. Personnel shall be deemed "qualified" based upon the standards of their discipline and in accordance with these regulations and shall be supervised in accordance with these regulations.

(2) Individuals who hold a professional license or certificate from an approved field as identified in this rule, and provide services in that discipline, do not require certification as a developmental specialist. However, individuals who hold a professional license or certificate in one of these fields and who spend sixty percent or more of their time employed in the role of developmental specialist must obtain certification as a developmental specialist.

(3) Personnel may delegate and perform tasks within the specific scope of their discipline. The legal and ethical responsibilities of personnel within their discipline cannot be delegated.

B. Qualified personnel may include individuals from the following disciplines who meet the state's entry level requirements and possess a valid license or certification:

(1) audiology;

(2) developmental specialist;

(3) early childhood development and education;

(4) education of the deaf/hard of hearing;

(5) education of the blind and visually impaired;

(6) family therapy and counseling;

(7) nutrition/ dietetics;

(8) occupational therapy (including certified occupational therapy assistants);

(9) orientation and mobility specialist;

(10) pediatric nursing;

(11) physical therapy (including physical therapy assistants);

(12) physician (pediatrics or other medical specialty);

(13) psychology (psychologist or psychological associate);

(14) social work;

(15) special education; and

(16) speech and language pathology.

C. Certification of developmental specialist.

(1) Certification is required for individuals providing early intervention services functioning in the position of developmental specialist.

(2) A developmental specialist must have the appropriate certificate issued by the New Mexico early childhood education and care department in accordance with the developmental specialist certification policy and procedures.

(3) The term of certification as a developmental specialist is a three-year period granted from the date the application is approved.

D. Reciprocity of certification: An applicant for a developmental specialist certificate who possesses a comparable certificate from another state shall be eligible to receive a New Mexico developmental specialist certificate,

at the discretion of the New Mexico early childhood education and care department.

E. Certification renewal: The individual seeking renewal of a developmental specialist certificate shall provide the required application and documentation in accordance with policy and procedures established by the FIT program.

F. Agency exemptions from personnel certification requirements.

(1) At its discretion, the FIT program may issue to an early intervention provider agency an exemption from personnel qualifications for a specific developmental specialist position. The exemption shall be in effect only for one year from the date it is issued.

(2) An exemption from certification is for a specific position and is to be used in situations when the early intervention provider agency can demonstrate that it has attempted actively to recruit personnel who meet the certification requirements but is currently unable to locate qualified personnel.

(3) Early intervention provider agencies shall not bill for early intervention services delivered by a non-certified developmental specialist unless the FIT program has issued an exemption for that position.

(4) Documentation of efforts to hire personnel meeting the certification requirements shall be maintained.

G. Family service coordinators.

(1) Family service coordinators shall possess a bachelor's degree in health, education or social service field or a bachelor's degree in another field plus two years' experience in community, health or social services.

(2) If an early intervention provider agency is unable to hire suitable candidates meeting the above requirements, a person can be hired as a family service coordinator with an associate of arts degree and at least three years' experience in community, health or social services.

(3) Early intervention provider agencies may request a waiver from the FIT program, to hire family service coordinators who do not meet the qualifications listed above but do meet cultural, linguistic, or other specific needs of the population served or an individual who is the parent of a child with a developmental delay or disability.

(4) All individuals must meet all training requirements for family service coordinators in accordance with FIT program standards within one-year of being hired.

H. Supervision of early intervention personnel providing direct services.

(1) Early intervention provider agencies shall ensure that developmental specialists and therapists (employees and subcontractors), and family service coordinators receive monthly planned and ongoing reflective supervision.

(2) The early intervention provider agency shall maintain documentation of supervision activities conducted.

(3) Supervision of other early intervention personnel shall comply with the requirements of other appropriate licensing and regulatory agencies for each discipline.

[8.9.8.9 NMAC - N, 7/7/2021]

8.9.8.10 CHILD IDENTIFICATION:

A. Early intervention provider agencies shall collaborate with the New Mexico early childhood education and care department and other state, federal and tribal government agencies in a coordinated child find effort to locate, identify and evaluate all children residing in the state who may be eligible for early intervention services. Child find efforts shall include families and children in rural and in Native American communities, children whose family is homeless, children in foster care and wards of the state, and children born prematurely.

B. Early intervention provider agencies shall collaborate with the New Mexico early childhood education and care department and shall inform primary referral sources regarding how to make a referral when there are concerns about a child's development. Primary referral sources include: hospitals; prenatal and postnatal care facilities; physicians; public health facilities; child care and early learning programs, school districts; home visiting programs; homeless family shelters; domestic violence shelters and agencies; child protective services, including foster care; other social service agencies; and other health care providers.

C. Early intervention provider agencies in collaboration with the New Mexico early childhood education and care department shall inform parents, medical personnel, local education agencies and the general public of the availability and benefits of early intervention services. This collaboration shall include an ongoing public awareness campaign that is sensitive to issues related to accessibility, culture, language, and modes of communication.

D. Referral and intake:

(1) Primary referral sources shall inform parent(s) of their intent to refer and the purpose for the referral. Primary referral sources should refer the child as soon as possible, but in no case more than seven days after the child has been identified.

(2) Parents must give permission for a referral of their child to the FIT program.

(3) The child must be under three years of age at the time of the referral.

(4) If there are less than 45 days before the child turns three at the time of referral, the early intervention provider agency will not complete an evaluation to determine eligibility and will assist the family with a referral to Part B preschool special education and other preschool programs, as appropriate and with consent of the parent(s).

(5) The early intervention provider agency receiving a referral shall promptly assign a family service coordinator to conduct an intake with the parent(s).

(6) The family service coordinator shall contact the parent(s) to arrange a meeting at the earliest possible time that is convenient for the parent(s) in order to:

(a) inform the parent(s) about early intervention services and the IFSP process;

(b) review the FIT family handbook;

(c) explain the family's rights and procedural safeguards;

(d) if in a county that is also served by other FIT provider, inform the parent(s) of their choice of provider agencies and have them sign a "freedom of choice" form.

(e) provide information about evaluation options; and with the parent's consent, arrange the comprehensive multidisciplinary evaluation.

(7) If the child is found eligible for FIT services, the family service coordinator with parental consent shall schedule and facilitate the initial IFSP meeting to be completed within 45 days of referral to the FIT program for early intervention services.

(8) Exceptions to the 45-day timeline for completion of the initial IFSP due to exceptional family circumstances must be documented in the child's early intervention record. Exceptional family circumstances include:

(a) The child or parent is unavailable to complete the screening (if applicable), the initial evaluation the initial assessments of the child and family, or the initial IFSP meeting.

(b) The parent has not provided consent for the screening (if applicable) the initial evaluation, or the initial assessment of the child despite documented repeated attempts by the early intervention provider.

E. Screening.

(1) A developmental screening for a child who has been referred may be conducted using a standardized instrument to determine if there is an indication that the child may have developmental delay and whether an evaluation to determine eligibility is recommended.

(2) A developmental screening should not be used if the child has a diagnosis that would qualify them under established condition or biological medical risk or where the referral indicates a strong likelihood that the child has delay in their development, including when a screening has already been conducted.

(3) If a developmental screening is conducted:

(a) the written consent of the parent(s) must be obtained for the screening; and

(b) the parent must be provided written notice that they can request an evaluation at any point during the screening process.

(4) If the results of the screening:

(a) Do not indicate that the child is suspected of having a developmental delay, the parent must be provided written notice of this result and be informed that they can request an evaluation at the present time or any future date.

(b) Do indicate that the child is suspected of having a developmental delay, an evaluation must be conducted, with the consent of the parent(s). The 45-day timeline from referral to the completion of the initial IFSP and all of the referral and intake requirements of this rule must still be met.

F. Evaluation.

(1) A child who is referred for early intervention services, and whose parent(s) has given prior informed consent, shall receive a comprehensive multidisciplinary evaluation to determine eligibility, unless the child receives a screening in accordance with the screening requirements of this rule and the results do not indicate that the child is suspected of having a developmental delay. Exception: If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted even if the results do not indicate that the child is suspected of having a developmental delay.

(2) The evaluation shall be:

(a) timely, multidisciplinary, evaluation;

(b) conducted by qualified personnel, in a nondiscriminatory manner so as not to be racially or culturally discriminatory; and

(c) shall include information provided by the parent(s).

(3) If parental consent is not given, the family service coordinator shall make reasonable efforts to ensure that the parent(s) is fully aware of the nature of the evaluation or the services that would be available; and that the parent(s) understand that the child will not be able to receive the evaluation or services unless consent is given.

(4) A comprehensive multidisciplinary evaluation shall be conducted by a multidisciplinary team consisting of at least two qualified professionals from different disciplines.

(5) The family service coordinator shall coordinate the evaluation and shall obtain pertinent records related to the child's health and medical history.

(6) The evaluation shall include information provided by the child's parents, a review of the child's records related to current health status and medical history and observations of the child. The evaluation shall also include an assessment of the child's strengths and needs and a determination of the developmental status of the child in the following developmental areas:

(a) physical/motor development (including vision and hearing);

(b) cognitive development;

(c) communication development;

(d) social or emotional development; and

(e) adaptive development.

(7) The evaluation team shall use the tool(s) approved by the FIT program. Other domain specific tools may be used in addition to the approved tool(s).

(8) The tool(s) used in the evaluation shall be administered by certified or licensed personnel who have received training in the use of the tool(s).

(9) The evaluation shall be conducted in the child and family's native language, in accordance with the definition of native language, unless it is clearly not feasible to do so.

(10) The evaluation team will collect and discuss all of the information obtained during the evaluation process in order to make a determination of the child's eligibility for the FIT program.

(11) An evaluation report shall be generated that summarizes the findings of the multidisciplinary evaluation team. The report shall summarize the child's level of functioning in each developmental area based on assessments conducted and shall describe the child's overall functioning and ability to participate in family and community life. The report shall include recommendations regarding approaches and strategies to be considered when developing IFSP outcomes. The report shall also include a statement regarding the determination of the child's eligibility for the FIT program.

(12) Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or a member of the IFPS team, with prior consultation with the evaluation team.

(13) Information from the evaluation process and the report shall be used to assist in determining a rating for the initial early childhood outcome (ECO).

(14) If the child has a recent and complete evaluation current within the past six months from another Early Intervention Agency, the results may be used, in lieu of conducting an additional evaluation, to determine eligibility.

(15) If, based on the evaluation conducted the evaluation team determines that a child is not eligible, the evaluation team must provide the parent with prior written notice, and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms such as requesting a due process hearing or mediation or filing a State complaint.

G. Eligibility.

(1) The child's eligibility for early intervention services shall be determined through the evaluation process as identified in Section F. A statement of the child's eligibility for the FIT Program shall be documented in the evaluation report.

(2) The child's age shall be adjusted (corrected) for prematurity for children born less than 37 weeks gestation. The adjusted age shall be used until a child is 24 months of age for the purpose of eligibility determination.

(3) Informed clinical opinion may be used by the evaluation team to establish eligibility when the approved evaluation tool(s) or other approved assessment tools are not able to establish developmental delay.

(a) If informed clinical opinion is used to determine the child's eligibility, documentation must be provided to justify the child's eligibility.

(b) A second level review and sign off shall occur within the early intervention provider agency by someone of equal or higher certification or licensure that was not part of the evaluation team.

(c) Informed clinical opinion may only be used to qualify a child for more than one year with review and approval of the FIT program.

(4) The child must be determined eligible under one of the following categories.

(a) **Developmental delay:** a delay of twenty-five percent or more, after correction for prematurity, in one or more of the following areas of development: cognitive; communication; physical/motor; social or emotional; adaptive.

(i) Twenty-five percent delay shall be documented utilizing the tool(s) approved by the FIT program.

(ii) If the FIT program approved tool does not indicate a twenty-five percent delay, a domain-specific tool may be used to establish eligibility if the score is one and one-half standard deviations below the mean or greater.

(iii) Developmental delay includes "significant atypical development" documented on the basis of informed clinical opinion.

(b) **Established condition:** a diagnosed physical, mental, or neurobiological condition that has a high probability of resulting in developmental delay. The established condition shall be diagnosed by a health care provider and documentation shall be kept on file. Established conditions include the following:

(i) genetic disorders with a high probability of developmental delay, including chromosomal anomalies including Down syndrome and Fragile X syndrome (in boys); inborn errors of metabolism including Hurler syndrome; and other syndromes, including Prader-Willi and Williams;

(ii) perinatal factors, including preterm newborn, 28 completed weeks or less

(iii) perinatal factors, including toxoplasmosis, rubella, CMV, and herpes (TORCH);

(iv) prenatal toxic exposures including fetal alcohol syndrome (FAS); and birth trauma, including neurologic sequelae from asphyxia;

(v) neurologic conditions, including congenital anomalies of the brain including holoprosencephaly lissencephaly, microcephaly, hydrocephalus; anomalies of spinal cord including meningomyelocele; degenerative or progressive disorders including muscular dystrophies, leukodystrophies, spinocerebellar disorders; cerebral palsy (all types), including generalized, hypotonic patterns; abnormal movement patterns including generalized hypotonia, ataxias, myoclonus, and dystonia; peripheral neuropathies; traumatic brain injury; and CNS trauma including shaken baby syndrome;

(vi) sensory abnormalities, including visual impairment or blindness; congenital impairments including cataracts; acquired impairments including retinopathy of prematurity; cortical visual impairment; and chronic hearing loss;

(vii) physical impairment, including congenital impairments including arthrogryposis, osteogenesis imperfecta, and severe hand anomalies; and acquired impairments including amputations and severe burns;

(viii) mental/psychosocial disorders, including autism spectrum disorders; and

(ix) conditions recognized by the FIT program as established conditions for purposes of this rule; a genetic disorder, perinatal factor, neurologic condition, sensory abnormality, physical impairment or mental/psychosocial disorder that is not specified above must be recognized by the FIT program in order to qualify as an established condition for purposes of this rule; physician, designated by the New Mexico early childhood education and care department, shall make a determination of whether a proposed condition will be recognized within seven days of the FIT program receipt of the request for review.

(c) **Biological or medical risk for developmental delay:** a diagnosed physical, mental, or neurobiological condition. The biological or medical risk condition shall be diagnosed by a health care provider and documentation shall be kept on file. Biological and medical risk conditions include the following:

(i) genetic disorders with increased risk for developmental delay, including chromosomal anomalies including Turner syndrome, Fragile X syndrome (in girls), inborn errors of metabolism including Phenylketonuria (PKU), and other syndromes including Goldenhar neurofibromatosis, and multiple congenital anomalies (no specific diagnosis);

(ii) perinatal factors, including prematurity (less than 35 weeks and more than 29 weeks gestation) small for gestational age (less than 1750 grams); prenatal toxic exposures including alcohol, polydrug exposure, and fetal hydantoin syndrome; and birth trauma including seizures, and intraventricular or periventricular hemorrhage;

(iii) neurologic conditions, including anomalies of the brain including the absence of the corpus callosum, and macrocephaly; anomalies of the spinal cord including spina bifida and tethered cord; abnormal movement patterns including severe tremor and gait problems; and other central nervous system (CNS) influences, including CNS or spinal cord tumors, CNS infections (e.g., meningitis), abscesses, acquired immunodeficiency syndrome (AIDS), and CNS toxins (e.g., lead poisoning);

(iv) sensory abnormalities, including neurological visual processing concerns that affect visual functioning in daily activities as a result of neurological conditions, including seizures, infections (e.g., meningitis), and injuries including traumatic brain injury (TBI); and mild or intermittent hearing loss;

(v) physical impairment, including congenital impairments including cleft lip or palate, torticollis, limb deformity, club feet; acquired impairments including severe arthritis, scoliosis, and brachial plexus injury;

(vi) mental/psychosocial disorders, including severe attachment disorder, severe behavior disorders, and severe socio-cultural deprivation;

(vii) other medical factors and symptoms, including growth problems, severe growth delay, failure to thrive, certain feeding disorders, and gastrostomy for feeding; and chronic illness/medically fragile conditions including severe cyanotic heart disease, cystic fibrosis, complex chronic conditions, and technology-dependency; and

(viii) conditions recognized by the FIT program as biological or medical risk conditions for purposes of this rule; a genetic disorder, perinatal factor, neurologic condition, sensory abnormality, physical impairment, mental/psychosocial disorder, or other medical factor or symptom that is not specified above must be recognized by the FIT program in order to qualify as an medical or biological risk condition for purposes of this rule; department of health physician, designated by the FIT program manager, shall make a determination of whether a proposed condition will be recognized within seven days of the FIT program manager's receipt of the request for review.

(d) **Environmental risk for developmental delay:** a presence of adverse family factors in the child's environment that increases the risk for developmental delay in children. Eligibility determination shall be made using the tool approved by the FIT program.

(5) The families of children who are determined to be not eligible for the FIT program shall be provided with prior written notice and informed of their rights to dispute the eligibility determination. Families shall receive information regarding other community resources, such as home visiting and how to access specific resources in their area. Families shall also be informed about how to request re-evaluation at a later time should they suspect that their child's delay or risk for delay increases.

H. Redetermination of eligibility.

(1) The child's eligibility for the FIT program shall be re-determined annually in accordance with the eligibility determination requirements of this rule.

(2) The child's continued eligibility shall be documented on the IFSP.

(3) If the child no longer meets the requirements under the original eligibility category, the team will determine if the child meets the criteria for one of the other eligibility categories before exiting the child.

(4) If the child is determined to no longer be eligible for the FIT program the family shall be provided with prior written notice and informed of their rights to dispute the eligibility determination. The family service coordinator will assist the family, with their consent, with referrals to other agencies.

I. Ongoing assessment.

(1) Each eligible child shall receive an initial and ongoing assessment to determine the child's unique strengths and needs and developmental functioning. The ongoing assessment will utilize multiple procedures including the use of a tool that helps the team determine if the child is making progress in their development, to determine developmental levels for the IFSP and to modify outcomes and strategies, and to determine the resources, priorities, and concerns of the family.

(2) Assessment information shall be used by the team as part of the process of determining early childhood outcome (ECO) scores at the time of the initial IFSP and prior to the child exiting the FIT program.

(3) An annual assessment of the resources, priorities, and concerns of the family shall be voluntary on the part of the family. The IFSP shall reflect those resources, priorities and concerns the family has identified related to supporting their child's development.

[8.9.8.10 NMAC - N, 7/7/2021]

8.9.8.11 INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP):

A. IFSP development.

(1) A written IFSP shall be developed and implemented for each eligible child and family.

(2) The IFSP shall be developed at a meeting. The IFSP meeting shall:

(a) take place in a setting and at a time that is convenient to the family;

(b) be conducted in the native language of the family, or other mode of communication used by the family, unless it is clearly not feasible to do so; and

(c) meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

(3) Participants at the initial IFSP and annual IFSP meeting shall include:

(a) the parent(s);

(b) other family members, as requested by the parent(s) (if feasible);

(c) an advocate or person outside of the family, as requested by the parent(s);

(d) a person or persons directly involved in conducting evaluations and assessments of the child;

(e) as appropriate, a person or persons who are or will be providing early intervention services to the child and family;

(f) the family service coordinator; and

(g) other individual(s) as applicable, such as personnel from: child care; early head start; home visiting; medically fragile; children's medical services; child protective services; physician and other medical staff, and with permission of the parent(s).

(4) If a person or persons directly involved in conducting evaluations and assessments of the child is unable to attend a meeting, the family service coordinator shall make arrangements for the person's participation through other means, including: participating by telephone; having a knowledgeable authorized representative attend; or submitting a report.

(5) The initial IFSP shall be developed within 45 days of the referral.

(6) Families shall receive prior written notice of the IFSP meeting.

(7) The family service coordinator shall assist the parent(s) in preparing for the IFSP meeting and shall ensure that the parent(s) have the information that they need in order to fully participate in the meeting.

B. Contents of the IFSP: The IFSP shall include:

(1) the child's name, address, the name and address of the parent(s) or guardian, the child's birth date and, when applicable, the child's chronological age and adjusted age for prematurity (if applicable);

(2) the date of the IFSP meeting, as well as the names of all participants in the IFSP meeting;

(3) the dates of periodic and annual reviews;

(4) a summary of the child's health (including vision and hearing) and the child's present levels of development in all domains

(cognitive, communication, physical/motor, social and emotional and adaptive);

(5) with the approval of the parent(s), a statement of the family's concerns, priorities and resources that relate to enhancing the development of the infant or toddler as identified through the family assessment;

(6) the desired child and family outcomes developed with the family (including but not limited to pre-literacy and numeracy, as developmentally appropriate to the child), the strategies to achieve those outcomes and the timelines, procedures and criteria to measure progress toward those outcomes;

(7) a statement of specific early intervention services based on peer-reviewed research (to the extent practicable) that are necessary to meet the unique needs of the child and family to achieve the desired outcomes, and the duration, frequency, intensity, location, and the method of delivering the early intervention services;

(8) a parental signature, which denotes prior consent to the early intervention services on the IFSP; if the parent(s) does not provide consent for a particular early intervention service, then the service(s) to which the parent(s) did consent shall be provided;

(9) specific information concerning payment sources and arrangements;

(10) the name of the ongoing family service coordinator;

(11) a statement of all other services including, medical services, child care and other early learning services being provided to the child and family that are not funded under this rule;

(12) an outcome, including strategies the family service coordinator or family shall take to assist the child and family to secure other services not funded under this rule;

(13) a statement about the natural environments in which early intervention services shall be provided; if the IFSP team determines that services cannot be satisfactorily provided or IFSP outcomes cannot be achieved in natural environments, then documentation for this determination and a statement of where services will be provided and what steps will be taken to enable early intervention services to be delivered in the natural environment must be included;

(14) the projected start dates for initiation of early intervention services and the anticipated duration of those services; and

(15) at the appropriate time, a plan including identified steps and services to be taken to ensure a smooth and effective transition from early intervention services to preschool services under IDEA Part B and other appropriate early learning services.

C. Interim IFSP.

(1) With parental consent an interim IFSP shall be developed and implemented, when an eligible child or family have an immediate need for early intervention services prior to the completion of the evaluation and assessment.

(2) The interim IFSP shall include the name of the family service coordinator, the needed early intervention services, the frequency, intensity, location and methods of delivery, and parental signature indicating consent.

(3) The use of an interim IFSP does not waive or constitute an extension of the evaluation requirements and timelines.

D. Family service coordination.

(1) Family service coordination shall be provided at no cost to the family.

(2) The parent may choose the early intervention agency that will provide ongoing family service coordination.

(3) The parent may request to change the family service coordinator, at any time.

(4) The family service coordinator shall be responsible for:

(a) informing the family about early intervention and their rights and procedural safeguards;

(b) gathering information from the family regarding their concerns, priorities and resources;

(c) coordinating the evaluation and assessment activities;

(d) facilitating the determination of the child's eligibility;

(e) referring the family to other resources and supports;

(f) helping families plan and prepare for their IFSP meeting;

(g) organizing and facilitating IFSP meetings;

(h) arranging for and coordinating all services listed on the IFSP;

(i) coordinating and monitoring the delivery of the services on the IFSP to ensure that they are provided in a timely manner;

(j) conducting follow-up activities to determine that appropriate services are being provided;

(k) assisting the family in identifying funding sources for IFSP services, including medicaid and private insurance;

(l) facilitating periodic reviews of the IFSP; and

(m) facilitating the development of the transition plan and coordinating the transition steps and activities.

(5) Family service coordination shall be available to families upon their referral to the FIT program.

(6) Family service coordination shall be listed on the IFSP for all families of eligible children.

(7) Families may direct the level of support and assistance that they need from their

family service coordinator and may choose to perform some of the service coordination functions themselves.

E. Periodic review of the IFSP.

(1) A review of the IFSP for a child and child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review.

(2) The parent(s), the family service coordinator, and others as appropriate, shall participate in these reviews.

(3) A review can occur at any time at the request of the parent(s) or early intervention provider agency.

