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Notices of Rulemaking and Proposed Rules

ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF RULEMAKING HEARING TO CONSIDER REPEALING EXISTING RULE 20.11.104 NMAC, EMISSION STANDARDS FOR NEW MOTOR VEHICLES, AND ADOPTING PROPOSED REPLACEMENT RULE 20.11.104 NMAC, NEW MOTOR VEHICLE EMISSION STANDARDS

The Albuquerque-Bernalillo County Air Quality Control Board ("AQCB") will hold a joint public hearing with the New Mexico Environmental Improvement Board ("EIB") beginning on May 4, 2022 at 9:00 a.m. via the web application WebEx and possibly in person at the Albuquerque Convention Center, 401 2nd Street NW, Albuquerque, NM 87102. The hearing will last as long as required to hear all testimony, evidence and public comment but is expected to last approximately two days, with a third day being reserved for deliberations.

The hearing is being held via WebEx due to public health restrictions in place to protect the public and prevent the spread of COVID-19. The AQCB may hold the hearing in person if circumstances allow and may change the in-person hearing location before the hearing date. If the AQCB holds the hearing in person, the AQCB Liaison will still provide access via WebEx for those wishing to participate virtually.

The subject of the hearing is AQCB Petition No. 2022-1, filed by the City of Albuquerque Environmental Health Department ("EHD"). The proposed regulatory change would repeal existing rule 20.11.104 NMAC, Emission Standards for New Motor Vehicles, which contains obsolete California motor vehicle emission standards and is legally invalid and unenforceable, and replace it with a new rule 20.11.104 NMAC, New Motor Vehicle Emission Standards, which adopts California's current low- and zero-emission vehicle standards for new 2026 and subsequent model year light- and medium-duty vehicles delivered for sale, offered for sale, sold, imported, delivered, purchased, rented, leased, acquired, received, or registered in New Mexico. To assure that the standards apply to the jurisdictions of both the AQCB and the EIB, and meet the identicality requirements of Section 177 of the Clean Air Act, the AQCB and the EIB will hold a joint hearing and deliberation to consider both 20.11.104 NMAC and the New Mexico Environment Department's proposed 20.2.91 NMAC. See EIB 21-66 (R) – In the Matter of Proposed 20.2.91 NMAC – New Motor Vehicle Emission Standards, available at www.env.nm.gov/opf/docketed-matters.

Copies of the proposed regulatory change are available in the rulemaking record for AQCB Petition No. 2022-1, which is accessible on the web at www.bit.ly/aqcb2022-1. A link to the rulemaking record can also be found under "Rulemaking Procedures" on the AQCB's website, www.cabq.gov/airquality/air-quality-control-board. The regulatory text EHD is proposing to repeal and the text of the proposed replacement rule are identified in the record as Exhibits B and C, respectively, to EHD's petition. Copies of the proposed regulatory change may also be obtained by contacting Stephanie Apodaca, AQCB Liaison, at 505-768-1915 or seapodaca@cabq.gov, or by visiting the Environmental Health Department, One Civic Plaza NW, 3rd Floor, Room 3023, Albuquerque, NM 87102 during normal business hours. In accordance with 20.11.2.22(A) NMAC, the Department charges a fee of 50 cents per page for providing paper copies.

The hearing on the proposed regulatory change will be conducted in accordance with the Air Quality Control Act, NMSA 1978, Section 74-2-6; the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994, Section 9-5-1-6; Bernalillo County Code, Article II, Section 30-35; 20.11.82 NMAC, Rulemaking Procedures—Air Quality Control Board; and other applicable procedures, including any pre-hearing orders. The AQCB may decide on the proposed regulatory change at the conclusion of the hearing or at a separate board meeting, as determined in coordination with the EIB.

Hearings and meetings of the AQCB are open to the public and all interested persons are encouraged to participate. All interested persons will be given a reasonable opportunity to submit relevant data, views or arguments, orally or in writing, and to examine witnesses by filing a notice of intent ("NOI") to present technical testimony, filing an entry of appearance, or participating as a member of the general public. Persons intending to participate in the hearing should consult the AQCB Petition No. 2022-1 rulemaking record, which is accessible as described above, for any pre-hearing orders.

Technical Testimony. Persons intending to present technical testimony at the hearing must file a written notice of intent at least 20 days before the hearing. In addition to any requirements a pre-hearing order may have, as required by 20.11.82.20 NMAC, an NOI to present technical testimony shall (1) identify the person for whom the witness(es) will testify; (2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their education and work background; (3) include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness; (4) include the text

of any recommended modifications to the proposed regulatory change; (5) list and attach an original and 20 copies of all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and (6) be served pursuant to 20.11.82.16 NMAC, including served on the petitioner if the document is an NOI filed by any person other than the petitioner. Unless otherwise provided for in a pre-hearing order, the filing of an NOI shall be accomplished by delivering the document to the Hearing Clerk, Stephanie Apodaca, AQCB Liaison, via postal mail at Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person at the Environmental Health Department, One Civic Plaza NW, 3rd Floor, Room 3023, Albuquerque, NM 87102 during normal business hours.

Entry of Appearance. In accordance with 20.11.82.21 NMAC, any person who is or may be affected by the proposed regulatory change may file and serve upon all parties an entry of appearance at least 15 days prior to the hearing date and shall be a party. In the event of multiple entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the entries or divide the service list to avoid a waste of public resources. A timely NOI shall be considered an entry of appearance. See 20.11.82.7(Q)(2) NMAC.

Non-Technical Testimony. As provided by 20.11.82.22 NMAC, any member of the general public may present non-technical testimony at the hearing. No prior notification is required to present non-technical testimony. Any member of the public may also offer non-technical exhibits in connection with non-technical testimony, as long as the non-technical exhibit is not unduly repetitious of previous testimony. A member of the general public who wishes to submit a non-technical written statement for the record instead of oral testimony shall file the written statement prior to the hearing or submit it at the hearing. Unless otherwise provided for in a pre-hearing order, written statements submitted prior to the hearing shall be delivered to the Hearing Clerk in the same manner as described above for filing a NOI.

More Information. Contact the AQCB Liaison at 505-768-1915 or seapodaca@cabq.gov, or visit the AQCB's events calendar at www.cabq.gov/airquality/air-quality-control-board/events prior to the hearing start date for the latest information. Final hearing details will be posted on the events calendar no later than April 22, 2022.

NOTICE TO PERSONS WITH DISABILITIES OR SPECIAL NEEDS: If you have a disability or require special assistance to participate in this hearing, including interpretation or an auxiliary aid, please contact the AQCB Liaison as soon as possible but no later than 72 hours before the hearing at 505-768-1915 or seapodaca@cabq.gov. Those in need of hearing assistance may call 711.

The City of Albuquerque does not discriminate on the bases of race, color, national origin, sex, age or disability. If you believe you have been discriminated against, you may submit a complaint at www.cabq.gov/civilrights/filing-a-complaint. You may also contact Torri Jacobus at 505-768-4595 or civilrights@cabq.gov.

Nếu bạn muốn thông báo này được dịch sang tiếng Việt, vui lòng truy cập www.cabq.gov/airquality/regulation-development/public-notices-and-comment-opportunities và sử dụng tính năng Dịch ở đầu trang.

JUNTA DE CONTROL DE CALIDAD DEL AIRE DEL CONDADO DE ALBUQUERQUE-BERNALILLO AVISO DE AUDIENCIA PARA LA ELABORACIÓN DE NORMAS PARA CONSIDERAR LA DEROGACIÓN DE LA NORMA EXISTENTE NMAC 20.11.104, ESTÁNDARES DE EMISIÓN PARA VEHÍCULOS MOTORIZADOS NUEVOS, Y ADOPTAR LA NORMA DE REEMPLAZO PROPUESTA NMAC 20.11.104, ESTÁNDARES DE EMISIÓN PARA VEHÍCULOS MOTORIZADOS NUEVOS

La Junta de Control de Calidad del Aire del Condado de Albuquerque-Bernalillo ("AQCB") celebrará una audiencia pública conjunta con la Junta de Mejora Ambiental de Nuevo México ("EIB") a partir del 4 de mayo de 2022 a las 9:00 a.m., a través de la aplicación web WebEx y, posiblemente, en persona en el Centro de convenciones de Albuquerque, 401 2nd Street NW, Albuquerque, NM 87102. La audiencia durará el tiempo necesario para escuchar todos los testimonios, pruebas y comentarios del público, pero se espera que dure aproximadamente dos días, y se reservará un tercer día para las deliberaciones.

La audiencia se celebra a través de WebEx debido a las restricciones de salud pública vigentes para proteger al público y evitar la propagación de la COVID-19. La AQCB puede celebrar la audiencia en persona si las circunstancias lo permiten y puede cambiar el lugar de la audiencia en persona antes de la fecha de la misma. Si la AQCB celebra la audiencia en persona, la intermediaria de la AQCB seguirá proporcionando acceso a través de WebEx a quienes deseen participar de forma virtual.

El tema de la audiencia es la Petición de la AQCB No. 2022-1, presentada por el Departamento de Salud Ambiental de la Ciudad de Albuquerque ("EHD"). El cambio normativo propuesto derogaría la norma existente NMAC 20.11.104, Estándares de emisión para vehículos motorizados nuevos, que contiene normas de emisiones de vehículos de motor de California obsoletas y es legalmente no válida y no aplicable, y la sustituiría por una nueva norma NMAC 20.11.104, Estándares de emisión para vehículos

motorizados nuevos, que adopta los estándares actuales para vehículos de California de baja y cero emisión para vehículos de carga ligera y media nuevos del año 2026 y años subsecuentes, ofrecidos para la venta, vendidos, importados, entregados, comprados, rentados, arrendados, adquiridos, recibidos o registrados en Nuevo México. Para asegurarse que los estándares se apliquen a las jurisdicciones de la AQCB y la EIB, y cumplan con los requisitos de identidad de la Sección 177 de la Ley de aire limpio, la AQCB y la EIB llevarán a cabo una audiencia y deliberación conjunta para considerar tanto la norma NMAC 20.11.104 como la norma NMAC 20.2.91 propuesta por el Departamento de Medio Ambiente de Nuevo México. Véase EIB 21-66 (R), en relación con la norma propuesta NMAC 20.2.91, Estándares de emisión para vehículos motorizados nuevos, disponible en www.env.nm.gov/opf/docketed-matters.

Las copias del cambio regulatorio propuesto están disponibles en el registro de reglamentación de la Petición de la AQCB No. 2022-1, al que se puede acceder en la página web www.bit.ly/aqcb2022-1. También se puede encontrar un enlace al registro de elaboración de normas en "Procedimientos de elaboración de normas" en la página web de la AQCB, www.cabq.gov/airquality/air-quality-control-board. El texto reglamentario que EHD propone derogar y el texto de la norma de reemplazo propuesta se identifican en el expediente como Anexo B y C, respectivamente, de la petición de EHD. También se pueden obtener copias del cambio regulatorio propuesto comunicándose con Stephanie Apocada, intermediaria de la AQCB, al 505-768-1915 o por correo electrónico a seapodaca@cabq.gov, o visitando el Departamento de Salud Ambiental, One Civic Plaza NW, tercer piso, sala 3023, Albuquerque, NM 87102 durante el horario comercial normal. De acuerdo con la norma NMAC 20.11.2.22(A), el Departamento cobra una tarifa de 50 centavos por página para proporcionar copias en papel.

La audiencia sobre el cambio regulatorio propuesto se llevará a cabo de acuerdo con la Ley de control de la calidad del aire, NMSA 1978, Sección 74-2-6; la Ordenanza de la Junta conjunta de Control de Calidad del Aire, Ordenanzas revisadas de Albuquerque 1994, Sección 9-5-1-6; Código del Condado de Bernalillo, Artículo II, Sección 30-35; NMAC 20.11.82, Procedimientos de reglamentación de la Junta de Control de Calidad del Aire, y otros procedimientos aplicables, incluidas las órdenes previas a la audiencia. La AQCB puede decidir sobre el cambio regulatorio propuesto al final de la audiencia o en una reunión de la junta por separado, según se determine en coordinación con la EIB.

Las audiencias y reuniones de la AQCB están abiertas al público y se recomienda la participación de todas las personas interesadas. Todas las personas interesadas tendrán la oportunidad razonable de presentar datos, puntos de vista o argumentos pertinentes, de forma oral o por escrito, y de interrogar a los testigos mediante la presentación de un aviso de intención ("NOI") para presentar testimonio técnico, la presentación de una solicitud de comparecencia o la participación como un miembro del público en general. Para cualquier orden previa a la audiencia, las personas que tengan la intención de participar en esta deben consultar el registro de reglamentación de la Petición No. 2022-1 de la AQCB, al que se puede acceder como se describe anteriormente.

Testimonio técnico. Las personas que tengan la intención de presentar testimonio técnico en la audiencia deben presentar una notificación de intención por escrito al menos 20 días antes de la audiencia. Además de cualquier requisito que pueda tener una orden previa a la audiencia, según lo exige la NMAC 20.11.82.20, para presentar testimonio técnico un NOI deberá (1) identificar a la persona por la cual testificarán los testigos; (2) identificar cada testigo que la persona tiene la intención de presentar y declarar las calificaciones de ese testigo, incluida una descripción de su educación y antecedentes laborales; (3) incluir una copia del testimonio directo de cada testigo técnico y establecer la duración anticipada del testimonio de ese testigo; (4) incluir el texto de cualquier modificación recomendada al cambio regulatorio propuesto; (5) enumerar y adjuntar un original y 20 copias de todos los anexos que se anticipa que ofrecerá esa persona en la audiencia, incluida cualquier declaración propuesta de razones para la adopción de reglas; y (6) ser notificado de conformidad con la NMAC 20.11.82.16, incluida la notificación al peticionario si el documento es un NOI presentado por cualquier persona que no sea el peticionario. A menos que se estipule lo contrario en una orden previa a la audiencia, la presentación de un NOI se realizará mediante la entrega del documento a la secretaria de la audiencia, Stephanie Apodaca, intermediaria de la AQCB, por correo postal al Departamento de Salud Ambiental, P.O. Box 1293, Albuquerque, NM 87103, o personalmente en el Departamento de Salud Ambiental, One Civic Plaza NW, tercer piso, sala 3023, Albuquerque, NM 87102 durante el horario administrativo normal.

Solicitud de comparecencia. De acuerdo con la NMAC 20.11.82.21, cualquier persona que se vea o pueda verse afectada por el cambio regulatorio propuesto puede presentar y notificar a todas las partes una solicitud de comparecencia al menos 15 días antes de la fecha de la audiencia y será parte. En caso de múltiples inscripciones de comparecencia de afiliados a un mismo grupo de interés, el funcionario auditor podrá consolidar las inscripciones o dividir la lista de servicios para evitar el despilfarro de recursos públicos. Un NOI oportuno se considerará una solicitud de comparecencia. Véase NMAC 20.11.82.7(Q)(2).

Testimonio no técnico. Según lo dispuesto por la NMAC 20.11.82.22, cualquier miembro del público en general puede presentar testimonio no técnico en la audiencia. No se requiere notificación previa para presentar testimonio no técnico. Cualquier miembro del público también puede ofrecer pruebas no técnicas en relación con testimonios no técnicos, siempre que la prueba no técnica no sea una repetición indebida de testimonios anteriores. Un miembro del público en general que desee presentar una declaración escrita no técnica para el registro en lugar de un testimonio oral deberá presentar la declaración escrita antes de la audiencia o presentarla en la audiencia. A menos que se estipule lo contrario en una orden previa a la audiencia, las declaraciones escritas presentadas antes de la audiencia se entregarán a la secretaria de la audiencia de la misma manera descrita anteriormente para la presentación de un NOI.

Más información. Comuníquese con la intermediaria de la AQCB al 505-768-1915 o por correo electrónico a seapodaca@cabq.gov, o visite el calendario de eventos de la AQCB en www.cabq.gov/airquality/air-quality-control-board/events antes de la fecha de inicio de la audiencia para conocer las últimas informaciones. Los detalles finales de la audiencia se publicarán en el calendario de eventos a más tardar el 22 de abril de 2022.

AVISO A PERSONAS CON DISCAPACIDAD O NECESIDADES ESPECIALES: Si tiene una discapacidad o necesita asistencia especial para participar en esta audiencia, incluida la interpretación o una ayuda auxiliar, comuníquese con la intermediaria de la AQCB lo antes posible, pero a más tardar 72 horas antes de la audiencia, al 505-768-1915 o por correo electrónico a seapodaca@cabq.gov. Aquellos que necesiten asistencia auditiva pueden llamar al 711.

La ciudad de Albuquerque no discrimina por motivos de raza, color, origen nacional, sexo, edad o discapacidad. Si cree que ha sido discriminado, puede presentar una queja en www.cabq.gov/civilrights/filing-a-complaint. También puede comunicarse con Torri Jacobus al 505-768-4595 o por correo electrónico a civilrights@cabq.gov.

Nếu bạn muốn thông báo này được dịch sang tiếng Việt, vui lòng truy cập www.cabq.gov/airquality/regulation-development/public-notices-and-comment-opportunities và sử dụng tính năng Dịch ở đầu trang.

EDUCATIONAL RETIREMENT BOARD

NOTICE OF PROPOSED RULEMAKING

Public Hearing: The New Mexico Educational Retirement Board (NMERB) will conduct a public board meeting and rule hearing on April 22, 2022 at 9:00 a.m. The rule hearing will be conducted during NMERB's regular public board meeting and will be held at Albuquerque Public Schools headquarters, 6400 Uptown Blvd. NE, Albuquerque, NM 87110. The location of the public rule hearing is subject to change if required by Governor Michelle Lujan Grisham's executive orders concerning COVID-19. If there is any change in the location of the public rule hearing, the updated information will be posted on the NMERB website at www.nmerb.org.

Purpose: The purpose of the public rule hearing is to receive public comment on proposed amendments to 2.82.1 NMAC General Provisions. In 2021, Governor Lujan Grisham signed Senate Bill 303 (SB303) which increased the number of members of the NMERB Board of Trustees (Board) from seven members to nine members including: the secretary of higher education and a member elected for a term of four years by the American federation of teachers New Mexico (AFT-NM). The statutory changes were codified at NMSA 1978, Section 22-11-3 and became effective June 18, 2021. NMERB rules contain several references to a seven-member board. The purpose of the proposed rule amendments is to update references to a nine-member Board. There is also a minor change to the investment committee rule which is unrelated to SB303.

Statutory Authority: The Educational Retirement Act, NMSA 1978 Sections 22-11-1 through 22-11-55 (Act) which, among other provisions, specifically authorizes the Board to promulgate regulations pursuant to the Act.

Summary of Proposed Amendments:
2.82.1.8 BOARD MEMBERS AND OFFICERS:
Insert language stating that the member elected by AFT-NM takes office on July 1 following election.

2.82.1.9 MEETINGS:
Amend subsection B to delete "four" and insert "five" as the number of members required for a quorum at any regular or special meeting. Amend subsection F to add the secretary of higher education to the list of ex-officio members of the Board.
2.82.1.10 SANCTIONS AND ENFORCEMENT:
Amend paragraphs 2 through 4 of subsection C to add the secretary of higher education to the list of ex officio members of the Board.

2.82.1.14 INVESTMENT COMMITTEE:
Delete "immediate" in the first sentence. "Immediate" was appropriate when the committee was approving investment managers. Now they are not, as their direction is through policy and review and is less immediate.

Details for Obtaining a Copy of Proposed Rule Amendments and Submitting Oral or Written Comments:
A copy of the proposed rule amendments is available on the NMERB website at www.nmerb.org

or by calling Amanda Olsen, Legal Assistant, at (505) 476-6133 during regular business hours. The proposed rule amendments are also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public rule hearing or submit written comments by mail to Amanda Olsen, Legal Assistant, New Mexico Educational Retirement Board, P.O. Box 26129, Santa Fe, NM 87502; by email to NMERB.RuleChange@state.nm.us or by fax to (505) 827-1855. Written comments must be received no later than 3:00 pm (MT) on April 21, 2022. All timely submitted written comments will be posted on the NMERB website at www.nmerb.org.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact Amanda Olsen at (505) 476-6133 as soon as possible or at least ten business days before the public hearing.

ENVIRONMENT DEPARTMENT

NEW MEXICO WATER QUALITY CONTROL COMMISSION NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.6.4.9 NMAC – STANDARDS FOR INTERSTATE AND INTRASTATE SURFACE WATERS – DESIGNATION OF WATERS OF THE RIO GRANDE, RIO HONDO, LAKE FORK, EAST FORK OF THE JEMEZ RIVER, SAN ANTONIO CREEK, AND REDONDO CREEK AS OUTSTANDING NATIONAL RESOURCE WATERS, NO. WQCC 21-62 (R)

The New Mexico Water Quality Control Commission ("Commission") will hold a public hearing on Tuesday, June 14, 2022, and continuing on subsequent days, as necessary, via the WebEx video conferencing platform. The purpose of the hearing is to consider amendments to the Standards for Interstate and Intrastate Surface Waters, 20.6.4.9 NMAC, Designation of Waters of the **Rio Grande, Rio Hondo, Lake Fork, East Fork of the Jemez River, San Antonio Creek, and Redondo Creek** as Outstanding National Resource Waters. The Commission will begin its regular monthly meeting at 9:00 a.m. MDT, and the public hearing will begin at the conclusion of its regular business. Information for attending the virtual hearing via the WebEx conferencing platform will be available on the New Mexico Environment Department ("NMED") Events Calendar at https://www.env.nm.gov/events-calendar/?trumbaEmbed=view%3Devent%26eventid%3D158027518 at least 30 days prior to the hearing.

The proposed amendments to 20.6.4.9 NMAC, as petitioned for by the Outdoor Recreation Division of the New Mexico Economic Development Department ("Petitioner"), and docketed as No. WQCC 21-62 (R), propose designation of certain surface waters of the **Rio Grande, Rio Hondo, Lake Fork, East Fork of The Jemez River, San Antonio Creek, and Redondo Creek** as Outstanding National Resource Waters ("ONRWs").

The petition and proposed amendments are available on the Commission's website, at https://www.env.nm.gov/opf/docketed-matters/. The petition may also be obtained electronically by contacting Pamela Jones, Commission Administrator, 1190 S. St. Francis Drive, Santa Fe, New Mexico 87502, (505) 660-4305, or Pamela.Jones@state.nm.us.

The hearing will be conducted in accordance with the New Mexico Water Quality Act, NMSA 1978, § 74-6-6; the Rulemaking Procedures for the Water Quality Control Commission, 20.1.6 NMAC; and the Scheduling Order issued January 19, 2022. A copy of the Scheduling Order is available at https://www.env.nm.gov/opf/docketed-matters/ or may be obtained from the Commission Administrator at the address and phone number 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 relevant exhibits and to examine witnesses testifying at the public hearing.

Persons desiring to present technical testimony at the hearing must file with the Commission a written notice of intent. The notice of intent to present technical testimony shall:

1. Identify the person or entity for whom the witness(es) will testify;
2. State whether the person filing the statement supports or opposes the Petition;
3. Identify each witness, including name, address, affiliation(s), and educational and work background;
4. Estimate the length of the direct testimony of each witness;
5. Identify all exhibits which are part of the Record Proper and, for exhibits not part of the Record Proper, attach a copy;
6. List or make available all technical materials relied upon by each witness in making statement of technical of fact or opinion contained in his or her direct testimony; and
7. Attach a summary of the testimony of each witness, stating any opinion(s) to be offered by such witness, and an explanation of the basis for such opinion(s).

The deadline for filing notices of intent is 5:00 p.m. MDT on Friday, May 13, 2022, to the Commission Administrator. Any member of the general public may present non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony before or at the hearing.

All documents filed in this matter, including notices of intent, must

be filed electronically via email to the Commission Administrator, at Pamela.Jones@state.nm.us.

The Commission may make a decision on the proposed amendments at the conclusion of the hearing.

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Pamela Jones, Commission Administrator, at least 14 days prior to the hearing date at P.O. Box 5469, 1190 St. Francis Drive, 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).

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.

LA COMISIÓN DE CONTROL DE CALIDAD DEL AGUA DE NUEVO MÉXICO DA AVISO DE UNA AUDIENCIA PÚBLICA PARA CONSIDERAR LAS ENMIENDAS PROPUESTAS A 20.6.4.9 NMAC - NORMAS PARA AGUAS SUPERFICIALES INTERESTATALES Y ESTATALES - DESIGNACIÓN DE LAS AGUAS DE RIO GRANDE, RIO HONDO, LAKE FORK, EAST FORK DE JEMEZ RIVER, SAN ANTONIO CREEK Y REDONDO CREEK COMO AGUAS DE RECURSOS DESTACADOS NACIONALES, NÚM. WQCC 21-62 (R)

La Comisión de Control de Calidad del Agua de Nuevo México ("Comisión") celebrará una audiencia pública el martes, 14 de junio de 2022, y continuará en los días siguientes según sea necesario, a través de la plataforma de videoconferencia WebEx. El propósito de la audiencia es considerar las enmiendas a las Normas para Aguas Superficiales Interestatales y Estatales, 20.6.4.9 NMAC, Designación de Aguas de **Rio Grande, Rio Hondo, Lake Fork, East Fork de Jemez River, San Antonio Creek y Redondo Creek** como Aguas de Recursos Destacados Nacionales. La Comisión iniciará su reunión mensual ordinaria a las 9:00 a.m. MDT, y al concluir los asuntos ordinarios comenzará la audiencia pública. La información para asistir a la audiencia virtual a través de la plataforma de conferencias WebEx estará disponible en el Calendario de Eventos del Departamento de Medio Ambiente de Nuevo México ("NMED") en https://www.env.nm.gov/events-calendar/?trumbaEmbed=view%3Devent%26eventid%3D158027518 al menos 30 días antes de la audiencia.

Las enmiendas propuestas a 20.6.4.9 NMAC, solicitadas por la División de Recreación al Aire Libre del Departamento de Desarrollo Económico de Nuevo México ("Solicitante"), y registradas con el número WQCC 21-62 (R), proponen la designación de ciertas aguas superficiales de **Rio Grande, Rio Hondo, Lake Fork, East Fork de Jemez River, San Antonio Creek y Redondo Creek** como Aguas de Recursos Destacados Nacionales ("ONRWs" por sus siglas en inglés).

La petición y las enmiendas propuestas están disponibles en el sitio web de la Comisión, en https://www.env.nm.gov/opf/docketed-matters/. La petición también puede obtenerse electrónicamente comunicándose con Pamela Jones, administradora de la Comisión, 1190 S. St. Francis Drive, Santa Fe, NM 87502, (505) 660-4305, o Pamela.Jones@state.nm.us.

La audiencia se llevará a cabo de acuerdo con la Ley de Calidad del Agua de Nuevo México, NMSA 1978, § 74-6-6; los Procedimientos de Reglamentación de la Comisión de Control de la Calidad del Agua, 20.1.6 NMAC; y la Orden de Programación emitida el 19 de enero de 2022. Una copia de la Orden de Programación está disponible en https://www.env.nm.gov/opf/docketed-matters/ o puede obtenerse de la administradora de la Comisión en la dirección y el número de teléfono mencionados anteriormente. Todas las personas interesadas tendrán una oportunidad razonable en la audiencia para presentar pruebas, datos, puntos de vista y argumentos pertinentes, de forma oral o por escrito, presentar pruebas instrumentales pertinentes y para interrogar a los testigos que declaren en la audiencia pública.

Las personas que deseen presentar un testimonio técnico en la audiencia deberán presentar a la Comisión un aviso de intención por escrito. El aviso de intención de presentar un testimonio técnico deberá:

1. Identificar a la persona o entidad para la que testificará el testigo o testigos;
2. Indicar si la persona que presenta la declaración apoya o se opone a la Petición;
3. Identificar

a cada testigo, incluyendo el nombre, la dirección, afiliación(es) y el historial académico y laboral;

4. Estimar la duración del testimonio directo de cada testigo;

5. Identificar todas las pruebas instrumentales que formen parte del Registro Administrativo y en el caso de pruebas instrumentales que no formen parte del Registro Administrativo deben adjuntar una copia;

6. Enumerar o poner a disposición todos los materiales técnicos en los que se basó cada testigo al hacer la declaración técnica de hecho u opinión contenida en su testimonio directo; y

7. Adjuntar un resumen del testimonio de cada testigo, indicando cualquier opinión u opinioniones que vaya a ofrecer dicho testigo, y una explicación de la base de dicha opinión u opiniones.

La fecha límite para presentar avisos de intención a la administradora de la Comisión es el viernes, 13 de mayo de 2022, hasta las 5:00 p.m. MDT. Cualquier miembro del público puede presentar comentarios públicos no técnicos en la audiencia o presentar una declaración no técnica por escrito en lugar de un testimonio oral antes o durante la audiencia.

Todos los documentos presentados en este asunto, incluidos los avisos de intención, deben presentarse electrónicamente por correo electrónico a la administradora de la Comisión, a Pamela.Jones@state.nm.us.

La Comisión podrá tomar una decisión sobre las modificaciones propuestas al término de la audiencia.

Si alguna persona requiere asistencia, un intérprete o un dispositivo auxiliar para participar en este proceso, comuníquese con Pamela Jones, administradora de la Comisión, al menos 14 días antes de la fecha de la audiencia en P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, NM, 87502, teléfono (505) 660-4305 o correo electrónico Pamela.Jones@state.nm.us. Los usuarios de TDD o TTY 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).

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, incluyendo 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 del NMED, puede comunicarse con Kathryn Becker, Non-Discrimination Coordinator (coordinadora de no discriminación), 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. Si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede ponerse en contacto 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. Para ver este y otros avisos públicos emitidos por la Oficina de Calidad de las Aguas Subterráneas en línea, vaya a: https://www.env.nm.gov/gwqb/public-notice/.

RACING COMMISSION

NOTICE OF PUBLIC MEETING AND RULE HEARING

The New Mexico Racing Commission (Commission) will hold a Public Meeting and Rule Hearing on **April 25, 2022**. The Rule hearing will be held during the Commission's regular business meeting with the public session beginning at 9:00 a.m. The Rule Hearing and Commission meeting will be held virtually via Teams.

Join on your computer or mobile app
https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2Fl%2Fmeetup-join%2F19%3Ameeting_MjYzYTk3NTctNzNhYy00ZDZlLTkyMGItYmE0NDgxNTIyZjUx%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%2522204aa6bf4-d436-426f-bfa4-04b7a70e60ff%2522%252c%2522Oid%2522%253a%2522f408c805-7305-4780-aa72-54ba16deddf3%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=264b05c5-68d1-4150-a3a1-7fde71ae1e27&directDl=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true
Or call in (audio only)
+1 505-312-4308,326682870# United States, Albuquerque
Phone Conference ID: 326 682 870#

The Commission is proposing the following amendments listed below to the rules Governing Horse Racing in New Mexico to clarify the rules regarding the Open Meetings Act and purse moneys.

15.2.2 NMAC – Gaming
15.2.3 NMAC – Flat Racing Officials
15.2.6 NMAC – Veterinary Practices, Equine Health, Medication, and Trainer Responsibility
16.47.1 NMAC – General Provisions

A copy of the proposed rules may be found on the Commission's website @ http://nmrc.state.nm.us/rules-regulations.aspx. You may also

contact Denise Chavez at (505) 249-2184 to request to receive a copy of the proposed rules by regular mail.

Interested persons may submit their written comments on the proposed rules to the Commission at the address below and/or may appear at the scheduled meeting and provide brief, verbal comments. All written comments must be received by the Commission by 12:00 PM on April 22, 2022. Written comments should be submitted to: Denise Chavez, Law Clerk, via email at DeniseM.Chavez@state.nm.us.

The **final** agenda for the Commission meeting will be available one hundred twenty (120) hours prior to the meeting. A copy of the **final** agenda may be obtained from Denise Chavez or from the Commission's website.

No technical information served as the basis for the proposed rule.

Anyone who requires special accommodations is requested to notify the Commission of such needs at least five days prior to the meeting.

Statutory Authority: Legal authority for this rulemaking can be found in the New Mexico Horse Racing Act, Sections 60-1A-1 through 60-1A-30 NMSA 1978 (2007, as amended through 2017), which, among other provisions, specifically authorizes the Commission to promulgate rules and regulations and carry out the duties of the Act to regulate horse racing in the State.

The Commission proposes the following rule amendments:

Subsection B of 15.2.2.8 NMAC: The purpose of the proposed amendment is to make consistent with current state laws.

Subsection A of 15.2.2.9 NMAC: The purpose of the proposed amendment is to make consistent with both reporting and depositing.

Subsection B of 15.2.3.8 NMAC: The purpose of the proposed amendment will allow the NMRC to revolutionize the way stewarding is conducted in the regulation of horse racing.

Subsection B of 15.2.6.8 NMAC: The purpose of the proposed amendment is to allow the same restrictions set forth in 15.2.6.9 NMAC to be utilized in out-of-competition testing.

Subsection L of 16.47.1.8 NMAC: The purpose of the proposed amendments is to promote and improve the professionalism of licensee behaviors and actions as a means of improving the wagering public's trust and confidence in the horse racing business and industry.

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.

AUDITOR, OFFICE OF THE STATE

The Office of the State Auditor reviewed at its 2/28/2022 hearing, to repeal its rule 2.2.2 NMAC, Audits of Governmental Entities - Requirements For Contracting Audits of Agencies (filed 3/11/2021) and replace it with 2.2.2 NMAC, Audits of Governmental Entities - Requirements For Contracting Audits of Agencies, adopted 3/9/2022 and effective 3/22/2022.

AUDITOR, OFFICE OF THE STATE

TITLE 2 PUBLIC FINANCE
CHAPTER 2 AUDITS OF GOVERNMENTAL AGENCIES
PART 2 REQUIREMENTS FOR CONTRACTING AND CONDUCTING AUDITS OF AGENCIES

2.2.2.1 ISSUING AGENCY: Office of the State Auditor.
[2.2.2.1 NMAC - Rp, 2.2.2.1 NMAC, 3/22/2022]

2.2.2.2 SCOPE: Agencies and local public bodies as defined by the Audit Act and independent public accountants interested in contracting to perform professional services related to the financial affairs and transactions of those agencies.
[2.2.2.2 NMAC - Rp, 2.2.2.2 NMAC, 3/22/2022]

2.2.2.3 STATUTORY AUTHORITY: Audit Act, Sections 12-6-1 to 12-6-14 NMSA 1978.
[2.2.2.3 NMAC - Rp, 2.2.2.3 NMAC, 3/22/2022]

2.2.2.4 DURATION: Permanent.
[2.2.2.4 NMAC - Rp, 2.2.2.4 NMAC, 3/22/2022]

2.2.2.5 EFFECTIVE DATE: March 22, 2022, unless a later date is cited at the end of a section.
[2.2.2.5 NMAC - Rp, 2.2.2.5 NMAC, 3/22/2022]

2.2.2.6 OBJECTIVE: The objective is to establish policies, procedures, rules and requirements for contracting and conducting financial audits, special audits, attestation engagements, performance audits, and forensic accounting engagements of or for governmental agencies of the state of New Mexico.
[2.2.2.6 NMAC - Rp, 2.2.2.6 NMAC, 3/22/2022]

2.2.2.7 DEFINITIONS: This section describes certain terms used in 2.2.2 NMAC. When terminology differs from that used at a particular organization or under particular standards, auditors should use professional judgment to determine if there is an equivalent term:

A. Definitions beginning with the letter "A":

(1) "AAG GAS" means AICPA Audit and Accounting Guide - Government auditing standards and Single Audits (latest edition).

(2) "AAG SLV" means AICPA Audit and Accounting Guide - State and Local Governments (latest edition).

(3) "Agency" means any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate or metropolitan courts, district attorneys and charitable institutions for which appropriations are made by the legislature; any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation, or other special districts; and school districts; any entity or instrumentality of the state specifically provided for by law, including the New Mexico finance authority, the New Mexico mortgage finance authority, the New Mexico lottery authority and every office or officer of any entity listed in Paragraphs (1) through (3) of Subsection A of Section 12-6-2 NMSA 1978.

(4) "Attest engagement" means an engagement to issue, or where an IPA issues, an examination, a review, AUP report, or report on subject matter, or an assertion about subject matter that is the responsibility of an agency or local public body, including engagements performed pursuant to AICPA and GAGAS attestation standards and all engagements pursuant to Subsection A of Section 12-6-3 NMSA 1978.

(5) "Audit" may refer to or include annual financial and compliance audit, or attestation engagement, unless otherwise specified.

(6) "Audit documentation" means the record of procedures performed, relevant evidence obtained, and conclusions reached (terms such as working papers or workpapers are also sometimes used).

(7) "Auditor" means independent public accountant performing audit or attest work as

defined in the Public Accountancy Act.

(8) "AICPA" means American institute of certified public accountants.

(9) "AU-C" means U.S. auditing standards-AICPA (Clarified).

(10) "AUP" means agreed upon procedures.

B. Definitions beginning with the letter "B": [RESERVED]

C. Definitions beginning with the letter "C":

(1) "CPA" means certified public accountant.

(2) "CPE" means continuing professional education.

(3) "CUSIP" means committee for uniform securities identification procedures, the unique identification number assigned to all stocks and registered bonds in the United States and Canada by the committee on uniform securities identification procedures.

(4) "CYFD" means the New Mexico children youth and families department.

D. Definitions beginning with the letter "D":

(1) "DFA" means the New Mexico department of finance and administration.

(2) "DOH" means the New Mexico department of health.

(3) "DOT" means the New Mexico department of transportation.

E. Definitions beginning with the letter "E":

(1) "ECECD" means the New Mexico early childhood education and care department.

(2) "ERB" means the New Mexico education retirement board.

F. Definitions beginning with the letter "F":

(1) "FCD" means financial control division of the department of finance and administration.

(2) "FDIC" means federal deposit insurance corporation.

(3) "FDS" means financial data schedule.

G. Definitions beginning with the letter "G":

(1) "GAAP" means accounting principles generally accepted in the United States of America.

(2) "GAGAS" means the most recent revision of government auditing standards issued by the comptroller general of the United States (yellow book).

(3) "GAO" means the government accountability office, a division of the OSA.

(4) "GASB" means governmental accounting standards board.

(5) "GAAS" means auditing standards generally accepted in the United States of America.

(6) "GSD" means the New Mexico general services department.

(7) "GRT" means gross receipts tax.

H. Definitions beginning with the letter "H":

(1) "HED" means the New Mexico higher education department.

(2) "HSD" means the New Mexico human services department.

(3) "HUD" means United States (US) department of housing and urban development.

I. Definitions beginning with the letter "I":

(1) "IPA" means independent public accountant performing professional services for agencies and local public bodies.

(2) "IRC" means internal revenue code.

J. Definitions beginning with the letter "J": [RESERVED]

K. Definitions beginning with the letter "K": [RESERVED]

L. Definitions beginning with the letter "L":

(1) "LGD" means the local government division of department of finance and administration (DFA).

(2) "Local public body" means a mutual domestic water consumers association, a land grant, an incorporated municipality or a special district.

M. Definitions beginning with the letter "M": [RESERVED]

N. Definitions beginning with the letter "N":

(1) "NCUSIF" means national credit union shares insurance fund.

(2) "NMAC" means New Mexico administrative code.

(3) "NMSA" means New Mexico statutes annotated.

(4) "Non-attest engagement" means any engagement that is not an attest engagement, including, but not limited to, audits, services performed in accordance with the statement on standards for consulting services or the statement on standards for forensic services, or any other engagement that is not under Section 12-6-3 NMSA 1978, including certain agency- initiated or other engagements in which the IPA's role is perform an engagement, assist the client or testify as an expert witness in accounting, auditing, taxation, or other matters, given certain stipulated facts.

O. Definitions beginning with the letter "O":

(1) "Office" or "OSA" means the New Mexico office of the state auditor.

(2) "OMB" means the United States office of management and budget.

P. Definitions beginning with the letter "P":

(1) "PED" means the New Mexico public education department.

(2) "PERA" means the New Mexico public employee retirement association.

(3) "PHA" means public housing authority.

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

R. Definitions beginning with the letter "R":

(1) "REAC" means real estate assessment center.

(2) "REC" means regional education cooperative.

(3) "Report" means a document issued as a result of an annual financial and compliance audit, special audit, attestation engagement, performance audit, forensic accounting engagement, or AUP engagement regardless of whether the document is on the contractor's letterhead or signed by the contractor.

(4) "RSI" means required supplementary information.

S. Definitions beginning with the letter "S":

(1) "SAS" means the AICPA's statement on auditing standards.

(2) "SHARE" means statewide human resources accounting and management reporting system.

(3) "SI" means supplementary information.

(4) "Special audit" means a limited-scope examination of financial records and other information designed to investigate allegations of waste, fraud, abuse, theft, non-compliance, or misappropriation of funds, or to quantify the extent of such losses, including both attest engagements and non-attest engagements, performance audits, forensic accounting engagements, and any other engagement that is not part of the annual financial statement and compliance audit, depending on designation or scope.

(5) "State auditor" may refer to either the elected state auditor of the state of New Mexico, or personnel of his office designated by him.

(6) "STO" means state treasurer's office.

T. Definitions beginning with the letter "T":

(1) "Tier" is established based on the amount of each local public body's annual revenue, pursuant to Section 12-6-3 NMSA 1978 and 2.2.2.16 NMAC.

(2) "TRD" means the New Mexico taxation and revenue department.

U. Definitions beginning with the letter "U":

(1) "UFRS" means uniform financial reporting standards.

(2) "Uniform guidance" Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(3) "U.S. GAO" means the United States government accountability office.

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

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

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

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

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

[2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 3/22/2022]

2.2.2.8 THE PROCUREMENT AND AUDIT PROCESS:

A. Firm profiles: For an IPA to be included on the state auditor's list of approved firms to perform audits, AUPs, and other attest engagements, an IPA shall submit a firm profile online annually on the fifth business day in January, in accordance with the guidelines set forth herein. The OSA shall review each firm profile for compliance with the requirements set forth in this rule. IPAs shall notify the state auditor of changes to the firm profile as information becomes available. The state auditor shall approve contracts for audit, AUPs, and other attest engagements only with IPAs who have *submitted a complete and correct* firm profile that has been approved by the OSA, and who have complied with all the requirements of this rule, including but not limited to:

(1) Subsection A of 2.2.2.14 NMAC, continuing professional education requirements for all staff that the firm will use on any New Mexico governmental engagements;

(2) for IPAs who have audited agencies under this rule in the past, they shall have previously complied with: 2.2.2.9 NMAC, report due dates, including notifying the state auditor regarding late audit reports and 2.2.2.13 NMAC, review of audit reports and audit documentation.

B. List of approved firms: The state auditor shall maintain a list of independent public accounting (IPA) firms that are approved and eligible to compete for audit contracts, AUPs, and other attest engagements with agencies. The state auditor's list of approved firms shall be reviewed and updated on an annual basis. An IPA on the list of approved firms is approved to perform government audits, AUPs, and other attest engagements for agencies and local public bodies until the list of approved firms is published for the following year; provided that the OSA may restrict firms at any time for failure to submit firm profile updates timely. An IPA that is included on the state auditor's list of approved firms for the first time may be subject to an OSA quality control review of the IPA's working papers for audits, AUPs and other attest engagements. This review shall be conducted as soon as the documentation completion date, as defined by AU-C Section 230, has passed (60 days after the report release date, as posted on the OSA's audit reports website). The state auditor shall approve contracts for audits, AUPs and other attest engagements only with IPA firms that have submitted a complete and

correct firm profile complying with all the requirements set forth in this rule and that has been approved by the OSA. The OSA shall inform all IPAs whose firm profiles were submitted by the due date whether they are on the list of approved firms for audits, AUPs and other attest engagements and shall publish the list of approved firms concurrent with notification to government agencies to begin the procurement process to obtain an IPA to conduct the agency's annual financial audit. Firms that only perform non-attest engagements, or otherwise do not meet applicable requirements, shall not be included on the list of approved firms.

C. Disqualified firms: An IPA firm shall not be included on the list of approved firms for audits, AUPs, and other attest engagements if any of the following applies to that IPA:

(1) the firm received a peer review rating of "failed";

(2) the firm does not have a current New Mexico firm permit to practice;

(3) the firm profile does not include at least one certified public accountant with a current CPA certificate who has met the GAGAS CPE requirements described at Subsection A of 2.2.2.14 NMAC, to perform GAGAS audits;

(4) the IPA has been restricted in the past and has not demonstrated improvement (this includes submitting excessively deficient audit reports or having excessively deficient workpapers);

(5) the IPA made false statements in their firm profile or any other official communication with the OSA that were misleading enough to merit disqualification; or

(6) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

D. Restriction:

(1) IPAs may be placed on restriction based on the OSA's review of the firm profile and deficiency considerations as described below. Restriction may take the form of limiting either the type of engagements or the number of audit contracts, or both, that the IPA may hold. The OSA may impose a corrective action plan associated with the restriction. The restriction remains in place until the OSA notifies the IPA that the restriction has been modified or removed. The deficiency considerations include, but are not necessarily limited to:

(a) failure to submit reports in accordance with report due dates provided in Subsection A of 2.2.2.9 NMAC, or the terms of their individual agency contract(s);

(b) failure to submit late report notification letters in accordance with Subsection A of 2.2.2.9 NMAC;

(c) failure to comply with this rule;

(d) poor quality reports as determined by the OSA;

(e) poor quality working papers as determined by the OSA;

(f) a peer review rating of "pass with deficiencies" with the deficiencies being related to governmental audits;

(g) failure to contract through the OSA for New Mexico governmental audits or AUP engagements;

(h) failure to inform agency in prior years that the IPA is restricted;

(i) failure to comply with the confidentiality requirements of this rule;

(j) failure to invite the state auditor or his designee to engagement entrance conferences, progress meetings or exit conferences after receipt of related notification from the OSA;

(k) failure to comply with OSA referrals or requests in a timely manner;

(l) suspension or debarment by the U.S. general services administration;

(m) false statements in the IPA's firm profile or any other official communication with the OSA;

(n) failure to cooperate timely with requests from successor IPAs, such as reviewing workpapers;

(o) failure to have required contracts approved by the OSA; or

(p) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

(2) The OSA shall notify any IPA that it proposes to place under restriction. If the proposed restriction includes a limitation on the number of engagements that an IPA is eligible to hold, the IPA shall not submit proposals or bids to new agencies if the number of multi-year proposals the IPA possesses at the time of restriction is equal to or exceeds the limitation on the number of engagements for which the IPA is restricted.

(3) An IPA under restriction is responsible for informing the agency whether the restricted IPA is eligible to engage in a proposed contract.

(4) If an agency or local public body submits an unsigned contract to the OSA for an IPA that was ineligible to perform that contract due to its restriction, the OSA shall reject the unsigned contract.

E. Procedures for imposition of restrictions:

(1) The state auditor may place an IPA under restriction in accordance with Subsection D of 2.2.2.8 NMAC.

(a) The state auditor or his designee shall cause written notice of the restriction to be sent by email and certified mail, return receipt requested, to the IPA, which shall take effect as of the date of the letter of restriction. The letter shall contain the following information:

(i) the nature of the restriction;

(ii) the conditions of the restriction;

(iii) the reasons for the restriction;

(iv) the action to place the IPA on restriction is brought pursuant to Subsection A of Section 12-6-3 NMSA 1978 and these regulations;

(v) the IPA may request, in writing, reconsideration of the proposed contract restriction which shall be received by the OSA within 15 calendar days from the date of the letter of restriction; and

(vi) the e-mail or street address where the IPA's written request for reconsideration shall be delivered, and the name of the person to whom the request shall be sent.

(b) The IPA's written request for reconsideration shall include sufficient facts to rebut on a point for point basis each deficiency noted in the OSA's letter of restriction. The IPA may request an opportunity to present in person its written request for reconsideration and provide supplemental argument as to why the OSA's determination should be modified or withdrawn. The IPA may be represented by an attorney licensed to practice law in the state of New Mexico.

(c) The IPA shall have forfeited its opportunity to request reconsideration of the restriction(s) if the OSA does not receive a written request for reconsideration within 15 calendar days of the date of the letter of restriction. The state auditor may grant, for good cause shown, an extension of the time an IPA has to submit a request for reconsideration.

(2) The OSA shall review an IPA's request for reconsideration and shall make a determination on reconsideration within 15 calendar days of the IPA response letter unless the IPA has asked to present its request for reconsideration in person, in which case the OSA shall make a determination within 15 calendar days from the date of the personal meeting. The OSA may uphold, modify or withdraw its restriction pursuant to its review of the IPA's request for reconsideration, and shall notify the IPA of its final decision in writing which shall be sent to the IPA via email and certified mail, return receipt requested.

F. Procedures to obtain professional services from an IPA: Concurrent with publication of the list of approved firms, the OSA shall authorize agencies to select an IPA to perform their annual audit or AUP engagement. Agencies are prohibited from beginning the process of procuring IPA services for annual audits or AUPs pursuant to Section 12-6-3 NMSA 1978 until they receive the OSA authorization. Agencies that wish to begin the IPA procurement process for their annual audit or AUP pursuant to Section 12-6-3 NMSA 1978 prior to receiving OSA authorization may request an exception, however any such exceptions granted by OSA are subject to changes in the final audit rule applicable to the annual audit or AUP pursuant to Section 12-6-3 NMSA 1978 and changes in restrictions to, or disqualifications of, IPAs. The notification shall inform the agency that it shall consult its prospective IPA to determine whether the prospective IPA has been restricted by the OSA as to the type of engagement or number of contracts it is eligible to perform. Agencies that may be eligible for the tiered system shall complete the evaluation described in Subsection B of 2.2.2.16 NMAC. Agencies that receive and expend federal awards shall follow the uniform guidance procurement requirements from 2 CFR 200.317 to 200.326 and 200.509, and shall also incorporate applicable guidance from the following requirements. Agencies shall comply with the following procedures to obtain professional services from an IPA for an audit or AUP engagement.

(1) Upon receipt of written authorization from the OSA to proceed, and at no time before then unless OSA has granted an exception, the agency shall identify all elements or services to be solicited pursuant to this rule and conduct a procurement that includes each applicable element of the annual financial and compliance audit, special audit, attestation engagement, performance audit, forensic audit or AUP engagement.

(2) Quotations or proposals for annual financial audits shall contain each of the following elements:

(a) financial statement audit;

(b) federal single audit (if applicable);

(c) financial statement preparation so long as the IPA has considered any threat to independence and mitigated it;

(d) other non-audit services (if applicable and allowed by current government auditing standards); and

(e) other (i.e., audits of component units such as housing authorities, charter schools, foundations and other types of component units).

(3) The agency is encouraged to request multiple year proposals for audit and AUP services, however the term of the contract shall be for one year only. The parties shall enter a new audit contract each year. The agency is responsible for procuring IPA services in accordance with all applicable laws and regulations which may include, but are not limited to, the State Procurement Code (Chapter 13, Article 1 NMSA 1978) or equivalent home rule procurement provisions; GSD Rule, Section 1.4.1 NMAC, Procurement Code Regulations, if applicable; DFA Rule, Section 2.40.2 NMAC, Governing the Approval of Contracts for the Purchase of Professional Services; Uniform Guidance; and Section 13-1-191.1 NMSA 1978 relating to campaign contribution disclosure forms. In the event that either of the parties to the contract elects not to contract for all of the years contemplated by a multiple year proposal, or the state

auditor disapproves the contract, the agency shall use the procedures described above to procure services from a different IPA.

(4) If the agency is a component of a primary government, the agency's procurement for audit services shall include the AU-C 600 (group audits) requirements for the IPA to communicate and cooperate with the group engagement partner and team, and the primary government. This requirement applies to agencies and universities that are part of the statewide comprehensive annual financial report, other component units of the statewide comprehensive annual financial report and other component units of any primary government that use a different audit firm from the primary government's audit firm. Costs for the IPA to cooperate with the group engagement partner and team, and the primary government, caused by the requirements of AU-C 600 (group audit) may not be charged in addition to the cost of the engagement, as the OSA views this in the same manner as compliance with any other applicable standard.

(5) Agencies are encouraged to include representatives of the offices of separately elected officials such as county treasurers, and component units such as charter schools and housing authorities, in the IPA selection process. As part of their evaluation process, the OSA recommends that agencies consider the following when selecting an IPA for their annual audit or AUP pursuant to Section 12-6-3 NMSA 1978:

(a) responsiveness to the request for proposal (the firm's integrity, record of past performance, financial and technical resources);

(b) relevant experience, availability of staff with professional qualifications and technical abilities;

(c) results of the firm's peer and external quality control reviews; and

(d) weighting the price criteria less than fifteen percent of the total criteria taken into consideration by the evaluation process or selection committee.

Upon the OSA's request, the agency shall make accessible to the OSA all of the IPA procurement and selection documentation.

(6) After selecting an IPA for their annual audit or AUP pursuant to Section 12-6-3 NMSA 1978, each agency shall enter the appropriate requested information online on the OSA-connect website (www.osa-app.org). In order to do this, the agency shall register on OSA-Connect and obtain a user-specified password. The agency's user shall then use OSA-Connect to enter information necessary for the contract and for the OSA's evaluation of the IPA selection. After the agency enters the information, the OSA-Connect system generates a draft contract containing the information entered. The agency shall submit to the OSA for approval a copy of the unsigned draft contract by following the instructions on OSA-Connect.

(7) The OSA shall notify the agency as to the OSA's approval or rejection of the selected IPA and contract. The OSA's review of audit contracts does not include evaluation of compliance with any state or local procurement laws or regulations; each agency is responsible for its own compliance with applicable procurement laws, regulations or policies. After the agency receives notification of approval of the selected IPA and contract from the OSA, the agency is responsible for getting the contract signed and sent to any oversight agencies, including DFA, for approval (if applicable). The OSA shall not physically sign the contract. After the agency obtains all the required signature and approvals of the contract, the agency shall submit an electronic portable document format (PDF) copy of the final signed contract to the OSA by electronic mail to: *reports@osa.state.nm.us*.

(8) The agency shall deliver the unsigned contract generated by OSA-Connect to the OSA by the due date shown below. In the event that the due date falls on a weekend or holiday, the due date shall be the next business day. If the unsigned contract is not submitted to the state auditor by these due dates, the IPA may, according to professional judgment, include a finding of non-compliance with Subsection F of 2.2.2.8 NMAC in the audit report or AUP report.

(a) Regional education cooperatives, cooperative educational services, independent housing authorities, hospitals and special hospital districts: April 15;

(b) school districts, counties, and higher education: May 1;

(c) incorporated counties (of which Los Alamos is the only one), local workforce investment boards and local public bodies that do not qualify for the tiered system: May 15;

(d) councils of governments, district courts, district attorneys, state agencies: July 1 and the state of New Mexico comprehensive annual financial report: July 31;

(e) local public bodies that qualify for the tiered system pursuant to Subsections A and B of 2.2.2.16 NMAC with a June 30 fiscal year end: July 30;

(f) local public bodies that qualify for the tiered system pursuant to Subsections A and B of 2.2.2.16 NMAC with a fiscal year end other than June 30 shall use a due date 30 days after the end of the fiscal year;

(g) agencies with a fiscal year end other than June 30 shall use a due date 30 days before the end of the fiscal year;

(h) component units that are being separately audited: on the primary government's due date;

(i) Charter schools that are chartered by the PED and agencies that are subject

to oversight by the HED have the additional requirement of submitting their audit contract to PED or HED for approval (Section 12-6-14 NMSA 1978); and

(j) In the event the agency's unsigned contract is submitted to the OSA, but is not approved by the state auditor, the state auditor shall promptly communicate the decision, including the reason(s) for disapproval, to the agency, at which time the agency shall promptly submit a contract with a different IPA using OSA-Connect. This process shall continue until the state auditor approves an unsigned contract. During this process, whenever an unsigned contract is not approved by the state auditor, the agency may submit a written request to the state auditor for reconsideration of the disapproval. The agency shall submit its request no later than 15 calendar days after the date of the disapproval and shall include documentation in support of its IPA selection. If warranted, after review of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor shall set the meeting in a timely manner with consideration given to the agency's circumstances.

(9) The agency shall retain all procurement documentation, including completed evaluation forms, for five years and in accordance with applicable public records laws.

(10) If the agency fails to submit an unsigned contract by the due date set forth in this rule, or, if no due date is applicable, within 60 days of notification from the state auditor to engage an IPA, the state auditor may conduct the audit or select the IPA for that agency. The reasonable costs of such an audit shall be borne by the agency audited unless otherwise exempted pursuant to Section 12-6-4 NMSA 1978.

(11) In selecting an IPA for an agency pursuant to Subsection F of 2.2.2.8 NMAC the state auditor shall at a minimum consider the following factors, but may consider other factors in the state auditor's discretion that serve the best interest of the state of New Mexico and the agency:

(a) the IPA shall be drawn from the list of approved IPAs maintained by the state auditor;

(b) an IPA subject to restriction pursuant to Subsection D of 2.2.2.8 NMAC, is ineligible to be selected under this paragraph;

(c) whether the IPA has conducted one or more audits of similar government agencies;

(d) the physical proximity of the IPA to the government agency to be audited;

(e) whether the resources and expertise of the IPA are consistent with the audit requirements of the government agency to be audited;

(f) the IPA's cost profile, including examination of the IPA's fee schedule and blended rates;

(g) the state auditor shall not select an IPA in which a conflict of interest exists with the agency or that may be otherwise impaired, or that is not in the best interest of the state of New Mexico.

(12) The state auditor shall consider, at a minimum, the following factors when considering which agencies shall be subject to the state auditor's selection of an IPA:

(a) whether agency is demonstrating progress in its own efforts to select an IPA;

(b) whether the agency has funds to pay for the audit;

(c) whether the agency is on the state auditor's "at risk" list;

(d) whether the agency is complying with the requirements imposed on it by virtue of being on the state auditor's "at risk" list;

(e) whether the agency has failed to timely submit its e-mailed draft unsigned contract copy in accordance with the audit rule on one or more occasions;

(f) whether the agency has failed to timely submit its annual financial audit report in accordance with the audit rule due dates on one or more occasions.

(13) The state auditor may appoint a committee of the state auditor's staff to make recommendations for the state auditor's final determination as to which IPAs shall be selected for each government agency subject to the discretion of the state auditor.

(14) Upon selection of an IPA to audit a government agency subject to the discretion of the state auditor, the state auditor shall notify the agency in writing regarding the selection of an IPA to conduct its audit. The notification letter shall include, at a minimum, the following statements:

(a) the agency was notified by the state auditor to select an IPA to perform its audit or AUP engagement;

(b) 60 days or more have passed since such notification, or the applicable due date in this rule has passed, and the agency failed to deliver its draft contract in accordance with this subsection;

(c) pursuant to Subsection A of Section 12-6-14 NMSA 1978, the state auditor is selecting the IPA for the agency;

(d) delay in completion of the agency's audit is contrary to the best interest of the state and the agency, and threatens the functioning of government and the preservation or protection of property;

(e) in accordance with Section 12-6-4 NMSA 1978, the reasonable costs of such an audit shall be borne by the agency unless otherwise exempted; and

(f) selection of the IPA is final, and the agency shall immediately take

appropriate measures to procure the services of the selected IPA.

G. State auditor approval/rejection of unsigned contract: The state auditor shall use discretion and may reject unsigned contracts as follows:

(1) An unsigned audit contract, special audit contract, attestation engagement contract, performance audit contract, forensic accounting engagement contract or AUP professional services contract under 2.2.2.16 NMAC that does not serve the best interests of the public or the agency or local public body because of one or more of the following reasons:

(a) lack of experience of the IPA;

(b) failure to meet the auditor rotation requirements as follows: the IPA is prohibited from conducting the agency audit for a period of two years because the IPA already conducted those services for that agency for a period of eight consecutive years;

(c) lack of competence or staff availability;

(d) circumstances that may cause untimely delivery of the audit report or AUP report;

(e) unreasonably high or low cost to the agency or local public body;

(f) terms in the proposed contract that the state auditor considers to be unfavorable, unfair, unreasonable, or unnecessary;

(g) lack of compliance with the procurement code, the audit act, or this rule;

(h) the agency giving too much consideration to the price of the IPA's response to the request for bids or request for proposals in relation to other evaluation criteria;

(i) newness of the IPA to the state auditor's list of approved firm;

(j) noncompliance with the requirements of Section 12-6-3 NMSA 1978 the audit act by the agency for previous fiscal years; or

(k) any other reason determined by the state auditor to be in the best interest of the state of New Mexico.

(2) An audit contract, special audit contract, attestation engagement contract, performance audit contract, or forensic accounting engagement contract or AUP contract of an IPA that has:

(a) breached a prior-year contract;

(b) failed to deliver an audit or AUP report on time;

(c) failed to comply with state laws or regulations of the state auditor;

(d) performed non-audit services (including services related to fraud) for an agency or local public body it is performing an audit, special audit, attestation engagement, performance audit, forensic accounting engagement or an AUP for, without prior approval of the state auditor;

(e) performed non-audit services under a separate contract for services that may be disallowed by GAGAS independence standards;

(f) failed to respond, in a timely and acceptable manner, to an OSA audit, special audit contract, attestation engagement contract, performance audit contract, forensic accounting engagement contract, AUP report review or working paper review;

(g) impaired independence during an engagement;

(h) failed to cooperate in providing prior-year working papers to successor IPAs;

(i) not adhered to external quality control review standards as defined by GAGAS and 2.2.2.14 NMAC;

(j) has a history of excessive errors or omissions in reports or working papers;

(k) released the audit report or AUP report to the agency, local public body or the public before the audit release letter or the OSA letter releasing the AUP report was received from the OSA;

(l) failed to submit a completed signed contingency subcontractor form, if required;

(m) failed to submit a completed firm profile as required by Subsection A of 2.2.2.8 NMAC or failed to include all staff in the firm profile who would be working on the firm's engagements;

(n) reached the limit of contracts to which the state auditor restricted the IPA;

(o) failed to respond to communications from the OSA or engagement clients within a reasonable amount of time; or

(p) otherwise, in the opinion of the state auditor, the IPA was unfit to be awarded a contract.

(3) An audit contract, special audit contract, attestation engagement contract, performance audit contract, forensic accounting engagement contract or AUP contract for an IPA received by the OSA, which the state auditor decides to perform himself with or without the assistance of an IPA, and pursuant to Section 12-6-3 NMSA 1978, even if the agency or local public body was previously designated for audit or AUP to be performed by an IPA.

H. Audit contract requirements: The agency shall use the appropriate audit or AUP engagement contract form provided by the OSA through the OSA-connect website at www.osa-app.org. The OSA may provide audit or AUP engagement contract forms to the agency via facsimile, e-mail, or U.S. mail if specifically requested by the agency. Only contract forms provided by the state auditor shall be accepted and shall:

(1) be completed and submitted in its

unsigned form by the due date indicated at Subsection F of 2.2.2.8 NMAC;

(2) for all agencies whose contracts are approved through the DFA's contracts review bureau, have the IPA's combined reporting system (CRS) number verified by the taxation and revenue department (TRD) after approval by the state auditor; and

(3) in the compensation section of the contract, include the dollar amount that applies to each element of the contracted procedures that shall be performed;

(4) if the agency requires the IPA to provide additional services outside the scope of work described in the audit or AUP contract form provided through the OSA-connect website, the additional services shall be described in detail in the "other provisions section" of the contract; if the additional services required by the "other provisions" section of the contract cause a significant change in the scope of the audit, then the contract amendment provisions of Subsection N of 2.2.2.8 NMAC shall apply.

I. Professional liability insurance: The IPA shall maintain professional liability insurance covering any error or omission committed during the term of the contract. The IPA shall provide proof of such insurance to the state auditor with the firm profile. The amount maintained should be commensurate with the risk assumed. The IPA shall provide to the state auditor, prior to expiration, updated insurance information.

J. Breach of contract: A breach of any terms of the contract shall be grounds for immediate termination of the contract. The injured party may seek damages for such breach from the offending party. Any IPA who knowingly makes false statements, assurances, or disclosures may be disqualified from conducting audits or AUP engagements of New Mexico governmental agencies.

K. Subcontractor requirements:

(1) Audit firms that have only one individual qualified to supervise a GAGAS audit and issue the related audit report pursuant to Section 61-28B-17 NMSA 1978, and GAGAS Paragraph 4.16 shall submit with the firm profile, a completed contingency subcontractor form that is dated to be effective until the date the next firm profile shall be submitted. The form shall indicate which IPA on the state auditor's current list of approved IPA's shall complete the IPA's audits in the event the one individual with the qualifications described above becomes incapacitated and unable to complete the audit. See the related contingency subcontractor form available at www.osanm.org. The OSA shall not approve audit contracts for such a firm without the required contingency subcontractor form.