(4) Participants at a periodic review meeting shall include:

(a) the parent(s);

(b) other family members, as requested by the parent(s) (if feasible);

(c) an advocate or person outside of the family, as requested by the parent(s);

(d) the family service coordinator; and

(e) persons providing early intervention services, as appropriate.

F. Annual IFSP.

(1) The family service coordinator shall convene the IFSP team on an annual basis, to review progress regarding outcomes on the IFSP and to revise outcomes, strategies or services, as appropriate to the child's and family's needs and the annual re-determination of the child's eligibility for services.

(2) Attendance at the annual IFSP meeting shall conform to the requirements of the initial IFSP meeting.

(3) The team shall develop a new IFSP for the coming year; however, information may becarried forward from the previous IFSP if the information is current and accurate.

(4) Results of current evaluations and assessments and other input from professionals and parents shall be used in determining what outcomes will be addressed for the child and family and the services to be provided to meet these outcomes.

(5) The annual IFSP process shall include a determination of the child's continuing eligibility utilizing the tool(s) approved by the FIT program.

(6) At any time when monitoring of the IFSP by the family service coordinator or any member of the IFSP team, including the family, indicates that services are not leading to intended outcomes, the team shall be reconvened to consider revision of the IFSP. The IFSP team can also be reconvened if there are significant changes to the child's or family's situation, e.g., moving to a new community, starting child care or early head start, health or medical changes, etc.

(7) If there are significant changes to the IFSP, the revised IFSP can be considered a new annual IFSP with a new start and end date.

[8.9.8.11 NMAC - N, 7/7/2021]

8.9.8.12 SERVICE DELIVERY:

A. Early intervention services.

(1) Early intervention services shall be:

(a) designed to address the outcomes identified by the IFSP team (which includes parents and other team members);

(b) identified in collaboration with the parents and other team members through the IFSP process;

(c) listed on the IFSP if recommended by the team, including the family, even if a service provider is not available at that time;

(d) delivered to the maximum extent appropriate in the natural environment for the child and family in the context of the family's day to day life activities;

(e) designed to meet the developmental needs of the eligible child and the family's needs related to enhancing the child's development;

(f) delivered in accordance with the specific location, duration and method in the IFSP; and

(g) provided at no cost to the parent(s).

(2) Early intervention services (with the exception of consultation and evaluation and assessments) must be provided within 30 days of the start date for those services, as listed on the IFSP and consented to by the parent(s).

(3) If an early intervention service cannot be achieved satisfactorily for the eligible child in a natural environment, the child's record shall contain justification for services provided in another setting or manner and a description of the process used to determine the most appropriate service delivery setting, methodology for service delivery, and steps to be taken to enable early intervention services to be delivered in the natural environment.

(4) Early intervention services shall be provided, by qualified personnel, in accordance with an IFSP, and meet the standards of the state. Early intervention services include:

(a) **Assistive technology services**: services which directly assist in the selection, acquisition, or use of assistive technology devices for eligible children. This includes the evaluation of the child's needs, including a functional evaluation in the child's natural environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for eligible children; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices,

such as those associated with existing developmental therapy, education and rehabilitation plans and programs; training or technical assistance for an eligible child and the child's family; and training or technical assistance for professionals that provide early intervention or other individuals who provide other services or who are substantially involved in the child's major life functions. Assistive technology devices are pieces of equipment, or product systems, that are used to increase, maintain, or improve the functional capabilities of eligible children. Assistive technology devices and services do not include medical devices that are implanted, including a cochlear implant, or the optimization, maintenance, or replacement of such a device.

(b)

Audiological services: services that address the following: identification of auditory impairment in a child using at risk criteria and appropriate audiology screening techniques; determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures; referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment; provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training; provision of services for the prevention of hearing loss; and determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(c)

Developmental instruction: services that include working in a coaching role with the family or other caregiver, the design of learning environments and implementation of planned activities that promote the child's healthy development and acquisition of skills that lead to achieving outcomes in the child's IFSP. Developmental instruction provides families and other caregivers with the information, skills, and support to enhance the child's development. Developmental instruction addresses all developmental areas: cognitive, communication, physical/motor, vision, hearing), social or emotional and adaptive development. Developmental instruction services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

(d)

Family therapy, counseling and training: services provided, as appropriate, by licensed social workers, family therapists, counselors, psychologists, and other qualified personnel to assist the parent(s) in understanding the special needs of their child, supporting the parent-child relationship, and to assist with emotional, mental health and relationship issues of the parent(s) related to parenting and supporting their child's healthy development.

(e)

Family service coordination: services and activities as designated in the IFSP and performed by a designated individual to assist and enable the families of children from birth through age three years of age to access and receive early intervention services. The responsibilities of the family service coordinator include acting as the single point of contact for: coordinating, facilitating and monitoring the delivery of services to ensure that services are provided in a timely manner; coordinating services across agency lines; assisting parents in gaining access to, and coordinating the provision of, early intervention services and other services as identified on the IFSP; explaining early intervention services to families, including family rights and procedural safeguards; gathering information from the family regarding their concerns, priorities and resources; coordinating the evaluation and assessment activities; facilitating the determination of the child's eligibility; referring the family to providers for needed services and supports; scheduling appointments for IFSP services for the child and their family; helping families plan and prepare for their IFSP meeting; organizing, facilitating and participating in IFSP meetings; arranging for and coordinating all services listed on the IFSP; conducting follow-up activities to determine that appropriate services are being provided; coordinating funding sources for services provided under the IFSP; facilitating periodic reviews of the IFSP; ensuring that a transition plan is developed at the appropriate time; and facilitating the activities in the transition plan to support a smooth and effective transition from FIT services.

(f)

Health services: those health related services that enable an eligible child to benefit from the provision of other early intervention service during the time that the child is receiving the other early intervention services. These services include, but are not limited to, clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services. Health services do not include surgery or purely medical services; devices necessary to control or treat a medical condition; medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children; or services related to implementation, optimization, maintenance or replacement of a medical device that is surgically implanted.

(g)

Medical services: those services provided for diagnostic or evaluation purposes by a licensed physician to determine a child's developmental status and other information related to the need for early intervention services.

(h)

Nursing services: those services that enable an eligible child to benefit

from early intervention services during the time that the child is receiving other early intervention services and include the assessment of health status for the purpose of providing nursing care; the identification of patterns of human response to actual or potential health problems; provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and administration of medication, treatments, and regimens prescribed by a licensed physician.

(i)

Nutrition services: include conducting individual assessments in nutritional history and dietary intake; anthropometric biochemical and clinical variables; feeding skills and feeding problems; and food habits and food preferences. Nutrition services also include developing and monitoring appropriate plans to address the nutritional needs of eligible children; and making referrals to appropriate community resources to carry out nutrition goals.

(j)

Occupational therapy services: those services that address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in a home, school, and community setting. Occupational therapy includes identification, assessment, and intervention; adaptation of the environment and selection, design and fabrication of assistive and orthotic devices to facilitate the development and promote the acquisition of functional skills, and prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(k)

Physical therapy services: those services that promote sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. Included are screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction; obtaining interpreting, and integrating information appropriate to program planning to prevent or alleviate movement dysfunction and related functional problems; and providing individual and group services to prevent or alleviate movement dysfunction and related functional problems.

(l)

Psychological services: those services delivered as specified in the IFSP which include administering psychological and developmental tests and other assessment procedures; interpreting assessment results; obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and planning and management of a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(m)

Sign language and cued language services: services that include teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.

(n)

Social work services: those activities as designated in the IFSP that include identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services; preparing a social or emotional developmental assessment of the child within the family context; making home visits to evaluate patterns of parent-child interaction and the child's living conditions, providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents; and working with those problems in a child's and family's living situation that affect the child's maximum utilization of early intervention services.

(o)

Speech and language pathology services: those services as designated in the IFSP which include identification of children with communicative or oral-motor disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills; provision of services for the habilitation or rehabilitation of children with communicative or oral-motor disorder and delays in development of communication skills; and provision of services for the habilitation, rehabilitation, or prevention of communicative or oral-motor disorders and delays in development of communication skills.

(p)

Transportation services: supports that assist the family with the cost of travel and other related costs as designated in the IFSP that are necessary to enable an eligible child and family to receive early intervention services or providing other means of transporting the child and family.

(q)

Vision services: services delineated in the IFSP that address visual functioning and ability of the child to most fully participate in family and community activities. These include evaluation and assessment of visual functioning including the diagnosis and appraisal of specific visual disorders, delays and abilities; referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorder; and communication skills training. Vision services also include orientation and mobility training addressing concurrent motor skills, sensation, environmental concepts, body image, space/time relationships, and gross motor skills. Orientation and mobility instruction is focused on travel and movement in current

environments and next environments and the interweaving of skills into the overall latticework of development. Services include evaluation and assessment of infants and toddlers identified as blind/visually impaired to determine necessary interventions, vision equipment, and strategies to promote movement and independence.

B. All services delivered to an eligible child shall be documented in the child's record and reported to the FIT program in accordance with policy and procedure established by the FIT program.

C. The family service coordinator shall review and monitor delivery of services to ensure delivery in accordance with the IFSP.

[8.9.8.12 NMAC - N, 7/7/2021]

8.9.8.13 TRANSITION:

A. Transition planning shall occur with the parent(s) of **all** children to ensure a smooth transition from the FIT program to preschool or other setting.

B. Notifications to the public education department and local education agency (LEA):

(1) The FIT program shall provide notification to the public education department, special education bureau, of all potentially eligible children statewide who will be turning three years old in the following 12-month period.

(2) The early intervention provider agency shall notify the LEA of all potentially eligible children residing in their district who will turn three years old in the following 12-month period. This will allow the LEA to conduct effective program planning.

(3) The notification from the early intervention provider agency to the LEA shall:

(a) include children who are potentially eligible for preschool special education services under the Individuals with Disabilities Education Act (IDEA) Part B; potentially eligible children are those children who are eligible under the developmental delay or established condition categories;

(b) include the child's name, date of birth, and contact information for the parent(s);

(c) be provided at least quarterly in accordance with the process determined in the local transition agreement; and

(d) be provided not fewer than 90 days before the third birthday of each child who is potentially eligible for IDEA Part B.

C. Transition plan:

(1) A transition plan shall be developed with the parent(s) for each eligible child and family that addresses supports and services after the child leaves the FIT program.

(2) The transition plan shall be included as part of the child's IFSP and shall be updated, revised and added as needed.

(3) The following is the timeline for developing the transition plan:

(a) at the child's initial IFSP meeting the transition plan shall be initiated and shall include documentation that the family service coordinator has informed the parent(s) regarding the timelines for their child's transition;

(b) by the time child is 24 months old, the transition plan will be updated to include documentation that the family service coordinator has informed the parent(s) of the early childhood transition options for their child and any plans to visit those settings; and

(c) at least 90 days and not more than nine months before the child's third birthday, the transition plan shall be finalized at an annual IFSP or transition conference meeting that meets the attendance requirements of this rule.

(4) The transition plan shall include:

(a) steps, activities and services to promote a smooth and effective transition for the child and family;

(b) a review of program and service options available, including Part B preschool special education, head start, New Mexico school for the deaf, New Mexico school for the blind and visually impaired, private preschool, child care settings and available options for Native American tribal communities; or home if no other options are available;

(c) documentation of when the child will transition;

(d) the parent(s) needs for childcare if they are working or in school, in an effort to avoid the child having to move between preschool settings;

(e) how the child will participate in inclusive settings with typically developing peers;

(f) evidence that the parent(s) have been informed of the requirement to send notification to the LEA;

(g) discussions with and training of the parent(s) regarding future placements and other matters related the child's transition;

(h) procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in a new setting; and

(i) a confirmation that referral information has been transmitted, including the assessment summary form and most recent IFSP.

D. Referral to the LEA and other preschool programs:

(1) A transition referral shall be submitted by the family service coordinator, with parental consent, to the LEA at least 60 days prior to the transition conference. The transition referral shall include at a minimum the child's name, the child's date of birth, the child's address of residence, and the contact information for the parent(s), including name(s), address(es), and phone number(s).

(2) For children who enter the FIT program less than 90 days before their third birthday, the family service coordinator shall submit a referral, with parental consent, as soon as possible to the LEA. This referral shall serve as the notification for the child. No further notification to the LEA shall be required for the child.

(3) For children referred to the FIT program less than 45 days before the child's third birthday, the family service coordinator shall submit a referral to the LEA, with parent consent, but the early intervention provider agency will not conduct an evaluation to determine eligibility in accordance with the referral and intake provisions of this rule.

E. Invitation to the transition conference: The family service coordinator shall submit an invitation to the transition conference to the LEA and other preschool programs at least 30 days prior to the transition conference.

F. Transition assessment summary:

(1) The family service coordinator shall submit a completed transition assessment summary form to the LEA at least 30 days prior to the transition conference.

(2) Assessment results, including present levels of development, must be current within six months of the transition conference.

G. Transition conference: The transition conference shall:

(1) be held with the approval of the parent(s);

(2) be held at least 90 days and no more than nine months prior to the child's third birthday;

(3) meet the IFSP meeting attendance requirements of this rule;

(4) take place in a setting and at a time that is convenient to the family;

(5) be conducted in the native language of the family, or other mode of communication used by the family, unless it is clearly not feasible to do so;

(6) with permission of the parent(s), include other early childhood providers (early head start/head start, child care, private preschools, New Mexico school for the deaf, New Mexico school for the blind and visually impaired, etc.);

(7) be facilitated by the family service coordinator to include:

(a) a review of the parent(s)'s preschool and other service options for their child;

(b) a review of, and if needed, a finalization of the transition plan;

(c) a review of the current IFSP, the assessment summary; and any other relevant information;

(d) the transmittal of the IFSP, evaluation and assessments and other pertinent information with parent consent;

(e) an explanation by an LEA representative of the IDEA Part B procedural safeguards and the eligibility determination process, including consent for the evaluation;

(f) as appropriate, discussion of communication considerations (if the child is deaf or hard of hearing) and Braille determination (if the child has a diagnosis of a visual impairment), autism considerations, and considerations for children for whom English is not their primary language.

(g) discussion of issues including enrollment of the child, transportation, dietary needs, medication needs, etc.

(h) documentation of the decisions made on the transition page and signatures on the transition conference signature page, which shall be included as part of the IFSP. Copies of the transition conference page and signature page shall be sent to all participants.

H. Transition date:

(1) The child shall transition from the FIT program when the child turns three years old.

(2) For a child determined to be eligible by the LEA for preschool special education (IDEA Part B):

(a) if the child's third birthday occurs during the school year, transition shall occur by the first school day after the child turns three; or

(b) if the child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP (or IFSP-IEP) will begin.

I. The individualized education program (IEP):

(1) The family service coordinator and other early intervention personnel shall participate in a meeting to develop the IEP (or IFSP-IEP) with parent approval.

(2) The family service coordinator, with parent consent, shall provide any new or updated documents to the LEA in order to develop the IEP.

J. Follow-up family service coordination: At the request of the parents, and in accordance with New Mexico early childhood education and care department policy, family service coordination shall be provided after the child exits from early intervention services for the purpose of facilitating a smooth and effective transition.

[8.9.8.13 NMAC - N, 7/7/2021]

8.9.8.14 PROCEDURAL SAFEGUARDS:

A. Procedural safeguards are the requirements set forth by IDEA, as amended, and established and implemented by the New Mexico early childhood education and care department that specify family's rights and protections relating to the provision of early intervention services and the process for resolving individual complaints related to services for a child and family. The family service coordinator at the first visit with the

family shall provide the family with a written overview of these rights and shall also explain all the procedural safeguards.

B. The family service coordinator shall provide ongoing information and assistance to families regarding their rights throughout the period of the child's eligibility for services. The family service coordinator shall explain dispute resolution options available to families and early intervention provider agencies. A family service coordinator shall not otherwise assist the parent(s) with the dispute resolution process.

C. Surrogate parent(s).

(1) A surrogate parent shall be assigned when:

(a) no parent can be identified;

(b) after reasonable efforts a parent cannot be located; and

(c) a child is a ward of the state or tribe and the foster parent is unable or unwilling to act as the parent in the IFSP process.

(2) The family service coordinator shall be responsible for determining the need for the assignment of a surrogate parent(s) and shall contact the FIT program if the need for a surrogate is determined.

(3) The continued need for a surrogate parent(s) shall be reviewed regularly throughout the IFSP process.

(4) The FIT program shall assign a surrogate parent within 30 days after it is determined that the child needs a surrogate parent. A surrogate may also be appointed by a judge in case of a child who is a ward of the court, as long as the surrogate meets the requirements of this rule.

(5) The person selected as a surrogate:

(a) must not be an employee of the lead agency, other public agency or early intervention provider agency or provider of other services to the child or family; the person is not considered an employee if they solely are employed to serve as a surrogate;

(b) must have no personal or professional interest that conflicts with the interests of the child; and

(c) must have knowledge and skills that ensure adequate representation of the child.

(6) A surrogate parent has all of the same rights as a parent for all purposes of this rule.

D. Consent.

(1) The family service coordinator shall obtain parental consent before:

(a) administering screening procedures under this rule that are used to determine whether a child is suspected of having a disability;

(b) an evaluation conducted to determine the child's eligibility for the FIT program;

(c) early intervention services are provided;

(d) public or private insurance is used, in accordance with this rule; and

(e) personally identifiable information is disclosed, unless the disclosure is made to a participating agency.

(2) The family service coordinator shall ensure that the parent is fully aware of the nature of the evaluation and assessment or early intervention service that would be available and informed that without consent the child cannot receive an evaluation or early intervention services.

(3) The parent(s):

(a) may accept or decline any early intervention service at any time; and

(b) may decline a service after first accepting it, without jeopardizing other early intervention services.

(4) The FIT program may not use due process procedures of this rule to challenge a parent's refusal to provide any consent that is required by this rule.

E. Prior written notice and procedural safeguards notice.

(1) Prior written notice shall be provided at least five days before the early intervention provider agency proposes, or refuses, to initiate or change the identification, evaluation or placement of a child, including any changes to length, duration, frequency and method of delivering a service. Parent(s) may waive the five-day period in order for the change to be implemented sooner, if needed.

(2) The prior written notice must include sufficient detail to inform the parent(s) about:

(a) the action being proposed or refused;

(b) the reasons for taking the action; and

(c) all procedural safeguards available, including mediation, how to file a complaint and a request for a due process hearing, and any timelines for each.

(3) The procedural safeguards notice must be provided in the native language of the parent(s) or other mode of communication used by the parent, unless clearly not feasible to do so.

(4) If the native language of the parent(s) is not a written language, the early intervention provider agency shall translate the notice orally in their native language or other means of communication so that the parent understands the notice. The family service coordinator shall document that this requirement has been met.

F. No child or family shall be denied access to early intervention services on the basis of race, creed, color, sexual orientation, religion, gender, ancestry, or national origin.

G. Confidentiality and opportunity to examine records.

(1) Notice: Notice to the parent(s) shall be provided when a child is referred to the FIT program, and shall include:

(a) a description of the types of children that information is maintained on, the types of information sought, and method used in gathering the information, and the uses of the information;

(b) a summary of the policies and procedures regarding storage, disclosure to third parties, retention and destruction of personally identifiable information;

(c) a list of the types and locations of early intervention records collected, maintained or used by the agency;

(d) a description of the rights of the parent(s) and children regarding this information, including their rights under IDEA, Part C ("Confidentiality"); and

(e) a description of the extent to which the notice is provided in the native languages of the various population groups in the state.

(2) Confidentiality.

(a) All personally identifiable data, information, and records shall be protected, and confidentiality maintained in accordance with the Family Educational Rights and Privacy Act (FERPA).

(b) Personally identifiable data, information, and records shall be maintained as confidential from the time the child is referred to the FIT program until the point at which records are no longer required to be maintained in accordance with federal or state law.

(c) Prior consent from the parent(s) must be obtained before personally identifiable information is disclosed to anyone other than a participating agency or used for any purpose other than meeting a requirement of these regulations.

(d) The early intervention provider agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.

(e) One official at each early intervention provider agency must assume responsibility for ensuring the confidentiality of all personally identifiable information.

(f) The early intervention provider agency must maintain for public inspection a current listing of names and positions of personnel who may have access to personally identifiable information.

(g) All personnel collecting or using personally identifiable information must receive training or instructions on the confidentiality requirements of this rule.

(3) Access to records.

(a) The early intervention provider agency must permit the parent(s) to inspect and review any early intervention records related to their child without unnecessary delay and before any IFSP meeting or due process hearing, and in no cases more than 10 days after the request has been made.

(b) The early intervention provider agency must respond to reasonable requests for explanations and interpretations of the early intervention records.

(c) The parent has the right to have a representative inspect and review the early intervention records.

(d) The early intervention provider agency must assume that the parent has the right to review the early intervention records unless they have been provided documentation that the parent does not have authority under state law governing such matters as custody, foster care, guardianship, separation and divorce.

(e) The early intervention provider agency must provide copies of evaluations and assessments, the IFSP as soon as possible after each meeting at no cost.

(f) The early intervention provider agency must provide one complete copy of the child's early intervention records at the request of the parent(s) at no cost.

(g) The early intervention provider agency may otherwise charge a fee for copies of records that are made for parents under this rule if the fee does not effectively prevent the parent(s) from exercising their right to inspect and review those records.

(h) The early intervention provider agency may not charge a fee to search for or to retrieve records to be copied.

(4) Record of access.

(a) The early intervention provider agency must keep a record of parties obtaining access to early intervention records (except access by the parent(s), authorized representatives of the lead agency and personnel of the FIT provider agency).

(b) The record must include the name of the party, the date access was given, and the purpose for which the party was authorized to access the record.

(c) If any early intervention record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(5) Amendment of records at parent request.

(a) If the parent(s) believes that information in the child's records is inaccurate, misleading, or violates the privacy or other rights of the child or parent(s), they may request that the early intervention provider agency amend the information.

(b) The early intervention provider agency must decide whether to amend the information in accordance with

the request within 14 days of receipt of the request.

(c) If the early intervention provider agency refuses to amend the information in accordance with the request, it must inform the parent(s) of the refusal and advise the parent(s) of their right to a hearing.

(6) Records hearing.

(a) The early intervention provider agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's record to ensure that it is not inaccurate, misleading, or violates the privacy or other rights of the child or parent(s).

(b) A parent may request a due process hearing under this rule to address amendment of records.

(c) If as a result of a hearing it is determined that information in the records is inaccurate, misleading, or violates the privacy or other rights of the child or parent(s), the early intervention provider agency must amend the information accordingly and inform the parents in writing.

(d) If as a result of a hearing it is determined that information in the records is not inaccurate, misleading, or violates the privacy or other rights of the child or parent(s), the early intervention provider agency must inform the parents of the right to place in the child's records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(e) Any explanation placed in the child's records must be maintained by the early intervention provider agency as long as the record is contested or as long as the contested portion is maintained and if the contested portion is released to any party, the explanation must also be disclosed to the party.

(7) Destruction of records.

(a) Records shall be maintained for a minimum of six years following the child's exit from the early intervention services system before being destroyed. At the conclusion of the six year period, records shall be destroyed upon the request of the parent(s), or may be destroyed at the discretion of the early intervention provider agency.

(b) The early intervention provider agency must attempt to inform the parent(s) when personally identifiable information collected, maintained or used is no longer needed to provide services under state and federal regulations.

(c) Notwithstanding the foregoing, a permanent record of a child's name, date of birth, parent contact information, name of the family service coordinator, names of early intervention personnel, and exit data (year and age upon exit, and any programs entered into upon exit) may be maintained without time limitation.

H. Dispute resolution options.

(1) Parents and providers shall have access to an array of options for resolving disputes, as described herein.

(2) The family service coordinator shall inform the family about all options for resolving disputes. The family shall also be informed of the policies and procedures of the early intervention provider agency for resolving disputes at the local level.