(2) In the event an IPA chooses to use a subcontractor to assist the IPA in working on a specific audit, then the IPA shall obtain the prior written approval of the state auditor to subcontract a portion of the audit work. The IPA may subcontract only with IPAs who have submitted a completed and approved firm profile to the state auditor as required in Subsection A of 2.2.2.8 NMAC. Subcontractors are subject to an independence analysis, which may include the IPA rotation requirements of Subsection G of 2.2.2.8 NMAC. "Technical review contracts" are considered subcontracting and are subject to the requirements of this Section. The audit contract shall specify subcontractor responsibility, who shall sign the report(s), and how the subcontractor shall be paid. For additional information see the subcontract work section of the OSA website.

L. IPA independence: IPAs shall maintain independence with respect to their client agencies in accordance with the requirements of the current *government auditing standards*.

M. Progress Payments: The state auditor shall approve progress and final payments for the annual audit contract as follows:

(1) Subsection A of Section 12-6-14 NMSA 1978 (contract audits) provides that "payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section."

(2) Subsection B of Section 12-6-14 NMSA 1978 (contract audits) provides that the state auditor may authorize progress payments on the basis of evidence of the percentage of audit work completed as of the date of the request for partial payment.

(3) Progress payments up to seventy percent do not require state auditor approval provided that the agency certifies the receipt of services before any payments are made to the IPA. If the report has been submitted, progress payments up to eighty-five percent do not require state auditor approval. The agency shall monitor audit progress and make progress payments only up to the percentage that the audit is completed. If requested by the state auditor, the agency or the IPA shall provide a copy of the approved invoices and progress billing(s). Progress payments between seventy percent and ninety-five percent if no report has been submitted, or eighty-five and ninety-five percent if a report has been submitted, require state auditor approval after being approved by the agency. When component unit audits are part of a primary government's audit contract, requests for progress payments on the component unit audit(s) shall be included within the primary government's request for progress payment approval. In this situation, the OSA shall not process separate progress payment approvals submitted by the component unit.

(4) The state auditor may limit progress payments allowed to be made without state auditor approval for an IPA whose previous audits were submitted after the due date specified in Subsection A of 2.2.2.9 NMAC to only the first fifty percent of the total fee.

(5) Section 12-6-14 NMSA 1978 (contract audits) provides that final payment under an audit contract may be made by the agency to the IPA only after the state auditor has determined, in writing, that the audit has been made in a competent manner in accordance with contract provisions and this rule. The state auditor's determination with respect to final payment shall be communicated as follows:

(a) stated in the letter accompanying the release of the report to the agency; or

(b) in the case of ongoing law enforcement investigations, stated in a letter prior to the release of the report to the agency. In no circumstance may the total billed by the IPA under the audit contract exceed the total contract amount, as amended if applicable. Further, as the compensation section of the contract shall include the dollar amount that applies to each element of the contracted procedures that shall be performed, if certain procedures, such as a single audit, are determined to be unnecessary and are not performed, the IPA may not bill the agency for these services. Final payment to the IPA by the agency prior to review and release of the audit report by the state auditor is considered a violation of Section 12-6-14 NMSA 1978 and this rule and shall be reported as an audit finding in the audit report of the agency. If this statute is violated, the IPA may be removed from the state auditor's list of approved auditors.

N. Contract amendment requirements:

(1) Contract amendments to contracts for audit services, AUP services, or non-attest services shall be submitted to the OSA regarding executed contracts. Contracts may not be amended after they expire. The contract should be amended prior to the additional work being performed or as soon as practicable thereafter. Any amendments to contracts for audits, AUPs, or other attest or non-attest engagements shall be made on the contract amendment form available at www.saonm.org. The OSA's review of audit contracts and amendments does not include evaluation of compliance with the state procurement code or other applicable requirements. Although the parties may amend the delivery dates in a contract, audit report regulatory due dates cannot be modified by amendment. The OSA's review of audit contract amendments does not include evaluation of compliance with any state or local procurement laws or regulations; each agency is responsible for its own compliance with applicable procurement laws, regulations or policies.

(2) Contract amendments submitted for state auditor approval shall include a detailed explanation of:

(a) the work to be performed and the estimated hours and fees required for completion of each separate professional service contemplated by the amendment; and

(b) how the work to be performed relates to the scope of work outlined in the original contract.

(3) Since annual financial audit contracts are fixed-price contracts, contract amendments for fee increases shall only be approved for extraordinary circumstances, reasons determined by the state auditor to be in the best interest of the state of New Mexico, or a significant change in the scope of an audit. For example, if an audit contract did not include a federal single audit, a contract amendment shall be approved if a single audit is required. Other examples of significant changes in the scope of an audit include: the addition of a new program, function or individual fund that is material to the government-wide financial statements; the addition of a component unit; and the addition of special procedures required by this rule, a regulatory body or a local, state or federal grantor. Contract amendments shall not be approved to perform additional procedures to achieve an unmodified opinion. The state auditor shall also consider the auditor independence requirements of Subsection L of 2.2.2.8 NMAC when reviewing contract amendments for approval. Requests for contract amendments shall be submitted to the OSA with the signed contract amendment. The OSA shall review the requests and respond to the agency and the IPA within 30 calendar days of receipt.

(4) If a proposed contract amendment is rejected for lack of adequate information, the IPA and agency may submit a corrected version for reconsideration.

O. Termination of audit contract requirements:

(1) The state auditor may terminate an audit contract to be performed by an IPA after determining that the audit has been unduly delayed, or for any other reason, and perform the audit entirely or partially with IPAs contracted by the OSA (consistent with the October 6, 1993, stipulated order, *Vigil v. King*, No. SF 92-1487(C). The notice of termination of the contract shall be in writing.

(2) If the agency or IPA terminate the audit or AUP engagement contract pursuant to the termination paragraph of the contract, the OSA shall be notified of the termination immediately. The party sending out the termination notification letter shall simultaneously send a copy of the termination notification letter to the OSA with an appropriate cover letter, addressed to the state auditor.

(a) The agency is responsible for procuring the services of a new IPA in accordance with all applicable laws and regulations, and this rule.

(b) The unsigned contract for the newly procured IPA shall be submitted to the OSA within 30 calendar days of the date of the termination notification letter.

(c) As indicated in Subsection A of 2.2.2.9 NMAC, the state auditor shall not grant extensions of time to the established regulatory due dates.

(d) If the IPA does not expect to deliver the engagement report by the regulatory due date, the IPA shall submit a written notification letter to the state auditor and oversight agency as required by Subsection A of 2.2.2.9 NMAC or Subsection G of 2.2.2.16 NMAC.

[2.2.2.8 NMAC - Rp, 2.2.2.8 NMAC, 3/22/2022]

2.2.2.9 REPORT DUE DATES:

A. Report due dates: The IPA shall deliver the electronic draft annual financial audit report to the state auditor by 5:00 p.m. on the date specified in the audit contract and send it electronically by the due date. IPAs and agencies are encouraged to perform interim work as necessary and appropriate to meet the following due dates.

(1) The audit report due dates are as follows:

(a) regional education cooperatives, cooperative educational services and independent housing authorities: September 30;

(b) hospitals and special hospital districts: October 15;

(c) higher education, state agencies not specifically named elsewhere in this Subsection, district courts, district attorneys, the New Mexico finance authority, the New Mexico lottery authority, and other agencies with June 30 fiscal year-ends that are reported as component units in the state of New Mexico comprehensive annual financial report: November 1;

(d) school districts, TRD, CYFD, DOH, DOT, HSD, GSD, ECECD, and the state of New Mexico component appropriation funds (state general fund): November 15;

(e) the PED, the state investment council, and the three post-employment benefit agencies (PERA, ERB and the retiree health care authority): the Wednesday before Thanksgiving day;

(f) counties, incorporated counties (of which Los Alamos is the only one), workforce investment boards, councils of governments, and the New Mexico mortgage finance authority: December 1;

(g) local public bodies including municipalities: December 15;

(h) the state of New Mexico comprehensive annual financial report: December 31;

(i) the ERB, PERA and retiree health care authority schedules of employer allocations reports and related employer guides required by Subsections Z of 2.2.2.10 NMAC: June 15;

(j) agencies with a fiscal year-end other than June 30 shall submit the audit report no later than *five months after the fiscal year-end*;

(k) regarding component unit reports (e.g., housing authorities, charter schools, hospitals, foundations, etc.), all separate audit reports prepared by an auditor that is different from the primary government's auditor, are *due fifteen days before the primary government's audit report is due*, unless some other applicable due date requires the report to be submitted earlier;

(l) any agency that requires its report to be released by December 31st for any reason (bonding, GFOA, etc.): the earlier of its agency due date or December 1; and

(m) late audit or AUP reports of any agency (not performed in the current reporting period): not more than six months after the date the contract was executed.

(2) If an audit report is not delivered on time to the state auditor, the auditor shall include this instance of non-compliance with Subsection A of 2.2.2.9 NMAC as an audit finding in the audit report. This requirement is not negotiable. If appropriate, the finding may also be reported as a significant deficiency or material weakness in the operation the agency's internal controls over financial reporting pursuant to AU-C 265.

(3) An electronic copy of the report shall be submitted for review by the OSA with the following: copy of the signed management representation letter and a copy of the completed state auditor report review guide (available at www.saonm.org). A report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the OSA. All separate reports prepared for component units shall also be submitted to the OSA for review, along with a copy of the management representation letter, and a completed report review guide for each separate audit report. A separate component unit report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the OSA. If a due date falls on a weekend or holiday, or if the OSA is closed due to inclement weather, the audit report is due the following business day by 5:00 p.m.

(4) AU-C 700.41 requires the auditor's report to be dated after audit evidence supporting the opinion has been obtained and reviewed, the financial statements have been prepared and the management representation letter has been signed. AU-C 580.20 requires the management representation letter to be dated the same date as the independent auditor's report.

(5) As soon as the auditor becomes aware that circumstances exist that will make an agency's audit report be submitted after the applicable due date provided in Subsection A of 2.2.2.9 NMAC, the auditor shall notify the state auditor in writing. This notification shall consist of a letter, not an email. However, a scanned version of the official letter

sent via email is acceptable. The late audit notification letter is subject to the confidentiality requirements detailed at Subsection M of 2.2.2.10 NMAC. This does not prevent the state auditor from notifying the legislative finance committee or applicable oversight agency pursuant to Subsections F and G of Section 12-6-3 NMSA 1978. There shall be a separate notification for each late audit report. The notification shall include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by a duly authorized representative of the agency. If the IPA is going to miss the expected report submission date, then the IPA shall send a revised notification letter. In the event the contract was signed after the report due date, the notification letter shall still be submitted to the OSA explaining the reason the audit report will be submitted after the report due date. The late report notification letter is not required if the report was submitted to the OSA for review by the due date, and then rejected by the OSA, making the report late when resubmitted. Reports resubmitted to the OSA with changes of the IPA's opinion after the report due date shall be considered late and a late audit finding shall be included in the audit report.

(6) The due date of any report not listed in Subsection A of 2.2.2.9 NMAC shall be the date specified in the contract.

B. Delivery and release of the audit report:

(1) The IPA shall deliver to the state auditor an electronic copy of the audit report for review by 5:00 p.m. on the day the report is due. Unfinished or excessively deficient reports shall not satisfy this requirement; such reports shall be rejected and returned to the IPA and the OSA may take action in accordance with Subsection C of 2.2.2.13 NMAC. When the OSA rejects and returns a substandard audit report to the IPA, the OSA shall consider the audit report late if the corrected report is not resubmitted by the due date. The IPA shall also report a finding for the late audit report in the audit report. The firm shall submit an electronic version of the corrected rejected report for OSA review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year.

(2) Before initial submission, the IPA shall review the report using the appropriate report review guide available on the OSA's website. The report review guide shall reference applicable page numbers in the audit report. The audit manager or person responsible for the IPA's quality control system shall either complete the report review guide or sign off as having reviewed it. All questions in the guide shall be answered, and the reviewer shall sign and date the last page of the guide. If the review guide is not accurately completed or incomplete, the report shall not be accepted.

(3) IPAs are encouraged to deliver completed audit reports before the due date. All reports, except for reports prepared by the OSA, shall be addressed to the state auditor, the agency executive and governing body (if applicable). Reports prepared by the OSA shall be addressed to the agency executive and governing body (if applicable). The OSA shall review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. Once the review of the report is completed pursuant to Subsection A of 2.2.2.13 NMAC, and any OSA comments have been addressed by the IPA, the OSA shall indicate to the IPA that the report is ready to print. After the OSA issues the "*ok to print*" communication for the audit report, the OSA shall authorize the IPA to submit the corrected report with the following items to the OSA within five business days; an electronic searchable version of the audit report labeled "final", in PDF format, and an electronic Excel version of the summary of findings report and any other required electronic schedule (electronic schedules may not apply to engagements pursuant to 2.2.2.15 or 2.2.2.16 NMAC) if applicable, and an electronic excel version of the schedule of asset management costs for investing agencies, if applicable (all available at www.saonm.org). The OSA shall not release the report until the searchable electronic PDF version of the report and all required electronic Excel schedules are received by the OSA. The electronic file containing the final audit report shall:

(a) be created and saved as a PDF document in a single PDF file format (simply naming the file using a PDF extension .pdf does not by itself create a PDF file);

(b) be version 5.0 or newer;

(c) not exceed 10 megabytes (MB) per file submitted (contact the OSA to request an exception if necessary);

(d) have all security settings like self-sign security, user passwords, or permissions removed or deactivated so the OSA is not prevented from opening, viewing, or printing the file;

(e) not contain any embedded scripts or executables, including sound or movie (multimedia) objects;

(f) have a file name that ends with .pdf;

(g) be free of worms, viruses or other malicious content (a file with such content shall be deleted by the OSA);

(h) be "flattened" into a single layer file prior to submission;

(i) not contain any active hypertext links, or any internal/external links (although it is permissible for the file to textually reference a URL as a disabled link);

(j) be saved at 300 dots per inch (DPI) (lower DPI makes the file hard to read and higher DPI makes the file too large);

(k) have a name that starts with the

OSA agency number, followed by the agency name, the fiscal year and "final"; and

(l) be searchable.

(4) The IPA shall deliver to the agency the number of copies of the audit report indicated in the audit contract only after the state auditor has officially released the audit report with a "release letter".

(a) The audited agency may waive the 5-day waiting period required by Section 12-6-5 NMSA 1978. To do so, the agency's governing authority or the governing authority's designee must provide written notification to the OSA of the waiver. The notification must be signed by the agency's governing authority or the governing authority's designee and be sent via letter, e-mail or fax to the attention of the state auditor. The OSA encourages agencies wishing to waive the five-day waiting period to provide the written notification *prior* to the submission of the final report to the OSA.

(b) The IPA shall deliver to the agency the number of copies of the audit report indicated in the audit contract only after the state auditor has officially released the audit report with a "release letter". Release of the audit report to the agency or the public prior to it being officially released by the state auditor shall result in an audit finding.

(5) After the release of a report, the OSA shall provide DFA and the legislative finance committee with notification that the report is available on the OSA website.

(6) If an audit report is reissued pursuant to AU-C 560, subsequent events and subsequently discovered facts, or AAG GAS 13.29-.30 for uniform guidance compliance reports, the reissued audit report shall be submitted to the OSA with a cover letter addressed to the state auditor. The cover letter shall explain that:

(a) the attached report is a "reissued" report;

(b) the circumstances that caused the reissuance; and

(c) a summary of the changes that appear in the reissued report. The OSA shall subject the reissued report to the report review process and upon completion of that report review process, shall issue a "release letter." The contents of the reissued audit report are subject to the confidentiality requirements described in Subsection M of 2.2.2.10 NMAC. Agency management and the IPA are responsible for ensuring that the latest version of the report is provided to each recipient of the prior version of the report. The OSA shall notify the appropriate oversight agencies regarding the updated report on the OSA website.

(7) If changes to a released audit report are submitted to the OSA, and the changes do not rise to the level of requiring a reissued report, the IPA shall submit a cover letter addressed to the agency, with a copy to the state auditor, which includes the following minimum elements:

(a) a statement that the changes did not rise to the level of requiring a reissued report;

(b) a description of the circumstances that caused the resubmitted updated report; and

(c) a summary of the changes that appear in the resubmitted updated report compared to the prior released report. Agency management and the IPA are responsible for ensuring that the latest version of the resubmitted report is provided to each recipient of the prior version of the report. The OSA shall notify the appropriate oversight agencies regarding the updated report on the OSA website.

C. Required status reports: For an agency that has failed to submit audit or agreed-upon procedures reports as required by this rule, and has therefore been designated as "at risk" due to late reports, the state auditor requires the agency to submit written status reports to the OSA on each March 15, June 15, September 15, and December 15 that the agency is not in compliance with this rule. Status reports are not required for agencies that are included on the "at risk" list solely due to an adverse or disclaimed independent auditor's opinion. The status report shall be signed by a member of the agency's governing authority, a designee of the governing authority or a member of the agency's top management. If the agency has a contract with an IPA to conduct the audit or perform the AUP engagement, the agency must send the IPA a copy of the quarterly status report. IPAs engaged to audit or perform AUP engagements for agencies with late reports are responsible for assisting these agencies in complying with the reporting requirements of this section. Failure to do so shall be noted by the OSA and taken into account during the IPA Firm Profile evaluation process. At a minimum, the quarterly written status report shall include:

(1) a detailed explanation of the agency's efforts to complete and submit its audit or agreed-upon procedures;

(2) the current status of any ongoing audit or agreed-upon procedures work;

(3) any obstacles encountered by the agency in completing its audit or agreed-upon procedures; and

(4) a projected completion date for the financial audit or agreed-upon procedures report.

[2.2.2.9 NMAC - Rp, 2 2.2.9 NMAC, 3/22/2022]

2.2.2.10 GENERAL CRITERIA:

A. Annual financial and compliance audits:

(1) The financial audit shall cover the entire financial reporting entity including the primary government and the component units of the primary government, if any. For any financial and compliance audit the agency should produce all documents necessary to conduct the engagement.

(a) The primary government shall determine whether an agency that is a separate legal entity from the primary government is a component unit of the primary government as defined by GASBS 14, 39, 61, and 80 (as amended). The flowchart at GASBS 61.68 may be useful in making this determination. The primary government shall notify all other agencies determined to be component units by September 15 of the subsequent fiscal year. Failure to meet this due date results in a compliance finding. IPAs shall use GASB guidelines as found in relevant GASBS to determine the correct presentation of the component unit. All agencies that meet the criteria to be a component unit of the primary government shall be included with the audited financial statements of the primary government by discrete presentation or blended, as appropriate. Component units are reported using the government financial reporting format if they have one or more of the characteristics described at AAG SLV 1.01. If a component unit does not qualify to be reported using the governmental format and is not statutorily required to be reported using the governmental format, that fact shall be explained in the notes to the financial statements (summary of significant accounting policies: financial reporting entity). If there was a change from the prior year's method of presenting a component unit or change in component units reported, the notes to the financial statements shall disclose the reason(s) for the change.

(b) If a primary government has no component units, that fact shall be disclosed in the notes to the financial statements (summary of significant accounting policies: financial reporting entity). If the primary government has component units that are not included in the financial statements due to materiality, that fact shall also be disclosed in the notes.

(c) The state auditor requires component unit(s) to be audited by the same audit firm that audits the primary government (except for public housing authority component units that are statutorily exempt from this requirement, and the statewide comprehensive annual financial report). Requests for exemption from this requirement shall be submitted in writing by the primary government to the state auditor. If the request to use a different auditor for the component unit is approved in writing by the state auditor, the following requirements shall be met:

(i) the IPAs of the primary government and all component units shall consider and comply with the requirements of AU-C 600;

(ii) the group engagement partner shall agree that the group engagement team will be able to obtain sufficient appropriate audit evidence through the use of the group engagement team's work or use of the work of the component auditors (AU-C 600.15);

(iii) the component unit auditor selected shall appear on the OSA list of approved IPAs;

(iv) all bid and auditor selection processes shall comply with the requirements of this rule;

(v) the OSA standard contract form shall be used by both the primary government and the component unit;

(vi) the primary government, the primary engagement partner, management of the component unit, and the component unit auditor shall all coordinate their efforts to ensure that the audit reports of the component unit and the primary government are submitted by the applicable due dates;

(vii) all component unit findings shall be disclosed in the primary government's audit report (except the statewide comprehensive annual financial report, which shall include only component unit findings that are significant to the state as a whole); and

(viii) any separately issued component unit financial statements and associated auditors' reports shall be submitted to the state auditor by the due date in Subsection A of 2.2.2.9 NMAC for the review process described in Subsection A of 2.2.2.13 NMAC.

(d) With the exception of the statewide comprehensive annual financial report, the following SI pertaining to component units for which separately issued financial statements are not available shall be audited and opined on as illustrated in AAG SLV 16.103 example A-15: financial statements for each of the component unit's major funds, combining and individual fund financial statements for all of the component unit's non-major funds, and budgetary comparison statements for the component unit's general fund and major special revenue funds that have legally adopted annual budgets (AAG SLV 3.22).

(2) Audits of agencies shall be comprised of a financial and compliance audit of the financial statements and schedules as follows:

(a) The level of planning materiality described at AAG SLV 4.72-4.73 and exhibit 4-1 shall be used. Planning materiality for component units is at the individual component unit level.

(b) The scope of the audit includes the following statements and disclosures which the auditor shall audit and give an opinion on. The basic financial statements (as defined by GASB and displayed in AAG SLV exhibit 4-1) consisting of:

(i) the governmental activities, the business-type activities, and the aggregate discretely presented component units;

(ii) each major fund and the aggregate remaining fund information;

(iii) budgetary comparison statements for the general fund and major special revenue funds that have legally

adopted annual budgets (when budget information is available on the same fund structure basis as the GAAP fund structure, the state auditor requires that the budgetary comparison statements be included as part of the basic financial statements consistent with GASBS 34 fn. 53, as amended, and AAG SLV 11.12 and 11.13); and

(iv) the related notes to the financial statements.

(c) Budgetary comparison statements for the general fund and major special revenue funds presented on a fund, organization, or program structure basis because the budgetary information is not available on the GAAP fund structure basis for those funds shall be presented as RSI pursuant to GASBS 41.

(d) The auditor shall apply procedures and report in the auditor's report on the following RSI (if applicable) pursuant to AU-C 730:

(i) management's discussion and analysis (GASBS 34.8-.11);

(ii) RSI data required by GASBS 67 and 68 for defined benefit pension plans;

(iii) RSI schedules required by GASBS 43 and 74 for postemployment benefit plans other than pension plans;

(iv) RSI schedules required by GASBS 45 and 75 regarding employer accounting and financial reporting for postemployment benefits other than pensions; and

(v) infrastructure modified approach schedules derived from asset management systems (GASBS 34.132-133).

(e) The audit engagement and audit contract compensation include an AU-C 725 opinion on the SI schedules presented in the audit report. The auditor shall subject the information on the SI schedules to the procedures required by AU-C 725. The auditor shall report on the remaining SI in an other-matter paragraph following the opinion paragraph in the auditor's report on the financial statements pursuant to AU-C 725. With the exception of the statewide comprehensive annual financial report, the following SI schedules are required to be included in the AU-C 725 opinion if the schedules are applicable to the agency:

(i) primary government combining and individual fund financial statements for all non-major funds (GASBS 34.383);

(ii) the schedule of expenditures of federal awards required by uniform guidance;

(iii) the schedule of pledged collateral required by Subsection P of 2.2.2.10 NMAC;

(iv) the financial data schedule (FDS) of housing authorities pursuant to Subsection B of 2.2.2.12 NMAC;

(v) the school district schedule of cash reconciliation required by Subsection C of 2.2.2.12 NMAC. In addition, the school district schedule of cash reconciliation SI shall be subjected to audit procedures that ensure the cash per the schedule reconciles to the PED reports as required by Subsection C of 2.2.2.12 NMAC;

(vi) any other SI schedule required by this rule.

B. Governmental auditing, accounting and financial reporting standards: The audits shall be conducted in accordance with:

(1) the most recent revision of GAGAS issued by the United States government accountability office;

(2) U.S. auditing standards-AICPA (clarified);

(3) uniform administrative requirements, cost principles, and audit requirements for federal awards (uniform guidance);

(4) AICPA audit and accounting guide, government auditing standards and single audits, (AAG GAS) latest edition;

(5) AICPA audit and accounting guide, state and local governments (AAG SLV) latest edition; and

(6) 2.2.2 NMAC, requirements for contracting and conducting audits of agencies, latest edition.

C. Financial statements and notes to the financial statements: The financial statements and notes to the financial statements shall be prepared in accordance with accounting principles generally accepted in the United States of America. Governmental accounting principles are identified in the government accounting standards board (GASB) codification, latest edition. IPAs shall follow interpretations, technical bulletins, and concept statements issued by GASB, other applicable pronouncements, and GASB illustrations and trends for financial statements. In addition to the revenue classifications required by NCGAS 1.110, the OSA requires that the statement of revenues, expenditures, and changes in fund balance - governmental funds include classifications for intergovernmental revenue from federal sources and intergovernmental revenue from state sources, as applicable.

D. Requirements for preparation of financial statements:

(1) The financial statements presented in audit reports shall be prepared from the agency's books of record and contain amounts rounded to the nearest dollar.

(2) The financial statements are the responsibility of the agency. The agency shall maintain adequate accounting records, prepare financial statements in accordance with accounting principles generally accepted in the United States of America, and provide complete, accurate, and timely information to the IPA as requested to meet the audit report due date imposed in Subsection A of 2.2.2.9 NMAC.

(3) If there are differences between the financial statements and the books, the IPA shall provide to the agency the adjusting journal entries and the supporting documentation that reconciles the financial statements in the audit report to the books.

(4) If the IPA prepared the financial statements in their entirety from the client-provided trial balance or underlying accounting records the IPA should conclude significant threats to independence exist and shall document the threats and safeguards applied to mitigate the threats to an acceptable level. If the threats cannot be documented as mitigated the IPA may appropriately decide to decline to provide the service. IPAs should refer to the GAGAS conceptual framework to evaluate independence. The fact that the auditor prepared the financial statements from the client-provided trial balance or underlying records shall be disclosed on the exit conference page of the audit report.

E. Audit documentation requirements:

(1) The IPA's audit documentation shall be retained for a minimum of five-years from the date shown on the opinion letter of the audit report or longer if requested by the federal oversight agency, cognizant agency, or the state auditor. Audit documentation, including working papers, are the property of the IPA or responsible certificate holder per Subsection A of Section 61-28B-25 NMSA 1978. Audit documentation includes all documents used to support any opinions or findings included in the report. The state auditor shall have access to the audit documentation at the discretion of the state auditor.

(2) When requested by the state auditor, all of the audit documentation shall be delivered to the state auditor by the due date indicated in the request. State auditor review of audit documentation does not transfer the ownership of the documents. Ownership of the audit documentation is maintained by the IPA or responsible certificate holder.

(3) The audit documentation of a predecessor IPA shall be made available to a successor IPA in accordance with AU-C 510.07 and 510.A3 to 510. A11, and the predecessor auditor's contract. Any photocopy costs incurred shall be borne by the requestor. If the successor IPA finds that the predecessor IPA's audit documentation does not comply with applicable auditing standards and this rule, or does not support the financial data presented in the audit report, the successor IPA shall notify the state auditor in writing specifying all deficiencies. If the state auditor determines that the nature of deficiencies indicate that the audit was not performed in accordance with auditing or accounting standards generally accepted in the United States of America and related laws, rules and regulations and this rule, any or all of the following actions may be taken:

(a) the state auditor may require the predecessor IPA firm to correct its working papers and reissue the audit report to the agency, federal oversight or cognizant agency and any others receiving copies;

(b) the state auditor may deny or limit the issuance of future audit contracts; or

(c) the state auditor may refer the predecessor IPA to the New Mexico public accountancy board for possible licensure action.

F. Auditor communication requirements:

(1) The IPA shall comply with the requirements for auditor communication with those charged with governance as set forth in AU-C 260 and GAGAS 6.06 and 6.07.

(2) After the agency and IPA have an approved audit contract in place, the IPA shall prepare a written and dated engagement letter during the planning stage of a financial audit, addressed to the appropriate officials of the agency, keeping a copy of the signed letter as part of the audit documentation. In addition to meeting the requirements of the AICPA professional standards and the GAGAS requirements, the engagement letter shall state that the engagement shall be performed in accordance with 2.2.2 NMAC.

(3) The audit engagement letter shall not include any fee contingencies. The engagement letter shall not be interpreted as amending the contract. Nothing in the engagement letter can impact or change the amount of compensation for the audit services. Only a contract amendment submitted pursuant to Subsection N of 2.2.2.8 NMAC may amend the amount of compensation for the audit services set forth in the contract.

(4) A separate engagement letter and list of client prepared documents is required for each fiscal year audited. The IPA shall provide a copy of the engagement letter and list of client prepared documents immediately upon request from the state auditor.

(5) The IPA shall conduct an audit entrance conference with the agency with representatives of the agency's governing authority and top management, which may include representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.), if applicable. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference and any progress meetings. If such notification is received, the IPA and agency shall invite the state auditor or his designee to attend all such conferences no later than 72 hours before the proposed conference or meeting.

(6) All communications with management and the agency's oversight officials during the audit, regarding any instances of non-compliance or internal control weaknesses, shall be made in writing. The auditor shall obtain and report the views of responsible officials of the audited agency concerning the audit findings, pursuant to GAGAS 6.57-6.60. Any

violation of law or good accounting practice, including instances of non-compliance or internal control weaknesses, shall be reported as audit findings per Section 12-6-5 NMSA 1978. Separate management letter comments shall not be issued as a substitute for such findings.

G. Reverting or non-reverting funds: Legislation can designate a fund as reverting or non-reverting. The IPA shall review the state law that appropriated funds to the agency to confirm whether any unexpended, unencumbered balance of a specific appropriation shall be reverted and to whom. The law may also indicate the due date for the required reversion. Appropriate audit procedures shall be performed to evaluate compliance with the law and accuracy of the related liability account balances due to other funds, governmental agencies, or both. The financial statements and the accompanying notes shall fully disclose the reverting or non-reverting status of a fund or appropriation. The financial statements shall disclose the specific legislation that makes a fund or appropriation non-reverting and any minimum balance required. If non-reverting funds are commingled with reverting appropriations, the notes to the financial statements shall disclose the methods and amounts used to calculate reversions. For more information regarding state agency reversions, see Subsection A of 2.2.2.12 NMAC and the department of finance and administration (DFA) white papers "calculating reversions to the state general fund," and "basis of accounting-modified accrual and the budgetary basis." The statewide comprehensive annual financial report is exempt from this requirement.

H. Referrals and Risk Advisories: The Audit Act (Section 12-6-1 *et seq*. NMSA 1978) states that "the financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor's office designated by the state auditor or independent auditors approved by the state auditor." (Section 12-6-3 NMSA 1978). Further, audits of New Mexico governmental agencies "shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor." (Section 12-6-3 NMSA 1978).

(1) In an effort to ensure that the finances of state and local governments are thoroughly examined, OSA may provide IPAs with written communications to inform the IPA that OSA received information that may suggest elevated risk in specific areas relevant to a particular agency's annual financial and compliance audit. These communications shall be referred to as "referrals." Referrals are considered confidential audit documentation. Referrals may relate to any topic, including the scope of the annual financial and compliance audit. IPAs shall take the circumstances described in OSA referral communications into account in their risk assessment and perform such procedures as, in the IPA's professional judgment, are necessary to determine what further actions, if any, in the form of additional disclosures, findings, and recommendations are appropriate in connection with the annual audit of the agency. After the conclusion of fieldwork but at least 14 days prior to submitting the draft annual audit report to the OSA for review, IPAs shall provide written confirmation to the OSA that the IPA took appropriate action in response to the referral. This written confirmation shall respond to all aspects of the referral and list any findings associated with the subject matter of the referral. IPAs shall retain adequate documentation in the audit workpapers to support the written confirmation to OSA that the IPA took appropriate action in response to the referral. As outlined in 2.2.2.13 NMAC the OSA may review IPA workpapers associated with the annual audit of any agency. OSA workpaper review procedures shall include examining the IPA documentation associated with referrals. Insufficient or inadequate documentation may result in deficiencies noted in the workpaper review letter and may negatively impact the IPA during the subsequent firm profile review process. In accordance with Subsection D of 2.2.2.8 NMAC, an IPA may be placed on restriction if an IPA refuses to comply with OSA referrals in a timely manner.

(2) OSA may issue written communications to inform agencies and IPAs that OSA received information that suggests elevated risk in specific areas relevant to the annual financial and compliance audits of some agencies. These communications shall be referred to as "risk advisories." Risk advisories shall be posted on the OSA website in the following location: https://www.saonm.org/risk_advisories. Risk advisories may relate to any topic relevant to annual financial and compliance audits of New Mexico agencies. IPAs shall take the circumstances described in OSA risk advisories into account in their risk assessment and perform such procedures and testwork as, in the IPA's professional judgment, are necessary to determine what further action, if any, in the form of disclosure, findings and recommendations are appropriate in connection with the annual audit of the agency.

I. State auditor workpaper requirement: The state auditor requires that audit workpapers include a written audit program for fund balance and net position that includes tests for proper classification of fund balance pursuant to GASBS 54 and proper classification of net position pursuant to GASBS 34.34-.37 (as amended) and GASBS 46.4-.5 (as amended).

J. State compliance audit requirements: An IPA shall identify significant state statutes, rules and regulations applicable to the agency under audit and perform tests of compliance. In designing tests of compliance, IPAs may reference AU-C 250 relating to consideration of laws and regulations in an audit of financial statements and AU-C 620 relating to using the work of an auditor's specialist. As discussed in AU-C 250.A23, in situations where management or those charged with

governance of the agency, or the agency's in-house or external legal counsel, do not provide sufficient information to satisfy the IPA that the agency is in compliance with an applicable requirement, the IPA may consider it appropriate to consult the IPA's own legal counsel. AU-C 620.06 and 620.A1 discuss the use of an auditor's specialist in situations where expertise in a field other than accounting or auditing is necessary to obtain sufficient, appropriate audit evidence, such as the interpretation of contracts, laws and regulations. In addition to the significant state statutes, rules and regulations identified by the IPA, compliance with the following shall be tested if applicable (with the exception of the statewide comprehensive annual financial report):

(1) Procurement Code, Sections 13-1-1 to 13-1-199 NMSA 1978 including providing the state purchasing agent with the name of the agency's chief procurement officer, pursuant to Section 13-1-95.2 NMSA 1978, and Procurement Code Regulations, Section 1.4.1 NMAC, or home rule equivalent. All agencies must retain support for procurement until the contract expires or the minimum time required for record retention is met, whichever is longer.

(2) Per Diem and Mileage Act, Sections 10-8-1 to 10-8-8 NMSA 1978, and Regulations Governing the Per Diem and Mileage Act, Section 2.42.2 NMAC.

(3) Public Money Act, Sections 6-10-1 to 6-10-63 NMSA 1978, including the requirements that county and municipal treasurers deposit money in their respective counties, and that the agency receive a joint safe keeping receipt for pledged collateral.

(4) Public School Finance Act, Sections 22-8-1 to 22-8-48 NMSA 1978.

(5) Investment of Public Money Act, Sections 6-8-1 to 6-8-25 NMSA 1978.

(6) Public Employees Retirement Act, Sections 10-11-1 to 10-11-142 NMSA 1978. IPAs shall test to ensure eligible contributions are remitted to PERA. The IPA shall evaluate and test internal controls regarding employee eligibility for PERA and other benefits. IPAs shall evaluate risk associated with employees excluded from PERA and test that employees are properly excluded.

(7) Educational Retirement Act, Sections 22-11-1 to 22-11-55 NMSA 1978. IPAs shall test to ensure eligible contributions are remitted to ERA. The IPA shall evaluate and test internal controls regarding employee eligibility for ERA and other benefits. IPAs shall evaluate risk associated with employees excluded from ERA and test that employees are properly excluded.

(8) Sale of Public Property Act, Sections 13-6-1 to 13-6-8 NMSA 1978.

(9) Anti-Donation Clause, Article IX, Section 14, New Mexico Constitution.

(10) Special, deficiency, and supplemental appropriations (appropriation laws applicable for the year under audit).

(11) State agency budget compliance with Sections 6-3-1 to 6-3-25 NMSA 1978, and local government compliance with Sections 6-6-1 to 6-6-19 NMSA 1978.

(12) Lease purchase agreements, Article IX, Sections 8 and 11, New Mexico Constitution; Sections 6-6-11 to 6-6-12 NMSA 1978; *Montano v. Gabaldon*, 108 NM 94, 766 P.2d 1328 (1989).

(13) Accounting and control of fixed assets of state government, Sections 2.20.1.1 to 2.20.1.18 NMAC, (updated for GASBS 34 as applicable).

(14) Requirements for contracting and conducting audits of agencies, 2.2.2 NMAC.

(15) Article IX of the state constitution limits on indebtedness.

(16) Any law, regulation, directive or policy relating to an agency's use of gasoline credit cards, telephone credit cards, procurement cards, and other agency-issued credit cards.

(17) Retiree Health Care Act, Sections 10-7C-1 to 10-7C-19 NMSA 1978. IPAs shall test to ensure eligible contributions are reported to NMRHCA. NMRHCA employer and employee contributions are set forth in Section 10-7C-15 NMSA 1978. The IPA shall evaluate and test internal controls regarding employee eligibility for NMRHCA and other benefits. IPAs shall evaluate risk associated with employees excluded from NMRHCA and test that employees are properly excluded.

(18) Governmental Conduct Act, Sections 10-16-1 to 10-16-18 NMSA 1978.

(19) School Personnel Act, Sections 22-10A-1 to 22-10A-39 NMSA 1978.

(20) School Athletics Equity Act, Sections 22-31-1 to 22-31-6 NMSA 1978. IPAs shall test whether the district has submitted the required school-district-level reports, but no auditing of the reports or the data therein is required.

K. Federal requirements: IPAs shall conduct their audits in accordance with the requirements of the following government pronouncements and shall test federal compliance audit requirements as applicable:

(1) government auditing standards (GAGAS) issued by the United States government accountability office, most recent revision;

(2) uniform administrative requirements, cost principles, and audit requirements for federal awards;

(3) compliance supplement, latest edition;

(4) catalog of federal domestic assistance (CFDA), latest edition; and

(5) internal revenue service (IRS) employee income tax requirements. IRS Publication 15-B, employer's tax guide to fringe benefits, available

online, provides detailed information regarding the taxability of fringe benefits.

L. Audit finding requirements:

(1) Communicating findings: IPAs shall communicate findings in accordance with generally accepted auditing standards and the requirements of GAGAS 6.17-6.30. All finding reference numbers shall follow a standard format with the four-digit audit year, a hyphen and a three-digit sequence number (e.g. 20XX-001, 20XX-002 … 20XX-999). All prior year findings shall include the finding numbers used when the finding was first reported under historical numbering systems in brackets, following the current year finding reference number (e.g., 2021-001 (2020-003)) to enable the report user to see what year the finding originated and how it was identified in previous years. Finding reference numbers for single audit findings reported on the data collection form shall match those reported in the schedule of findings and questioned costs and the applicable auditor's report. Depending on the IPA's classification of the finding, the finding reference number shall be followed by one of the following descriptions: "material weakness"; "significant deficiency"; "material non-compliance"; "other non-compliance"; or "other matters."

(a) IPAs shall evaluate deficiencies to determine whether individually or in combination they are significant deficiencies or material weaknesses in accordance with AU-C 260.

(b) Findings that meet the requirements described in AAG GAS 4.12 shall be included in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards. AAG GAS 13.35 table 13-2 provides guidance on whether a finding shall be included in the schedule of findings and questioned costs.

(c) Section 12-6-5 NMSA 1978 requires that "each report set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination."

(i) When auditors detect violations of law or good accounting practices that shall be reported per Section 12-6-5 NMSA 1978, but that do not rise to the level of significant deficiencies or material weaknesses, such findings are considered to warrant the attention of those charged with governance due to the statutory reporting requirement. The auditor shall communicate such violations in the "compliance and other matters" paragraph in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards.

(ii) Findings required by Section 12-6-5 NMSA 1978 shall be presented in a separate schedule of findings labeled "Section 12-6-5 NMSA 1978 findings". This schedule shall be placed in the back of the audit report following the financial statement audit and federal award findings. Per AAG GAS 13.49 there is no requirement for such findings to be included or referenced in the uniform guidance compliance report.

(d) Each audit finding (including current year and unresolved prior-year findings) shall specifically state and describe the following:

(i) condition (provides a description of a situation that exists and includes the extent of the condition and an accurate perspective, the number of instances found, the dollar amounts involved, if specific amounts were identified, and *for repeat findings, management's progress or lack of progress towards implementing the prior year planned corrective actions*);

(ii) criteria (identifies the required or desired state or what is expected from the program or operation; cites the specific section of law, regulation, ordinance, contract, or grant agreement if applicable);

(iii) effect (the logical link to establish the impact or potential impact of the difference between the situation that exists (condition) and the required or desired state (criteria); demonstrates the need for corrective action in response to identified problems or relevant risks);

(iv) cause (identifies the reason or explanation for the condition or the factors responsible for the difference between what the auditors found and what is required or expected; the cause serves as a basis for the recommendation);

(v) recommendation addressing each condition and cause; and

(vi) agency response (the agency's comments about the finding, *including specific planned corrective actions with a timeline and designation of what employee position(s) are responsible for meeting the deadlines in the timeline*).

(e) Uniform guidance regarding single audit findings (uniform guidance 200.511): The auditee is responsible for follow-up and corrective action on all audit findings. As a part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings and a corrective action plan for current year audit findings in accordance with the requirements of uniform guidance 200.511. The corrective action plan and summary schedule of prior audit findings shall include findings relating to the financial statements which shall be reported in accordance with GAGAS. The summary schedule of prior year findings and the corrective action plan shall be included in the reporting package submitted to the federal audit clearinghouse (AAG GAS 13.49 fn 38). In addition to being included in the agency response to each audit finding, the corrective action plan shall be provided on the audited

agency's letterhead in a document separate from the auditor's findings. (COFAR frequently asked questions on the office of management and budget's uniform administrative requirements, cost principles, and audit requirements for federal awards at 2 CFR 200, Section 511-1).

(f) All audit reports shall include a summary of audit results preceding the presentation of audit findings (if any). The summary of audit results shall include the type of auditor report issued and whether the following categories of findings for internal control over financial reporting were identified: material weakness, significant deficiency, and material noncompliance. AUP reports completed pursuant to 2.2.2.16 NMAC are not required to include a summary of audit results.

(2) Prior year findings:

(a) IPAs shall comply with the requirements of GAGAS Section 6.11 relating to findings and recommendations from previous audits and attestation engagements. In addition, IPAs shall report the status of *all* prior-year findings and *all* findings from special audits performed under the oversight of the state auditor in the current year audit report in a summary schedule of prior year audit findings. The summary schedule of prior year audit findings shall include the prior year finding number, the title, and whether the finding was resolved, repeated, or repeated and modified in the current year. No other information shall be included in the summary schedule of prior year audit findings. All findings from special audits performed under the oversight of the state auditor shall be included in the findings of the annual financial and compliance audits of the related fiscal year.

(b) Uniform guidance regarding single audit prior year findings (uniform guidance 200.511): The auditor shall follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the uniform guidance, and report, as a current-year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding (AAG GAS 13.53).

(3) Current-year audit findings: Written audit findings shall be prepared and submitted to management of the agency as soon as the IPA becomes aware of the findings so the agency has time to respond to the findings prior to the exit conference. The agency shall prepare "planned corrective actions" as required by GAGAS 6.57 and 6.58. The agency shall respond, in writing, to the IPA's audit findings within 10 business days. Lack of agency responses within the 10 business days does not warrant a delay of the audit report. The agency's responses to the audit findings and the "planned corrective actions" shall be included in the finding after the recommendation. If the IPA disagrees with the management's comments in response to a finding, they may explain in the report their reasons for disagreement, after the agency's response (GAGAS 6.59). Pursuant to GAGAS 6.60, "if the audited agency refuses to provide comments or is unable to provide comments within a reasonable period of time, the auditors may issue the report without receiving comments from the audited agency. In such cases, the auditors should indicate in the report that the audited agency did not provide comments."

(4) If appropriate in the auditor's professional judgment, failure to submit the completed audit contract to the OSA by the due date at Subsection F of 2.2.2.8 NMAC may be reported as a current year compliance finding.

(5) If an agency has entered into any professional services contract with the IPA who performs the agency's annual financial audit, or the scope of work on any professional services contract relates to fraud, waste, or abuse, and the contract was not approved by the state auditor, the IPA shall report a finding of non-compliance with Subsection L of 2.2.2.8 NMAC.

(6) If an agency subject to the procurement code failed to meet the requirement to have a certified chief procurement officer during the fiscal year, the IPA shall report a finding of non-compliance with Section 1.4.1.94 NMAC.

(7) Component unit audit findings shall be reported in the primary government's financial audit report. This is not required for the statewide comprehensive annual financial report unless a finding of a legally separate component unit is significant to the state as a whole.

(8) Except as discussed in Subsections A and E of 2.2.2.12 NMAC, release of any portion of the audit report by the IPA or agency prior to being officially released by the state auditor is a violation of Section 12-6-5 NMSA 1978 and requires a compliance finding in the audit report.

(9) In the event that an agency response to a finding indicates in any way that the OSA is the cause of the finding, the OSA may require that a written response from the OSA be included in the report, below the other responses to that finding.

M. Exit conference and related confidentiality issues:

(1) The IPA shall hold an exit conference with representatives of the agency's governing authority and top management, which may include representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.), if applicable. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor or his designee to attend all such conferences. If component unit representatives cannot attend the

combined exit conference, a separate exit conference shall be held with the component unit's governing authority and top management. The exit conference and presentation to governance shall occur in the forum agreed to by the agency and the IPA, to include virtual or telephonic options. The OSA reserves the right to require an in-person exit conference and presentation to the board. The date of the exit conference(s) and the names and titles of personnel attending shall be stated in the last page of the audit report.

(2) The IPA, with the agency's cooperation, shall provide to the agency for review a draft of the audit report (stamped "draft"), a list of the "passed audit adjustments," and a copy of all the adjusting journal entries at or before the exit conference. The draft audit report shall include, at minimum, the following elements: independent auditor's report, basic financial statements, audit findings, summary schedule of prior year audit findings, and the reports on internal control and compliance required by government auditing standards and uniform guidance.

(3) Agency personnel and the agency's IPA shall not release information to the public relating to the audit until the audit report is released by the OSA, and has become a public record. This does not preclude an agency from submitting financial statements and notes to the financial statements, clearly marked as "draft" or "unaudited" to federal or state oversight agencies or bond rating agencies. Any draft financial statements provided to federal or state oversight agencies or to bond rating agencies shall exclude draft auditor opinions and findings, and any pages including references to auditor opinions or findings.

(4) Once the audit report is officially released to the agency by the state auditor (by a release letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing as described in Subparagraph (a) of Paragraph (4) of Subsection B of 2.2.2.9 NMAC, the audit report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable. This requirement only applies to agencies with a governing authority, such as a board of directors, board of county commissioners, or city council, which is subject to the Open Meetings Act. The IPA shall ensure that the required communications to those charged with governance are made in accordance with AU-C 260.12 to 260.14.

(5) At all times during the audit and after the audit report becomes a public record, the IPA shall follow applicable standards and 2.2.2 NMAC regarding the release of any information relating to the audit. Applicable standards include but are not limited to the AICPA Code of Conduct ET Section 1.700.001 and related interpretations and guidance, and GAGAS 6.53-6.55 and GAGAS 6.63-6.65. The OSA and the IPA shall not disclose audit documentation if such disclosure would undermine the effectiveness or integrity of the audit process. AU-C 230.A29.

N. Possible violations of criminal statutes in connection with financial affairs:

(1) IPAs shall comply with the requirements of GAGAS 6.19-6.24 relating to fraud, noncompliance with provisions of laws, regulations, contracts and grant agreements, waste and abuse. Relating to contracts and grant agreements, IPAs shall extend the AICPA requirements pertaining to the auditors' responsibilities for laws and regulations to also apply to consideration of compliance with provisions of contracts or grant agreements. Concerning abuse, if an IPA becomes aware of abuse that could be quantitatively, or qualitatively material to the financial statements or other financial data significant to the audit objectives, the IPA shall apply audit procedures specifically directed to ascertain the potential effect on the financial statements or other financial data significant to the audit objectives.

(2) Pursuant to Section 12-6-6 NMSA 1978 (criminal violations), an agency or IPA shall notify the state auditor immediately, in writing, upon discovery of any alleged violation of a criminal statute in connection with financial affairs. If an agency or IPA has already made a report to law enforcement that fact shall be included in the notification. The notification shall be sent by e-mail to reports@osa.state.nm.us, by facsimile, or by US mail. Notifications shall not be made through the fraud hotline. The notification shall include an estimate of the dollar amount involved, if known or estimable, and a description of the alleged violation, including names of persons involved and any action taken or planned. The state auditor may cause the financial affairs and transactions of the agency to be audited in whole or in part pursuant to Section 12-6-3 NMSA 1978 and 2.2.2.15 NMAC. If the state auditor does not designate an agency for audit, an agency shall follow the provisions of 2.2.2.15 NMAC when entering into a professional services contract for a special audit, performance audit, non-attest engagement, or attestation engagement regarding the financial affairs and transactions of the agency relating to financial fraud, waste and abuse.

(3) In accordance with Section 12-6-6 NMSA 1978, the state auditor, immediately upon discovery of any violation of a criminal statute in connection with financial affairs, shall report the violation to the proper prosecuting officer and furnish the officer with all data and information in his possession relative to the violation.

O. Special revenue funds authority: The authority for creation of special revenue funds and any minimum balance required shall be shown in the audit report (i.e., cite the statute number, code of federal regulation, executive order, resolution number, or other specific authority)

on the divider page before the combining financial statements or in the notes to the financial statements. This requirement does not apply to the statewide comprehensive annual financial report.

P. Public monies:

(1) All monies coming into all agencies (i.e., vending machines, fees for photocopies, telephone charges, etc.) shall be considered public monies and be accounted for as such. For state agencies, all revenues generated shall be authorized by legislation (MAPS FIN 11.4).

(2) If the agency has investments in securities and derivative instruments, the IPA shall comply with the requirements of AU-C 501.04-.10. If the IPA elects to use the work of an auditor's specialist to meet the requirements of AU-C 501, the requirements of AU-C 620 shall also be met.

(3) Pursuant to Section 12-6-5 NMSA 1978, each audit report shall include a list of individual deposit and investment accounts held by the agency. The information presented in the audit report shall include at a minimum:

(a) name of depository (i.e., bank, credit union, state treasurer, state investment council, etc.);

(b) account name;

(c) type of deposit or investment account (also required in separate component unit audit reports):

(i) types of deposit accounts include non-interest bearing checking, interest bearing checking, savings, money market accounts, certificates of deposit, etc.; and

(ii) types of investment accounts include state treasurer general fund investment pool (SGFIP), state treasurer local government investment pool (LGIP), U.S. treasury bills, securities of U.S. agencies such as Fannie Mae (FNMA), Freddie Mac (FHLMC), government national mortgage association (GNMA), Sallie Mae, small business administration (SBA), federal housing administration (FHA), etc.

(d) account balance of deposits and investments as of the balance sheet date;

(e) reconciled balance of deposits and investments as of the balance sheet date as reported in the financial statements; and

(f) for state agencies only, statewide human resources accounting and management reporting system (SHARE) fund number. In auditing the balance of a state agency's investment in the SGFIP, the IPA shall review the individual state agency's cash reconciliation procedures and determine whether those procedures would reduce the agency's risk of misstatement in the investment in SGFIP, and whether the agency is actually performing those procedures. The IPA shall also take into consideration the complexity of the types of cash transactions that the state agency enters into and whether the agency processes its deposits and payments through SHARE. The IPA shall use professional judgment to determine each state agency's risk of misstatement in the investment in the SGFIP and write findings and modify opinions as deemed appropriate by the IPA.

(4) Pledged collateral:

(a) All audit reports shall disclose applicable collateral requirements in the notes to the financial statements. In addition, there shall be a SI schedule or note to the financial statements that discloses the collateral pledged by each depository for public funds. The SI schedule or note shall disclose the type of security (i.e., bond, note, treasury, bill, etc.), security number, committee on uniform security identification procedures (CUSIP) number, fair market value and maturity date.

(b) Pursuant to Section 6-10-17 NMSA 1978, the pledged collateral for deposits in banks and savings and loan associations shall have an aggregate value equal to one-half of the amount of public money held by the depository. If this requirement is not met the audit report shall include a finding. No security is required for the deposit of public money that is insured by the federal deposit insurance corporation (FDIC) or the national credit union administration (NCUA) in accordance with Section 6-10-16 NMSA 1978. Collateral requirements shall be calculated separately for each bank and disclosed in the notes.

(c) All applicable GASB 40 disclosure requirements relating to deposit and investment risk shall be met. In accordance with GASBS 40.8, relating to custodial credit risk, the notes to the financial statements shall disclose the dollar amount of deposits subject to custodial credit risk, and the type of risk the deposits are exposed to. To determine compliance with the fifty percent pledged collateral requirement of Section 6-10-17 NMSA 1978, the disclosure shall include the dollar amount of each of the following for each financial institution: fifty percent pledged collateral requirement per statute, total pledged collateral, uninsured and uncollateralized.

(d) Repurchase agreements shall be secured by pledged collateral having a market value of at least one hundred two percent of the contract per Subsection H of Section 6-10-10 NMSA 1978. To determine compliance with the one hundred two percent pledged collateral requirement of Section 6-10-10 NMSA 1978, the disclosure shall include the dollar amount of the following for each repurchase agreement: one hundred-two percent pledged collateral requirement per statute, and total pledged collateral.

(e) Per Subsection A of Section 6-10-16 NMSA 1978, "deposits of public money shall be secured by: securities of the United States, its agencies or instrumentalities; securities

of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions; securities, including student loans, that are guaranteed by the United States or the state of New Mexico; revenue bonds that are underwritten by a member of the financial industry regulatory authority (known as FINRA), and are rated "BAA" or above by a nationally recognized bond rating service; or letters of credit issued by a federal home loan bank."

(f) Securities shall be accepted as security at market value pursuant to Subsection C of Section 6-10-16 NMSA 1978.

(g) State agency investments in the state treasurer's general fund investment pool do not require disclosure of specific pledged collateral for amounts held by the state treasurer. However, the notes to the financial statements shall refer the reader to the state treasurer's separately issued financial statements which disclose the collateral pledged to secure state treasurer cash and investments.

(h) If an agency has other "authorized" bank accounts, pledged collateral information shall be obtained from the bank and disclosed in the notes to the financial statements. The state treasurer monitors pledged collateral related to most state agency bank accounts. State agencies should not request the pledged collateral information from the state treasurer. In the event pledged collateral information specific to the state agency is not available, the following note disclosure shall be made: detail of pledged collateral specific to this agency is unavailable because the bank commingles pledged collateral for all state funds it holds. However, STO's collateral bureau monitors pledged collateral for all state funds held by state agencies in such "authorized" bank accounts.

(5) Agencies that have investments in the state treasurer's local government investment pool shall disclose the information required by GASBS 79 in the notes to their financial statements. Agencies with questions about the content of these required note disclosures may contact STO (http://www.nmsto.gov) for assistance.

Q. Budgetary presentation:

(1) Prior year balance included in budget:

(a) If the agency prepares its budget on the accrual or modified accrual basis, the statement of revenues and expenditures (budget and actual) or the budgetary comparisons shall include the amount of fund balance on the budgetary basis used to balance the budget.

(b) If the agency prepares its budget on the cash basis, the statement of revenues and expenditures (budget and actual) or the budgetary comparisons shall include the amount of prior-year cash balance used to balance the budget (or fund balance on the cash basis).

(2) The differences between the budgetary basis and GAAP basis revenues and expenditures shall be reconciled. If the required budgetary comparison information is included in the basic financial statements, the reconciliation shall be included on the statement itself or in the notes to the financial statements. If the required budgetary comparison is presented as RSI, the reconciliation to GAAP basis shall appear in either a separate schedule or in the notes to the RSI (AAG SLV 11.14). The notes to the financial statements shall disclose the legal level of budgetary control for the entity and any excess of expenditures over appropriations at the legal level of budgetary control. The legal level of budgetary control for local governments is at the fund level. The legal level of budgetary control for school districts is at the function level. The legal level of budgetary control for state agencies is explained at Subsection A of 2.2.2.12 NMAC. For additional information regarding the legal level of budgetary control the IPA may contact the applicable oversight agency (DFA, HED, or PED).

(3) Budgetary comparisons shall show the original and final appropriated budget (same as final budget approved by DFA, HED, or PED), the actual amounts on the budgetary basis, and a column with the variance between the final budget and actual amounts.

(a) If the budget structure for the general fund and major special revenue funds is similar enough to the GAAP fund structure to provide the necessary information, the basic financial statements shall include budgetary comparison statements those funds.

(b) Budgetary comparisons for the general fund and major special revenue funds shall be presented as RSI if the agency budget structure differs from the GAAP fund structure enough that the budget information is unavailable for the general fund and major special revenue funds. An example of this "perspective difference" would occur if an agency budgets by program with portions of the general fund and major special revenue funds appearing across various program budgets. In a case like that the budgetary comparison would be presented for program budgets and include information in addition to the general fund and major special revenue funds budgetary comparison data (GASBS 41.03 and .10).

R. Appropriations:

(1) Budget related findings:

(a) If actual expenditures exceed budgeted expenditures at the legal level of budgetary control, that fact shall be reported in a finding and disclosed in the notes to the financial statements.

(b) If budgeted expenditures exceed budgeted revenues (after prior-year cash balance and any applicable federal receivables used to balance the budget), that fact shall be reported in a finding. This type of finding shall be confirmed with the agency's budget oversight entity (if applicable).

(2) Special, deficiency, specific, and capital outlay appropriations:

(a) Special, deficiency, specific, and capital outlay appropriations shall be disclosed in the notes to the financial statements. The original appropriation, the appropriation period, expenditures to date, outstanding encumbrances and unencumbered balances shall be shown in a SI schedule or in a note to the financial statements. The accounting treatment of any unexpended balances shall be fully explained in the SI schedule or in a note to the financial statements. This is a special requirement of the state auditor and it does not apply to the statewide comprehensive annual financial report audit.

(b) The accounting treatment of any unexpended balances shall be fully explained in the SI schedule or in a note to the financial statements regarding the special appropriations.

S. Consideration of internal control and risk assessment in a financial statement audit: Audits performed under this rule shall include tests of internal controls (manual or automated) over assertions about the financial statements and about compliance related to laws, regulations, and contract and grant provisions. IPAs and agencies are encouraged to reference the U.S. GAOs' *standards for internal control in the federal government*, known as the "*green book*", which may be adopted by state, local, and quasi-governmental Agencies as a framework for an internal control system.

T. Required auditor's reports:

(1) The AICPA provides examples of independent auditor's reports in the appendix to chapter 4 of AAG GAS and appendix A to chapter 16 of AAG SLV. Guidance is provided in footnote 4 to appendix A to chapter 16 of AAG SLV regarding wording used when opining on budgetary statements on the GAAP basis. IPAs conducting audits under this rule shall follow the AICPA report examples. All independent auditor's reports shall include a statement that the audit was performed in accordance with auditing standards generally accepted in the United States of America *and with applicable government auditing standards* per GAGAS 6.37. This statement shall be modified in accordance with GAGAS 2.17b if some GAGAS requirements were not followed. Reports for single audits of fiscal years beginning on or after December 26, 2014 shall have references to OMB Circular A-133 replaced with references to Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance 200.110(b), AAG GAS 4.89, Example 4-1).

(2) The AICPA provides examples of the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards in the appendix to chapter 4 of AAG GAS. IPAs conducting audits under this rule shall follow the AICPA report examples.

(a) The state auditor requires the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards be dated the same date as the independent auditor's report.

(b) No separate management letters shall be issued to the agency by the auditor. Issuance of a separate management letter to an agency shall be considered a violation of the terms of the audit contract and may result in further action by the state auditor. See also Subsection F of 2.2.2.10 NMAC regarding this issue.

(3) The AICPA provides examples of the report on compliance for each major federal program and on internal control over compliance required by the uniform guidance in the appendix to chapter 13 of AAG GAS. IPAs conducting audits under this rule shall follow the AICPA report examples.

(4) The state auditor requires the financial statements, RSI, SI, and other information required by this rule, and the following reports to be *included under one report cover*: the independent auditor's report; the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards; and the report on compliance for each major federal program and on internal control over compliance required by the uniform guidance. If applicable, the independent auditor's report shall include the AU-C 725 opinion on SI, the schedule of expenditures of federal awards and the HUD financial data schedule (required by HUD guidelines on reporting and attestation requirements of uniform financial reporting standards). The report shall also contain a table of contents and an official roster. The IPA may submit a written request for an *exemption* from the "one report cover" requirement, but shall receive prior written approval from the state auditor in order to present any of the above information under a separate cover.

U. Disposition of property: Sections 13-6-1 and 13-6-2 NMSA 1978 govern the disposition of tangible personal property owned by state agencies, local public bodies, school districts, and state educational institutions. At least 30 days prior to any disposition of property included on the agency inventory list described at Subsection W of 2.2.2.10 NMAC, written notification of the official finding and proposed disposition duly sworn and subscribed under oath by each member of the authority approving the action shall be sent to the state auditor.

V. Joint powers agreements:

(1) Any joint powers agreement (JPA) shall be listed in a SI schedule in the audit report. The statewide comprehensive annual financial report schedule shall

include JPAs that are significant to the state as a whole. The schedule shall include the following information for each JPA: participants; party responsible for operations; description; beginning and ending dates of the JPA; total estimated amount of project and portion applicable to the agency; amount the agency contributed in the current fiscal year; audit responsibility; fiscal agent if applicable; and name of government agency where revenues and expenditures are reported.

(2) For self-insurance obtained under a JPA, see the GASB Codification Section J50.113.

W. Capital asset inventory:

(1) The Audit Act (at Section 12-6-10 NMSA 1978) requires agencies to capitalize only chattels and equipment that cost over five thousand dollars ($5,000). All agencies shall maintain a capitalization policy that complies with the law. All agencies shall maintain an inventory listing of capitalized chattels and equipment that cost over five thousand dollars ($5,000).

(2) Agencies shall conduct an annual physical inventory of chattels and equipment on the inventory list at the end of each fiscal year in accordance with the requirements of Section 12-6-10 NMSA 1978. The agency shall certify the correctness of the inventory after the physical inventory. This certification shall be provided to the agency's auditors. The IPA shall audit the inventory listing for correctness and compliance with the requirements of the Audit Act.

X. Tax increment development districts: Pursuant to Subsection C of Section 5-15-9 NMSA 1978, tax increment development districts (TIDDs) are political subdivisions of the state, and they are separate and apart from the municipality or county in which they are located. Section 5-15-10 NMSA 1978 states that the district shall be governed by the governing body that adopted a resolution to form the district or by a five-member board composed of four members appointed by that governing body; provided, however, that the fifth member of the five-member board is the secretary of finance and administration or the secretary's designee with full voting privileges. However, in the case of an appointed board of directors that is not the governing body, at the end of the appointed directors' initial terms, the board shall hold an election of new directors by majority vote of owners and qualified resident electors. Therefore, a TIDD and its audit firm shall apply the criteria of GASBS 14, 39, 61, and 80 to determine whether the TIDD is a component unit of the municipality or county that approved it, or whether the TIDD is a related organization of the municipality or county that approved it. If the TIDD is determined to be a related organization per the GAAP requirements, then the TIDD shall contract separately for an audit separate from the audit of the municipality or county that approved it.

Y. GASBS 68, accounting and financial reporting for pensions:

(1) PERA and ERB shall each prepare schedules of employer allocations as of June 30 of each fiscal year. The state auditor requires the following:

(a) Prior to distribution of the schedule of employer allocations, PERA and ERB shall obtain audits of their respective schedules. These audits shall be conducted in accordance with government auditing standards and AU-C 805, special considerations - audits of single financial statements and specific elements, accounts, or items of a financial statement.

(b) Pursuant to AU-C 805.16, the PERA and ERB auditors shall each issue a separate auditor's report and express a separate opinion on the AU-C 805 audit performed (distinct from the agency's regular financial statement and compliance audit). Additionally, the auditor shall apply the procedures required by AU-C 725 to all supplementary information schedules included in the schedule of employer allocations report in order to determine whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole. The IPA shall include the supplementary information schedules in the related reporting in the other-matter paragraph pursuant to AU-C 725.09, regarding whether such information is fairly stated in all material respects in relation to the schedule of employer allocations as a whole.

(c) PERA and ERB shall include note disclosures in their respective schedule of employer allocations reports that detail each component of allocable pension expense at the fund level, excluding employer-specific pension expense for changes in proportion. Each plan shall also include note disclosures by fund detailing collective fund-level deferred outflows of resources and deferred inflows of resources. The disclosures shall include a summary of changes in the collective deferred and inflows outflows of resources (excluding employer specific amounts), by year of deferral.