I. Mediation.

(1) The mediation process shall be made available to parties to disputes, including matters arising prior to filing a complaint or request for due process hearing. The mediation:

(a) shall be voluntary on the part of the parties;

(b) shall not be used to deny or delay the parent(s)'s right to a due process hearing or to deny any other rights of the parent(s);

(c) shall be conducted by a qualified and impartial mediator who is trained in mediation techniques and who is knowledgeable in the laws and regulations related to the provision of early intervention services;

(d) shall be selected by the FIT program from a list of qualified, impartial mediators who are selected based on a random, rotational or other impartial basis; the selected mediator may not be an employee of the lead agency or the early intervention provider agency and they must not have a personal or professional interest that conflicts with the person's objectivity; and

(e) shall be funded by the FIT program.

(2) Sessions in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties.

(3) If the parties resolve the dispute, they must execute a legally binding agreement that:

(a) states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(b) is signed by both parties.

(4) The mediation agreement shall be enforceable in a state or federal district court of competent jurisdiction.

J. Complaints.

(1) An individual or organization may file a complaint with the state director of the FIT program regarding a proposal, or refusal, to initiate or change the identification, evaluation, or placement of a child; or regarding the provision of early intervention services to a child and the child's family. The party submitting the complaint shall also forward a copy of the complaint to the FIT provider agency(ies) serving the child.

(2) The written complaint shall be signed by the complaining party and shall include:

(a) a statement that the FIT program or FIT provider agency(ies) serving the child have violated a requirement of this rule or Part C of the IDEA, and a statement of the facts on which that allegation is based;

(b) the signature and contact information of the complainant;

(c) if the complaint concerns a specific child:

(i) the name and address of the residence of the child, or if the child is homeless, the contact information for the child;

(ii) the name of the FIT provider agency(ies) serving the child;

(iii) a description of the nature of the dispute related to the proposed or refused initiation or change, including facts related to the dispute; and

(d) a proposed resolution of the dispute to the extent known and available to the party at the time.

(3) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the FIT program.

(4) Upon receipt of a complaint, the early childhood education and care department shall determine if an investigation is necessary, and if an investigation is deemed necessary, within 60 calendar days after the complaint is received it shall:

(a) carry out an independent on-site investigation;

(b) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(c) provide an opportunity for the lead agency, public agency or early intervention provider agency to respond to the complaint, including at a minimum:

(i) at the discretion of the FIT program, a proposal to resolve the complaint; and

(ii) an opportunity for a parent who has filed a complaint and the FIT program or the FIT provider agency(ies) serving the child to voluntarily engage in mediation, consistent with this rule;

(d) give the parties the opportunity to voluntarily engage in mediation;

(e) review all relevant information and make an independent determination as to whether any law or regulation has been violated; and

(f) issue a written decision to the complainant and involved parties that addresses each allegation and details the findings of fact and conclusions and the reason for the complaint investigator's final decision. The written decision may include recommendations that include technical assistance activities, negotiations and corrective actions to be achieved.

(5) An extension of the 60 day investigation timeline will only be granted if exceptional circumstances exist with respect to a particular complaint or if the parties agree to extend the timeline to engage in mediation.

(6) If the complaint received is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, the complaint investigator shall set aside any part of the complaint that is being addressed in a due process hearing until the conclusion of that hearing. Any issue in the complaint that is not part of the due process hearing must be resolved within the sixty-calendar day timeline.

(7) If an issue raised in a complaint is or was previously decided in a due process hearing involving the same parties, the decision from that hearing is binding on that issue, and the FIT program shall inform the complainant to that effect.

(8) A complaint alleging a failure to implement a due process hearing decision shall be resolved by the department.

(9) Except as otherwise provided by law, there shall be no right to judicial review of a decision on a complaint.

K. Request for a due process hearing.

(1) In addition to the complaint procedure described above, a parent, a participating FIT provider, or the FIT program may file a request for a hearing regarding a proposal, or refusal, to initiate or change the identification, evaluation, or placement of a child; or regarding the provision of early intervention services to a child and the child's family.

(2) A parent or participating FIT provider may request a hearing to contest a decision made by the FIT program pursuant to the complaints provisions above.

(3) A request for a hearing shall contain the same minimum information required for a complaint under this rule.

L. Appointment of hearing officer.

(1) When a request for a hearing is received, the FIT program shall assign an impartial hearing officer from a list of hearing officers maintained by the FIT program who:

(a) has knowledge about IDEA Part C and early intervention;

(b) is not an employee of any agency or entity involved in the provision of early intervention; and

(c) does not have a personal or professional interest that would conflict with their objectivity in implementing the process.

(2) The hearing officer shall:

(a) listen to the presentation of relevant viewpoints about the due process issue;

(b) examine all information relevant to the issues;

(c) seek to reach timely resolution of the issues; and

(d) provide a record of the proceedings, including a written decision.

M. Due process hearings.

(1) When a request for a hearing is received, a due process hearing shall be conducted.

(2) The due process hearing shall be carried out at a time and place that is reasonably convenient to the parents and child involved.

(3) The due process hearing shall be conducted and completed and a written decision shall be mailed to each party no later than 30 days after receipt of a parent's complaint. However, the hearing officer may grant specific extensions of this time limit at the request of either party.

(4) A parent shall have the right in the due process hearing proceedings:

(a) to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children and others, at the party's discretion;

(b) to present evidence and confront, cross examine, and compel the attendance of witnesses;

(c) to prohibit the introduction of any evidence at the hearing that has not been disclosed to the party at least five days before the hearing;

(d) to obtain a written or electronic verbatim record of the hearing, at no cost to the parent; and

(e) to obtain a written copy of the findings of fact and decisions, at no cost to the parent.

(5) Any party aggrieved by the findings and decision of the hearing officer after a hearing has the right to bring a civil action in a state or federal court of competent jurisdiction, within 30 days of the date of the decision.

N. Abuse, neglect, and exploitation.

(1) All instances of suspected abuse, neglect, and exploitation shall be reported in accordance with law and policies established through the New Mexico early childhood education and care department and the children, youth and families department.

(2) A parent's decision to decline early intervention services does not constitute abuse, neglect or exploitation.

[8.9.8.14 NMAC - N, 7/7/2021]

HISTORY OF 8.9.8 NMAC:
[**RESERVED**]

ENVIRONMENT DEPARTMENT

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.2.79 NMAC EIB 21-07 (R)

The Environmental Improvement Board ("EIB") will hold a virtual public hearing on June 25, 2021 beginning at 9:00 a.m. via video conference (Zoom), via telephone, and comments will also be received via email (to: pamela.jones@state.nm.us) through the conclusion of the hearing. The purpose of the hearing is to consider the matter of EIB 21-07 (R), proposed revisions to the New Mexico State Implementation Plan ("SIP") regarding proposed amendments to the Air Quality Control Regulation codified in the New Mexico Administrative Code ("NMAC") at 20.2.79 NMAC, Permits - Nonattainment Areas.

Instructions to Join the Hearing:

Join via Zoom
https://zoom.us/j/97135613307?pwd=eWs5QS9KRG5XRmg4QmVFNS9RWThWdz09

Meeting ID: 971 3561 3307
Passcode: 130269

One tap mobile
+1-253-215-8782,,97135613307#,,,,*130269# US (Tacoma)
+1-346-248-7799,,97135613307#,,,,*130269# US (Houston)

Dial by your location
+1-253-215-8782 US (Tacoma)
+1-346-248-7799 US (Houston)
+1-669-900-6833 US (San Jose)
+1-301-715-8592 US (Washington DC)
+1-312-626-6799 US (Chicago)
+1-929-436-2866 US (New York)
Meeting ID: 971 3561 3307
Passcode: 130269
Find your local number: https://zoom.us/u/aennMfZqJI

The hearing is being held via video conference, email and telephonic means due to the concerns surrounding the Novel Coronavirus 2019 ("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 20.2.79 NMAC, Permits - Nonattainment Areas, as proposed in the *Petition for Regulatory Change*

("Petition"), EIB Docket Number 21-07(R), filed March 3, 2021, by the Air Quality Bureau ("Bureau") of the New Mexico Environment Department ("Department").

The purpose of the amendments is to make technical and administrative corrections to the rule. 20.2.79 NMAC specifies permitting requirements for any new major stationary source or major modification of an existing source located within a designated nonattainment area, or which is located within an area designated attainment or unclassifiable and will emit a regulated pollutant that significantly impacts a nonattainment area for the same pollutant. A source subject to this regulation must submit a permit application to the Department and cannot construct or operate the new source or modification until it receives a permit or permit revision.

The U.S. Environmental Protection Agency ("EPA") designated a part of Doña Ana County in the Sunland Park area as a Marginal Nonattainment Area for the 2015 O3 NAAQS, effective August 3, 2018, requiring the Bureau to develop a SIP revision that includes any necessary revisions to 20.2.79 NMAC, and submit it to EPA by August 3, 2021.

The Bureau analyzed 20.2.79 NMAC to determine if it was adequate to implement and enforce the revised ozone standard. The Bureau compared 20.2.79 NMAC with 40 CFR 51.165, *Permit Requirements*, and identified cross-reference inconsistencies and typographical errors that are addressed in the proposed revision.

The full text of the Bureau's proposed amended regulation is available on the Bureau's web site at https://www.env.nm.gov/air-quality/proposed-regs/ or by contacting Neal Butt at 505-476-4317 or neal.butt@state.nm.us. Please contact Neal Butt if you have questions or comments concerning the proposed amendments. **Stakeholders are requested to provide comments by May 21, 2021**.

The hearing will be conducted in accordance with: 20.1.1 NMAC, Rulemaking Procedures – Environmental Improvement Board; the *Environmental Improvement Act*, Section 74-1-9 NMSA 1978; the *Air Quality Control Act*, Section 74-2-6 NMSA 1978; and other applicable procedures.

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 hearing.

Persons wishing to present technical testimony must file with the EIB a written *Notice of Intent* to do so. The requirements for a *Notice of Intent* can be found at 20.1.1.302 NMAC, Technical Testimony. Notices Of Intent to present technical testimony at the hearing must be received by the EIB by 5:00 pm on June 4, 2021, and should reference the name of the regulation (Permits - Nonattainment Areas), the date of the hearing (June 25, 2021), and docket number EIB 21-07 (R).

Notices of Intent to present technical testimony should be submitted to:

Pamela Jones, Board Administrator, at the New Mexico State Capitol Building, 409 Old Santa Fe Trail, Santa Fe, New Mexico; pamela.jones@state.nm.us ; (505) 660-4305.

The Board may make a decision on the proposed amendments at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

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 pamela.jones@state.nm.us ; (505) 660-4305. TDD or TDY users please access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779; TTY users: 1-800-659-8331)

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, or if you believe that you have been discriminated against with respect to a NMED program or activity, you may contact: Kathryn Becker, Non-Discrimination Coordinator, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. You may also 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.

JUNTA DE MEJORA AMBIENTAL DE NUEVO MÉXICO
AVISO DE AUDIENCIA DE REGLAMENTACIÓN PARA CONSIDERAR

PROPUESTA DE ENMIENDAS A 20.2.79 NMAC
EIB 21-07 (R)

La Junta de Mejora Ambiental ("EIB" por sus siglas en inglés) celebrará una audiencia pública el 25 de junio de 2021 a partir de las 9:00 a.m. por Internet (Zoom), por teléfono y también recibirán comentarios por correo electrónico hasta el término de la audiencia. El propósito de la audiencia es considerar el asunto de EIB 21-07 (R), las revisiones propuestas al Plan de Implementación del Estado de Nuevo México ("SIP" por sus siglas en inglés) con respecto al Reglamento de Control de la Calidad del Aire codificado en el Código Administrativo de Nuevo México ("NMAC" por sus siglas en inglés) en 20.2.79 NMAC, Permisos - Áreas de No Cumplimiento.

Únase a través del enlace de la reunión de Zoom:
https://zoom.us/j/97135613307?pwd=eWs5QS9KRG5XRmg4QmVFNS9RWThWdz09

Número de la reunión de Zoom (código de acceso): 971 3561 3307
Contraseña de la reunión de Zoom: 130269

Únase por teléfono o dispositivo móvil:
Móvil con un toque
+1-253-215-8782,,97135613307#,,,,*130269# US (Tacoma)
+1-346-248-7799,,97135613307#,,,,*130269# US (Houston)

Marque por su ubicación
+1-253-215-8782 US (Tacoma)
+1-346-248-7799 US (Houston)
+1-669-900-6833 US (San Jose)
+1-312-626-6799 US (Chicago)
+1-929-436-2866 US (New York)
Número de la reunión (código de acceso): 971 3561 3307
Contraseña de la reunión: 130269
Encuentra tu número local: https://zoom.us/u/aennMfZqJI

Para hacer comentarios por correo electrónico, envíe la correspondencia a: pamela.jones@state.nm.us .

La audiencia se llevara a cabo a través de Internet, correo electrónico y medios telefónicos debido a las preocupaciones que rodean al Nuevo Coronavirus 2019 ("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 las 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 las 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 del COVID-19*.
En la audiencia pública, la EIB considerará las enmiendas propuestas a la sección 20.2.79 NMAC, Permisos - Áreas de no cumplimiento, según lo propuesto en la *Petición de Cambio Regulatorio* ("Petición"), Expediente de la EIB número 21-07 del 3 de marzo de 2021. La Petición ha sido presentada por la Oficina de Calidad del Aire ("Oficina" por sus siglas en inglés) del Departamento de Medio Ambiente de Nuevo México ("Departamento").

El propósito de las enmiendas es hacer correcciones técnicas y administrativas a la norma. 20.2.79 NMAC especifica los requisitos de permiso para cualquier fuente nueva estacionaria importante o modificación importante de una fuente existente situada dentro de un área de no cumplimiento, o que esté situada dentro de un área de cumplimiento o inclasificable y que vaya a emitir un contaminante regulado que tenga un impacto significativo en un área de no cumplimiento para el mismo contaminante. Una fuente sujeta a esta regulación debe presentar una solicitud de permiso al Departamento y no puede construir ni operar la nueva fuente o modificación hasta que reciba un permiso o una revisión del permiso.

La Agencia de Protección Ambiental de los Estados Unidos designó una parte del condado de Doña Ana en el área de Sunland Park como un Área Marginal de No Cumplimiento para el NAAQS de O3 de 2015, a partir del 3 de agosto de 2018, lo que requiere que la Oficina desarrolle una revisión del SIP que incluya cualquier revisión necesaria a 20.2.79 NMAC y la presente a la EPA a más tardar hasta el 3 de agosto de 2021.

La Oficina analizó el 20.2.79 NMAC para determinar si era adecuado para aplicar y hacer cumplir el estándar revisado de ozono. La Oficina comparó 20.2.79 NMAC con 40 CFR 51.165, *Requisitos de Permisos*, e identificó incoherencias de referencias cruzadas y errores tipográficos que se abordan en la revisión propuesta.

El texto completo de la propuesta regulación enmendada de la Oficina está disponible en el sitio web de la Oficina en https://www.env.nm.gov/air-quality/proposed-regs/ o comunicándose con Neal Butt en 505-476-4317 o en neal.butt@state.nm.us. Si tiene preguntas o comentarios sobre las enmiendas propuestas comuníquese con Neal Butt en (505) 476-4317 o en neal.butt@state.nm.us. **Se solicita a las partes interesadas que presenten sus comentarios a más tardar hasta el 21 de mayo de 2021**.

La audiencia se llevará a cabo de acuerdo con: 20.1.1 NMAC, Procedimientos de Reglamentación - Junta de Mejora Ambiental; la *Ley de Mejora Ambiental*, Sección 74-1-9 NMSA 1978; la *Ley de Control de la Calidad del Aire*, Sección 74-2-6 NMSA 1978; y otros procedimientos aplicables.

Todas las personas interesadas tendrán una oportunidad razonable

en la audiencia para presentar evidencias, datos, opiniones y argumentos pertinentes, de forma oral 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 el registro en lugar de un testimonio oral deberá presentar dicha declaración antes del término de la audiencia.

Las personas que deseen presentar un testimonio técnico deberán presentar a la EIB un *Aviso de Intención* por escrito de la intención de hacerlo. Los requisitos para los *Avisos de Intención* pueden encontrarse en 20.1.1.302 NMAC, Testimonio Técnico. Los Avisos de Intención para presentar testimonios técnicos en la audiencia deben ser recibidos por la EIB a más tardar hasta las 5:00 p.m. del 4 de junio de 2021, y deben hacer referencia al nombre de la regulación (*Permisos - Áreas de no cumplimiento*), la fecha de la audiencia (25 de junio de 2021) y el número de expediente EIB 21-07 (R).

Los avisos de intención de presentar testimonios técnicos deben enviarse a:

Pamela Jones, administradora de la Junta, New Mexico State Capitol Building, 409 Old Santa Fe Trail, Santa Fe, NM; pamela.jones@state.nm.us; (505) 660-4305.

La Junta puede tomar una decisión sobre las enmiendas propuestas al término de la audiencia, o la Junta puede convocar una reunión después de la audiencia para considerar la acción sobre la propuesta.

Si usted tiene una discapacidad y necesita un dispositivo auxiliar o asistencia, 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 pamela.jones@state.nm.us; (505) 660-4305. Los usuarios de TDD o TDY pueden acceder a este número a través de la Red de Retransmisión de Nuevo México (usuarios de TDD de Albuquerque: (505) 275-7333; fuera de Albuquerque: 1-800-659-1779; usuarios de TTY: 1-800-659-8331)

DECLARACIÓN DE NO DISCRIMINACIÓN

El 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. El NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de las consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluyendo el Título VI de la Ley de Derechos Civiles de 1964, con sus enmiendas; la 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 Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o cualquiera de los programas, políticas o procedimientos de no discriminación del NMED, o si cree que ha sido discriminado con respecto a un programa o actividad del NMED, puede ponerse en contacto 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, nd.coordinator@state.nm.us. También puede visitar nuestro sitio web en https://www.env.nm.gov/non-employee-discrimination-complaint-page/ para saber cómo y dónde presentar una queja por discriminación.

ENVIRONMENT DEPARTMENT

NEW MEXICO ENVIRONMENT IMPROVEMENT BOARD NOTICE OF SCHEDULED PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.3.1 NMAC, 20.3.3 NMAC, 20.3.4 NMAC, 20.3.5 NMAC, 20.3.7 NMAC, 20.3.12 NMAC, AND 20.3.15 NMAC OF THE RADIATION PROTECTION REGULATIONS EIB 21-09

The Environmental Improvement Board ("EIB") will hold a public hearing June 25, 2021 beginning at 1:00 p.m. MDT via internet (Zoom) and via telephone.

If you would like to join the video conference online, go to: https://zoom.us/j/99160428877?pwd=SjEyUjdiVkEzaGJ5L2dJMGRON2VSQT09
When prompted, the meeting ID number is: 991 6042 8877
The password is: 968835
If you would like to join the meeting thru a telephone, please call:
+16699006833, 99160428877#, *968835# US (San Jose)
+12532158782, 99160428877#, *968835# US (Tacoma)
Dial by your location
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 929 436 2866 US (New York)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
Meeting ID: 991 6042 8877
Passcode: 968835
Find your local number: https://zoom.us/u/a8MLJTgPY

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 the following regulations: 20.3.1 NMAC "General Provisions"; 20.3.3 NMAC "Licensing of Radioactive Materials"; 20.3.4 NMAC "Standards for Protection Against Radiation"; 20.3.5 NMAC "Radiation Safety Requirements for Industrial Radiographic Operations"; 20.3.7 NMAC "Medical Use of Radionuclides"; 20.3.12 NMAC "Licenses and Radiation Safety Requirements for Well Logging"; 20.3.15 NMAC "Licenses and Radiation Safety Requirements for Irradiators", as proposed in the Petition to Amend 20.3.1 NMAC, 20.3.3 NMAC, 20.3.4 NMAC, 20.3.5 NMAC, 20.3.7 NMAC, 20.3.12 NMAC, and 20.3.15 NMAC of the Radiation Protection Regulations and Request for Hearing ("Petition"), docket number EIB 21-09. The Petition has been filed by the Radiation Control Bureau ("Bureau") of the New Mexico Environment Department ("NMED"). The proposed amendments are to align certain provisions within the state regulations with mandatory federal requirements.

New Mexico is an agreement state under 42 U.S.C. § 2021 and NMSA 1978, Section 74-3-15 (1977). As an agreement state, New Mexico's state regulations must be compatible to the United States Nuclear Regulatory Commission's ("NRC") regulations. 42 U.S.C. § 2021(d)(2). The compatibility requirement is met through the promulgation of state regulations when necessary. The majority of the amendments currently being proposed are to align certain provisions within the state regulations with the federal NRC regulations. Pursuant to NMSA 1978, Section 74-3-5(A) (2000), the proposed amendments were provided to the Radiation Technology Advisory Council ("RTAC") at its March 3, 2021 meeting. The RTAC consented to the amendments as proposed. Finally, the EIB has the authority to amend the Radiation Protection Regulations under NMSA 1978, Section 74-1-8(A)(5) (2020), NMSA 1978, Section 74-1-9 (1985), and Section 74-3-5(A).

In addition, the proposed amendments include several other minor changes and clarifications to current definitions, regulations, and procedures. Please note that formatting and minor technical changes in the regulations other than those proposed by NMED may be proposed at the hearing. In addition, the EIB may make other changes as necessary to accomplish the purpose of providing public health and safety in response to public comments and evidence presented at the hearing.

A copy of the proposed amendments is posted on the Bureau website at https://www.env.nm.gov/rcb/open-meeting-notification-for-radioactive-material-rule-revision/. In addition, copies of the proposed amendments are posted on the EIB website as attachments to the Petition under docket number EIB 21-09. https://www.env.nm.gov/environmental-improvement/main-2/.

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 21-09.

The hearing will be conducted in accordance with the EIB's Rulemaking Procedures found at 20.1.1.1 – 501 NMAC, the Environmental Improvement Act under Section 74-1-9, and other applicable procedures and procedural orders. Written comments regarding the proposed revisions may 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. MDT on June 4, 2021, and should reference the name of the regulations, the date of the hearing (June 25, 2021), and docket number EIB 21-09.

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

The notice of intent shall:
- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;
- include a copy of the direct testimony of each technical witness in narrative form;
- include the text of any recommended modifications to the proposed regulatory change; and
- list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of the rule language being proposed.

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 DEL MEDIO AMBIENTE DE NUEVO MÉXICO DE AUDIENCIA PÚBLICA PROGRAMADA PARA CONSIDERAR LAS ENMIENDAS PROPUESTAS A 20.3.1 NMAC, 20.3.3 NMAC, 20.3.4 NMAC, 20.3.5 NMAC, 20.3.7 NMAC, 20.3.12 NMAC Y 20.3.15 NMAC DEL REGLAMENTO DE PROTECCIÓN RADIOLÓGICA EIB 21-09

La Junta de Mejora Ambiental ("EIB" por sus siglas en inglés) celebrará una audiencia pública el 25 de junio de 2021 a partir de la 1:00 p.m., MDT (horario de verano de la montaña), a través de Internet (Zoom) y por teléfono.

Si desea unirse a la videoconferencia en línea, vaya a: https://zoom.us/j/99160428877?pwd=SjEyUjdiVkEzaGJ5L2dJMGRON2VSQT09
Cuando se le solicite, el número de identificación de la reunión es: 991 6042 8877
La contraseña es: 968835
Si desea unirse a la reunión a través de un teléfono, llame al +16699006833, 99160428877#, *968835 núm. de EE. UU. (San José) +12532158782, 99160428877#, *968835 núm. de EE. UU. (Tacoma)
Marque por su ubicación
+1 669 900 6833 US (San José)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 929 436 2866 US (Nueva York)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
Identificación de la reunión: 991 6042 8877
Código de acceso: 968835
Encuentre su número local: https://zoom.us/u/a8MLJTgPY

Los comentarios se recibirán por correo electrónico hasta el término de la audiencia. Para hacer comentarios por correo electrónico, envíe la correspondencia a Pamela.Jones@state.nm.us.

La audiencia se celebra 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 las 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 del COVID-19.