(d) The AU-C 805 audits and resulting separate reports on the PERA and ERB schedules of employer allocations shall be submitted to the OSA for review and release pursuant to Subsection A of 2.2.2.13 NMAC, prior to distribution to the participant employers.

(e) As soon as the AU-C 805 reports become public record, PERA and ERB shall make the information available to their participant employers.

(f) PERA and ERB shall each prepare an employer guide that illustrates the correct use of their respective schedule of employer allocations report by their participant employers. The guides shall explicitly distinguish between the plan-level reporting and any employer-specific items. The calculations and record-keeping

necessary at the employer level (for adjusting journal entries, amortization of deferred amounts, etc.) shall be described and illustrated. The employer guides shall be made available to the participant employers by June 30 of the subsequent fiscal. Stand-alone state agency financial statements that exclude the proportionate share of the collective net pension liability of the state of New Mexico shall include note disclosure referring the reader to the statewide comprehensive annual financial report for the state's net pension liability and other pension-related information.

(2) Stand-alone state agency financial statements that exclude the proportionate share of the collective net pension liability of the state of New Mexico shall include note disclosure referring the reader to the statewide comprehensive annual financial report for the state's net pension liability and other pension-related information.

Z. GASBS 77, tax abatement agreements: Unaudited, but final, GASBS 77 disclosure information shall be provided to any agency whose tax revenues are affected by the reporting agency's tax abatement agreements no later than September 15 of the subsequent fiscal year. This due date does not apply if the reporting agency does not have any tax abatement agreements that reduce the tax revenues of another agency. All tax abatement agreements entered into by an agency's component unit(s) shall be disclosed in the same manner as the tax abatement agreements of the primary government. If an agency determines that any required disclosure is confidential, the agency shall cite the legal authority for the determination.

AA. GASBS 75, accounting and financial reporting for postemployment benefits other than pensions: The retiree health care authority (RHCA) shall prepare a schedule of employer allocations as of June 30 of each fiscal year. The state auditor requires the following:

(1) Prior to distribution of the schedule of employer allocations, RHCA shall obtain an audit of the schedule. This audit shall be conducted in accordance with government auditing standards and AU-C 805, special considerations - audits of single financial statements and specific elements, accounts, or items of a financial statement.

(2) Pursuant to AU-C 805.16, the RHCA auditors shall issue a separate auditor's report and express a separate opinion on the AU-C 805 audit performed (distinct from the agency's regular financial statement and compliance audit). Additionally, the auditor shall apply the procedures required by AU-C 725 to all supplementary information schedules included in the schedule of employer allocations report in order to determine whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole. The IPA shall include the supplementary information schedules in the related reporting in the other-matter paragraph pursuant to AU-C 725.09, regarding whether such information is fairly stated in all material respects in relation to the schedule of employer allocations as a whole.

(3) RHCA shall include note disclosures in the schedule of employer allocations report that detail each component of allocable OPEB expense at the fund level, excluding employer-specific OPEB expense for changes in proportion. RHCA shall also include note disclosures by fund detailing collective fund-level deferred outflows of resources and deferred inflows of resources. The disclosures shall include a summary of changes in the collective deferred outflows and inflows of resources (excluding employer specific amounts), by year of deferral.

(4) The AU-C 805 audit and resulting separate report on the RHCA schedule of employer allocations shall be submitted to the OSA for review and release pursuant to Subsection A of 2.2.2.13 NMAC, prior to distribution to the participant employers.

(5) As soon as the AU-C 805 reports become public record, RHCA shall make the information available to its participant employers.

(6) RHCA shall prepare an employer guide that illustrates the correct use of the schedule of employer allocations report by its participant employers. The guide shall explicitly distinguish between the plan-level reporting and any employer-specific items. The calculations and record-keeping necessary at the employer level (for adjusting journal entries, amortization of deferred amounts, etc.) shall be described and illustrated. The employer guide shall be made available to the participant employers by June 30 of the subsequent fiscal year.

(7) Stand-alone state agency financial statements that exclude the proportionate share of the collective OPEB liability of the state of New Mexico, shall include note disclosure referring the reader to the statewide comprehensive annual financial report for the state's net OPEB liability and other OPEB-related information.

[2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC, 3/22/2022]

2.2.2.11 [RESERVED]

[2.2.2.11 NMAC - Repealed 3/10/2020]

2.2.2.12 SPECIFIC CRITERIA: The specific criteria described in this section shall be considered in planning and conducting governmental audits. These requirements are not intended to be all-inclusive; therefore, OSA recommends that IPAs review the NMSA and NMAC while planning governmental audits.

A. Pertaining to audits of state agencies:

(1) Due dates for agency audits: audit reports of agencies under the oversight of DFA FCD are due to OSA in accordance with the requirements of Subsection

D of Section 12-6-3 NMSA 1978 and Subsection A of 2.2.2.9 NMAC.

(2) All the individual SHARE funds shall be reported in the financial statements, either within the basic financial statements or as SI.

(3) Accounts payable at year-end and reversion calculation: If goods and services were received (as defined by generally accepted accounting principles) by the end of the fiscal year but not paid for by the end of the fiscal year, an accounts payable shall be reported for the respective amount due in both the government-wide financial statements and the fund financial statements. The *"actual"* expenditures in the budgetary comparison exclude any accounts payable that were not paid timely and therefore require a request to the financial control division to pay prior year bills out of current year budget. They are paid out of the budget of the following fiscal year. An agency's reversions are calculated using the *budgetary basis expenditures* because the agency does not have the legal authority to obligate the state for liabilities once the appropriation period has lapsed. Thus, the agency cannot keep the cash related to accounts payable that were not paid timely. This results in a negative fund balance in the modified accrual basis financial statements of a reverting fund.

(4) Net position/fund balance:

(a) Pursuant to GASBS 63.8 the government-wide statement of net position and the proprietary fund statement of net position show net position as:

(i) net investment in capital assets as defined by GASBS 63.9;

(ii) restricted (distinguishing between major categories of restrictions) as defined by GASBS 63.10; and

(iii) unrestricted as defined by GASBS 63.11.

(b) Governmental fund financial statement fund balances shall be reported in accordance with GASBS 54.

(5) Book of record:

(a) The state maintains the centralized accounting system SHARE. The SHARE data and reports are the original book of record that the auditor is auditing. Each fiscal year, the agency shall record all audit adjusting journal entries in SHARE. The financial information in SHARE shall agree to the agency's audited financial statements, with the exception of accounts payable as explained in Subsection A of 2.2.2.12 NMAC. If the agency maintains a separate accounting system, it shall be reconciled with the SHARE system and all applicable adjustments shall be recorded in SHARE in the month in which the transactions occurred. DFA FCD provides guidance to agencies, which IPAs shall review, regarding policy and procedure requirements. These documents are available on the DFA FCD website and include:

(i) the manual of model accounting practices (MAPs);

(ii) various white papers, yearly closing instructions; and

(iii) various accounting guideline memos.

(b) The statement of revenues and expenditures in the audit report shall be presented in accordance with GAAP, by function or program classification and object code. However, the budgetary comparison statements shall be presented using the level of appropriation reflected in the final approved budget. The SHARE chart of accounts reflects the following appropriation unit levels:

Appropriation unit code/appropriation unit description	
200	personal services & employee benefits
300	contractual services
400	other
500	other financing uses
600	non-budgeted

(c) Revenue categories of appropriations to state agencies are listed below. The budgetary comparison statements for state agencies shall be presented in the audit report by the revenue categories shown below and by the expenditure categories that appear in the agency's final approved budget.

(i) state general fund;

(ii) other state funds;

(iii) internal service funds/inter-agency transfers; or

(iv) federal funds.

(d) For more detail about the SHARE chart of accounts see the DFA website.

(6) Reversions to state general fund:

(a) All reversions to the state general fund shall be identified in the financial statements by the fiscal year of appropriation (i.e., reversion to state general fund - FY 16). The gross amount of the appropriation

and the gross amount of the reversion shall be shown separately.

(b) Subsection A of Section 6-5-10 NMSA 1978 states "all unreserved undesignated fund balances in reverting funds and accounts as reflected in the central accounting system as of June 30 shall revert by September 30 to the general fund. The division may adjust the reversion within 45 days of release of the audit report for that fiscal year." Failure to transfer reverting funds timely in compliance with the statute requires an audit finding.

(7) Non-reciprocal (not payments for materials or services rendered) interfund (internal) activity includes:

(a) transfers; and

(b) reimbursements (GASBS 34.410):

(i) intra-agency transfers between funds within the agency shall offset (i.e. balance). Reasons for intra-agency transfers shall be fully explained in the notes to the financial statements. In the separate audit reports of state agencies, transfers between their internal funds are shown as other financing sources or uses in the fund financial statements and as transfers (that get eliminated) in the government-wide financial statements;

(ii) inter-agency transfers (between an agency's internal funds and other funds of the state that are outside the agency such as state general fund appropriations, special appropriations, bond proceeds appropriations, reversions to the state general fund, and transfers to/from other state agencies) shall be segregated from intra-agency transfers and fully explained in the notes to the financial statements along with the agency number and SHARE fund number to whom and from whom transferred. The transfers may be detailed in supporting schedules rather than in the notes, but agency and SHARE fund numbers shall be shown. The schedule shall be presented on the modified accrual basis. The IPA is responsible for performing audit procedures on all such inter-agency transfers.

(c) Regarding inter-agency transfers between legally separate component units and the primary government (the state of New Mexico):

(i) if the inter-agency transfer is between a blended component unit of the state and other funds of the state, then the component unit's separately issued financial statements report such activity between itself and the primary government as revenues and expenses. When the blended component unit is included in the primary government's financial statements, such inter-agency transfers are reclassified as transfers (GASBS 34.318);

(ii) all resource flows between a discretely presented component unit of the state and other funds of the state shall be reported as external transactions - revenues and expenses - in the primary government's financial statements and the component unit's separately issued financial statements (GASBS 34.318);

(d) All transfers to and from SHARE fund 853, the state general fund appropriation account, shall be clearly identifiable in the audit report as state general fund appropriations, reversions, or collections;

(e) Reimbursements are transfers between funds that are used to reallocate the revenues and expenditures/expenses to the appropriate fund. Reimbursements are not reported as inter-fund activity in the financial statements.

(8) General services department capital projects: in general, GSD records the state of New Mexico capitalized land and buildings for which it is responsible, in its accounting records. The cost of furniture, fixtures, and moveable equipment owned by agencies is to be capitalized in the accounting records of the agency that purchased them. The agency shall capitalize those assets based on actual amounts expended in accordance with GSD instructions issued in Section 2.20.1.10 NMAC.

(9) State-owned motor vehicle inventory: successful management of state-owned vehicles pursuant to the Transportation Services Act (Sections 15-8-1 to 15-8-11 NMSA 1978) is dependent on reliable and accurate capital assets inventory records and physical verification of that inventory. Thus, the annual audit of state agencies shall include specific tests of the reliability of the capital assets inventory and verification that a physical inventory was conducted for both the agency's owned vehicles and long-term leased vehicles.

(10) Independent auditor's report: The independent auditor's report for state agencies, district attorneys, district courts, and the educational institutions created by New Mexico Constitution Article XII, Sec. 11 shall include an emphasis of matter paragraph referencing the summary of significant accounting principles disclosure regarding the reporting agency. The emphasis of matter paragraph shall indicate that the financial statements are not intended to present the financial position and changes in financial position of the primary government, the state of New Mexico, but just the financial position and the changes in financial position of the department. The emphasis of matter paragraph shall follow the example provided in AAG SLV 16.103 ex. A-17.

(11) Budgetary basis for state agencies: the state budget is adopted on the modified accrual basis of accounting except for accounts payable accrued at the end of the fiscal year that do not get accrued by the statutory deadline per Section 6-10-4 NMSA 1978. Those accounts payable that do not get paid timely or accrued by the statutory deadline shall be paid out of the next year's budget. If an agency needs to recognize additional accounts payable amounts that were not accrued by the

statutory deadline, then the budgetary statements and the fund financial statements require a reconciliation of expenditures, as discussed at Subsection Q of 2.2.2.10 NMAC. All transactions are recorded in the state's book of record, SHARE, under the modified accrual basis of accounting except for accounts payable not meeting the statutory deadline; therefore, the "actual" expenditures in the budgetary comparison schedules equal the expenditures as recorded in SHARE for the fund. Encumbrances related to single year appropriations lapse at year end. Appropriation periods are sometimes for periods in excess of 12 months (multiple-year appropriations). When multiple-year appropriation periods lapse, the authority for the related budgets also lapse and encumbrances can no longer be charged to those budgets. The legal level of budgetary control shall be disclosed in the notes to the financial statements. Per Subsection C of Section 9 of the General Appropriation Act of 2017, all agencies, including legislative agencies, may request category transfers among personal services and employee benefits, contractual services and other. Therefore, the legal level of budgetary control is the appropriation program level (A-Code, P-Code, and Z-Code). A-Codes pertain to capital outlay appropriations (general obligation/ severance tax or state general fund). P-Codes pertain to program/ operating funds. Z-Codes pertain to special appropriations. The IPA shall compare total expenditures for each program to the program's approved final budget to evaluate compliance.

(12) Budgetary comparisons of state agencies shall show the original and final appropriated budget (same as final budget approved by DFA), the actual amounts on the budgetary basis, and a column with the variance between the final budget and actual amounts. If a state agency presents budgetary comparisons by fund, the appropriation program code(s) (A-Code, P-Code, and Z-Code) shall be reported on the budgetary comparison schedule.

(13) Accounting for special capital outlay appropriations financed by bond proceeds:

(a) STO administers the debt service funds for various bond issues that are obligations of the state of New Mexico. STO does not report in its departmental financial statements bonds payable that are obligations of the state of New Mexico. These payables and the related bond face amounts (proceeds) are reported in the state's comprehensive annual financial report. The note disclosures associated with STO's departmental financial statements shall explain that, by statute, STO is responsible for making the state's bond payments and keeping the related records; however, it is not responsible for the related debt, the state is. Additionally, the note disclosures associated with STO's departmental financial statements shall refer the reader to detailed SI in the STO audit report and the statewide comprehensive annual financial report. The STO departmental financial statements shall include SI regarding the state of New Mexico bond obligations. The SI schedules shall show;

(i) the beginning and end-of-year bond payable balances, increases and decreases (separately presented), and the portions of each bond issuance that are due within one year, as required by GASBS 34.119;

(ii) the details of debt service requirements to maturity, as required by GASBS 38.10; and

(iii) any violations of bond covenants and related actions taken to address violations of bond covenants, as required by GASBS 38.9 and Section 12-6-5 NMSA 1978.

(b) DFA has provided accounting and reporting guidance for state agencies that receive or administer special capital outlay appropriations from the state legislature that are financed by bond proceeds. DFA's guidance is available in the "FYI 2008 Audit Forum 9/30/08" section of DFA's website at http://www.nmdfa.state.nm.us/Forums.aspx. In the notes to the financial statements, agencies disclose that the bond proceeds were allocated by the legislature to the agency to administer disbursements to the project recipients, and the agency is not obligated in any manner for the related indebtedness. Agencies also disclose the specific revenue recognition policy for these appropriations. Each agency's IPA shall audit the agency's financial statement presentation of this capital outlay project information to ensure that they are presented in accordance with accounting principles that are generally accepted in the United States.

(14) Amounts "due from other state agencies" and "due to other state agencies": if a state agency reports amounts "due from" or "due to" other state agencies the notes shall disclose the amount "due to" or "due from" each agency, the name of each agency, the SHARE fund account numbers, and the purpose of the account balance.

(15) Investments in the state general fund investment pool (SGFIP): these balances are presented as cash and cash equivalents in the statements of net position and the balance sheets of the participant agencies, with the exception of the component appropriation funds (state general fund). The notes to the financial statements of the component appropriation funds shall contain GASBS 40 disclosures for the SGFIP. This disclosure may refer the reader to the separate audit report for STO for additional information regarding the SGFIP.

(16) Format for the statement of activities: state agencies that have more than one program or function shall use the financial statement format presented in GASBS 34, Illustrations B-1 through B-4. The simplified statement of activities (GASBS 34, Illustration B-5) may not be used for agencies that have multiple programs or functions. GASBS 34.41 requires

governments to report direct expenses for each function.

B. Pertaining to audits of housing authorities:

(1) Housing authorities within the state of New Mexico consist of regional housing authorities, component units or departments of local governments, component units of housing authorities, and housing authorities created by intergovernmental agreements between cities and counties that are authorized to exercise all powers under the Municipal Housing Law, Section 3-45-1 *et seq*., NMSA 1978.

(2) The financial statements of a housing authority that is a department, program or component unit of a primary government shall be included in the financial audit report of the primary government by discrete presentation unless an exemption from this requirement has been obtained from the state auditor. In the event that a primary government determines that a housing authority is a department or program of, rather than a component unit of, the primary government, a request for exemption from the discrete presentation requirement shall be submitted to the state auditor, by the primary government. The request for exemption shall include evidence that the housing authority is not a separate legal entity from the primary government and that the corporate powers of the housing authority are held by the primary government. Evidence included in the request shall address these issues:

(a) the housing authority is not a corporation registered with the secretary of state;

(b) there was never a resolution or ordinance making the housing authority a public body corporate; and

(c) the housing authority was authorized under Section 3-45-1 *et seq*., NMSA 1978.

(d) Upon receipt of the exemption granted by the state auditor from the requirement for discrete presentation, the housing authority department or program shall be included in the financial report of the primary government like any other department or program of the primary government.

(3) Audits of public housing authorities that are departments of a local government shall be conducted by the same IPA that performs the audit of the local government. Separate audit contracts shall not be approved.

(a) Local governments are encouraged to include representatives from public housing authorities that are departments of the local government in the IPA selection process.

(b) The IPA shall include the housing authority's governing board and management representatives in the entrance and exit conferences with the primary government. If it is not possible to hold such combined conferences, the IPA shall hold separate entrance and exit conferences with housing authority's management and a member of the governing board. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor or his designee to attend all such conferences no later than 72 hours before the proposed conference.

(4) The following information relates to housing authorities that are component units of a local government.

(a) The housing authority shall account for financial activity in proprietary funds.

(b) At the public housing authority's discretion, the agency may "be audited separately from the audit of its local primary government entity. If a separate audit is made, the public housing authority audit shall be included in the local primary government entity audit and need not be conducted by the same auditor who audits the financial affairs of the local primary government entity" (Subsection E of Section 12-6-3 NMSA 1978). Statute further stipulates in Subsection A of Section 12-6-4 NMSA 1978 that "a public housing authority other than a regional housing authority shall not bear the cost of an audit conducted solely at the request of its local primary government entity."

(c) Audit reports of separate audits of component unit housing authorities shall be released by the state auditor separately from the primary government's report under a separate release letter to the housing authority.

(5) Public housing authorities and their IPAs shall follow the requirements of *guidelines on reporting and attestation requirements of uniform financial reporting standards* (UFRS), which is available on the U.S. department of housing and urban development's website under a search for UFRS. Additional administrative issues related to audits of public housing authorities follow.

(a) Housing authority audit contracts include the cost of the audit firm's AU-C 725 opinion on the financial data schedule (FDS). The preparation and submission cost for this HUD requirement shall be included in the audit contract. The public housing authority shall electronically submit a final approved FDS based on the audited financial statements no later than nine months after the public housing authority's fiscal year end. The IPA shall:

(i) electronically report on the comparison of the electronic FDS submission in the REAC staging database through the use of an identification (ID) and password;

(ii) include a hard copy of the FDS in the audit report;

(iii) render an AU-C 725 opinion on the FDS; and

(iv) explain in the notes any material differences between the FDS and the financial statements.

(b) The IPA shall consider whether any fee accountant used by the housing authority is a service organization and, if applicable, follow the requirements of AU-C 402 regarding service organizations.

(c) The IPA shall provide the housing authority with an itemized cost breakdown by program area for audit services rendered in conjunction with the housing authority.

(6) Single audit reporting issue: If a single audit is performed on the separate audit report for the public housing authority, including the housing authority's schedule of expenditures of federal awards, the housing authority federal funds do not need to be subjected a second time to a single audit during the single audit of the primary government. In this situation, the housing authority's federal expenditures do not need to be included in the primary government's schedule of expenditures of federal awards. See AAG GAS 6.15 for more information.

C. Pertaining to audits of school districts:

(1) In the event that a state-chartered charter school subject to oversight by PED is not subject to the requirement to use the same auditor as PED, that charter school is reminded that their audit contract shall be submitted to PED for approval. Charter schools shall ensure that sufficient time is allowed for PED review refer to Subsection F of 2.2.2.8 NMAC for the due date for submission of the audit contract to the OSA.

(2) Regional education cooperative (REC) audits:

(a) A separate financial and compliance audit is required on activities of RECs. The IPA shall provide copies of the REC report to the participating school districts and PED once the report has been released by the state auditor.

(b) Audits of RECs shall include tests for compliance with Section 6.23.3 NMAC.

(c) Any 'on-behalf' payments for fringe benefits and salaries made by RECs for employees of school districts shall be accounted for in accordance with GASB Cod. Sec. N50.135 and communicated to the employer in accordance with GASB Cod. Sec. N50.131.

(d) The audit report of each REC shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year. This schedule shall account for cash in the same categories used by the REC in its monthly cash reports to the PED. If there are differences in cash per the REC financial statements and cash per the REC accounting records, the IPA shall provide the adjusting entries to the REC to reconcile cash per the financial statements to cash per the REC accounting records. If cash per the REC accounting records differs from the cash amount the REC reports to PED in the monthly cash report, the IPA shall issue a finding which explains that the PED reports do not reconcile to the REC accounting records.

(3) School district audits shall address the following issues:

(a) Audits of school districts shall include tests for compliance with Section 6.20.2 NMAC and PED's manual of procedures for public schools accounting and budgeting (PSAB), with specific emphasis on supplement 7, cash controls.

(b) The audit report of each school district shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year. This schedule is also required for each charter school chartered by a school district and each charter school chartered by PED. This schedule shall account for cash in the same categories used by the district in its monthly cash reports to PED. Subsection D of Section 6.20.2.13 NMAC states that school districts shall use the "cash basis of accounting for budgeting and reporting". The financial statements are prepared on the accrual basis of accounting. Subsection E of Section 6.20.2.13 NMAC states that "if there are differences between the financial statements, school district records and department records, the IPA should provide the adjusting entries to the school district to reconcile the report to the school district records." If there are difference between the school district records and the PED report amounts, other than those explained by the adjusting entries, the IPA shall issue a finding which explains that the PED reports do not reconcile to the school district records.

(c) Any joint ventures or other Agencies created by a school district are agencies subject to the Audit Act.

(d) Student activity funds: Risk should be assessed and an appropriate sample tested regarding controls over student activity funds.

(e) Relating to capital expenditures by the New Mexico public school facilities authority (PSFA), school districts shall review capital expenditures made by PSFA for repairs and building construction projects of the school district. School districts shall also determine the amount of capital expenditures that shall be added to the capital assets of the school district and account for those additions properly. The IPA shall test the school district capital asset additions for proper inclusion of these expenditures.

(f) Sub-funds of the general fund: school district audit reports shall include individual fund financial statements for the following sub-funds of

the general fund: operational, transportation, instructional materials and teacherage (if applicable).

(4) Pertaining to charter schools:

(a) A charter school is a conversion school or start-up school within a school district authorized by the local school board or PED to operate as a charter school. A charter school is considered a public school, accredited by the state board of public education and accountable to the school district's local school board, or PED, for ensuring compliance with applicable laws, rules and charter provisions. A charter school is administered and governed by a governing body in a manner set forth in the charter.

(b) Certain GASBS 14 criteria (as amended by GASBS 39, 61, and 80) shall be applied to determine whether a charter school is a component unit of the chartering entity (the district or PED). The chartering agency (primary government) shall make the determination whether the charter school is a component unit of the primary government.

(c) No charter school that has been determined to be a component unit may be omitted from the financial statements of the primary government based on materiality. All charter schools that are component units shall be included in the basic financial statements using one of the presentation methods described in GASBS 34.126, as amended.

D. Pertaining to audits of counties: Tax roll reconciliation county governments: Audit reports for counties shall include two SI schedules.

(1) The first one is a "tax roll reconciliation of changes in the county treasurer's property taxes receivable" showing the June 30 receivable balance and a breakout of the receivable for the most recent fiscal year ended, and a total for the previous nine fiscal years. Per Subsection C of Section 7-38-81 NMSA 1978, property taxes that have been delinquent for more than 10 years, together with any penalties and interest, are presumed to have been paid.

(2) The second schedule titled "county treasurer's property tax schedule" shall show by property tax type and agency, the amount of taxes: levied; collected in the current year; collected to-date; distributed in the current year; distributed to-date; the amount determined to be uncollectible in the current year; the uncollectible amount to-date; and the outstanding receivable balance at the end of the fiscal year. This information is necessary for proper revenue recognition on the part of the county as well as on the part of the recipient agencies, under GASBS 33. If the county does not have a system set up to gather and report the necessary information for the property tax schedule, the IPA shall issue a finding.

E. Pertaining to audits of educational institutions:

(1) Educational institutions are reminded that audit contracts shall be submitted to HED for approval. Refer to Subsection F of 2.2.2.8 NMAC for the due date for submission of the audit contract to the OSA.

(2) Budgetary comparisons: the legal level of budgetary control per 5.3.4.10 NMAC shall be disclosed in the notes to the financial statements. The state auditor requires that every educational institution's audit report include budgetary comparisons as SI. The budgetary comparisons shall be audited and an auditor's opinion shall be rendered. An AU-C 725 opinion does not meet this requirement. The budgetary comparisons shall show columns for: the original budget; the revised budget; actual amounts on the budgetary basis; and a variance column. The IPA shall confirm the final adjusted and approved budget with HED. The IPA shall compare the financial statement budget comparison to the related September 15 budget submission to HED. The only differences that should exist between the HED budget submission and the financial statement budgetary comparisons are adjustments made by the institution after September 15 and audit adjustments. If the HED budget submission does not tie to the financial statement budgetary comparison, taking into account only those differences, then the IPA shall write a related finding. A reconciliation of actual revenue and expense amounts on the budgetary basis to the GAAP basis financial statements shall be disclosed at the bottom of the budgetary comparisons or in the notes to the financial statements. The reconciliation is required only at the "rolled up" level of "unrestricted and restricted - all operations" and shall include revenues and expenses. HED approved the following categories which shall be used for the budgetary comparisons.

(a) Unrestricted and restricted - All operations (schedule 1): beginning fund balance/net position; unrestricted and restricted revenues; state general fund appropriations; federal revenue sources; tuition and fees; land and permanent fund; endowments and private gifts; other; total unrestricted & restricted revenues; unrestricted and restricted expenditures; instruction; academic support; student services; institutional support; operation and maintenance of plant; student social & cultural activities; research; public service; internal services; student aid, grants & stipends; auxiliary services; intercollegiate athletics; independent operations; capital outlay; renewal & replacement; retirement of indebtedness; total unrestricted & restricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(b) Unrestricted instruction & general (schedule 2): beginning fund balance/net position; unrestricted revenues; tuition; miscellaneous fees; federal government appropriations; state government appropriations; local government appropriations; federal government contracts/grants; state government contracts/grants; local government contracts/grants; private

contracts/grants; endowments; land & permanent fund; private gifts; sales and services; other; total unrestricted revenues; unrestricted expenditures; instruction; academic support; student services; institutional support; operation & maintenance of plant; total unrestricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(c) Restricted instruction & general (schedule 3): beginning fund balance/ net position; restricted revenues; tuition; miscellaneous fees; federal government appropriations; state government appropriations; local government appropriations; federal government contracts/grants; state government contracts/grants; local government contracts/grants; private contracts/grants; endowments; land & permanent fund; private gifts; sales and services; other; total restricted revenues; restricted expenditures; instruction; academic support; student services; institutional support; operation & maintenance of plant; total restricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(3) Educational institutions shall present their financial statements using the business type activities model.

(4) Compensated absence liability is reported as follows: the statement of net position reflects the current portion of compensated absences under current liabilities and the long-term portion of compensated absences under noncurrent liabilities.

(5) Component unit issues: educational institutions shall comply with the requirements of Subsection A of 2.2.2.10 NMAC. Additionally:

(a) individual component unit budgetary comparisons are required if the component unit has a "legally adopted budget." A component unit has a legally adopted budget if it receives any federal funds, state funds, or any other appropriated funds whose expenditure authority derives from an appropriation bill or ordinance that was signed into law; and

(b) there is no level of materiality for reporting findings of component units that do not receive public funds. All component unit findings shall be disclosed in the primary government's audit report.

(6) Management discussion and analysis (MD&A): The MD&A of educational institutions shall include analysis of significant variations between original and final budget amounts and between final budget amount and actual budget results. The analysis shall include any currently known reasons for those variations that are expected to have a significant effect on future services or liquidity.

(7) Educational institutions established by Section 11 of Article XII of the New Mexico state constitution shall provide the department of finance and administration's financial control division with a draft copy of their financial statements excluding opinions and findings, pursuant to Subsection A of 2.2.2.12 NMAC.

F. Pertaining to audits of investing agencies: Investing agencies, which are defined as STO, PERA, ERB, and the state investment council, shall prepare *schedules of asset management costs* which include management fee information by investment class.

(1) For all asset classes except private asset classes and alternative investment classes, the schedules shall, at minimum, include the following information:

(a) relating to consultants: the name of the firm or individual, the location of the consultant (in-state or out-of-state), a brief description of investments subject to the agreement, and fees;

(b) relating to third-party marketers (as defined in Section 6-8-22 NMSA 1978): the name of the firm or individual, the location of the marketer (in-state or out-of-state), a brief description of investments subject to the agreement, and any fees, commissions or retainers;

(c) relating to traditional asset classes: name of the investment, asset class, value of the investment, and fees (including both "direct" and "embedded" costs).

(2) For private asset classes and alternative investment classes, the schedules shall, at minimum, include the following information:

(a) relating to consultants: the aggregate fees by asset class and consultant location (in-state or out-of-state), and a brief description of investments included in each asset class;

(b) relating to third-party marketers (as defined in Section 6-8-22 NMSA 1978): aggregate fees, commissions and retainers by asset class and third-party marketer location (in-state or out-of-state), and a brief description of investments included in each asset class;

(c) relating to alternative asset classes: the total fees by asset class (including both "direct" and "embedded" costs), and a brief description of the investments included in each asset class.

(3) These schedules shall be included as unaudited other information in the audit report.

G. Pertaining to audits of local public bodies; budgetary comparisons: Auditors shall test local public body budgets for compliance with required reserves and disclose those reserves on the face of the financial statements and in notes financial statements (if applicable).

[2.2.2.12 NMAC, Rp, 2.2.2.12 NMAC, 3/22/2022]

2.2.2.13 REVIEW OF AUDIT REPORTS AND AUDIT DOCUMENTATION:

A. Statutory requirement to review audit reports: Subsection B of Section

12-6-14 NMSA 1978 requires the state auditor or personnel of his office designated by him examine all reports of audits of agencies made pursuant to contract. All audits performed under contracts approved by the state auditor are subject to review. The OSA shall review all reports submitted by the IPA to determine if the reports are presented in accordance with the requirements of this rule and applicable auditing, accounting and financial reporting standards. The OSA shall review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. As discussed in Subsection B of 2.2.2.9 NMAC, audit reports reissued by the agency and IPA, pursuant to AU-C 560, are also subject to OSA review procedures.

B. Comprehensive reviews: Released audit reports are subject to a comprehensive report and audit documentation review by the state auditor. The IPA's audit documentation shall be assembled in one complete file or one complete set of files in one location, whether the documentation is hardcopy or electronic. The documentation shall be either all hardcopy or all electronic. OSA reviews of audit and AUP working papers include inspection of firm documentation related to compliance with governmental auditing, accounting and financial reporting standards, rules and other requirements issued by GASB, AICPA, GAO, and the OSA.

C. Consequences of deficiencies: If during the course of its review of an audit report or the related audit documentation, the OSA finds significant deficiencies that warrant a determination that the audit was not made in accordance with the provisions of the contract or applicable standards and requirements, any or all of the following action(s) may be taken;

(1) the IPA may be required by OSA to correct the deficiencies in the report or audit documentation, and reissue the audit report to the agency and any others receiving copies;

(2) the IPA's eligibility to perform future engagements may be limited in number or type of engagement pursuant to Subsection D of 2.2.2.8 NMAC;

(3) for future audit reports, for some or all audit contracts, the IPA may be required to submit working papers with the audit reports for review by the OSA prior to the release of the report; or

(4) the IPA may be referred to the New Mexico public accountancy board for possible licensure action.

D. Results of work paper reviews: After the review is completed, the OSA shall issue a letter to advise the IPA about the results of the review. The IPA shall respond in writing to all review comments when directed. If the firm disagrees with any comments, the firm shall provide references to professional standards supporting the firm's disagreement. Failure to respond shall be noted during the firm profile review process. Results of work paper reviews are confidential audit documentation.

[2.2.2.13 NMAC - Rp, 2 2.2.13 NMAC, 3/22/2022]

2.2.2.14 CONTINUING PROFESSIONAL EDUCATION AND PEER REVIEW REQUIREMENTS:

A. Continuing professional education: IPAs performing annual financial and compliance audits, or other attest engagements under GAGAS shall ensure that all members of their staff comply with the CPE requirements of the most recent revision of GAGAS.

B. Peer review requirements: IPAs performing annual financial and compliance audits, or other attest engagements under GAGAS shall comply with the requirements of the most recent revision of GAGAS relating to quality control and assurance and external peer review.

(1) Per AICPA PRP Section 1000 standards for performing and reporting on peer reviews, a firm's due date for its initial peer review is 18 months from the date the firm enrolled in the peer review program or should have enrolled, whichever is earlier. A firm's subsequent peer review is due three years and six months from the previous peer review year end.

(2) The IPA firm profile submission to the state auditor shall include copies of the following peer review documentation:

(a) the peer review report for the auditor's firm;

(b) if applicable, detailed descriptions of the findings, conclusions and recommendations related to deficiencies or significant deficiencies required by GAGAS 5.91;

(c) if applicable, the auditor's response to deficiencies or significant deficiencies;

(d) the letter of acceptance from the peer review program in which the firm is enrolled; and

(e) a list of the governmental audits reviewed during the peer review.

(3) A peer review rating of "failed" on the auditor's peer review shall disqualify the IPA from performing New Mexico governmental audits.

(4) During the procurement process IPAs shall provide a copy of their most recent external peer review report to the agency with their bid proposal or offer. Any subsequent peer review reports received during the period of the contract shall also be provided to the agency.

(5) The peer review shall meet the requirements of GAGAS 5.60 to 5.95.

(6) The New Mexico public accountancy board's substantial equivalency provision has been replaced with mobility pursuant to the 1999 Public Accountancy Act (61-28B NMSA 1978). If a CPA is performing any type of attest work subject to this rule, the firm shall maintain a New Mexico firm permit.

(7) The peer reviewer shall be familiar with this rule. This is a requirement of the state auditor that can be achieved by attendance at audit rule training provided by the OSA.

C. State auditor quality control reviews: The state auditor performs its own quality control review of IPA audit reports and working papers. An IPA that is included on the state auditor's list of approved firms for the first time may be subject to an OSA quality control review of the IPA's working papers. This review shall be conducted as soon as the documentation completion date, as defined by AU-C Section 230, has passed (60 days after the report release date). When the result of the state auditor's quality control review differs significantly from the external quality control report and corresponding peer review rating, the state auditor may no longer accept external peer review reports performed by that reviewer. In making this determination, the state auditor shall take into consideration the fact that AICPA peer reviews are performed on a risk-based or key-element approach looking for systemic problems, while the state auditor reviews are engagement-specific reviews.

[2.2.2.14 NMAC - Rp, 2.2.2.14 NMAC, 3/22/2022]

2.2.2.15 SPECIAL AUDITS AND EXAMINATIONS:

A. Fraud, waste or abuse in government reported by agencies, IPAs or members of the public:

(1) Definition of fraud: Fraud includes, but is not limited to, fraudulent financial reporting, misappropriation of assets, corruption, and use of public funds for activities prohibited by the constitution or laws of the state of New Mexico. Fraudulent financial reporting means intentional misstatements or omissions of amounts or disclosures in the financial statements to deceive financial statement users, which may include intentional alteration of accounting records, misrepresentation of transactions, or intentional misapplication of accounting principles. Misappropriation of assets means theft of an agency's assets, including theft of property, embezzlement of receipts, or fraudulent payments. Corruption means bribery and other illegal acts. (GAO-14-704G federal internal control standards paragraph 8.02).

(2) Definitions of waste and abuse: Waste is the act of using or expending resources carelessly, extravagantly, or to no purpose. Abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary operational practice given the facts and circumstances. This includes the misuse of authority or position for personal gain or for the benefit of another. Waste and abuse do not necessarily involve fraud or illegal acts. However, they may be an indication of potential fraud or illegal acts and may still impact the achievement of defined objectives. (GAO-14-704G federal internal control standards paragraph 8.03).

(3) Reports of fraud, waste & abuse: Pursuant to the authority set forth Section 12-6-3 NMSA 1978, the state auditor may conduct initial fact-finding procedures in connection with reports of financial fraud, waste and abuse in government made by agencies, IPAs or members of the public. Reports may be made telephonically or in writing through the fraud hotline or website established by the state auditor for the confidential reporting of financial fraud, waste, and abuse in government. Reports may be made telephonically to the fraud hotline by calling 1-866-OSA-FRAUD (1-866-672-3728) or reported in writing through the state auditor's website at www.saonm.org. Reports received or created by the state auditor are audit information and audit documentation in connection with the state auditor's statutory duty to examine and audit the financial affairs of every agency, or in connection with the state auditor's statutory discretion to audit the financial affairs and transactions of an agency in whole or in part.

(4) Confidentiality of sources: The identity of a person making a report and associated allegations made directly to the state auditor orally or in writing, or telephonically or in writing through the state auditor's fraud hotline or website, or through any other means, alleging financial fraud, waste, or abuse in government is confidential audit information and may not be disclosed, except as required by Section 12-6-6 NMSA 1978.

(5) Confidentiality of files: A report alleging financial fraud, waste, or abuse in government that is made directly to the state auditor orally or in writing, or telephonically or in writing through the state auditor's fraud hotline or website, any resulting special audit, performance audit, attestation engagement or forensic accounting or other non-attest engagement, and all records and files related thereto are confidential audit documentation and may not be disclosed by the OSA or the agency, except to an independent auditor, performance audit team or forensic accounting team in connection with a special audit, performance audit, attestation engagement, forensic accounting engagement, non-attest engagement, or other existing or potential engagement regarding the financial affairs or transactions of an agency. Any information related to a report alleging financial fraud, waste, or abuse in government provided to an independent auditor, performance audit team or forensic accounting team, is considered to be confidential audit or engagement documentation and is subject to confidentiality requirements, including but not limited to requirements under Subsections E and M in Section in 2.2.2.10 NMAC, the Public Accountancy Act, and the AICPA Code of Professional Conduct.

(6) The OSA may make inquiries of agencies as part of the fact-finding process performed by the OSA's special

investigations division. Agencies shall respond to the OSA inquiries within 15 calendar days of receipt or as soon as practicable under the circumstances with written notice to the OSA stating the basis for any delay. IPAs shall test compliance with this requirement and report noncompliance as a finding in the annual financial and compliance audit report.

B. Special audit or examination process:

(1) Designation: Pursuant to Section 12-6-3 NMSA 1978, in addition to the annual audit, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part. Accordingly, the state auditor may designate an agency for special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement regarding the financial affairs and transactions of an agency or local public body based on information or a report received from an agency, IPA or member of the public. For purposes of this rule "special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement" includes, without limitation, AUP, consulting, and contract close-out (results-based award) engagements that address financial fraud, waste, or abuse in government. It also includes non-attest engagements performed under the forensic services standards issued by the AICPA and engagements performed following the Code of Professional Standards issued by the Association of Certified Fraud Examiners (ACFE). The state auditor shall inform the agency of the designation by sending the agency a notification letter. The state auditor may specify the subject matter, the scope and any procedures required, the AICPA or other professional standards that apply, and for a performance audit, performance aspects to be included and the potential findings and reporting elements that the auditors expect to develop. Pursuant to Section 200.503 of Uniform Guidance, if a single audit was previously performed, the special audit, attestation engagement, performance audit or forensic accounting engagement shall be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed by other auditors. The attestation and performance audit engagements may be conducted pursuant to government auditing standards if so specified by the OSA.

(2) Costs: All reasonable costs of special audits, attestation engagements, forensic accounting engagements, non-attest engagements, or single-entity performance audits conducted pursuant to this Section shall be borne by the agency audited pursuant to Section 12-6-4 NMSA 1978. The state auditor, in its sole discretion, may apportion among the Agencies audited some or all of the reasonable costs of a multi-entity performance audit.

(3) Who performs the engagement: The state auditor may perform the special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement alone or with other professionals selected by the state auditor. Alternatively, the state auditor may require the engagement to be performed by an IPA or a team that may be comprised of any of the following: independent public accountants; individuals with masters degrees or doctorates in a relevant field such as business, public administration, public policy, finance, or economics; individuals with their juris doctorate; CFE-certified fraud examiners; CFF-certified forensic auditors; CIA-certified internal auditors; or other specialists. If the state auditor designates an agency for an engagement to be conducted by an IPA or professional team, the agency shall:

(a) upon receipt of notification to proceed from the state auditor, identify all elements or services to be solicited, obtain the state auditor's written approval of the proposed scope of work, and request quotations or proposals for each applicable element of the engagement;

(b) follow all applicable procurement requirements which may include, but are not limited to, Uniform Guidance, Procurement Code (Sections 13-1-28 through 13-1-199 NMSA 1978), or equivalent home rule procurement provisions when selecting an IPA or team to perform the engagement;

(c) submit the following information to the state auditor by the due date specified by the state auditor:

(i) a completed template for special audits, attestation engagements, performance audits or forensic accounting engagements, provided at www.osanm.org, which the agency shall print on agency letterhead; and

(ii) a completed contract form including the contract fee, start and completion date, and the specific scope of services to be performed in the format prescribed by the OSA, provided at www.osanm.org, with all required signatures on the contract.

(d) If the agency fails to select an IPA and submit the signed contract to OSA by the due date specified by the state auditor, or, if none within 60 days of notification of designation from the state auditor, the state auditor may conduct the engagement or select the IPA for that agency in accordance with the process described at Subsection F of 2.2.2.8 NMAC.

(4) Errors: Contracts that are submitted to the OSA with errors or omissions shall be rejected by the state auditor. The state auditor shall return the rejected contract to the agency indicating the reason(s) for the rejection.

(5) Recommendation rejections: In the event the agency's recommendation is not approved by the state auditor, the state auditor shall promptly communicate the decision, including the reason(s) for rejection, to the

agency, at which time the agency shall promptly submit a different recommendation. This process shall continue until the state auditor approves a recommendation and related contract. During this process, whenever a recommendation and related contract are not approved, the agency may submit a written request to the state auditor for reconsideration of the disapproval. The agency shall submit its request no later than 15 calendar days from the date of the disapproval and shall include documentation in support of its recommendation. If warranted, after review of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor shall set the meeting in a timely manner with consideration given to the agency's circumstances.

(6) Contract amendments: Any proposed contract amendments shall be processed in accordance with Subsection N of 2.2.2.8 NMAC.

(7) Access to records and documents: For any special audit, attestation engagement, performance audit or forensic accounting engagement, or non-attest engagement, the state auditor and any engaged professionals shall have available to them all documents necessary to conduct the special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement. Furthermore, pursuant to Section 12-6-11 NMSA 1978, when necessary for a special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement the state auditor may apply to the district court of Santa Fe County for issuance of a subpoena to compel the attendance of witnesses and the production of books and records.

(8) Entrance, progress and exit conferences: The IPA or other professional shall hold an entrance conference and an exit conference with the agency, unless the IPA or other professional has submitted a written request to the state auditor for an exemption from this requirement and has obtained written approval of the exemption. The OSA has the authority to notify the agency or IPA or other professional that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA or other professional and the agency shall invite the state auditor or his designee to attend all such conferences no later than 72 hours before the proposed conference or meeting. The state auditor may also require the IPA or other professional to submit its audit plan to the state auditor for review and approval. The date of the exit conference(s) and the names and titles of personnel attending shall be stated on the last page of the special audit report.

(9) Required reporting: All reports for special audits, attestation engagements, performance audits, forensic accounting engagements, or non-attest engagements related to financial fraud, waste or abuse in government undertaken pursuant to 2.2.2.15 NMAC (regardless of whether they are conducted pursuant to AICPA standards for consulting services, forensic services or for attestation engagements, non-attest engagements, or other professional standards) shall report as findings any fraud, illegal acts, non-compliance or internal control deficiencies, pursuant to Section 12-6-5 NMSA 1978. Each finding shall comply with the requirements of Subsection L of 2.2.2.10 NMAC for audit and attest engagements or Subsection D of 2.2.2.15 NMAC for non-attest engagements.

(10) Report review: As required by Section 12-6-14 NMSA 1978, the state auditor shall review reports of any special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement made pursuant to this section for compliance with the professional services contract and this rule. Upon completion of the report, the IPA or other professional shall deliver the electronic report to the state auditor with a copy of any signed management representation letter, if applicable. Unfinished or excessively deficient reports shall be rejected by the state auditor. If the report is rejected the firm shall submit an electronic version of the corrected rejected report for state auditor review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year. The IPA or other professional shall respond to all review comments as directed by the state auditor.

(11) Report release: After OSA's review of the report for compliance with the professional services contract and this rule, the state auditor shall authorize the IPA to print and submit the final report. An electronic version of the report, in the PDF format described at Subsection B of 2.2.2.9 NMAC, shall be delivered to the state auditor within five business days. The state auditor shall not release the report until all the required documents are received by the state auditor. The state auditor shall provide the agency with a letter authorizing the release of the report pursuant to Section 12-6-5 NMSA 1978. Agency and local public body personnel shall not release information to the public relating to the special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978. Except for the exception under Subsection B of 2.2.2.15 NMAC, at all times during the engagement and after the engagement report becomes a public record, the IPA or other professional(s) shall not disclose to the public confidential information about the auditee or about the engagement. Confidential information is information that is not generally known to the public through common means of providing public information like the news media and internet.

(12) Disclosure by professionals: The IPA or other professional shall not disclose information identified as confidential information provided to them by the state auditor unless otherwise specified by the state auditor. Disclosure of confidential information by the IPA or other professional may result in legal action by the state auditor, or in the case of an IPA, restriction pursuant to Subsection D of 2.2.2.8 NMAC.

(13) Payment: Progress payments up to (but not including) ninety-five percent of the contract amount do not require state auditor approval and may be made by the agency if the agency monitors the progress of the services procured. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Final payments over ninety-five percent may be made by the agency pursuant to either of the following:

(a) stated in the letter accompanying the release of the report to the agency, or

(b) in the case of ongoing law enforcement investigations, stated in a letter prior to the release of the report to the agency.

C. Agency-initiated special audits or examinations:

(1) Applicability: With the exception of agencies that are authorized by statute to conduct performance audits and forensic accounting engagements, this section applies to all special audits and examinations in which an agency enters into a professional services contract for a special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement relating to financial fraud, waste or abuse, but the agency has not been designated by the state auditor for the engagement pursuant to Subsection B of 2.2.2.15 NMAC. For purposes of this rule, "special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement" includes, without limitation, AUP, consulting, forensic services and contract close-out (results-based award) engagements that address financial fraud, waste or abuse in government.

(2) Contracting: An agency, IPA or other professional shall not enter into a professional services contract for a special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement regarding the financial affairs and transactions of an agency and relating to financial fraud, waste or abuse in government without the prior written approval of the state auditor. The proposed professional services contract shall be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA or other professional, unless the agency or IPA or other professional applies to the state auditor for an exemption and the state auditor grants the exemption. When contracting with an IPA or other professional, the agency shall contract only with an IPA or other professional that has been approved by the state auditor to conduct such work. The state auditor may, in its sole discretion, require a non-IPA professional to submit proof of qualifications, a firm profile or equivalent documentation prior to approving the contract. The contract shall include the contract fee, start and completion date, and the specific scope of services to be performed, and shall follow any template that the state auditor may provide. See Subsection F of 2.2.2.10 NMAC for applicable restrictions on the engagement letter.

(3) Applicability of other rules: The provisions outlined in Subsection B of 2.2.2.15 NMAC apply to agency-initiated special audits, attestation engagements, performance audits and forensic accounting engagements.

D. Finding requirements for special audits or examinations: Communicating findings: All finding reference numbers shall follow a consistent format. Findings required by Section 12-6-5 NMSA 1978 shall be presented in a separate schedule of findings and placed at the end of the report.

(1) Section 12-6-5 NMSA 1978 requires that for every special audit and examination made "each report set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination."

(2) Each finding shall specifically state and describe the following:

(a) condition (provides a description of a situation that exists and includes the extent of the condition and an accurate perspective, the number of instances found, the dollar amounts involved, if specific amounts were identified);

(b) criteria (identifies the required or desired state or what is expected from the program or operation; cites the specific section of law, regulation, ordinance, contract, or grant agreement if applicable);

(c) effect (the logical link to establish the impact or potential impact of the difference between the situation that exists (condition) and the required or desired state (criteria); demonstrates the need for corrective action in response to identified problems or relevant risks);

(d) cause (identifies the reason or explanation for the condition or the factors responsible for the difference between what the auditors found and what is required or expected; the cause serves as a basis for the recommendation);

(e) recommendation addressing each condition and cause; and

(f) agency response (the agency's response shall include specific planned corrective actions with a timeline and designation of what employee position(s) are responsible for meeting the deadlines in the timeline).

[2.2.2.15 NMAC - Rp, 2.2.2.15 NMAC, 3/22/2022]

2.2.2.16 ANNUAL FINANCIAL PROCEDURES REQUIRED FOR LOCAL PUBLIC BODIES WITH ANNUAL REVENUES LESS THAN FIVE HUNDRED THOUSAND DOLLARS ($500,000) (TIERED SYSTEM):

A. Annual revenue and state funded capital outlay expenditures determine type of financial reporting: All local public bodies shall comply with the requirements of Section 6-6-3 NMSA 1978. Pursuant to Section 12-6-3 NMSA 1978, the annual revenue of a local public body determines the type of financial reporting a local public body shall submit to the OSA. Local public bodies are mutual domestic water consumers associations, land grants, incorporated municipalities, and special districts.

(1) The annual revenue of a local public body shall be calculated on a cash basis as follows:

(a) Revenue shall exclude capital outlay funds. OSA defines capital outlay funds as funds expended pursuant to the Property Control Act definition of a capital outlay project. Per Section 15-3B-2 NMSA 1978 "Capital outlay project" means the acquisition, improvement, alteration or reconstruction of assets of a long-term character that are intended to continue to be held or used, including land, buildings, machinery, furniture and equipment. A "capital outlay project" includes all proposed expenditures related to the entire undertaking.

(b) Revenue shall exclude federal or private grants. For the purpose of 2.2.2.16 NMAC "private grant" means funding provided by a non-governmental entity.

(2) For the purposes of 2.2.2.16 NMAC "state funded capital outlay expenditures" are expenditures made pursuant to any funding provided by the New Mexico legislature for a capital outlay project as defined in the Property Control Act, Section 15-3B-2 NMSA 1978, either received directly by the local public body or disbursed through an administering agency.

B. Determination of revenue and services: Annually, following the procedures described in Subsection F of 2.2.2.8 NMAC, the state auditor shall provide local public bodies written authorization to obtain services to conduct a financial audit or other procedures. Upon receipt of the authorization, a local public body shall determine its annual revenue in accordance with Subsection A of 2.2.2.16 NMAC. The following requirements for financial reporting apply to the following annual revenue amounts (tiers):

(1) if a local public body's annual revenue is less than ten thousand dollars ($10,000) and the local public body did not directly expend at least fifty percent of, or the remainder of, a single capital outlay award, then the local public body is exempt from submitting a financial report to the state auditor, except as otherwise provided in Subsection C of 2.2.2.16 NMAC;

(2) if a local public body's annual revenue is ten thousand dollars ($10,000) or more but less than fifty thousand dollars ($50,000), then the local public body is exempt from submitting a financial report to the state auditor, except as otherwise provided in Subsection C of 2.2.2.16 NMAC;

(3) if a local public body's annual revenue is less than fifty thousand dollars ($50,000), and the local public body expended at least fifty percent of, or the remainder of, a single capital outlay award during the fiscal year, then the local public body shall procure the services of an IPA for the performance of a tier three AUP engagement in accordance with the audit contract for a tier three AUP engagement;

(4) if a local public body's annual revenue is greater than fifty thousand dollars ($50,000) but less than two hundred-fifty thousand dollars ($250,000), then the local public body shall procure the services of an IPA for the performance of a tier four AUP engagement in accordance with the audit contract for a tier four AUP engagement;

(5) if a local public body's annual revenue is greater than fifty thousand dollars ($50,000) but less than two hundred-fifty thousand dollars ($250,000), and the local public body expended any capital outlay funds during the fiscal year, then the local public body shall procure the services of an IPA for the performance of a tier five AUP engagement in accordance with the audit contract for a tier five AUP engagement;

(6) if a local public body's annual revenue is two hundred-fifty thousand dollars ($250,000) or greater, but less than five hundred thousand dollars ($500,000), the local public body shall procure services of an IPA for the performance of a tier six AUP engagement in accordance with the audit contract for a tier six AUP engagement;

(7) if a local public body's annual revenue is five hundred thousand dollars ($500,000) or more, this section shall not apply and the local public body shall procure services of an IPA for the performance of a financial and compliance audit in accordance with other provisions of this rule;

(8) not withstanding the annual revenue of a local public body, if the local public body expended seven hundred-fifty thousand dollars ($750,000) or more of federal funds subject to a federal single audit during the fiscal year then the local public body shall procure a single audit.

C. Exemption from financial reporting: A local public body that is exempt from financial reporting to the state auditor pursuant to Subsection B of 2.2.2.16 NMAC shall submit written certification to LGD and the state auditor. The certification shall be provided on the form made by the state auditor, available through OSA-Connect. The local public body shall certify, at a minimum:

(1) the local public body's annual revenue for the fiscal year; and

(2) that the local public body did not expend fifty percent of or the remainder of a single capital outlay award during the fiscal year.

(3) The OSA will not accept the certification of exemption from financial reporting for the current year until the prior year certifications or AUP reports (whichever is appropriate) have been submitted.

D. Procurement of IPA services: A local public body required to obtain an AUP engagement shall procure the services of an IPA in accordance with Subsection F of 2.2.2.8 NMAC.

E. Access to Records and Documents: For any AUP the agency should produce all documents necessary to conduct the engagement.

F. Requirements of the IPA selected to perform the AUP:

(1) The IPA shall provide the local public body with a dated engagement letter during the planning stages of the engagement, describing the services to be provided. See Subsection F of 2.2.2.10 NMAC for applicable restrictions on the engagement letter.

(2) The IPA may not subcontract any portion of the services to be performed under the contract with the local public body except for the activation of a contingency subcontractor form in the event the IPA is unable to complete the engagement.

(3) The IPA shall hold an entrance conference and an exit conference with the local public body. The entrance and exit conference shall occur in the forum agreed to by the local public body and the IPA, to include virtual or telephonic options. The OSA reserves the right to require an in-person entrance or exit conference. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor or his designee to attend all such conferences no later than 72 hours before the proposed conference or meeting.

(4) The IPA shall submit the report to the OSA for review in accordance with the procedures described at Subsection B of 2.2.2.9 NMAC. Before submitting the report to OSA for review, the IPA shall review the report using the AUP report review guide available on the OSA's website at www.saonm.org. The report shall be submitted to the OSA for review with the completed AUP report review guide. Once the AUP report is officially released to the agency by the state auditor (by a release letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing, the AUP report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable. This requirement only applies to agencies with a governing authority, such as a board of directors, board of county commissioners, or city council, which is subject to the Open Meetings Act. The IPA shall ensure that the required communications to those charged with governance are made in accordance with AU-C 260.12 to 260.14.

G. Progress payments:

(1) Progress payments up to ninety-five percent of the contract amount do not require state auditor approval and may be made by the local public body if the local public body ensures that progress payments made do not exceed the percentage of work completed by the IPA. If requested by the state auditor, the local public body shall provide the OSA a copy of the approved progress billing(s).

(2) Final payments from ninety-five percent to one hundred percent may be made by the local public body pursuant to either of the following:

(a) stated in the letter accompanying the release of the report to the agency, or

(b) in the case of ongoing law enforcement investigations, stated in a letter prior to the release of the report to the agency. In this situation a letter releasing the report to the agency will be issued when it is appropriate to release the report.

H. Report due dates, notification letters and confidentiality:

(1) For local public bodies with a June 30 fiscal year-end that qualify for the tiered system, the report or certification due date is December 15. Local public bodies with a fiscal year end other than June 30 shall submit the AUP report or certification no later than five months after the fiscal year-end. Late AUP reports (not the current reporting period) are due not more than six months after the date the contract was executed. An electronic copy of the report shall be submitted to the OSA. AUP reports submitted via fax or email shall not be accepted. A copy of the signed dated management representation letter shall be submitted with the report. If a due date falls on a weekend or holiday, or if the OSA is closed due to inclement weather, the report is due the following business day by 5:00 p.m. If the report is mailed to the state auditor, it shall be postmarked no later than the due date to be considered filed by the due date. If the due date falls on a weekend or holiday the audit report shall be postmarked by the following business day.

(2) As soon as the IPA becomes aware that circumstances exist that will make the local public body's AUP report be submitted after the applicable due date, the auditor shall notify the state auditor of the situation in writing. This notification shall consist of a letter, not an email. However, a scanned version of the official letter sent via email is acceptable. The late AUP notification letter is subject to the confidentiality requirements detailed at Subsection M of 2.2.2.10 NMAC. This does not prevent the state auditor from notifying the

legislative finance committee or applicable oversight agency pursuant to Subsections F and G of Section 12-6-3 NMSA 1978. There shall be a separate notification for each late AUP report. The notification shall include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by the local public body. If the IPA will not meet the expected report submission date, then the IPA shall send a revised notification letter. In the event the contract was signed after the report due date, the notification letter shall still be submitted to the OSA explaining the reason the AUP report will be submitted after the report due date. The late report notification letter is not required if the report was submitted to the OSA for review by the deadline, and then rejected by the OSA, making the report late when resubmitted.

(3) Local public body personnel shall not release information to the public relating to the AUP engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978. At all times during the engagement and after the AUP report becomes a public record, the IPA shall follow applicable professional standards and 2.2.2 NMAC regarding the release of any information relating to the AUP engagement.

I. Findings: All AUP engagements shall report as findings any fraud, illegal acts, non-compliance or internal control deficiencies, consistent with Section 12-6-5 NMSA 1978. The findings shall include the required content listed at Subparagraph (d) of Paragraph (1) of Subsection L of 2.2.2.10 NMAC.

J. Review of AUP reports and related workpapers: AUP shall be reviewed by the OSA for compliance with professional standards and the professional services contract. Noncompliant reports shall be rejected and not considered received. Such reports shall be returned to the firm and a copy of the rejection letter shall be sent to the local public body. If the OSA rejects and returns an AUP report to the IPA, the report shall be corrected and resubmitted to the OSA by the due date, or the IPA shall include a finding for non-compliance with the due date. The IPA shall submit an electronic version of the corrected rejected report for OSA review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year. The OSA encourages early submission of reports to avoid findings for late reports. After its review of the AUP report for compliance with professional standards and the professional services contract, the OSA shall authorize the IPA to print and submit the final report. An electronic version of the AUP report, in PDF format, as described at Subsection B of 2.2.2.9 NMAC, shall all be delivered to the OSA within five business days. The OSA shall not release the AUP report until the electronic version of the report is received by the OSA. The OSA shall provide the local public body with a letter authorizing the release of the report after the required five day waiting period. Released reports may be selected by the OSA for comprehensive report and workpaper reviews. After such a comprehensive report and workpaper review is completed, the OSA shall issue a letter to advise the IPA about the results of the review. The IPA shall respond to all review comments as directed. If during the course of its review, the OSA finds significant deficiencies that warrant a determination that the engagement was not performed in accordance with provisions of the contract, applicable AICPA standards, or the requirements of this rule, any or all of the following action(s) may be taken:

(1) the IPA may be required to correct the deficiencies in the report or audit documentation, and reissue the AUP report to the agency and any others receiving copies;

(2) the IPA's eligibility to perform future engagements may be limited in number or type of engagement pursuant to Subsection D of 2.2.2.8 NMAC;

(3) for future reports, for some or all contracts, the IPA may be required to submit working papers with the reports for review by the OSA prior to the release of the report; or

(4) the IPA may be referred to the New Mexico public accountancy board for possible licensure action.

K. IPA independence: IPAs shall maintain independence with respect to their client agencies in accordance with the requirements of *government auditing standards*, December 2018 revision, issued by the US-GAO (GAGAS 3.17-3.108). [2.2.2.16 NMAC - Rp 2.2.2.16 NMAC, 3/22/2022]

HISTORY of 2.2.2 NMAC:
Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under SA Rule No. 71-1, Regulations of State Auditor Relating to Audit Contracts with Independent Auditors by State Agencies, filed 5/14/1971; SA Rule No. 71-2, Regulations of State Auditor for Audits by Independent Auditors, filed 5/27/1971; SA Rule No. 72-1, Regulations of State Auditor Relating to Audit Contracts With Independent Auditors by Agencies of the State of New Mexico, filed 6/1/1972; SA Rule No. 72-2, Regulations of State Auditor for Audits by Independent Auditors, filed 6/1/1972; SA Rule No. 74-1, Regulations of State Auditor Relating to Reporting Statutory Violations, filed 2/28/1974; SA Rule No. 74-2, Rotation of Assignments, filed 2/28/1974; SA No. 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 11/3/1978; Amendment No. 1 to SA Rule 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 5/28/1980; SA Rule No. 82-1, Regulation Governing the Auditing of

New Mexico Governmental Agencies, filed 12/17/1982; SA Rule No. 84-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 4/10/1984; SA Rule No. 85-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 1/28/1985; SA Rule No. 85-3, Regulation for State Agencies Concerning NCGA Statement No. 4 - Accounting and Financial Reporting Principles for Claims and Judgements and Compensated Absences, filed 4/16/1980; SA Rule No. 85-4, Regulations Governing the Auditing of Housing Authorities of the State of New Mexico, filed 6/12/1985; SA Rule No. 85-5, Regulations Pertaining to Single Audits of State Agencies and Local Public Bodies, filed 6/17/1985; SA Rule No. 85-6, Audits of Grants to Subrecipients, filed 6/17/1985; SA Rule 86-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 1/20/1986; SA Rule No. 86-2, Regulation Governing Violations of Criminal Statutes in Connection with Financial Affairs, filed 3/20/1986; SA Rule No. 86-3, Professional Services Contracts, filed 7/9/1986; SA Rule 87-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2/13/1987; SA Rule 87-2, Approval of Audit Contracts, filed 4/2/1987; SA Rule 87-3, Audit Requirements for Deferred Compensation, Retirement Plans, Budget and Public Money for the State of New Mexico, filed 8/14/1987; SA Rule 88-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2/10/1988; SA Rule 89-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/10/1989; SA Rule 90-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/1/1990; SA Rule 90-3, Auditor's Responsibilities Related to Fees Collected on Convictions Relating to Intoxicating Liquor and Controlled Substances, filed 5/7/1990; SA Rule 91-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/13/1991; SA Rule 92-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/6/1992; SA Rule 93-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2/25/1993; SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2/25/1994; Amendment 1 to SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 5/16/1994; SA Rule 95-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/16/1995; and 2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies, filed 4/2/1996.

History of Repealed Material:
2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies - Repealed, 3/30/2001.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 3/29/2002.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 4/30/2003.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 3/31/2004.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 5/13/2005.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 3/16/2006.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 4/16/2007.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 4/15/2008.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 2/27/2009.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 2/12/2010.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 2/28/2011.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 2/15/2012.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 2/28/2013.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 2/28/2014.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 3/16/2015.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 3/15/2016.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 3/14/2017.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 2/27/2018.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 3/10/2020.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies - Repealed, 3/22/2022.

Other History:
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies, filed 2/15/2018, is replaced by 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies, effective 3/10/2020.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies, filed 2/27/2020, is replaced by 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies, effective 3/22/2022.