En la audiencia pública, la EIB examinará las propuestas de modificación de las siguientes regulaciones: 20.3.1 NMAC "Disposiciones Generales"; 20.3.3 NMAC "Licencias de Materiales Radiactivos"; 20.3.4 NMAC "Estándares de Protección Contra las Radiaciones"; 20.3.5 NMAC "Requisitos de Seguridad Contra las Radiaciones para Operaciones Radiográficas Industriales"; 20.3.7 NMAC "Uso Médico de Radionucleidos"; 20.3.12 NMAC "Licencias y Requisitos de Seguridad Contra las Radiaciones para Well Logging "; 20. 3.15 NMAC "Licencias y Requisitos de Seguridad Radiológica para Irradiadores", tal y como se propone en la Petición para Enmendar 20.3.1 NMAC, 20.3.3 NMAC, 20.3.4 NMAC, 20.3.5 NMAC,

20.3.7 NMAC, 20.3.12 NMAC y 20.3.15 NMAC del Reglamento de Protección Radiológica y Solicitud de Audiencia ("Petición"), número de expediente EIB 21-09. 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 enmiendas propuestas son para alinear ciertas disposiciones dentro de los reglamentos estatales con los requisitos federales obligatorios. Nuevo México es un estado de acuerdo en virtud de 42 U.S.C. § 2021 y NMSA 1978, Sección 74-3-15 (1977). Como estado de acuerdo, los reglamentos estatales de Nuevo México deben ser compatibles con los reglamentos de la Comisión Reguladora Nuclear de los Estados Unidos ("NRC" por sus siglas en inglés). 42 U.S.C. § 2021(d)(2). El requisito de compatibilidad se cumple mediante la promulgación de reglamentos estatales cuando es necesario. La mayor parte de las modificaciones que se proponen actualmente tienen por objeto alinear determinadas disposiciones de los reglamentos estatales con los reglamentos federales de la NRC. De conformidad con NMSA 1978, Sección 74-3-5(A) (2000), las enmiendas propuestas se presentaron al Consejo Asesor de Tecnología de la Radiación ("RTAC" por sus siglas en inglés) en su reunión del 3 de marzo de 2021. El RTAC dio su consentimiento a las modificaciones propuestas. Por último, la EIB está facultada para enmendar el Reglamento de Protección Contra las Radiaciones en virtud de NMSA 1978, Sección 74-1-8(A)(5) (2020), NMSA 1978, Sección 74-1-9 (1985), y Sección 74-3-5(A).

Además, las enmiendas propuestas incluyen otros cambios menores y aclaraciones a las definiciones, reglamentos y procedimientos actuales. Tenga en cuenta que en la audiencia pueden proponerse cambios de formato y técnicos menores en los reglamentos distintos de los propuestos por el NMED. Además, la EIB puede hacer otros cambios según sea necesario para cumplir con el propósito de proporcionar salud pública y seguridad en respuesta a los comentarios públicos y las pruebas presentadas en la audiencia.

Una copia de las propuestas de modificación está publicada en el sitio web de la Oficina en: https://www.env.nm.gov/rcb/open-meeting-notification-for-radioactive-material-rule-revision/. Además, copias de las enmiendas propuestas están publicadas en el sitio web de la EIB como anexos a la Petición bajo el número de expediente EIB 21-09. https://www.env.nm.gov/environmental-improvement/main-2/.

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 21-09.

La audiencia se llevará a cabo de acuerdo con los Procedimientos de Reglamentación de la EIB que se encuentran en 20.1.1.1 - 501 NMAC, la Ley de Mejora Ambiental bajo la Sección 74-1-9, y otros procedimientos y órdenes de procesales aplicables. Los comentarios por escrito sobre las revisiones propuestas pueden obtenerse comunicándose con Pamela Jones, administradora de la EIB, en la información de contacto indicada anteriormente.

Todas las personas interesadas tendrán una oportunidad razonable en la audiencia para presentar evidencias, datos, opiniones y argumentos pertinentes, de forma oral 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 el registro en lugar de un testimonio oral deberá presentar dicha declaración antes del término 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 de Intención por escrito de su intención de hacerlo. Los Avisos de Intención para audiencia deben ser recibidos por la EIB a más tardar hasta las 5:00 p.m., MDT (horario de verano de la montaña), del 4 de junio de 2021, y deben hacer referencia al nombre del reglamento, la fecha de la audiencia (25 de junio de 2021), y el número de expediente EIB 21-09.

Los requisitos de los Avisos de Intención se encuentran en 20.1.1.302 NMAC.

El Aviso de Intención deberá:
- identificar a la persona o entidad para la cual el testigo o los testigos testificarán;
- identificar cada uno de los testigos técnicos que la persona tiene intención de presentar e indicar las cualificaciones del testigo, incluida una descripción de su historial académico y laboral
- incluir una copia del testimonio directo de cada testigo técnico en forma narrativa
- incluir el texto de cualquier modificación recomendada para el cambio normativo propuesto; y
- enumerar y adjuntar todas las pruebas instrumentales que se prevé que ofrezca esa persona en la audiencia, incluida cualquier declaración de motivos para la adopción del lenguaje de la norma que se propone.

Si usted es una persona con discapacidad y necesita un dispositivo auxiliar o asistencia, 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 puede tomar una decisión sobre los cambios reglamentarios propuestos al término de la audiencia o puede convocar una reunión después de la audiencia para considerar la acción sobre la propuesta.

DECLARACIÓN DE NO DISCRIMINACIÓN

El NMED no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, tal y como exigen las leyes y reglamentos aplicables. El NMED es responsable de la coordinación de los esfuerzos de cumplimiento y de la recepción de las consultas relativas a los requisitos de no discriminación implementados por el 40 C.F.R. Partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; la 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 sobre 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.

HUMAN SERVICES DEPARTMENT
CHILD SUPPORT ENFORCEMENT DIVISION

NOTICE OF PUBLIC RULE HEARING

The Human Services Department through the Child Support Enforcement Division (CSED), is proposing to amend/repeal/replace rules:

8.50.108.8 - ESTABLISHMENT OF SUPPORT ORDER
8.50.108.9 - CHILD SUPPORT AWARD GUIDELINES
8.50.108.12 - MODIFICATION OF CHILD SUPPORT ORDERS
8.50.108.13 - REVIEW AND ADJUSTMENT OF SUPPORT ORDERS
8.50.109.7 - DEFINITIONS
8.50.109.8 - ESTABLISHMENT OF MEDICAL SUPPORT

The Human Services Department is authorized to propose and adopt rules under the Public Assistance Act, Section 27-2-1 et seq. NMSA 1978 (1992 Repl.).

Changes in the rule are to update language, incorporate standardized rule language, and to provide additional clarification of the rules. Rules will refer back to federal policy when establishing and modifying support or completing a review and adjustment of a support order when a party is incarcerated and will include updated definitions of health care. The register for these proposed amendments to these rules will be available April 20, 2021 on the HSD web site at http://www.hsd.state.nm.us/LookingForInformation/registers.aspx. If you do not have Internet access, a copy of the proposed rules may be requested by contacting CSED at (505) 795-3251.

A public hearing to receive testimony on the proposed rules will be held remotely Thursday, May 20, 2021 10:00 AM - 11:00 AM at https://global.gotomeeting.com/join/620975581. You can also dial in using your phone
United States: +1 (872) 240-3412,
Access Code: 620-975-581.

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATTN: Child Support Enforcement Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling (505) 795-3251. Electronic comments may be submitted to Melinda.Pineda@state.nm.us. Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. May 20, 2021.

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

Copies of all comments will be made available by the CSED upon request by providing copies directly to a requestor or by making them available on the CSED website or at a location within the county of the requestor. All written comments will be posted on the agency website within three (3) days of receipt.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

AMENDED NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rules: 8.200.510 NMAC Medicaid Eligibility- General Recipient Policies, Resource Standards, 8.200.520 NMAC, Medicaid Eligibility- General Recipient Rules, Income Standards and 8.291.430 NMAC, Medicaid Eligibility Affordable Care, Financial Responsibility Requirements in order to implement the Department of Health and Human Services (HHS) updates to the Federal Poverty Level (FPL) income guidelines for the Medical Assistance Program (MAP) categories of eligibility effective April 01, 2021. The Supplemental Security Income (SSI) and Spousal Impoverishment Standards are being updated effective July 01, 2020 along with the annual cost of living allowance (COLA) increase that went into effect January 01, 2021. The Department is repromulgating these sections of the rules in full within six months of issuance of the emergency rule in accordance with the New Mexico State Rules Act.

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

Notice Date: April 20, 2021
Hearing Date: May 20, 2021
Adoption Date: SSI and Spousal Impoverishment Standards proposed and filed as July 01, 2020, COLA proposed and filed as January 01, 2021. FPL proposed and filed as April 01, 2021.
Technical Citations: HHS 2021 FPL Guidelines, Federal SSI and Spousal Impoverishment Standards, and SSA COLA Fact Sheet

The Department is proposing to amend the rule as follows:
8.200.510 NMAC Section 11 is amended to reflect the current COLA for Community Spouse Resource Allowance. Section 12 is amended to reflect the current COLA for Post-Eligibility Calculation (Medical Care Credit).
Section 13 is amended to reflect the current COLA for Average Monthly Cost of Nursing Facilities for Private Patients.
Section 14 is deleted to remove the resource amounts for the Medicare Savings Program to be consistent with separate rule changes that went into effect January 01, 2021.
Section 15 is changed to section 14 and is amended to reflect the COLA for current Excess Home Equity Amount for Long-Term Care Services.

8.200.520 NMAC
Section 11 is amended to reflect FPL mandates.
Section 12 is amended to reflect the cost of living increase.
Section 13 is amended to reflect the increase in the Federal Benefit Rate.
Section 15 is amended to reflect the increase in SSI living arrangement amounts.
Section 16 is amended to reflect the increase in the monthly income standard for Institutional Care and Home and Community Based Waiver Services categories.
Section 20 is amended to reflect the increase in the covered quarter income standard.

8.291.430 NMAC
Section 10 is amended to reflect FPL mandates.

The register for the proposed amendments to these rules will be available April 20, 2021 on the HSD web site at https://www.hsd.state.nm.us/lookingforinformation/registers/ and https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to finalize these rules effective August 01, 2021. A public hearing to receive testimony on these rules will be held via conference call on Thursday, May 20, 2021 at 9:00 a.m., Mountain Time (MT). **Conference Number: 1-800-747-5150. Access Code: 2284263.**

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

Recorded comments may be left at *(505) 827-1337*. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on May 20, 2021. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/ along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

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

requested alternative formats and special accommodations.

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

STATE PERSONNEL BOARD

NOTICE OF PROPOSED RULEMAKING

Public Notice: The New Mexico State Personnel Board provides notice that it will conduct a public hearing via Zoom meeting on Friday, June 18, 2021 at 9:00 a.m. Log-in details for the Zoom meeting will be available on the State Personnel Office website, spo.state.nm.us, beginning Tuesday, June 15, 2021. The purpose of the public hearing is to receive public input on the proposed amendment to 1.7.1 NMAC – General Provisions, the repeal and replacement of and proposed amendments to 1.7.4 NMAC – Pay, and the proposed amendments to 1.7.7 NMAC – Absence and Leave.

Authority: Personnel Act, NMSA 1978, Sections 10-9-10 and 10-9-12.

Purpose: The purpose of the change to 1.7.1 NMAC is to clarify the definition of "pay band." The purposes of the changes to 1.7.4 NMAC are to: (1) repeal and replace all Sections of 1.7.4 NMAC, (2) clarify the definitions for "alternative pay band" and "in pay band adjustment," (3) establish a definition for "base pay"/"base salary," (4) remove part of the alternative pay band description, (5) remove the 10% cap on in pay band adjustments, (6) simplify the description of salary upon demotion, (7) clarify that a pay allowance for performing first line supervisor duties is considered part of an employee's *base* salary, (8) clarify that the salary of former employees who are returned to work or re-employed in accordance with 1.7.10.10 NMAC, 1.7.10.11 NMAC, 1.7.10.12 NMAC, or 1.7.10.14 NMAC shall not exceed the hourly rate of their *base* salary at the time of separation, (9) clarify that temporary promotion increases and temporary salary increases are separate from an employee's base salary, (10) move the pay for dusk to dawn work provision from 1.7.4.12 - Administration of the Salary Schedules to 1.7.4.13 - Pay Differential, (11) simplify the language allowing the State Personnel Office Director to authorize temporary recruitment differentials and temporary retention differentials of more than 15% of an employee's base salary or that result in an employee's pay exceeding the maximum of the pay band, (12) clarify that agencies need to notify the State Personnel Director of any change to the dusk to dawn differential and establish that an agency can choose not to pay the dusk to dawn differential to employees whose alternative work schedule request results in the employee working hours between 6:00 p.m. and 7:00 a.m., and (13) remove the out-of-state differential. The purposes of the changes to 1.7.7 NMAC are to: (1) clarify that terminal annual leave payout will be paid at the current hourly rate of an employee's *base* salary, (2) clarify that agencies need to maintain documentation on a proposed donated leave recipient's hourly rate of *base* pay, (3) clarify that agencies need to convert the value of donated leave based on the donor's hourly rate of *base* pay to hours of leave based on the recipient's hourly rate of *base* pay, (4) move the provision allowing agencies to authorize employees to use accrued sick leave to attend the funeral of a relation by blood or marriage within the third degree from 1.7.7.10 – Sick Leave to new Section 1.7.7.20 – Bereavement Leave, (5) clarify that payout of unused sick leave in excess of 600 hours shall be at a rate equal to 50% of an employee's hourly rate of *base* pay, (6) clarify that leave without pay may be approved if an agency can assure a position of like status and *base* pay, at the same geographic location upon the employee's return, (7) clarify certain reasons FMLA-eligible employees are entitled to FMLA leave, including to care for the serious health condition of a domestic partner and for qualifying exigencies arising out of the fact that an employee's domestic partner is on or has been called for active covered duty, (8) clarify that an FMLA-eligible employee who is the domestic partner of a covered servicemember with a serious illness or injury sustained in the line of duty on active duty is entitled to 26 weeks of unpaid FMLA to care for the servicemember, (9) clarify that an employee is not entitled to administrative leave to participate in a judicial or administrative proceeding in which the employee is a party to the proceeding and adverse to an agency or the State of New Mexico, and (10) establish that bereavement leave may be granted to employees as a form of administrative leave.

Summary of Proposed Amendment to 1.7.1 NMAC:

1.7.1.7 – Definitions

The proposed amendment to Subsection EE would clarify that a "pay band" is a discrete range of pay rates with fixed minimum and maximum limits to which classification may be assigned.

Summary of Proposed Amendments to the Repeal and Replacement of 1.7.4 NMAC:

1.7.4.7 – Definitions

The proposed amendment to Subsection A would clarify that an "alternative pay band" is a pay band based on current market rate for benchmark jobs in the relevant labor market(s).

The proposed amendment to Subsection D would define "base pay" or "base salary" as the rate of compensation paid to an employee exclusive of benefits, temporary increases, pay differentials, overtime

payments, call-back pay, on-call pay, holiday pay, and incentive awards.

The proposed amendment to Subsection F would clarify that an "in pay band adjustment" allows *base* salary growth within a pay band.

1.7.4.10 – Assignment of Alternative Pay Bands

The proposed amendment to Subsection A would remove part of the description of alternative pay band that is unnecessary.

1.7.4.12 – Administration of the Salary Schedules

The proposed amendment to Subsection C would remove the 10% cap on in pay band adjustments, but would continue to permit agencies to increase an employee's salary within the employee's assigned pay band once per fiscal year, subject to State Personnel Office Director approval, subject to budget availability, and reflective of appropriate placement.

The proposed amendment to Subsection E would simplify the description of salary upon demotion.

The proposed amendment to Subsection F would clarify that a pay allowance for performing first line supervisor duties is considered part of an employee's *base* salary while it is in place and would reaffirm that a pay allowance will be removed once supervisor duties are no longer being performed.

The proposed amendment to Subsection J would clarify that the salary of former employees who are returned to work or re-employed in accordance with 1.7.10.10 NMAC, 1.7.10.11 NMAC, 1.7.10.12 NMAC, or 1.7.10.14 NMAC shall not exceed the hourly rate of their *base* salary at the time of separation, unless a higher salary is necessary to bring the employee to the minimum of the pay band.

The proposed amendment to Subsection K would clarify that payment of a temporary promotion increase is separate from an employee's base salary.

The proposed amendment to Subsection L would clarify that payment of a temporary salary increase is separate from an employee's base salary.

Subsection M would be deleted, removing the pay for dusk to dawn work provision. A revised pay for dusk to dawn work provision would be added to 1.7.4.13 NMAC – Pay Differentials.

1.7.4.13 – Pay Differentials

The proposed amendment to Subsection A would simplify the language allowing the State Personnel Office Director to authorize a temporary recruitment differential of more than 15% of an employee's base pay or that results in an employee's pay exceeding the maximum of the pay band.

The proposed amendment to Subsection B would simplify the language allowing the State Personnel Office Director to authorize a temporary retention differential of more than 15% of an employee's base pay or that results in an employee's pay exceeding the maximum of the pay band.

Subsection D would be deleted, removing the out-of-state differential. Proposed new Subsection D would contain an amended pay for dusk to dawn work provision, which would clarify that agencies must notify the State Personnel Office Director of any change to the dusk to dawn differential and establish that an agency may choose not to pay the dusk to dawn differential to an employee whose alternative work schedule request results in the employee working any hours between 6:00 p.m. and 7:00 a.m.

Summary of Proposed Amendments and Additions to 1.7.7 NMAC:

1.7.7.8 – Annual Leave

The proposed amendment to Subsection G would clarify that accrued annual leave payout upon separation from the classified service shall be paid at the current hourly rate of an employee's *base* salary.

1.7.7.9 – Donation of Annual or Sick Leave

The proposed amendment to Subsection D would clarify that agencies need to maintain documentation on the hourly rate of *base* pay of proposed leave recipients.

The proposed amendment to Subsection F would clarify that an agency needs to convert the value of a donor's leave based on the donor's hourly rate of *base* pay to hours of leave based on the recipient's hourly rate of *base* pay.

1.7.7.10 – Sick Leave

Subsection H would be deleted, removing the provision allowing agencies to authorize employees to use accrued sick leave to attend the funeral of a relation by blood or marriage within the third degree or a person residing in the employee's household. This provision would be removed to avoid any confusion with new Section 1.7.7.20 - Bereavement Leave, which would contain a similar provision.

The proposed amendments to Subsection I would clarify that payout of unused sick leave in excess of 600 hours shall be at a rate equal to 50% of an employee's hourly rate of *base* pay.

1.7.7.11 – Leave Without Pay

The proposed amendment to Subsection A would clarify that leave without pay may be approved if an agency can assure a position of like status and *base* pay, at the same

geographic location upon the return of the employee, or if the employee agrees in writing to waive that requirement.

1.7.7.12 – Family and Medical Leave

The proposed amendment to Subsection B would clarify certain reasons an employee eligible for FMLA leave is entitled to up to 12 weeks of unpaid FMLA leave, including but not limited to: the birth and care of a newborn child of the employee within one year of the birth; the placement with the employee of a child for adoption or foster care and the care of the newly placed child within one year of placement; the care of the employee's child, parent, spouse, or domestic partner who has a serious health condition; the employee's own serious health condition that makes the employee unable to perform the essential functions of their job; and qualifying exigencies arising out of the fact that an employee's domestic partner is on or has been called for active covered duty.

The proposed amendment to Subsection C would clarify that an FMLA-eligible employee who is the domestic partner of a covered servicemember with a serious illness or injury sustained in the line of duty on active duty is entitled to 26 weeks of unpaid FMLA in a single 12-month period to care for the servicemember.

1.7.7.14 – Administrative Leave

The proposed amendment to Subsection D would clarify that an employee is not entitled to administrative leave to participate in judicial or administrative proceedings in which the employee is a party to the proceeding and adverse to an agency or the State of New Mexico.

1.7.7.20 – Bereavement Leave

New Section 1.7.7.20 would define bereavement leave as leave that may be granted to an employee who has experienced the death of a relation by blood or marriage within the third degree or a person residing in the employee's household. It would clarify that bereavement leave is a form of administrative leave agencies may grant to employees pursuant to 1.7.7.14(A) NMAC. And it would allow agencies to supplement bereavement leave by authorizing agencies to allow employees to use accrued leave or compensatory time to attend the funeral of a relation by blood or marriage within the third degree or a person residing in the employee's household.

How to Comment on the Proposed Rules:

Interested individuals may provide verbal comments at the public hearing and/or submit written or electronic comments to Denise Forlizzi, via email at DeniseM.Forlizzi@state.nm.us, fax (505) 476-7806, or mail to Attn: Denise Forlizzi– Rule Changes to 1.7.1, 1.7.4, and 1.7.7 NMAC, State Personnel Office, 2600 Cerrillos Rd., Santa Fe, New Mexico 87505. Written comments must be received no later than May 31, 2021. However, the submission of written comments as soon as possible is encouraged. Persons may also provide verbal comments at the public hearing.

Copies of Proposed Rules:

Copies of the proposed rules are available for download on the State Personnel Office's website at spo.state.nm.us. A copy of the proposed rules may also be requested by contacting Denise Forlizzi at (505) 365-3691.

Special Needs:

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Denise Forlizzi at (505) 365-3691 as soon as possible to provide requested special accommodations.

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance ("Superintendent"), pursuant to the New Mexico Insurance Code, Sections 59A-1-1 et seq. NMSA 1978 and 13.1.4 NMAC**,** proposes to adopt a new rule, 13.2.11 NMAC, RISK MANAGEMENT AND OWN RISK SOLVENCY ASSESSMENT

PURPOSE OF THE PROPOSED NEW RULE IS: The purpose of this rule is to provide the requirements for maintaining a risk management framework and completing an own risk and solvency assessment and to provide guidance and instruction for filing an own risk and solvency assessment with the superintendent.

STATUTORY AUTHORITY: Section 59A-1-18 NMSA 1978, section 59A-2-9 NMSA 1978, section 59A-2-12 NMSA 1978, Chapter 59A Article 4 NMSA 1978, "Examinations, Hearings and Appeals," Chapter 59A Article 5A NMSA 1978, the "Risk Based Capital Act," and Chapter 57 Article 3A NMSA 1978, the "Uniform Trade Secrets Act.".

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

OSI will hold a public video/telephonic hearing on the proposed rule on May 21, 2021 at 9:00 a.m.

Join via Video: https://us02web.zoom.us/j/2916274744
Join via telephone: 1-346-248-7799
Meeting ID: 291 627 4744

The Superintendent designates Bryan E. Brock to act as the hearing officer for this rulemaking. Oral comments will be accepted at the video/

telephonic hearing from members of the public and any interested parties.

Written comments and proposals will be accepted through 4:00 pm on May 21, 2021. Responses to written comments or oral comments will be accepted through 4:00 pm on June 1, 2021. Comments may be submitted via email to OSI-docketfiling@state.nm.us or may be filed by sending original copies to:

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

Docket No.: 21-00021-RULE-PC IN THE MATTER OF ADOPTION OF RISK MANAGEMENT AND OWN RISK SOLVENCY ASSESSMENT RULES

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

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

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

ISSUED this 20th day of April, 2021
/S/RUSSELL TOAL

WORKFORCE SOLUTIONS, DEPARTMENT OF

NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions ("Department" or "NMDWS") hereby gives notice that the Department will conduct a public hearing in the conference room of the Human Rights Bureau located at 1596 Pacheco Street Suite 103 in Santa Fe, New Mexico, 87505 on May 25, 2021 from 10:00 am to 12:00 pm. The public comment hearing will also be conducted virtually. Instructions regarding how to join the virtual meeting will be posted on the NMDWS website at **https://www.dws.state.nm.us/**. The purpose of the public hearing will be to obtain input and public comment on an amendment to 11.2.4 NMAC.

Summary: new definition of Chief Elected Official, addition/expansion of public comment process to include deadlines, and inclusion of provisions for consultation between the State, the local development boards, and the CEOs in the regional designation process.