GAME AND FISH DEPARTMENT

The State Game Commission voted to repeal 19.31.22 NMAC, Landowner Certification of Non-Navigable Waters on an emergency basis due to the New Mexico Supreme Court decision in Adobe Whitewater Club v. N.M. State Game Commission, S-1-SC-38195). The emergency basis for the State Game Commission vote was in accordance with emergency rule provisions in 14-4-5.6 NMSA (1978). (filed 1/2/2018), effective 3/2/2022.

GAME AND FISH DEPARTMENT

The State Game Commission at its 03/04/2022 meeting, repealed its rule 19.31.2 NMAC, Hunting and Fishing License Revocation, filed 04/01/2019, and replaced it with 19.31.2 NMAC, Hunting and Fishing License Revocation, adopted on 03/04/2022 and becomes effective 04/01/2022.

GAME AND FISH DEPARTMENT

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND FISHING
PART 2 HUNTING AND FISHING LICENSE REVOCATION

19.31.2.1 ISSUING AGENCY: New Mexico department of game and fish.
[19.31.2.1 NMAC - Rp, 19.31.2.1 NMAC, 4/1/2022]

19.31.2.2 SCOPE: Anyone who violates the provisions of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978, the Interstate Wildlife Violator Compact (Chapter 11 NMSA 1978) and the Parental Responsibility Act (Chapter 40 NMSA 1978).
[19.31.2.2 NMAC - Rp, 19.31.2.2 NMAC, 4/1/2022]

19.31.2.3 STATUTORY AUTHORITY: Sections 11-16-5, 11-16-6, 17-1-14, 17-2-10.3, 17-3-34, 30-14-1, 40-5A-3, and 40-5A-6 NMSA 1978.
[19.31.2.3 NMAC - Rp, 19.31.2.3 NMAC, 4/1/2022]

19.31.2.4 DURATION: Permanent.
[19.31.2.4 NMAC - Rp, 19.31.2.4 NMAC, 4/1/2022]

19.31.2.5 EFFECTIVE DATE: April 1, 2022 unless a later date is cited at the end of a section or paragraph.
[19.31.2.5 NMAC - Rp, 19.31.2.5 NMAC, 4/1/2022]

19.31.2.6 OBJECTIVE: To revoke, suspend or deny the privileges of any person who persistently, flagrantly or knowingly violates any of the provisions of Chapter 17 NMSA 1978, any rule adopted by the state game commission, the conditions of their agreement, license, permit or privileges, or Section 30-14-1 NMSA 1978; whose name appears on a HSD certified list of obligors not in compliance with the Parental Responsibility Act, Section 40-5A-1 NMSA 1978; who fails to pay a penalty assessment levied pursuant to Section 17-2-10.1 NMSA 1978; who fails to appear, after proper notice, for hearings as required by law or regulation pursuant to Section 17-2-10.3 NMSA 1978; who has a civil judgment assessed against them pursuant to Section 17-2-26 NMSA 1978 until those damages have been paid in full; whose privileges have been revoked by a wildlife violator compact member state or of any resident that fails to meet the terms of a citation issued from a compact member state pursuant to the Interstate Wildlife Violator Compact, Section 11-16-1 NMSA 1978; or, who does not comply with a department sponsored private lands agreement.
[19.31.2.6 NMAC - Rp, 19.31.2.6 NMAC, 4/1/2022]

19.31.2.7 DEFINITIONS:

A. "Commission" means the New Mexico state game commission.

B. "Conviction" means any adjudication of guilt; plea of guilty or nolo contendere accepted by the court; or payment of a fine, court cost, court order or penalty assessment; or forfeiture of collateral; regardless of whether sentencing or imposition of sentencing has been deferred or suspended.

C. "Department" means New Mexico department of game and fish.

D. "Director" means the director of the department of game and fish.

E. "HSD" means the New Mexico human services department.

F. "Notice of contemplated action" or **"NCA"** means a written notice that the commission is considering revoking a respondent's privileges, the basis for the action and the manner in which they can request a hearing.

G. "Notice of suspension" or **"NOS"** means a written notice that the department has suspended a respondent's privileges until they come into compliance with parental responsibility obligations to HSD, compliance with criminal obligations to a court, compliance with criminal or civil obligations to the department or that the department has suspended or revoked the respondent's privileges in accordance with the Interstate Wildlife Violators Compact.

H. "Obligor" means a person who has been ordered to pay child or spousal support pursuant to a judgment and order for support.

I. "Privilege(s)" means the ability to purchase, receive, obtain or possess any license, permit, certificate, registration, authorization or agreement issued by the department, including but not limited to, hunting, fishing, trapping, private land hunting authorizations or permits, guiding and outfitting.

J. "Respondent" means any person who is subject to revocation or suspension.

K. "Revocation" means when a person's privileges are withheld by the commission or department, after notice and opportunity for a hearing, for a definite period of time.

L. "Suspension" means a person's privileges are withheld by the commission or department until the person comes into compliance.
[19.31.2.7 NMAC - Rp, 19.31.2.7 NMAC, 4/1/2022]

19.31.2.8 CRIMINAL REVOCATION CATEGORIES AND POINTS: Each conviction or penalty assessment for a violation of

Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or commission rule will result in the assessment of points. Any person with 20 or more points accumulated within any consecutive three-year period shall have all of his or her privileges subject to revocation or suspension. The tolling of time for the three consecutive years shall begin from the date of conviction or the date a penalty assessment was accepted.

A. 40-point criminal violations:

(1) hunting with the aid of an artificial light or spotlight, in violation of Section 17-2-31 NMSA 1978;

(2) felony waste of game in violation of Section 17-2-8 NMSA 1978;

(3) selling, offering for sale, offering to purchase or purchasing any game animal, game bird or game fish or parts thereof in violation of Section 17-2-7 NMSA 1978;

(4) any violation of Section 17-3-45 NMSA 1978 related to shooting from an aircraft involving any game animal, game bird or any state listed threatened or endangered animal;

(5) applying for or receiving an outfitter or guide registration while revoked;

(6) any violation of Section 17-3-48 NMSA 1978;

(7) any violation of Section 17-3-49 NMSA 1978;

(8) except as otherwise provided by Sections 17-2-37 to 17-2-46, taking, possessing, transporting, exporting, processing, selling or offering for sale, or shipping any species or subspecies of wildlife listed on the state list of endangered or threatened species or the United States' list of endangered native and foreign fish and wildlife;

(9) knowingly or willfully introducing an aquatic invasive species, in violation of Section 17-4-35 NMSA 1978; or

(10) accessory to any of the above violations.

B. 20-point criminal violations:

(1) illegally taking, attempting to take, killing, capturing or possessing any big game species outside of hunting season in violation of Section 17-2-7 or 17-3-33 NMSA 1978, except for possession of head, antlers or horns found in the field penalty assessment violations;

(2) hunting big game without a license in violation of Section 17-3-1 NMSA 1978;

(3) misdemeanor waste of game in violation of Section 17-2-8 NMSA 1978;

(4) hunting on public land (lands owned by the U.S. government, state of New Mexico, state land office or New Mexico game commission) with a license which was valid only on private land;

(5) hunting in a closed area or hunting big game outside the ranch boundaries for which a ranch only license is issued or hunting big game in the wrong game management unit;

(6) any violation of Section 17-3-45 NMSA 1978 related to shooting from an aircraft involving species other than game animals, game birds or state listed threatened or endangered animals;

(7) exceeding the bag limit of big game;

(8) criminal trespass, in violation of Section 30-14-1 NMSA 1978, when in connection with hunting, fishing or trapping activity; revocation to be for no less than three years;

(9) any violation of Section 17-3-6 NMSA 1978;

(10) any violation of Section 17-2-7.1 NMSA 1978 relating to interference with hunting, fishing or trapping;

(11) any violation of Section 17-2-29 NMSA 1978; revocation for a period of one year as prescribed by Section 17-2-30 NMSA 1978;

(12) outfitter allowing or using an unregistered person to perform outfitting or guiding services;

(13) guiding or outfitting without being registered in violation of Section 17-2A-3 NMSA 1978;

(14) using an outfitter or guide license issued to another;

(15) hunting with a license obtained through the special drawing pool without being contracted with a New Mexico outfitter;

(16) any violation of the provisions of any special use of wildlife permit issued by the department pursuant to Chapter 17 NMSA 1978 and its implementing rules;

(17) procurement, possession or use of any additional big game or turkey license or tag, except as provided by rule;

(18) any violation of Section 17-2-4.2 NMSA 1978;

(19) selling or offering for sale any license issued to a person.

(20) importation or possession of any species listed as group II, III or IV on the director's "species importation list" in violation of Section 17-3-32 NMSA 1978 or 19.31.10 NMAC;

(21) any person who obtains any license, permit or stamp by falsely claiming a military discount; or

(22) accessory to any of the above violations.

C. 10-point criminal violations:

(1) illegally taking, attempting to take, killing, capturing or possession of any big game species during hunting season;

(2) illegally taking, attempting to take, killing, capturing or possessing any turkey or small game in violation of Section 17-2-7 or 17-3-33 NMSA 1978;

(3) hunting, taking or attempting to take any protected game animal, game bird, game fish or furbearer on private land without written permission, in violation of 19.31.10 NMAC;

(4) harassing a game animal;

(5) use of an aircraft or drone to locate, harass, drive or rally a game animal;

(6) fail to properly tag big game species or turkey as prescribed;

(7) using an invalid or voided tag or using a tag of any other person;

(8) fishing without a license or hunting small game or turkey without a license;

(9) exceeding the bag limit of small game or turkey;

(10) retention of live game animal or game bird;

(11) refusing or failing to produce an outfitter contract or not having a signed contract prior to hunting;

(12) applying or allowing someone to apply in the special drawing pool without a contract;

(13) hunting or collecting non-game without a license or permit;

(14) applying or aiding any person in applying in the special drawing pool with an unregistered or unqualified outfitter number;

(15) hunting with a license obtained through the special drawing pool without being accompanied by a New Mexico outfitter or their guide; or

(16) accessory to any of the above violations.

D. five-point criminal violations:

(1) illegal possession of any head, horns or antlers of a game animal found in the field;

or

(2) any provision of Chapter 17 NMSA 1978 and its implementing rules not specifically listed herein.

E. three-point criminal violations:

(1) hunting, fishing or trapping without proper stamp(s); or

(2) using any department issued permit without possessing the proper stamp(s).

[19.31.2.8 NMAC - Rp, 19.31.2.8 NMAC, 4/1/2022]

19.31.2.9 ADMINISTRATIVEREVOCATION CATEGORIES AND POINTS: Any person may be assessed administrative revocation points for violations as provided below. Any person with 20 or more points accumulated within any consecutive three-year period shall have all of his or her privileges subject to revocation or suspension. An outfitter, guide or applicant's administrative revocation points shall only be against their outfitting or guiding registration unless they have accumulated 20 or more criminal revocation points. Administrative revocation points for landowners or their authorized ranch contact shall only be for the revocation or suspension of their private land program participation privileges unless they have accumulated 20 or more criminal revocation points.

A. 20 points:

(1) outfitter or guide failure to comply with registration audit or conditions;

(2) outfitter or guide misrepresentation;

(3) outfitter or guide failure to disclose;

(4) landowner's or authorized ranch contact's misrepresentation or violation of the conditions of a contract, application or agreement with the department;

(5) any person submitting, or allowing to be submitted for them, false or fraudulent harvest reporting or pelt tagging information as required by rule; or

(6) any person purchasing a license, permit, certificate or registration without sufficient funds to pay or who stops payment for same.

B. 10 points:

(1) outfitting on state or federal lands without a proper permit or authorization;

(2) outfitter breach of contract; or

(3) outfitter, guide, landowner or authorized ranch contact failure to report illegal activity.

C. five points:

(1) outfitter or guide violation of any conditions of a state or federal permit or authorization;

(2) outfitter or guide failure to comply with any local, state or federal laws other than outfitting on state or federal lands without a proper permit or authorization;

(3) outfitter failure to supervise guides; or

(4) any outfitter or guide misconduct not otherwise specifically listed herein.

D. outfitters, guides and landowners or their authorized ranch contact shall be notified when points are assessed.

[19.31.2.9 NMAC - Rp, 19.31.2.9 NMAC, 4/1/2022]

19.31.2.10 TIMEFRAMES: Any person found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or commission rule, after notice and opportunity to be heard by a hearing officer, shall have their privileges revoked for a definite period of time in accordance with Section 17-1-14 NMSA 1978.

A. First revocation: Any person subject to revocation for the first time may be revoked for up to three years or as provided for in statute. Stipulated agreements may only be used for first time revocations and any stipulated agreement shall be considered a first revocation for the purpose of calculating second or subsequent revocation timeframes.

B. Second revocation: Any person, who is subject to a second revocation may be revoked for up to five years.

C. Third revocation: Any person, who is subject to a third revocation, shall be revoked for no less than ten years.

D. Felony conviction: Any person convicted of a felony waste of game violation for the first time shall have their privileges revoked for no less than seven years and no more than ten years. Any person convicted of a felony waste of game violation for a second or subsequent time shall have their privileges revoked for no less than 10 years and no more than 99 years.

E. Enhancement: The department may recommend any period of revocation longer than those set in Sections A through C of this section to a hearing officer during a hearing requested by a respondent or to the commission, if no hearing was requested by the respondent, when a respondent has accrued 40 or more revocation points within a three year period or when a respondent has accrued 20 or more revocation points and is subject to civil restitution for any animal designated as a trophy animal under 19.30.11 NMAC in connection with these points or for any person who accrues additional violation points while on revocation for a separate offense. Any such recommendation shall be supported with written justification detailing the recommendation and the egregious circumstances. Neither the hearing officer nor the commission shall be bound by the department's recommendation but shall consider it in determining the appropriate time period for a respondent's revocation.

F. Mitigation: The department may recommend any period of revocation shorter than those set in Sections A through C of this section to a hearing officer during a hearing requested by a respondent or to the commission, if no hearing was requested by the respondent, when the department believes mitigating circumstances exist. Any such recommendation shall be supported with written justification detailing the recommendation and the mitigating circumstances. Neither the hearing officer nor the commission shall be bound by the department's recommendation but shall consider it in determining the appropriate time period for a respondent's revocation.

G. Private land program violations: Any person, corporation or management authority found not complying with a department sponsored private lands agreement shall have all of their private lands program privileges revoked for up to three years for a first offense, no less than five years for a second offense and no less than 10 years for a third or subsequent offense. Such a revocation shall attach to the property associated with the violations and no change of ownership, change of authorized ranch contact nor any other change in management shall not reinstate a property which was associated with this type of revocation. The property shall remain inactive and the department shall not issue any private land authorizations for any species to any property or any portion of any property involved in a private land program revocation for the duration of the revocation time period even if the property is sold, changes management, is subdivided or otherwise altered.

H. PRA, IWVC violators and penalty assessments: Any person not in compliance with the Parental Responsibility Act (PRA) Section 40-5A-1 NMSA 1978, the Interstate Wildlife Violator Compact (IWVC) Section 11-16-1 NMSA 1978 or who has failed to pay a penalty assessment citation to the department within the amount of time allowed shall have their privileges revoked or suspended until in compliance (PRA) or for the time period designated by the original revoking state (IWVC) or until the penalty assessment citation has been paid in full.

I. Revocations shall be consecutive: All revocations shall commence consecutively to any current revocation or suspension.

J. Timeline to begin revocation process: If the department fails to initiate (initiation shall be calculated based on the post mark on the NCA or NOS letter) a revocation or suspension action against an individual within one year of the date that the individual is either convicted of an act or accepts a penalty assessment misdemeanor, or a person is issued an administrative citation and assessed administrative points, which results in the accumulation of 20 or more points, the department shall not bring a revocation or suspension action against that individual unless and until that individual is either convicted of an additional violation or accepts an additional penalty assessment misdemeanor of any point value within three years of the most recent point accrual originally equaling or exceeding 20 points.

[19.31.2.10 NMAC - Rp, 19.31.2.10 NMAC, 4/1/2022]

19.31.2.11 REVOCATION AND SUSPENSION PROCEDURES:

A. Revocation: The department shall mail out a NCA when it determines that a person has accumulated 20 or more points, or when the commission is contemplating revoking a landowner's or authorized ranch contact's private land program privileges to participate in any department sponsored private land program or when the department determines that there has been a violation of the terms of a permit, license or authorization. An NCA shall clearly describe the proposed action and shall contain the following**:**

(1) Accrual of points: That the respondent has accrued 20 or more violation points within a three-year period and they are subject to having their privileges revoked.

(2) Hearing may be requested: That the respondent may secure a hearing before a hearing officer designated by the commission by mailing a request for a hearing letter to the department at 1 Wildlife Way, Santa Fe, NM 87507 and that a request for hearing shall only be deemed timely if it is postmarked within 20 calendar days after service of the department's NCA to the respondent.

(3) Rights of respondent: A person entitled to be heard under this rule shall have the right to be represented by counsel

or may appear on their own behalf; to present all relevant evidence by means of witnesses, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues.

(4) Written request: Upon written request to another party, any party is entitled to:

(a) Obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(b) Inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

(c) The party to whom such a request is made shall comply with the request within 20 calendar days after the delivery of the request. No such request shall be made less than 20 calendar days before the hearing.

B. Suspension: The department shall mail out a NOS when it determines that there is sufficient evidence that a person is named on the wildlife violator compact, has failed to appear in court, has failed to pay a penalty assessment citation in full within the timeframe allowed, has failed to pay a civil judgement in full, or has entered into a voluntary suspension pursuant to a civil assessment. The NOS shall clearly describe the suspension of privileges and shall contain the remedy for the suspension.

C. Deadlines: If any deadline falls on a Saturday, Sunday, or state-recognized holiday, the deadline shall be extended to the next business day.

D. Department may initiate process: The commission grants approval to the department, through the director, to initiate the NCA or NOS process without commission consideration and to carry out suspensions associated with any NOS. The commission retains all authority for final revocation decisions.

[19.31.2.11 NMAC - Rp, 19.31.2.11 NMAC 4/1/2022]

19.31.2.12 NO HEARING REQUESTED: If a respondent does not mail a request for a hearing within the time frame and in the manner required by this rule, or the notice mailed by the department is returned as undeliverable or unclaimed at the address the department has on file, the commission may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

A. The commission shall consider the department's submission of names of respondents who have not requested a hearing at a properly scheduled commission meeting and the respondent's privileges shall be automatically revoked or suspended pursuant to this rule.

B. Within 20 days after the commission's decision is rendered and signed by the chairperson of the commission, the department shall serve upon the respondent a copy of the written decision.

[19.31.2.12 NMAC - Rp, 19.31.2.12 NMAC 4/1/2022]

19.31.2.13 HEARING REQUESTED: If a respondent requests a hearing as provided by this rule, the department, within 20 calendar days of receipt of such request, shall notify the respondent of the time and place of the hearing, the name or names of the person or persons who shall conduct the hearing for the commission, and the statutes and rules authorizing the commission to take the contemplated action. The hearing shall be held not more than 90 or less than 30 days from the date of service of such notice unless a continuance is granted to either party by the hearing officer. If a continuance has been requested by the department and granted by the hearing officer the hearing shall be rescheduled within 60 days from the original hearing date. If a continuance has been requested by the violator and granted by the hearing officer all timelines are waived for the hearing. Continuances may only be granted for good cause. The decision to grant or deny a continuance is at the sole discretion of the hearing officer.

[19.31.2.13 NMAC - Rp, 19.31.2.13 NMAC, 4/1/2022]

19.31.2.14 STIPULATED AGREEMENTS: At the department's discretion, a person entitled to be heard under this rule for a first-time revocation may enter into a written stipulated agreement with the department. Signing such an agreement shall waive the person's right to a hearing and the filing of a written exception. The agreement shall be presented to the commission as the department's recommendation and the commission retains authority for the final decision.

[19.31.2.14 NMAC - Rp, 19.31.2.14 NMAC, 4/1/2022]

19.31.2.15 METHOD OF SERVICE:

A. Any NCA, notice of hearing or written decision by the commission shall be served by certified mail, return receipt requested, directed to the respondent, at their last known address as shown by the records of the department of game and fish. Notice by certified mail shall be deemed to have been served on the date born by the return receipt showing delivery or the last attempted delivery of the notice or decision to the respondent or refusal to accept delivery of the notice or decision.

B. Any NOS shall be given either by personal delivery to the person to be notified or by deposit in the United States mail, addressed to the person at the address as shown by the records of the department of game and fish. The giving of notice by mail is complete upon the expiration of seven days after deposit of the notice in the mail. Proof of the giving of notice in either manner may be made by the certificate of any officer or employee of the department, naming the person to whom the notice was given and specifying the time, place and manner of the giving of the notice. Notice is given when a person refuses to accept notice.

[19.31.2.15 NMAC - Rp, 19.31.2.15 NMAC, 4/1/2022]

19.31.2.16 VENUE: Hearings held under this rule shall be conducted in Santa Fe county or Bernalillo county, New Mexico. Under exigent circumstances, and at the discretion of the hearing officer, the hearing may be held in another county in New Mexico. Hearings may be conducted in person, via video conference, telephone or other equivalent electronic method with the approval of the hearing officer. Witnesses may appear in person, via video conference, telephone or other equivalent electronic method.
[19.31.2.17 NMAC - Rp, 19.31.2.17 NMAC, 4/1/2022]

19.31.2.17 HEARING OFFICER: All hearings under this rule shall be conducted by a hearing officer who is designated by the commission. The hearing officer may be disqualified as provided for under the rules of civil procedure by filing an affidavit of disqualification with the department.
[19.31.2.18 NMAC - Rp, 19.31.2.18 NMAC, 4/1/2022]

19.31.2.18 RULES OF EVIDENCE: The hearing officer shall consider a certified copy or a filed copy of a conviction from any court of competent jurisdiction as conclusive evidence of a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or commission rule. In cases where court records associated with a conviction are not available, the official form of the records maintained by either the court or the department of game and fish shall be admissible. These records shall also stand as conclusive evidence of a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or commission rule. In the case of hearings in which a criminal conviction is not germane, the standard of proof shall be a preponderance of the evidence.

A. Admission of evidence: In proceedings held under this regulation, the hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may, at their discretion, exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Documentary evidence may be received in the form of copies or excerpts. All parties appearing via telephone, videoconference, or other electronic method shall provide the department with a working email address or facsimile number for the exchange of all documentary evidence before or during the hearing.

B. Judicial notice: The hearing officer may take notice of judicially cognizable facts.

C. Rules of privilege: The rules of privilege shall be effective to the extent that they are required to be recognized in civil actions in district courts of the state of New Mexico.

D. Mitigating or aggravating circumstances: The hearing officer may consider mitigating, extenuating and aggravating circumstances surrounding the violations of game and fish laws and rules to determine the recommended period of the revocation or suspension.
[19.31.2.22 NMAC - Rp, 19.31.2.22 NMAC, 4/1/2022]

19.31.2.19 HEARING AND POST-HEARING PROCEDURES:

A. Hearing closed to the public: All hearings conducted under this rule shall be closed to the public.

B. Hearing interpreter provided: The department shall provide technology or an interpreter for individuals requesting a hearing who provide proof of hearing impairment to the extent that they cannot understand voice communications. The respondent must give written notice of this need to the department at the time they request a hearing or no less than 30 calendar days prior to their hearing.

C. Language interpreter: A party needing language interpreter services for translation of one language into another is responsible for arranging such service for the hearing. While the person serving as an interpreter need not be a court-certified interpreter in order to provide interpretation at a hearing, any person serving as an interpreter must affirm the interpreter's oath applicable in courts across this state. Any respondent who intends to bring a language interpreter shall notify the department of this at the time they request a hearing or no less than 30 calendar days prior to their hearing.

D. Record of hearing: In all hearings conducted under this rule, the hearing officer shall cause a complete record to be made by audio recording and shall preserve all evidence received. The hearing officer shall observe any standards pertaining to audio recordings established for the district courts of this state.

E. Post-hearing briefs: The hearing officer may require post-hearing briefs, proposed findings of fact and conclusions of law, or both.

F. Hearing officer's report: Within 20 calendar days of any hearing, the hearing officer shall make and submit to the department a report setting forth his or her findings of fact, conclusions of law and recommended decision.

G. Report copies to parties: The department shall serve a copy of the recommended decision on the parties by email or if specifically requested by the respondent, by certified mail with return receipt requested.

H. Filing of exceptions to hearing officer's report: The parties to the proceeding may file exceptions, or supporting briefs, to a hearing officer's recommended decision within a time period set by the hearing officer or within 30 calendar days of the hearing if not otherwise specified by the hearing officer. Exceptions shall not contain matters unrelated to or outside the scope of the hearing.
[19.31.2.23 NMAC - Rp, 19.31.2.23 NMAC, 4/1/2022]

19.31.2.20 FINAL DECISION OF THE COMMISSION:

A. Review and consideration of hearing officer's report and filed exceptions and briefs: After a hearing has been completed, the commission shall review and consider the hearing officer's report and any filed exceptions or briefs to the recommended decision.

B. No oral arguments; no new evidence: The commission shall not permit any oral arguments. The commission shall not consider any evidence outside of the hearing officer's report and filed exceptions or briefs.

C. Final decision: The commission's final decision shall be made by a quorum of the commission at a properly scheduled commission meeting.

D. Written decision served: Within 20 calendar days after the commission's decision is rendered and signed by the chairperson of the commission, the department shall serve upon the respondent a copy of the written decision.

[19.31.2.24 NMAC - Rp, 19.31.2.24 NMAC, 4/1/2022]

19.31.2.21 JUDICIAL REVIEW: In accordance with Section 17-3-34 NMSA 1978, any person whose privileges have been revoked by the commission or department, and who has requested and received a hearing, may appeal to the district court for further relief. Upon appeal, the district court shall set aside, reverse or remand the decision only if it determines:

A. the agency, commission or hearing officer acted fraudulently, arbitrarily or capriciously;

B. the final decision was not supported by substantial evidence; or

C. the agency did not act in accordance with law.

[19.31.2.25 NMAC - Rp, 19.31.2.25 NMAC, 4/1/2022]

19.31.2.22 INTERSTATE WILDLIFE VIOLATOR COMPACT SUSPENSION AND REVOCATION: Any person whose name appears on the Interstate Wildlife Violator Compact (IWVC) list and whose privileges have been suspended or revoked in another state and whose convictions have been verified by the department as constituting 20 or more points if committed in New Mexico shall be reciprocally suspended or revoked immediately for the time frame indicated by the originating state. Any resident who fails to comply with the terms of a citation including failure to appear, from a member state shall have his or her privileges suspended immediately until they have complied with the court appearance or citation requirements in the other state.

A. Notice procedures: The information provided by the board of wildlife violator compact administrators or their designee shall be deemed sufficient to allow the department by and through its director to suspend the violator and send the same violator a NOS in which the department will notify the violator of their right to contest the suspension or revocation.

B. Contesting procedures: A person wishing to contest their IWVC reciprocal suspension or revocation in New Mexico must provide evidence to the department which shows:

(1) the violation(s) leading to a revocation or suspension in another state, if committed in New Mexico, would not have accrued 20 or more points; or

(2) the respondent is not the person whose name appears on the wildlife violator compact list as being revoked by another wildlife violator compact member state; or

(3) the revocation or suspension in the other wildlife violator compact member state ended or has been rescinded.

(4) If a suspension or revocation is contested and the department determines that the person suspended or revoked should be reinstated, they will do so immediately. Any person who is not satisfied with the department's determination after contesting their IWVC suspension or revocation may appeal the department's decision in writing to the director within 20 calendar days of the department's decision. The director shall consider all evidence presented by both the department and the suspended or revoked person and shall have the final decision on whether a contested IWVC reciprocal suspension or revocation will be upheld or rescinded.

C. Notification to the commission: The department shall notify the commission of the number of individuals reciprocally revoked or suspended pursuant to this subsection at a properly scheduled commission meeting.

[19.31.2.26 NMAC - Rp, 19.31.2.26 NMAC, 4/1/2022]

19.31.2.23 PARENTAL RESPONSIBILITY ACT: Any person listed as in violation of the PRA by HSD shall have their privileges suspended until they are in compliance with the PRA and have paid the reinstatement fee to the department. In cases where the person can show the department that they were incorrectly placed on that month's list they shall not be required to pay the reinstatement fee and shall be reinstated immediately.

A. Notice procedures: When the department receives a HSD certified list of obligors not in compliance with the PRA, the department shall send a NOS to any named obligor in the department's database. The NOS shall inform the obligor that their privileges have been suspended until they are in compliance with the PRA and have paid the department reinstatement fee.

B. Notification to the commission: The department shall notify the commission of the number of individuals suspended pursuant to this section at a properly scheduled commission meeting after the director has acted to suspend such individuals.

C. Reinstatement fee: Any person whose privileges

have been suspended in accordance with the PRA shall be reinstated after demonstrating proof of compliance from the HSD, and having paid the department of game and fish a reinstatement fee of $25. The director has the authority to waive this fee in the case of unusual circumstances or clerical errors.
[19.31.2.28 NMAC - Rp, 19.31.2.28 NMAC, 4/1/2022]

19.31.2.24 FAILURE TO APPEAR, FAILURE TO PAY PENALTY ASSESSMENT OR CIVIL JUDGEMENT: In accordance with Section 17-2-10.3 NMSA 1978 the privileges of a person who fails to comply with the terms of a citation including failure to appear in court after proper notice for a hearing as required by law, a person who fails to pay a penalty assessment levied pursuant to Section 17-2-10.1 NMSA 1978, or a person who has a civil judgment assessed against them or who has entered into a voluntary civil assessment payment plan pursuant to Section 17-2-26 NMSA 1978, shall be suspended until in compliance or the amount owed to the department has been paid in full.

A. Notice procedures: The department shall send a NOS to any person who meets the criteria listed in this section. The NOS shall inform the respondent that their privileges have been suspended until they come into compliance with the law or pays the amount owed in full.

B. Notification to the commission: The department shall notify the commission of the number of individuals suspended pursuant to this section at a properly scheduled commission meeting after the director has acted to suspend such individuals.

C. Reinstatement: Any person whose privileges have been suspended in accordance with this section shall be reinstated after paying their outstanding penalty assessment(s) or civil judgement(s) in full or upon coming into compliance with any court order to appear and having any warrant issued resolved.
[19.31.2.29 NMAC - Rp, 19.31.2.29 NMAC, 4/1/2022]

HISTORY OF 19.31.2 NMAC:
NMAC History:
19.31.2 NMAC Hunting and Fishing License Revocation, filed 4/1/1995; amended 10/31/1998, 11/14/1998, 01/29/1999, 12/14/2001, 12/28/2001, 5/15/2002, 9/30/2002, 6/15/2006, 12/14/2006, 9/20/2012, 12/19/2017, Repeal and replaced 4/1/2019, Repeal and replaced 4/1/2022

History of Repealed Material:
19.31.2 NMAC, Hunting and Fishing License Revocation, filed 12/3/2001, repealed effective 9/20/2012.
19.31.2 NMAC, Hunting and Fishing License Revocation, filed 9/14/2012, repealed effective 12/19/2017.
19.31.2 NMAC, Hunting and Fishing License Revocation, filed 12/19/2017, repealed effective 4/1/2019.
19.31.2 NMAC, Hunting and Fishing License Revocation, filed 03/22/2022, repealed effective 4/1/2022.

HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.100.970 NMAC, Sections 3 and 6 through 15, effective 4/1/2022.

8.100.970.3 STATUTORY AUTHORITY:

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

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

C. The New Mexico health insurance exchange (NMHIX) was established by Section 59A-23F-1 of NMSA 1978 *et al*. Pursuant to 45 CFR 155.505(c) and 155.510(a), NMHIX has designated to the New Mexico human services department the authority to conduct fair hearings of NMHIX eligibility appeals pursuant to 45 CFR 155 Subpart F.
[8.100.970.3 NMAC - Rp, 8.100.970.3 NMAC, 11/27/2013, A/E, 11/1/2021; A, 4/1/2022]

8.100.970.6 OBJECTIVE: The objective of these regulations is to provide general policy and procedures for the public assistance programs administered by the department, as well as policy and procedures for the department to conduct hearings for claimants of adverse actions by NMHIX.
[8.100.970.6 NMAC - Rp, 8.100.970.6 NMAC, 11/27/2013; A/E, 11/1/2021; A, 4/1/2022]

8.100.970.7 DEFINITIONS:

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

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

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

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

[8.100.970.7 NMAC - N, 11/27/2013; A/E, 11/1/2021; A, 4/1/2022]

8.100.970.8 FAIR HEARINGS:

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

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

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

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

C. Hearing rights: Each household has the right to request a fair hearing and:

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

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

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

(4) to receive a copy of the SOE and any document contained in the claimant's case record in order to prepare for the fair hearing in accordance with Subsection B of 8.100.970.8 NMAC; the department shall forward the SOE and any other document(s) submitted to the fair hearings bureau for admission into the fair hearing record to the claimant's authorized representative once the department or NMHIX becomes aware that an authorized representative has been designated by the claimant;

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

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

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

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

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

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

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

E. Notice of rights:

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

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

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

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

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

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

(6) A claimant may request special accommodations for a disability or a language or speech interpreter be available during [~~a~~] an informal resolution process, a fair hearing or ARC. An interpreter or special accommodations shall be provided by the department or NMHIX, as applicable, at no cost to the claimant. A request for a language interpreter, a speech interpreter or other disability accommodation must be made within [~~ten (10)~~] 10 days of the date of the fair hearing. If an interpreter or disability accommodations are not requested timely, the claimant can request postponement of the hearing in accordance with Subsection B of 8.100.970.10 NMAC.

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

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

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

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

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

[8.100.970.8 NMAC - Rp, 8.100.970.8 NMAC, 11/27/2013; A/E, 11/1/2021; A, 4/1/2022]

8.100.970.9 THE HEARING PROCESS:

A. Initiation of the hearing process:

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

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

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

B. Time limits:

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

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

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

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

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

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

(d) **Medical assistance programs:** The final fair hearing decision shall be issued to the claimant and the authorized representative within [~~ninety (90)~~] 90 days from the date that the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC. Fair hearing decisions regarding the termination, modification, reduction or suspension of services is governed by all applicable federal and state laws and regulations, including 8.352 NMAC, et seq.

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

C. Jurisdiction of the fair hearings bureau:

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

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

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

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

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

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

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

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

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

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

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

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

[~~**(2)**~~] **(3)** Fair hearing requests submitted to the local county office shall be immediately forwarded to the fair hearings bureau for scheduling. The fair hearings bureau shall promptly inform the applicable local county office upon its receipt of a written or oral fair hearing request submitted directly to the fair hearings bureau to ensure timely scheduling of an ARC.

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

(1) the request is not received by the close of business on the [~~ninetieth (90th)~~] 90th

day following the date of the notice of adverse action; in instances where the fair hearings bureau schedules a hearing prior to becoming aware of the lateness of the fair hearing request, the fair hearings bureau shall, upon learning of the late request, promptly dismiss the matter and provide notice thereof to all parties;

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

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

(4) the claimant fails to appear, without good cause, at a scheduled fair hearing;

(5) the same issue has already been appealed and a hearing decision made;

(6) there is no adverse action or delay of benefits or services for which a fair hearing may be requested; or

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

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

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

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

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

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

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

E. Good cause for failing to appear:

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

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

(3) Good cause includes, but is not limited to, a death in the family, disabling personal illness, or other significant emergencies. At the discretion of the hearing officer, other exceptional circumstances may be considered good cause.

[8.100.970.9 NMAC - Rp, 8.100.970.9 NMAC, 11/27/2013; A/E, 11/1/2021; A, 4/1/2022]

8.100.970.10 PRE-HEARING PROCEDURE

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

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

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

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

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

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

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

(7) notice that the department will not pay for any costs of the claimant or authorized representative, including legal counsel, that are incurred in the preparation for, or attendance at, an ARC, fair hearing or judicial appeal.

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

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

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

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

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

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

C. Expedited hearing:

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

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

(a) the reason for the denial;

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

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

D. Group hearings: A hearing officer may respond to a series of individual requests for hearings by conducting a single group hearing. Group hearing procedures apply only to cases in which individual issues of fact are not disputed and where related issues of state or federal law, regulation or policy are the sole issues being raised. In all group hearings, the regulations governing individual hearings are followed. Each individual claimant is permitted to present the claimant's own case or to be represented by an authorized representative. If a group hearing is scheduled, any individual claimant may withdraw from the group hearing and request an individual hearing. The confidentiality of client records is to be maintained in accordance with federal and state laws and regulations.

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

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

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

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

(4) For cases in which the household appeals a denial of expedited SNAP service, the ARC shall be scheduled within

[~~two (2)~~] two business days, unless the household requests that it be scheduled at a later date or does not wish to have an ARC.

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

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

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

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

(3) documentation in support of the department's adverse action, including any facts, information and department findings related to the fair hearing issue(s);

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

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

G. Availability of information: The department staff shall:

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

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

[8.100.970.10 NMAC - Rp, 8.100.970.10 NMAC, 11/27/2013; A/E, 11/1/2021; A, 4/1/2022]

8.100.970.11 HEARING STANDARDS

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

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

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

(3) introduce witnesses;

(4) establish all pertinent facts and circumstances;

(5) advance any arguments without undue interference; and

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

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

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

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

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

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

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

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

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

(2) administer oaths and affirmations;

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

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

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

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

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

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

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

E. Appointment of hearing officer: A hearing officer is appointed by the fair hearings bureau upon receipt of the request for hearing.

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

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

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

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

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

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

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

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

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

(1) The fair hearing proceedings, including testimony and exhibits, shall be recorded electronically.

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

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

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

[8.100.970.11 NMAC - Rp, 8.100.970.11 NMAC, 11/27/2013; A/E, 11/1/2021; A, 4/1/2022]

8.100.970.12 CONDUCTING THE FAIR HEARING: A fair hearing is conducted in an orderly manner and in an informal atmosphere. The fair hearing is not open to the public. The fair hearing is conducted by telephone, unless the claimant or the authorized

representative makes a special request for the fair hearing to be held in person and the request is justified by special circumstances, as determined by the hearing officer on a case-by-case basis. In cases involving NMHIX, the fair hearings shall also be conducted in accordance with 45 CFR 155.535(c)-(f).

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

B. Order of testimony: The order of testimony is as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Within [~~ten (10)~~] 10 calendar days of its receipt of the additional evidence, the non-producing party may submit a written response to the hearing officer and each party that will become part of the fair hearing record; or, the hearing officer may continue the hearing until such a date and time that the non-producing party may respond to the additional evidence on the record.

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

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

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

[8.100.970.12 NMAC - Rp, 8.100.970.12 NMAC, 11/27/2013; A/E, 11/1/2021; A, 4/1/2022]

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

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

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

(1) in favor of the claimant when the adverse action taken by the department is not supported by a preponderance of the evidence available as a result of the fair hearing;

(2) in favor of the department when the preponderance of the evidence, available as a result of the fair hearing, supports the adverse action taken by the department is in accordance with federal and state laws and regulations; or

(3) any other result supported by the fair hearing record.

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

D. Final decision: The hearing officer's recommendation may be adopted or rejected, in whole or in part, in a final written decision by the appropriate department division director. The final fair hearing decision shall be based solely on the fair hearing record as defined in Paragraph (3) of Subsection I of 8.100.970.11 NMAC. The final fair hearing decision must summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and relevant federal and state laws and regulations. No person who participated in the original action under appeal may participate in arriving at the final fair hearing decision. The final fair hearing decision becomes part of the fair hearing record.

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

(1) a statement that the claimant has exhausted all administrative remedies available;

(2) the claimant's right to pursue judicial review of the final fair hearing decision; and

(3) information on how to file an appeal of the final fair hearing decision, the timeframe for filing an appeal and where the appeal may be filed.

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

(1) be based exclusively on:

(a) the information used to determine the appellant's eligibility as well as any additional relevant evidence presented during the course of the appeals process, including at the hearing; and

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

(2) state the decision, including a plain language

description of the effect of the decision on the appellant's eligibility;

(3) summarize the facts relevant to the appeal;

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

(5) state the effective date of the decision;

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

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

[8.100.970.13 NMAC - Rp, 8.100.970.13 NMAC, 11/27/2013; A/E, 11/1/2021; A, 4/1/2022]

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

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

B. Decision favorable to the claimant:

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

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

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

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

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

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

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

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

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

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

C. Implementation of decisions related to NMHIX: Unless stated by court order, the department's final fair hearing decision is binding on all issues that have been the subject of the fair hearings as to that claimant. NMHIX, upon receiving notice of the final fair hearing decision, must promptly:

(1) Implement the decision effective:

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

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

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

[8.100.970.14 NMAC - Rp, 8.100.970.14 NMAC, 11/27/2013; A/E, 11/1/2021; A, 4/1/2022]

8.100.970.15 JUDICIAL REVIEW

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

B. Timeliness:

(1) SNAP, LIHEAP, general assistance (GA), and medical assistance programs: Unless otherwise provided by law, within [~~thirty (30)~~] 30 days of the issuance of the department's final fair hearing decision, the claimant may appeal the final fair hearing decision by filing a notice of appeal with the appropriate district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

(2) NMW: Unless otherwise provided by law, within [~~thirty (30)~~] 30 days of the issuance of the department's final

fair hearing decision, the claimant may appeal the final fair hearing decision by filing a notice of appeal with the court of appeals pursuant to the provisions of Section 27-2B-13 NMSA 1978.

C. Jurisdiction and standard of review:

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

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

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

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

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

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

E. Effect of appeal: If the court of appeals decides in favor of the claimant, the HSD office of general counsel immediately notifies the county office as to the appropriate benefit issuance and adjustments, if any. If the decision is in favor of HSD, and a reduction has been pending the decision on appeal, an overpayment claim retroactive to the date the change should have been made is filed.

F. Appealing the appellant court's decision:

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

(2) NMW: A party may seek further review by filing a petition for writ of certiorari with the supreme court.

[8.100.970.15 NMAC - Rp, 8.100.970.15 NMAC, 11/27/2013; A/E, 11/1/2021; A, 4/1/2022]

HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.102.410 NMAC, Section 15 effective 04/01/2022.

8.102.410.15 PROGRAM DISQUALIFICATIONS:

A. Dual state benefits: An individual who has been convicted of fraud for receiving TANF, [~~food stamps~~] SNAP, Medicaid, or SSI in more than one state at the same time shall not be eligible for inclusion in the cash assistance benefit group for a period of 10 years following such conviction. The conviction must have occurred on or after August 22, 1996.

B. Fugitive and probation and parole violators: An individual who is a fugitive felon or who has been determined to be in violation of conditions of probation or parole shall not be eligible for inclusion in the cash assistance benefit group.

C. Certain convicted felons. An individual who is or has been determined to be convicted on or before February 7, 2014, as an adult of the following crimes shall not be eligible for inclusion in the cash assistance benefit group:

(1) aggravated sexual abuse under section 2241 of title 18, United States Code;

(2) murder under section 1111 of title 18, United States Code;

(3) an offense under chapter 110 of title 18, United States Code;

(4) a federal or state offense involving sexual assault, as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a); or

(5) an offense under state law determined by the attorney general to be substantially similar to an offense described in clause (i), (ii), or (iii); and

(6) the individual is not in compliance with the terms of the sentence of the individual or the restrictions under 8.139.400.12 C NMAC.

[8.102.410.15 NMAC - Rp 8.102.410.15 NMAC, 07/01/2001; A, 05/15/2002; A, 11/15/2007; A, 04/01/2022]

HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.102.500 NMAC, Section 8 effective 04/01/2022.

8.102.500.8 GENERAL REQUIREMENTS:

A. Need determination process: Eligibility for NMW, state funded qualified aliens and EWP cash assistance based on need requires a finding that:

(1) the benefit group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group;

(2) the benefit group's countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;

(3) the countable resources owned by and available to the benefit group do not exceed the $1,500 liquid and $2,000 non-liquid resource limits;

(4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

B. Gross income limits: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

(a) one person	[~~$904~~] $913
(b) two persons	[~~$1,221~~] $1,234
(c) three persons	[~~$1,539~~] $1,556
(d) four persons	[~~$1,856~~] $1,878
(e) five persons	[~~$2,173~~] $2,199
(f) six persons	[~~$2,491~~] $2,520
(g) seven persons	[~~$2,808~~] $2,842
(h) eight persons	[~~$3,125~~] $3,164

(i) add [~~$318~~] $322 for each additional person.

C. Eligibility for support services only: Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than one hundred percent of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:

(1) one person [~~$1,064~~] $1,074

(2) two persons [~~$1,437~~] $1,452

(3) three persons [~~$1,810~~] $1,830

(4) four persons [~~$2,184~~] $2,209

(5) five persons [~~$2,557~~] $2,587

(6) six persons [~~$2,930~~] $2,965

(7) seven persons [~~$3,304~~] $3,344

(8) eight persons [~~$3,677~~] $3,722

(9) add [~~$374~~] $379 for each additional person.

D. Standard of need:

(1) The standard of need is based on the number of participants included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the participant's share of benefit group supplies.

(3) The financial standard includes approximately $91 per month for each participant in the benefit group.

(4) The standard of need for the NMW, state funded qualified aliens, and EWP cash assistance benefit group is:

(a) one person	$266
(b) two persons	$357
(c) three persons	$447
(d) four persons	$539
(e) five persons	$630
(f) six persons	$721
(g) seven persons	$812
(h) eight persons	$922

(i) add $91 for each additional person.

E. Special needs:

(1) Special clothing allowance: A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b) The clothing allowance shall be allowed for each school-age child who is included in the NMW, TBP, state funded qualified aliens, or EWP cash assistance benefit group, subject to the availability of state or federal funds.

(c) The clothing allowance is not allowed in determining eligibility for NMW, TBP, state funded qualified aliens, EWP cash assistance, or wage subsidy.

(2) Layette: A one-time layette allowance of $25 is allowed upon the birth of a child who is included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

(3) Special circumstance: Dependent upon the availability of funds and in accordance with the federal act, the HSD secretary, may establish a separate, non-recurring, cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation. This cash assistance program shall not exceed a four month time period, and is not intended to meet recurrent or ongoing needs.

F. Non-inclusion of legal guardian in benefit group: Based on the availability of state and federal funds, the department may limit the eligibility of a benefit group due to the fact that a legal guardian is not included in the benefit group.

[8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A, 07/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 11/15/2007; A, 01/01/2008; A/E, 10/01/2008; A, 08/01/2009; A, 08/14/2009; A/E, 10/01/2009; A, 10/30/2009; A, 01/01/2011; A, 01/01/2011;

A, 07/29/2011; A/E, 10/01//2011; A/E, 10/01/2012; A/E, 10/01/2013; A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017; A, 02/01/2018; A/E, 10/01/2018; A, 03/01/2019; A/E, 10/01/2019; A, 03/01/2020; A/E, 10/01/2020; A, 03/01/2021; A/E, 10/01/2021; A 04/01/2022]

HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.106.410 NMAC, Section 14 effective 04/01/2022.

8.106.410.14 PROGRAM DISQUALIFICATIONS:

A. Dual state benefits: An individual who has been convicted of fraud for receiving TANF, [~~food stamps~~] SNAP, Medicaid or SSI in more than one state at the same time shall not be eligible for inclusion in the GA cash assistance benefit group for a period of 10 years following such conviction. The conviction must have occurred on or after August 22, 1996.

B. Fugitive and probation and parole violators: An individual who is a fugitive felon or who has been determined to be in violation of conditions of probation or parole shall not be eligible for inclusion in the GA cash assistance benefit group.

C. Certain convicted felons. An individual who is or has been determined to be convicted on or before February 7, 2014, as an adult of the following crimes shall not be eligible for inclusion in the cash assistance benefit group:

(1) aggravated sexual abuse under section 2241 of title 18, United States Code;

(2) murder under section 1111 of title 18, United States Code;

(3) an offense under chapter 110 of title 18, United States Code;

(4) a federal or state offense involving sexual assault, as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)); or

(5) an offense under state law determined by the attorney general to be substantially similar to an offense described in clause (i), (ii), or (iii); and

(6) the individual is not in compliance with the terms of the sentence of the individual or the restrictions under Subsection C of 8.139.400.12 NMAC.

[8.106.410.14 NMAC - Rp, 8.106.410.13 NMAC, 12/01/2009; A, 04/01/2022]

HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.106.500 NMAC, Section 8 effective 04/01/2022.

8.106.500.8 GA -GENERAL REQUIREMENTS:

A. Limited state funds may result in a suspension or reduction in general assistance benefits without eligibility and need considered.

B. Need determination process: Eligibility for the GA program based on need requires a finding that the:

(1) countable resources owned by and available to the benefit group do not exceed either the $1,500 liquid or $2,000 non-liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent of the federal poverty guideline for the size of the benefit group; and

(3) benefit group's countable net income does not equal or exceed the standard of need for the size of the benefit group.

C. GA payment determination: The benefit group's cash assistance payment is determined after subtracting from the standard of need the benefit group's countable income and any payment sanctions or recoupments.

D. Gross income test: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

(a) one person	[~~$904~~] $913
(b) two persons	[~~$1,221~~] $1234
(c) three persons	[~~$1,539~~] $1556
(d) four persons	[~~$1,856~~] $1878
(e) five persons	[~~$2,173~~] $2199
(f) six persons	[~~$2,491~~] $2520
(g) seven persons	[~~$2,808~~] $2842
(h) eight persons	[~~$3,125~~] $3164
(i)	add $318 for each additional person.

E. Standard of need:

(1) As published monthly by the department, the standard of need is an amount provided to each GA cash assistance benefit group on a monthly basis and is based on availability of state funds, the number of individuals included in the benefit group, number of cases, number of applications processed and approved, application approval rate, number of case closures, IAR caseload number and expenditures, and number of pending applications.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and an individual benefit group member's share of supplies.

(3) Notice: The department shall issue prior public notice identifying any change(s) to the standard of need amounts for the next quarter, as discussed at 8.106.630.11 NMAC.

F. Net income test: The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group. After the countable net income is determined it is rounded down prior to the comparison of the household's income to the standard of need to determine the households monthly benefit amount.

G. Special clothing allowance for school-age dependent children: A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age as defined by PED.

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group, subject to the availability of state or federal funds.

(3) The clothing allowance is not counted in determining eligibility for GA cash assistance.

H. Supplemental issuance: A one-time supplemental issuance may be distributed to recipients of GA for disabled adults based on the sole discretion of the secretary of the human services department and the availability of state funds.

(1) The one time supplemental issuance may be no more than the standard GA payment made during the month the GA payment was issued.

(2) To be eligible to receive the one time supplement, a GA application must be active and determined eligible no later than the last day of the month in the month the one time supplement is issued.

I. Minimum Benefit Amount: Benefits less than ten dollars ($10.00) will not be issued for the initial month or subsequent months. ISD shall certify household beginning the month of application. [8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008; A, 06/16/2008; A/E, 10/01/2008; A, 07/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 12/01/2009; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A, 07/01/2013; A/E, 10/01/2013; A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017; A, 02/01/2018; A/E, 10/01/2018; A, 03/1/2019; A/E, 10/01/2019; A, 03/1/2020 A/E, 10/01/2020; A, 03/1/2021 A/E, 10/01/2021; A, 04/01/2022]

HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.139.120 NMAC, Section 9 effective 04/01/2022.

8.139.120.9 SIMPLIFIED REPORTING: All households will be assigned to simplified reporting (SR). Households must submit an interim report once every six or twelve months, depending on their certification period. Households assigned to a 12-month certification period have an interim report form due at six months. Households assigned to a 24-month certification period have an interim report form due at 12 months.

A. Household Certification Periods: A household that is approved for SNAP benefits shall be assigned the longest certification period possible in accordance with the household's circumstances. Households wherein all adult members are elderly or disabled, with no earned income, will be assigned a 24-month certification period. All other households will be assigned a 12-month certification period.

B. Household responsibility to turn in interim report form:

(1) A household assigned to a 12-month certification period shall be required to file an interim report form no later than the tenth day of the sixth month of the certification period in order to receive uninterrupted benefits.

(2) A household assigned to a 24-month certification period shall be required to file an interim report form no later than the tenth day of the twelfth month of the certification period in order to receive uninterrupted benefits.

C. Information that ISD is responsible to provide to households regarding simplified reporting: At the initial certification and at recertification, ISD shall provide the household with the following:

(1) a written and oral explanation of how simplified reporting works;

(2) a written and oral explanation of the reporting requirements including:

(a) what needs to be reported and verified;

(b) when the interim report form is due;

(c) how to obtain assistance; and

(d) the consequences of failing to file an interim report form.

(3) special assistance in completing and filing interim reports to households whose adult members are all either mentally or physically handicapped or are non-English speaking or otherwise lacking in reading and writing skills such that they cannot complete and file the required report; and

(4) a toll-free number which the household may call to ask questions or to obtain help in completing the interim report.

D. Information requirements for the interim report form: The interim report form will be written in clear, simple language,

include information on the availability of a bilingual version of the document described in 7 CFR 272.4(b), and shall specify:

(1) the deadline date to submit the form to ISD to ensure uninterrupted benefits if the household is determined eligible;

(2) the consequences of submitting a late or incomplete form including whether ISD shall delay benefits if the form is not received by the due date;

(3) verification the household must submit with the form;

(4) a statement to be signed by a member of the household indicating his or her understanding that the information provided may result in a reduction or termination of benefits;

(5) where to call for help in completing the form;

(6) a statement explaining that ISD will not change certain deductions until the household's next recertification and identify those deductions if ISD has chosen to disregard reported changes that affect certain deductions in accordance with paragraph (c) of section 7 CFR 273.12;

(7) a brief explanation of fraud penalties; and

(8) how the agency may use social security numbers.

E. The following information, along with required verification, must be returned to ISD with the interim report form:

(1) a change of more than one hundred dollars ($100) in the amount of unearned income, except changes relating to public assistance (PA) or general assistance (GA) programs when jointly processed with SNAP cases;

(2) a change in the source of income, including starting or stopping a job or changing jobs, if the change in employment is accompanied by a change in income;

(3) changes in either:

(a) the wage rate or salary or a change in full-time or part-time employment status as defined in Subsection C of 8.102.461.11 NMAC, provided the household is certified for no more than six months; or

(b) a change in the amount earned of more than one hundred dollars ($100) a month from the amount last used to calculate the household's allotment, provided the household is certified for no more than six months.

(4) all changes in household composition, such as the addition or loss of a household member;

(5) changes in residence and the resulting shelter costs;

(6) the acquisition of a licensed vehicle, unless the household is categorically eligible as defined at Sections 8 and 9 of 8.139.420 NMAC or the vehicle is not fully excludable under 8.139.527 NMAC;

(7) when cash on hand, stocks, bonds and money in a bank account or savings institution reach or exceed the resource limit set at 8.139.510.8 NMAC, unless the household is categorically eligible as defined at Sections 8 and 9 of 8.139.420 NMAC;

(8) changes in the legal obligation to pay child support;

(9) for able-bodied adults subject to the time limit of 7 CFR 273.24, any changes in work hours that bring an individual below 20 hours per week, averaged monthly, as defined in 7 CFR 273.24(a)(1)(i); and

(10) In accordance with 7 CFR 273.12(a)(2), SNAP households must report substantial lottery and gambling winnings;

(a) if the substantial lottery and gambling winning is won by multiple beneficiaries and is over the elderly and disabled resource standard, each SNAP member's share must be reported;

(b) if the winning is less than the elderly and disabled resource standard it does not need to be reported;

F. ISD's responsibility with interim report forms:

(1) Interim report form is not received: If a household fails to file a report by the specific filing date, defined in Subsection B of 8.139.120.9 NMAC, ISD will send a notice to the household advising of the missing report no later than 10 calendar days from the date the report should have been submitted. If the household does not respond to the notice, the household's participation shall be terminated.

(2) Incomplete interim report form is received:

(a) An interim report form that is not signed shall be returned to the household for a signature. The household:

(i) shall be notified that the form is incomplete;

(ii) what needs to be completed to complete the interim report form; and

(iii) shall be given 10 calendar days to provide the signed interim report form to be reviewed for completeness.

(b) An interim report form that is incomplete because required verification is not provided shall not be returned to the household. The household:

(i) shall be notified that the form is incomplete;

(ii) what information must be provided to complete the interim report form; and

(iii) shall be given 10 calendar days to provide the verification to process the interim report form.

(3) Complete interim report form is received:

(a) A form that is complete and all verifications are provided, shall be processed within 10 calendar days of receipt.

(b) A form that is complete, and all verifications are provided except for verification of an allowable deduction, shall be processed, unless the verification is otherwise questionable, in accordance with 8.100.130.12 NMAC. The household:

(i) shall be notified that verification is questionable; and

(ii) shall be given 10 calendar days to provide the verification to process the allowable deduction.

(c) A deduction that is verified within the month the interim report form is due shall be processed as part of the interim report form.

(d) A deduction that is verified in the month after the interim report form is due shall be processed as a change reported by the household.

(e) If the household files a timely and complete report resulting in reduction or termination of benefits, ISD shall send a notice of case action. The notice must be issued so that the household will receive it no later than the time that its benefits are normally received. If the household fails to provide sufficient information or verification regarding a deductible expense, ISD will not terminate the household, but will instead determine the household's benefits excluding the deduction from the benefit calculation.

G. Changes that must be reported at any time during certification period: Households must report changes no later than 10 days from the end of the calendar month in which the change occurred, provided that the household has at least 10 calendar days within which to report the change. If there are not 10 days remaining in the month, the household must report within 10 days from the date the work hours fall below 20 hours per week, averaged monthly or when income exceeding the gross federal poverty limit as mentioned below is first received. The interim report form is the sole reporting requirement for any information that is required to be reported on the form, except that a household must report at any time during the certification period:

(1) the household must report when its monthly gross income exceeds one hundred thirty percent of poverty level. A categorically eligible household defined in accordance with 8.139.420.8 NMAC, must report when its monthly gross income exceeds one hundred sixty-five percent of poverty level. The household shall use the monthly gross income limit for the household size that existed at the time of certification or recertification regardless of any subsequent changes to its household size; and

(2) able-bodied adults subject to the time limit in accordance with 7 CFR 273.24 shall report whenever their work hours fall below 20 hours per week, averaged monthly.

(3) in accordance with 7 CFR 273.12(a)(2), SNAP households must report substantial lottery and gambling winnings within 10 days of the end of the month in which the household received the winnings.

(a) if the substantial lottery and gambling winning is won by multiple beneficiaries and is over the elderly and disabled resource standard, each SNAP member's share must be reported.

(b) if the winning is less than the elderly and disabled resource standard it does not need to be reported.

H. Action on changes reported outside of the interim report form: In addition to changes that must be reported in accordance with Subsection G of 8.139.120.9 NMAC, ISD must act on changes in between interim report forms, if it would increase the household's benefits. ISD shall not act on changes that would result in a decrease in the household's benefits unless:

(1) The household has voluntarily requested that its case be closed.

(2) ISD has information about the household's circumstances considered verified upon receipt. Verified upon receipt is defined:

(a) information is not questionable; and

(b) the provider of the information is the primary source of information; or

(c) the recipient's attestation exactly matches the information received from a third party.

(3) A household member has been identified as a fleeing felon or probation violator in accordance with 7 CFR 273.11(n);

(4) There has been a change in the household's cash grant, or where cash and SNAP cases are jointly processed in accordance with 7 CFR 273.2(j)(2).

I. Responsibilities on reported changes outside of the interim report form: When a household reports a change, ISD shall take action to determine the household's eligibility or SNAP benefit amount within 10 working days of the date the change is reported.

(1) During the certification period, action shall not be taken on changes to medical expenses of households eligible for the medical expense deduction which ISD learns of from a source other than the household and which, in order to take action, requires ISD to contact the household for verification. ISD shall act only on those changes in medical expenses that it learns about from a source other than the household, if those changes are verified upon receipt and do not necessitate contact with the household.

(2) Decreased or termination of benefits: For reported and verified changes that result in a decrease or termination of household benefits, ISD shall act on the change as follows:

(a) Issue a notice of adverse action within 10 calendar days of the date the change was reported and verified unless one of the exemptions to the

notice of adverse action in 7 CFR 273.13 (a)(3) or (b) applies.

(b) When a notice of adverse action is used, the decrease in the benefit level shall be made effective no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested.

(c) When a notice of adverse action is not used due to one of the exemptions in 7 CFR 273.13 (a)(3) or (b), the decrease shall be made effective no later than the month following the change. Verification which is required by 7 CFR 273.2(f) must be obtained prior to recertification.

(3) Increased benefits: For reported and verified changes that result in an increase of household benefits, ISD shall act on the change as follows:

(a) For changes which result in an increase in a household's benefits, other than changes described in paragraph (b) of this section, ISD shall make the change effective no later than the first allotment issued 10 calendar days after the date the change was reported to ISD.

(b) For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of fifty dollars ($50) or more in the household's gross monthly income, ISD shall make the change effective not later than the first allotment issued 10 calendar days after the date the change was reported.

(i) In no event shall these changes take effect any later than the month following the month in which the change is reported.

(ii) If the change is reported after the last day to make changes and it is too late for ISD to adjust the following month's allotment, ISD shall issue a supplement or otherwise provide an opportunity for the household to obtain the increase in benefits by the tenth day of the following month, or the household's normal issuance cycle in that month, whichever is later.

(4) No change in SNAP benefit amount: When a reported change has no effect on the SNAP benefit amount, ISD shall document the change in the case file and notify the household of the receipt of the report.

(5) Providing verification: The household shall be allowed 10 calendar days from the date a change is reported to provide verification, if necessary. If verification is provided at the time a change is reported or by the deadline date, the increase in benefits shall be effective in accordance with (a) and (b) above. If the household fails to provide the verification by the deadline date, but does provide it at a later date, the increase shall be effective in the month following the month the verification is provided. If the household fails to provide necessary verification, its' SNAP benefit amount shall revert to the original benefit amount.

J. Resolving unclear information:

(1) During the certification period, ISD may obtain information about changes in a household's circumstances from which ISD cannot readily determine the effect of the change on the household's benefit amount. The information may be received from a third party or from the household itself. ISD must pursue clarification and verification of household circumstances using the following procedure if unclear information received outside the periodic report is:

(a) information fewer than 60 days old relative to the current month of participation; and,

(b) if accurate, would have been required to be reported under simplified reporting rules, in accordance with 8.139.120.9 NMAC.

(c) ISD must pursue clarification and verification of household circumstances in accordance with the process outlined in Subsection B of 8.100.130.12 NMAC, for any unclear information that appears to present significantly conflicting information from that used by ISD, at the time of certification.

(2) Unclear information resulting from certain data matches:

(a) if the department receives match information from a trusted data source as described in 7 CFR 272.13 or 7 CFR 272.14, ISD shall send a notice in accordance with Subsection B of 8.100.130.12 NMAC in accordance with 7 CFR 272.13(b)(4) and 7 CFR 272.14 (c)(4). The notices must clearly explain what information is needed from the household and the consequences of failing to respond to the notice.

(b) if the household fails to respond to the notice or does respond but refuses to provide sufficient information to clarify its circumstances, ISD shall remove the individual and the individual's income from the household and adjust benefits accordingly. As appropriate, ISD shall issue a notice of adverse action.

K. Failure to report changes: If ISD discovers that the household failed to report a change as required, ISD shall evaluate the change to determine whether the household received benefits to which it was not entitled or if the household is entitled to an increased benefit amount.

(1) Decreased benefit amount: After verifying the change, ISD shall initiate a claim against the household for any month in which the household was over issued SNAP benefits. The first month of the over issuance is the month following the month the adverse action notice time limit would have expired had the household timely reported the change. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if its benefits will be reduced. No

claim shall be established because of a change in circumstances that a household is not required to report in accordance with Subsection G of 8.139.120.9 NMAC above.

(2) Increased benefit amount: When a household fails to make a timely report of a change which will result in an increased SNAP benefit amount, the household is not entitled to a supplement for any month prior to and including the month in which the change was reported. The household is entitled to an increased benefit amount effective no later than the first benefit amount issued 10 calendar days after the date the change was reported.

[2/1/1995, 10/01/1995, 06/15/1996, 09/14/1996, 11/01/1996, 07/01/1998, 06/01/1999; 8.139.120.9 NMAC - Rn, 8 NMAC 3 FSP.123, 05/15/2001; 8.139.120.9 - N, 02/14/2002; A, 01/01/2004; A, 07/16/2008; A, 08/15/2008; A/E, 10/15/2008; A, 12/31/2008; A, 09/01/2017; A, 09/01/2017; A/E, 10/01/2021; A, 04/01/2022]

HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.139.520 NMAC, Section 11 effective 04/01/2022.

8.139.520.11 GENERAL DEDUCTIONS

A. Use of deductions: A household must qualify for deductions by first meeting a gross income test. A household is not eligible if gross income is more than the standard listed in Subsection E of 8.139.500.8 NMAC for a household size. If income falls below the gross income limit, a household shall be allowed deductions, where applicable, to make a final eligibility and benefit amount determination. Households that include elderly or disabled members, as defined, automatically qualify for deductions; eligibility is determined based on net rather than gross income.