Under Title I of the Workforce Innovation and Opportunity Act, 29 U.S.C. Chapter 32, Subchapter I, WIOA USDOL Final Rule 20 C.F.R. 683, et al, and NMSA 1978 §§50-14-1 et seq, NMDWS is the agency responsible for the Workforce Innovation and Opportunity Act and the Department has legal authority for rule making.

Interested individuals are encouraged to submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman prior to the hearing for consideration. Written comments must be received no later than 5 p.m. on May 24, 2021. However, the submission of written comments as soon as possible is encouraged. Copies of the proposed rule may be accessed online at **https://www.dws.state.nm.us/** or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rules will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

End of Notices of Rulemaking and Proposed Rules

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.

HEALTH, DEPARTMENT OF

TITLE 7 HEALTH
CHAPTER 1 HEALTH GENERAL PROVISIONS
PART 31 STATEWIDE HEALTH CARE CLAIMS DATABASE

7.1.31.1 ISSUING AGENCY: New Mexico Department of Health.
[7.1.31.1 NMAC - N, 04/20/2021]

7.1.31.2 SCOPE: These regulations govern the creation and maintenance of a repository of healthcare claims data to be used to increase the quality and effectiveness of health care delivered in New Mexico.
[7.1.31.12 NMAC - N, 04/20/2021]

7.1.31.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the secretary of the department of health pursuant to the authority granted under Subsection E of Section 9-7-6, NMSA 1978, and the Health Information System Act, 24-14A-1 et seq. NMSA 1978.
[7.1.31.3 NMAC - N, 04/20/2021]

7.1.31.4 DURATION: Permanent.
[7.1.31.4 NMAC - N, 04/20/2021]

7.1.31.5 EFFECTIVE DATE: April 20, 2021, unless a later date is cited at the end of a section.
[7.1.31.5 NMAC - N, 04/20/2021]

7.1.31.6 OBJECTIVE: The objective of this rule is to establish provisions that govern the creation, maintenance, and usage of a repository of healthcare claims data for the purpose of improving health care cost and quality.
[7.1.31.6 NMAC - N, 04/20/2021]

7.1.31.7 DEFINITIONS:

A. "Allowed amount" means the negotiated amount eligible for payment for a health care service or item rendered by a provider.

B. "Billed amount" means the amount billed by a provider requesting payment for health care services or items rendered.

C. "Claim" means a financial accounting of or a request for payment for health care items or services rendered by a provider.

D. "Data" means the data required by this rule to be submitted to this database, including data on the following health factors: mortality and natality, including accidental causes of death; morbidity; health behavior; disability; health system costs, availability, utilization and revenues; environmental factors; health personnel; demographic factors; social, cultural and economic conditions affecting health, including language preference; family status; medical and practice outcomes as measured by nationally accepted standards and quality of care; and participation in clinical research trials.

E. "Data provider" means a person that possesses health information, including any public or private sector licensed health care practitioner, primary care clinic, ambulatory surgery center, ambulatory urgent care center, ambulatory dialysis unit, home health agency, long-term care facility, hospital, pharmacy, third-party payer and any public entity that has health information.

F. "Database" means the statewide all-payer health care claims database established in this rule.

G. "Department" means the department of health.

H. "Direct patient identifier" means a data variable that identifies an individual, including: names; telephone numbers; fax numbers; social security number; medical record numbers; health plan beneficiary numbers; account numbers; certificate or license numbers; vehicle identifiers and serial numbers, including license plate numbers; device identifiers and serial numbers; web universal resource locators; internet protocol address numbers; biometric identifiers, including finger and voice prints; elements of dates more granular than a year; un-aggregated ages over 89; geographic subdivisions smaller than the state, except the first three digits of ZIP, full face photographic images and any comparable images; and any other unique identifying number, characteristic, or code, except as permitted by 45 C.F.R 164.514 (c).

I. "ERISA plan" means an employee welfare benefit plan to the extent that the plan provides medical care to employees or their dependents under the Employee Retirement Income Security Act of 1974 directly or through insurance, reimbursement or other means.

J. "Health information" or **"health data"** means any data relating to health care; health status, including environmental, social and economic factors; a health system or provider; health costs, financing, and including data that would customarily be collected in the ordinary course of business for the data provider; annual audited financial statements customarily prepared by a data provider; information on major capital expenditures; data established by regulation to be collected to carry out the requirements of the Health

Information System Act; data required to be collected by other state or federal laws; and annual surveys or collection of data may be used as an alternative to collection of health data from some health service providers to the extent it can be shown that the information collected will meet validity and quality standards.

K. "Health information system" or **"HIS"** means the health information system established by the Health Information System Act, Sections 24-14A-1 to 24-14A-10, NMSA 1978.

L. "**Health insurance carrier"** means any entity that offers the following:

(1) group health and dental coverage governed by the provisions of the Health Care Purchasing Act;

(2) individual health and dental insurance policies, health benefits plans and certificates of insurance governed by the provisions of Chapter 59A, Article 22 NMSA 1978;

(3) health and dental multiple-employer welfare arrangements governed by the provisions of Section 59A-15-20 NMSA 1978;

(4) group and blanket health and dental insurance policies, health benefits plans and certificates of insurance governed by the provisions of Chapter 59A, Article 23 NMSA 1978;

(5) individual and group health and dental health maintenance organization contracts governed by the provisions of the Health Maintenance Organization Law Chapter 59A, Article 46 NMSA 1978; and

(6) individual and group health and dental nonprofit health benefits plans governed by the provisions of the Nonprofit Health Care Plan Law Chapter 59A, Article 47 NMSA 1978.

M. "Indirect patient identifier" means a data variable that may identify an individual when combined with other information.

N. "Proprietary financial information" means information that derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

O. "Secretary" means the secretary of the New Mexico department of health.

P. "Unique identifier" means an obfuscated identifier assigned to an individual represented in the database to establish a basis for following the individual longitudinally throughout different payers and encounters in the data without revealing the individual's identity.

[7.1.31.7 NMAC - N, 04/20/2021]

7.1.31.8 STATEWIDE ALL-PAYER CLAIMS DATABASE–DUTIES-CONTRACT WITH DATA VENDOR:

A. Duties of the department:

(1) The department shall establish a statewide all-payer claims database to support transparent public reporting of health care information. The database must improve transparency to: assist patients, providers, and hospitals to make informed choices about care; enable providers, hospitals, and communities to improve by benchmarking their performance against that of others by focusing on best practices, enable purchasers to identify value, build expectations into their purchasing strategy, and reward improvements over time; and promote competition based on quality and cost. The database must systematically collect all medical claims for covered medical services, pharmacy claims, dental claims, member eligibility and enrollment data, and provider data with necessary identifiers from private and public payers, with data from all settings of care that permit the systematic analysis of health care delivery.

(2) The department shall convene subcommittees to the HIS advisory committee with the approval of the secretary, including:

(a) a subcommittee on data policy development;

(b) a subcommittee to establish a data release process consistent with the requirements of this rule and to provide advice regarding formal data release requests. The advisory subcommittees must include in-state representation from key providers, hospitals, public health and health maintenance organizations, large and small private purchasers, consumer organizations, and the two largest carriers supplying claims data to the database; and

(c) other subcommittees as needed.

B. Duties of the department in contract with data vendor:

(1) The department will conduct, or may engage a data vendor to perform, data collection, processing, aggregation, extracts, and analytics. The department or data vendor must:

(a) establish a secure data submission process with data providers;

(b) review data submitters' files per standards established by the department;

(c) assess each record's alignment with established format, frequency, and consistency criteria;

(d) maintain responsibility for quality assurance, including, but not limited to:

(i) the completeness, accuracy and validity of data provider's data;

(ii) accuracy of dates of service spans;

(iii) maintaining consistency of record layout and counts; and

(iv) identifying duplicate records;

(e) assign unique identifiers, as defined in this rule, to individuals represented in the database;

(f) ensure that direct patient identifiers, indirect patient identifiers, and proprietary information are released only in compliance with federal and state privacy laws and the terms of applicable confidentiality requirements;

(g) demonstrate internal controls and affiliations with separate organizations as appropriate to ensure safe data collection, security of the data with state of the art encryption methods, actuarial support, and data review for quality assurance;

(h) store data in a manner compliant with the federal Health Insurance Portability and Accountability Act and regulations, with access to the data strictly controlled and limited to staff with appropriate training, clearance, and background checks; and

(i) maintain state of the art security standards for transferring data to approved data requestors.

(2) The data vendor must submit detailed descriptions to the department's chief information security officer to ensure robust security methods are in place.

(3) The department is responsible for internal governance, management, funding, and operations of the database. The department shall work with the data vendor to:

(a) collect claims data from data providers as provided in this rule;

(b) design data collection mechanisms with consideration for the time and cost incurred by data providers and others in submission and collection and the benefits that measurement would achieve, ensuring the data submitted meet quality standards and are reviewed for quality assurance;

(c) ensure protection of collected data and store and use of data in a manner that protects patient privacy and complies with this section. All patient-specific information must be secured with required standard encryption algorithms;

(d) consistent with requirements of this rule, make information from the database available as a resource for public and private entities, including carriers, employers, providers, hospitals, and purchasers of health care;

(e) report performance on cost and quality pursuant to this rule.

(f) develop protocols and policies, including prerelease review by any entity identified by the department, to ensure the quality of data releases and reports;

(g) the department may not charge providers or data providers fees other than fees directly related to requested reports.

[7.1.31.8 NMAC - N, 04/20/2021]

7.1.31.9 SUBMISSION OF CLAIMS DATA TO DATABASE:

A. All-payer claims database data providers:

(1) Data providers must submit all available data and health information with necessary identifiers to the database as described in the APCD-Common Data Layout (APCD-CDL™, Version 1.1 with errata, Copyright 2018-2020 by APCD Council, National Association of Health Data Organizations, the University of New Hampshire) within the time frames in this rule and in accordance with procedures established herein.

(2) Any data provider used by an entity that participates in the database such as a third-party administrator or pharmacy benefit manager must provide claims data to the department or the data vendor upon request of the entity.

(3) The following plans or entities may voluntarily provide claims data to the database within the time frames and in accordance with procedures established by the department:

(a) Employer sponsored plans subject to the Employee Retirement Income Security Act of 1974; and

(b) any governmental or tribal program or facility that provides health care services to American Indians and Alaska Natives.

(4) Health insurance carriers that only offer the following excepted benefit coverages are not required to report:

(a) specific disease;

(b) accident or injury;

(c) hospital indemnity and other fixed indemnity;

(d) disability;

(e) long-term care; and

(f) vision coverage.

(5) Centennial care managed care organizations provide claims data to the New Mexico human services division (HSD), and who will then submit that data to the department of health.

B. Data submission procedures:

(1) The department shall:

(a) utilize an internet-based user interface (or similar technology) that allows for secure submission and acceptance of data submissions;

(b) perform quality assurance and validation of all submitted data and provide feedback to the data providers; and

(c) provide data submissions procedures to data providers in a data submission guide that is based on a current version of the APCD-Common Data Layout.

(2) Data submission frequency: data shall be submitted at least monthly.

(3) Data providers shall make every effort to initially submit complete, accurate,

and valid data in the APCD-Common Data Layout and shall correct all identified errors within the timelines established by the department or its designee.

(4) An initial test submission of data may be required.

(5) Data dating to January 1, 2019 must be submitted initially.

(6) The department may sanction data providers who do not comply with this rule.

(7) Data shall be submitted beginning January 1, 2022.

[7.1.31.9 NMAC - N, 04/20/2021]

7.1.31.10 CLAIMS DATA AND DATABASE - EXEMPTIONS FROM PUBLIC DISCLOSURE: Public record:

A. The claims data provided to the database, the database itself, including the data compilation, and any raw data received from the database are not public records and are generally exempt from public disclosure in accordance with the Inspection of Public Records Act, Subsections A and H of Section 14-3-1, NMSA 1978, the Health and Hospital Records Act, 14-6-1, NMSA 1978, and the Health Information Systems Act, Sections 24-14A-6 & 8, NMSA 1978.

B. Claims data obtained, distributed, or reported in the course of activities undertaken pursuant to or supported under this rule are strictly confidential and shall not be a matter of public record or accessible to the public. The department shall not disclose data except to the extent that they are included in a compilation of aggregate data. Any forms of data collected by and furnished for the department shall not be public records subject to inspection pursuant to Section 14-2-1 NMSA 1978. The department may release or disseminate aggregate data, which shall be public records if the release of these data does not violate state or federal law relating to the privacy and confidentiality of individually identifiable health information. In accordance with Paragraph (6) of Subsection D of Section 24-14A-3 NMSA 1978, Section 24-14A-4.3 NMSA 1978, and Subsection D of Section 24-14A-6, NMSA 1978 of the HIS Act, data may be reported routinely to authorized federal, state, and local public agencies.

[7.1.31.10 NMAC - N, 04/20/2021]

7.1.31.11 GENERAL PROVISIONS ON ACCESS TO THE CLAIMS DATABASE DATA:

A. Access requirements: Data and reports based on the claims database may be obtained only in accordance with the requirements of the HIS Act and this rule. Any request for information that would not be contained in previously prepared and published reports will require a data request from the department.

B. Evaluation of requests: In addition to other requirements stated in this rule, all requests for claims data and reports, other than routine reports, shall be evaluated by the department and shall not be released unless the requests satisfy the following criteria for approval.

(1) The specific intended use of the data shall comport with the purposes of the HIS Act, as stated in 24-14A-3A, NMSA 1978 and rules promulgated pursuant to the HIS Act, including use of data to assist in:

(a) the performance of health planning, policy making functions, and research conducted for the benefit of the public;

(b) informed health care decision making by consumers;

(c) surveillance for the control of disease and conditions of public health significance as required by Public Health Act, Subsection C of 24-1-3 NMSA 1978, and

(d) administration, monitoring, and evaluation of a statewide health plan.

(2) The request shall be consistent with the responsibilities of the department in accomplishing the priorities of the HIS.

C. Request procedures: All requests for data shall be made to the department.

D. Fees: Fees for access to data and reports shall be paid pursuant to the requirements of this rule.

E. Time period to fulfill request: The department will endeavor to fulfill requests within one month of receiving the request, although the time period for fulfillment of a request may vary depending on the complexity of the request and other factors.

F. Restrictions on access to confidential sensitive data: The department shall deny access to information from the claims database where the use or disclosure of the information could result in a violation of health information confidentiality or purposes for which the department has determined is not consistent with the purposes or intent of the act.

G. Compliance with other laws: The department shall ensure that any access to data that is subject to restrictions on use pursuant to state, federal, or tribal law or regulation, or any other legal agreement, complies with those restrictions.

H. Disclaimer: The department shall include a disclaimer in all claims data and reports released pursuant to this rule stating that the accuracy of the original data is the responsibility of the submitting data provider and that the department assumes no responsibility for any use made of or conclusions drawn from the data.

I. Agency contractors:

(1) A state or federal agency that receives claims data or reports under an agreement with the department pursuant to this rule shall be solely responsible for fulfillment of the agreement, including responsibility for the actions of any subcontractor engaged

to perform services that require access to claims data or reports.

(2) A state or federal agency subcontractor that is provided access to claims data or reports shall be subject to the full provisions of the HIS Act and this rule.

J. Proprietary and confidential information:

(1) Proprietary information and protected health information shall not be disclosed in or as part of a public health information report by the department.

(2) A data provider that objects to the potential release of its reported data or information derived from its reported data shall submit to the department a written request to exempt its data from such disclosures. By the end of each fiscal year (June 30th), data providers must notify the department in writing regarding data items that they deem proprietary. Application for an exemption must be addressed by a representative of the data provider to the department.

[7.1.31.11 NMAC - N, 04/20/2021]

7.1.31.12 ACCESS TO HEALTH CARE DATA REPORTS:

A. Access to routine and published reports: The department shall release reports to the public on a periodic schedule as determined by the department and in accordance with the HIS Act.

B. Access to aggregate data and reports for individuals: Pursuant to the requirements of the NM Inspection of Public Records Act (IPRA), any person may obtain access to existing aggregate data or reports based on the subset or portion of the claims database that is relevant to the individual's stated purpose. Any access to aggregate data or reports that have not yet been generated is subject to approval by the department pursuant to the requirements of this rule.

C. Access to data and reports for state agencies: The department shall establish policies and procedures for access to data and reports by state agencies.

[7.1.31.12 NMAC - N, 04/20/2021]

7.1.31.13 FEES FOR DATA AND REPORTS:

A. Fees for routine reports:

(1) Generally: The fees for copies of available reports produced for public use shall be as follows:

(a) single copies of any claims data reports or annual reports shall be provided free of charge upon request; and

(b) all other reports shall be provided for a fee of no more than $1.00 per page.

(2) Data providers: Data providers may receive one free copy of the department's routine reports upon request.

B. Previously-prepared reports: The fee for copies of available previously-prepared, non-routine reports provided to persons other than the original requestor for whom the report was prepared shall be $20.00 per report.

C. Fees for data and non-routine reports: The fee for preparing data and non-routine reports that have not been previously prepared shall be charged at the hourly rate of the analyst(s) preparing the data or report, as follows:

(1) data providers shall be charged a rate of $50.00 per analyst hour;

(2) state agencies shall be charged a rate of $75.00 per analyst hour; and

(3) all others shall be charged a rate of $100.00 per analyst hour.

D. Electronic media reports: Fees for reports made available on electronic media may include charges for the cost of the magnetic tape, diskette, CD-ROM, or other electronic media, in addition to the fees required by this section.

E. Waiver or reduction of fees:

(1) Standard for waiver or reduction: The department may reduce or waive the fee for routine reports, data, and non-routine reports when the department determines that the requestor's proposed use of the information would be of value to the department in fulfilling its statutory mandates to a degree equal to or greater than the fee reduction or waiver.

(2) Payment upon failure to perform: When a fee waiver or reduction has been granted, and the research for which the fee was waived or reduced is not completed or the product for which the fee was waived or reduced is not delivered to the department, the full fee shall be assessed in accordance with this rule.

F. Statement of fees: The department shall prepare a statement of the fee for requests made pursuant to this rule and provide it to the requestor prior to tender of the requested data or report. Payment is required in advance of the requestor receiving the data or report.

[7.1.31.13 NMAC - N, 04/20/2021]

HISTORY OF 7.1.31 NMAC: [RESERVED]

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY
PART 13 STUDENT DENTAL EXAMINATION REQUIREMENTS FOR ENROLLMENT

6.12.13.1 ISSUING AGENCY: Public Education Department, hereinafter the department.

[6.12.13.1 NMAC – N, 4/20/2021]

6.12.13.2 SCOPE: This rule applies to all school districts and public schools, including charter schools.

[6.12.13.2 NMAC – N, 4/20/2021]

6.12.13.3 STATUTORY AUTHORITY: This rule is promulgated by the secretary of public education and the public education department under the authority of Section 22-1-14 NMSA 1978.
[6.12.13.3 NMAC – N, 4/20/2021]

6.12.13.4 DURATION: Permanent.
[6.12.13.4 NMAC – N, 4/20/2021]

6.12.13.5 EFFECTIVE DATE: April 20, 2021, unless a later date is cited at the end of a section.
[6.12.13.5 NMAC – N, 4/20/2021]

6.12.13.6 OBJECTIVE: This rule provides parameters for the requirements of schools to verify student records of dental examination prior to initial enrollment in a New Mexico school district or charter school, providing an exception for an informed opt-out process based on parent or guardian understanding of the risks associated with not having a dental examination. The rule also provides parameters for the requirements of schools to report annual end-of-year compliance data to the department.
[6.12.13.6 NMAC – N, 4/20/2021]

6.12.13.7 DEFINITIONS:

A. "Dental examination" means an assessment conducted by a licensed dental health care provider such as a dental hygienist, dental therapist or dentist that includes the review and documentation of the oral condition, and the recognition and documentation of deviations from healthy oral condition, with or without a diagnosis to determine the cause or nature of disease or its treatment.

B. "Initial enrollment" or "initially enroll" means the first time a student registers at a New Mexico school district or charter school.

C. "Student dental examination waiver" means a designated field within a school district or charter school's enrollment application, signed by the parent or guardian, and collected and stored by schools, indicating the parent or guardian acknowledges the risks associated with the student not receiving a dental examination and opts not to obtain a dental examination for the student.
[6.12.13.7 NMAC – N, 4/20/2021]

6.12.13.8 DENTAL EXAMINATION REQUIREMENTS AND EXCEPTIONS FOR INITIAL ENROLLMENT:

A. Beginning July 1, 2021, a student shall not initially enroll in a school district or charter school unless the parent or guardian has provided:

(1) satisfactory evidence, as determined by the school district or charter school, of having received a dental examination within the past year; or

(2) the student dental examination waiver signed by a parent or guardian.

B. Students shall obtain the required dental examination at their own expense or the expense of any dental health coverage they may have.
[6.12.13.8 NMAC – N, 4/20/2021]

6.12.13.9 REPORTING REQUIREMENTS:

A. Beginning July 1, 2022, and each year thereafter, all school districts and charter schools shall report to the department end-of-year student data for dental examinations.

B. End-of-year student data shall include:

(1) total number of students enrolled with satisfactory evidence, as determined by the district or charter school, of a dental examination within the past year; and

(2) total number of students enrolled with a signed student dental examination waiver opting not to obtain a dental examination.
[6.12.13.9 NMAC – N, 4/20/2021]

HISTORY OF 6.12.13 NMAC: [RESERVED]

RACING COMMISSION

This is an amendment to 15.2.2 NMAC, Section 8, effective 4/20/2021.

Explanatory Paragraph: Subsection A and Subsections C through X were not published as there were no changes.

15.2.2.8 ASSOCIATIONS:

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B. Financial requirements: insurer of the race meeting:

(1) Approval of a race meeting by the commission does not establish the commission as the insurer or guarantor of the safety or physical condition of the association's facilities or purse of any race.

(2) An association shall agree to indemnify, save and hold harmless the commission from any liability, if any, arising from unsafe conditions of association grounds and default in payment of purses.

(3) An association shall provide the commission with a certificate of liability insurance as required by the commission.

(4) An association shall maintain one or more trust accounts in financial institutions insured by the FDIC or other federal government agency for the deposit of nominations and futurity monies and those amounts deducted from the pari mutuel handle for distribution to persons other than the association according to the Horse Racing Act and commission rules. An association may invest nominations and futurities monies paid by owners in a U.S. treasury bill or other appropriate U.S. Government financial instrument instead of an account in a financial institution, in which case the

provisions of this rule shall apply to such instrument.

(5) An association shall keep its operating funds and other funds that belong exclusively to the association separate and apart from the funds in its trust accounts and from other funds or accounts it maintains for persons other than itself, such as a horsemen's book account.

(6) An association shall employ proper accounting procedures to insure accurate allocation of funds to the respective purses, parties and organizations and detailed records of such accounts shall be made available to the commission or its staff on demand in connection with any commission audit or investigation.

(7) An association shall insure that sufficient funds for the payment of all purses on any race day are on deposit in a trust account at least two business days before the race day and shall provide the commission with documentation of such deposits prior to the race day. Exceptions to this subsection may be made by the commission or the agency director for good cause shown.

(8) An association shall add all interest accrued on funds in a trust account to the balance in the account and distribute the interest proportionally to those for whom the funds are held.

(9) An association and its managing officers are jointly and severally responsible to ensure that the amounts retained from the pari mutuel handle are distributed according to the Horse Racing Act and commission rules and not otherwise.

(10) An association and its managing officers shall ensure that all purse monies, disbursements and appropriate nomination race monies are available to make timely distribution in accordance with the Horse Racing Act, commission rules, association rules and race conditions.

(11) An association is authorized to offset a portion of the jockey and exercise rider insurance premium from gaming monies subject to the approval of the commission.

(12) An association shall insure that funds for the payment of the ten percent track breeder's awards on New Mexico bred winners, that have been requested by the New Mexico horse breeders' association and whose purses have been cleared by the New Mexico racing commission, will be sent via wire transfer to the designated bank account set up for that purpose within five business days after the request.