B. Standard deduction: All households are allowed a standard deduction from income. The standard deduction is listed in Paragraph (3) of Subsection F of 8.139.500.8 NMAC, tables, and is adjusted effective every October 1st.

C. Earned income deduction: Twenty percent (20%) of gross earned income shall be deducted. Excluded income is not used for purposes of computing the earned income deduction.

(1) Computing an overissuance: The earned income deduction (EID) shall not be allowed when calculating the income to be used in determining an overissuance which is due to the failure of a household to report earned income in a timely manner.

(2) Work supplementation programs: The EID shall not be allowed for any amount of income which is earned under a work supplementation or support program and is attributable to public assistance.

D. Medical deductions: Allowable medical deductions include:

(1) Elderly/ disabled: Medical expenses in excess of $35.00 per month, excluding special diets, incurred by any household member who is elderly or disabled.

(2) Emergency SSI: Individuals receiving emergency SSI benefits based on presumptive eligibility shall be eligible for the medical deduction.

(3) Death: A medical expense incurred by a household member who dies shall be allowed as a deduction if the member was eligible for the deduction at the time of death and if the remaining household members are legally responsible for payment.

(4) Hospital/ outpatient/nursing home: Medical expenses, such as hospitalization or outpatient treatment, nursing care and nursing home care, including payments by a household for an individual who was an eligible household member immediately before entering a hospital or nursing home facility recognized by the state, are allowable deductions.

(5) Not eligible: Spouses, children or other individuals in the household who are not elderly or disabled, shall not be entitled to claim the medical deduction.

(6) Allowing medical expenses:

(a) One-time only expense:

(i) A household may choose to have a one-time only expense, reported at certification, deducted in a lump sum or averaged over the certification period.

(ii) If a household incurs a one-time medical expense and has made arrangements with the provider to make monthly installments (beyond the current certification period), the expense may be allowed each month as arranged.

(iii) A household reporting a one-time only medical expense during its certification period may choose to have a one-time deduction or to have the expense averaged over the remaining months of the certification period.

(b) Households certified for 24 months: A household certified for 24 months cannot have a one-time medical expense averaged over the 24-month certification period.

(i) A one-time medical expense may be deducted in the first month of the 24-month certification period; or the one-time medical expense may be deducted and averaged over the first 12 months of the 24-month certification period.

(ii) One-time medical expenses reported after the first 12 months of the certification period shall be averaged over the remaining months.

(c) Expense in last month of certification: If a household is billed

for and reports an expense during the last month of its certification period, the deduction shall not be allowed. If the expense will be paid in installments during the following certification period, the deduction shall be allowed during the appropriate number of months in the subsequent certification period.

(d)

Fluctuating expenses: Fluctuating medical expenses shall be allowed as deductions if regularly recurring, reasonably anticipated, and verified. Once determined, the household is not required to report changes of $25 or less or reverify expenses each month.

(e)

Anticipated changes in expenses: At certification and recertification the household must report and verify all medical expenses. The household's monthly medical deduction for the certification period shall be based on:

(i)

anticipated changes in the household's medical expenses that can reasonably be expected to occur during the certification period based on available information about the recipients medical condition, public or private insurance coverage, and current verified medical expenses; and

(ii)

expenses that occurred during the certification period that will continue in the new certification period; and

(iii)

consideration of unpaid and past due medical expenses that will continue in the certification period.

(f)

If a household reports an allowable medical expense at the time of certification but cannot provide verification at that time, and if the amount of the expense cannot be reasonably anticipated based upon available information about the recipients' medical condition and public or private medical insurance coverage, the household shall have the nonreimbursable portion of the medical expense considered at the time the amount of the expense or reimbursement is reported and verified.

(g)

A household shall not be required to file reports about its medical expenses during the certification period. If a household voluntarily reports a change in its medical expenses, the caseworker shall act on the change in accordance with regulations in (c) of Paragraph (1) of Subsection B of 8.139.120.10 NMAC.

(7) Past due and unpaid medical expenses: The medical expense deduction shall not be determined by averaging past due or unpaid monthly medical expenses. Such expenses shall be used only as an indicator of what can reasonably be anticipated. Medical expenses which the household might reasonably anticipate receiving include but are not limited to costs of medical services and treatment received regularly, but less often than monthly, and prescription drugs.

(8) Medical and dental care: Medical and dental care, psychotherapy, and rehabilitation services, provided by licensed practitioners authorized by state law, or other qualified health professional, shall be allowed as medical expense deductions. State licenses in New Mexico are authorized by occupational licensing boards. A state-licensed practitioner has such a license. Native American practitioners (medicine men) are not licensed, but are recognized as health practitioners for this purpose.

(9)

Prescription drugs and medical supplies: Prescription drugs, when prescribed by a licensed practitioner authorized under state law, and over-the-counter medications (including insulin) when approved by a licensed practitioner or other qualified health professional, shall be allowed as deductions. In addition, costs for medical supplies, sick-room equipment (including rental), or other prescribed equipment are deductible.

(10)

Health and hospitalization/ medicare premiums: Health and hospitalization insurance premiums, and medicare premiums, as well as any cost sharing or spend-down expenses incurred by medicaid recipients, are allowable deductions. If a medical insurance policy includes benefits for household members not eligible for a deduction, only that portion of the premium assigned to the eligible member(s) may be considered a deduction. In the absence of specific information about how much of the premium is for the eligible member(s), a pro rata amount may be used. This system may be used even if the policy holder does not qualify for the deduction but the policy includes a person(s) who does qualify. The cost of life or health and accident policies, such as those payable in lump sum settlements for death or dismemberment, or income maintenance policies that continue mortgage or loan payments while the beneficiary is disabled, are not deductible.

(11)

Transportation and lodging costs: Reasonable costs of transportation and lodging to obtain medical treatment or services are deductible. The allowance for mileage in privately owned vehicles is the same as the amount allowed state employees. Lodging costs may not exceed the daily expense amount allowed (per diem) for state employees.

(12)

Maintaining an attendant: Costs of maintaining an attendant, homemaker or home health aide, child care services, or housekeeper that are necessary because of age, infirmity, or illness are deductible medical expenses. In addition, an amount equal to the food stamp benefit amount for one person is deductible if the household furnishes the majority of the attendant's meals. The food stamp benefit amount for the meal-related deduction is the one in effect at the time of initial certification. The caseworker shall update the food stamp benefit amount for meals at the next scheduled recertification. If a household incurs attendant care expenses that could qualify under both the medical deduction and the dependent care deduction, the caseworker shall treat the expense as a medical expense.

(13) Other expenses: Other deductible expenses include but are not limited to:

(a) dentures, hearing aids, prosthetics;

(b) securing and maintaining a seeing-eye or hearing dog, or other service animal, including the cost of dog food and veterinary bills; and

(c) eyeglasses or contact lenses prescribed by an ophthalmologist or an optometrist.

(14) Prescription drug card expense:

(a) An individual participating in the food stamp program who has enrolled for the medicare-approved drug discount card shall have $23.00 credited to the monthly medical expense allowed for that individual.

(b) An individual participating in the food stamp program who receives a $600.00 transitional assistance credit on the medicare-approved drug discount card for the calendar years 2004 and 2005 shall have $50.00 credited to the monthly medical expense allowed for that individual for each month after September 2004, through December 2005, and not beyond that month.

E. Dependent care expenses:

(1) Deductible amounts: Payments may be deducted for the actual cost of the care of children or other dependents when necessary for a household member to accept or continue employment, comply with E&T work requirements, or an equivalent effort by those not required to comply with E&T work requirements, or attend training or pursue education which is preparatory to employment or leads to a degree. [~~An amount up to the maximum allowed may be deducted for each child requiring dependent care (See Paragraph (3) of Subsection F of 8.139.500.8 NMAC, deductions and standards)~~] Allowable costs include:

(a) the costs of care given by an individual care provider or care;

(b) transportation costs to and from the care facility; and

(c) activity or other fees associated with the care provided to the dependent that are necessary for the household to participate in the care.

(2) Household member provides care: If a household member provides dependent care, the payment is neither income to the payee nor a deduction for the payor (see Subsection A of 8.139.500.11 NMAC).

(3) Income excluded/deduction allowed: Households whose dependent care costs are paid in accordance with 8.139.527 NMAC, income and resources excluded by federal law, shall be entitled to a dependent care deduction only for the amount of the child care expense not reimbursed by a work program or transitional day care (TDC) program. Child care expenses reimbursed or paid by a work program or TDC are not deductible.

F. Household expenses:

(1) Shelter expenses:

(a) Definition: Continuing charges for the shelter occupied by a household include rent, mortgage payment, or other continuing charges leading to the ownership of the shelter, such as loan repayments for the purchase of a mobile home and interest on such payments. If payments are made on more than one mortgage on the home, each payment is counted for the period the payment is intended to cover. Security deposits on rental property and downpayments for the purchase of a home are not allowed as shelter expense deductions. Closing costs shall not be allowed as a shelter expense, unless the closing costs can be itemized to identify costs that are allowable deductions, such as insurance and property taxes.

(b) Excess shelter expense deduction: Monthly shelter expenses in excess of fifty percent (50%) of a household's income, after all other deductions have been allowed may be deducted, subject to the following restrictions:

(i) The shelter deduction may not exceed the maximum amount indicated in Paragraph (3) Subsection F of 8.139.500.8 NMAC, unless the household contains a member who is elderly or disabled, as defined.

(ii) Households may not claim shelter expenses if the expense shall be paid as a vendor payment by an individual or organization outside the household.

(iii) The household must be responsible for payment of the shelter expense; however the household need not have paid the expense to claim the deduction. A current billing statement is used to establish the expense. The expense may not be allowed more than once.

(2) Taxes and insurance: Property taxes, state and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings, are deductible expenses.

(3) Natural disasters: Expenses for the repair of a home that has been substantially damaged or destroyed by a natural disaster such as fire or flood may be deducted. Expenses shall not be allowed if the household has been or will be reimbursed by public or private relief agencies, insurance companies, or any other source. Expense deductions are limited to the repair of the home and not its furnishings.

(4) Costs of temporarily unoccupied home:

(a) If the home is temporarily unoccupied by a household because of employment or training away from home, illness, or abandonment caused by a natural disaster or casualty loss, the shelter costs for the home may be deducted. However, a household may claim only one SUA.

(b) For costs of a home vacated by the household to be included in its shelter costs:

(i) the household must intend to return to the home;

(ii) the current occupants of the home, if any, cannot be claiming shelter expenses for food stamp purposes;

(iii) the home cannot be leased or rented during the household's absence.

(c) Verification is required of households claiming this deduction if the cost is questionable or would result in a deduction.

(5) Maximum deduction limit adjustment: The maximum deduction limit for excess shelter expenses will be revised as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as follows: effective January 1, 1997 through September 30, 1998, the deduction will be $250; from October 1, 1998 through September 30, 2000 the deduction will be $275; and effective from October 1, 2000 the deduction will be $300; and will remain so indefinitely.

(6) Homeless shelter standard: A household in which all household members are defined as homeless, within the definition at Paragraph (40) of Subsection A of 8.139.100.7 NMAC, shall be allowed the homeless shelter standard if the household incurs any shelter expenses at any time during the month.

(a) The homeless household may claim actual shelter expenses if the expenses exceed the homeless shelter standard and the expenses are verified. Verification standards at Subsection A of 8.100.130.15 NMAC and 8.100.130.9 NMAC shall be used to verify shelter expenses, as well as other reasonable documentation determined to establish the homeless household's actual expenses.

(b) The caseworker shall assist the homeless household in determining whether claiming the homeless shelter standard or actual expenses would be most beneficial to the household.

(c) The homeless shelter standard shall be deducted from the household's countable net income.

(7) Utility expenses:

(a) Allowable expenses for the mandatory utility standards: Allowable expenses that may be used to determine the mandatory utility standards include the cost of home heating or cooling; cooking fuel; electricity; water and sewerage; garbage and trash collection fees; the service fee for one telephone, including but not limited to, basic service fees, wire maintenance fees, subscriber line charges, relay center surcharges, 911 fees, taxes; and fees charged by the utility provider for initial installation of the utility.

(i) A one-time deposit is not allowed as a utility expense.

(ii) **Ex**penses billed to a landlord or housing unit, but separately identifiable from the rent as an expense to the household, are allowable expenses.

(iii) A household shall not be allowed actual utility expenses, even if the expenses exceed the amount of the mandatory utility standard for which the household is eligible.

(iv) A household that is determined eligible for a mandatory utility standard deduction shall receive only one standard deduction during the household's food stamp certification period.

(b) Mandatory heating or cooling standard: A food stamp household shall be allowed the heating/cooling standard utility allowance (HCSUA) during the household's certification period. The HCSUA includes all utility expenses for heating or cooling the household's home. The household's heating or cooling expense must be billed separately from other shelter expenses. The HCSUA shall be allowed if the household:

(i) incurs a heating or cooling expense separate from other shelter expenses; or

(ii) receives or received a direct payment or a payment is made on behalf of the household under the Low Income Home Energy Assistance Act of 1981; or

(iii) receives or received a payment or a payment is made on behalf of the household under any other similar energy assistance program as long as the household still incurs out-of-pocket heating or cooling expenses in excess of the energy assistance provided; or

(iv) lives in a public housing unit that has central utility meters, incurs a heating or cooling expense, and the household is charged only for excess heating or cooling usage.

(c) Mandatory limited utility standard: A food stamp household shall be allowed a limited utility allowance (LUA) if the household does not incur a heating or cooling expense but does incur two or more of the following expenses:

(i) electricity or fuel, for purposes other than heating or cooling;

(ii) water;

(iii) sewerage;

(iv) well and septic tank installation or maintenance;

(v) garbage or trash collection; and

(vi) one telephone.

(d) Mandatory telephone standard: A food stamp household shall be allowed the telephone standard if the household incurs an expense only for the telephone used by the household. The telephone standard shall be allowed for only one telephone charge for the residence.

G. Child support deduction: A deduction shall be

allowed for child support payments paid by a household member to or for a non-household member, provided that the household member has a legal obligation to pay child support and such payments are being made.

(1) Legal obligation and verification: The household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays shall be verified. Any document that verifies the household's legal obligation to pay child support, such as a court or administrative order, or legally enforceable separation agreement shall be acceptable verification. Documents that are accepted as verification of the household's legal obligation to pay child support shall not be accepted as verification of the household's actual monthly child support payments. Actual payment of child support shall be verified by documentation including, but not limited to, cancelled checks, wage withholding statements, verification of withholding from unemployment compensation, and statements from the custodial parent regarding direct payments or third party payments the non-custodial parent pays or expects to pay on behalf of the custodial parent. The department shall be responsible for obtaining verification of the household's child support payments if the payments are made to the child support enforcement division.

(2) Determining the deduction amount:

(a) Household with at least three months of payment history: Average the last three month period, taking into account any anticipated changes in the legal obligation. This average is the child support deduction amount. In the event that the client has at least a three month payment history and the payment includes arrearages, the amount paid toward arrearages shall be used in the average.

(b) Household with less than three months of payment history: The department shall estimate the anticipated payments according to the obligation and discussion with the client. This anticipation shall not include payments toward arrearages.

H. Nondeductable expenses:

(1) Excluded reimbursement/vendor payments:

(a) That portion of any allowable expense that is reimbursed to the household or that is paid through a vendor payment to a third party is not allowable as a deduction.

(b) Actual utility expense deductions or the SUA, as appropriate, shall be allowed for households receiving payments from LIHEAP, or receiving energy assistance payments under a program other than LIHEAP, as long as the household continues to incur out-of-pocket expenses for home heating or cooling.

(c) A reimbursement paid by HUD or FmHA to a household, or indirectly to a utility provider, is not allowed as a deductible expense.

(d) A household receiving HUD or FmHA utility reimbursements shall be entitled to the SUA if it incurs heating or cooling costs exceeding the amount of excluded utility reimbursements.

(2) Household member provides service:

(a) When one household member pays another household member to provide a product or service, the money that is exchanged is neither an expense for one nor income for the other household member. Expenses are deductible only when a product or service is provided by someone outside the household and the household makes a money payment for the product or service.

(b) Similarly, income is not counted for one household member who is paid by another household member to obtain wood for home heating. The actual cost of the wood is allowed as a utility expense if an outside money payment is made. Money exchanged between household members is not considered income to the individual receiving the money and is not an expense to the member paying it.

(3) Past due shelter expenses: Payment on delinquent rent, mortgage, property taxes or utilities are not allowed as deductible expenses even if not previously billed.

[2/1/1995, 12/17/1996, 7/1/1997; 8.139.520.11 NMAC - Rn, 8 NMAC 3.FSP.525.8, 05/15/2001; A, 02/14/2002, A, 09/01/2003; A/E, 10/01/2004; A, 04/01/2022]

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.100.130 NMAC, Section 22 effective 4/1/2022.

8.100.130.22 NON-FINANCIAL VERIFICATION STANDARDS - OTHER:

A. Fraud conviction for dual state receipt of benefits: The existence of a fraud conviction for simultaneous receipt of benefits from two states is determined based upon client statement on the application form. If ISD receives other information indicating the existence of a dual state benefit fraud conviction, ISD shall verify it by contacting the appropriate authorities.

B. Fleeing felon, probation or parole violator:

(1) Fleeing felon: An individual determined to be a fleeing felon shall be an ineligible household member. To establish an individual as a fleeing felon ISD must verify that an individual is a fleeing felon. A federal, state, or local law enforcement officer acting in his or her official capacity must present an outstanding felony arrest warrant that conforms to one of the following national crime information center uniform offense classification codes, to the department to obtain information on the location of and

other information about the individual named in the warrant:

(a) escape (4901); or

(b) flight to avoid prosecution, confinement, etc (4902); or

(c) flight-escape (4999).

(2) Probation or parole violator: An individual determined a parole or probation violator shall not be considered to be an eligible household member. To be considered a probation or parole violator, an impartial party, as designated by ISD, must determine that the individual violated a condition of his or her probation or parole imposed under federal or state law and that federal, state, or local law enforcement authorities are actively seeking the individual to enforce the conditions of the probation or parole. Actively seeking is defined as:

(a) a federal, state, or local law enforcement agency informs ISD that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or parole violation within 20 days of submitting a request for information about the individual to ISD; or

(b) a federal, state, or local law enforcement agency presents a felony arrest warrant as provided in Paragraph (1) of Subsection B of this section; or

(c) a federal, state, or local law enforcement agency states that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or parole violation within 30 days of the date of a request from ISD about a specific outstanding felony warrant or probation or parole violation.

(3) Certain convicted felons: An individual who is or has been determined to be convicted on or before February 7, 2014, as an adult of the following crimes shall not be eligible for inclusion in the cash assistance benefit group:

(a) aggravated sexual abuse under section 2241 of title 18, United States Code;

(b) murder under section 1111 of title 18, United States Code;

(c) an offense under chapter 110 of title 18, United States Code;

(d) a federal or state offense involving sexual assault, as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)); or

(e) an offense under state law determined by the attorney general to be substantially similar to an offense described in clause (i), (ii), or (iii); and

(f) the individual is not in compliance with the terms of the sentence of the individual or the restrictions under 8.139.400.12 C NMAC.

[~~**(3)**~~] **(4)** **Response time**: ISD shall give the law enforcement agency 20 days to respond to a request for information about the conditions of a felony warrant or a probation or parole violation, and whether the law enforcement agency intends to actively pursue the individual. If the law enforcement agency does not indicate that it intends to enforce the felony warrant or arrest the individual for the probation or parole violation within 30 days of the date of ISD's request for information about the warrant, ISD shall determine that the individual is not a fleeing felon or a probation or parole violator and document the household's case file accordingly. If the law enforcement agency indicates that it does intend to enforce the felony warrant or arrest the individual for the probation or parole violation within 30 days of the date of ISD's request for information, ISD will postpone taking any action on the case until the 30-day period has expired. Once the 30-day period has expired, ISD shall verify with the law enforcement agency whether it has attempted to execute the felony warrant or arrest the probation or parole violator. If it has, ISD shall take appropriate action to deny an applicant or terminate a participant who has been determined to be a fleeing felon or a probation or parole violator. If the law enforcement agency has not taken any action within 30 days, ISD shall not consider the individual a fleeing felon or probation or parole violator, shall document the case file accordingly, and take no further action.

[~~**(4)**~~] **(5)** **Application processing**: ISD shall continue to process the application while awaiting verification of fleeing felon or probation or parole violator status. If ISD is required to act on the case without being able to determine fleeing felon or probation or parole violator status in order to meet the time standards in 7 CFR 273.2(g) or 273.2(i)(3), ISD shall process the application without consideration of the individual's fleeing felon or probation or parole violator status. [8.100.130.22 - Rp, 8.100.130.13 NMAC, 8/1/2008; A, 3/1/2017; A, 12/1/2018; A, 4/1/2022]

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.314.5 NMAC, Sections 7 through1, 14 through 18 and 20, effective 4/1/2022.

8.314.5.7 DEFINITIONS:

A. Activities of daily living (ADLs): Basic personal everyday activities that include bathing, dressing, transferring (e.g., from bed to chair), toileting, oral care, mobility and eating.

B. Adult: An individual who is 18 years of age or older.

C. Authorized representative: An individual designated by the eligible recipient or [~~his or her~~] their guardian, if applicable, to represent the eligible recipient and act on [~~his or her~~] their behalf. The authorized representative

must provide formal documentation authorizing [~~him or her~~] them to access the identified case information for this specific purpose. An authorized representative may be, but need not be, the eligible recipient's guardian or attorney.

D. Child: An individual under the age of 18. For purpose of early periodic screening, diagnosis and treatment (EPSDT) services eligibility, "child" is defined as an individual under the age of 21.

E. Clinical Documentation: Sufficient information and documentation that demonstrates the request for initial and ongoing developmental disabilities waiver (DDW) services is necessary and appropriate based on the service specific DDW clinical criteria established by the department of health (DOH) developmental disabilities support division (DDSD) for adult recipients excluding class members of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al, (757 F. Supp. 1243 DNM 1990). [~~Examples of clinical documentation include but are not limited to: the therapy service prior authorization request (TSPAR), behavioral support consultation prior authorization request (BSCPAR), intense medical living service (IMLS) parameter tool, electronic comprehensive health assessment tool (e-Chat), assessments, clinical notes, progress notes, interdisciplinary team (IDT) meeting minutes, letters from physicians or ancillary service providers that provide sufficient clinical information that demonstrates the need for requested services, etc. Any relevant supporting information and documentation is acceptable and will be considered by the outside reviewer.~~] Examples of clinical documentation include but are not limited to: the DDW therapy documentation form (TDF), intensive medical living supports (IMLS) and adult nursing services parameter tools, electronic comprehensive health assessment tool (e-Chat), all other assessments, clinical notes, progress notes, interdisciplinary team (IDT) meeting minutes, letters or reports from physicians or ancillary service providers that provide sufficient clinical information that demonstrates the need for requested services, etc. Any relevant supporting information and documentation is acceptable and will be considered by the outside reviewer.

F. Clinical justification: Information and documentation that justifies the need for services based on the eligible recipient's assessed need and the DDW clinical criteria. Based on assessed need, the justification must:

(1) meet the eligible recipient's clinical, functional, physical, behavioral or habilitative needs;

(2) promote and afford support to the eligible recipient for [~~his or her~~] their greater independence and to maintain current level of function or minimize risk of further decline; or

(3) contribute to and support the eligible recipient's efforts to remain in the community; to contribute and be engaged in [~~his or her~~] their community, and to reduce [~~his or her~~] their risk of institutionalization; and

(4) address the eligible recipient's physical health, behavioral, and social support needs (not including financial support) that arise as a result of [~~his or her~~] their functional limitations or conditions, such as: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and

(5) relate to an outcome in the eligible recipient's individual service plan (ISP).

G. DDW clinical criteria: A set of criteria established by the DOH/DDSD that is applied by an outside reviewer to each DDW service when a DDW service is requested for [~~adult~~] recipients excluding class members of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al, (757 F. Supp. 1243 DNM 1990).

H. Electronic visit verification (EVV): A telephone and computer-based system that electronically verifies the occurrence of selected services, as required by the 21st Century CURES Act. The EVV system verifies the occurrence of authorized service visits electronically by documenting the precise time and location where service delivery visit begins and ends. EVV is implemented according to federal requirements and timelines. The 21st Century CURES Act requires EVV for personal care services (PCS), defined as services that provide assistance with activities of daily living (ADLs) or instrumental activities for daily living (IADLs) effective January 1, 2020 and for home health services effective January 1, 2023.

[~~H.~~] **I. Individual service plan (ISP):** [~~A person-centered plan for an eligible recipient that includes his or her needs, functional levels, intermediate and long range outcomes for achieving his or her goals and specifies responsibilities for the eligible recipient's support needs. The ISP determines the services allocated to the eligible recipient.~~] A person-centered plan for an eligible recipient that includes their needs, functional levels, intermediate and long-range outcomes for achieving their goals and specifies responsibilities for the eligible recipient's support needs. The ISP enables and assists the recipient to identify and access a personalized mix of paid waiver and non-paid services and supports that assists them to achieve personally defined outcomes in the community.

[~~I.~~] **J. Outside reviewer:** An independent [~~third party~~] third-party assessor who has a contract with the DOH to conduct clinical reviews of all requested DDW services. The outside reviewer will make a written determination on whether the requested supports are clinically justified and will recommend whether the eligible recipient's requested ISP and budget should be approved or denied. The decision of the outside reviewer to approve any requested

service is binding on the state. However, the state may agree to overturn a decision to deny requested services.

[~~J.~~] **K. Person centered planning (PCP):** Person centered planning is a process that places a person at the center of planning their life and supports. It is an ongoing process that is the foundation for all aspects of the DDW program and DDW service provider's work with individuals with I/DD. The process is designed to identify the strengths, capacities, preferences, needs, and desired outcomes of the recipient. The process may include other persons, freely chosen by the individual, who are able to serve as important contributors to the process. It involves person centered thinking, person centered service planning and person- centered practice. [~~The PCP enables and assists the recipient to identify and access a personalized mix of paid and non-paid services and supports that assists him or her to achieve personally defined outcomes in the community.~~]

[~~K.~~] **L. Waiver:** Permission from the centers for medicaid and medicare services (CMS) to cover supports for a particular population or service not ordinarily allowed.

[~~L.~~] **M. Young Adult:** An individual between the ages of 18 through 20 years of age who is allocated to the DDW and is receiving specific services as identified in the DOH/DDSD standards [~~and policies~~]. An individual under age 21 is eligible for medical services funded by [~~his or her~~] their medicaid providers under EPSDT. Upon the individual's 21st birthday, [~~he or she is~~] they are considered to be an adult recipient of DDW services.

[8.314.5.7 NMAC - Rp. 8.314.5.7 NMAC, 12/1/2018; A, 4/1/2022]

8.314.5.8 [~~RESERVED~~] SAFEGUARDS CONCERNING RESTRAINTS, RESTRICTIONS AND SECLUSION:

A. Seclusion and isolation is prohibited during waiver services.

B. Use of restraints or restrictions is only permitted during the course of delivery of waiver services under strict limitations and oversight.

(1) Certain specific interventions are considered ethically unacceptable for application and, as such, are unequivocally prohibited. Interventions that are prohibited include but are not limited to:

(a) contingent electrical aversion procedures;

(b) seclusion and isolation;

(c) use of time out (for an adult);

(d) use of mechanical or chemical restraints;

(e) use of manual application of any physical restraint, except in emergent situations involving imminent risk of harm to self or others (personal restraints);

(f) overcorrection;

(g) forced physical guidance;

(h) forced exercise;

(i) withholding food, water, or sleep;

(j) public or private humiliation;

(k) privacy violations;

(l) restricting exit from home with locks on windows or doors;

(m) application of water mist; and

(n) application of noxious taste, smell, or skin agents; etc.

(2) Use of restrictive interventions must be documented in the individual's positive behavior support plan or behavioral crisis intervention plan or risk management plan and must be reviewed by the human rights committee prior to implementation.

(3) Chemical restraint is defined as the administration of medication at a dose or frequency to intentionally and exclusively preclude behavior without identifying an underlying anxiety, fear or severe emotional distress or other symptoms of psychiatric/emotional disturbance to be eased, managed or treated. The administration may be regularly scheduled or on a pro re nata (PRN), or "as needed" basis. The use of chemical restraints is prohibited.

(4) The administration of PRN psychotropic medication is allowed when prescribed in advance by the prescribing professional. A PRN psychotropic medication plan is a collaborative document that outlines the behavioral indications for using the medication. A human rights committee must approve use of PRN psychotropic medication prior to its implementation and the procedures that DSP must use to gain approval for its implementation.

(5) Mechanical restraints are defined as the use of a physical device to restrict the individual's capacity for desired or intended movement including movement or normal function of a portion of their body. The use of mechanical restraints is prohibited.

(6) Use of any emergency physical restraints must be written into a behavioral crisis intervention plan only and approved by a human rights committee prior to its use. Personal restraints (i.e. emergency physical restraints) are used as a last resort, only when other less intrusive alternatives have failed and under limited circumstances that include protecting an individual or others from imminent, serious physical harm, or to prevent or minimize any physical or emotional harm to the individual. Staff must be trained in both nonphysical and physical interventions.

(7) Any individual for whom the use of emergency physical restraints or PRN psychotropic medications is allowed is required to have a positive behavioral supports assessment, positive behavior support plan, and a behavioral crisis intervention plan or

PRN psychotropic medication plan completed by a behavior support consultant in conjunction with the individual's agency nurse and interdisciplinary team.

(8) Ethical, medical or behavioral concerns, use of live or recorded video monitoring/ observational systems, and resolution of plans contested on the individual team or provider agency level in local human rights committees are heard and resolved in a statewide and state coordinated super human rights committee.

[8.314.5.8 NMAC - Rp, 8.314.5.8 NMAC, 12/1/2018; A, 4/1/2022]

8.314.5.9 DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES WAIVER: The New Mexico medical assistance division (MAD) has obtained a waiver from certain medicaid payment and benefit statutes (42 CFR 441.300) to provide home and community-based services (HCBS) to eligible recipients as an alternative to institutionalization. DDW services are intended to enhance, not replace, existing natural supports and other available community resources. Services will emphasize and promote the use of natural and generic supports to address the eligible recipient's assessed needs in addition to paid supports. Provider agencies are required to ensure the settings in which they provide services meet the below requirements. All providers have a responsibility to monitor settings for compliance; monitor that waiver recipients are given choices; and, ensure rights are respected. DDW services must be provided in a setting that:

A. is integrated in and facilitates full access to the greater community;

B. ensures the individual receives services in the community to the same degree of access as individuals not receiving medicaid HCBS;

C. maximizes independence in making life choices;

D. is chosen by the individual (in consultation with the guardian if applicable) from among residential and day options, including non-disability specific settings;

E. ensures the right to privacy, dignity, respect and freedom from coercion and restraint;

F. supports health and safety based upon the individual's needs, decisions or desires;

[~~F.~~] **G.** optimizes individual initiative, autonomy and independence in making life choices;

[~~G.~~] **H.** provides an opportunity to seek competitive employment;

[~~H.~~] **I.** provides individuals an option to choose a private unit in a residential setting; and

[~~I.~~] **J.** facilitates choice of services and who provides them.

[8.314.5.9 NMAC - Rp, 8.314.5.9 NMAC, 12/1/2018; A, 4/1/2022]

8.314.5.10 ELIGIBLE PROVIDERS:

A. Health care to [~~MAP~~] eligible recipients is furnished by a variety of providers and provider groups. The reimbursement and billing for these services is administered by MAD. Upon approval of a New Mexico MAD provider participation agreement (PPA) by MAD or its designee, licensed practitioners, facilities, and other providers of services that meet applicable requirements are eligible to be reimbursed for furnishing covered services to [~~MAP~~] eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/ MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including New Mexico administrative code (NMAC) rules, billing instructions, utilization review instructions, EVV requirements and instructions, service definitions and service standards and other pertinent materials. When enrolled, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to obtain answers to questions related to the material or not covered by the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD PPA and all applicable statutes, regulations, and executive orders. MAD or its selected claims processing contractor issues payments to a provider using electronic funds transfer (EFT) only.

B. All DDW eligible providers must be approved by DOH or its designee and have an approved MAD PPA and a DOH provider agreement.

C. MAD through its designee, DOH/DDSD, follows a subcontractor model for certain DDW services. The agency, following the DOH/DDSD model, must ensure that its subcontractors or employees meet all required qualifications. The agency must provide oversight of subcontractors and supervision of employees to ensure that all required MAD and DOH/DDSD qualifications and service standards are met. In addition, the agency must provide oversight and supervision of subcontractors and employees to ensure that services are delivered in accordance with all requirements set forth by the DOH/DDSD DDW service definition, all requirements outlined in the DDW services standards, applicable NMAC rules, MAD supplements, and as applicable, [~~his or her~~] their New Mexico licensing board's scope of practice and licensure. Pursuant to federal regulations, an agency may not employ or subcontract with the spouse of an eligible recipient or the parent of an eligible recipient under 18 years of age to provide direct care services to the eligible recipient.

D. Qualifications of case management provider agency: A case management provider agency, its case managers, whether subcontractors or employees must

comply with 8.314.5.10 NMAC. In addition, case management provider agency must ensure that a case manager meets the following qualifications:

(1) one year of clinical experience, related to the target population; and

(2) one or more of the following:

(a) hold a current social worker license as defined by the New Mexico regulation and licensing department (RLD); or

(b) hold a current registered nurse (RN) license as defined by the New Mexico board of nursing; or

(c) hold a bachelor's or master's degree in social work, psychology, sociology, counseling, nursing, special education, or a closely related field or have a minimum of six years of direct experience related to the delivery of social services to people with disabilities; and

(3) comply with all training requirements as specified by DOH/DDSD; and

(4) have received written notification from DOH that [~~he or she does~~] they do not have a disqualifying conviction after submitting to the caregiver criminal history screening (CCHS);

(5) [~~does not provide any direct support services through any other type of 1915 (c) HCBS waiver program;~~] does not provide any direct waiver services through the same 1915 (c) HCBS waiver program; and

(6) any exception to the above must be approved by DOH/DDSD.

E. Qualifications of respite provider agency: A respite provider agency must comply and ensure that all direct support personnel, whether subcontractors or employees, comply with 8.314.5.10 NMAC. In addition, respite provider agencies and direct support personnel must:

(1) comply with all training requirements as specified by DOH;

(2) have and maintain documentation of current cardiopulmonary resuscitation (CPR) and first aid certification; [~~and~~]

(3) have written notification from DOH that [~~he or she does~~] they do not have a disqualifying conviction after submitting to the CCHS; and

(4) comply with all EVV requirements as defined by the 21st Century CURES Act and implemented by MAD including but not limited to documenting service provision using the approved EVV system.

F. Qualifications of adult nursing provider agencies: Adult nursing provider agencies must ensure all subcontractors or employees, including nurses, comply with DOH DDW service definitions, DDW service standards, applicable NMAC rules, MAD billing instructions, utilization review instructions, and supplements, and applicable federal and state laws, rules and statutes. Direct nursing services shall be provided by a New Mexico licensed RN or licensed practical nurse (LPN), have a minimum of one year experience as a licensed nurse, and must comply with all aspects of the New Mexico Nursing Practice Act, including supervision and delegation requirements of specific nursing function and 8.314.5.10 NMAC.

G. Qualifications of therapy provider agency: A therapy provider agency must comply and ensure that each of its therapists including physical therapists (PT), occupational therapists (OT), and speech therapists (SLP), physical therapy assistants (PTA), and certified occupational therapy assistants (COTA), whether a subcontractor or employee complies with 8.314.5.10 NMAC.

H. Qualifications for [~~community~~] living supports provider agency: Living supports consist of family living, supported living, and intensive medical living [~~services~~] supports. A living supports provider agency must comply with the accreditation policy and all requirements set forth by the DOH, DDW service definitions, all requirements outlined in the DDW service standards and the applicable NMAC rules. A living supports provider agency must ensure that all direct support personnel meet all qualifications set forth by DOH, DDW service standards, and applicable NMAC rules.

(1) A living supports provider agency and direct support personnel must:

(a) comply with all training requirements as specified by DOH;

(b) have and maintain documentation of current CPR and first aid certification; and

(c) have written notification from DOH that [~~he or she does~~] they do not have a disqualifying conviction after submitting to the CCHS.

(2) A family living provider agency must ensure that all direct support personnel, whether a subcontractor or employee, meet all qualifications set forth by DOH and the DDW service standards and the applicable NMAC rules. Legal guardians who are also natural or adoptive family members who meet the DOH/DDSD requirements and are approved to provide family living services may be paid for providing services. A family living provider agency must employ or subcontract with at least one registered or licensed dietician or licensed nutritionist. A family living provider agency must also be an adult nursing services provider and must employ or subcontract with at least one licensed RN; employ or subcontract with at least one additional nurse for on call services and comply with the New Mexico Nurse Practice Act, including supervision and delegation requirements of specific nursing functions. The number of nurses (RNs and LPNs) must be sufficient to meet the routine and on call health care needs of the individuals. [~~The~~] Both the direct support personnel employed by or subcontracting

with the provider agency and the physical home setting must be approved through a home study completed prior to the initiation of services, revised with any change in family composition, move to a new home, or other significant event and periodically thereafter as required of the provider agency.

(3) A supported living provider agency must ensure that all direct support personnel meet all qualifications set forth by DOH and the applicable NMAC rules and the DDW service standards. A supported living provider agency must employ or subcontract with at least one registered or licensed dietician or licensed nutritionist. The number of RD/LDs employed or under contract must be sufficient to meet the routine nutritional needs of the individuals. They must employ or subcontract with at least one licensed RN, employ or subcontract with at least one additional nurse for on call and services, and comply with the New Mexico Nurse Practice [~~Practicing~~] Act, including supervision and delegation requirements of specific nursing functions. The number of nurses (RNs and LPNs) must be sufficient to meet the routine and on call health care needs of the individuals.

(4) An intensive medical living supports provider agency must employ or subcontract with at least one registered or licensed dietician or licensed nutritionist. The number of RD/LDs employed or under contract must be sufficient to meet the routine nutritional needs of the individuals. They must employ or subcontract with at least one New Mexico licensed RN who must have a minimum of one year of [~~supervised~~] nursing experience employ or subcontract with at least one additional nurse for on call services and comply with the New Mexico Nursing Practice Act including supervision and delegation requirements of specific nursing functions. The number of nurses (RNs and LPNs) must be sufficient to meet the routine and on call health care needs of the individuals. [~~An intensive medical living supports provider agency must comply with and ensure RNs, whether subcontractors or employees, comply with 8.314.5.10 NMAC. An intensive medical living supports provider agency and direct support personnel must:~~

~~**(a)** comply with all training requirements as specified by DOH;~~

~~**(b)** have and maintain documentation of current CPR and first aid certification; and~~

~~**(c)** have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the CCHS.~~]

I. Qualifications of a customized community supports provider agency: A customized community supports provider agency must comply with and ensure that all direct support personnel comply with 8.314.5.10 NMAC. A customized community supports provider agency and direct support personnel must:

(1) comply with all training requirements as specified by DOH;

(2) have and maintain documentation of current CPR and first aid certification; and

(3) have written notification from DOH that [~~he or she does~~] they do not have a disqualifying conviction after submitting to the CCHS.

J. Qualifications of a community integrated employment provider agency: A community integrated employment provider agency must comply with and ensure that all direct support personnel comply with 8.314.5.10 NMAC. A community integrated employment provider agency and direct support personnel must:

(1) comply with all training requirements as specified by DOH;

(2) have and maintain documentation of current CPR and first aid certification; and

(3) have written notification from DOH that [~~he or she does~~] they do not have a disqualifying conviction after submitting to the CCHS.

K. Qualifications of a behavioral support consultation provider agency: A behavioral support consultation provider agency must comply with and ensure that all behavioral support consultants, whether subcontractors or employees, comply with 8.314.5.10 NMAC.

(1) A provider of behavioral support consultation services must be currently licensed in one of the following professions and maintain that licensure with the appropriate RLD board or licensing authority:

(a) a licensed clinical mental health counselor (LMHC), or

(b) a licensed [~~clinical~~] psychologist; or

(c) a licensed psychologist associate, (masters or Ph.D. level); or

(d) a licensed independent social worker (LISW) or a licensed clinical social worker (LCSW); or

(e) a licensed master social worker (LMSW); or

(f) a licensed professional clinical mental health counselor (LPCC); or

(g) a licensed marriage and family therapist (LMFT); or

(h) a licensed [~~practicing~~] professional art therapist (LPAT); or

(i) Other related licenses and qualifications may be considered with DOH's prior written approval.

(2) Providers of behavioral support consultation services must have a minimum of one year of experience working with individuals with intellectual or developmental disabilities.

(3) Behavioral support consultation providers must participate in training in accordance with the DOH/DDSD training policy.

L. Qualifications of a nutritional counseling provider agency: A nutritional counseling provider agency must comply with and ensure that all nutritional counseling providers, whether subcontractors or employees comply with 8.314.5.10 NMAC. In addition, a nutritional counseling provider must be registered as a dietitian or a licensed nutritionist by the commission on dietetic registration of the American dietetic association and be licensed by RLD as a nutrition counselor.

M. Qualifications of an environmental modification provider agency: An environmental modification contractor and [~~his or her~~] their subcontractors and employees must be bonded, licensed by RLD, and authorized by DOH to complete the specified project. An environmental modification provider agency must comply with 8.314.5.10 NMAC. All services shall be provided in accordance with applicable federal, state and local building codes.

N. Qualifications of a crisis supports provider agency: A crisis supports provider agency must comply with and must ensure that direct support personnel, whether subcontractors or employees, comply with 8.314.5.10 NMAC. In addition, a crisis supports provider agency and direct support personnel must:

(1) comply with all training requirements as specified by DOH;

(2) have and maintain documentation of current CPR and first aid certification; and

(3) have written notification from DOH that [~~he or she does~~] they do not have a disqualifying conviction after submitting to the CCHS.

~~[**O. Qualifications for a non-medical transportation provider agency:** A non-medical transportation provider agency must comply with 8.314.5.10 NMAC. In addition, a non-medical transportation provider agency and direct support personnel must:~~

~~**(1)** comply with all training requirements as specified by DOH;~~

~~**(2)** have and maintain documentation of current CPR and first aid certification; and~~

~~**(3)** have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the CCHS.~~

~~**P. Qualifications of a supplemental dental care provider agency:** A supplemental dental care provider agency must comply with 8.314.5.10 NMAC. A supplemental dental care provider must contract with a New Mexico licensed dentist and dental hygienist who are licensed by RLD. The supplemental dental care provider will ensure that a RLD licensed dentist provides the oral examination; ensure that a RLD licensed dental hygienist provides all routine dental cleaning services; demonstrate fiscal solvency; and function as a payee for the service.]~~

~~**Q. Qualifications of an assistive technology purchasing agent provider and:** An assistive technology purchasing agent provider and agency must comply with 8.314.5.10 NMAC, demonstrate fiscal solvency and function as a payee for this service.~~

~~**R. Qualifications of an independent living transition service provider agency:** An independent living transition service provider agency must comply with 8.314.5.10 NMAC, demonstrate fiscal solvency and function as a payee for this service.~~

~~**S. Qualifications of a personal support technology/on-site response service provider agency:** Personal support technology/on-site response service provider agencies must comply with 8.314.5.10 NMAC. In addition, personal support technology/on-site response service provider agencies must comply with all laws, rules, and regulations of the federal communications commission (FCC) for telecommunications.~~

~~**T. Qualifications of a preliminary risk screening and consultation related to inappropriate sexual behavior (PRSC) provider agency:** A PRSC provider agency must comply with 8.314.5.10 NMAC and all training requirements as specified by DOH. Additionally, the PRSC provider agency must subcontract with or employ the risk evaluator, who at a minimum must be:~~

~~**(1)** an RLD independently licensed behavioral health practitioner, such as an LPCC, LCSW, LMFT, LISW, or a psychologist; or~~

~~**(2)** a practitioner who holds a master's or doctoral degree in a behavior health related field from an accredited college or university.~~

~~**U. Qualifications of a socialization and sexuality education provider agency:** A socialization and sexuality education provider agency must comply with 8.314.5.10 NMAC. A provider agency must be approved by the DOH, bureau of behavioral support (BBS) as a socialization and sexuality education provider, and must meet training requirements as specified by DOH. In addition, a socialization and sexuality education provider agency must employ or contract with a provider who has one of the following qualifications for rendering the service:~~

~~**(1)** a master's degree or higher in psychology;~~

~~**(2)** a master's degree or higher in counseling;~~

~~**(3)** a master's degree or higher in special education;~~

~~**(4)** a master's degree or higher in social work;~~

~~**(5)** a master's degree or higher in a related field;~~

~~**(6)** a RN or LPN;~~

~~**(7)** a bachelor's degree in special education or a related field such as psychology or social work;~~

~~**(8)** a certification in special education; or~~

~~**(9)** a New Mexico level three recreational therapy instructional support provider certification.~~

~~**V. Qualifications of**~~

~~**a customized in-home supports provider agency:** A customized in-home supports provider agency must comply with and ensure that direct support personnel, whether subcontractors or employees, comply with 8.314.5.10 NMAC. A customized in-home supports provider agency and direct support personnel must:~~

~~**(1)** comply with all training requirements as specified by DOH;~~

~~**(2)** have and maintain documentation of current CPR and first aid certification; and~~

~~**(3)** have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the CCHS.~~]

O. Qualifications for a non-medical transportation provider agency: A non-medical transportation provider agency must comply with 8.314.5.10 NMAC. In addition, a non-medical transportation provider must have a business license and drivers must have a valid driver's license and not have a disqualifying conviction after submitting to the CCHS. Must have written notification from DOH that they do not have a disqualifying conviction after submitting to the CCHS.

P. Qualifications of an assistive technology provider agency: An assistive technology purchasing agent provider and agency must comply with 8.314.5.10 NMAC, demonstrate fiscal solvency when functioning as a payee for this service. Assistive technology providers may also be the direct vendors of approved technology.

Q. Qualifications of an independent living transition service provider agency: An independent living transition service provider agency must comply with 8.314.5.10 NMAC, demonstrate fiscal solvency and function as a payee for this service.

R. Qualifications of a remote personal support technology provider agency: Remote personal support technology provider agencies must comply with 8.314.5.10 NMAC. This includes having a current business license and must demonstrate fiscal solvency and function as a payee of services. In addition, remote personal support technology provider agencies must comply with all laws, rules, and regulations of the federal communications commission (FCC) for telecommunications.

S. Qualifications of a preliminary risk screening and consultation (PRSC) related to inappropriate sexual behavior provider agency: A PRSC provider agency must comply with 8.314.5.10 NMAC and all training requirements as specified by DOH. Additionally, the PRSC provider agency must subcontract with or employ the evaluator, who at a minimum must be:

(1) an RLD independently licensed behavioral health practitioner, such as an LPCC, LCSW, LMFT, LISW, or a psychologist; or

(2) a practitioner who holds a master's or doctoral degree in a behavior health related field from an accredited college or university.

T. Qualifications of a socialization and sexuality education provider agency: A socialization and sexuality education provider agency must comply with 8.314.5.10 NMAC. A provider agency must be approved by the DOH, bureau of behavioral support (BBS) as a socialization and sexuality education provider and must meet training requirements as specified by DOH. In addition, a socialization and sexuality education provider agency must employ or contract with a provider who has one of the following qualifications for rendering the service:

(1) a master's degree or higher in psychology;

(2) a master's degree or higher in counseling;

(3) a master's degree or higher in special education;

(4) a master's degree or higher in social work;

(5) a master's degree or higher in a related field;

(6) a RN or LPN;

(7) a bachelor's degree in special education or a related field such as psychology or social work;

(8) a certification in special education;

(9) a New Mexico level three recreational therapy instructional support provider license; or

(10) a certified therapeutic recreation therapist (CTRS) obtained through the national council for therapeutic recreation.

U. Qualifications of a customized in-home supports provider agency: A customized in-home supports provider agency must comply with and ensure that direct support personnel, whether subcontractors or employees, comply with 8.314.5.10 NMAC. Legal guardians who are also natural or adoptive family members, relatives, or natural family members that meet the DOH/DDSD requirements and are approved to provide customized in-home supports may be paid for providing services. A customized in-home supports provider agency and direct support personnel must:

(1) comply with all training requirements as specified by DOH;

(2) have and maintain documentation of current CPR and first aid certification; and

(3) have written notification from DOH that they do not have a disqualifying conviction after submitting to the CCHS.

(4) comply with all EVV requirements as defined by the 21st Century CURES Act and implemented by MAD including but not limited to documenting service provision using the approved EVV system.

V. Qualifications of a supplemental dental care provider agency: A supplemental dental care provider agency must comply with 8.314.5.10 NMAC. A supplemental dental care provider must contract with a New Mexico licensed dentist

and dental hygienist who are licensed by RLD. The supplemental dental care provider will ensure that a RLD licensed dentist provides the oral examination; ensure that a RLD licensed dental hygienist provides all routine dental cleaning services; demonstrate fiscal solvency; and function as a payee for the service.
[8.314.5.10 NMAC - Rp, 8.314.5.10 NMAC, 12/1/2018; A, 4/1/2022]

8.314.5.11 PROVIDER RESPONSIBILITIES:

A. A provider who furnishes services to an eligible recipient must comply with all federal and state laws, regulations, rules, and executive orders relevant to the provision of services as specified in the MAD provider participation agreement and the DOH provider agreement. A provider also must meet and adhere to all applicable NMAC rules and instructions as specified in the MAD provider rules manual and its appendices, DDW service standards, DDW service definitions, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and the centers for medicare and medicaid services (CMS) correct coding initiatives, including not improperly unbundling or upcoding services.

B. A provider must verify that an individual is eligible for a specific health care program administered by the HSD and its authorized agents and must verify the eligible recipient's enrollment status at the time services are furnished. A provider must determine if an eligible recipient has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to an eligible recipient.

C. Provider agencies must mitigate any conflict of interest issues by adhering to at least the following:

(1) Any individual who operates or is an employee of a DDW provider shall not serve as guardian for a person served by that agency, except when related by affinity or consanguinity (Paragraph (1) of Subsection A of Section 45-5-31 NMSA (1978)). Affinity which stems solely from the caregiver relationship is not sufficient to satisfy this requirement.

(2) DDW provider agencies may not employ or sub-contract with a direct support person who is an immediate family member to support the person in services, except when the person is in family living, respite, or customized in home supports (CIHS).

(3) DDW provider agencies may not employ or subcontract with the spouse of the participant to support the person in any DDW funded services.

D. Case management agencies are required to mitigate real or perceived conflict of interest issues by adhering to, at minimum the following requirements. Case managers who are contracted under the DDW are identified as agents who are responsible for the development of the ISP.

(1) Case management agency owners and individually employed or contracted case managers may not:

(a) be related by blood or affinity to the person supported, or to any paid caregiver of the individual supported. Following formal authorization from DDSD, a case manager may provide family living services or respite to their own family member; [~~or to an individual who receives case management services from another provider;~~]

(b) have material financial interest in any entity that is paid to provide DDW or mi via services. A material financial interest is defined as anyone who has, directly or indirectly, any actual or potential ownership, investment, or compensation arrangement;

(c) be empowered to make financial or health related decisions for individuals on their caseload;

(d) be related by blood or affinity to any DDW service provider for individuals on their caseload. Providers are identified as providers of living care arrangements, community inclusion services, mi via consultants, mi via vendors, BSC's and therapist**.**

[~~(e)~~ ~~hold a caseload on mi via and DDW simultaneously.~~]

(2) A case management provider agency may not:

(a) be a provider agency for any other DDW service;

(b) provide guardianship services to an individual receiving case management services from that same agency;

(3) A case manager or director of a case management provider agency may not:

(a) serve on the board of directors of any DDW provider agency;

(b) provide training to staff of DDW provider agencies unless meeting criteria as outlined in the DDW service standards.

(4) [~~Case management provider agencies must disclose to both DDSD and to people supported by their agency any familial relationships between employees/ subcontract case managers and providers of other DDW services.~~] Case management provider agencies must disclose to both DDSD and the people supported by their agency any familial relationships between employees or subcontract case managers and providers of other DDW services.

(5) Case management provider agency staff and subcontractors must maintain independence and avoid all activity which could be perceived as a potential conflict of interest.
[8.314.5.11 NMAC - Rp, 8.314.5.11 NMAC, 12/1/2018; A, 4/1/2022]

8.314.5.14 DDW COVERED WAIVER SERVICES FOR IDENTIFIED POPULATION UNDER 18 YEARS OF AGE:
The DDW program is limited to

the number of federally authorized unduplicated eligible recipient (UDR) positions and program funding. All DDW covered services in an ISP must be authorized. DDW services must be provided in accordance with all requirements set forth by DDW service definitions, all requirements outlined in the DDW service standards, and the applicable NMAC rules, supplements and guidance. The DDW covers the following services for a specified and limited number of waiver eligible recipients as a cost effective alternative to institutionalization in an intermediate care facilities for individuals with intellectual disabilities (ICF-IID).

[~~**A. Eligible recipients age birth to 18:** The child's level of care assessment is used to determine the annual resource allotment (ARA) within the under 18 years of age category. The service options funded within the ARA allow the family of an eligible recipient, in conjunction with the IDT, the flexibility to choose any or all of these service options in an amount that does not exceed the eligible recipient's ARA. Services funded within [the ARA include:]~~

~~**[(1)** behavioral support consultation;~~

~~**(2)** customized community support;~~

~~**(3)** respite;~~

~~**(4)** non-medical transportation;~~

~~**(5)** case management; and~~

~~**(6)** nutritional counseling.~~

~~**B.** Services from the under 18 years of this age category must be coordinated with and shall not duplicate other services such as the medicaid school-based services program, the MAD early periodic screening diagnosis and treatment (EPSDT) program, services offered through the New Mexico public education department (PED), or the DOH family infant toddler program (FIT).~~

~~**C.** Service options available outside of the ARA include:~~

~~**(1)** environmental modifications;~~

~~**(2)** assistive technology;~~

~~**(3)** remote personal support technology;~~

~~**(4)** preliminary risk screening and consultation; and~~

~~**(5)** socialization and sexuality education.~~]

A. Eligible recipients age birth to 18: Services funded within this age category must be coordinated with and shall not duplicate other services such as the medicaid school-based services program, the MAD early periodic screening diagnosis and treatment (EPSDT) program, services offered through the New Mexico public education department (PED), or the early childhood education and care department (ECECD) family infant toddler (FIT) program.

B. Service options available include:

(1) environmental modifications;

(2) assistive technology;

(3) remote personal support technology;

(4) preliminary risk screening and consultation;

(5) socialization and sexuality education;

(6) behavioral support consultation;

(7) customized community support;

(8) respite;

(9) non-medical transportation;

(10) case management; and

(11) nutritional counseling.

[8.314.5.14 NMAC - Rp, 8.314.5.14 NMAC, 12/1/2018; A, 4/1/2022]

8.314.5.15 DDW COVERED WAIVER SERVICES [~~FOR IDENTIFIED POPULATION 18 YEARS OF AGE AND OLDER~~]: The DDW program is limited to the number of federally authorized unduplicated eligible recipient (UDR) positions and program funding. All DDW covered services in an ISP must be authorized by DOH. DDW services must be provided in accordance with all requirements set forth by DOH DDW service definition, all requirements outlined in the DDW service standards, and the applicable NMAC rules, supplements and guidance. Services for individuals under the age of 21 must be coordinated with and shall not duplicate other services such as the medicaid school-based services program, the MAD early periodic screening diagnosis and treatment (EPSDT) program, or the early childhood education and care department (ECECD) family infant toddler (FIT) program. Services offered through the New Mexico public education department (PED), the Individuals with Disabilities Education Act (IDEA), the New Mexico division of vocational rehabilitation (DVR), the Rehabilitation Act, the Workforce Innovation and Opportunities Act (WIOA), the New Mexico department of workforce solutions (DWS) must be utilized prior to accessing funding from the DDW. DDW covers the following services for a specified and limited number of waiver eligible recipients as a cost effective alternative to institutionalization in an ICF-IID.

A. There are seven proposed budget levels (PBL) which the IDT use for person centered planning. They encompass descriptions and characteristics of seven levels of typical support needs designed to meet the needs of most individuals. Each PBL has a corresponding suggested budget dollar amount based on the type of living care arrangement, typical service options, intensity of staffing needs, and support needs in each level. The case manager guides the IDT in the person-centered planning process. The IDT makes a determination of which proposed budget level the person falls based on history, current assessments, and support needs, using both the PBL and suggested dollar amount as a tool or guide in the person-centered planning

process and in budget development. The OR approves services based on clinical justification. Approvals may be over or under the suggested amount. The OR does not verify or approve the IDT's determination of a PBL, nor does a PBL limit the request for services or require that the budget be developed within a set amount.

B. Exception authorization process, formerly known as the H authorization process is the process that allows individuals on the DDW, who have extenuating circumstances, including extremely complex clinical needs to receive services beyond what is authorized in their current ISP/budget level or to allow individual exceptions to DDW service standards. Exception authorization process includes:

(1) an eligible recipient who is included in the class established in the matter of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al, (757 F. Supp. 1243 DNM 1990) is to receive a permanent NM DDW exception authorization approval. A Jackson class member may receive service types and amounts consistent with those approved in [~~his or her~~] their ISP**.**

(2) Exception authorization packet includes: the completed individual supports needs review form with all attachments indicated on the form as relevant to the nature/type of exception authorization process request submitted.

C. When determining what services the eligible recipient needs, the IDT should consider the individual's proposed budget level and service options with the understanding that the focus must always be on the individual's DDW support needs that can be clinically justified. Services available:

(1) Case management services: Case management services assist an eligible recipient to access MAD covered services. A case manager also links the eligible recipient to needed medical, social, educational and other services, regardless of funding source. DDW services are intended to enhance, not replace existing natural supports and other available community resources. Services will emphasize and promote the use of natural and community supports to address the eligible recipient's assessed needs in addition to paid supports. Case managers facilitate and assist in assessment activities, as appropriate. Case management services are person-centered and intended to advocate for and support an eligible recipient in pursuing [~~his or her~~] their desired life outcomes while gaining independence, and access to services and supports. Case management is a set of interrelated activities that are implemented in a collaborative manner involving the active participation of the eligible recipient, [~~his or her~~] their authorized representative, and the entire IDT. The case manager is an advocate for the eligible recipient [~~he or she serves~~] they serve, is responsible for developing the ISP and for ongoing monitoring of the provision of services included in the ISP. Case management services include but are not limited to activities such as:

(a) assessing needs;

(b) [~~facilitating eligibility determination for persons with developmental disabilities~~] assisting in the submission process of the application for assistance and yearly recertification to the local income support division (ISD) office;

(c) directing the person-centered planning process;

(d) advocating on behalf of the eligible recipient;

(e) [~~coordinating service delivery under state plan;~~] coordinating waiver and state plan service delivery and collaborating with managed care organization care coordinators;

(f) assuring services are delivered as described in the ISP;

(g) maintaining a complete current central eligible recipient record (e.g. ISP, ISP budget, level of care documentation, assessments);

(h) health care coordination;

(i) assuring cost containment by preventing the expense of DDW services from exceeding a maximum cost established by DOH and by exploring other options to address expressed needs.

(j) Case managers must:

(i) evaluate and monitor direct service through face-to-face visits with the eligible recipient to ensure the health and welfare of the eligible recipient, and to monitor the implementation of the ISP;

(ii) support informed choice;

(iii) support participant self-advocacy;

(iv) allow participants to lead their own meetings, program and plan development;

(v) increase an individual's experiences with other paid, unpaid, publicly-funded and community support options;

(vi) increase self-determination;

(vii) demonstrate that the approved budget is not replacing other natural or non-disability specific resources available; and

(viii) document efforts demonstrating choice of non-waiver and non-disability specific options in the ISP, IDT meeting minutes or companion documents when an individual has only DDW funded supports.

(2) Respite services: Respite services are a flexible family support service for an eligible recipient. The primary purpose of respite services is to provide support to the eligible recipient and give the primary, unpaid caregiver relief and time away from [~~his or her~~] their duties. Respite services include assistance

with routine activities of daily living (e.g., bathing, toileting, preparing or assisting with meal preparation and eating), enhancing self-help skills and providing opportunities for play and other recreational activities; community and social awareness; providing opportunities for community and neighborhood integration and involvement; and providing opportunities for the eligible recipient to make [~~his or her~~] their own choices with regard to daily activities. Respite services will be scheduled as determined by the primary caregiver. An eligible recipient receiving living supports or customized in-home supports (when an eligible recipient is not living with a family member), may not access respite services. Respite services may be provided in the eligible recipient's own home, in a provider's home, or in a community setting of the eligible recipient family's choice. Respite services must be provided in accordance with 8.314.5.10 NMAC.

(3) Adult nursing services: Adult nursing services (ANS) are provided by a licensed RN or LPN under the direct supervision of [~~a~~] the RN to an eligible adult recipient. Adult nursing services are intended to support the highest practicable level of health, functioning and independence for an eligible recipient. [~~They include~~] This includes the direct nursing services and activities related to the assessment, planning, training and nursing oversight of unrelated direct support staff when assisting with a variety of health related needs in specific settings. Nursing services may be delivered in person and via remote or telehealth services. Nursing services include an array of supports including efforts to support aspiration risk management (ARM). Nursing services may be delivered in person and via remote or telehealth services. Individuals and their health care decision makers will be informed of telehealth service and technology as part of the ISP process.

(a) ANS is available to individuals ages 21 and over who reside in family living; those who receive customized in home supports and those who do not receive any living supports. It is available to any eligible recipient who has health related needs that require at least one of the following: nursing training, delegation or oversight of direct support staff during participation in customized community supports (individual or small group) or community integrated employment even if living supports or CCS-group are also provided.

(b) ANS is available to individuals ages 18-20 who reside in family living and who are at aspiration risk and desire to have aspiration risk management services. It is also available to individuals who have health related needs that require nursing training, delegation or the oversight of non-related direct support staff during substitute care; customized community supports (individual or small group); community integrated employment or customized in home supports.

(c) There are two categories of adult nursing services:

(i) assessment and consultation services which includes a comprehensive health assessment (including assessment for medication delivery needs and aspiration risk) and consultation regarding available or mandatory services which requires only budgeting; and

(ii) ongoing services, which requires [~~prior authorization~~] clinical justification and are tied to the eligible recipient's specific health needs revealed in the comprehensive health assessment and prior authorization process.

(4) Therapy services: Therapy services are to be delivered consistent with the participatory approach philosophy and two models of therapy services (collaborative-consultative and direct treatment). These models support and emphasize increased participation, independence and community inclusion in combination with health and safety. DDW therapy services are intended to improve, maintain or minimize the decline in functional ability and skills. Therapy services are designed to support achievement of ISP outcomes and prioritized areas of need identified through therapeutic assessment. PT, OT and SLP are skilled therapies that are recommended by an eligible recipient's IDT members and a clinical assessment that demonstrates the need for therapy services. Therapy services may be delivered in an integrated setting, clinical setting, or through telehealth as appropriate and will support the use of assistive or remote personal support technology as needed. Upon recommendation for therapy assessment by the IDT members [~~All~~] all three therapy disciplines: PT, OT, and SLP will be available to all DDW recipients if [~~they and their IDT members determine the therapy disciplines are necessary~~] the therapy assessment indicates that services are needed. Individuals and their health care decision makers will be informed of telehealth service and technology as part of the ISP process. Therapy services for an eligible adult recipient require a prior authorization except for [~~his or her~~] their initial assessment. A RLD licensed practitioner, as specified by applicable state laws and standards, provides the skilled therapy services. Therapy services for eligible adult recipients must comply with 8.314.5.10 NMAC. All medically necessary therapy services for children under 21 years of age, are covered under the state plan through the early periodic screening, diagnostic and treatment (EPSDT) [~~benefit~~] and must comply with 8.320.2 NMAC. To the extent that any listed services are covered under the state plan, the services under the waiver are additional services not otherwise covered under the state plan, and consistent with DDW objectives to support the recipient to remain in the community and prevent institutionalization. The exception is aspiration risk management supports for persons between age 18 and 21.

(a)

Physical therapy (PT): PT is a skilled, RLD licensed therapy service involving the diagnosis and management of movement dysfunction and the enhancement of physical and functional abilities. Physical therapy addresses the restoration, maintenance, and promotion of optimal physical function, wellness and quality of life related to movement and health. Physical therapy prevents the onset, symptoms and progression of impairments, functional limitations, and disability that may result from diseases, disorders, conditions or injuries. PT supports access, mobility and independence in all environments. A RLD licensed physical therapy assistant (PTA) may perform physical therapy procedures and related tasks pursuant to a plan of care/therapy intervention plan written by the supervising physical therapist. Therapy services for eligible recipients must comply with 8.314.5.10 NMAC.

(b)

Occupational therapy (OT): OT is a skilled, RLD licensed therapy service involving the use of everyday life activities (occupations) for the purpose of evaluation, treatment, and management of functional limitations. Therapy services for eligible recipients must comply with 8.314.5.10 NMAC. Occupational therapy addresses physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement [~~in everyday~~], performance and access to work and life activities that affect health, well-being and quality of life. [~~COTAs~~] A RLD certified occupational therapy assistant (COTA) may perform occupational therapy procedures and related tasks pursuant to a therapy intervention plan written by the supervising OT as allowed by RLD licensure. [~~OT services typically include:~~

~~**(i)** evaluation and customized treatment programs to improve the eligible recipient's ability to engage in daily activities;~~

~~**(ii)** evaluation and treatment for enhancement of an eligible recipient's performance skills;~~

~~**(iii)** health and wellness promotion to the eligible recipient;~~

~~**(iv)** environmental access and assistive technology evaluation and treatment for use by the eligible recipient; and~~

~~**(v)** training/consultation to eligible recipient's family members and direct support personnel.~~]

(c)

Speech-language pathology (SLP): SLP service, also known as speech therapy, is a skilled therapy service, provided by a speech-language pathologist that involves the non-medical application of principles, methods and procedures for the diagnosis, counseling, and instruction related to the development of and disorders of communication including speech, fluency, voice, verbal and written language, auditory comprehension, cognition, swallowing dysfunction and sensory-motor competencies. Therapy services for eligible recipients must comply with 8.314.5.10 NMAC. Speech-language pathology services are also used when an eligible recipient requires the use of assistive technology or an augmentative communication device. For example, SLP services are intended to improve, maintain or minimize the loss of communication skills; treat a specific condition clinically related to an intellectual developmental disability of the eligible recipient; or improve or maintain the eligible recipient's ability to safely eat food, drink liquids or manage oral secretions while minimizing the risk of aspiration or other potential injuries or illness related to swallowing disorders.

[~~**(i)** improve or maintain the eligible recipient's capacity for successful communication or to lessen the effects of an eligible recipient's loss of communication skills; or~~

~~**(ii)** treat a specific condition clinically related to an intellectual developmental disability of the eligible recipient; or~~

~~**(iii)** improve or maintain the eligible recipient's ability to safely eat foods, drink liquids or manage oral secretions while minimizing the risk of aspiration or other potential injuries or illness related to swallowing disorders.~~]

(5) Living supports: Living supports are residential habilitation services, available up to 24 hours a day, that are individually tailored to assist an eligible recipient 18 year and older who is assessed to need daily support or supervision with the acquisition, retention, or improvement of skills related to living in the community to prevent institutionalization. Living supports include residential-type instruction intended to increase and promote independence and to support an eligible recipient to live as independently as possible in the community in a setting of [~~his or her~~] their own choice. Living support services assist and encourage an eligible recipient to grow and develop, to gain autonomy, self-direct and pursue [~~his or her~~] their own interests and goals. Living supports includes support to individuals to access: healthcare, dietary, nursing, therapy and behavior supports through telehealth and in person appointments; generic and natural supports, standard utilities including internet services, assistive and remote technology, transportation, employment, and opportunities to establish or maintain meaningful relationships throughout the community. Living supports providers are also required to coordinate and collaborate with nursing, behavior support consultants, dieticians, therapists and therapy assistants to implement plans including aspiration risk management plans. Living supports providers are also required to coordinate and collaborate with behavior support consultants to implement positive behavior support plans. Living support providers take positive steps to protect and promote the dignity,

privacy, legal rights, autonomy and individuality of each eligible recipient who receives services. Services promote inclusion in the community and an eligible recipient is afforded the opportunity to be involved in the community and actively participate using the same resources and doing the same activities as other community members. [~~Living supports will assist an eligible recipient to access generic and natural supports and opportunities to establish or maintain meaningful relationships throughout the community.~~] Living supports providers are responsible for providing an appropriate level of services and supports up to 24 hours per day, seven days per week. Room and board costs are reimbursed through the eligible recipient's social security insurance (SSI) or other personal accounts and cannot be paid through the DDW. Living support services for eligible recipients must comply with 8.314.5.10 NMAC. Living supports consists of family living, supported living, and intensive medical living as follows.

(a)

Family living (FL): Family living is intended for an eligible recipient who is assessed to need residential habilitation to ensure health and safety while providing the opportunity to live in a typical family setting. Family living is a residential habilitation service that is intended to increase and promote independence and to provide the skills necessary to prepare an eligible recipient to live on [~~his or her~~] their own in a non-residential setting. Family living services are designed to address assessed needs and identified individual eligible recipient outcomes. Family living is direct support and assistance that is provided to no more than two eligible recipients with intellectual or developmental disabilities at a time furnished by a natural or host family member, or companion who meets the requirements and is approved to provide family living services in the eligible recipient's home or the home of the family living direct support personnel. The eligible recipient lives with the paid direct support personnel. The FL provider agency is responsible for providing nutritional services from a registered dietician or licensed nutritionist. All FL providers must be adult nursing services (ANS) providers and deliver budgeted nursing services including nursing assessment and on call. The provider agency is responsible for up to 750 hours of substitute coverage for the primary direct support personnel to receive sick leave and time off as needed. An exception may be granted by DOH if three eligible recipients are in the residence, but only two of the three are on the DDW and the arrangement is approved by DOH based on the home study documenting the ability of the family living [~~services~~] provider [~~agency~~] to serve more than two eligible recipients in the residence; or there is documentation that identifies the eligible recipients as siblings or there is documentation of the longevity of a relationship (e.g., copies of birth certificates or social history summary). Documentation shall include a statement of justification from a social worker, psychologist, and any other pertinent professionals working with the eligible recipients. Family living services cannot be provided in conjunction with any other living supports service, respite, or additional nutritional counseling accessed through the person's budget. Family living provider must arrange transportation for all medical appointments, household functions and activities, and to-and-from day services and other meaningful community options. The family living services provider agency shall complete all DOH requirements for approval of each direct support personnel, including completion of an approved home study and training prior to placement. After the initial home study, an updated home study shall be completed annually. The home study must also be updated each time there is a change in family composition or when the family moves to a new home or other significant event. The content and procedures used by the provider agency to conduct home studies shall be approved by DOH and must include assessment of environmental safety.

(b)

Supported living (SL): Supported living is intended for an eligible recipient who is assessed to need residential-type habilitation support to ensure health and safety. Supported living is a living habilitation support service that is intended to increase and promote independence and to provide the skills necessary to prepare an eligible recipient to live on [~~his or her~~] their own in a non-residential setting. Supported living services are designed to address assessed needs and identified individual eligible recipient outcomes. The service is provided to two to four eligible recipients in a community residence. Prior authorization is required from DOH for an eligible recipient to receive this service when living alone. The SL provider agency is responsible for providing nutritional services from a registered dietician or licensed nutritionist based on the person's needs. All SL providers must provide needed nursing services including on call based on the person's needs. The SL provider must arrange transportation to all medical appointments, household functions and activities, and to-and-from day services and other meaningful community options. Supported living services cannot be provided in conjunction with any other living supports service, respite, or additional nutritional counseling assessed through the person's budget.

(c)

Intensive medical living [~~services~~] supports: An intensive medical living supports agency provides residential-type supports for an eligible recipient in a supported living environment who requires daily direct skilled nursing, in conjunction with community living supports that promote health and assist the eligible recipient to acquire, retain or improve skills necessary to live in the community and prevent institutionalization, consistent with [~~his or her~~] their ISP. An eligible

recipient must meet criteria for intensive medical living supports according to DDW service definitions and DDW standards for this service and [~~he or she requires~~] they require nursing care, ongoing assessment, clinical oversight and health management that must be provided directly by a MAD recognized RN or LPN, see 8.314.5.10 NMAC.

(i) These medical needs include: skilled nursing interventions; delivery of treatment; monitoring for change of condition; and adjustment of interventions and revision of services and plans based on assessed clinical needs.

(ii) In addition to providing support to an eligible recipient with chronic health conditions, intensive medical living supports are available to an eligible recipient who meets a high level of medical acuity and require short-term transitional support due to recent illness or hospitalization. This service will afford the core living support provider the time to update health status information and health care plans, train staff on new or exacerbated conditions and assure that the home environment is appropriate to meet the needs of the eligible recipient. Short-term stay in this model may also be utilized by an eligible recipient who meets the criteria that is living in a family setting when the family needs a substantial break from providing direct service. Both types of short-term placements require prior approval from DOH. In order to accommodate referrals for short-term stays, each approved intensive medical living supports provider must maintain at least one bed available for such short-term placements. If the short-term stay bed is occupied, additional requests for short-term stay will be referred to other providers of this service.

(iii) The intensive medical living supports provider will be responsible for providing the appropriate level of supports, 24 hours per day seven days a week, including necessary levels of skilled nursing based on assessed need of the eligible recipient. Daily nursing visits are required; however, a RN or a LPN under a RN's supervision is not required to be present in the home during periods of time when skilled nursing services are not required or when an eligible recipient is out in the community. An on-call RN or LPN, under the supervision of a RN must be available to staff during periods when a RN or a LPN under a RN's supervision is not present. Intensive medical living supports require supervision by a RN, and must comply with 8.314.5.10 NMAC.

(iv) Direct support personnel will provide services that include training and assistance with ADLs such as bathing, dressing, grooming, oral care, eating, transferring, mobility and toileting. These services also include training and assistance with instrumental activities of daily living (IADL) including housework, meal preparation, medication assistance, medication administration, shopping, and money management.

(v) The intensive medical living supports provider will be responsible for providing access to customized community support and employment as outlined in the eligible recipient's ISP. This includes any skilled nursing needed by the eligible recipient to participate in customized community support and development and employment services. The intensive medical living provider must arrange transportation for all medical appointments, household functions and activities, and to-and-from day services and other meaningful community options.

(vi) Intensive medical living supports providers must comply with 8.314.5.10 NMAC.

(6) **Customized community supports (CCS):** [~~Customized community supports (CCS) consists~~] CCS consists of individualized services and supports that enable an eligible recipient to acquire, maintain, and improve opportunities for independence, community integration and employment. Customized community supports services are designed around the preferences and choices of each eligible recipient and offer skill training and supports to include: adaptive skill development; adult educational supports; citizenship skills; communication; social skills, socially appropriate behaviors; self-advocacy, informed choice; community integration and relationship building. This service provides the necessary support to develop social networks with community organizations to increase the eligible recipient's opportunity to expand valued social relationships and build connections within-[~~local~~] communities. This service helps to promote self-determination, increases independence and enhances the eligible recipient's ability to interact with and contribute to [~~his or her~~] their community. Customized community supports are intended to be provided in the community to the fullest extent possible. Customized community supports must not duplicate services available through the New Mexico public education department or the Individuals with Disabilities Education Act (IDEA).

(a) Based on assessed needs, customized community supports services may include personal support, nursing oversight, medication assistance or administration, and integration of strategies in the therapy and healthcare plans into the eligible recipient's daily activities.

(b) The customized community supports provider may provide fiscal management for the payment of adult education opportunities as determined necessary for the eligible recipient.

(c) Customized community supports services may be provided regularly or intermittently based on the needs of the eligible recipient and are provided during the day, evenings and weekends. Customized community supports are not limited to specific hours or days of the week and should

be provided in alignment with the persons desired outcomes.

(d)

Customized community supports may be provided in a variety of settings to include the community, classroom, remotely and at site-based locations, depending on the ISP and the particular type of service chosen within CCS. Services provided in any location are required to provide opportunities that lead to participation and [~~integration~~] inclusion in the community or support the eligible recipient to increase [~~his/her~~] their growth and development.

(e)

Pre-vocational and vocational services are not covered under customized community supports.

(f)

Customized community supports services must be provided in accordance with 8.314.5.10 NMAC.

(7)

Community integrated employment (CIE): [~~Community integrated employment provides supports that achieve employment in jobs of the eligible recipient's choice in his or her community to increase his or her economic independence, self-reliance, social connections and ability to grow within a career.~~] Community integrated employment is intended to provide supports that result in jobs in the community which increase economic independence, self-reliance, social connections, and the ability to grow within a career. CIE consists of intensive, ongoing services that support individuals to achieve competitive integrated employment or business ownership who, because of their disabilities, might otherwise not be able to succeed without supports to perform in a competitive work setting or own a business. Community integrated employment results in employment alongside non-disabled coworkers within the general workforce or in business ownership. This service may also include small group employment including mobile work crews or enclaves. An eligible recipient is supported to explore and seek opportunity for career advancement through growth in wages, hours, experience or movement from group to individual employment. Each of these activities is reflected in individual career plans. Community integrated employment services must not duplicate services offered through the New Mexico public education department (PED), the Individuals with Disabilities Education Act (IDEA), the New Mexico division of vocational rehabilitation (DVR), the Rehabilitation Act, New Mexico department of workforce solutions (DWS), or the Workforce Innovation and Opportunities Act (WIOA). Compensation shall comply with state and federal laws including the Fair Labor Standards Act. DDW funds (e.g., the provider agency's reimbursement) may not be used to pay the eligible recipient for work. CIE services shall be provided based on the interests of the person and desired outcomes listed in the ISP. Employment services are to be available 365 days a year, 24 hours a day. Community integrated employment services must comply with 8.314.5.10 NMAC. Community integrated employment consists of job development, self-employment, short term job coaching, job maintenance, job aid, intensive [~~individual~~] community integrated employment and group community integrated employment models.

[~~(a)~~

~~Self-employment:~~ ~~The community integrated employment provider provides the necessary assistance to develop a business plan, conduct a market analysis of the product or service and establish necessary infrastructure to support a successful business. Self-employment does not preclude employment in the other models. Self-employment may include but is not limited to the following:~~

~~(i)~~

~~completing a market analysis of product/business viability;~~

~~(ii)~~

~~creating a business plan or accessing community resources to develop a business plan including development of a business infrastructure to sustain the business over time, including marketing plans;~~

~~(iii)~~

~~referring and coordinating with the division of vocational rehabilitation (DVR) for possible funds for business start-up;~~

~~(iv)~~

~~assisting in obtaining required licenses, necessary tax identifications, incorporation documents and completing any other business paperwork required by local and state codes;~~

~~(v)~~

~~supporting the eligible recipient in developing and implementing a system of bookkeeping and records management;~~

~~(vi)~~

~~providing effective job coaching and on-the-job training and skill development; and~~

~~(vii)~~

~~arranging transportation or public transportation during self-employment services.~~

~~(b)~~

~~Individual community integrated employment:~~ ~~Individual community integrated employment is job development and job coaching for an eligible recipient in integrated community based settings. The amount and type of individual support needed will be determined through a person-centered assessment including on-the-job analysis. Individual community integrated employment may include, but is not limited to the following:~~

~~(i)~~

~~promoting career exploration based on interests within various careers through job sampling, job trials or other assessments;~~

~~(ii)~~

~~developing and identifying community based job opportunities that are in line with the individual's skills and interests;~~

~~(iii)~~

~~developing a résumé (written or visual) that identifies an individual's relevant vocational experiences;~~

~~(iv)~~

~~negotiating with employers for job~~

~~customization, including facilitating job accommodations and the use of assistive technology such as communication devices;~~

~~(v)~~

~~supporting the individual in gaining the skills and knowledge to advocate for themselves in the workplace including the development of natural supports;~~

~~(vi)~~

~~educating the individual, the employer or other IDT members regarding rights and responsibilities related to employment;~~

~~(vii)~~

~~arranging for or providing benefits counseling;~~

~~(viii)~~

~~linking the individual to employment resources in the community;~~

~~(ix)~~

~~providing effective job coaching and on-the-job training as needed to assist the eligible recipient to maintain the job placement and enhance skill development; and~~

~~(x)~~

~~arranging transportation or public transportation during individual community integrated employment services.~~

~~(c)~~

~~**Group community integrated employment:** Group community integrated employment is when more than one eligible recipient works in an integrated setting with staff supports on site. Regular and daily contact with non-disabled coworkers or the public occurs. Group community integrated employment may include but is not limited to the following:~~

~~(i)~~

~~participating with the IDT to develop a plan to assist an eligible recipient who desires to move from group employment to individual employment;~~

~~(ii)~~

~~providing effective job coaching and on-the-job training as needed to assist the eligible recipient to maintain the job placement and enhance skill development;~~

~~(iii)~~

~~negotiating with employers for job customization, including facilitating job accommodations and the use of assistive technology such as communication devices;~~

~~(iv)~~

~~supporting individuals in gaining the skills and knowledge to advocate for themselves in the workplace including the development of natural supports; or~~

~~(v)~~

~~educating individuals, the employer or other IDT members regarding rights and responsibilities related to employment.~~]

(a)

Job development services through the DDW can only be accessed when services are not otherwise available to the beneficiary under either special education and related services as defined in the Individuals with Disabilities Education Act (IDEA) or vocational rehabilitation services available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730). Job development may include but is not limited to, activities to assist an individual to plan for, accommodate, explore and obtain CIE.

(b)

Short term job coaching services through the DDW can only be accessed when services are not otherwise available to the beneficiary under either special education and related services as defined in the Individuals with Disabilities Education Act (IDEA) or vocational rehabilitation services available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730). Short term job coaching services may include but are not limited to, activities to assist an individual to learn, accommodate and perform work duties, and maintain employment.

(c)

Job maintenance is intended to be used as the long-term supports once all available funding and services through vocational rehabilitation or the educational systems has been utilized. Job maintenance is provided on a one-to-one ratio. Job maintenance services may include, but are not limited to, activities to assist the individual to accommodate, maintain employment and career advancement.

(d)

Self-employment: Services through the DDW can only be accessed when services are not otherwise available to the beneficiary under either special education and related services as defined in the Individuals with Disabilities Education Act (IDEA) or vocational rehabilitation services available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730). Self-employment services are intended to be used as the long-term supports once all available funding and services through vocational rehabilitation or the educational systems have been utilized. Self-employment does not preclude employment in the other models. Self-employment may include but is not limited to development of a business plan, conducting market analysis, and establishing and supporting the infrastructure for a successful business.

(e)

Job aid: One to one personal care services in an individual, community integrated employment setting for people who require assistance with activities of daily living (ADLs) during work hours to maintain successful employment as job supports are reduced.

(f)

Intensive community integrated employment (ICIE): Services for people who are working in an individual, community integrated employment setting and require more than 40 hours of staff supports per month to maintain their employment. ICIE is the same scope of services as outlined in 8.314.5.10 NMAC.

(g)

Group community integrated employment: Group community integrated employment is when more than one eligible recipient works in an integrated setting with staff supports on site. Regular and daily contact

with non-disabled coworkers or the public occurs. Group community integrated employment services may include but are not limited to activities to assist the individual to accommodate, maintain and advance from group to individual employment.

(8) Behavioral support consultation services: [~~Behavioral support consultation services guide the IDT to enhance the eligible recipient's quality of life by providing positive behavioral supports for the development of functional and relational skills. Behavioral support consultation services also identify distracting, disruptive, or destructive behavior that could compromise quality of life and provide specific prevention and intervention strategies to manage and lessen the risks this behavior presents. Behavioral support consultation services do not include individual or group therapy, or any other behavioral services that would typically be provided through the behavioral health system.~~

~~(a)~~

~~Behavioral support consultation services are intended to augment functional skills and positive behaviors that contribute to quality of life and reduce the impact of interfering behaviors that compromise quality of life. This service is provided by an authorized behavioral support consultant and includes an assessment and positive behavioral support plan development, IDT training and technical assistance, and monitoring of an eligible recipient's behavioral support services.~~]

The behavior support consultation supports the person's successful achievement of vision-driven desired outcomes. Behavior support consultation services identify behaviors that impact quality of life and provide specific prevention and intervention strategies to manage and lessen the risks these behaviors present. This service is provided by an authorized behavior support consultant and includes a positive behavior supports assessment and positive behavior support plan development; interdisciplinary team (IDT) training and technical assistance; and monitoring of an individual's behavioral support services. Services may be provided in person for training, evaluation or monitoring and remotely via telehealth as needed. Annual assessments require an in person interview or observation except when conducted during declared state or national emergencies or pandemics. Behavioral support services include:

(a)

Assessment of the person and their environment, including barriers to independent functioning;

(b)

design and testing of strategies to address concerns and build on strengths and skills for independence;

(c)

writing and training in the implementation of plans in a way that the person and direct support personnel (DSP) can understand and implement them.

[**~~(b)~~**] **(d)** Behavioral support consultation services must comply with 8.314.5.10 NMAC.

(9) Nutritional counseling services: Nutritional counseling services include the assessment, evaluation, collaboration, planning, teaching, consultation and implementation and monitoring of a nutritional plan and menu services that supports the eligible recipient to attain or maintain the highest practicable level of health. It may be provided by a registered/licensed dietician (RD/LD) or licensed nutritionist (LN). This service may be delivered in person or via telehealth. The RD/LD/LN is an active member of the IDT and addresses overall nutritional needs, diet, tube feeding, weight loss or gain, wounds and a variety complex medical or behavioral conditions that have or may impact the persons overall health. These [~~Nutritional~~] nutritional counseling services are in addition to those nutritional or dietary services allowed in the eligible recipient's medicaid state plan benefit, or other funding source. This service does not include oral-motor skill development services, such as those services provided by a speech pathologist. [~~Because nutritional counseling is included in the reimbursement rate for living supports, nutritional~~] Nutritional counseling cannot be billed as a separate service during the hours of living supports. Nutritional counseling services must comply with 8.314.5.10 NMAC.

(10) Environmental modification services: Environmental modifications services include the purchasing and installing of equipment or making physical adaptions to an eligible recipient's residence that are necessary to ensure the health, welfare and safety of the eligible recipient or enhance [~~his or her~~] their access to the home environment and increase [~~his or her~~] their ability to act independently.

(a) Adaptations, [~~instillations~~] installations and modifications include:

(i) heating and cooling adaptations;

(ii) fire safety adaptations;

(iii) turnaround space adaptations;

(iv) specialized accessibility, safety adaptations or additions;

(v) installation of specialized electric and plumbing systems to accommodate medical equipment and supplies;

(vi) installation of trapeze and mobility tracks for home ceilings;

(vii) installation of ramps [~~and grab-bars~~];

(viii) widening of doorways or hallways;

(ix) modification of bathroom facilities (roll-in showers, sink, bathtub and toilet modification, water faucet controls, floor urinals and bidet adaptations and plumbing);

(x) purchase or installation of air filtering devices;

(xi) purchase or installation of lifts or elevators;

(xii) purchase and installation of glass substitute for windows and doors;

(xiii) purchase and installation of modified switches, outlets or environmental controls for home devices; and

(xiv) purchase and installation of alarm and alert systems or signaling devices.

(b) Excluded are those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the eligible recipient. Adaptations that add to the total square footage of the home are excluded from this benefit except when necessary to complete an adaptation (e.g., in order to improve entrance/egress to an eligible recipient's residence or to configure a bathroom to accommodate a wheelchair).

(c) Environmental modification services must be provided in accordance with applicable federal, state and local building codes.

(d) Environmental modification services must comply with 8.314.5.10 NMAC.

(11) Crisis supports: Crisis supports are services that provide intensive supports by appropriately trained staff to an eligible recipient experiencing a behavioral or medical crisis either within the eligible recipient's present residence or in an alternate residential setting. Crisis support must comply with 8.314.5.10 NMAC.

(a) **Crisis supports in the eligible recipient's residence:** These services provide crisis response staff to assist in supporting and stabilizing the eligible recipient while also training and mentoring staff or family members, who normally support the eligible recipient, in order to remediate the crisis and minimize or prevent recurrence.

(b) **Crisis supports in an alternate residential setting:** These services arrange an alternative residential setting and provide crisis response staff to support the eligible recipient in that setting, to stabilize and prepare the eligible recipient to return home or to move into another permanent location. In addition, staff will arrange to train and mentor staff or family members who will support the eligible recipient long-term once the crisis has stabilized, in order to minimize or prevent recurrence of the crisis.

(c) Crisis response staff will deliver such support in a way that maintains the eligible recipient's normal routine to the maximum extent possible. This includes support during attendance at employment or customized community supports services, which may be billed on the same dates and times of service as crisis supports.

(d) This service requires prior written approval and referral from the bureau of behavioral support (BBS). Crisis supports are designed to be a short-term response (two to 90 calendar days).

(e) The timeline may exceed 90 calendar days under extraordinary circumstances, with approval from the BBS in which case duration and intensity of the crisis intervention will be assessed weekly by BBS staff.

(12) Non-medical transportation: Non-medical transportation services assists the eligible recipient in accessing other waiver supports and non-waiver activities identified in [~~his or her~~] their ISP. Non-medical transportation enables the eligible recipient to gain physical access to non-medical community services and resources promoting the eligible recipient opportunity and responsibility in carrying out [~~his or her~~] their ISP activities. This service is to be considered only when transportation is not available through the medicaid state plan or when other arrangements cannot be made. Non-medical transportation includes mileage reimbursement and funding to purchase a pass for public transportation for the eligible recipient. Non-medical transportation provider services must comply with 8.314.5.10 NMAC.

(13) Supplemental dental care: Supplemental DDW dental care services are provided for an eligible recipient that requires routine oral health care more frequently than the coverage provided under other MAP benefit plans. Supplemental dental care provides one oral examination and one cleaning once every ISP year to an eligible recipient for the purpose of preserving or maintaining oral health. The supplemental dental care service must comply with 8.314.5.10 NMAC.

(14) Assistive technology [~~purchasing agent service~~]: Assistive technology (AT) purchasing agent service is intended to support the access of low tech devices that increase the eligible recipient's physical and communicative participation in functional activities at home and in the community. Items purchased through the assistive technology service assist the eligible recipient to meet outcomes outlined in [~~his or her~~] their ISP, increase functional participation in employment, community activities, activities of daily living, personal interactions, or leisure activities, or increase the eligible recipient's safety during participation of the functional or leisure activity.

(a) The assistive technology [~~services~~] service allows an eligible recipient to purchase or obtain needed items to develop low-tech augmentative communication, environmental access, mobility systems and other functional assistive technology, not covered through the eligible recipient's medicaid state plan benefits.

(b) **[**~~Assistive technology purchasing agent providers act as a fiscal agent to either directly purchase, or reimburse team members who purchase devices or materials which have been prior authorized by DOH on behalf of the eligible recipient.~~]** Assistive technology may be accessed

through an approved waiver provider acting as a purchasing agent for technology vendors whose products meet definition and needs or directly through an approved technology provider who is the direct vendor of the service and approved DDW provider.

(c) Assistive technology [~~purchasing agent services~~] must comply with 8.314.5.10 NMAC.

(15) Independent living transition services: Independent living transition services are one-time set-up expenses for an eligible recipient who transitions from a 24 hour living supports setting into a home or apartment of [~~his or her~~] their own with intermittent support that allows [~~him or her~~] them to live more independently in the community. The service covers expenses associated with security deposits that are required to obtain a lease on an apartment or home, set-up fees or deposits for utilities (telephone, internet, electricity, heating, etc.), and furnishings to establish safe and healthy living arrangements, such as a bed, chair, dining table and chairs, eating utensils and food preparation items, and a [~~telephone~~] cell phone. The service also covers services necessary for the eligible recipient's health and safety such as initial or one-time fees associated with the cost of paying for pest control, allergen control or cleaning services prior to occupancy. Independent living transition services must comply with 8.314.5.10 NMAC.

(16) [~~Personal support technology/on-site response service~~] Remote personal support technology: [~~Personal support technology/on-site response service is an electronic device or monitoring system that supports the eligible recipient to be independent in the community or in his or her place of residence with limited assistance or supervision of paid staff. This service provides 24-hour response capability or prompting through the use of electronic notification and monitoring technologies to ensure the health and safety of the eligible recipient in services. Personal support technology/on-site response service is available to the eligible recipient who has a demonstrated need for timely response due to health or safety concerns. Personal support technology/on-site response service includes the installation of the rented electronic device, monthly maintenance fee for the electronic device, and hourly response funding for staff that support the eligible recipient when the device is activated. Personal support technology/on-site response services must comply with 8.314.5.10 NMAC.~~] Remote personal support technology is an electronic device or monitoring system that supports individuals to be independent in the community or in their place of residence with limited assistance or supervision of paid staff. This service provides up to 24-hour alert, monitoring or remote personal emergency response capability, remote prompting or in-home reminders, or environmental controls for independence through the use of technologies. The service is intended to promote independence and quality of life, to offer opportunity to live safely and as independently as possible in one's home, and to ensure the health and safety of the individual in services. Remote personal support technology is available to individuals who may want to live independently in their own homes, may have a demonstrated need for timely response due to health or safety concerns, or may be afforded increased independence from staff supervision in residential services. The use of technology should ease life activities for individuals and their families. Remote personal support technology includes development of individualized response plans with the installation of the electronic device or sensors, monthly maintenance, rental or subscription fees. This service is not intended to provide for paid, in-person on-site response. On-site response must be planned through response plans that are developed using natural or other paid supports for on-site response. Remote personal support technology may be accessed through an approved waiver provider acting as a purchasing agent for technology vendors whose products meet definition and needs or directly through an approved technology provider who is the direct vendor of the service and approved DDW provider.

(17) Preliminary risk screening and consultation related to inappropriate sexual behavior (PRSC): [~~PRSC identifies, screens, and provides periodic technical assistance and crisis intervention when needed to the IDTs supporting the eligible recipient with risk factors for sexually inappropriate or offending behavior, as defined in the DDW definitions and DDW standards. This service is part of a continuum of behavioral support services (including behavioral support consultation, and socialization and sexuality services) that promote community safety and reduce the impact of interfering behaviors that compromise quality of life.~~] PRSC is designed to assess continued risk of sexually inappropriate or offending behavior in persons who exhibit or have a history of exhibiting risk factors for these types of behaviors. This service is part of a variety of behavior support services (including BSC and socialization & sexuality education) that promotes community safety and reduces the impact of interfering behaviors that compromise the person's quality of life. PRSC is provided by a licensed mental health professional who has been trained and approved as a risk evaluator by the BBS.

(a) The key functions of PRSC are to:

(i) provide a structured screening of the eligible recipient's behaviors that may be sexually inappropriate;

(ii) develop and document recommendations of the eligible recipient in the form of a report or consultation notes;

(iii) develop and periodically review risk

management plans for the eligible recipient, when recommended; and

(iv) provide consultation regarding the management and reduction of the eligible recipient's sexually inappropriate behavioral incidents that may pose a health and safety risk to the eligible recipient or others.

(b) Preliminary risk screening and consultation related to inappropriate sexual behavioral services must comply with 8.314.5.10 NMAC.

(18) **Socialization and sexuality education service:** [~~Socialization and sexuality education service is carried out through a series of classes intended to provide a proactive educational program about the values and critical thinking skills needed to form and maintain meaningful relationships, and about healthy sexuality and sexual expression. Social skills learning objectives include positive self-image, communication skills, doing things independently and with others, and using paid and natural supports. Sexuality learning objectives include reproductive anatomy, conception and fetal development, safe sex and health awareness. Positive outcomes for the eligible recipient include safety from negative consequences of being sexual, assertiveness about setting boundaries and reporting violations, expressing physical affection in a manner that is appropriate, and making informed choices about the relationships in the eligible recipient's life. Independent living skills are enhanced and improved work outcomes result from better understanding of interpersonal boundaries, and improved communication, critical thinking and self-reliance skills.~~] Socialization and sexuality education in the form of the friends & relationships course (FRC) is a comprehensive lifelong adult education program that teaches students knowledge and skills to increase social networks with healthy, meaningful relationships and to increase personal safety including decreasing interpersonal and intimate violence in relationships, sexual victimization, exploitation and abuse. This enhances their ability to develop close friendships and romantic relationships. The FRC involves the person's network of support (natural supports, paid supports, teachers, nurses, family members, guardians, friends, advocates, or other professionals) teaching them to support the social and sexual lives of persons with I/DD, through participation in classes, and by using trained and paid self-advocates as role models and peer mentors in classes. Socialization and sexuality education services must comply with 8.314.5.10 NMAC.

(19) **Customized in-home supports:** Customized in-home support services is not a residential habilitation service and is intended for an eligible recipient that does not require the level of support provided under living supports services. Customized in-home supports provide an eligible recipient the opportunity to design and manage the supports needed to live in [~~his or her~~] their own home or family home. Customized in-home supports include a combination of instruction and personal support activities provided intermittently to assist the eligible recipient with ADLs, meal preparation, household services, and money management. The services and supports are individually designed to instruct or enhance home living skills, community skills and to address health and safety of the eligible recipient, as needed. This service provides assistance with the acquisition, improvement or retention of skills that provides the necessary support to achieve personal outcomes that enhance the eligible recipient's ability to live independently in the community. Services are delivered by a direct support professional in the individuals own home or family home in the community. Services may be provided as part of on-site response plan with use of remote personal support technology. This service is intended to provide intermittent support and cannot be provided 24 hours a day/seven days a week. Customized in-home support services must comply with 8.314.5.10 NMAC. [8.314.5.15 NMAC - Rp, 8.314.5.15 NMAC, 12/1/2018; A, 4/1/2022]

8.314.5.16 NON-COVERED SERVICES: Only those services listed in the DDW benefit package may be reimbursed through the DDW. Room, board and ancillary services are not covered under DDW services. An eligible recipient may access, as medically necessary, all medicaid state plan benefits in addition to [~~his and her~~] their DDW services. If the eligible recipient is an enrolled member of a HSD managed care organization (MCO), [~~he or she~~] they may access, as medically necessary, the benefits listed in 8.308.9 NMAC. [8.314.5.16 NMAC - Rp, 8.314.5.16 NMAC, 12/1/2018; A, 4/1/2022]

8.314.5.17 INDIVIDUALIZED SERVICE PLAN (ISP):

A. CMS requires a person-centered service plan for every individual receiving HCBS. The ISP must be developed annually through an ongoing person-centered planning process. The ISP development must:

(1) Involve those whom the participant wishes to attend and participate in developing the service plan and are provided adequate notice;

(2) Use assessed needs to identify services and supports;

(3) Include individually identified goals and preferences related to relationships, community participation, employment, income and savings, healthcare and wellness, education and others;

(4) Identify roles and responsibilities of IDT members responsible for implementing the plan;

(5) Include the timing of the plan and how and when it is updated, including response to changing circumstances and needs; and

(6) Outline how the individual is informed of

available services funded by the DDW as well as other natural and community resources.

B. The IDT must review the eligible recipient's person-centered plan every 12 months or more often if indicated.

C. The IDT is responsible for compiling clinical documentation to justify the requested services and budget to the OR for adult recipients excluding class members of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al, (757 F. Supp. 1243 DNM 1990).

D. The person-centered service plan must consist of the following:

(1) identifies risks and includes a plan to reduce any risks;

(2) incorporates other health concerns (e.g. mental health, chemical health, chronic medical conditions, etc.);

(3) is written in plain language;

(4) records the alternative HCBS that were considered by the person;

(5) includes natural supports and services;

(6) includes strategies for solving conflict or disagreement within the process, including any conflict of interest guidelines for planning participants;

(7) identifies who is responsible for monitoring implementation of the plan;

(8) includes the person's strengths;

(9) describes goals or skills that are related to the person's preferences;

(10) includes a global statement about the person's self-determined goals and aspirations;

(11) details what is important to the person; and

(12) includes a method for the individual to request updates to the plan, as needed.

E. Upon completion of the ISP by the IDT, the case manager shall develop a budget to be evaluated in accordance with the outside reviewer (OR) process; see Subsection D of 8.314.5.18 NMAC.

F. Upon completion of the ISP by the IDT, the case manager shall develop a budget to be evaluated in accordance with the medicaid third party assessor (TPA) review process for [~~child recipients and~~] class members of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al, (757 F. Supp. 1243 DNM 1990).

G. All services must be provided as specified in the ISP.

H. The case manager must conduct a pre ISP meeting annually with the recipient to evaluate and plan for upcoming ISP term. The CM is required to meet with the DD Waiver participant and guardian prior to the ISP meeting. The CM reviews current assessment information, prepares for the meeting, creates a plan with the person to facilitate or co-facilitate the meeting if desired, discusses the budget, reviews the current secondary freedom of choice forms, and facilitates greater informed participation in ISP development by the person.

[8.314.5.17 NMAC - Rp, 8.314.5.17 NMAC, 12/1/2018; A, 4/1/2022]

8.314.5.18 PRIOR AUTHORIZATION AND UTILIZATION REVIEW: All MAD services, including services covered under the DDW, are subject to utilization review for medical necessity and program compliance. Reviews may be performed before services are furnished, after services are furnished and before payment is made, or after payment is made; see 8.310.2 NMAC. Once enrolled, providers receive instructions and documentation forms necessary for prior authorization and claims processing.

A. MAD prior authorization: To be eligible for DDW services, a MAD eligible recipient must require the level of care (LOC) of services provided in an ICF-IID. LOC determinations are made by MAD or its designee. The eligible recipient's person centered ISP must specify the type, amount and duration of services and meet clinical criteria. Certain procedures and services specified in the ISP may require prior authorization from MAD or its designee. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

B. DOH prior authorization: Certain services are subject to utilization review by DOH.

C. Eligibility determination: Prior authorization of services does not guarantee that individuals are eligible for MAD services. Providers must verify that individuals are eligible for MAD services, including DDW services or other health insurance prior to the time services are furnished. An eligible recipient may not be institutionalized, hospitalized, or receive personal care option (PCO) services or other HCBS waiver services at the time DDW services are provided, except for certain case management services that are required to coordinate discharge plans or transition of services to DDW services.

D. Outside review process: All services for [~~adult~~] DDW recipients excluding class members of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al, (757 F. Supp. 1243 DNM 1990) will be reviewed by an OR contracted by DOH. The OR will adhere to deadlines set forth in its contract with the DOH. The OR will apply the DDW clinical criteria to make a clinical determination on whether the requested services and service amounts are needed, and will recommend whether the requested annual budget and ISP should be approved. If the OR approves in whole or part the requested ISP and budget, the OR will send the approved portion of the budget to the medicaid TPA for entry into the medicaid management information system and issue a prior authorization to the case manager. If there is a denial in part or whole, the OR decision must be in writing, identify a list of all documents and input considered by the OR team during its review,

and state the reasons for any denial of requested services. The eligible recipient, case manager, and guardian (if applicable) will be provided with this written determination and notice of an opportunity to request a fair hearing as well as an agency review conference.

(1) The eligible recipient, case manager, and guardian (if applicable) may submit to the OR additional information relating to support needs.

(2) The decision of the OR approving services requested by the DDW participant is binding on the State. However, the state may agree to overturn a decision to deny services requested by the DDW participant at a requested agency conference.

E. Reconsideration: Providers who disagree with the denial of a prior authorization request or other review decisions may request a reconsideration. See 8.350.2 NMAC, Reconsideration of Utilization Review Decisions.

[8.314.5.18 NMAC - Rp, 8.314.5.18 NMAC, 12/1/2018; A, 4/1/2022]

8.314.5.20 RIGHT TO A HSD ADMINISTRATIVE HEARING: An eligible recipient may request a HSD administrative hearing to appeal a decision of MAD or its third party assessor contractor, or the OR, that is an adverse action against the recipient. Prior to the fair hearing an eligible recipient may be offered an agency review conference. An agency review conference (AC) means an optional conference offered by the DOH to provide an opportunity to informally resolve a dispute over the denial, suspension, reduction, termination or modification of DDW benefits or services. An AC will be attended by the recipient and their authorized representative if applicable, representatives of the outside review, DOH and any other necessary parties. The recipient may also bring whomever [~~he or she wishes~~] they wish to assist during the AC. The AC is optional and shall in no way delay or replace the fair hearing process or affect the deadline for a fair hearing request.

A. An authorized representative means any individual designated by the eligible recipient or [~~his or her~~] their guardian, if applicable, to represent the recipient and act on their behalf. The authorized representative must provide formal documentation authorizing [~~him or her~~] them to access the identified case information for this specific purpose. An authorized representative may be, but need not be, the recipient's guardian or attorney.

B. The DOH will issue written notification describing the outcome of the AC and any agreements within seven business days of the AC to the recipient, recipient's guardian if applicable, and case manager.

C. Unless the fair hearing request is withdrawn by the recipient or recipient's guardian or lawyer, any requested fair hearing will proceed. At the fair hearing the claimant may raise any relevant issue and present any relevant information that [~~he or she chooses~~] they choose. See 8.352.2 NMAC for a description of a claimant's HSD administrative hearing rights and responsibilities.

D. In addition to the requirements set forth in 8.352.2 NMAC, HSD and DOH shall take such actions as are necessary to assure the presence at the hearing of all necessary witnesses within DOH's control, including, when relevant to a denial of services or when requested by the claimant, a representative of the OR with knowledge of the claimant's case and the reason(s) for the denial, in whole or in part, of any requested services.

E. Denials of services through the exception authorization process or other actions during this process adverse to the participant can also be appealed through a fair hearing.

F. All HSD administrative hearings are conducted in accordance with state and federal law.

G. No ex parte communications with an HSD administrative law judge are permitted by any DDW participant or counsel regarding any pending case. The MAD director shall not have ex parte communications regarding any pending cases with any DDW participant or counsel involved in that case. The MAD director's decision shall be limited to an on the record review.

[8.314.5.20 NMAC - Rp, 8.314.5.20 NMAC, 12/1/2018; A, 4/1/2022]

REGULATION AND LICENSING DEPARTMENT
CANNABIS CONTROL DIVISION

This is an amendment to 16.8.1 NMAC amending Section 8, effective 3/22/2022.

16.8.1.8 SOCIAL AND ECONOMIC EQUITY:

A. Division mandate: Pursuant to the Cannabis Regulation Act, Paragraphs (7) and (8) of Subsection B of Section 26-2C-3 NMSA 1978, the division must adopt procedures to promote and encourage full participation in the cannabis industry of representatives of communities that have disproportionately been harmed by rates of arrest through the enforcement of cannabis prohibitions and encourage racial, ethnic, gender, geographic diversity, and New Mexico residency among license applicants, licensees and cannabis industry employees. Policies must also encourage representatives from rural communities that are likely to be impacted by cannabis production, including agricultural producers from economically disadvantaged communities.

B. Division goal: To accomplish these mandates, the division establishes a goal that at least fifty percent of applicants for licensure, licensees, and cannabis industry employees will represent these groups.

[~~C. Social and economic equity plan:~~ ~~The division, with the advice of the cannabis regulatory advisory committee, shall solicit public input to create and~~

~~implement a social and economic equity plan. A plan shall be created no later than October 15, 2021, and will include guidelines to determine how to assess which communities have been disproportionately impacted, how to assess if a person is a member of a community disproportionately impacted, and proposed incentives to promote social and economic equity for applicants, licensees, and cannabis industry employees.~~]

[16.8.1.8 NMAC - N, 08/24/2021; A, 03/22/2022]

REGULATION AND LICENSING DEPARTMENT
CANNABIS CONTROL DIVISION

This is an amendment to 16.8.2 NMAC amending Sections 8, 9, 10, 20, 21, 22, 24, 25, 29, 30, 32, 35, 36, 38, 41, 43, 44 and 46, effective 3/22/2022.

16.8.2.8 GENERAL OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS:

A. State and local laws: Pursuant to the Cannabis Regulation Act, applicants and licensees shall comply with all applicable state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act, including laws governing food and product safety, occupational health and safety, environmental impacts, natural resource protection, construction and building codes, operation of a cannabis establishment, employment, zoning, building and fire codes, water use and quality, water supply, hazardous materials, pesticide use, wastewater discharge, and business or professional licensing.

B. Licensure on federally recognized Indian Nation, Tribe or Pueblo: The division shall not approve an application for licensure to operate within the exterior boundaries of a federally recognized Indian Nation, Tribe or Pueblo located wholly or partially in the state, unless the tribal government and the department have entered an intergovernmental agreement to coordinate the cross-jurisdictional administration of the laws of New Mexico and the laws of a tribal government relating to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

C. Age requirements: All applicants for licensure, including controlling persons of applicants, must be at least 21 years of age. All employees of a commercial cannabis establishment must be at least 21 years of age.

D. Consumption prohibited: Licensees shall prohibit the consumption of cannabis or cannabis products on or within the licensed premises unless a cannabis consumption area has been approved by the division.

E. Illegal sale or distribution: Licensees shall not knowingly and intentionally sell, deliver, or transport cannabis or cannabis products to any person that is not authorized to possess and receive the cannabis or cannabis products pursuant to state law or division rules.

F. Sales of alcoholic beverages prohibited: Licensees are allowed to conduct other licensed activities, including activities pursuant to the Hemp Manufacturing Act, Section 76-24-3 *et seq.*, NMSA 1978, except for sales of alcoholic beverages.

G. No guarantee of licensure: An applicant may not exercise any of the privileges of licensure until the division approves the license application and issues a license. The submission of an application is in no way a guarantee that the application will be accepted as complete. A license shall be granted or denied within 90 days upon acceptance of a completed application. Information provided by the applicant and used by the division for the licensing process shall be accurate and truthful. The division may initiate action to deny licensure, or other administrative action against an applicant or licensee, pursuant to the Uniform Licensing Act.

H. Computation of time: The word "days" as used in this rule means calendar days unless otherwise noted.

I. Display of license: A division license shall be displayed in a conspicuous place on the licensed premises and must be made available upon request by state and local agencies. If the licensed premises is open to the public, the license shall be displayed in an area that is within plain sight of the public.

J. Inventory and sales equipment: The division shall require licensees to utilize division approved track and trace equipment, software, and services.

K. Limitation of licensed premises: Licensees shall conduct cannabis establishment operations solely on licensed premises approved by the division.

L. Multiple licensee premises: Multiple licensees may, upon determination by the division, occupy a single licensed premises, provided each is individually licensed by the division.

M. Reporting of theft or security incident to division: Licensees shall submit to the division written notification of any attempted theft, theft, assault of employees or patrons, robbery or attempted robbery, break-in, or security breach that occurs on the licensee's premises, no later than 24 hours after the licensee first becomes aware of the event. The description shall include a description of any property that was stolen or destroyed, and the quantity of any cannabis plants, cannabis and cannabis products that were stolen. The licensee must provide a copy of the police report, video footage and any other supporting evidence requested by the division. The premises must be secured prior to continuing operations, including the replacement of locks, doors, windows, repair of damaged structures or access points with comparable or more secure replacement material.

N. Non-transferable or assignable license: A license shall not be transferred by assignment or otherwise to other persons or locations. Unless the licensee applies for and receives an amended license,

the license shall be void and returned to the division when any one of the following situations occurs:

(1) location of the licensed premises changes;

(2) the discontinuance of operation at a licensed premises; or

(3) suspension or revocation of the license by the division.

O. Online application: Online application: All applications for initial licensure, amended licensure, additional premises, and renewal must be made [~~completed using the online application portal~~] available on the division website. [~~Applicants~~] If applicable, applicants shall first register for a user account.

P. Complete application and fees required: Applicants must submit a completed application to the division before it will be accepted by the division as complete and considered for approval or denial. License and additional premises application or renewal fees must be paid at the time of application submission. Annual plant fees must be paid upon the division's approval of the initial application or renewal application and approval of the number of cannabis plants that a licensee may produce.

[~~Q. Process for incomplete application:~~ ~~In the event that an application for licensure is determined by the division to be incomplete, the division shall notify the applicant by email and specify the information or materials that remain to be submitted. All licensing or renewal fees are non-refundable and must be paid for each new application.~~]

Q. Process for incomplete application: In the event that an application for licensure is determined by the division to be incomplete, the division shall notify the applicant by email and specify the information or materials that remain to be submitted. All licensing or renewal fees are non-refundable and must be paid for each new application.

R. Provisional license with contingencies: Upon written request of the applicant, the division may issue a provisional license letter with defined contingencies that the applicant must obtain documents that may be pending approval of a cannabis establishment license or must be obtained from other state agencies or local jurisdictions for the application to be considered complete. The provisional license letter shall list the remaining items necessary for the application to be complete and shall expire six-months from the date the provisional license letter was issued to the applicant. Upon written request of the applicant, the division may extend a provisional license letter for an additional six-months. Final approval or denial of a license shall be stated on the provisional license letter as contingent on the applicant submitting all remaining items. Such a provisional license letter shall not authorize an applicant to begin licensed cannabis activity.

S. Request for clarifying information: Upon request of the division, an applicant shall provide additional information required to process and fully review the application. If the requested information is not received by the division within 90 days from the date the application was deemed to be complete, the division shall initiate action to deny licensure pursuant to the Uniform Licensing Act.

T. Physical and email address: Applicants and licensees must provide a physical mailing address and an email address. General correspondence from the division will be sent to the applicant or licensee's email address of record. Legal notice and determinations regarding an application, renewal or an administrative action, including an action taken by the division to deny, suspend, or revoke a license or impose a sanction and civil monetary penalty, shall be sent to the last mailing address and to the last email address furnished to the division. Licensees must inform the division in writing of any change to its physical mailing address or email address within 10 days of the change. If applicable, such changes may be submitted via the online licensing portal. An applicant or licensee's failure to notify the division of a change in physical or email address does not relieve the applicant or licensee from the obligation of responding to a division communication.

U. Electronic signature: The division will accept an electronic signature that complies with the Uniform Electronic Transactions Act, Section 14-16-1 *et seq.*, NMSA 1978, or the Revised Uniform Law on Notarial Acts, or rules promulgated pursuant thereto, on any documents required to be submitted to the division and that are submitted electronically.

V. Withdrawal of Application: An applicant may withdraw an application at any time prior to the division's issuance of a license or denial of a license. Requests to withdraw an application must be submitted to the division in writing, dated, and signed by the applicant. Withdrawal of an application shall not, unless the division has consented in writing to such withdrawal, deprive the division of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground. The division shall not refund application fees for a withdrawn application. An applicant may reapply at any time following the withdrawal of an application and shall be required to submit a new application and fee.

W. Closure of a licensed cannabis establishment: A licensee that anticipates permanently ceasing its business operations shall notify the division no later than 30 days prior to closure. The licensee shall post public notice of the anticipated closure at all licensed premises that are accessible to the public at least 14 days prior to the closure. Any cannabis or cannabis products that are held by a licensee on behalf of the licensee ceasing its business operations shall be returned to the licensee ceasing business operations. Any cannabis or cannabis products that are held by the licensee

ceasing its business operations on behalf of another licensee shall be returned to the originating licensee. Cannabis or cannabis products that are otherwise held by a licensee shall, prior to the licensee's closure, be surrendered to either state or local law enforcement, destroyed by the licensee in accordance with the wastage standards of this rule, or donated to patients via a licensed cannabis establishment, provided that the donation has been approved in writing by the division and that the licensee has submitted documentation of the donation to the division. State and local law enforcement are authorized to remove and destroy any cannabis or cannabis products that are held by a person who has ceased to be licensed by the division.

[~~**X. Persons licensed pursuant to the medical cannabis program:** In order to be entitled to continue operating as a cannabis establishment, a person properly licensed and in good standing pursuant to the Lynn and Erin Compassionate Use Act on June 29, 2021, must submit a completed renewal application for a cannabis establishment license, along with required fees, within 30 days of the division notifying the licensee that a renewal application is available. In the event the person does not apply for such a license renewal within the required timeframe, the person shall cease all production operations immediately. Upon approval, the licensee shall operate pursuant to the Cannabis Regulation Act and rules adopted by the division pursuant thereto, provided that the licensee shall continue to operate pursuant to rules promulgated by the department of health for activities authorized by virtue of the licensee's medical program license to the extent they do not conflict with rules adopted by the division pursuant to the Cannabis Regulation Act.~~]

X. Persons licensed pursuant to the medical cannabis program: In order to be entitled to continue operating as a cannabis establishment, a person properly licensed and in good standing pursuant to the Lynn and Erin Compassionate Use Act on June 29, 2021, must submit a completed renewal application for a cannabis establishment license, along with required fees, within 30 days of the division notifying the licensee that a renewal application is available. In the event the person does not apply for such a license renewal within the required timeframe, the person shall cease all production operations immediately. Upon approval, the licensee shall operate pursuant to the Cannabis Regulation Act and rules adopted by the division pursuant thereto, provided that the licensee shall continue to operate pursuant to rules promulgated by the department of health for activities authorized by virtue of the licensee's medical program license to the extent they do not conflict with rules adopted by the division pursuant to the Cannabis Regulation Act.

Y. Application for variance:

(1) Any applicant or licensee may seek a variance from division rule(s) and shall do so by filing a written petition with the division. The petitioner may submit with the petition any relevant documents or material, which the petitioner believes would support the petition.

(2) Petitions shall:

(a) state the petitioner's name and address;

(b) state the date of the petition;

(c) describe the facility or activity for which the variance is sought;

(d) state the address or description of the premises upon which the cannabis establishment or activity is located;

(e) identify the rule(s) from which the variance is sought;

(f) state in detail the extent to which the petitioner wishes to vary from the rule(s) and how the petitioner will ensure public health and safety is not negatively impacted;

(g) state why the petitioner believes that compliance with the regulation will impose an unreasonable regulatory burden upon the cannabis establishment or activity; and

(h) state the period of time for which the variance is desired, including all reasons, data, reports and any other information demonstrating that such time period is justified and reasonable.

[~~**(3)** At the discretion of the division, the adjudicatory procedures of the Uniform Licensing Act may be used for guidance and shall not be construed to limit, extend, or otherwise modify the authority and jurisdiction of the division. The division shall deny any request for a waiver related to a legal right to water pursuant to Paragraphs (3) and (4) of Subsection B of Section 26-2C-7 NMSA 1978.~~]

(3) At the discretion of the division, the adjudicatory procedures of the Uniform Licensing Act may be used for guidance and shall not be construed to limit, extend, or otherwise modify the authority and jurisdiction of the division. The division shall deny any request for a waiver related to a legal right to water pursuant to Paragraphs (3) and (4) of Subsection B of Section 26-2C-7 NMSA 1978.

(4) Prior to a final decision, the division will hold a public hearing pursuant to the Open Meetings Act, Section 10-15-1 *et seq.*, NMSA 1978. The purpose of the hearing is to provide interested persons a reasonable opportunity to submit data, views or arguments orally or in writing on the proposed variance. The division, at its sole discretion, may determine whether to hold more than one hearing. The division may act as the hearing officer or designate an individual hearing officer to preside over the hearing. The hearing officer may ask questions and provide comments for clarification purposes. The hearing officer shall identify and mark all

written comments submitted during the hearing. The public comments should be labeled as exhibits for reference, but do not require formal admission into the hearing record. Individuals wishing to provide public comment or submit information at the hearing must state their name and any relevant affiliation for the record and be recognized before presenting. Public comment shall not be taken under oath. Any individual who provides public comment at the hearing may be questioned by the hearing officer. The hearing shall be conducted in a fair and equitable manner. The hearing officer may determine the format in which the hearing is conducted, but the hearing should be conducted in a simple and organized manner that facilitates public comment. The rules of evidence shall not apply and the hearing officer may, in the interest of efficiency, exclude or limit comment or questions deemed irrelevant, redundant, or unduly repetitious.

(5) The division may grant the requested variance, in whole or in part, subject to conditions, if the variance is not contrary to the Cannabis Regulation Act, or public interest, does not have a negative environmental impact, and is not detrimental to public health and safety, or the division may deny the variance. If the variance is granted in whole or in part, or subject to conditions, the division shall specify the length of time that the variance shall be in place. A permanent variance may be granted. If a permanent variance is not granted, a petitioner may reapply for a variance once the time period expires.

(6) The division shall set forth in the final order the reasons for its actions and shall not be subject to review.

Z. Application for additional licensed premises: Licensees must apply for the specific cannabis establishment license type intended for each additional licensed premises as defined in the Cannabis Regulation Act.

AA. Vertically integrated cannabis establishment and integrated cannabis establishment microbusiness:

(1) Applicants for a vertically integrated cannabis establishment or integrated cannabis establishment microbusiness must meet all qualifications for each type of cannabis establishment that is authorized pursuant to the Cannabis Regulation Act.

(2) An initial applicant for an integrated cannabis microbusiness or a vertically integrated cannabis establishment license, must submit an application for authorization to conduct one or more of the following:

(a) production of cannabis;

(b) manufacturing of cannabis products;

(c) retail establishment; or

(d) courier of cannabis products.

(3) Applicants or licensees shall request authority to add or remove a cannabis establishment activity by submitting an amended application, and any required additional fees.

(4) If a vertically integrated cannabis establishment applicant or licensee will not conduct all cannabis establishment activity on a single premises, each additional premises shall require an additional premises fee.

(5) An applicant or licensee shall not conduct any activity for which additional authority is required until it has received written approval from the division.

[16.8.2.8 NMAC – N, 08/22/2021; A/E, 12/06/2021; A, 03/22/2022]

16.8.2.9 CRIMINAL HISTORY SCREENING REQUIREMENTS:

~~**[A. Initial licensure**: Applicants for initial licensure shall submit to a criminal history screening. For purposes of this rule, a criminal history screening shall be required for:~~

~~**(1)** each partner of a limited partnership;~~

~~**(2)** each member of a limited liability company;~~

~~**(3)** each director, officer, or trustee of a corporation or trust; and~~

~~**(4)** any controlling person of the applicant.~~

~~**B. Authorized change**: If there is a change in membership of any of the above listed person(s), an amended application and a criminal history screening shall be submitted, and each new member must be approved by the division prior to a person assuming any duties or responsibilities for a licensee.~~

~~**C. Criminal history screening procedure for applicants and the division**:~~

~~**(1)** an applicant shall submit a background screening request, including an authorization for release of information, to the New Mexico department of public safety for a current New Mexico state criminal history report;~~

~~**(2)** the New Mexico department of public safety will review state records;~~

~~**(3)** the results of the screening will be made available to the division for review;~~

~~**(4)** the applicant shall submit a signed and sworn affidavit, witnessed and notarized by a notary public with a valid commission, affirming that the applicant has or has not been convicted of the following offenses:~~

~~**(a)** a felony conviction involving fraud, deceit, or embezzlement;~~

~~**(b)** a felony conviction for hiring, employing, or otherwise using a person younger than 18 years of age to:~~

~~**(i)** prepare for sale, transport or carry a controlled substance; or~~

~~**(ii)** sell, give away or offer to sell a controlled substance to any person; or~~

~~**(c)** a~~

~~felony conviction for the possession, use, manufacture, distribution, or dispensing or possession with the intent to manufacture, distribute or dispense a controlled substance, which no longer includes cannabis.~~

~~**D.** Fees: All applicable fees associated with the New Mexico department of public safety state criminal history background checks shall be paid by the applicant or licensee.~~

~~**E.** Duty to report potentially disqualifying event: Applicants and licensees must notify the division in writing within seven days of any change of fact that would potentially result in the applicant or licensee, including any of the persons listed in Subsection A of this section, being disqualified from holding a license pursuant to the Cannabis Regulation Act or division rules, including a conviction for any offense specified in this section. Failure to make required notification to the division may be grounds for administrative disciplinary action. If the division has determined that the person's conviction does not disqualify the licensee from licensure, the division shall notify the licensee in writing. The division may also initiate administrative disciplinary action pursuant to the Uniform Licensing Act.~~]

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(2) the New Mexico department of public safety will review state records;

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(a) a felony conviction involving fraud, deceit, or embezzlement;

(b) a felony conviction for hiring, employing, or otherwise using a person younger than 18 years of age to:

(i) prepare for sale, transport or carry a controlled substance; or

(ii) sell, give away or offer to sell a controlled substance to any person; or

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E. Duty to report potentially disqualifying event: Applicants and licensees must notify the division in writing within seven days of any change of fact that would potentially result in the applicant or licensee, including any of the persons listed in Subsection A of this section, being disqualified from holding a license pursuant to the Cannabis Regulation Act or division rules, including a conviction for any offense specified in this section. Failure to make required notification to the division may be grounds for administrative disciplinary action. If the division has determined that the person's conviction does not disqualify the licensee from licensure, the division shall notify the licensee in writing. The division may also initiate administrative disciplinary action pursuant to the Uniform Licensing Act.

[16.8.2.9 NMAC – N, 08/22/2021; A/E, 12/06/2021; A, 03/22/2022]

16.8.2.10 SECURITY AND LIMITED-ACCESS AREA: All phases where cannabis or cannabis products are cultivated, stored or held, weighed, packaged, manufactured, disposed or wasted, all point-of-sale areas, and any room or area storing a digital video surveillance system storage device shall take place in a designated limited-access area where cannabis and cannabis products are not visible from a public place without the use of binoculars, aircraft, or other optical aids. For purposes of this rule, cannabis or cannabis products are not visible if it cannot be reasonably identified. Licensees shall comply with the security requirements set out in this rule to ensure that licensed premises and limited-access areas, including a vault, are secure.

A. Security alarm system: Licensees shall install and maintain at each premises an operational security alarm system. The security alarm system must be continuously monitored, whether electronically, by a monitoring company, or other means determined to be adequate by the division, and provide an alert to designated employees of the licensee and, if necessary, law enforcement within 5 minutes after a notification of an alarm or a security alarm system

failure, either by telephone, email, or text message. Monitored sensors are required on all perimeter entry points and perimeter windows, if applicable. The system must include an audible alarm, which must be capable of being disarmed remotely by the designated employee or the security company. Licensees shall maintain, and make available to the division upon request, a description of the location and operation of the security system, including the location of the central control, a schematic of the security zones, and the name of the security alarm company and monitoring company, if applicable.

B. Security alarm system maintenance and failure: Licensees shall conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the security alarm system. In the event of a security alarm system failure due to a loss of electrical power or mechanical malfunction that is expected to exceed an eight-hour period, the licensee shall immediately notify the division within 48 hours following the discovery of the failure, and provide alternative security that may include closure of the premises. All security system equipment shall be maintained in a secure location so as to prevent theft, loss, destruction and alterations.

C. Inspection of security alarm system records: Licensees shall maintain documentation for a period of at least 12 months of all maintenance inspections, servicing, alterations, and upgrades performed on the security alarm system. All documentation must be available during a division inspection.

D. Digital video surveillance: Licensees shall provide and maintain at each premises a digital video surveillance system with a minimum camera resolution of 1280 x 720 pixels. The digital video surveillance system shall further comply with the following requirements:

(1) the digital video surveillance system shall at all times be able to effectively and clearly record images of the area under surveillance;

(2) each camera shall be permanently mounted and in a fixed location;

(3) cameras shall be placed in a location that allows the camera to clearly record activity occurring on the licensed premises that digital video surveillance is required under subsection E of this section, and shall provide a clear and certain identification of any person and activities in those areas.

E. Areas of digital video surveillance: Areas that shall be recorded on the digital video surveillance system include the following:

(1) areas where cannabis and cannabis products are cultivated, produced, manufactured, weighed, packed, stored, loaded, and unloaded for transportation, prepared, or moved within the licensed premises;

(2) limited-access areas;

(3) areas storing a digital video surveillance-system storage device;

(4) entrances and exits to the licensed premises; and

(5) all point of sale (POS) locations to capture sale transactions.

F. Digital video surveillance recording: Licensees shall comply with the following digital video surveillance recording requirements:

(1) cameras shall record continuously 24 hours per day, or may be motion activated, and at a minimum of 15 frames per second (FPS);

(2) the physical media or storage device on which digital video surveillance recordings are stored shall be secured in a manner to protect the recording from tampering or theft;

(3) digital video surveillance recordings shall be kept for a minimum of 30 days and recordings of theft or security incidents as set forth in Subsection N of 16.8.2.8 NMAC shall be kept for a minimum of 12 months;

(4) digital video surveillance recordings are subject to inspection by the division, and shall be kept in a manner that allows the division to view and obtain copies of the recordings at the licensed premises immediately upon request;

(5) upon request, licensees shall send or otherwise provide copies of the recordings to the division within 48 hours;

(6) recorded images shall clearly and accurately display the time and date of the recording; and

(7) time shall be measured in accordance with the United States national institute standards and technology standards.

G. Failure notification: A digital video surveillance system shall be equipped with a failure notification system that provides notification to the licensee of any interruption or failure of the digital video surveillance system or digital video surveillance-system storage device. A digital video surveillance system failure shall be reported to the division immediately and operations shall cease as soon as safely possible until the system is again operational.

H. Multiple licensees premises: If multiple applicants or licensees seek to operate, or operate, within the same premises, a single security system and digital video surveillance system covering the entire premises may be used by all of the licensees under the following conditions:

(1) each applicant or licensee shall [~~disclose~~] include on their premises diagram where the security alarm system and the digital video surveillance cameras are located and where digital video surveillance recordings are stored;

(2) each applicant or licensee shall include in their application a certification that all licensees shall be individually responsible for the operation,

maintenance, and record keeping requirements of the security alarm system, and that all licensees shall have access to live monitoring of the digital video surveillance system;

(3) each applicant or licensee shall include in their application an explanation of how the security alarm system and digital video surveillance system will be shared with the division and authorities, as well as who is responsible for maintenance of the security alarm system and the digital video surveillance system, who is authorized to monitor the video footage and who is responsible for storing any digital video surveillance recordings;

(4) each applicant or licensee shall have immediate access to the digital video surveillance recordings to produce them pursuant to subsection F of this section; and

(5) each applicant or licensee shall be held responsible for any violations of the security system or digital video surveillance requirements.