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[15.2.2.8 NMAC - Rp, 15 NMAC 2.2.8, 3/15/2001; A, 8/30/2001; A, 11/14/2002; A, 8/30/2007; A, 1/1/2013; A, 6/1/2016; A, 12/16/2016; A, 9/26/2018; A, 4/20/2021]

RACING COMMISSION

This is an amendment to 15.2.4 NMAC, Section 8, effective 4/20/2021.

Explanatory Paragraph: Subsections B through G were not published as there were no changes.

15.2.4.8 CLAIMING RACES:

A. General Provisions:

(1) A person entering a horse in a claiming race warrants that the title to said horse is free and clear of any existing claim or lien, either as security interest mortgage, bill of sale, or lien of any kind; unless before entering such horse, the written consent of the holder of the claim or lien has been filed with the stewards and the racing secretary and its entry approved by the stewards. A transfer of ownership arising from a recognized claiming race will terminate any existing prior lease for that horse.

(2) A filly or mare that has been bred is ineligible to enter into a claiming race unless a licensed veterinarian's certificate dated at least 25 days after the last breeding of that mare is on file with the racing secretary's office stating that the mare or filly is not in foal. However, an in-foal filly or mare shall be eligible to enter into a claiming race if the following conditions are fulfilled:

(a) full disclosure of such fact is on file with the racing secretary and such information is posted in the racing secretary's office;

(b) the stallion service certificate has been deposited with the racing secretary's office (although all information obtained on such certificate shall remain confidential);

(c) all payments due for the service in question and for any live progeny resulting from that service are paid in full;

(d) the release of the stallion service certificate to the successful claimant at the time of claim is guaranteed.

(3) The stewards may set aside and order recession of a claim for any horse from a claiming race run in this jurisdiction upon a showing that any party to the claim committed a prohibited action, as specified in Subsection E of 15.2.4 NMAC with respect to the making of the claim, or that the owner of the horse at the time of entry in the claiming race failed to comply with any requirement of these rules regarding claiming races. Should the stewards order a recession of a claim, they may also, in their discretion, make a further order for the costs of maintenance and care of the horse as they may deem appropriate.

(4) The successful claimant of a horse [~~that tests positive for a substance that requires the horse to be placed on the steward's list pursuant to Subsection C of 15.2.6.9 NMAC shall be notified at the time the horse is placed on the steward's list.~~] shall be notified of a medication violation. Once notified,

the successful claimant has 72 hours in which to request the stewards to void the claim. If the claim is voided the stewards may also, in their discretion, make a further order for the costs of maintenance and care of the horse as they may deem appropriate. If the claim is not voided, all applicable time requirements and procedures pursuant to Subsection C of 15.2.6.9 NMAC shall follow the horse.

(5) A claim shall be voided if a horse is a starter as determined by the New Mexico racing commission, and the horse:

(a) dies on the track; or

(b) suffers [~~an~~] injury [~~which requires~~] requiring euthanasia of the horse as determined by the official or racing veterinarian while the horse is on the track or at the test barn.

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[15.2.4.8 NMAC - Rp, 15 NMAC 2.4.8, 3/15/2001; A, 10/31/2006; A, 6/15/2009; A, 6/30/2009; A, 1/1/2013; A, 6/1/2016; A/E, 6/28/2016; A, 12/16/2016; A, 5/1/2019; A, 4/20/2021]

RACING COMMISSION

This is an amendment to 15.2.5 NMAC, Sections 11 and 14, effective 4/20/2021.

15.2.5.11 WORKOUTS:

A. Requirements:

(1) A non-starter must have had within 60 days prior to time of entry, one approved official schooling race or at least two workouts recorded at a pari mutuel or commission recognized facility and posted with the racing secretary prior to time of entry, one of the two workouts shall be from the starting gate, and be gate approved. It shall be the trainer's responsibility to establish validity as to workouts and gate approvals.

(2) Any horse which has started, but not within 60 days, must have at least one workout within 60 days prior to time of entry. Horses that have not started within six months of entry must have at least two approved workouts within the 60 days prior to time of entry. [~~Any horse which has started, but not within 60 days, must have at least one workout within 60 days prior to time of entry. Horses that have not started within six months of entry must have at least two approved workouts within the 60 days.~~]

(3) Horses that have never raced around the turn will be required to have within 30 days prior to time of entry, at least one workout at 660 yards or farther.

(4) Gate approvals at a licensed facility must be made by a licensed starter on a commission approved form.

B. Identification:

(1) Each horse must be properly identified prior to its participation in an official timed workout.

(2) The trainer or exercise rider shall bring each horse scheduled for an official workout to be identified by the clocker or clocker's assistant immediately prior to the workout.

(3) A horse may be properly identified by its lip tattoo or its digital tattoo immediately prior to participating in an official timed workout. A horse may also be properly identified by other approved methods of positive identification as described in Subsection F of 15.2.3.8 NMAC.

(4) The owner, trainer or rider shall be required to identify the distance the horse is to be worked and the point on the track where the workout will start.

C. Information dissemination: Information regarding a horse's approved timed workout(s) shall be furnished to the public prior to the start of the race for which the horse has been entered.

D. Restrictions: A horse shall not be taken onto the track for training or a workout except during hours designated by the association.

[15.2.5.11 NMAC - Rp, 15 NMAC 2.5.11, 3/15/2001; A, 3/30/2007; A, 6/15/2009; A, 7/5/2010; A, 1/1/2013; A. 3/15/2016; A, 12/16/16; A, 8/26/2017; A, 3/14/2018; A, 12/19/2019; A, 2/25/2020; A, 4/20/2021]

15.2.5.14 PROTESTS, OBJECTIONS AND INQUIRIES:

A. Stewards to inquire: The stewards shall take cognizance of foul riding and, upon their own motion or that of any racing official or person empowered by this chapter to object or complain, shall make diligent inquiry or investigation into such objection or complaint when properly received.

B. Race objections:

(1) An objection to an incident alleged to have occurred during the running of a race shall be received only when lodged with the clerk of scales, the stewards or their designees, by the owner, the authorized agent of the owner, the trainer or the jockey of a horse engaged in the same race.

(2) An objection following the running of any race must be filed before the race is declared official, whether all or some riders are required to weigh in, or the use of a "fast official" procedure is permitted.

(3) The stewards shall make all findings of fact as to all matters occurring during an incident to the running of a race; shall determine all objections and inquiries, and shall determine the extent of disqualification, if any, of horses in the race. Such findings of fact and determination shall be final for pari mutuel payout purposes.

C. Prior objections:

(1) Objections to the participation of a horse entered in any race shall be made to the stewards in writing, signed by the objector, and filed not later than one hour prior to post time for the first race on the day which the questioned horse is entered. Any such objections shall set forth the specific reason or grounds for the objection in such detail so as to establish probable

cause for the objection. The stewards upon their own motion may consider an objection until such time as the horse becomes a starter.

(2) An objection to a horse which is entered in a race may be made on, but not limited to, the following grounds or reasons:

(a) a misstatement, error or omission in the entry under which a horse is to run;

(b) the horse, which is entered to run, is not the horse it is represented to be at the time of entry, or the age was erroneously given;

(c) the horse is not qualified to enter under the conditions specified for the race, or the allowances are improperly claimed or not entitled the horse, or the weight to be carried is incorrect under the conditions of the race;

(d) the horse is owned in whole or in part, or leased or trained by a person ineligible to participate in racing or otherwise ineligible to own a race horse as provided in these rules;

(e) the horse was entered without regard to a lien filed previously with the racing secretary.

(3) The stewards may scratch from the race any horse, which is the subject of an objection if they have reasonable cause to believe that the objection is valid.

D. Protests:

(1) A protest against any horse, which has started in a race, shall be made to the stewards in writing, signed by the protestor, and must be accompanied by a fee in the amount of [~~$500~~] $1000 in the form of a cashier's check or money order [~~or personal check~~] within 48 hours of the race. If the incident upon which the protest is based occurs within the last two days of the meeting, such protest may be filed with the commission within 48 hours exclusive of Saturdays, Sunday or official holidays. Any such protest shall set forth the specific reason or reasons for the protest in such detail as to establish probable cause for the protest.

(2) A protest may be made on any of the following grounds:

(a) any grounds for objection as set forth in this chapter;

(b) the order of finish as officially determined by the stewards was incorrect due to oversight or errors in the numbers of the horses, which started the race;

(c) a jockey, trainer, owner or lessor was ineligible to participate in racing as provided in this chapter;

(d) the weight carried by a horse was improper, by reason of fraud or willful misconduct;

(e) an unfair advantage was gained in violation of the rules;

(f) the disqualification of a horse(s).

(3) Notwithstanding any other provision in this article, the time limitation on the filing of protests shall not apply in any case in which fraud or willful misconduct is alleged provided that the stewards are satisfied that the allegations are bona fide and verifiable.

(4) No person shall file any objection or protest knowing the same to be inaccurate, false, untruthful or frivolous.

(5) The commission may fine any license holder an amount of up $2,500 after considering protest, if based on the evidence they determine that the protest is frivolous, unreasonable or unnecessary.

(6) If a license holder who appealed fails to appear for any scheduled hearing without providing five days prior notice, the stewards or the commission may impose costs.

(7) The stewards may order any purse, award or prize for any race withheld from distribution pending the determination of any protest. In the event any purse, award or prize has been distributed to an owner or for a horse which by reason of a protest or other reason is disqualified or determined to be not entitled to such purse, award or prize, the stewards or the commission may order such purse, award or prize returned and redistributed to the rightful owner or horse. Any person who fails to comply with an order to return any purse, award or prize erroneously distributed shall be subject to fines and suspension.

E. Race review committee:

(1) If a timely objection concerning a race is filed in accordance with the rules, the agency director may refer the objection to the race review committee who shall consist of three members appointed by the commission. The agency director shall issue and send, or deliver, to the objecting party a notice of hearing stating the date, time and place at which the race review committee will hear the appeal. The notice of hearing shall also be sent, or delivered, to any trainer or owner the placement of whose horse may be affected by the outcome of the appeal. The race review committee shall review the official tape or tapes of the race. Affected parties shall be given the opportunity to state their positions to the committee.

(2) The committee shall state its conclusions as to the merits of the objection and shall make a recommendation to the commission as to whether to uphold the stewards' determination, or to revise the order of finish. The commission shall then make the final determination as to the order of finish. The race review committee and the commission may only address the issues raised in the appeal filed.

[15.2.5.14 NMAC - Rp, 15 NMAC 2.5.14, 3/15/2001; A, 8/30/2001; A, 6/15/2004; A, 9/15/2009; A, 4/20/2021]

RACING COMMISSION

This is an amendment to 15.2.6 NMAC, Section 9, effective 4/20/2021.

Explanatory Paragraph: Subsection A; Paragraphs 1, 5, 6 and 7 of Subsection B; Subsections C through E; Paragraphs 1 through 5 of Subsection F; and Subsections G though M were not published as there were no changes

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", [~~January 2019~~] December 2020 version [~~14.0~~] 14.4 and "association of racing commissioners international [~~inc.~~] controlled therapeutic medication schedule for horses", version [~~4.0~~] 4.2.1, revised [~~April 20, 2017~~] 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.

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B. Penalty recommendations:

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(2) Category B penalties will be assessed for violations due to the presence of a drug carrying a category B penalty and for the presence of more than one NSAID in a plasma or serum sample in accordance with [~~Paragraphs (3) and (4)~~] Paragraph (5) of Subsection N of 15.2.6.9 NMAC. Recommended penalties for category B violations are as follows:
Licensed trainer:
1st **offense:**
A minimum 15-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 60-day suspension. A minimum fine of $500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a $1,000 fine.
2nd **offense (365-day period) in any jurisdiction:**
A minimum 30-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 180-day suspension. A minimum fine of $1,000 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of $2,500.
3rd **offense (365-day period) in any jurisdiction:**
A minimum 60-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of a one year suspension. A minimum fine of $2,500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum $5,000 fine or five percent of the total purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.
Licensed owner:
1st **offense:**
Disqualification, loss of purse (in the absence of mitigating circumstances)* and horse must pass a commission-approved examination before becoming eligible to be entered.
2nd **offense (365-day period) in owner's stable in any jurisdiction:**
Disqualification, loss of purse (in the absence of mitigating circumstances)* and horse must pass a commission-approved examination before becoming eligible to be entered.
3rd **offense (365-day period) in owner's stable in any jurisdiction:**
Disqualification, loss of purse, and in the absence of mitigating circumstances a $5,000 fine* and horse must be placed on the veterinarian's list for 45 days and must pass a commission-approved examination before becoming eligible to be entered.

[~~**(3)** Category C (**minor**) penalties will be assessed for violations due to the presence of more than one NSAID in a plasma or serum sample in accordance with Paragraph (6) of Subsection N of 15.2.6.9 NMAC and overages for NSAIDs or for furosemide violations utilizing the following concentrations in serum or plasma:~~

~~**(a)** phenylbutazone >2.0 mcg/ml and up to 5.0 mcg/ml; or~~

~~**(b)** flunixin > 20 ng/ml and up to 100 ng/ml; or~~

~~**(c)** ketoprofen > 2 ng/ml and up to 50 ng/ml;or~~

~~**(d)** furosemide >100 ng/ml; or~~

~~**(e)** no detectable furosemide concentration when identified as administered.~~

~~Recommended penalties for category C **(minor)** violations are as follows:~~

~~**Licensed trainer:**~~
~~1st offense (365-day period) in any jurisdiction, the penalty is a minimum of a written warning to maximum fine of $500.~~
~~2nd offense (365-day period) in any jurisdiction, the penalty is a minimum of a written warning to maximum fine of $750.~~
~~3rd offense (365-day period) in any jurisdiction, the penalty is a minimum fine of $500 to a maximum fine of $1,000.~~
~~**Licensed owner:**~~
~~1st offense (365-day period) in any jurisdiction, the penalty is the horse may be required to pass a commission-approved examination before being eligible to run.~~
~~2nd offense (365-day period) in any jurisdiction, the penalty is the horse may be required to pass a commission-approved examination before being eligible to run.~~
~~3rd offense (365-day period) in any jurisdiction, the penalty is disqualification, loss of purse and horse must pass a commission-approved examination before being eligible to run.~~]

[~~**(4)**~~] **(3)** Category C [~~**(major)**~~] penalties will be assessed for violations due to the presence of a drug carrying a category C penalty.

(a) phenylbutazone >[~~5.0~~] 0.3 mcg/ml or

(b) flunixin > [~~100~~] 5.0 ng/ml or

(c) ketoprofen > [~~50~~] 2.0 ng/ml or

[~~**(d)** the presence of more than one NSAID in a plasma or serum sample in accordance with Paragraph (5) of Subsection N of 15.2.6.9 NMAC; or~~]

[~~(e)~~] **(d)** penalty class C drugs.

Recommended penalties for category C [~~**(major)**~~] violations are as follows:

Licensed trainer:
1st offense (365-day period) in any jurisdiction, the penalty is a minimum fine of $1,000 absent mitigating circumstances.
2nd offense (365-day period) in any jurisdiction, the penalty is a minimum fine of $1,500 and 15 day suspension absent mitigating circumstances.
3rd offense (365-day period) in any jurisdiction, the penalty is a minimum fine of $2,500 and a 30 day suspension absent mitigating circumstances.
Licensed owner:
1st offense (365-day period) in any jurisdiction, the penalty is disqualification, loss of purse in the absence of mitigating circumstances and the horse must pass a commission-approved examination before being eligible to run.
2nd offense (365-day period) in any jurisdiction, the penalty is disqualification, and loss of purse in the absence of mitigating circumstances. If same horse, that horse shall be placed on veterinarian's list for 45 days and must pass a commission-approved examination before being eligible to run.
3rd offense (365-day period) in any jurisdiction, the penalty is disqualification, loss of purse, and in the absence of mitigating circumstances a $5,000 fine and if same horse that horse shall be placed on veterinarian's list for 60 days and must pass a commission-approved examination before being eligible to run.

(4) Category C penalties will be assessed for violations due to the presence of:

(a) furosemide >100 ng/ml; or

(b) no detectable furosemide concentration when identified as administered.

Recommended penalties for category C violations are as follows:

Licensed trainer:
1st offense (365-day period) in any jurisdiction, the penalty is a minimum of a written warning to maximum fine of $500.
2nd offense (365-day period) in any jurisdiction, the penalty is a minimum of a written warning to maximum fine of $750.
3rd offense (365-day period) in any jurisdiction, the penalty is a minimum fine of $500 to a maximum fine of $1,000.
Licensed owner:
1st offense (365-day period) in any jurisdiction, the horse may be required to pass a commission-approved examination before being eligible to run.
2nd offense (365-day period) in any jurisdiction, the horse may be required to pass a commission-approved examination before being eligible to run.
3rd offense (365-day period) in any jurisdiction, the penalty is disqualification, loss of purse, and the horse must pass a commission-approved examination before being eligible to run.

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F. Permissible medications with acceptable levels: The official urine or blood test sample may contain one of the following drug substances listed below or the drugs listed on "association of racing commissioners international inc. controlled therapeutic medication schedule", their metabolites or analogs, in any amount that does not exceed the specified levels.

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[~~**(6)**~~

~~**Naproxen:** The use of naproxen shall be permitted under the following conditions: any horse to which naproxen has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of naproxen shall be administered in such dosage amount that the official test sample shall not exceed 5000 nanograms per milliliter of urine.~~]

[~~**(7)**~~] **(6)**

Pentoxifylline: The use of pentoxifylline shall be permitted under the following conditions: any horse to which pentoxifylline has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of pentoxifylline shall be administered in such dosage amount that the official test sample shall not exceed 50 nanograms per milliliter of urine.

[~~**(8)**~~] **(7)**

Pyrilamine: The use of pyrilamine shall be permitted under the following conditions: any horse to which pyrilamine has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of pyrilamine shall be administered in such dosage amount that the official test sample shall not exceed 50 nanograms per milliliter of urine.

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N. Non-steroidal anti-inflammatory drugs (NSAIDs): The use of NSAIDs shall be governed by the following conditions:

(1) No NSAID may be administered at less than 48 hours to the scheduled post time of the race in which the horse is entered.

[~~**(2)** The presence of more than one NSAID may constitute a NSAID stacking violation.~~

(2) Evidence of an NSAID administration at less than 48 hours to the scheduled post time of the race in which the horse is entered constitutes a Class C violation.

[~~**(3)** A NSAID stacking violation with a penalty class B occurs when two non-steroidal anti-inflammatory drugs are found at individual levels determined to exceed the following restrictions:~~

~~**(a)** Diclofenac - 5 nanograms per milliliter of plasma or serum;~~

~~**(b)** Firocoxib - 20 nanograms per milliliter of plasma or serum;~~

~~**(c)** Flunixin - 20 nanograms per milliliter of plasma or serum;~~

~~**(d)** Ketoprofen - 2 nanograms per milliliter of plasma or serum;~~

~~**(e)** Phenylbutazone - 2 micrograms per milliliter of plasma or serum; or~~

~~**(f)** all other non-steroidal anti-inflammatory drugs - official laboratory limit of detection.~~]

[~~**(1)**~~] **(3)** NSAIDs included in the "association of racing commissioner's international incorporated controlled therapeutic medication schedule for horses" are not to be used in a manner

inconsistent with the restrictions contained herein. NSAIDs not included on the "association of racing commissioner's international incorporated controlled therapeutic medication schedule for horses" are not to be present in a racing horse's official sample above the official laboratory limit of detection.

[~~**(4)** A NSAID stacking violation with a penalty class B occurs when three or more non-steroidal anti-inflammatory drugs are found at individual levels determined to exceed the following restrictions:~~

~~**(a)** Diclofenac - 5 nanograms per milliliter of plasma or serum;~~

~~**(b)** Firocoxib - 20 nanograms per milliliter of plasma or serum;~~

~~**(c)** Flunixin - 3 nanograms per milliliter of plasma or serum;~~

~~**(d)** Ketoprofen - 1 nanogram per milliliter of plasma or serum;~~

~~**(e)** Phenylbutazone - 0.3 micrograms per milliliter of plasma or serum; or~~

~~**(f)** all other non-steroidal anti-inflammatory drugs - official laboratory limit of detection.~~]

(4) Notwithstanding the above, the presence of one of the following does not constitute a violation:

(a) Phenylbutazone at a concentration of less than 0.3 micrograms per milliliter of plasma or serum;

(b) Flunixin at a concentration less than 5.0 nanograms per milliliter of plasma or serum; or

(c) Ketoprofen at a concentration less than 2.0 nanograms per milliliter of plasma or serum.

[~~**(5)** A NSAID stacking violation with a penalty class C **(major)** occurs when any one substance noted in Subparagraphs (a) through (c) of Paragraph (3) above is found in excess of the restrictions contained therein in combination with any one of the following substances at the following levels:~~

~~**(a)** Flunixin - 3 nanograms per milliliter of plasma or serum but below 20 nanograms per milliliter of plasma or serum;~~

~~**(b)** Ketoprofen - 1 nanogram per milliliter of plasma or serum but below 2 nanograms per milliliter of plasma or serum;~~

~~**(c)** Phenylbutazone - 0.3 micrograms per milliliter of plasma or serum but below 2 micrograms per milliliter of plasma or serum.~~]

(5) The detection of two or more NSAIDS in blood or urine constitutes a NSAID Stacking Violation (Penalty Class B).

[~~(6)~~ ~~A NSAID stacking violation with a penalty class C **(minor)** occurs when any combination of two of the following non-steroidal anti-inflammatory drugs are found at concentrations between the noted restrictions:~~

~~**(a)** Flunixin - 3 nanograms per milliliter of plasma or serum but below 20 nanograms per milliliter of plasma or serum;~~

~~**(b)** Ketoprofen - 1 nanogram per milliliter of plasma or serum but below 2 nanograms per milliliter of plasma or serum;~~

~~**(c)** Phenylbutazone - 0.3 micrograms per milliliter of plasma or serum but below 2 micrograms per milliliter of plasma or serum.~~

~~**(7)** Any horse to which a NSAID has been administered shall be subject to having a blood sample or urine sample, or both blood and urine sample(s), taken at the direction of the official veterinarian to determine the quantitative NSAID level(s).~~]

O. Multiple Medication Violations (MMV):

(1) A trainer who receives a penalty for a medication violation based upon a horse testing positive for a class 1-5 medication with penalty class A-C, as provided in the version of the ARCI "uniform classification guidelines for foreign substances" listed in 15.2.6.9 NMAC, or similar state regulatory guidelines, shall be assigned points as follows;

Penalty Class	Points If Controlled Therapeutic Substance	Points if Non-Controlled Substance
Class A	[~~N/A~~] 6	6
Class B	2	4
Class C	1/2 point for first violation with an additional 1/2 point for each additional violation within 365 days	1 for first violation with an additional 1/2 point for each additional violation with 365 days
Class D	0	0

Points for NSAID violations only apply when the primary threshold of the NSAID is exceeded. Points are not to be separately assigned for a stacking violation. If the stewards or the commission determine that the violation is due to environmental contamination, they may assign lesser or no points against the trainer based upon the specific facts of the case.

(2) The points assigned to a medication violation by the stewards or commission shall be included in the ARCI official database. The ARCI shall record points consistent with Paragraph (1) of this Subsection including when appropriate, a designation that points have been suspended for the medication violation. Points assigned by such commission ruling shall reflect, in the case of multiple positive tests as described in Paragraph (4), whether they constitute a single violation. The stewards or commission ruling shall be posted on the official website of the commission and within the official database of the ARCI. If an appeal is pending, that fact shall be noted in such ruling. No points shall be applied until a final adjudication of the enforcement of any such violation.

(3) A trainer's cumulative points for violations in all racing jurisdictions shall be maintained by the ARCI. Once all appeals are waived or exhausted, the points shall immediately become part of the trainer's official ARCI record and shall be considered by the commission in its determination to subject the trainer to the mandatory enhanced penalties by the stewards or commission as provided in this rule.

(4) Multiple positive tests for the same medication incurred by a trainer prior to delivery of official notice by the commission may be treated as a single violation. In the case of a positive test indicating multiple substances found in a single post-race sample, the stewards may treat each substance found as an individual violation for which points will be assigned, depending upon the facts and circumstances of the case.

(5) The official ARCI record shall be used to advise the stewards or commission of a trainer's past record of violations and cumulative points. Nothing in this administrative regulation shall be construed to confer upon a licensed trainer the right to appeal a violation for which all remedies have been exhausted or for which the appeal time has expired as provided by applicable law.

(6) The stewards or commission shall consider all points for violations in all racing jurisdictions as contained in the trainer's official ARCI record when determining whether the mandatory enhancements provided in this regulation shall be imposed.

(7) In addition to the penalty for the underlying offense, the following enhancements shall be imposed upon a licensed trainer based upon the cumulative points contained in their official ARCI record:

POINTS	SUSPENSION IN DAYS
5 - 5.5	15 to 30
6 - 8.5	30 to 60
9 - 10.5	90 to 180
11 or more	180 to 360

MMV penalties are not a substitute for the current penalty system and are intended to be an additional uniform penalty when the licensee:

(a) Has more than one medication violation for the relevant time period, and

(b) exceeds the permissible number of points.

The stewards and commission shall consider aggravating and mitigating circumstances, including the trainer's prior record for medication violations, when determining the appropriate penalty for the underlying offense. The multiple medication penalty is intended to be a separate and additional penalty for a pattern of violations.

(8) The suspension periods as provided in this subsection shall run consecutive to any [~~supension~~] suspension imposed for the underlying offense.

(9) The stewards or commission ruling shall distinguish between the penalty for the underlying offense and any enhancement based upon a stewards or commission review of the trainer's cumulative points and regulatory record, which may be considered an aggravating factor in a case.

(10) Points shall expire as follows:

Penalty Classification	Time to Expire
A	3 years
B	2 years
C	1 year

In the case of a medication violation that results in a suspension, any points assessed expire on the anniversary date of the date the suspension is completed.

[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]

RACING COMMISSION

This is an amendment to 16.47.1 NMAC, Section 11, effective 4/20/2021.

16.47.1.11 OWNER'S AUTHORIZED AGENTS:

A. Licenses required:

(1) A written authorized agent appointment, acknowledged before a notary public must be approved by the board of stewards.

(2) A written appointment must be filed with the commission office for each owner represented and is not transferable to any other partnership, stable name, or owner-principal.

(3) A written instrument signed by the owner shall clearly set forth the delegated powers of the authorized agent. The owner's signature on the written instrument must be acknowledged before a notary public.

(4) If the written instrument is a power of attorney it shall be filed with the commission office and attached to the regular application form.

(5) Any changes must be made in writing, notarized and filed as provided in Paragraph (3) of Subsection A of 16.47.1.11 NMAC above.

(6) All authorized agent appointments shall expire December 31st each year or when terminated by the owner in writing, acknowledged before a notary public, and filed with the commission office whereupon the agency appointment shall not be valid.

(7) An authorized agent shall be licensed by the commission as such and must be a minimum of 18 years old.

B. Powers and duties:

(1) An authorized agent may perform on behalf of the licensed owner-[~~principle~~] principal all acts related to racing, as specified in the agency appointment that could be performed by the [~~principle~~] owner-principal if such [~~principle~~] principal were present.

(2) In executing any document on behalf of the [~~principle~~] principal, the authorized agent must clearly identify the authorized agent and the owner-[~~principle~~] principal.

(3) When an authorized agent enters a claim for the account of [~~a~~] an [~~principle~~] owner-principal, the name of the licensed owner for whom the claim is being made and the name of the authorized agent shall appear on the claim slip or card.

(4) Authorized agents are responsible for disclosure of the true and entire ownership of each horse for which they have authority. Any change in ownership must be reported immediately to, and approved by, the stewards and recorded by the racing secretary.

[16.47.1.11 NMAC - Rp, 16 NMAC 47.1.11, 03/15/2001; A, 03/30/2007; A, 08/14/2008; A, 4/20/2021]

TRANSPORTATION, DEPARTMENT OF

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 27 HIGHWAY CONSTRUCTION GENERAL PROVISIONS
PART 6 TRANSPORTATION PROJECT FUND

18.27.6.1 ISSUING AGENCY: New Mexico department of transportation, Post Office Box 1149, Santa Fe, New Mexico 87504-1149.
[18.27.6.1 NMAC - N, 4/20/2021]

18.27.6.2 SCOPE: This rule covers the application, evaluation, award and close out process for the transportation project fund (the fund) and all eligible entities in the state of New Mexico applying for and receiving grant money from the fund.
[18.27.6.2 NMAC - N, 4/20/2021]

18.27.6.3 STATUTORY AUTHORITY: Sections 67-3-11, 67-3-28 and 67-3-78 NMSA 1978.
[18.27.6.3 NMAC - N, 4/20/2021]

18.27.6.4 DURATION: Permanent.
[18.27.6.4 NMAC - N, 4/20/2021]

18.27.6.5 EFFECTIVE DATE: April 20, 2021 unless a later date is cited at the end of a section.
[18.27.6.5 NMAC - N, 4/20/2021]

18.27.6.6 OBJECTIVE:

A. In 2019, the New Mexico legislature enacted Laws of 2019, Chapter 205, Section 1, which created the local government transportation project fund and was compiled as Section 67-3-78 NMSA 1978. In 2020, the New Mexico legislature enacted Laws of 2020, Chapter 31, Section 1, which made certain amendments to the local government transportation project fund enabling statute including changing the title of the fund to simply "transportation project fund." Money in the transportation project fund is appropriated to the New Mexico department of transportation to administer the fund and to make grants to eligible entities for transportation projects.

B. The purpose of this rule is to describe the application, evaluation, award, and close out processes to be administered by the department for money appropriated to the fund by the New Mexico legislature for the development of transportation infrastructure.
[18.27.6.6 NMAC - N, 4/20/2021]

18.27.6.7 DEFINITIONS: As used in this rule:

A. "Annual appropriation" means the annual amount of state funds appropriated to the fund by the legislature.

B. "Beautification project" means a landscape project that is intended to enhance the attractiveness of a public right-of-way or a transportation facility.

C. "Commission" means the state transportation commission.

D. Definitions beginning with "D":

(1) "Department" means the New Mexico department of transportation.

(2) "DFA" means the department of finance and administration of the state of New Mexico.

(3) "Directive" is a written communication that prescribes or establishes policy, organization, methods, procedures, requirements, guidelines, or delegations of authority. It also provides information essential to the administration or operation of the fund.

(4) "District" means one of the six New Mexico department of transportation districts.

(5) "District engineer" means the department of transportation district engineer as designated pursuant to Subsection C of Section 67-3-8 NMSA 1978.

E. "Eligible entity" means those entities eligible under the provisions of the transportation project fund to receive grants for transportation projects.

F. Definitions beginning with "F":

(1) "Fiscal year" means 12 calendar months commencing on July first and ending on June 30 of the year being described.

(2) "Fund" has the same meaning as defined in Section 67-3-78 NMSA 1978 (2019).

G. Definitions beginning with "G":

(1) "Grant" means the award of funds from the fund to a grantee for a transportation project.

(2) "Grantee" means an eligible entity receiving a grant.

(3) "Grant agreement" means a written document memorializing the terms and conditions of a grant award granted pursuant to the grant program.

(4) "Grant award" means the funds awarded to a grantee from the fund pursuant to a grant.

(5) "Grant program" means the grant program established by the department to make grants to eligible entities for transportation projects.

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

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

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

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

L. Definitions beginning with "L":

(1) "Landscape" or "landscaping" means any vegetation, mulches, irrigation systems, and other landscape components, such as street furniture, specialty paving, tree gates, walls, planters, fountains, fences, and lighting (excluding public utility street and area lighting).

(2) "Landscape project" means any planned or actual landscape or landscaping on a public right-of-way, including its construction or installation, planning, beautification, and maintenance thereof, by a municipality, county, tribe, or an abutting private property owner or other non-governmental entity.

(3) "Letter of approval" means a document issued by a district engineer that authorizes an eligible entity to proceed with a project that is located in full or in part within a department right-of-way or NHS route, or when the project ties into or crosses a department right-of-way or an NHS route, or when the project may have an effect on existing improvements within department rights-of-way. A project agreement is not required for a project that receives a letter of approval.

(4) "Letter of authorization" means a document issued by a district engineer that authorizes an eligible entity to proceed with seeking funding for a project that is located in full or in part within a department right-of-way or NHS route, or when the project ties into or crosses a department right-of-way or an NHS route, or when the project may have an effect on existing improvements within department rights-of-way. A letter of authorization is a conditional approval of a project. Final approval shall be given by a project agreement.

(5) "Local funds" means revenue received from any locally imposed gross receipts tax, property tax, municipal gasoline tax, franchise fee, user fees or any other locally imposed fees or taxes, and enterprise activities, which can be lawfully used for transportation projects, but excluding state grants and loans and federal grants.

M. Definitions beginning with "M":

(1) "Maintenance" is defined as the planned strategy of extending the service life of an existing roadway system, including its structures and appurtenances, by applying cost-effective treatments or procedures that preserves the system, retards future deterioration, and maintains or improves the functional condition of the system without significantly increasing the structural capacity. Examples of pavement related maintenance activities include asphalt crack sealing, chip sealing, slurry or micro-surfacing, thin and ultra-thin hot-mix asphalt overlay, concrete joint sealing, diamond grinding, dowel-bar retrofit, and isolated, partial or full-depth concrete repairs to restore functionality of the slab; e.g.; edge spalls, or corner breaks. Examples of maintenance activities for bridge structures include deck joint repair and replacement; bearing repair and replacement; localized deck repairs; deck sealing; grid deck section repair or localized section replacement; concrete repair on pedestals, bents, caps, piling, piers, and columns; and bridge deck drainage.

(2) "Metropolitan transportation plan" means the official multimodal transportation plan addressing no less than a 2-year planning horizon that a MPO develops, adopts, and updates through the metropolitan transportation planning process.

(3) "MPO" means metropolitan planning organization.

N. Definitions beginning with "N":

(1) "National highway system" or "NHS" means that system of highways designated and approved in accordance with the provisions of 23 U.S.C. 103(b).

(2) "Non-state money" has the same meaning as defined in Section 67-3-78 NMSA 1978.

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

P. Definitions beginning with "P":

(1) "Program guidelines" means guidelines for the operation of the grant program established and revised by the department from time to time.

(2) "Project agreement" means a written document between an eligible entity and the department that memorializes the roles and responsibilities of the parties with respect to a project that receives a letter of authorization. The project agreement will include, but is not limited to, the roles and responsibilities with respect to design standards and exceptions, compliance with state, local and federal regulations, survey and right of way acquisition requirements, and construction phase duties and obligations. A project agreement is required in addition to a grant agreement.

(3) "Public authority" is defined as a Federal, State, county, municipality, village, town, tribe, or other local government or instrumentality with authority to finance, build, operate, or maintain a public roadway.

(4) "Public highway" means every public street, road, highway or thoroughfare of any kind in this state used by the public whether actually dedicated to the public and accepted by proper authority or otherwise.

(5) "Public right-of-way" means a strip of property, owned by a public authority, within which a public roadway exists or is planned to be built. The public right-of-way consists of all lands within the defined highway right-of-way limits, including airspace above and below the facility. This area typically includes, but is not limited to, the roadway(s), shoulders, and sidewalk(s), if any; areas for drainage, utilities, landscaping, berms, and fencing; rest areas; and the defined clear zone.

(6) "Public roadway" means any road or street owned and maintained by a public authority and open to public travel.

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

R. Definitions beginning with "R":

(1) "Regional transportation plan" means the multimodal transportation plan for the non-metropolitan area covered by the RTPO, developed, adopted and updated through the RTPO planning process.

(2) "Roadway" means that portion of a public roadway intended for vehicular use.

(3) "RTPO" means regional transportation planning organization.

S. Definitions beginning with "S":

(1) "Secretary" means the cabinet secretary of the New Mexico department of transportation or designee.

(2) "State highway" means every public highway which has been designated as a state highway either by the legislature or by the state transportation commission.

T. Definitions beginning with "T":

(1) "Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility, sidewalk, bicycle facility or similar facility used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances, and other property needed to operate such facility.

(2) "Transportation infrastructure" has the same meaning as defined in Section 67-3-78 NMSA 1978.

(3) "Transportation project" has the same meaning as defined in Section 67-3-78 NMSA 1978.

(4) "Transportation improvement program" (TIP) means a prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by a MPO as part of the metropolitan transportation planning process, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. chapter 53.

(5) "Tribal/ local public agency handbook" means the most recent edition of the guidance developed by the department to assist tribal and local public agencies in successfully navigating the planning, design, and implementation of federally-funded transportation projects.

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**]

[18.27.6.7 NMAC - N, 4/20/2021]

18.27.6.8 GENERAL GUIDELINES:

A. The department may make grants to eligible entities for transportation projects as funds are appropriated in a manner deemed necessary to effectuate the purposes of the fund.

B. Eligible projects include environmental and other studies, planning, design, construction

and acquisition of rights of way necessary for the development of transportation infrastructure, and includes highways, streets, roadways, bridges, crossing structures, parking facilities, including all areas for vehicular, transit, bicycle or pedestrian use for travel, ingress, egress and parking. An eligible entity may seek funding for any discrete phase of a transportation project. A project included in a transportation improvement program is an eligible project provided the project is not funded with federal funds and the project does not qualify as a beautification project.

C. The department will award up to ninety-five percent of the total cost of a transportation project provided that the eligible entity has demonstrated an ability to provide the remainder of the project costs in local funds. The eligible entity is responsible for any and all expenditures in excess of the grant award.

D. The department will award up to one hundred percent of the total cost of a transportation project if a financial hardship qualification certificate is issued by DFA, or if the department makes such a determination in the event a tribe requests a waiver. The eligible entity is responsible for any and all expenditures in excess of the grant award.

E. Costs associated with preparing, reviewing, and submitting an application and any required supporting documentation prepared by the eligible entity, and any costs of a consultant's services incurred in preparing an application, are not eligible for grant funding participation.

F. The department will not perform any in depth analysis or review of project scope, cost estimates, functionality, project phasing and scheduling or overall constructability. The department may conduct an in-depth analysis after the completion of a project when evaluating the eligible entity's ability to properly administer, implement and complete a project.

G. Applicants must have the ability to successfully deliver their project.

H. All grant awarded funds must be spent no later than 30 months from the effective date of the grant agreement.

I. All grants are subject to department audit.

J. Grants awarded to an eligible entity will be provided for a specific project. Unexpended funds cannot be used for any other purpose or project. A grant award can be used for any project included in the state transportation improvement program provided the project will not be receiving any federal funding and is not a transportation beautification project. Unexpended grant awards will be returned to the department after project completion.

[18.27.6.8 NMAC - N, 4/20/2021]

18.27.6.9 CALL FOR PROJECTS:

A. The department will invite eligible entities to submit applications for grants from the fund for transportation projects by a call for projects letter using a two-phase application process. The first phase will consist of a request to submit a project feasibility form. Submittal of the project feasibility form is mandatory in order to be eligible to submit a full application in the second phase. If a project is determined to be feasible, phase two will consist of a request for the eligible entity to submit a completed project application. Any specific criteria applicable to the funding cycle will be specified in the call for projects. Applications for program funds shall conform to the application instructions described in the call for projects or the phase two request. Any procedures, requirements, conditions, restrictions, and limitations applicable to the funding cycle other than those contained in this rule will be specified in the call for projects or the phase two application request.

B. The completed phase one feasibility form must be submitted to the appropriate MPO or RTPO based on a project's physical location on or before the date specified in the call for projects. Failure to timely submit the required project feasibility form as required in the call for projects will result in the eligible entity being ineligible for funding in the funding cycle.

C. The completed project application must be submitted to the same MPO or RTPO where the project feasibility form was submitted unless otherwise instructed in writing by the department. Failure to timely submit the phase two project application will result in the eligible entity being ineligible for funding in the funding cycle.

D. An incomplete project feasibility form or project application will be rejected and will not be considered for funding in the funding cycle unless amended or corrected on or before the date specified in the call for projects.

[18.27.6.9 NMAC - N, 4/20/2021]

18.27.6.10 FINANCIAL HARDSHIP:

A. Eligible entities may request a waiver of their share in whole or in part due to financial hardship. Waiver requests with supporting documentation shall be submitted to the department's division or bureau designated in the call for projects.

B. If the eligible entity's application is accepted, the eligible entity shall submit a resolution or certification indicating that it cannot match all or a portion of its share. The resolution or certification shall be signed by the appropriate eligible entity official(s).

C. The department will request from the DFA's local government division a financial analysis and recommendation on a financial hardship request submitted by a county or municipality. The department will conduct the financial analysis if a waiver request is made by a tribe. The eligible entity shall cooperate with any request to provide necessary financial documents or other information requested by DFA or the department in conjunction with

a financial analysis. Failure to do so will result in a denial of the waiver request.

D. If a wavier is granted, the eligible entity must request an amendment to its grant agreement.

[18.27.6.10 NMAC - N, 4/20/2021]

18.27.6.11 APPLICATION PROCEDURES, REVIEW AND EVALUATION PROCESS:

A. Any eligible entity interested in applying for a grant award must submit a completed project feasibility form to their MPO or RTPO. A complete project feasibility form must be submitted to the appropriate MPO or RTPO before the deadline specified in the call for projects.

B. If a project is determined to be feasible, the eligible entity will be requested to submit a project application.

C. Timely application packages will be reviewed and ranked by the MPO/RTPO using the criteria specified in the call for projects.

D. Each MPO/RTPO will submit its ranked list of projects to the district engineer for the district where the project is located no later than 30 days prior to the start of the fiscal year in which funding is available.

E. Each individual district engineer will present their recommendation to the secretary prior to start of the fiscal year in which funding is available.

F. The secretary shall by August first of the fiscal year in which funds are available submit a proposed list of transportation projects identified by the above described project review process to the commission.

G. Final project selection and funding amounts will be determined by the commission no later than September first of that same fiscal year. The commission's decision will be final. At its discretion, the commission may adjust the projects selected in an effort to program funds in a geographically equitable manner or in any other manner. The commission may, in its sole discretion, reject all applications or award grants totaling less than the funds appropriated for the particular fiscal year. The commission may approve subsequent changes to a priority list as it deems necessary.

H. After projects are selected, the department will send out award letters and grant agreements to the selected eligible entities. Applicants whose projects were not selected will be notified as well. Each awarded eligible entity must execute a grant agreement with the department. Once a fully executed grant agreement has been received by the department, the eligible entity may then proceed with authorized project activities. If the eligible entity fails to execute and return the grant agreement within 60 days of receiving the notice of award, the project shall be considered lapsed and may be submitted to the commission for re-programming.

I. The department shall disburse the grant to the eligible entity after receipt of a request for disbursement submitted by the eligible entity to the department and receipt of a fully executed project agreement. The format of the request for disbursement will be determined by the department.

J. Any moneys appropriated to a specific eligible entity by the legislature shall be disbursed to the eligible entity after receipt of a request for disbursement submitted by the eligible entity to the department and the receipt of a fully executed project agreement.

[18.27.6.11 NMAC - N, 4/20/2021]

18.27.6.12 APPLICATION REQUIREMENTS: Applicants must submit the following documents (as a single PDF) as part of the application process:

A. Completed application: The format and content of the application will be determined by the department.

B. Resolution of sponsorship from their governing body, indicating the availability of the proposed match. Subject to any local restrictions, the resolution may provide that the applicant's chief executive or other appropriate officer is authorized to sign the grant agreements and all associated documents and amendments on behalf of the eligible entity as required for receipt of the grant. Alternatively, the applicant may submit an official letter signed by the applicant's chief executive or official with budget authority, indicating the availability of the match.

C. Detailed map of project location.

D. If applicable, letters of support from the governmental entity that owns in fee simple or possesses a perpetual easement for the project right-of-way (ROW) if the applying applicant does not own in fee simple or possess a perpetual easement for all of the project ROW.

E. If applicable, a letter of approval or authorization from the district engineer.

[18.27.6.12 NMAC - N, 4/20/2021]

18.27.6.13 EVALUATION PROCESS: Each MPO/RTPO will be evaluating and ranking projects based on the specific merits of the individual projects using the evaluation criteria specified in the call for projects.

[18.27.6.13 NMAC - N, 4/20/2021]

18.27.6.14 AGREEMENT CONDITIONS, REQUIREMENTS AND PROCEDURES:

A. The eligible entity must expend and account for grant funds in accordance with state laws and procedures for expending and accounting for its own funds.

B. If an eligible entity commences performance on a transportation infrastructure project but fails to complete the project, the department may seek reimbursement of the grant award received by the eligible entity for that project.

C. The department shall have the right to evaluate the activities of eligible entity as necessary to ensure grant awards are used for authorized purposes in

compliance with applicable laws, regulations and the provisions of the grant agreement.
[18.27.6.14 NMAC - N, 4/20/2021]

18.27.6.15 DESIGN/ BIDDING/CONSTRUCTION:

A. A transportation project that is located in full or in part within a department right-of-way or NHS route eligible entity must be administered in accordance with the "*Tribal/Local Public Agency Handbook*".

B. A transportation project that ties into or crosses a department right-of-way or an NHS route, or when the project may have an effect on existing improvements within department rights-of-way, requires the approval of the department as evidenced by either a letter of approval or letter of authorization from the district engineer for the district where the project is located. The eligible entity shall contact the appropriate district engineer to determine if either is needed for the project. The district engineer will conduct a review of the project and determine whether the project requires a letter of approval or a letter of authorization from the department. If the district engineer determines the project does not require a letter of authorization, the district engineer, or designee, will submit a letter of approval to the eligible entity. If the district engineer determines the project requires a letter of authorization, the eligible entity must enter into a project agreement with the department before any grant funding will be distributed. The eligible entity shall cause the project to be constructed in compliance with any and all department designated standards, conditions and criteria as specified in the project agreement.

C. For transportation projects funded entirely by the fund, or in combination with local funds, and no Federal-aid funds are involved, the following apply:

(1) It will be the eligible entity's responsibility to ensure compliance with any and all state, local and federal regulations including the Americans with Disabilities Act (ADA) and laws regarding noise ordinances, air quality, surface water quality, ground water quality, threatened and endangered species, hazardous materials, historic and cultural properties, and cultural resources. The department will not be involved in permit preparation, review, or coordination with the regulatory agencies. However, the eligible entity shall provide to the district where the project is located a copy of any permit identified by the department in the project feasibility form.

(2) Projects on locally owned roadways are to be designed in accordance with the eligible entity's established design standards. The eligible entity is responsible for ensuring that the plans, specifications and estimates meet applicable design criteria and standards. The department will not perform any detailed technical reviews of project design and related documents.

D. In accordance with Section 67-3-62 NMSA 1978, any transportation projects for constructing highways along new alignments or for purposes of substantially widening highways along the existing alignments must consider provisions for pedestrian, bicycle, and equestrian facilities concurrent with the design of the project.

E. Pursuant to Section 61-23-26 NMSA 1978, all transportation projects involving engineering requires the engineering to be under the responsible charge of a licensed professional engineer.

F. The eligible entity will be responsible for advertising the project for construction bids and for receiving and publicly opening bids received for the project. The department will have no involvement in the bidding process.

G. The eligible entity shall follow its normal procedures for award of the contract and assure that all applicable requirements are followed. The eligible entity shall retain the executed contract, document the award date, and the preconstruction conference minutes as part of the project files. The department will have no involvement in the award of the contract and will not participate in resolving any disputes between the eligible entity and its bidders.

H. The eligible entity will have the responsibility and control of the construction phase and resulting quality of the completed work. The department will have no involvement in the construction phase other than its discretionary ability to periodically monitor the implementation of the project, and will not participate in resolving any disputes between the eligible entity and its contractor.