I. Locks: Licensees shall ensure that limited-access areas can be securely locked using commercial-grade locks that meet applicable building and fire codes. Licensees shall also use commercial-grade locks that meet applicable building and fire codes on all points of entry and exit to the licensed premises and access points to areas where cannabis and cannabis products are stored.

J. Limited-access areas: A limited access area shall only be accessible to a licensee and its authorized employees, authorized vendors, contractors or other individuals conducting business that requires access to a limited-access area, division staff or authorized designees, state and local law enforcement authorities acting within their lawful jurisdictions, fire departments and emergency medical services acting in the course of their official capacity, or volunteers specifically permitted by the licensed cannabis establishment. Licensees shall ensure:

(1) only authorized employees of the licensee and other authorized individuals have access to the limited-access areas of the licensed premises;

(2) a daily record log, which may be a sign-in and sign-out sheet at the entrance of a premises, of all authorized employees and authorized individuals that are not employees of the licensee who enter the limited-access areas is maintained;

(3) limited-access record logs are kept for a minimum of 90 days, or 12 months if a theft or security incident occurs, and must be made available to the division within 48 hours upon request;

(4) entrances to all limited-access areas have a solid door, or if appropriate, a gate adequate to block access, and a lock meeting the requirements set forth in subsection I of this section, and unless prohibited by building or fire codes, the entrance shall remain locked when not in use during regular business hours;

(5) all limited-access areas are identified by the posting of a sign that shall be a minimum of 12" x 12" and which states: "Do Not Enter - Limited Access Area - Access Limited to Authorized Personnel Only" in lettering no smaller than one inch in height;

(6) authorized employees of the licensee visibly display an employee identification badge at all times while present within a limited-access area;

(7) other authorized individuals obtain a visitor identification badge prior to entering a limited-access area, the visitor identification badge shall be visibly displayed at all times while the visitor is in any limited access area, and all visitor identification badges shall be returned to the cannabis establishment on exit.

K. Licensee identification badge requirement: Licensees shall issue a laminated or plastic-coated identification badge to all agents, officers, or other persons acting for or employed by a licensee, which shall, at a minimum, include the licensee's "doing business as" name and license number, the individual's first name, an employee number exclusively assigned to that employee for identification purposes, and a color photograph of the employee that clearly shows the full front of the employee's face and that is at least 1 inch in width and 1.5 inches in height.

L. Lighting: Any perimeter entry point of a cannabis establishment must have lighting sufficient for observers to see, and cameras to record, any activity within 20 feet of the gate or entry; and a motion detection lighting system may be employed to light required areas in low-light conditions.

M. Doors and windows: All external entrances to indoor facilities on the licensed premises must be able to be locked and all perimeter doors and windows of indoor facilities must be in good condition and lockable.

N. Fencing requirements for outdoor areas or greenhouses: Any licensed premises that is an outdoor area or greenhouse shall also implement security measures to ensure that the outdoor area or greenhouse is not assessable to unauthorized individuals and is secure to prevent and detect diversion, theft, or loss of cannabis, which shall at a minimum include:

(1) a perimeter security fence designed to prevent unauthorized entry to any cannabis cultivation areas and signs that shall be a minimum of 12" x 12" and which states: "Do Not Enter - Limited Access Area - Access Limited to Authorized Personnel Only" in lettering no smaller than one inch in height; and

(2) a cover that obscures cannabis cultivation areas from being readily viewed from outside of the fenced area.

O. Security guards: Security guards are permitted but not required. Contract security guards must be licensed under the Private

Investigations Act, Section 61-27B-1 *et seq.*, NMSA 1978. Security guards must not consume cannabis or cannabis products or be intoxicated while performing any duties for a licensee. Security guards must comply with all laws related to firearms and other weapons.

P. Vault: Licensees may store all non-growing cannabis, cannabis products, or cash not being actively handled for purposes of cultivating, packaging, processing, transporting, or selling within an adequately sized vault.

[16.8.2.10 NMAC - N, 08/24/2021; A, 03/22/2022]

16.8.2.20 MONITORING OF LICENSEE:

A. Monitoring: The division may perform on-site assessments of an applicant or licensee during normal business hours to determine compliance with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

B. Record access and review: The division may review any and all records related to the operations of the licensee and may require and conduct interviews with such persons or entities and persons affiliated with such entities, for the purpose of determining compliance with division rules or applicable laws. The division shall have access to the financial records of a licensee, including sales records and data from point-of-sale systems, and shall be granted immediate access to inspect or copy those records upon request.

C. Access to premises: Licensees shall provide the division timely access to any material and information necessary for determining compliance with division rules or applicable laws. Failure by a licensee to provide the division access to the premises or materials may result in disciplinary action.

D. Monitoring documents: Any failure to adhere to division rules or applicable laws documented by the division during monitoring may result in disciplinary action.

E. Report to law enforcement: The division shall refer suspected criminal activity or complaints alleging criminal activity that are made against a licensee to appropriate federal, state, or local law enforcement authorities.

F. Financial records: Licensees shall maintain detailed sales records in a manner and format approved by the division, inform the division of the location where such records are kept, and promptly update the division if the records are removed.

G. Audit: Licensees shall submit the results of a biennial audit to the division. The audit shall be conducted by an independent certified public accountant; the costs of which shall be borne by the licensee. Results of the audit shall be forwarded to the division. The division may extend, in writing, a licensees audit requirement to three years following the timely submission of two biennial unqualified audits or two biennial unqualified reports.

H. Producer reports: A cannabis producer licensee shall submit reports on an annual basis, or as otherwise reasonably requested, and in the format specified by the division. The annual report shall include:

~~**[(1)** number of cannabis plants and cannabis inventory;~~

~~**(2)** revenue from the wholesale of cannabis;~~

~~**(3)** total number of transactions;~~

~~**(4)** number of units provided without charge;~~

~~**(5)** number of cannabis plants in production, including mature and immature plants;~~

~~**(6)** number of cannabis plants harvested;~~

~~**(7)** total yield of usable cannabis harvested from cannabis plants (in grams);~~

~~**(8)** average yield per plant (in grams);~~

~~**(9)** amount of cannabis (in grams) sold by wholesale;~~

~~**(10)** amount of cannabis (in grams) purchased by wholesale;~~

~~**(11)** number of live cannabis plants (including clones) and cannabis seeds sold;~~

~~**(12)** amount of dried cannabis leaves and flowers in stock;~~

~~**(13)** average price per gram of dried cannabis leaves and flowers;~~

~~**(14)** total amount of dried cannabis leaves and flowers sold (in units);~~

~~**(15)** total sales of dried cannabis leaves and flowers (in dollars and units);~~

~~**(16)]** **(1)** actual water and energy use in the preceding 12 months;~~

~~**[(17)]** **(2)** demographic information required pursuant to the Cannabis Regulation Act, including data as defined by the applicant's social and economic equity plan, and the divisions published social and economic equity plan; [~~and~~]~~

~~**(3)** progress made toward the licensee's social and economic equity plan; and~~

~~**[(18)]** **(4)** all quality testing reports, to be included as attachments.~~

I. Manufacturer reports: A cannabis manufacturer licensee shall submit reports on an annual basis, or as otherwise reasonably requested, and in the format specified by the division. The annual report shall include:

(1) actual water and energy use in the preceding 12 months;

(2) demographic information required pursuant to the Cannabis Regulation Act, including data as defined by the applicant's social and economic equity plan, and the divisions published social and economic equity plan;

(3) progress made toward the licensee's social and economic equity plan; and

(4) all quality testing reports, to be included as attachments.

J. Testing laboratory reports: A cannabis testing laboratory licensee shall submit reports on an annual basis, or as otherwise

reasonably requested, and in the format specified by the division. The annual report shall include:

(1) total number of test failures by product type;

(2) number of failures by product type;

(3) total number of calibrations conducted;

(4) total number of calibrations categorized by test code or analysis type;

(5) total number of audits conducted by an accredited laboratory auditing service; and

(6) number of proficiency tests conducted by test code or analysis type.

K. Retailer reports: A cannabis retailer licensee shall submit reports on an annual basis, or as otherwise reasonably requested, and in the format specified by the division. The annual report shall include:

(1) demographic information required pursuant to the Cannabis Regulation Act, including data as defined by the applicant's social and economic equity plan, and the divisions published social and economic equity plan; and

(2) progress made toward the licensee's social and economic equity plan.

[16.8.2.20 NMAC - N, 08/24/2021; A, 03/22/2022]

16.8.2.21 CANNABIS PRODUCER LICENSURE; GENERAL PROVISIONS:

[~~A. License types:~~ ~~The division may license two classes of producers:~~

~~(1)~~ ~~A cannabis producer; and~~

~~(2)~~ ~~A cannabis producer microbusiness.~~

~~B. Division application forms:~~ ~~All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division using the online application portal.~~

~~C. License required:~~ ~~Unless licensed pursuant to the Cannabis Regulation Act or division rules, a person shall not cultivate cannabis, including planting, growing, and harvesting cannabis, except for personal use as provided by the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.~~

~~D. Other activities prohibited:~~ ~~Except as provided in Subsection BB of 16.8.2.8 NMAC, no cannabis producer establishment licensee may manufacture cannabis products, courier cannabis or cannabis products, or engage in the retail sale of cannabis or cannabis products unless the licensee has properly applied for, and the division has approved, the applicable license type required for those activities.~~**]**

A. License types: The division may license two classes of producers:

(1) A cannabis producer; and

(2) A cannabis producer microbusiness.

B. Division application forms: All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division found on the division website.

C. License required: Unless licensed pursuant to the Cannabis Regulation Act or division rules, a person shall not cultivate cannabis, including planting, growing, and harvesting cannabis, except for personal use as provided by the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.

D. Other activities prohibited: Except as provided in Subsection BB of 16.8.2.8 NMAC, no cannabis producer establishment licensee may manufacture cannabis products, courier cannabis or cannabis products, or engage in the retail sale of cannabis or cannabis products unless the licensee has properly applied for, and the division has approved, the applicable license type required for those activities.

[16.8.2.21 NMAC – N, 08/22/2021; A/E, 12/06/2021; A, 03/22/2022]

16.8.2.22 APPLICATION REQUIREMENTS FOR CANNABIS PRODUCER LICENSE:

[~~A.~~ ~~An initial application or renewal for cannabis producer licensure shall include the following:~~

~~(1)~~ ~~Contact information for the applicant and the cannabis establishment, to include:~~

~~(a)~~ ~~applicant's full legal name;~~

~~(b)~~ ~~applicant's date of birth, if applicable;~~

~~(c)~~ ~~applicant's mailing address;~~

~~(d)~~ ~~applicant's contact telephone number;~~

~~(e)~~ ~~applicant's contact email address;~~

~~(f)~~ ~~applicant's business physical address and mailing address, if different;~~

~~(g)~~ ~~applicant's business legal name, including a DBA name if applicable;~~

~~(h)~~ ~~applicant's business web address, if applicable;~~

~~(i)~~ ~~applicant's business hours of operation;~~

~~(j)~~ ~~name and contact information for each controlling person; and~~

~~(k)~~ ~~demographic data pursuant to the Cannabis Regulation Act;~~

~~(2)~~ ~~proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;~~

~~(3)~~ ~~demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis production, as evidenced by either:~~

~~(a)~~ ~~documentation from a water provider that the applicant has the right to use water from the provider and that the use of water from cannabis production is compliant with provider's rules, or~~

~~(b)~~ ~~documentation from the office of the state engineer showing that the~~

applicant has a valid and existing water right, or a permit to develop a water right, for irrigation purposes for outdoor cultivation, or a commercial purpose for indoor cultivation at the proposed place of use of the cannabis establishment. The documentation may include any of the following:

(i) a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, -1.1, -1.2, or -1.3, NMSA 1978;

(ii) a subfile order or decree issued by a water rights adjudication court;

(iii) the findings of an office of the state engineer hydrographic survey; or

(iv) other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state engineer under this rule.

(4) a plan to use, or certification that the applicant cannot feasibly use, energy and water reduction opportunities, including:

(a) drip irrigation and water collection;

(b) natural lighting and energy efficiency measures;

(c) renewable energy generation; and

(d) estimated water and energy use related to the applicants cultivation plan;

(5) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(6) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(7) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(8) the initial number of mature cannabis plants, and immature cannabis plants, the applicant proposes for production and the amount of water the applicant plans to use on a monthly basis for a twelve month period;

(9) certification the applicant will adhere to production requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including creating and maintaining a cultivation plan, and cannabis waste procedures for cannabis or cannabis products;

(10) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including the transport of unprocessed cannabis or cannabis products to other cannabis establishments;

(11) certification the applicant will adhere to New Mexico department of agriculture (NMDA) pesticide registration, licensing, and use requirements to ensure a safe product and environment;

(12) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to safety and security procedures, security devices to be used, placement of security devices, personal safety, and crime prevention techniques;

(13) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to routine testing by a licensed testing laboratory, division inspection of licensed premises during normal business hours, and testing of cannabis;

(14) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(15) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed medical or commercial cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(16) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

(17) certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;

(18) certification the applicant will

~~maintain at all times a legible and accurate diagram containing information required by 16.8.2.24 NMAC and description of the location of the land or facility used for the cannabis establishment and the method(s) to be used to produce cannabis which shall be made immediately available upon request by the division;~~

~~(19)~~ ~~an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and~~

~~(20)~~ ~~payment of any required application or licensure fees as set forth in 16.8.11 NMAC. Cannabis plant fees, if applicable, shall be accessed by the division upon approval of an initial application, additional premises application or renewal application. The division must receive payment of cannabis plant fee prior to cultivation of cannabis plants or, if applicable, at the time of renewal.~~

~~**B. Verification of information:** The division may verify information contained in each application and accompanying documentation, including:~~

~~(1)~~ ~~contacting the applicant or controlling person by telephone, mail, or electronic mail;~~

~~(2)~~ ~~conducting an on-site visit;~~

~~(3)~~ ~~requiring a face-to-face or virtual meeting and the production of additional documentation; or~~

~~(4)~~ ~~consulting with state or local governments.~~]

A. An initial application or renewal for cannabis producer licensure shall include the following:

(1) Contact information for the applicant and the cannabis establishment, to include:

(a) applicant's full legal name;

(b) applicant's date of birth, if applicable;

(c) applicant's mailing address;

(d) applicant's contact telephone number;

(e) applicant's contact email address;

(f) applicant's business physical address and mailing address, if different;

(g) applicant's business legal name, including a DBA name if applicable;

(h) applicant's business web address, if applicable;

(i) applicant's business hours of operation;

(j) name and contact information for each controlling person; and

(k) demographic data pursuant to the Cannabis Regulation Act;

(2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

(3) demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis production, as evidenced by either:

(a) documentation from a water provider that the applicant has the right to use water from the provider and that the use of water from cannabis production is compliant with provider's rules, or

(b) documentation from the office of the state engineer showing that the applicant has a valid and existing water right, or a permit to develop a water right, for irrigation purposes for outdoor cultivation, or a commercial purpose for indoor cultivation at the proposed place of use of the cannabis establishment. The documentation may include any of the following:

(i) a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, -1.1, -1.2, or -1.3, NMSA 1978;

(ii) a subfile order or decree issued by a water rights adjudication court;

(iii) the findings of an office of the state engineer hydrographic survey; or

(iv) other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state engineer under this rule.

(4) a plan to use, or certification that the applicant cannot feasibly use, energy and water reduction opportunities, including:

(a) drip irrigation and water collection;

(b) natural lighting and energy efficiency measures;

(c) renewable energy generation; and

(d) estimated water and energy use related to the applicants cultivation plan;

(5) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(6) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(7) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(8) the initial number of mature cannabis plants, and immature cannabis plants, the applicant proposes for production and the amount of water the applicant plans to use on a monthly basis for a twelve month period;

(9) certification the applicant will adhere to production requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including creating and maintaining a cultivation plan, and cannabis waste procedures for cannabis or cannabis products;

(10) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including the transport of unprocessed cannabis or cannabis products to other cannabis establishments;

(11) certification the applicant will adhere to New Mexico department of agriculture (NMDA) pesticide registration, licensing, and use requirements to ensure a safe product and environment;

(12) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to safety and security procedures, security devices to be used, placement of security devices, personal safety, and crime prevention techniques;

(13) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to routine testing by a licensed testing laboratory, division inspection of licensed premises during normal business hours, and testing of cannabis;

(14) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(15) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed medical or commercial cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(16) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

(17) certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;

(18) certification the applicant will maintain at all times a legible and accurate diagram and description of the location of the land or facility used for the cannabis establishment and the method(s) to be used to produce cannabis;

(19) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(20) payment of any required application or licensure fees as set forth in 16.8.11 NMAC. Cannabis plant fees, if applicable, shall be accessed by the division upon approval of an initial application, additional premises application or renewal application. The division must receive payment of cannabis plant fee prior to cultivation of cannabis plants or, if applicable, at the time of renewal.

B. Verification of information: The division may verify information contained in each application and accompanying documentation, including:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.

[16.8.2.22 NMAC – N, 08/22/2021; A/E, 12/06/2021; A/E, 1/13/2022; A, 03/22/2022]

16.8.2.24 PRODUCER PREMISES DIAGRAM:

~~**[A.** An applicant must maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.~~

~~**B.** The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis plants will be cultivated, the location(s) and the dimensions of other areas where other horticulture will be cultivated, if applicable. The diagram shall also include, as~~

~~applicable, any equipment to be used, entrances and exits, interior partitions, location of lights in the cannabis plant cultivation area(s) and the maximum wattage or wattage equivalent, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.~~

~~**C.** The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.~~

~~**D.** The diagram shall be to scale.~~

~~**E.** The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.~~

~~**F.** If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.~~

~~**G.** If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.~~

~~**H.** If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.~~]

A. An applicant must maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

B. The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis plants will be cultivated, the location(s) and the dimensions of other areas where other horticulture will be cultivated, if applicable. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, location of lights in the cannabis plant cultivation area(s) and the maximum wattage or wattage equivalent, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

D. The diagram shall be to scale.

E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

H. If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

[16.8.2.24 NMAC - N, 08/24/2021; A/E, 01/13/2022; A, 03/22/2022]

16.8.2.25 PHYSICAL MODIFICATION OF PRODUCER PREMISES:

~~**[A.** Licensees shall not, without the prior written approval of the division, make a physical change, alteration, or modification of the licensed premises that materially or substantially alters the licensed premises or the use of the licensed premises.~~

~~**B.** Licensees whose licensed premises is to be materially or substantially changed, modified, or altered is responsible for filing a request for premises modification with the division.~~

~~**C.** Material or substantial changes, alterations, or modifications requiring approval include:~~

~~**(1)** when a building or structure will be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished, as defined and described in the applicable building codes, which require a permit from the construction industries division or the appropriate local jurisdiction;~~

~~**(2)** when electrical wiring, plumbing or mechanical work and LP gas work, as defined and described in the applicable construction codes for those trades, is to be installed, repaired or maintained in or on such building or structure, which require a permit from the construction industries division or the appropriate local jurisdiction;~~

~~**(3)** re-roofing and application of roof coatings that requires a building permit and inspections; or~~

~~**(4)** changing the occupancy activities conducted in or the use of an area that requires a new certificate of occupancy or fire inspection.~~

~~**D.** Licensees shall request approval of a material or substantial physical change, alteration, or modification in writing, and the request shall include:~~

~~**(1)** a copy of the applicable building permit; and~~

~~**(2)** a new certificate of occupancy, if applicable.~~

~~**E.** Licensees shall immediately notify the division within 24 hours if a federal or state authority requires a change to the premises;~~

~~**F.** Licensees shall promptly provide additional documentation requested by the division to evaluate the licensee's request to modify the licensed premises; and~~

~~G. The division shall notify the licensee, in writing, of approval or denial of a request for physical modification no later than 10 days after receiving a request.~~]

A. Licensees shall not, without the prior written approval of the division, make a physical change, alteration, or modification of the licensed premises that materially or substantially alters the licensed premises or the use of the licensed premises.

B. Licensees whose licensed premises is to be materially or substantially changed, modified, or altered is responsible for filing a request for premises modification with the division.

C. Material or substantial changes, alterations, or modifications requiring approval include:

(1) when a building or structure will be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished, as defined and described in the applicable building codes, which require a permit from the construction industries division or the appropriate local jurisdiction;

(2) when electrical wiring, plumbing or mechanical work and LP gas work, as defined and described in the applicable construction codes for those trades, is to be installed, repaired or maintained in or on such building or structure, which require a permit from the construction industries division or the appropriate local jurisdiction;

(3) re-roofing and application of roof coatings that requires a building permit and inspections; or

(4) changing the occupancy activities conducted in or the use of an area that requires a new certificate of occupancy or fire inspection.

D. Licensees shall request approval of a material or substantial physical change, alteration, or modification in writing, and the request shall include:

(1) a copy of the applicable building permit; and

(2) a new certificate of occupancy, if applicable.

E. Licensees shall immediately notify the division within 24 hours if a federal or state authority requires a change to the premises;

F. Licensees shall promptly provide additional documentation requested by the division to evaluate the licensee's request to modify the licensed premises; and

G. The division shall notify the licensee, in writing, of approval or denial of a request for physical modification no later than 10 days after receiving a request.

[16.8.2.25 NMAC - N, 08/24/2021; A/E, 01/13/2022; A, 03/22/2022]

16.8.2.29 CANNABIS MANUFACTURER LICENSURE; GENERAL PROVISIONS:

A. License Types: The division may license four classes of manufacture:

(1) Class I: A licensee that only packages or repackages cannabis products, or labels or relabels the cannabis product container;

(2) Class II: A licensee that conducts Class I activities, and manufactures edible products or topical products using infusion processes, or other types of cannabis products other than extracts or concentrates, and does not conduct extractions;

(3) Class III: A licensee that conducts Class I and Class II activities, and extracts using mechanical methods or nonvolatile solvents; and

(4) Class IV: A licensee that conducts Class I, Class II, and Class III activities, and extracts using volatile solvents or supercritical CO2.

B. Division application forms: All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division [~~using the online application portal~~] found on the division website.

C. License required: Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not manufacture cannabis extract, unless for personal use pursuant to Section 26-2C-31, NMSA.

D. Other activities prohibited: Except as provided in Subsection BB of 16.8.2.8 NMAC, no cannabis manufacturer establishment licensee may produce cannabis, courier cannabis or cannabis products, or engage in the retail sale of cannabis or cannabis products unless the licensee has properly applied for, and the division has approved, the applicable license type required for those activities.

E. Prohibited additives: A manufacturer shall not manufacture or distribute a product that is intended to be consumed by inhalation that includes polyethylene glycol, polypropylene glycol, vitamin E acetate, or medium chain triglycerides. A manufacturer shall not combine nicotine, caffeine, or any other addictive substance with a cannabis product. This prohibition shall not apply to the combination of cannabis with sugar, or a product in which caffeine is naturally occurring, such as coffee, tea, or chocolate.

[16.8.2.29 NMAC – N/E, 09/08/2021; A, 12/28/2021; A, 03/22/2022]

16.8.2.30 APPLICATION REQUIREMENTS FOR CANNABIS MANUFACTURER LICENSE:

[~~A.~~ ~~An initial application or renewal for cannabis manufacturer licensure shall include the following:~~

~~**(1)** Contact information for the applicant and the cannabis establishment, to include:~~

~~**(a)** applicant's full legal name;~~

~~**(b)** applicant's mailing address;~~

~~**(c)** applicant's contact telephone number;~~

~~**(d)** applicant's contact email address;~~

~~**(e)** applicant's business physical address and mailing address, if different;~~

(f) applicant's business legal name, including a DBA name if applicable;

(g) applicant's business web address, if applicable;

(h) applicant's business hours of operation;

(i) name and contact information for each controlling person;

(j) demographic data pursuant to the Cannabis Regulation Act; and

(k) license type sought (Class I, Class II, Class III, or Class IV);

(2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

(3) demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis manufacturing, as evidenced by either:

(a) documentation from a water provider that the applicant has the right to use water from the provider and that the use of water for cannabis manufacturing is compliant with provider's rules, or

(b) documentation from the office of the state engineer showing that the applicant has a valid and existing water right, or a permit to develop a water right, at the proposed place of use of the cannabis establishment. The documentation may include any of the following:

(i) a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, -1.1, -1.2, or -1.3, NMSA 1978;

(ii) a subfile order or decree issued by a water rights adjudication court;

(iii) the findings of an office of the state engineer hydrographic survey; or

(iv) other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state engineer under this rule;

(4) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(5) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(6) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(7) if applicable, proof of prior approval by the New Mexico regulation and licensing department for the use of any compressed gas extraction equipment to be utilized by the manufacturer;

(8) if applicable, a sample of the record form(s), which shall identify (among other items) the name of the wholesale purchaser, the date of the sale, the quantity, and price of cannabis sold;

(9) for class II, III, and IV licenses, documentation that the applicant has obtain all necessary authority required for the production of edibles and topicals from the New Mexico environment department and that such authority is valid at the time the license application is submitted;

(10) certification the applicant will adhere to manufacturing requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(11) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(12) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(13) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(14) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(15) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(16) certification the applicant is not licensed under the Liquor Control Act.

(17) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and

~~residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;~~

~~(18) an attestation that the manufacturer will not use dimethylsulfoxide (DMSO) in the production of cannabis products, and will not possess DMSO on the premises of the manufacturer;~~

~~(19) certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;~~

~~(20) certification the applicant will maintain at all times a legible and accurate diagram containing information required by 16.8.2.32 NMAC and description of the location of the land or facility to be used for the cannabis establishment and the method(s) to be used to manufacture cannabis (extraction, infusion, packaging, labeling), including a description of extraction and infusion methods, which shall be made immediately available upon request by the division;~~

~~(21) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and~~

~~(22) payment of any required fees as set forth in 16.8.11 NMAC.~~

~~**B. Verification of information:** The division may verify information contained in each application and accompanying documentation by:~~

~~(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;~~

~~(2) conducting an on-site visit;~~

~~(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or~~

~~(4) consulting with state or local governments.~~

~~**C. Trade secrets:** Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret or confidential by clearly identifying such information as "confidential" on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant's good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to 7, NMSA 1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within ten days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act.~~]

A. An initial application or renewal for cannabis manufacturer licensure shall include the following:

(1) Contact information for the applicant and the cannabis establishment, to include:

(a) applicant's full legal name;

(b) applicant's mailing address;

(c) applicant's contact telephone number;

(d) applicant's contact email address;

(e) applicant's business physical address and mailing address, if different;

(f) applicant's business legal name, including a DBA name if applicable;

(g) applicant's business web address, if applicable;

(h) applicant's business hours of operation;

(i) name and contact information for each controlling person;

(j) demographic data pursuant to the Cannabis Regulation Act; and

(k) license type sought (Class I, Class II, Class III, or Class IV);

(2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

(3) demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis manufacturing, as evidenced by either:

(a) documentation from a water provider that the applicant has the right to use water from the provider and that the use of water for cannabis manufacturing is compliant with provider's rules, or

(b) documentation from the office of the state engineer showing that the applicant has a valid and existing water right, or a permit to develop a water right, at the proposed place of use of the cannabis establishment. The documentation may include any of the following:

(i) a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, 1.1, 1.2, or 1.3, NMSA 1978;

(ii) a subfile order or decree issued by a water rights adjudication court;

(iii) the findings of an office of the state engineer hydrographic survey; or

(iv) other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state engineer under this rule;

(4) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(5) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(6) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(7) if applicable, proof of prior approval by the New Mexico regulation and licensing department for the use of any compressed gas extraction equipment to be utilized by the manufacturer;

(8) if applicable, a sample of the record form(s), which shall identify (among other items) the name of the wholesale purchaser, the date of the sale, the quantity, and price of cannabis sold;

(9) for class II, III, and IV licenses, documentation that the applicant has obtain all necessary authority required for the production of edibles and topicals from the New Mexico environment department and that such authority is valid at the time the license application is submitted;

(10) certification the applicant will adhere to manufacturing requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(11) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(12) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(13) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(14) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(15) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(16) certification the applicant is not licensed under the Liquor Control Act.

(17) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

(18) an attestation that the manufacturer will not use dimethylsulfoxide (DMSO) in the production of cannabis products, and will not possess DMSO on the premises of the manufacturer:

(19) certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;

(20) certification the applicant will maintain at all times a legible and accurate diagram containing information required by 16.8.2.32 NMAC and description of the location of the land or facility to be used for the cannabis establishment and the method(s) to be used to manufacture cannabis (extraction, infusion, packaging, labeling), including a description of extraction and infusion methods;

(21) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(22) payment of any required fees as set forth in 16.8.11 NMAC.

B. Verification of information: The division may verify information contained in each application and accompanying documentation by:

(1) contacting the applicant or controlling person by

telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.

C. Trade secrets: Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret or confidential by clearly identifying such information as "confidential" on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant's good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to 7, NMSA 1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within 10 days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act.

[16.8.2.30 NMAC – N/E, 09/08/2021; A/E, 12/02/2021; N, 12/28/2021; A/E, 01/13/2022; A, 3/22/2022]

16.8.2.32 MANUFACTURER PREMISES DIAGRAM:

[~~**A.** An applicant must maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.~~

~~**B.** The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be manufactured, and the location of the extraction area. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.~~

~~**C.** The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.~~

~~**D.** The diagram shall be to scale.~~

~~**E.** The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.~~

~~**F.** If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.~~

~~**G.** If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.~~

~~**H.** If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.~~]

A. An applicant must maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.

B. The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be manufactured, and the location of the extraction area. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

D. The diagram shall be to scale.

E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

H. If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

[16.8.2.32 NMAC – N/E, 09/08/2021; N, 12/28/2021; A/E, 01/13/2022; A, 03/22/2022]

16.8.2.35 CANNABIS RETAIL LICENSURE; GENERAL PROVISIONS:

A. Division application forms: All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division [~~using the online application portal~~] found on the division website.

B. License required: Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not sell cannabis products to qualified patients, primary caregivers or reciprocal participants, or directly to consumers.

[16.8.2.35 NMAC - N, 12/28/2021; A, 03/22/2022]

16.8.2.36 APPLICATION REQUIREMENTS FOR CANNABIS RETAILER LICENSE:

[A. An initial application or renewal for cannabis retailer licensure shall include the following:

(1) Contact information for the applicant and the cannabis establishment, to include:

(a) applicant's full legal name;

(b) applicant's date of birth, if applicable;

(c) applicant's mailing address;

(d) applicant's contact telephone number;

(e) applicant's contact email address;

(f) applicant's business physical address and mailing address, if different;

(g) applicant's business legal name, including a DBA name if applicable;

(h) applicant's business web address, if applicable;

(i) applicant's business hours of operation;

(j) name and contact information for each controlling person;

(k) demographic data pursuant to the Cannabis Regulation Act; and

(l) license type sought;

(2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

(3) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(4) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(5) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(6) certification the applicant will adhere to retail requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(7) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(8) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(9) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(10) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(11) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(12) certification the applicant is not licensed under the Liquor Control Act;

(13) certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;

(14) certification the applicant will maintain at all times a legible and accurate diagram and description containing information required by 16.8.2.38 NMAC and description of the location of the land or facility to be used for the cannabis establishment, including a description of each retail area and all security requirements which shall be made immediately available upon request by the division;

(15) if applicable, certification the applicant will adhere to courier requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(16) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

(17) an attestation of the following

~~statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and~~

~~**(18)** payment of any required fees as set forth in 16.8.11 NMAC.~~

~~**B. Verification of information:** The division may verify information contained in each application and accompanying documentation by:~~

~~**(1)** contacting the applicant or controlling person by telephone, mail, or electronic mail;~~

~~**(2)** conducting an on-site visit;~~

~~**(3)** requiring a face-to-face or virtual meeting and the production of additional documentation; or~~

~~**(4)** consulting with state or local governments.~~]

A. An initial application or renewal for cannabis retailer licensure shall include the following:

(1) Contact information for the applicant and the cannabis establishment, to include:

(a) applicant's full legal name;

(b) applicant's date of birth, if applicable;

(c) applicant's mailing address;

(d) applicant's contact telephone number;

(e) applicant's contact email address;

(f) applicant's business physical address and mailing address, if different;

(g) applicant's business legal name, including a DBA name if applicable;

(h) applicant's business web address, if applicable;

(i) applicant's business hours of operation;

(j) name and contact information for each controlling person;

(k) demographic data pursuant to the Cannabis Regulation Act; and

(l) license type sought;

(2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

(3) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(4) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(5) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(6) certification the applicant will adhere to retail requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(7) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(8) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(9) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(10) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(11) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(12) certification the applicant is not licensed under the Liquor Control Act;

(13) certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;

(14) certification the applicant will maintain at all times a legible and accurate diagram and description of the location of the land or facility to be used for the cannabis establishment, including a description of each retail area and all security requirements;

(15) if applicable, certification the applicant will adhere to courier requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(16) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

(17) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(18) payment of any required fees as set forth in 16.8.11 NMAC.

B. Verification of information: The division may verify information contained in each application and accompanying documentation by:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.

[16.8.2.36 NMAC – N, 12/28/2021; A/E, 01/13/2022; A, 03/22/2022]

16.8.2.38 RETAIL PREMISES DIAGRAM:

[~~**A.** An applicant maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.~~

~~**B.** The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be stored and available to the public. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.~~

~~**C.** The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.~~

~~**D.** The diagram shall be to scale.~~

~~**E.** The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.~~

~~**F.** If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.~~

~~**G.** If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.~~

~~**H.** If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.~~]

A. An applicant shall maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.

B. The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be stored and available to the public. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

D. The diagram shall be to scale.

E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

H. If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

[16.8.2.38 NMAC – N, 12/28/2021; A/E, 01/13/2022; A, 03/22/2022]

16.8.2.41 CANNABIS COURIER LICENSURE; GENERAL PROVISIONS:

A. Division application forms: All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division [~~using the online application portal~~] found on the division website.

B. License required: Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not transport cannabis products directly to qualified patients, primary caregivers or

reciprocal participants, or directly to consumers.

C. Consumer delivery:

(1) A licensee may deliver cannabis or cannabis products [~~directly~~] from a licensed retail establishment to a qualified patient who is at least 18 years of age, a primary caregiver or a reciprocal participant, or [~~directly to~~] a consumer who is at least 21 years of age.

(2) Licensees shall only deliver [~~cannabis or cannabis products~~] to the person who is identified by the retail cannabis licensee as an intended, authorized recipient.

(3) Licensees shall only deliver cannabis, cannabis products, or products not containing THC that are for sale within the licensed retail establishment from which the sale and delivery is initiated.

D. Operational requirements:

(1) All cannabis and cannabis products delivered by a licensed cannabis courier shall be obtained from a retail cannabis licensee with which the cannabis courier is employed or has a delivery agreement.

(2) All delivery agreements between a retail cannabis licensee and a cannabis courier licensee shall be disclosed to the division. The division shall be notified in writing of a new delivery agreement or modification to a delivery agreement prior to delivery of cannabis or cannabis products under a new or modified delivery agreement.

(3) Licensees shall not transport or deliver cannabis or cannabis products that are not individually packaged, or that are not labeled in accordance with the Cannabis Regulation Act and division rules.

(4) Upon obtaining a package of cannabis or cannabis product from a retail cannabis licensee, the cannabis courier shall hold the package in a secure area or areas that are locked and otherwise resistant to tampering or theft, until the package is delivered to its intended recipient or returned to the retail cannabis licensee.

(5) Licensees shall not relinquish possession of cannabis or cannabis products unless and until the package of cannabis or cannabis products is either successfully delivered to its intended recipient or returned to the retain cannabis licensee. For purposes of this section, a package of cannabis or cannabis product is successfully delivered only upon the licensee's verification that an intended recipient has taken actual, physical possession of the package. Licensees shall not leave a package at any location for any reason, unless the package is successfully delivered to its intended recipient.

(6) At the time of delivery, a licensee shall verify the recipient's identity by requiring presentation of the recipient's photo identification issued by a federal or state government that includes the name, date of birth, and picture of the intended recipient. Identification must match the pre-verified identification of the consumer who placed the order for delivery. Licensees shall not deliver cannabis or cannabis product to any person whose identity is not verified in accordance with this rule. Upon delivery to the intended recipient, the licensee shall certify having verified the recipient's identification in accordance with this rule for each transaction. Licensee shall view proof of the order generated at the time of the order and receive the signature of the consumer who ordered the cannabis or cannabis product.

(7) Licensees shall not possess a delivery package of cannabis or cannabis product for a time period greater than 24 hours. Licensees shall return any cannabis or cannabis product that is not successfully delivered to its intended recipient to the originating retail cannabis licensee within this time-period.

(8) Licensees shall not, when transporting cannabis or cannabis products utilize a delivery vehicle that advertises or otherwise displays signage, logos, or symbols that would indicate that the vehicle is used for the transport of cannabis.

(9) Only shelf stable cannabis [~~and~~] cannabis products [~~that is~~] , and products not containing THC that are for sale within the licensed retail establishment from which the sale and delivery is initiated [~~shelf-stable~~] may be delivered. Products that are perishable or time and temperature controlled to prevent deterioration may not be delivered.

E. Confidentiality: Licensees shall at all times take measures to ensure confidentiality and safety in the transport and delivery of cannabis and cannabis product. A licensee may obtain contact information of a purchasing qualified patient or primary caregiver, and a reciprocal participant, as permitted by agreement between the licensee and a respective retail cannabis licensee, and may utilize such information solely for the purpose of arranging a delivery location and time with the qualified patient or primary caregiver, or reciprocal participant. Licensees shall not otherwise disseminate, disclose, or use identifying information or contact information concerning a qualified patient or primary caregiver, or reciprocal participant.

F. Maximum retail value: The maximum retail value [~~of cannabis and cannabis product~~] allowed in a cannabis courier's vehicle at any one time shall be $10,000 and each product shall be associated with a specific order for delivery. For purposes of this provision, "maximum retail value" shall mean the aggregate value of cannabis, cannabis products, and products not containing THC that are for sale within the licensed retail establishment from which the sale and delivery is initiated as priced on the day of the order for delivery.

G. Track and trace: All cannabis and cannabis product deliveries shall be tracked using the track and trace system as designated by the division. Records of sales

of cannabis accessories shall be maintained by the cannabis courier, but may not be tracked in the track and trace system designated by the division.

H. Record retention: Delivery records, including certification of delivery, the cannabis and cannabis product delivered, the date of delivery, and the time of delivery, shall be maintained by the cannabis courier for a minimum of 12 months.

I. Delivery time and location:

(1) Limitations on the time of delivery shall comply with all local laws.

(2) Licensees shall only deliver packages of cannabis or cannabis products to the address provided by the retail cannabis licensee.

(3) Licensees are prohibited from delivery to an individual consumer of more than two ounces of cannabis, 16 grams or cannabis extract and 800 milligrams of edible cannabis.

[16.8.2.41 NMAC – N, 12/28/2021; A, 03/22/2022]

16.8.2.43 CANNABIS TESTING LABORATORY LICENSE: GENERAL PROVISIONS:

A. Testing categories: The division may license cannabis testing laboratories to perform analytical testing of cannabis products in one or more of the following categories:

(1) visual inspection;

(2) microbiological;

(3) residual solvents;

(4) potency and homogeneity;

(5) heavy metals;

(6) pesticides; and

(7) such other testing categories as the department may identify.

B. License not required for internal testing: A cannabis establishment may conduct analytical testing using validated methods for internal quality control purposes without obtaining a cannabis testing laboratory license but may not offer testing services to another person or entity.

C. Division application forms: All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division [~~using the online application portal~~] found on the division website.

D. Other activities prohibited: No person with a direct or indirect interest in any cannabis establishment other than a cannabis research laboratory may hold an interest in a cannabis testing laboratory.

[16.8.2.43 NMAC – Rp, 16.8.2.43 NMAC, 01/11/2022; A, 03/22/2022]

16.8.2.44 APPLICATION REQUIREMENTS FOR CANNABIS TESTING LABORATORY LICENSE:

A. Contents of application:

(1) for any initial or renewal application, contact information for the applicant and the cannabis establishment, to include:

(a) applicant's full legal name;

(b) applicant's mailing address;

(c) applicant's contact telephone number;

(d) applicant's contact email address;

(e) applicant's business physical address and mailing address, if different;

(f) applicant's business legal name, including a DBA name, if applicable;

(g) applicant's business web address, if applicable;

(2) for any initial application, information about controlling persons, to include:

(a) name and contact information;

(b) documentation of legal name change, if applicable;

(c) criminal history screening documents. as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(d) a detailed description of any criminal convictions, including for each: the date of the conviction; dates of incarceration, probation, or parole; description of the offense; and any evidence of rehabilitation, including court documents, personal or professional references, completion of treatment, employment records, and other relevant information;

(e) demographic data pursuant to the Cannabis Regulation Act; and

(f) A copy of identification issued by a federal or state government, including name, date of birth, and picture and indicating the person is at least 21 years of age;

(3) for any renewal application, certifications that the applicant:

(a) attests to the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued;

(b) will adhere to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules, including:

(i) testing requirements;

(ii) transport requirements;

(iii) security requirements;

(iv) quality assurance requirements; and

(v) the prohibition on any person holding

an interest in one or more cannabis testing laboratories from holding an interest in any other cannabis license other than a cannabis research laboratory;

(c) will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(d) has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application; and

(e) is not licensed at the same location under the Liquor Control Act;

(f) has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance; and

[~~**(g)** maintain on its licensed premise at all times, a complete and detailed diagram of the premises containing information required by 16.8.2.46 NMAC, which shall be made immediately available to the division upon request.~~]

(g) maintain on its licensed premise at all times, a complete and detailed diagram of the premises containing information required by 16.8.2.46 NMAC, which shall be made immediately available to the division upon request.

[~~**(4)** for any initial application, and, unless a statement is included that no material changes exist, for any renewal application:~~

~~**(a)** a list of categories of testing for which licensure is sought; and~~

~~**(b)** applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees, or premises are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities; and~~]

(4) for any initial application, and, unless a statement is included that no material changes exist, for any renewal application:

(a) a list of categories of testing for which licensure is sought; and

(b) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees, or premises are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities; and

(5) for any initial or renewal application, payment of any required fees as set forth in 16.8.11 NMAC.

B. Initial demonstration of capability: The division requires the submission of an initial demonstration of capability (IDC) for every test a cannabis testing laboratory intends to conduct, except tests for research and development purposes only. The IDC must identify a limit of quantitation that is equal to or lower than the action level for the specified test.

(1) An IDC is required whenever:

(a) an initial application is submitted, except that an applicant may instead submit evidence of prior completion of an IDC as a requirement of licensing under the Lynn and Erin Compassionate Use Act;

(b) the cannabis testing laboratory proposes to use a new analytical instrument to test for an analyte; or

(c) the cannabis testing laboratory proposes material changes to testing methods.

(2) Every IDC shall include the following elements:

(a) Demonstration of method calibration: The calibration range shall use at least five calibration points consisting of five different concentration levels of target compounds. The calibration range shall include a low calibration point equal to, or less than, the action level for each targeted compound. The cannabis testing laboratory shall provide the equation and the type of curve fit used for the calibration range, and the percent relative standard deviation or the goodness of fit. The percent relative standard deviation shall be less than twenty percent, or the goodness of fit (correlation coefficient) shall be 0.995 or better.

(b) Demonstration of method accuracy and precision: A cannabis testing laboratory shall supply the quantitation data for five positive control samples analyzed by its testing method utilizing median or mid-level calibration concentration. The cannabis testing laboratory shall identify and justify acceptance criteria and shall calculate and provide the calculated mean (average) result and the standard deviation. Any standard deviations greater than twenty percent shall be noted and explained.

(c) Demonstration of method detection

limit: A cannabis testing laboratory shall calculate its method detection limit using a generally accepted method.

(d) Demonstration of low system background: A cannabis testing laboratory shall supply the analytical data of at least three negative control samples that do not contain any target analytes.

(e) Demonstration of analyte identification: A cannabis testing laboratory that uses, high performance liquid chromatography (HPLC) or gas chromatography with flame ionization detector or photoionization detector (GC-FID or GC-PID/FID) instrumentation shall supply analytical data where each targeted compound is analyzed as a single compound giving it its characteristic retention time. A cannabis testing laboratory that uses gas chromatography–mass spectrometry (GCMS), liquid chromatography–mass spectrometry (LCMS), or liquid chromatography–tandem mass spectrometry (LCMSMS) instrumentation shall supply analytical data with the characteristic mass spectrum of each targeted compound.

C. Continuing demonstration of capability: A cannabis testing laboratory shall submit a continuing demonstration of capability (CDC) for each test performed annually as part of the laboratory's application for renewal of licensure. A CDC may consist of:

(1) Evidence that the cannabis testing laboratory has the test within its current scope of accreditation to the current standards of ISO/IEC 17025, *Testing and Calibration Laboratories*;

(2) Evidence that each analyst performing the test has successfully completed, within the previous year, relevant proficiency testing administered by a provider accredited to the standards of ISO/IEC 17043, *Conformity Assessment—General Requirements for Proficiency Testing*; or

(3) The re-performance of the IDC.

D. Verification of information: The division may verify information contained in each application and accompanying documentation by:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.

E. Trade secrets: Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret by clearly identifying such information as "confidential trade secrets" on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant's good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to -7, NMSA 1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within five days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act. [16.8.2.44 NMAC – N, 01/11/2022; A/E, 01/13/2022; A, 03/22/2022]

16.8.2.46 TESTING LABORATORY PREMISES DIAGRAM:

[~~**A. Detailed diagram required:** An applicant maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.~~

~~**B. Contents of diagram:** The diagram shall show:~~

~~**(1)** the boundaries of the property and the proposed premises to be licensed;~~

~~**(2)** if applicable, the uses of any portion of the property not included in the premises;~~

~~**(3)** a brief statement or description of the principal activity to be conducted in each area on the premises;~~

~~**(4)** the dimensions of each area where testing of cannabis products will take place;~~

~~**(5)** the location and identity of equipment; and~~

~~**(6)** entrances and exits;~~

~~**C. Format of diagram:** The diagram shall:~~

~~**(1)** be drawn to scale;~~

~~**(2)** be rendered in black and white print; and~~

~~**(3)** contain no highlighting.~~]

A. Detailed diagram required: An applicant shall maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.

B. Contents of diagram: The diagram shall show:

(1) the boundaries of the property and the proposed premises to be licensed;

(2) if applicable, the uses of any portion of the property not included in the premises;

(3) a brief statement or description of the principal activity to be conducted in each area on the premises;

(4) the

dimensions of each area where testing of cannabis products will take place;

(5) the location and identity of equipment; and

(6) entrances and exits;

C. Format of diagram: The diagram shall:

(1) be drawn to scale;

(2) be rendered in black and white print; and

(3) contain no highlighting.

[16.8.2.46 NMAC – N, 01/11/2022; A/E, 01/13/2022; A, 03/22/2022]

REGULATION AND LICENSING DEPARTMENT
CANNABIS CONTROL DIVISION

This is an amendment to 16.8.3 NMAC amending Sections 7, 8, and 12 effective 3/22/2022.

16.8.3.7 DEFINITIONS: **[~~RESERVED~~]** Unless otherwise defined in Title 16, Chapter 8, Part 1, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the licensing authority under the Lynn and Erin Compassionate Use Act.

[16.8.3.7 NMAC – N, 03/22/2022]

16.8.3.8 ADVERTISING AND MARKETING:

A. Required Practices. The following practices are required in all advertising and marketing activities:

(1) Responsible persons. All advertisements and marketing for cannabis products shall accurately and legibly identify all licensees or organizations who are responsible for the proliferation of the advertisement or marketing activity.

(2) Reasonable expectation of audience age. All advertisements in print and digital communications shall only be placed in areas where at least seventy percent of the audience is reasonably expected to be 21 years of age or older as determined by reliable, current audience composition data. For the purposes of this section, "reliable, current audience composition data" means data regarding the age and location demographics of the audience viewing a particular advertising or marketing medium. Immediately upon request, a licensee shall provide to the division audience composition data as required in this section for advertising or marketing placed by the licensee. If the audience composition data for advertising or marketing provided by a licensee does not comply with the requirements of this section, or the licensee fails to provide audience composition data to the division upon request, the licensee shall remove the advertising or marketing placement in question.

(3) Statements and warnings: Any advertising or marketing materials created for viewing by the public shall include the statement "Please Consume Responsibly" in a conspicuous manner on the face of the advertisement and shall include the following warnings that must be in type size at least ten percent of the largest type used in the advertisement:

(a) for use only by adults 21 and older;

(b) keep out of reach of children;

(c) this product is not approved by the FDA to treat, cure, or prevent any disease. FDA has not evaluated this product for safety, effectiveness, and quality;

(d) do not drive a motor vehicle or operate machinery while under the influence of cannabis; and

(e) there may be long term adverse health effects from consumption of cannabis, including additional risks for women who are or may become pregnant or are breastfeeding.

B. Prohibited practices. Advertising and marketing activities of cannabis products shall not:

(1) occur on radio, television or other broadcast media, internet pop-ups and mass transit vehicles. The division shall not prohibit advertising and marketing activities on these forums where:

(a) subscribers of subscription-based radio, television or other broadcast media are 21 years of age or older; or

(b) persons 21 years of age or older have solicited the advertising or marketing activities.

(2) be done in such a manner that is deemed to be is deceptive, misleading, false or fraudulent, or that tends to deceive or create a misleading impression, whether directly or by omission or ambiguity;

(3) **[**~~shall not~~**]** make unproven health benefit claims and any health benefit claims must be supported by substantial evidence or substantial clinical data;

(4) be on billboards, posters, handbills or other visual media that are located or can be viewed within 300 feet of a school, daycare center or church;

(5) contain symbols or images, including a celebrity or celebrity likeness, that are commonly used to market products to minors;

(6) use predatory marketing or advertising practices targeting minors; and

(7) be designed to mimic any other product brand;

(8) promote the over consumption of cannabis or cannabis products; or

(9) depict the actual consumption of cannabis or cannabis products.

C. Branding. "Branding" means promotion of a cannabis establishment's brand through publicizing the cannabis establishment's name, logo, or distinct design feature of the brand.

(1) Branding shall not be designed to be appealing to a child and shall not contain:

(a) cartoons;

(b) a design, brand or name that resembles a non-cannabis consumer product of the type that is typically marketed to minors;

(c) contain symbols or images, including a celebrity or celebrity likeness, that are commonly used to market products to minors.

(2) Branding is not considered a marketing or advertising activity.

(3) Branding is allowed without the required warnings and statements for advertising and marketing of cannabis establishments.

[16.8.3.8 NMAC – N, 04/01/2022; A, 03/22/2022]

16.8.3.12 CANNABIS FINISHED PRODUCT PACKAGING:

A. Unless otherwise specified, edible or topical cannabis finished products shall meet the following minimum packaging requirements:

(1) containers used for edible cannabis products or edible cannabis finished products shall be food-grade or GRAS and must not impart any toxic or deleterious substance to the packaged product;

(2) containers used for topical cannabis products and topical cannabis finished products must be suitable for the intended purpose and must not impart any toxic or deleterious substance to the packaged product;

(3) unless otherwise provided, containers shall be child-resistant. If the product is multiple use, or contains multiple servings, it shall also be packaged in a container that is resealable and continually child-resistant;

(4) cannabis finished products that contain only cannabis flower must be packaged in resealable containers and are not subject to the child resistant container requirement;

(5) containers shall be compostable and recyclable, or made from recycled materials;

(6) edible cannabis finished products packaged for commercial sale shall not exceed 10 milligrams of Total THC per serving, or 100 milligrams of Total THC per container;

(7) edible cannabis finished products packaged for qualified patients, qualified caregivers and reciprocal participants as defined by the Lynn and Erin Compassionate Use Act shall be identified for medical use only and shall not exceed 50 milligrams of Total THC per serving;

[~~**(7)**~~] **(8)** single serving edible cannabis finished products that are placed into a child resistant container may be bundled into an exit package;

[~~**(8)**~~] **(9)** edible cannabis finished products containing multiple servings in a single container shall:

(a) when in in solid form, be:

(i) easily separable in order to allow an average person 21 years of age or older to physically separate, with minimal effort, individual servings of the product; and

(ii) easily and permanently scored to identify individual servings;

(b) be packaged in a single serving size; and

(c) be marked, stamped, or otherwise imprinted with a logo designed and provided by the division that notifies a reasonable person that the product contains cannabis that is no smaller than 1/2 inch by 1/2 inch for each single serving contained in a multi-serving package.

[~~**(9)**~~] **(10)** Unless as otherwise specified in Paragraph (10) of this subsection, liquid cannabis finished products shall be single-serving only.

[~~**(10)**~~] **(11)** Each liquid cannabis finished product that is a multiple-serving edible cannabis finished product shall be:

(a) packaged in a structure that uses a single mechanism to achieve both child-resistant properties and accurate pouring measurement of each liquid serving in increments; and

(b) the measurement component is within the child-resistant cap or closure of the bottle and is not a separate component.

[~~**(11)**~~] **(12)** A cannabis manufacturer shall maintain a copy of the certificate showing that each child-resistant container into which edible or topical cannabis finished product is placed is child-resistant and complies with the requirements of 16 C.F.R. 1700.15 and 16 C.F.R. 1700.20;

[~~**(12)**~~] **(13)** Packaging containers shall not be designed to be appealing to a child and shall not use words that refer to products that are commonly associated with minors or marketed by minors, including use of the word(s) “candy” or “candies” on the label of any container.

[~~**(13)**~~] **(14)** Once any remaining cannabis has been removed and destroyed pursuant to these rules, a cannabis establishment may reuse containers subject to the following requirements and restrictions:

(a) the containers have been sanitized and disinfected either by a cannabis establishment or by a third-party to ensure that they do not contain any harmful residue or contaminants, and

(b) if child resistant, the containers can be reused with new child resistant packaging that complies with 16 C.F.R. 1700.15 and 16 C.F.R. 1700.20; or if new child resistant packaging is not being used, based on a visual inspection, the existing child-resistant packaging appears to be in good working order and does not appear to pose a risk of unintended exposure or ingestion of cannabis. The visual inspection must ensure such containers are not brittle or have chips, cracks, or other imperfections that could compromise the child-

resistant properties of the container or otherwise pose a threat of harm to a patient or consumer.

(15) Packaging for edible cannabis finished products packaged pursuant to the Lynn and Erin Compassionate Use Act that was purchased prior to January 11, 2022 may be used by a licensee until October 1, 2022.

[16.8.3.12 NMAC - N, 04/01/2022; A, 03/22/2022]

REGULATION AND LICENSING DEPARTMENT
CANNABIS CONTROL DIVISION

This is an amendment to 16.8.8 NMAC, Sections 9 and 10 effective 3/22/2022. Previously promulgated under emergency rulemaking.

16.8.8.9 CANNABIS PLANT LIMIT TIER LEVELS:

[~~**A. Initial license designation:** For the purpose of determining the number of mature cannabis plants a licensee may be allocated to cultivate, all cannabis producer and vertically integrated cannabis establishment licenses issued on or after August 15, 2021, will be designated by the division as a level 1, level 2, level 3, or level 4. Cannabis plant count level placement shall be based on the following factors:~~

~~**(1)** applicant's requested mature cannabis plant limit level;~~

~~**(2)** applicant's demonstration of a legal right to use the quantity of water needed for the level of mature cannabis plants cultivated based on the applicant's cannabis cultivation plan;~~

~~**(3)** if applicable, whether the applicant's reported number of mature cannabis plants harvested in the preceding six months was a minimum of eighty percent of applicant's authorized mature plant count limit;~~

~~**(4)** if applicable, whether the applicant's total cannabis sales were a minimum of seventy-five percent of applicant's reported production of cannabis during the six months preceding applicant's request; and~~

~~**(5)** applicant's social equity plan, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities.~~

~~**B. Designated mature cannabis plant levels:**~~

~~**(1)** Level 1: 401 – 2,000 mature cannabis plants;~~

~~**(2)** Level 2: 2,001 – 6,000 mature cannabis plants;~~

~~**(3)** Level 3: 6,001 – 12,000 mature cannabis plants; or~~

~~**(4)** Level 4: 12,001 – 16,000 mature cannabis plants.~~

~~**C. Incremental increase:** A licensee may increase the number of mature cannabis plants, at the time of renewal and one other time per year. An authorized mature cannabis plant count increase shall only be approved in increments of 1,000 mature cannabis plants.~~

~~**D. Limit of incremental increase:** A licensee may be allowed to increase its authorized mature cannabis plant count up to four increments at a time upon application and approval by the division.~~

~~**E. Immature Plants:** For purposes of calculating the maximum number of authorized mature cannabis plants, the germination, seedling, and vegetative stages are classified as immature cannabis plants and are excluded from a licensees approved cannabis plant level.~~

~~**F. Maximum cannabis plant count:** In no event shall a licensee be permitted to grow more than 20,000 mature cannabis plants at one time.~~]

A. Initial license designation: For the purpose of determining the number of mature cannabis plants a licensee may be allocated to cultivate, all cannabis producer and vertically integrated cannabis establishment licenses issued on or after August 15, 2021, will be designated by the division as a level 1, level 2, level 3, or level 4. Cannabis plant count level placement shall be based on the following factors:

(1) applicant's requested mature cannabis plant limit level;

(2) applicant's demonstration of a legal right to use the quantity of water needed for the level of mature cannabis plants cultivated based on the applicant's cannabis cultivation plan;

(3) if applicable, whether the applicant's reported number of mature cannabis plants harvested in the preceding six months was a minimum of eighty percent of applicant's authorized mature plant count limit;

(4) if applicable, whether the applicant's total cannabis sales were a minimum of seventy-five percent of applicant's reported production of cannabis during the six months preceding applicant's request; and

(5) applicant's social equity plan, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities.

B. Designated mature cannabis plant levels:

(1) Level 1: 201 – 2,000 mature cannabis plants;

(2) Level 2: 2,001 – 6,000 mature cannabis plants;

(3) Level 3: 6,001 – 12,000 mature cannabis plants; or

(4) Level 4: 12,001 – 16,000 mature cannabis plants.

C. Incremental increase: A licensee may increase the number of mature cannabis plants, at the time of renewal and one other time per year. An authorized mature cannabis plant count increase shall only be approved in increments of 500 mature cannabis plants.

D. Limit of incremental increase: A licensee may be allowed to increase its authorized mature cannabis plant count up to eight increments at a time upon application and approval by the division.

E. Immature Plants: For purposes of calculating the maximum number of authorized mature cannabis plants, the germination, seedling, and vegetative stages are classified as immature cannabis plants and are excluded from a licensees approved cannabis plant level.

F. Maximum cannabis plant count: In no event shall a licensee be permitted to grow more than 20,000 mature cannabis plants at one time.

[16.8.8.9 NMAC - N, 08/24/2021; A/E, 01/13/2022; A, 03/22/2022]

16.8.8.10 PLANT INCREASE REQUEST:

[~~**A.** A licensee may request an increase of the number of mature plants licensed at the time of renewal and at one other time per year. To be considered for approval by the division, the licensee shall provide, in addition to required fees set forth in 16.8.11 NMAC, the following information to demonstrate the licensee's capacity for a mature cannabis plant count increase, licensee's compliance with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules:~~

~~**(1)** a current inventory of mature cannabis plants and harvested cannabis;~~

~~**(2)** applicant's demonstration of a legal right to use the quantity of water needed for the level of mature plants to be cultivated based on the applicant's cultivation plan;~~

~~**(3)** applicant's reported number of plants harvested in the preceding three months;~~

~~**(4)** applicant's medical cannabis and commercial cannabis sales in the preceding three months;~~

~~**(5)** applicant's total cannabis sales; and~~

~~**(6)** progress on implementation of applicant's social equity plan, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, or other rural historic communities.~~

~~**B.** The division shall make a determination to approve or deny a licensee's request to increase mature cannabis plant count based on the information provided and the following factors:~~

~~**(1)** the licensee has met the required minimum sale of medical cannabis each month for the last 3 months it has operated;~~

~~**(2)** the licensee has sold at least eighty percent of its cannabis or cannabis products each month for the last 3 months it has operated;~~

~~**(3)** the existence of any pending or final enforcement action taken by the division against the licensee;~~

~~**(4)** whether there is a shortage of cannabis in the medical cannabis program during the most recent 6-month period, including throughout the state and in underserved geographical regions;~~

~~**(5)** whether the licensee's cultivation plan to increase mature cannabis plants meets the requirements for licensure, including access to water and water usage; and~~

~~**(6)** the completeness of information and data provided to the division.~~

~~**C. Ground for Denial:** The division may deny a request for additional mature cannabis plants based on the information provided or for violating the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including the licensee exceeding its authorized mature cannabis plant count during the prior three-month period.~~]

A. A licensee may request an increase of the number of mature plants licensed at the time of renewal and at one other time per year. To be considered for approval by the division, the licensee shall provide, in addition to required fees set forth in 16.8.11 NMAC, the following information to demonstrate the licensee's capacity for a mature cannabis plant count increase, licensee's compliance with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules:

(1) a current inventory of mature cannabis plants and harvested cannabis;

(2) applicant's demonstration of a legal right to use the quantity of water needed for the level of mature plants to be cultivated based on the applicant's cultivation plan;

(3) applicant's reported number of plants harvested in the preceding three months;

(4) applicant's medical cannabis and commercial cannabis sales in the preceding three months;

(5) applicant's total cannabis sales; and

(6) progress on implementation of applicant's social equity plan, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, or other rural historic communities.

B. The division shall make a determination to approve or

deny a licensee's request to increase mature cannabis plant count based on the information provided and the following factors:

(1) the licensee has met the required minimum sale of medical cannabis each month for the last 3 months it has operated;

(2) the licensee has sold at least eighty percent of its cannabis or cannabis products each month for the last 3 months it has operated;

(3) the existence of any pending or final enforcement action taken by the division against the licensee;

(4) whether there is a shortage of cannabis in the medical cannabis program during the most recent 6-month period, including throughout the state and in underserved geographical regions;

(5) whether the licensee's cultivation plan to increase mature cannabis plants meets the requirements for licensure, including access to water and water usage; and

(6) the completeness of information and data provided to the division.

C. Ground for Denial: The division may deny a request for additional mature cannabis plants based on the information provided or for violating the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including the licensee exceeding its authorized mature cannabis plant count during the prior three-month period.

[16.8.8.10 NMAC - N, 08/24/2021; A/E, 01/13/2022; A, 03/22/2022]

REGULATION AND LICENSING DEPARTMENT
CANNABIS CONTROL DIVISION

This is an amendment to 16.8.11 NMAC, Section 11 effective 3/22/2022. Previously promulgated under emergency rulemaking.

16.8.11.11 ANNUAL PER PLANT FEE:

~~**[A. Commercial cannabis plants:** Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating commercial cannabis plants shall be assessed an additional annual fee per mature cannabis plant at the time of licensing, incremental increase as set forth in 16.8.8.10 NMAC, and licensure renewal as set forth in 16.8.2.17 NMAC. Plant fee shall be accessed based on the plant limit license designation as set forth in Subsection A in 16.8.8.9 NMAC, as follows:~~

~~**(1)** Level 1: $5.00 per mature cannabis plant;~~

~~**(2)** Level 2: $5.00 per mature cannabis plant;~~

~~**(3)** Level 3: $5.00 per mature cannabis plant; and~~

~~**(4)** Level 4 and above: $5.00 per mature cannabis plant.~~

~~**B. Medical cannabis plants:** Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating solely medical cannabis plants shall be assessed an additional annual fee per mature cannabis plant at the time of licensing, incremental increase as set forth in 16.8.8.10 NMAC, and licensure renewal as set forth in 16.8.2.17 NMAC. Plant fees shall be accessed based on the plant limit license designation as set forth in Subsection A in 16.8.8.9 NMAC, as follows:~~

~~**(1)** Level 1: $2.50 per mature cannabis plant;~~

~~**(2)** Level 2: $2.50 per mature cannabis plant;~~

~~**(3)** Level 3: $2.50 per mature cannabis plant; and~~

~~**(4)** Level 4 and above: $2.50 per mature cannabis plant.]~~

A. Commercial cannabis plants: Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating commercial cannabis plants shall be assessed an additional annual fee per mature cannabis plant at the time of licensing, incremental increase as set forth in 16.8.8.10 NMAC, and licensure renewal as set forth in 16.8.2.17 NMAC. Plant fee shall be accessed based on the plant limit license designation as set forth in Subsection A in 16.8.8.9 NMAC, as follows:

(1) Level 1: $5.00 per mature cannabis plant;

(2) Level 2: $5.00 per mature cannabis plant;

(3) Level 3: $5.00 per mature cannabis plant; and

(4) Level 4 and above: $5.00 per mature cannabis plant.