I. Department personnel will not conduct periodic assurance inspections or comparison material testing. The department, at its discretion, may perform a final inspection upon project completion.
[18.27.6.15 NMAC - N, 4/20/2021]

18.27.6.16 PROJECT EVALUATION:

A. The eligible entity's performance and administration of the grant funding will be reviewed and evaluated by the department at the completion of the project or, if the eligible entity fails to complete the project, following the close of the fiscal year in which the project was to be completed. If an eligible entity demonstrates, pursuant to the criteria set forth in subsection B below, an inability to properly administer a project a reduction of twenty five percent will be applied to the scoring criteria applicable to the eligible entity's next project application.

B. The following criteria shall be used in determining the ability of an eligible entity to properly administer a project:

(1) whether the eligible entity demonstrated a pattern of unsatisfactory project implementation and completion;

(2) whether the eligible entity has failed to keep all required books, make all requested reports, and conform to all rules

and regulations adopted by DFA's local government division, financial management bureau applicable to the grant;

(3) whether the eligible entity fails the complete the project within the allotted time; or

(4) whether the department obtains documentation through an audit or audits that finds the eligible entity has not performed in accordance with the terms of the grant agreement, the standards set forth in the grant agreement, in accordance with generally accepted governmental accounting principles, or failed to comply with any and all state, local and federal regulations including the Americans with Disabilities Act (ADA) and laws regarding noise ordinances, air quality, surface water quality, ground water quality, threatened and endangered species, hazardous materials, historic and cultural properties, and cultural resources.

C. In the event the department has conducted an evaluation pursuant to this section and has issued a preliminary determination that the eligible entity has demonstrated an inability to property administer a project, the department shall provide written notice of the determination to the eligible entity with an opportunity to provide additional information within 30 calendar days, unless the parties to some other timeframe, to address, mitigate or refute the conclusions of the department.

(1) If the eligible entity does not produce any additional information with the designated timeframe, the preliminary determination of the department shall become final.

(2) If the eligible entity produces information with the designated timeframe, after considering the additional information the department will promptly issue a final a final determination.

[18.27.6.16 NMAC - N, 4/20/2021]

18.27.6.17 PROJECT DOCUMENTATION: The eligible entity shall maintain a complete set of project files for a period of not less than five years following the completion of the project. The project files shall contain all documents that are specified as required by the grant agreement.

[18.27.6.17 NMAC - N, 4/20/2021]

18.27.6.18 PROJECT MONITORING AND CLOSE OUT:

A. The department reserves the right to request the eligible entity to submit progress reports at any time. Reports are due within 30 days of such a request.

B. Within 60 days after the date of completion of the project, the eligible entity must submit a written certification that it has complied with the requirements of this rule and the grant agreement.

C. The department reserves the right to request the eligible entity to submit additional documentation to demonstrate completion of the terms and conditions required by the grant program. It is the responsibility of the eligible entity to comply in full with all such requests and to submit the requested documentation in a timely manner.

D. Financial audits of the project may be required. Financial audits do not limit the authority of the department to conduct or arrange for additional audits, reviews, and evaluations. The eligible entity must make records available for review or audit upon request by the department. The department is entitled to recover amounts based on the results of an audit.

[18.27.6.18 NMAC - N, 4/20/2021]

HISTORY OF 18.27.6 NMAC:

End of Adopted Rules

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Other Material Related to Administrative Law

GOVERNOR, OFFICE OF THE

EXECUTIVE ORDER 2021-011

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 April 1, 2021 the Centers for Disease Control and Prevention ("CDC") reported over 30 million people have been infected in the United States, with over 549,000 related deaths, and the New Mexico Department of Health has reported 191,945 positive COVID-19 cases and 3,942 related deaths in New Mexico.

Public health organizations have implemented emergency measures intended to slow the spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly thereafter. All of our sister states have declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its impacts. I have been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19. Various state agencies have been at the forefront of our State's response to COVID-19, particularly the New Mexico Department of Health. The hard work of a variety of state employees has made a difference in our fight against COVID-19. Due to the continued spread of COVID-19, it is necessary for all branches of State government to continue taking actions to minimize transmission of COVID-19 and to reduce its attendant physical and economic harms.

Therefore, for the reasons above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby ORDER and DIRECT:

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-55, 2020-059, 2020- 064, 2020-073, 2020-080, 2020-085, 2021-001, 2020-004 and 2021-010 shall be renewed and extended through April 30, 2021.

2. All other powers, directives, and orders invoked in Executive Order 2020-004 remain in effect.

3. All other Executive Orders with a duration that was tied to the COVID-19 public health emergency or that was not explicitly stated shall continue with the same effect, including any orders appropriating emergency funding as well as Executive Orders 2020-016, 2020-020, 2020-021, 2020-025, and 2020-039.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect on April 2, 2021 and shall remain in effect until April 30, 2021 unless renewed, modified, or until the Governor rescinds it.

DONE AT THE EXECUTIVE OFFICE THIS 2ND DAY OF APRIL 2021

ATTEST:
/S/MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

/S/MICHELLE LUJAN GRISHAM
GOVERNOR

HEALTH, DEPARTMENT OF

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

APRIL 5, 2021

Amended Public Health Emergency Order Temporarily Limiting Long-Term Care Facilities Visitation Due to COVID-19

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 Derailment 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 , Michelle Lujan Grisham, the Governor of the State of New Mexico, issued Executive Order 2020-004 declaring that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan G1isham has renewed the declaration of a Public Health Emergency through April 30, 2021;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, and wellbeing of residents of long-term facilities, who are particularly vulnerable due to their age and underlying health conditions;

WHEREAS, COVID-19 has spread rapidly in long-term care facilities throughout New Mexico, resulting in the deaths of hundreds of long-term care facility residents;

WHEREAS, in the effort to halt the spread of COVID-19, the State, through the New Mexico Department of Health, has made significant progress in distributing the COVID-19 vaccine to long-term care facility residents and employees but has not yet completed the vaccination process, leaving those residents vulnerable;

WHEREAS, social-distancing remains the most effective ways to minimize the spread of COVID-19; and

WHEREAS, the New Mexico Department of Health possess legal authority pursuant to the Public Health Act, NMSA, 1978, Sections 24-1-1 to -40 the Public Health Emergency Response Act, NMSA 1978, 12-lOA-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 gathering of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Tracie C. Collins, M.D., Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby **ORDER** and **DIRECT** as follows:

(1) All Long-Term Care Facilities must stay appraised of and comply with the applicable directives and guidelines issued by the Department of Health in consultation with the Aging and Long-Term Services Department and the Governor's Long-Term Care Medical Advisory Team, which may be found at: https://cv.nmhealth.org/long-term-care-guidelines/.

(2) For purposes of this Order, "Long-Term Care Facilities" include nursing homes, assisted living facilities, adult day cares, hospice facilities, and rehabilitations facilities with older adult patients.

I FURTHER ORDER AND 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 shall not abrogate any disease-reporting requirements set forth in the Public Health Act.

(3) Any person who willfully violates this Order may be subject to civil administrative penalties available at law.

(4) This Order shall take effect on April 5, 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.

DONE AT THE EXECUTIVE OFFICE THIS 5TH DAY OF APRIL 2021

ATTEST:
/S/ MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

/S/ TRACIE C. COLLINS, M.D.
SECRETARY DESIGNATE OF THE STATE OF NEW MEXICO DEPARTMENT OF HEALTH

HEALTH, DEPARTMENT OF

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

APRIL 9, 2021

Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain

in Effect; and Amending Prior Public Health Emergency Orders to Impose County-by-County Restrictions Due to COVID-19

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 ("COVID-19"). Continued social distancing and self-isolation measures are necessary to protect public health given the devastating effects that are now resulting from the rapid increase in COVID-19 cases in New Mexico. It remains the core purpose of this Order to emphasize that all New Mexicans should be staying in their homes for all but the most essential activities and services. When New Mexicans are not in their homes, they must strictly adhere to social distancing protocols and wear face coverings to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended of rescinded:

A. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19;

B. December 15, 2020 Amended Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition COVID- 19 Test Results to the New Mexico Epidemiology and Response Division;

C. January 8, 2021 Emergency Order Implementing Administration and Reporting Requirements for All COVID-19 Vaccine Providers; and

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

E. February 26, 2021 Public Health Emergency Order Temporarily Limiting Long-Term Care Facilities Visitation Due to COVID-19.

3. The March 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 County-by-County Restrictions Due to COVID-19 is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 ("COVID-19"), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through March 5, 2021;

WHEREAS, confirmed cases in the United States have risen to more than 31 million and confirmed COVID-19 infections in New Mexico have risen to over 193,000;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 560,000 Americans and over 3,974 New Mexicans;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, vaccination, social distancing and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Tracie C. Collins, M.D., Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by

the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in NMSA 1978, Section 24-l-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

DEFINITIONS

As used in this Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) "Bars and clubs" means any business, other than those specifically defined as a "food and drink establishment," that typically or actually generates more than half of its revenue from the sale of alcohol for on-premises consumption, as well as adult entertainment venues, nightclubs, and dance clubs, regardless of the source of their revenue.

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

(3) "COVID-Safe Practices" ("CSPs") are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled "All Together New Mexico: COVID-Safe Practices for Individuals and Employers." This document may be obtained at the following link https://cv.nmhealth.org/covid safe-practices/.

(4) "Essential business" means any business or non-profit entity falling within one or more of the following categories:

a. Health care operations including hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;

b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;

c. Childcare facilities;

d. Grocery stores, supermarkets, food banks, farmers' markets and vendors who sell food, convenience stores, and other businesses that generate more than one-third of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, animal feed or supplies, fresh meats, fish, and poultry, and any other consumable food and drink products;

e. Farms, ranches, and other food cultivation, processing, or packaging operations;

f. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, self-storage facilities, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;

g. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;

h. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

i. Veterinary and livestock services, animal shelters and facilities providing pet adoption, daycare, or boarding services;

j. Media services;

k. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products;

l. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

m. Hardware stores;

n. Laundromats and dry cleaner services;

o. Crematoriums, funeral homes, and cemeteries;

p. Banks, credit unions, insurance providers, licensed check cashing businesses, payroll services, brokerage services, and investment management firms;

q. Businesses providing mailing and shipping services;

r.
Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

s.
Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

t. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods, or services directly to residences, retailers, government institutions, or essential businesses.

(5) "Food and drink establishments" include restaurants, breweries, wineries, distillers, cafes, coffee shops, or other similar establishments that offer food or drink. For purposes of this section, "breweries" are those businesses licensed pursuant to NMSA 1978, Section 60-6A-26.1; "distillers" are those businesses licensed pursuant to NMSA 1978, Section 60-6A-1; and "wineries" are those businesses licensed pursuant to NMSA 1978, Section 60-A-1l.

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

(7) "Large entertainment venues" mean any publicly or privately owned venue typically or actually used to host large audiences for the purposes of entertainment or amusement, including, but not limited to: convention centers, concert venues, movie theaters, performance venues, professional or semi-professional sports venues, racetracks, and theaters.

(8) "Mass gathering" means any public gathering, private gathering, organized event, ceremony, parade, funeral, or any other grouping that brings together a specified number of individuals in a single room or connected space, confined outdoor space, or open outdoor space. "Mass gatherings" also includes coordinated events in which individuals gather in vehicles. "Mass gathering" does not include the presence of any number of individuals where those individuals regularly reside or individuals who are public officials or public employees in the course and scope of their employment.

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

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

(11) "Recreational facilities" means any publicly or privately owned facility typically or actually used for recreational activities capable of bringing persons within close proximity of one another, including, but not limited to: aquariums, amusement parks, arcades, basketball courts, baseball fields, bowling alleys, botanical gardens, family entertainment centers, football fields, go kart courses, golf courses, guided raft and balloon tours, ice-skating rinks, museums with interactive displays or exhibits, miniature golf courses, ski areas, soccer fields, swimming pools, tennis courts, trampoline parks, youth programs, and zoos.

(12) "Retail space" means any business that regularly sells goods or services directly to consumers or end-users at the business location and includes, but is not limited to, the following "essential businesses" identified in the categories above: (1)d, (1)k, (1) m, and (1)n.

THE "RED TO GREEN" FRAMEWORK

I DIRECT that the State shall continue to reopen according to the following county-by-county framework:

SUMMARY

This Order sets out the "Red to Green" framework, which includes four levels of operations that are based on a county's ability to satisfy specified metrics: Turquoise Level, Green Level, Yellow Level, and Red Level. A county will remain at a given operating level so long as it continues to satisfy the specified metrics for that level. The Department of Health maintains the official map displaying each county's current level at: https://cvprovider.nmhealth.org/public-dashboard.html. The Department of Health updates this map every other Wednesday. If a county fails to meet the specified metrics for a given level, the county must begin operating at the lower level's restrictions within 48 hours of the map's update. If a county begins meeting the specified metrics for a less restrictive level, the county may begin operating at that level's restrictions immediately upon the map's update.

REOPENING LEVEL METRICS

Counties shall be categorized according to one of the following levels:

(1) Turquoise Level – Counties seeking to operate at this level must have satisfied the metrics required to operate at Green Level for the two most recent 14-day reporting periods.

(2) Green Level -Counties seeking to operate at this level must satisfy <u>both</u> of the following metrics:

(a) A new COVID-19 case incidence rate of no greater than 8 cases per 100,000 inhabitants during the most recent two-week period; <u>AND</u>

(b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 5%.

(3) Yellow Level - Counties seeking to operate at this level must meet either of the following metrics:

(a) A new COVID-19 case incidence rate of no greater than 8 cases per 100,000 inhabitants during the most recent two-week period; OR

(b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 5%.

(4) Red Level -All other counties shall operate at the Red Level.

REQUIREMENTS FOR EACH LEVEL

Turquoise Level - Turquoise Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all "mass gatherings" of more than one hundred fifty (150) individuals are prohibited.

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

a. All "essential businesses," excluding those defined as a "retail space," may operate without occupancy limitations but must limit operations to only those absolutely necessary to carry out essential functions.

b. "Essential businesses" identified as a "retail space" may operate up to 75% of the maximum occupancy of any enclosed space on the premises and up to 100% capacity of any outdoor space on the premises.

c. "Houses of worship" may hold religious services up to 75% of the maximum occupancy of any enclosed space on the premises and up to 100% capacity of any outdoor space on the premises.

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

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

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

g. "Food and drink establishments" may not provide dine-in service, except those restaurants that have completed the NM Safe Certified training program. All "food and drink establishments" that have completed the NM Safe Certified offered at https://nmsafecertified.org, and also comply with all NM Safe Certified requirements, including, but not limited to: screening customers and staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks may operate at 75% of the maximum occupancy of any enclosed space on the premises. All "food and drink establishments," regardless of compliance with the NM Safe Certified requirements, may operate up to 75% of the maximum capacity of any outdoor seating area. In all instances, tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. "Food and drink establishments" may provide carryout service, or delivery service if otherwise permitted by law.

h. "Places of lodging" which have completed the NM Safe Certified training offered at https://nmsafecertified.org may operate up to 100% of maximum occupancy. All other "places of lodging" shall not operate at more than 50% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed fifteen (15) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

1. Any entity not identified above may operate up to 75% of the maximum occupancy of any enclosed space on the premises and up to 100% capacity of any outdoor space on the premises.

Green Level - Green Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all "mass gatherings" of more than twenty (20) individuals are prohibited.

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

a. All "essential businesses," excluding those defined as a "retail space," may operate without capacity limitations but must limit operations to only those absolutely necessary to carry out essential functions.

b. "Essential

businesses" identified as a "retail space" may operate up to 50% of the maximum occupancy of any enclosed space on the premises.

c. "Houses of worship" may hold religious services up to 50% of the maximum occupancy of any enclosed space on the premises and up to 50% capacity of any outdoor space on the premises.

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

e. "Recreational facilities" may operate up to 25% of the maximum occupancy of any enclosed space on the premises and up to 50% capacity of any outdoor space on the premises.

f. "Bars and clubs" may operate up to 25% capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the premises except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the premises only to the extent necessary to operate the outdoor portion. "Bars and clubs" shall comply with all other requirements applicable to "food and drink establishments."

g. "Food and drink establishments" may not provide dine-in service, except those restaurants that have completed the NM Safe Certified training program. All "food and drink establishments" that have completed the NM Safe Certified offered at https://nmsafecertified.org, and also comply with all NM Safe Certified requirements, including, but not limited to: screening customers and staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks may operate at 50% of the maximum occupancy of any enclosed space on the premises. All "food and drink establishments," regardless of compliance with the NM Safe Certified requirements, may operate up to 75% of the maximum capacity of any outdoor seating area. In all instances, tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. "Food and drink establishments" may provide carryout service, or delivery service if otherwise permitted by law.

h. "Places of lodging" which have completed the NM Safe Certified training offered at https://mnsafecertified.org may operate up to 75% of maximum occupancy. All other "places of lodging" shall not operate at more than 40% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed ten (10) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

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

Yellow Level -Yellow Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all "mass gatherings" of more than ten (10) individuals are prohibited.

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

a. All "essential businesses," excluding those defined as a "retail space," may operate but must limit operations to only those absolutely necessary to carry out essential functions.

b. "Essential businesses" identified as a "retail space" may operate up to 33% of the maximum occupancy of any outdoor or enclosed space on the premises.

c. "Houses of worship" may hold religious services up to 33% of the maximum occupancy of any enclosed space on the premises and up to 100% capacity of any outdoor space on the premises.

d. "Large entertainment venues" may operate up to 25% capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the venue except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the facility only to the extent necessary to operate the outdoor portion. Notwithstanding the foregoing, "large entertainment venues" may operate up to 25% of the maximum occupancy of any enclosed space on the premises for the limited purposes of recording and broadcasting entertainment, but shall in no event permit any live, in-person audience.

e. "Recreational facilities" may operate up to 33% capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the facility except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the facility only to the extent necessary to operate the outdoor portion. Notwithstanding the foregoing,

pools may operate up to 33% of the maximum capacity of any enclosed space on the premises so long as they are only used for physical therapy and socially distanced exercise.

f. "Bars and clubs" may not operate.

g. "Food and drink establishments" may not provide dine-in service unless they complete the NM Safe Certified training offered at https://nmsafecertified.org, as well as comply with all NM Safe Certified requirements, including, but not limited to: screening customers and staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks. Those "food and drink establishments" that complete the NM Safe Certified training and comply with all attendant requirements mandated by that program may operate up to 33% of the maximum occupancy of any enclosed space on the premises. All "food and drink establishments," regardless of compliance with the NM Safe Certified requirements, may operate up to 75% of the maximum capacity of any outdoor seating area. In all instances, tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. Any "food and drink establishment" that is permitted to serve alcohol must close for in person service by 10:00 p.m. and must remain closed until at least 4:00 a.m., but may continue to provide delivery service so long as customers are permitted on the premises. "Food and drink establishments" may provide carryout service, or delivery service if otherwise permitted by law.

h. "Places of lodging" which have completed the NM Safe Certified training offered at https://nmsafecertified.org may operate up to 60% of maximum occupancy. All other "places of lodging" shall not operate at more than 33% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

i. "Close-contact businesses" may operate but may not exceed the lesser of 33% of the maximum occupancy of any outdoor or enclosed space on the premises or twenty (20) customers inside the building at any given time.

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

Red Level -Red Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all "mass gatherings" of more than five (5) individuals are prohibited.

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

a. All "essential businesses," excluding those defined as a "retail space," may operate without capacity limitations but must limit operations to only those absolutely necessary to carry out essential functions.

b. "Essential businesses" identified as a "retail space" may operate up to 25% of the maximum occupancy of any outdoor or enclosed space on the premises.

c. "Houses of worship" may hold religious services up to 25% of the maximum occupancy of any enclosed space on the premises and up to 100% capacity of any outdoor space on the premises.

d. "Large entertainment venues" may not operate.

e. "Recreational facilities" may operate up to 25% of the maximum capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the facility except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the facility only to the extent necessary to operate the outdoor portion. Notwithstanding the foregoing, amusement parks may not operate. Further, pools may operate up to 25% of the maximum capacity of any enclosed space on the premises so long as they are only used for physical therapy and socially distanced exercise.

f. "Bars and clubs" may not operate.

g. "Food and drink establishments" may operate up to 25% of the maximum capacity of any outdoor seating areas but shall not permit patrons to enter any indoor portion of the premises except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the premises only to the extent necessary to operate the outdoor portion. Tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. "Food and drink establishments" may provide carryout service, or delivery service if otherwise permitted by law. Any

"food and drink establishment" that is permitted to serve alcohol must close for in-person service by 9:00 p.m. and must remain closed until at least 4:00 a.m. but may continue to provide delivery service so long as no customers are permitted on the premises.

h. "Places of lodging" which have completed the NM Safe Certified training offered at https://nmsafecertified.org may operate up to 40% of maximum occupancy. All other "places of lodging" shall not operate at more than 25% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as tempora1y housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

i. "Close-contact businesses" may operate but may not exceed 25% of the maximum occupancy of any outdoor or enclosed space on the premises or ten (10) customers inside the building at any given time.

j. Any entity not identified above may operate but may not exceed 25% of the maximum occupancy of any outdoor or enclosed space on the premises.

BASELINE DIRECTIVES

Regardless of a county's level, I **DIRECT** that the following baseline directives apply at all times and in all instances:

(1) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating or drinking. Masks with vents do not satisfy this requirement. "Retail spaces" may not allow a person who is without a mask or multilayer cloth face covering to enter the premises except where that person is in possession of a written exemption from a healthcare provider.

(2) In order to minimize the shortage of health care supplies and other necessary goods, "retail spaces" shall limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual.

(3) Any "food and drink establishment," "close-contact business," "place of lodging," "retail space," or other business (including "essential businesses" other than those which meet the definition of a healthcare operation, utility, or indigent care services) in which members of the public regularly visit must immediately close for a period of fourteen (14) days following the occurrence of four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Notwithstanding this provision, an "essential business" may be permitted to continue operating if the Department of Health, after consultation with the New Mexico Environment Department, determines that the business is a necessary provider of goods or services within the community in light of geographic considerations. Further, "essential businesses" that test each employee every two weeks and regularly provide contact tracing data to the Environment Department shall not be subject to closure under this provision.

(4) All businesses, houses of worship, and other non-profit entities must adhere to the pertinent CSP's. In the event the pertinent CSP's specify a reduced occupancy or capacity limit, the CSP's limit shall control.

(5) Private educational institutions serving children and young adults from pre-Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in person instruction contained in the New Mexico's Public Education Department's "Reentry Guidance" and "COVID-19 Response Toolkit for New Mexico's Public Schools", available at https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/, and may operate up to maximum capacity. Private schools shall report to the New Mexico Public Education Department all cases of COVID-19-positive students, staff, contractors and volunteers associated with the school within four hours of the school being notified of the positive case, pursuant to the procedures in the current COVID-19 Response Toolkit for New Mexico's Public Elementary Schools. Private schools must immediately close for a period of fourteen (14) days following the last occurrence of four (4) or more rapid responses within a fourteen (14) day period. Private schools also are subject to inclusion on the New Mexico Environment Department's watchlist and closure list.

(6) State museums may operate subject to the capacity level and restrictions applicable to comparable private museums located in their respective counties.

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect April 9, 2021 and remain in effect through May 7, 2021.

(5) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(6) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to $5,000 for each violation under Section 12-l0A-19.

I FURTHER ADVISE the public to take the following preventive precautions:

-- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**
-- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.
-- Avoid crowds.
-- Avoid all non-essential travel including plane trips and cruise ships.

DONE AT THE EXECUTIVE OFFICE THIS 9TH DAY OF APRIL 2021

ATTEST:
/S/ MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

/S/ TRACIE C. COLLINS, M.D.
SECRETARY DESIGNATE OF THE STATE OF NEW MEXICO DEPARTMENT OF HEALTH

End of Other Material Related to Administrative Law

2021 New Mexico Register

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

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