B. Medical cannabis plants: Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating solely medical cannabis plants shall be assessed an additional annual fee per mature cannabis plant at the time of licensing, incremental increase as set forth in 16.8.8.10 NMAC, and licensure renewal as set forth in 16.8.2.17 NMAC. Plant fees shall be accessed based on the plant limit license designation as set forth in Subsection A in 16.8.8.9 NMAC, as follows:

(1) Level 1: $2.50 per mature cannabis plant;

(2) Level 2: $2.50 per mature cannabis plant;

(3) Level 3: $2.50 per mature cannabis plant; and

(4) Level 4 and above: $2.50 per mature cannabis plant.

[16.8.11.11 NMAC - N, 08/24/2021; A/E 01/13/2022; A, 03/22/2022]

REGULATION AND LICENSING DEPARTMENT
CANNABIS CONTROL DIVISION

This is an emergency amendment to 16.8.2 NMAC amending Section 26, effective 3/10/2022.

16.8.2.26 CANNABIS PRODUCER POLICIES AND PROCEDURES:

A. Minimum policy and procedure requirements: A producer shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

(1) cannabis testing criteria and procedures, which shall be consistent with the testing requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:

(a) employee health and safety training materials;

(b) training requirements for the proper use of health and safety measures and controls;

(c) representative sampling and analytical testing of cannabis or cannabis products for contaminants prior to wholesale or transfer to another cannabis establishment consistent with self-sampling guidance issued annually by the division on September 1 and made available on the division website, the sunshine portal, and at the division's district, field and regional offices;

(d) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory, consistent with 16.8.2.12 NMAC and 16.8.2.13 NMAC;

(e) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis products to another cannabis establishment for any purpose;

(f) protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion, consistent with Subsection L of 16.8.7.8 NMAC;

(g) protocols for testing sample collection that ensures accurate test results, establishment consistent with self-sampling guidance issued annually by the division on September 1 and made available on the division website, the sunshine portal, and at the division's district, field and regional offices; and

(h) procedures for remedial measures to bring cannabis or cannabis products into compliance with division standards or destruction of a tested batch of cannabis or cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;

(2) employee policies and procedures to address the following minimum requirements:

(a) adherence to state and federal laws;

(b) responding to an emergency, including robbery or a serious accident;

(c) alcohol and drug-free workplace policies and procedures;

(d) safety and security procedures;

(e) occupational safety;

(f) crime prevention techniques; and

(g) if applicable, confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and

(3) documentation prepared for each employee and statements signed by employees indicating [the topics discussed, names and titles of presenters, and the date, time, and place the employee received said receipt of policies and procedures.

B. Training program:

(1) Licensee shall implement a training program, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:

(a) employee health and safety training materials;

(b) health and safety hazards;

(c) hazard communication training for all solvents or chemicals used at the licensed premises and as described in the safety data sheet for each solvent or chemical;

(d) training requirements for the proper use of health and safety measures and controls;

(e) emergency procedures;

(f) security procedures; and

(g) record keeping requirements.

(2) A licensee, or employee, involved in the handling, transportation, manufacture, extraction, testing, or packaging of cannabis products must successfully complete a food handler course accredited by the American National Standards Institute (ANSI) prior to conducting any related activities. Such training shall be maintained while employed under a manufacturing licensee. The licensee shall obtain documentation evidencing the fulfillment of this requirement.

C. Training documentation:

(1) Licensee shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section. The licensee shall maintain a record, which contains at minimum:

(a) a list of all personnel at the premises, including at minimum, name and job duties of each;

(b) documentation of training topics and dates of training completion for all personnel;
(c) dates of refresher training completion for all personnel;
(d) the signature of verifying receipt and understanding of each training or refresher training completed.

(2) Licensee may designate supervisory personnel with responsibility to oversee the requirements of this section.

D. Retention of training documentation: Licensees shall maintain documentation of an employee's training for a period of two years for current employees and at least six months after the termination of an employee's employment.

[16.8.2.26 NMAC – N, 08/22/2021; A/E, 12/06/2021; A/E, 03/10/2022]

REGULATION AND LICENSING DEPARTMENT
CANNABIS CONTROL DIVISION

This is an emergency amendment to 16.8.7 NMAC amending Section 8, effective 3/10/2022.

16.8.7.8 REQUIRED TESTING OF CANNABIS PRODUCTS: A cannabis establishment shall segregate a batch of cannabis product and arrange for samples to be collected and tested by a cannabis testing laboratory if required by this section. The batch must pass all required tests prior to the sale or delivery to a qualified patient, primary caregiver or consumer.

A. Required testing: Unless an exception applies:

(1) A cannabis producer, cannabis producer microbusiness, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall arrange for and pay for the testing specified in Table 1, *Required Testing of Cannabis Products*, below, of any cannabis flower and trim that it harvests prior to:
(a) packaging for retail sale;
(b) transfer to another cannabis establishment for the purposes of retail sale;
(c) retail sale; or
(d) delivery to a patient or consumer.

(2) A cannabis manufacturer, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall arrange for and pay for the testing specified in Table 1 of any cannabis product, including but not limited to a concentrate or extract, that it manufactures prior to:
(a) packaging for retail sale
(b) transfer to another cannabis establishment for the purposes or retail sale;
(c) retail sale; or
(d) delivery to a qualified patient, primary caregiver or consumer.

(3) A cannabis retailer, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall not sell or deliver to a patient or consumer any cannabis product unless the cannabis product has undergone all testing required by this section.

(4) Testing for homogeneity will be required beginning April 1, 2024.

Table 1, Required Testing of Cannabis Products

Product category	Potency	Homogeneity of Batch	Visual Inspection	Microbiological	Residual Pesticides	Residual Solvents
Flower	X	X	X	X	X	
Trim	X	X	X	X	X	
Concentrate (volatile solvent)	X			X	X	X
Kief	X		X	X	X	

Pre-rolls	X			X	X	
Concentrate (non-volatile solvent)	X		X	X	X	
Extract – alcohol	X			X	X	
Extract – other liquid	X			X	X	
Topical	X			X		
Edible	X			X	*	
Other inhalable	X				*	X
Other	X			X	*	X

*Pesticide testing required unless exempted by Subsection E, below**.**

B. Staggered implementation:

(1) The division may within its discretion delay implementation of sample collection and testing requirements of this section, in whole or in part.

(2) In determining the start date of an individual testing requirement, the division shall consider whether a cannabis testing laboratory has validated a method for conducting the test.

(3) In determining the date on which a cannabis establishment must have its samples collected by an employee or contractor of a cannabis testing laboratory, the division shall consider the capacity of cannabis testing laboratories to collect and transport samples.

(4) The division may establish different implementation dates for sample collection requirements for:

(a) cannabis producer microbusinesses and integrated cannabis microbusinesses located up to 100 miles by automobile from the nearest licensed cannabis testing laboratory location;

(b) cannabis producers, cannabis manufacturers, and vertically integrated cannabis establishments located up to 200 miles by automobile from the nearest licensed cannabis testing laboratory location;

(c) cannabis producer microbusinesses and integrated cannabis microbusinesses located more than 100 miles by automobile from the nearest licensed cannabis testing laboratory location;

(d) cannabis producers, cannabis manufacturers, and vertically integrated cannabis establishments located more than 200 miles by automobile from the nearest licensed cannabis testing laboratory location; and

(e) cannabis establishments for which travel to a licensed cannabis testing laboratory location requires passing through a United States border patrol checkpoint.

C. Collection and transportation of samples: A cannabis testing laboratory is responsible for the collection of samples for the performance of any required test, re-test after a failing result, re-test after remediation, or test for the purposes of labeling.

(1) A cannabis testing laboratory may perform sample collection using:

(a) Laboratory employees with requisite training, as specified in 16.8.2.26 NMAC; or

(b) Contractors who have completed the sampling agent training offered by the U.S. department of agriculture's domestic hemp production program and sign an affidavit that they have no ownership interest in, and are not employed by, any cannabis establishment that produces or manufactures cannabis. The contractor shall obtain necessary training to comply with the cannabis testing laboratory's protocols, and the cannabis testing laboratory may reject any sample that it suspects was collected outside of its protocols.

(2) A cannabis testing laboratory may transport samples using:

(a) Laboratory employees with requisite training, as specified in 16.8.2.26 NMAC; or

(b) Contractors who sign an affidavit that they have no ownership interest in, and are not employed by, any cannabis establishment that produces or manufactures cannabis. Transporting cannabis for a cannabis establishment on a contractual basis does not preclude a person or entity from transporting samples in secure containers for cannabis testing laboratories.

(3) Nothing in these rules shall be interpreted to require a cannabis testing laboratory to collect samples from or transport samples on behalf of any cannabis establishment.

(4) If the division has delayed implementation of the requirement that the cannabis testing laboratory collect the sample from a cannabis establishment, based on its distance from the nearest cannabis testing laboratory or location beyond a U.S. border patrol checkpoint, then any person collecting or transporting samples for required testing must receive training in sample collection and transportation protocols.

(a) Nothing in these rules shall be interpreted to require a cannabis testing laboratory to accept samples from a cannabis establishment.

(b) The cannabis testing laboratory may reject any sample that it suspects was collected outside of its protocols.

(5) A cannabis establishment may specify reasonable precautions prevent the contamination of batches of cannabis, except that the cannabis establishment must provide access to the entire batch of cannabis product. Precautions may include, but are not limited to:

(a) requiring the use of gloves and other personal protective equipment

(b) inspecting tools and containers prior to their use;

(c) specifying the location within the cannabis establishment at which the samples will be collected;

(d) specifying locations within the cannabis establishment to which laboratory employees or contractors do not have access; and

(e) the right to refuse entry to any laboratory employee or contractor not in compliance with the precautions

(6) Nothing in these rules shall be interpreted to require routine testing of cannabis products before the cannabis establishment segregates cannabis products into batches and places the batches into containers for storage while awaiting test results.

(7) This Subsection C of 16.8.7.8 NMAC is effective March 1, 2023.

D. Compliance with all rules and applicable laws required: Passage of testing does not relieve an establishment of its obligation to comply with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, the Pesticide Control Act, division rules, or other local, state, and federal laws not in conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

(1) A cannabis establishment shall waste and dispose of any cannabis product to which a pesticide has been applied in violation of division rules or the Pesticide Control Act or any product manufactured using an unapproved solvent.

(2) Nothing in this rule shall be interpreted as precluding regulatory activities by other state agencies that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

E. Exceptions to required testing:

(1) A cannabis establishment shall not be required to have tested for pesticide residue any cannabis product made from cannabis concentrate or cannabis extract with verified pesticide residue test results, so long as the establishment can demonstrate that the resulting product will not exceed action levels for that type of cannabis product.

(2) A cannabis establishment shall not be required to have tested a cannabis product acquired from another cannabis establishment if the batch, in present form, was previously determined to have passed the testing requirements of this rule and is accompanied by a *Certificate of Analysis* issued by a licensed cannabis testing laboratory within the previous 90 days.

(3) If additional testing requirements take effect after a cannabis testing laboratory obtains a sample of a cannabis product for required testing, the laboratory is required to perform only those tests required at the time the sample was obtained.

F. Visual inspection: A sample shall pass visual inspection if, under a minimum of 40X magnification, laboratory personnel detect in a one gram sample:

(1) no living or dead insects, hair, eggs, or feces; and

(2) no more than two percent sand, soil, mold, or rocks.

G. Microbiological testing: A sample shall pass microbiological testing if the sample contains concentrations of target microbes not exceeding the action levels set forth in Table 2, *Microbiological Testing Requirements*, below.

(1) The division may require required testing for additional microbes if quality control or inspection testing conducted by cannabis testing laboratories, NMDA, the department of health, or the division identifies their presence, in a quantity or amount that poses a threat to public health, in a cannabis product produced, manufactured, or sold by any cannabis establishment. The division shall provide written notice to licensees 30 days before requiring required testing for additional pesticide residues, except that such notice is not required when human illness is linked to contaminated cannabis products.

(2) The cannabis testing laboratory may report a collective total of the four Aspergillus strains listed without distinguishing individual totals.

(3) The test results shall be reported as "Present," "Absent," or in colony forming units (CFU) per one gram sample.

(4) Testing for shiga-toxin producing E. coli, Clostridium botulinum, and Pseudomonas aeruginosa is effective July 1, 2022.

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Table 2. Microbiological Testing Requirements	
Target Microbe	**Action Level**
*E. coli	100 CFU/gram
Aspergillus flavus, Aspergillus fumigatus, Aspergillus niger, or Aspergillus terreus	Present in 1 gram
Salmonella spp.	Present in 1 gram
†Shiga-toxin producing E. coli	Present in 1 gram
†Clostridium botulinum	Present in 1 gram
†Pseudomonas aeruginosa	Present in 1 gram
*Cannabis product may be tested for shiga-toxin producing E. coli, rather than generic E. coli. †Testing for shiga-toxin producing E. coli, Clostridium botulinum, and Pseudomonas aeruginosa is required only for edible cannabis products manufactured from fresh cannabis with a water activity of 0.65 or greater.	

H. Residual solvent testing: A sample shall pass residual solvent testing if the sample contains concentrations of residual solvents lower than the action levels set forth in Table 3, *Residual Solvent Testing Requirements*, below. The test results shall be reported as described in the notes to Table 3.

Table 3. Residual Solvent Testing Requirements				
Target Compounds	**Common Chemical Name**	**IUPAC Name**	**CAS Number**	**Action Level***
Propane	Propane	Propane	74-98-6	5000
Butanes	*n*-butane	Butane	106-97-8	5000
	Isobutane	2-methylpropane	75-28-5	5000
Pentane	*n*-pentane	Pentane	109-66-0	5000
Hexane	*n*-hexane	Hexane	110-54-3	290
Benzene	Benzene	Benzene	71-43-2	2.0
Toluene	Toluene	Methylbenzene	108-88-3	890
Heptane	*n*-heptane	Heptane	142-82-5	5000
Ethylbenzene and Xylenes	Ethylbenzene	Ethylbenzene	100-41-4	2170 Total
	ortho-xylene	1,2-dimethylbenzene	95-47-6	
	meta-xylene	1,3-dimethylbenzene	108-38-3	
	para-xylene	1,4-dimethylbenzene	106-42-3	
Ethanol†	ethyl alcohol	Ethanol	64-17-5	5000
Methanol	methyl alcohol	Methanol	67-56-1	3000
Isopropanol	Isopropyl alcohol	2-propanol	67-63-0	5000
Acetone	Acetone	2-propanone	67-64-1	5000
Use two significant digits when reporting residual solvent results. Report levels less than the Limit of Quantitation for each solvent according to the following example:: "Benzene < 2.0 µg/g" *Micrograms solvent per gram (µg/g) of sample/parts per million (ppm). †Unless exempt from testing.				

I. Potency and homogeneity testing:

(1) Potency testing requires determining the quantity of tetrahydrocannabinol (THC), tetrahydrocannabinolic acid (THCA), cannabidiol (CBD), cannabidiolic acid (CBDA) per gram of sample and the calculation of THC potency and CBD potency, according to Table 4, *Potency Testing Requirements*, below.

(2) Batch-level homogeneity testing is performed by testing for total THC potency. The number of samples to be tested shall be based on the size of the batch according to the method validated by the cannabis testing laboratory; however, the total number of samples tested shall be not less than three for any batch of material five pounds or less.

(3) Product-level homogeneity testing is performed by segregating a single retail package or an identical quantity of a solid or semi-solid and testing for total THC potency a minimum of three randomly selected increments of the product.

(4) A set of samples shall pass homogeneity testing if the relative standard deviation of total THC potency of the samples is no more than twenty percent.

Table 4. Potency Testing Requirements

Cannabinoid	Abbreviation	CAS Number	Reporting Units
Tetrahydrocannabinolic Acid	THCA	23978-85-0	For solids: mg of analyte/ gram of sample and percentage by weight For liquids: mg/ml
Tetrahydrocannabinol	THC	1972-08-3	
Cannabidiolic Acid	CBDA	1244-58-2	
Cannabidiol	CBD	13956-29-1	
Total THC Potency (solids)	THC Potency = (Percent THCA × 0.877) + Percent THC		Percentage by weight
Total CBD Potency (solids)	CBD Potency = (Percent CBDA × 0.877) + Percent CBD		
Total THC Potency (liquids)	THC Potency = (mg/ml THCA × 0.877) + mg/ml THC		mg/ml
Total CBD Potency (liquids)	CBD Potency = (mg/ml CBDA × 0.877) + mg/ml CBD		

J. Pesticide testing: A sample shall pass pesticide testing if concentrations of residues of pesticides are lower than the action levels listed in Table 5, *Pesticide Testing Requirements*, below.

(1) The division may adopt required testing for additional pesticide residues if quality control or inspection testing conducted by cannabis testing laboratories, NMDA, the Department of Health, or the division identifies their presence in a cannabis product produced or manufactured by any cannabis establishment. The division shall provide written notice to licensees 30 days before implementing required testing for additional pesticide residues.

(2) Nothing in this section shall be interpreted to waive or diminish any requirement of the Pesticide Control Act, §§76-4-1 et seq. NMSA 1978. The division, alone or in conjunction with NMDA, may investigate any suspected use of a pesticide not registered with NMDA for use on cannabis.

(3) This Subsection J of 16.8.7.8 NMAC is effective July 1, 2022.

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Table 5. Pesticide Testing Requirements			
Targeted Pesticide	**CAS Number**	**Action Level: Inhalable***	**Action Level: Non-Inhalable***
†Abamectin	71751-41-2	0.1	0.15
†Acequinocyl	57960-19-7	2.0	2.0
†Bifenazate	149877-41-8	0.2	0.2
†Bifenthrin	82657-04-3	0.1	0.1
†Etoxazole	153233-91-1	0.1	1.0
†Imazalil	35554-44-0	0.1	0.1
†Imidacloprid	138261-41-3	0.1	3.0
†Myclobutanil	88671-89-0	0.1	0.4
†Paclobutrazol	76738-62-0	0.04	0.04
Piperonyl butoxide	51-03-6	3.0	8.0
†Pyrethrins (cumulative total)	121-21-1 25402-06-6 4466-14-2	0.5	1.0
†Spinosyn A, D (cumulative total)	131929-60-7 131929-63-0	0.1	3.0
†Spiromesifen	283594-90-1	0.1	0.2
†Spirotetramat	203313-25-1	0.1	0.2
†Trifloxystrobin	141517-21-7	0.02	0.02
Other pesticide not registered with NMDA for use on cannabis	Varies	0.02	0.02

*Micrograms of pesticide per gram (**µg/g**) of sample/parts per million (ppm).
Report levels less than the Limit of Quantitation for each pesticide residue according to the following example: "Paclobitrazol < 0.4 µg/g"
†Not registered with NMDA for use on cannabis.

K. Release of batch after testing: A cannabis establishment may release an entire batch of cannabis product for immediate manufacture, sale, or other use, provided that the sample taken from the batch passes the tests required in this section.

L. Procedures for testing: A cannabis establishment shall adhere to the following procedures:

(1) After collection of samples, a batch of cannabis product shall be segregated in a secure container and stored under controlled environmental conditions (temperature, humidity, light) designed to limit microbial growth or other spoilage until the cannabis establishment receives a certificate of analysis indicating the batch meets the testing requirements of this rule.

(2) The secured container shall be labeled with the identification number used in the track and trace system, the name of the cannabis testing laboratory, the date on which the samples were taken, and, in minimum 12-point font, all capital letters, "AWAITING TEST RESULTS. DO NOT TRANSER."

(3) The cannabis testing laboratory and the cannabis establishment submitting samples each shall appropriately document in the track and trace system the sampling and testing of cannabis product.

(4) A cannabis establishment shall maintain all results of laboratory tests conducted on cannabis products produced or manufactured by the cannabis establishment for a period of at least two years and shall make those results available to consumers or cannabis retailers upon request.

M. Re-testing: If a sample fails any test, the cannabis establishment may request re-testing by the same cannabis testing laboratory or another cannabis testing laboratory. If the repeated test is within acceptable limits, then the batch may be sold, transferred, or further manufactured.

N. Remediation: Within 120 days of a failed test, a cannabis establishment may remediate and retest the batch according to the procedures described in this subsection. A cannabis establishment shall adopt and maintain

on the premises protocols regarding remediation consistent with this rule.

(1) A cannabis establishment may remediate dried cannabis or cannabis concentrates that fail microbiological testing by means of extraction using an approved volatile solvent. Other products that fail microbiological testing may not be remediated.

(2) A cannabis establishment may remediate any cannabis product that fails homogeneity testing through any approved manufacturing process, including extraction, chopping, melting, mixing, infusing, or otherwise combining the batch.

(3) A cannabis establishment may remediate any cannabis product that fails residual solvent testing by evaporating solvent using heat, vacuum pressure, or a combination of methods.

(4) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of mold by means of extraction using an approved volatile solvent.

(5) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of insects, hair, eggs, or feces by removing the contaminants, followed by extraction using an approved volatile solvent.

(6) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of soil or rocks by removing the contaminants.

(7) Cannabis product that has been remediated must undergo any test that was previously failed.

(8) Cannabis product that has been remediated with the use of volatile solvents must additionally undergo residual solvent testing.

O. Notice and destruction: Any cannabis product that fails a test and cannot be remediated, including any remediated cannabis product that fails any test after remediation, is subject to destruction in accordance with the wastage requirements of 16.8.2.15 NMAC. The cannabis establishment shall notify the division within 24 hours and shall confirm the wastage and disposal of the usable cannabis in accordance with this rule. The wasted product shall be removed from inventory, and the removal from inventory shall be noted in the track and trace system.

P. Interpretation of differing results: Results produced by a cannabis testing laboratory are valid only for the sample tested. A differing result produced by quality control or inspection testing of a different sample pursuant to 16.8.2.16 NMAC is not grounds for action against the cannabis testing laboratory that produced the original testing result.

[16.8.7.8 NMAC – N, 3/1/2022; A/E, 03/10/2022]

REGULATION AND LICENSING DEPARTMENT
CHIROPRACTIC BOARD

The Regulation and Licensing Department - Chiropractic Board reviewed at its 1/21/2021 hearing, 16.4.8 NMAC, Chiropractic Practitioners - License Renewal Procedures filed 7/10/2019. The Board has decided to repeal 16.4.8 NMAC, Chiropractic Practitioners - License Renewal Procedures filed 7/10/2019 and replace it with 16.4.8 NMAC, Chiropractic Practitioners - License Renewal Procedures, adopted 3/10/2022 and effective 4/9/2022.

REGULATION AND LICENSING DEPARTMENT
CHIROPRACTIC BOARD

The Regulation and Licensing Department - Chiropractic Board reviewed at its 1/21/2021 hearing, 16.4.23 NMAC, Chiropractic Practitioners - Licensure For Military Service Members, Spouses And Veterans filed 7/10/2019. The Board has decided to repeal 16.4.23 NMAC, Chiropractic Practitioners - Licensure For Military Service Members, Spouses And Veterans 7/10/2019 and replace it with 16.4.23 NMAC, Chiropractic Practitioners - Licensure For Military Service Members, Spouses And Veterans, adopted 3/10/2022 and effective 4/9/2022.

REGULATION AND LICENSING DEPARTMENT
CHIROPRACTIC BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 4 CHIROPRACTIC PRACTITIONERS
PART 8 DISCIPLINARY PROCEEDINGS

16.4.8.1 ISSUING AGENCY: New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.
[16.4.8.1 NMAC - Rp, 16.4.8.1 NMAC 4/9/2022]

16.4.8.2 SCOPE: The provisions of 16.4.8 NMAC apply to all active license holders and applicants for licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a chiropractor licensed by the board.
[16.4.8.2 NMAC - Rp, 16.4.8.2 NMAC 4/9/2022]

16.4.8.3 STATUTORY AUTHORITY: 16.4.8 NMAC is promulgated pursuant to the Chiropractic Physician Practice Act, Section 61-4-10 NMSA 1978 and the Uniform Licensing Act, 60-1-1 through -36 NMSA 1978.
[16.4.8.3 NMAC - Rp, 16.4.8.3 NMAC 4/9/2022]

16.4.8.4 DURATION: Permanent.
[16.4.8.4 NMAC - Rp, 16.4.8.4 NMAC 4/9/2022]

16.4.8.5 EFFECTIVE DATE: April 9, 2022, unless a later date is cited at the end of a section.
[16.4.8.5 NMAC - Rp, 16.4.8.5 NMAC 4/9/2022]

16.4.8.6 OBJECTIVE: To establish the procedures for filing complaints against licensees and applicants, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to further define actions by a licensee which are considered incompetent or unprofessional practice.
[16.4.8.6 NMAC - Rp, 16.4.8.6 NMAC 4/9/2022]

16.4.8.7 DEFINITIONS: [**RESERVED**]

16.4.8.8 COMPLAINTS: Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board and complaint/ review committee. Any hearing held pursuant to the complaint shall conform to the provisions of the Uniform Licensing Act, the Chiropractic Physician Practice Act, and the Impaired Practitioners Act.
[16.4.8.8 NMAC - Rp, 16.4.8.8 NMAC 4/9/2022]

16.4.8.9 ACTIONS:

A. The board may penalize, deny, revoke, suspend, stipulate, or otherwise limit a license if the board determines the licensee is guilty of violating any of the provisions of the Chiropractic Physician Practice Act, the Uniform Licensing Act, the Impaired Healthcare Care Providers Act, these Rules, or discipline imposed by other governing bodies.

B. The board may reprimand, censure, or require licensees to fulfill additional continuing education hours within limited time constraints for violations of the act or rules.

C. The board may at its discretion hire investigators to investigate complaints made to the board regarding chiropractic physicians.

D. Licensees shall bear all costs of disciplinary proceedings unless exonerated.
[16.4.8.9 NMAC - Rp, 16.4.8.9 NMAC 4/9/2022]

16.4.8.10 GUIDELINES: The board shall use the following as guidelines for disciplinary action.

A. "Gross incompetence" or "gross negligence" means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients.

B. "Unprofessional conduct" means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof. This includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the chiropractic profession;

(2) representing to a patient that a manifestly incurable condition or sickness, disease or injury can be cured;

(3) willfully or negligently divulging a professional confidence;

(4) failure to release to a patient copies of that patient's records and x-rays;

(5) failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by consultation with individuals having special skills, knowledge, and experience;

(6) failure of a chiropractor to comply with and following advertising guidelines as set in 16.4.1.12 NMAC;

(7) failure to use appropriate infection control techniques and sterilization procedures;

(8) deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another chiropractor licensed or applying for licensure by the board;

(9) accept rebates, or split fees or commissions from any source associated with the service rendered to a patient;

(10) intentionally engaging in sexual contact with a patient other than his spouse during the doctor-patient relationship;

(11) the use of a false, fraudulent or deceptive statement in any document connected with the practice of chiropractic;

(12) fraud, deceit or misrepresentation in any renewal or reinstatement application;

(13) violation of any order of the board, including any probation order;

(14) failure to adequately supervise, as provided by board regulation, a chiropractic assistant or technician who renders care as a chiropractic assistant under 16.4.19 NMAC of these rules;

(15) cheating on an examination for licensure;

(16) is habitually intemperate or is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render him unfit to practice chiropractic;

(17) is guilty of failing to comply with any of the provisions of the Chiropractic Physician Practice Act (Chapter 61, Article 4 NMSA 1978) or rules and regulations promulgated by the board and filed in accordance with the State Rules Act (Chapter 14, Article 4 NMSA 1978);

(18) has been declared mentally incompetent by regularly constituted authorities or is manifestly incapacitated to practice chiropractic;

(19) has incurred a prior suspension or revocation in another state where the suspension or revocation of a license to practice chiropractic was based upon acts by the licensee similar to acts described in this section and by board rules;

(20) failure to report to the board within 90 days any adverse action taken after due process has been afforded to the licensee by:

(a) another licensing jurisdiction;

(b) any health care entity, not involving disputes over fees;

(c) any governmental agency, not involving disputes oversees;

(d) any court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section.

(21) failure to furnish the board, its investigators or representatives with information requested by the board;

(22) abandonment of patients;

(23) providing a false, materially incomplete, factually unsupported opinion or opinions which are not congruent with current teachings and standards of care as taught in CCE accredited chiropractic colleges in a peer review, records review, independent medical examination, or chiropractic examination.

[16.4.8.10 NMAC - Rp, 16.4.8.10 NMAC 4/9/2022]

16.4.8.11 COMPLAINT/ REVIEW COMMITTEE: The complaint/review committee of the board is authorized to:

A. carry out the instructions of the board in the investigation and processing of complaints against licensees.

B. disciplinary actions taken by the board shall be reported as required to the following entities:

(1) national practitioner databank-healthcare integrity and protection databank "NPDB-HIPD";

(2) federation of chiropractic licensing boards "FCLB";

(3) or their successors.

[16.4.8.11 NMAC - Rp, 16.4.8.11 NMAC 4/9/2022]

16.4.8.12 DISQUALIFYING CRIMINAL CONVICTIONS: A "disqualifying criminal conviction" means a conviction for a crime that is job-related for the position in question and consistent with business necessity. Convictions for any of the following offense, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license or certificate by the board:

A. Physical Harm to Others:

(1) Section 30-2-1 NMSA 1978, "Murder".

(2) Section 30-2-3 NMSA 1978, "Manslaughter".

(3) Section 30-3-1 NMSA 1978, "Assault".

(4) Section 30-3- NMSA 1978, "Battery".

(5) Section 30-6-1 NMSA 1978, "Abandonment or abuse of a child".

(6) Section 30-4-1 NMSA 1978, "Kidnapping".

(7) Section 30-4-3 NMSA 1978, "False imprisonment".

(8) Section 30-9-19, NMSA 1978, "Sexual assault".

(9) Section 30-47-4 NMSA 1978, "Abuse of a care facility resident".

(10) Section 30-47-5 NMSA 1978, "Neglect of a care facility resident".

B. Property Damage:

(1) Section 30-15-1 NMSA 1978, "Criminal damage to property".

(2) Section 30-7-5 NMSA 1978, "Dangerous use of explosives".

(3) Section 30-15-1.1 NMSA 1978, "Unauthorized graffiti on personal or real property.

(4) Section 30-17-5 NMSA 1978, "Arson and negligent arson".

C. Fraud:

(1) Section 30-16-6 NMSA 1978, "Fraud".

(2) Section 7-1-73 "NMSA 1978, Tax fraud".

(3) Sections 59A-16C-1 to -17 NMSA 1978, , violations of the Insurance fraud act.

(4) Section 30-28-2 "NMSA 1978, Conspiracy".

(5) Section 30-44-4 NMSA 1978, "Falsification of documents" under the Medicaid Fraud Act.

(6) Section 30-44-5 NMSA 1978, "Failure to retain records in connection with the Medicaid Fraud Act".

(7) Section 30-44-6 NMSA 1978, "Obstruction of Investigation in connection with the Medicaid Fraud Act".

(8) Section 30-44-7 NMSA 1978, "Medicaid fraud".

(9) Section 30-51-4 NMSA 1978, "Money laundering".

D. Theft:

(1) Section 30-14-8 NMSA 1978, "Breaking and entering".

(2) Section 30-16-1 NMSA 1978, "Larceny".

(3) Section 30-16-2 "NMSA 1978, Robbery".

(4) Section 30-16-3 NMSA 1978, "Burglary".

(5) Section 30-16-20 NMSA 1978, "Shoplifting".

(6) Section 30-16-24.1 NMSA 1978, "Theft of identity".

(7) Section 30-16-26 NMSA 1978, "Theft of a credit card".

(8) Section 30-16-11 NMSA 1978, "Receiving stolen property".

(9) Section 30-47-6 NMSA 1978, "Exploitation of a care facility resident's property".

E. Financial Crimes:

(1) Section 30-16-8 NMSA 1978, "Embezzlement".

(2) Section 30-16-9 NMSA 1978, "Extortion".

(3) Section 30-16-10 NMSA 1978, "Forgery".

(4) Section 30-41-1 NMSA 1978, "Soliciting and receiving illegal kickbacks".

(5) Section 30-42-4 NMSA 1978, "Racketeering".

F. Drug Offenses:

(1) Section 30-31-20 NMSA 1978, "Trafficking of controlled substances".

(2) Section 30-31-21 NMSA 1978, "Distribution to a minor".

(3) Section 30-31-22 NMSA 1978, "Intentionally distributing or possessing with intent to distribute a controlled substance.

(4) Section 30-31-23 NMSA 1978, "Possession of controlled substances".

(5) Section 30-31-24 NMSA 1978, "Violations of the administrative provisions of the Controlled Substances Act".

(6) Section 30-31-25 "NMSA 1978, Engaging in other acts prohibited by the Controlled Substances Act".

(7) Section 30-31-25.1 NMSA 1978, "Delivering drug paraphernalia to a person under eighteen years of age and who is at least three years the person's junior".

(8) Section 30-31A-4 NMSA 1978, "Manufacturing, distributing or possessing with intent to distribute an imitation controlled substance".

(9) Section 30-31A-5 NMSA 1978, "Intentionally selling an imitation controlled substance to a person under the age of eighteen years".

(10) Section 30-31A-6 NMSA 1978, "Intentionally possessing an imitation controlled substance with the intent to distribute".

(11) Section 30-31B-12 NMSA 1978, "Certain violations of the Drug Precursor Act".

(12) Section 30-6-3 NMSA 1978, "Contributing to the delinquency of a minor".

G. Sex crimes:

(1) Section 30-37A-1 NMSA 1978, "Unauthorized distribution of sensitive images".

(2) Section 30-37-3.2 NMSA 1978, "Child solicitation by electronic communication device".

(3) Section 30-37-3.3 NMSA 1978, "Criminal sexual communication with a child".

(4) Section, 30-52-1 NMSA 1978, "Human trafficking".

(5) Section 30-9-11 NMSA 1978, "Criminal sexual penetration".

(6) Section 30-9-12 NMSA 1978, "Criminal sexual contact".

(7) Section 30-9-13 NMSA 1978, "Criminal sexual contact of a minor".

(8) Section 30-9-14.3 NMSA 1978, "Aggravated indecent exposure".

(9) Section 30-6A-3 NMSA 1978, "Sexual exploitation of children".

(10) Section 30-6A-4 NMSA 1978, "Sexual exploitation of children by prostitution".

(11) Subsection P of Section 29-11A-4 NMSA 1978, "Failure to register as required by sex offender registration and notification act".

H. Abuse of animals:

(1) Section 30-18-1 NMSA 1978, "Cruelty to animals or extreme crulety to animals".

(2) Section 30-18-3 NMSA 1978, "Unlawful branding of animals".

(3) Section 30-18-6 NMSA 1978, "Transporting stolen livestock".

(4) Section 30-18-9 NMSA 1978, "Dog fighting or cock fighting".

(5) Section 30-18-12 NMSA 1978, "Injury to livestock".

I. Miscellaneous:

(1) Section 30-3A-3 NMSA 1978, "Stalking".

(2) Section 30-20-12 NMSA 1978, "Use of telephone to terrify, intimidate, threaten, harass, annoy or offend another.

(3) Section 66-8-102 NMSA 1978, "Driving under the influence of intoxicating liquor or drugs".

(4) Section 61-6-20 NMSA 1978, "Practicing medicine without a license".

(5) Section 61-6-25 NMSA 1978, "Making a false statement under oath or submitting a false affidavit, in connection with the Medical Practice Act".

(6) Section 26-1-26 NMSA 1978, "Violation of the New Mexico Drug, Device and Cosmetic Act".

(7) Section 12-10-20 NMSA 1978, "Failure to comply with proclamation of the governor".

J. The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed under this section.

K. The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed under this section.

L. Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Chiropractor Physician Practice Act, Sections 61-4-1 to -17 NMSA 1978, or the Uniform Licensing Act, Section 61-1-1 to-36 NMSA 1978, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in under this section.

M. In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in 16.4.8.11 NMAC.

[16.4.8.12 NMAC - N, 4/9/2022]

History of 16.4.8 NMAC: 16.4.8 NMAC, Disciplinary Proceedings filed 1/31/2006, Repealed effective 8/10/2019.
16.4.8 NMAC, Disciplinary Proceedings filed 7/10/2019, Repealed effective 4/9/2022.

Other History: 16.4.8 NMAC, Disciplinary Proceedings filed 1/31/2006 was replaced by 16.4.8 NMAC, Disciplinary Proceedings filed 1/31/2006 effective 8/10/2019.
16.4.8 NMAC, Disciplinary Proceedings filed 1/31/2006 was replaced by 16.4.8 NMAC, Disciplinary Proceedings filed 7/10/2019 effective 4/9/2022.

REGULATION AND LICENSING DEPARTMENT
CHIROPRACTIC BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 4 CHIROPRACTIC PRACTIONERS
PART 23 LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS

16.4.23.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department New Mexico Board of Chiropractors.
[16.4.23.1 NMAC - Rp 16.4.23.1 NMAC, 4/9/2022]

16.4.23.2 SCOPE: This part sets forth application procedures to expedite licensure for military service members, spouses, dependent children and veterans.
[16.4.23.2 NMAC - Rp 16.4.23.2 NMAC, 4/9/2022]

16.4.23.3 STATUTORY AUTHORITY: These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Uniform Licensing Act (ULA), Section 61-1-34 NMSA 1978 and the Chiropractic Physicians Act, Section 61-1-34 NMSA 1978.
[16.4.23.3 NMAC - Rp 16.4.23.3 NMAC, 4/9/2022]

16.4.23.4 DURATION: Permanent.
[16.4.23.4 NMAC - Rp 16.4.23.4 NMAC, 4/9/2022]

16.4.23.5 EFFECTIVE DATE: April 9, 2022 unless a later date is cited at the end of a section.
[16.4.23.5 NMAC - Rp 16.4.23.5 NMAC, 4/9/2022]

16.4.23.6 OBJECTIVE: The purpose of this part is to expedite licensure for military service members, spouses and veterans pursuant to the ULA, Section 61-1-34 NMSA 1978.
[16.4.23.6 NMAC - Rp 16.4.23.6 NMAC, 4/9/2022]

16.4.23.7 DEFINITIONS:

A. "License" means a license, registration, certificate of registration, certificate, permit or certification.

B. "Licensing fee" means a fee charged at the time an application for a professional or occupational license is submitted to the state agency, board or commission, and any fee for the processing of the application for such license, "licensing fee" does not include a fee for an annual inspection or examination of a licensee or a fee charged for copies of documents, replacement license or other expenses related to a professional or occupational license.

C. "Military service member" means a person who is:

(1) serving in the armed forces of the United States as an active duty member or in an active reserve component of the armed forces of the United States, including the national guard, or a surviving spouse of a member who at the time of the member's death was serving on active duty; or

(2) the spouse of a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard, or a surviving spouse of a member who at the time of the member's death was serving on active duty; or

(3) the child of a person who is serving in the armed forces of the United States as an active duty member, or in an active reserve component of the armed forces of the United States, including the national guard; provided that the child is also a dependent of that person for federal income tax purposes; and

(4) a veteran.

D. "Veteran" means a person who has received an honorable discharge or separation from military service.

E. "Substantially equivalent" means the determination by the board that the education, examination and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination and experience requirements of the Chiropractic Physicians Act, Sections 61-4-1 through 17 NMSA 1978.
[16.4.23.7 NMAC - Rp 16.4.23.7 NMAC, 4/9/2022]

16.4.23.8 APPLICATION REQUIREMENTS:

A. In accordance with the ULA Section 61-1-34 NMSA 1978, the board shall expedite the issuance of a license to practice chiropractic in New Mexico for doctors who provide evidence of meeting the following minimal requirements. Applications for registration shall be completed on a form provided by the board.

B. The completed application shall include the following information:

(1) the applicant's full name;

(2) current mailing address;

(3) current electronic mailing address, if any;

(4) date of birth;

(5) background check if required; and

(6) proof as described in subsection C below.

C. The applicant shall provide the following satisfactory evidence:

(1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico;

(3) the following documentation:

(a) a copy of military orders for military service members;

(b) a copy of military service member's military orders and a copy of marriage license for spouses of military service members;

(c) for spouses of deceased military members; a copy of the decedent's DD214 and a copy of marriage license;

(d) for dependent children of military service members; a copy of military service members orders listing the dependent child, or a copy of military orders and one of the following: a copy of a birth certificate, military service member's federal income tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): a copy of DD214 showing proof of honorable discharge.

D. The license shall be issued by the board as soon as is practicable but no later than 30 days after a qualified military service member, spouse, dependent child or veteran files a complete application and pays any required fees.

E. A license issued pursuant to this rule shall be valid for the time period that is specified in the Chiropractic Physician's Act, Sections 61-4-1 through-17 NMSA 1978.

F. Electronic signatures will be acceptable for applications submitted pursuant to the Uniform Electronic Transactions Act, Section 14-16-1 through-21 NMSA 1978.

[16.4.23.8 NMAC - Rp 16.4.23.8 NMAC, 4/9/2022]

16.4.23.9 FEES: Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a licenses issued pursuant to this rule.

[16.4.23.9 NMAC - Rp 16.4.23.9 NMAC, 4/9/2022]

16.4.23.10 RENEWAL REQUIREMENTS:

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal of a license set forth in 16.4.9 NMAC and Section 61-4-13 NMSA 1978.

B. The board will send, via electronic mail, license renewal notifications to licensees or registrants before the license expiration date to the last known electronic mail address on file with the board. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.

[16.4.23.10 NMAC - Rp 16.4.23.10 NMAC, 4/9/2022]

HISTORY OF 16.4.23 NMAC:
[**RESERVED**]

History of Repealed Material:
16.4.23 NMAC, Licensure for Military Service Members, Spouses and Veterans filed 1/2/2015 Repealed effective 8/10/2019.
16.4.23 NMAC, Licensure for Military Service Members, Spouses and Veterans filed 7/10/2019 Repealed effective 4/9/2022.

Other History: 16.4.23 NMAC, Licensure for Military Service Members, Spouses and Veterans filed 1/2/2015 was replaced by 16.4.23 NMAC, Licensure for Military Service Members, Spouses and Veterans effective 8/10/2019.
16.4.23 NMAC, Licensure for Military Service Members, Spouses and Veterans filed 7/10/2019 was replaced by 16.4.23.10 NMAC, Licensure for Military Service Members, Spouses and Veterans effective 4/9/2022

REGULATION AND LICENSING DEPARTMENT
CHIROPRACTIC BOARD

This is an amendment to 16.4.13 NMAC, Section 8, effective 4/9/2022.

16.4.13.8 REINSTATEMENT OF CHIROPRACTIC LICENSURE:

A. Any person whose license has been suspended, revoked or which has lapsed may apply to the board for reinstatement of the license at any time within two years of the suspension, revocation or lapse.

(1) In making application for reinstatement, the applicant should state why the license should be reinstated and should specifically set forth any changed circumstances which would justify reinstatement.

(2) Applicant must include in the application, evidence that applicant meets the current requirements for licensure.

(3) Any licensed chiropractor applying for reinstatement of a license must pay all back renewal and penalty fees for each year of suspension, revocation or lapse, an application fee as set forth in Subparagraph (d) of Paragraph (1) of Subsection A of 16.4.22.8 NMAC and provide proof of attendance of continuing education hours as set forth in Subsection A of 16.4.10.8 NMAC for each year of suspension, revocation or lapse to a maximum of two years.

B. The board may require an applicant to complete certain education or training requirements, in addition to any continuing education requirements; to be completed prior to or after

reinstatement to ensure that the applicant is competent to practice chiropractic. The board may, in its discretion, require that an applicant for reinstatement take and pass a written examination as prescribed by the board.

C. Upon receipt of an application for reinstatement, the board shall grant the applicant a hearing, at which time the applicant may appeal to the board to reinstate the license.

D. After two years, the applicant must apply for licensure without examination.

E. Applicant agrees to a national practitioner databank and a federation of chiropractic licensing board's (FCLB) background check.

F. Chiropractic physicians seeking reinstatement of advance practice certification registration because of suspension or lapse must meet the requirements established by the board under Subsection G of 16.4.15.8 NMAC.

[16.4.13.8 NMAC - Rp 16.4.13.8 NMAC 8/10/2019, A 4/9/2022]

REGULATION AND LICENSING DEPARTMENT
CHIROPRACTIC BOARD

This is an amendment to 16.4.15 NMAC, Sections 8 and 10, effective 4/9/2022.

16.4.15.8 ADVANCED PRACTICE REGISTRATION GENERAL PROVISIONS:

Advanced practice registration is authorized by [~~61-4-9.1(C) NMSA~~] Subsection C of 61-4-9.1 NMSA 1978 of the act and defined in 61-4-9.2 NMSA 1978 and allows the use of approved substances through injection for therapeutic purposes.

A. A chiropractic physician shall have the prescriptive authority to administer through injection and prescribe the compounding of substances that are authorized in the advanced practice formulary. Those with active registration are allowed prescription authority that is limited to the current formulary as agreed on by the New Mexico board of chiropractic examiners and as by statute, by the New Mexico board of pharmacy and the New Mexico medical board. The New Mexico board of chiropractic examiners shall maintain a registry of all chiropractic physicians who are registered in advanced practice and shall notify the New Mexico board of pharmacy of all such current registered licensees no later than September 1st of each licensing period.

B. Chiropractic physicians applying for registry shall submit to the board:

(1) documentation that the doctor has successfully completed a competency examination administered by a nationally recognized credentialing agency or after December 31, 2012 successfully completed a graduate degree in a chiropractic clinical practice specialty;

(2) documentation that the chiropractic physician has successfully completed 90 clinical and didactic hours of education provided by an institution approved by the New Mexico medical board and the New Mexico board of chiropractic examiners;

(3) an application provided by the board for registry of the advanced practice certification.

C. A chiropractic physician without advanced practice certification may administer, dispense and prescribe any natural substance that is to be used in an oral or topical manner so long as that substance is not considered a dangerous drug.

D. The board shall annually renew the advanced practice certification registration of a doctor of chiropractic medicine in good standing [~~who is registered in advanced practice~~] if the licensee has completed all continuing education required by 16.4.10 NMAC.

E. All advanced practice certification registrations shall automatically terminate when licensure as a doctor of chiropractic medicine:

(1) is placed [~~permissive temporary cancellation~~] on inactive status as stated in Paragraph (2) of Subsection A of 16.4.12.8 NMAC; or

(2) [~~expires as stated in 16.4.13.8 NMAC; or~~

~~**(3)**~~] is suspended, revoked or terminated for any reason as stated in [~~16.4.13.8~~] 16.4.8.10 NMAC; or

[~~**(4)**~~] **(3)** is not renewed prior to the annual renewal date (July 1).

F. [~~An advanced practice registration that is revoked or terminated shall not be reinstated. The chiropractic physician must reapply for expanded practice certification as a new applicant.~~] All advanced practice certification registrations that were automatically terminated pursuant to Subsection E of 16.4.15.8 NMAC shall be automatically reinstated when licensure as a chiropractic physician is reinstated, provided that:

(1) all fees required by 16.4.22.8 NMAC have been paid; and

(2) all continuing education requirements stated in Subsection C of 16.4.15.10 NMAC have been completed; and

(3) any other reinstatement provisions, required by board rule, have been completed.

G. [~~All advanced practice registrations that were automatically terminated due to inactive status, expiration or suspension as stated in 16.4.8.10 NMAC shall be automatically reinstated when licensure as a chiropractic physician is reinstated, provided that:~~

~~**(1)** all fees required by 16.4.1.13 NMAC have been paid; and~~

~~**(2)** all continuing education requirements stated in Subsection C of 16.4.15.10 NMAC have been completed; and~~

~~**(3)** any other reinstatement provisions, required by board rule, have been completed~~] An advanced practice registration that is suspended or revoked by the board

for any reason listed under 16.4.8.10 NMAC, shall not be reinstated. The chiropractic physician must reapply for advanced practice certification registration as a new applicant.

H. Each year the board may review the advanced practice formularies for necessary amendments. When new substances are added to a formulary, appropriate education in the use of the new substances may be approved and required by the board for chiropractic physician applying for registration or as continuing education for renewal of the applicable advanced practice registration. All amendments to the formulary shall be made following consensus of the NM board of medicine, NM pharmacy board and the NM board of chiropractic examiners.

I. A chiropractic physician certified for advanced practice under 16.4.15.11 NMAC that includes the use of controlled substances shall register with the federal DEA (drug enforcement agency) prior to obtaining, prescribing, administering, compounding the controlled substance.

J. A chiropractic physician registered in advanced practice, when prescribing, shall use prescription pads printed with his or her name, address, telephone number, license number and his or her advanced practice certification. If a chiropractic physician is using a prescription pad printed with the names of more than one chiropractic physician the above information for each chiropractic physician shall be on the pad and the pad shall have a separate signature line for each chiropractic physician. Each specific prescription shall indicate the name of the chiropractic physician for that prescription and shall be signed by the prescribing chiropractic physician.
[16.4.15.8 NMAC - N, 3/31/2009; A, 7/23/2010; A, 1/30/2015; A, 2/13/2015, A, 4/9/2022]

16.4.15.10 FEES, RENEWAL and CONTINUING EDUCATION:

A. A fee of $100 shall accompany the initial application. When that application is approved a fee of $100 shall be submitted for registry of the advanced practice certification.

B. A fee of $100 shall be assessed for all renewal applications, in addition to the standard fee for renewal of the chiropractic license.

C. Chiropractic physicians seeking renewal of advanced practice certification registration shall have completed 10 hours of continuing education, in addition to the required number of [~~CE~~] continuing education hours for the general chiropractic licensure, from an approved institution as stated in [~~16.4.15.8~~] 16.4.10 NMAC or as approved by [~~submission to~~] the board [~~for CE credited as stated in 16.4.15.8 NMAC.~~] The continuing education should include pharmacology, toxicology, medication administration or pharmacognosy appropriate to the current formulary and procedures authorized to be performed by the advanced practice chiropractic certification.
[16.4.15.10 NMAC - N, 3/31/2009; A, 1/30/2015, A, 4/9/2022]

REGULATION AND LICENSING DEPARTMENT
CHIROPRACTIC BOARD

This is an Amendment to 16.4.22 NMAC, Section 8, effective 4/9/2022.

16.4.22.8 ADMINISTRATIVE FEES:

A. In accordance with Subsection F of Section 61-4-7 and Subsection B of Section 61-4-13 NMSA 1978 of the New Mexico Chiropractic Physicians Practice Act, the board of chiropractic examiners establishes the following nonrefundable fees:

[~~**(1)** fees:~~

~~**(a)** application fee $350;~~

~~**(b)** initial license fee with or without examination $350;~~

~~**(c)** reinstatement of license $125 (in addition to back renewal and penalty fees for each year, not to exceed two years);~~

~~**(d)** reactivation application fee $200.~~

~~**(e)** application fee for advanced practice certification $100;~~

~~**(2)** annual renewal fees:~~

~~**(a)** active $300;~~

~~**(b)** inactive $100;~~

~~**(c)** advanced practice certification $100;~~

~~**(d)** impairment fee of $25 in addition to the license renewal fee, each chiropractor subject to renewal will be assessed an amount not to exceed $60 per renewal period;~~

~~**(3)** penalty for late renewal $100 (per month or portion of a month for which the license renewal fee is in arrears, the penalty not to exceed $1000).~~

~~**(4)** continuing education fee individual course $50;~~

~~**(5)** continuing education fee yearly for approved institution $500~~**)**

~~**(6)** miscellaneous fees listed below will be approved annually by the board and made available by the board office upon request:~~

~~**(a)** photocopying $0.25;~~

~~**(b)** written license verifications $25;~~

~~**(c)** list of licensees $75;~~

~~**(d)** duplicate licenses $25;~~

~~**(e)** duplicate renewal certificate $25;~~

~~**(f)** copies of statutes, rules and regulations are free online at board web site.~~

~~**B.** The board shall annually designate that proportion of renewal fees which shall be used for the exclusive purposes of investigating and funding hearings~~

~~regarding complaints against chiropractic physicians.~~]

(1) Initial application for licensure/certification:

(a) application fee $350;

(b) initial license fee with or without examination $350;

(c) advanced practice certification application fee $100.

(2) Reinstatement and reactivation:

(a) reinstatement of license $125 (in addition to back renewal and penalty fees for each year, not to exceed two years);

(b) reactivation application fee $200.

(3) Annual renewal fees:

(a) active $300;

(b) inactive $100;

(c) advanced practice certification $100;

(d) impairment fee of $25 in addition to the license renewal fee, each chiropractor subject to renewal will be assessed an amount not to exceed $60 per renewal period;

(e) penalty for late renewal $100 (per month or portion of a month for which the license renewal fee is in arrears, the penalty not to exceed $1000).

(4) Continuing education seminars and programs:

(a) continuing education fee individual course $50;

(b) continuing education seminars and programs provided by entities or organizations that meet the criteria established by the board under Subsections E and F of 16.4.10.8 NMAC and who intend to submit approval for more than 10 but less than 25 continuing education programs or seminars will be assessed a fee of $500.

(5) Any requests for approval that exceed 25 continuing education programs or seminars will be assessed a fee of:

(a) $50/program or seminar or;

(b) a fee of $500 if approval is for more than 10 but less than 25 continuing education programs or seminars.

(6) Miscellaneous fees listed below will be approved annually by the board and made available by the board office upon request:

(a) photocopying $0.25;

(b) written license verifications $25;

(c) list of licensees $75;

(d) duplicate licenses $25;

(e) duplicate renewal certificate $25;

(f) copies of statutes, rules and regulations are free online at board web site.

B. The board shall annually designate that proportion of renewal fees which shall be used for the exclusive purposes of investigating and funding hearings regarding complaints against chiropractic physicians.

[16.4.22.8 NMAC - Rp 16.4.22.8 NMAC, 8/10/2019, A, 4/9/2022]

REGULATION AND LICENSING DEPARTMENT

CONSTRUCTION INDUSTRIES DIVISION

This is an amendment to 12.2.15 NMAC, amending Section 7, effective April 22, 2022.

12.2.15.7 DEFINITIONS:

A. Secondhand metal dealer: means a scrap metal processor in the business of operating or maintain a scrap metal yard in a physical location in which scrap metal or cast-off regulated material is purchased for shipment, sale or transfer.

B. Aluminum material: means a product made from aluminum, an aluminum alloy or an aluminum byproduct. Aluminum material includes an aluminum beer keg but does not include other types of aluminum cans used to contain a food or beverage.

C. Bronze material: means a cemetery vase, receptacle or memorial made from bronze; bronze statuary; or material readily identifiable as bronze.

D. Copper or brass material: means insulated or noninsulated copper wire, hardware or cable of the type used by a public utility, commercial mobile radio service carrier or common carrier that consists of at least twenty-five percent copper; or a copper or brass item of a type commonly used in construction or by a public utility, commercial mobile radio service carrier or common carrier.

E. Business day: means any calendar day except Sunday and following holidays: New Year's day, Washington's birthday, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, Christmas day, Martin Luther King Jr.'s birthday and any other legal public holiday of the state of New Mexico or the United States.

F. Department: means the regulation and licensing department.

G. Superintendent: means the superintendent of the regulation and licensing.

H. Peace officer: means any full-time salaried and commissioned or certified law enforcement officer of a police or sherriff's department that is part of or administered by the state or a political subdivision of the state.

I. Personal identification document: means a driver's license; a military identification card; or a passport issued by the United States or by another country and recognized by the United States.

J. Regulated material: means aluminum material; bronze

material; copper or brass material; steel material; a utility access cover; a water meter cover; a road or bridge guard rail; a highway or street sign; a traffic directional or control sign or signal or a catalytic converter that is not part of an entire motor vehicle.

K. Steel material: means a product made from an alloy of iron, chromium, nickel or manganese, including stainless steel beer kegs.

L. Military service member: has the same meaning as set forth in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

M. Veteran: means a person who has received an honorable discharge or separation from military service.

[12.2.15.7 NMAC - Rp, 12.2.15.7 NMAC, 8/12/2012; A, 4/22/2022]

REGULATION AND LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES DIVISION

This is an amendment to 12.2.16 NMAC, amending Sections 8 and 9, effective April 22, 2022.

12.2.16.8 APPLICATION REQUIREMENTS:

A. Effective July 1, 2012, all secondhand metal dealers shall not buy or sell regulated material without a valid registration issued by the department.

B. Applications for registration shall be completed on a form provided by the department.

C. Electronic signatures will be acceptable for applications submitted pursuant to Section 14-16-1 through Section 14-16-19 NMSA 1978.

D. Information submitted shall include:

(1) the full name and business address of the applicant;

(2) a list of all locations at which the applicant engages or will engage in the business of buying or selling regulated material;

(3) a non-refundable registration fee as set forth in 12.2.16.9 NMAC;

(4) affirmation of compliance with all federal requirements;

(5) affirmation of registration with metal theft alert system as described in Paragraph (3) of Subsection A of 12.2.18.8 NMAC.

E. Any occupational or professional registration pursuant to these rules shall be issued as soon as practicable, but no later than 30 days after a military service member or a veteran as defined in these rules submits an application, pays any required fees, and provides a background check if required.

[12.2.16.8 NMAC - N, 8/12/2021; A, 4/22/2022]

12.2.16.9 FEES:

A. The fee for application registration is twenty-five dollars ($25.00).

B. The fee for renewal of registration is twenty-five dollars ($25.00).

C. A military service member or veteran as defined in these rules shall not be charged a registration fee for the first three years a registration issued under these rules is valid.

[12.2.16.9 NMAC - N, 8/12/2021; A, 4/22/2022]

REGULATION AND LICENSING DEPARTMENT
MANUFACTURED HOUSING DIVISION

This is an amendment to 14.12.1, amending Section 7, effective April 22, 2022.

14.12.1.7 DEFINITIONS:

All words and terms defined in the Manufactured Housing Act have the same meaning in these rules.

A. Terms starting with the letter 'A' are defined as follows.

(1) "Act" means the Manufactured Housing Act. Chapter 60, Article 14, Section 4, NMSA, 1978 is incorporated herein and made a part of these rules.

(2) "Alternative permanent foundation systems" are defined as commercially packaged systems designed by a New Mexico licensed engineer for the purpose of classifying installations as permanent.

(3) "Anchoring" is defined as those systems approved by a DAPIA. Where no DAPIA approval exists a licensed professional engineer may design a anchoring system pursuant to the manufacturer's specifications.

(a) "Tie-down" is any device designed for the purpose of securing a manufactured home to the ground.

(b) "Ground anchor" is a listed screw auger.

B. Terms starting with the letter 'B' are defined as follows. **[RESERVED]**

C. Terms starting with the letter 'C' are defined as follows.

(1) "Commercial unit" means any structure designed and equipped for human occupancy for industrial, professional or commercial purposes.

(2) "Committee" means the manufactured housing committee.

(3) "Customer, consumer or homeowner". These words are used interchangeably throughout these rules, they are intended to be synonymous, and they mean the purchaser, homeowner or owner of a manufactured home, including an occupant of a manufactured home subsequent to installation.

D. Terms starting with the letter 'D' are defined as follows.

(1) "DAPIA" means design approval primary inspection agencies as the term is utilized in the H.U.D. regulation, which is included in the federal preemption, on manufactured homes, and inclusive of on-site installations.

(2) "Deliver" as it applies to Section 20, means a seller's obligation shall

be accomplished when a seller has completed or stands ready, willing and able to physically transport and locate the home to a buyer as specified in the purchase agreement or buyer's order and (a) the weather is not an impediment and (b) the parties responsible for preparing the installation site have acted in good faith and acted according to all relevant statues, codes and rules. If (a) or (b) are not met, then seller will have a reasonable time to deliver the home.

(3) **"Director"** means the director of the manufactured housing division.

(4) **"Disqualifying criminal conviction"** means a conviction for a crime that is job-related for the position in question and consistent with business necessity.

[~~(4)~~] **(5)** **"Division"** means the manufactured housing division of the regulation and licensing department.

[~~(5)~~] **(6)** **"Down payment"** means any payment, such as consideration, a deposit of remuneration, of less than the full purchase price of the home.

E. Terms starting with the letter 'E' are defined as follows. **[RESERVED]**

F. Terms starting with the letter 'F' are defined as follows. **"Federal preemption"** is defined as The National Manufactured Housing Construction and Safety Standards Act, Title VI, 42 U.S. Code as amended, including Section 604.(d) and The Manufactured Homes Procedural and Enforcement Regulations, Part 3282, including Section 32.82.11.

(1) Section 604(d) Title VI, 42 U.S. Code is incorporated herein and made a part of these rules, as follows: "no State or political subdivision of a State shall have any authority either to establish or to continue in effect, with respect any manufactured home covered, any standard regarding construction or safety applicable to the same which is not identical to the Federal manufactured home construction standard".

(2) Section 3282.11(e) is incorporated herein and made a part of these rules, as follows: "No state or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purposes and objectives of congress. The test of whether a state rule or action is valid or must give way is whether the state rule can be enforced or the action taken without impairing the federal superintendence of the manufactured home industry as established by the act".

G. Terms starting with the letter 'G' are defined as follows.

(1) **"Grade level"** shall be defined as the finished grade around the exterior perimeter of the manufactured home; and, which shall slope away from the home to provide positive drainage consistent with the rules and regulations.

(2) **"Ground level"** shall be defined only as the average surface level exposed under the home.

H. Terms starting with the letter 'H' are defined as follows. **"HUD"** means the United States department of housing & urban development.

I. Terms starting with the letter 'I' are defined as follows. **"Installation inspection permit"** shall mean a document issued by the division that shall be used to request any inspection or re-inspection of a manufactured home permanent or non-permanent foundation system, manufactured home installation, utility connection or re-inspection request.

J. Terms starting with the letter 'J' are defined as follows. **[RESERVED]**

K. Terms starting with the letter 'K' are defined as follows. **[RESERVED]**

L. Terms starting with the letter 'L' are defined as follows.

(1) **"License"** means a license, registration, certificate of registration, certificate, or permit.

(2) **"Licensing fee"** means a fee charged at the time an application for a professional or occupational license or renewal is submitted to the state agency, board or commission and any fee charged for the processing of the application for such license; "licensing fee" does not include a fee for an inspection, or a fee charged for copies of documents, replacement licenses, examination fees, or other expenses related to a professional or occupational license.

[~~(1)~~] **(3)** **"Liquidated damages"** means the sum provided in a contract that a party agrees to pay if it breaches the contract, which sum is based on the good-faith effort of the parties to estimate the actual damages likely to result from a breach of contract.

[~~(2)~~] **(4)** **"Listed materials"** means equipment and materials included in a list published by a nationally recognized testing laboratory that maintain periodic inspections of production of listed equipment and materials and whose listing states either that the equipment and materials meet nationally recognized standards or have been tested and found suitable for use in a specific manner and has been approved for use in a manufacturer's installation manual or an approval in writing by the division's technical advisory council (TAC).

M. Terms starting with the letter 'M' are defined as follows.

(1) **"Manufacturer II"** means an enterprise whose primary business is the acquisition, restoration, renovation, or similar work and resale of distressed or damaged pre-owned manufactured housing units.

(2) **"Military service member"** has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

[~~(2)~~] **(3)** **"Mobile or manufactured home installation"** means all on-site work necessary for the installation of a manufactured home, including:

(a) preparation and construction of the foundation system;

(b) installation of the support piers and earthquake resistant bracing system;

(c) required connection to foundation system and support piers;

(d) skirting;

(e) connections to on-site utility terminals that are necessary for the normal operation of the home; and

(f) installation of a pressure relief valve when required.

[~~(3)~~] **(4)** **"Mudslide"** means the general and temporary movement down a slope of a mass of rock or soil, artificial fill, or a combination of these materials, caused or precipitated by the accumulation of water on or under the grounds.

N. Terms starting with the letter 'N' are defined as follows.

(1) "Net listing agreement" is a prohibited employment contract in which a broker, or dealer acting as a broker, receives as a commission all monies in excess of the minimum sales price agreed upon by the broker or dealer and the listing owner.

(2) "Non-permanent foundation" shall be defined as various foundational support mechanisms or arrangements other than permanent foundation systems.

O. Terms starting with the letter 'O' are defined as follows.

(1) "One hundred year flood" means the level of flooding that will be equaled or exceeded once in one hundred (100) years and has a one percent chance of occurring each year, on the average as defined by the federal emergency management agency (F.E.M.A).

(2) "On-site utility terminal" means the consumer's load side of the on-site utility meter for gas and electric utilities, or the point of attachment or connection to the utility supplier's distribution system, for water and sewer. **P.** Terms starting with the letter 'P' are defined as follows.

(1) "Perimeter enclosement" is defined as any arrangement that encloses and provides weather protection to the volume beneath the principle structure. Perimeter enclosements shall not be load bearing unless engineered to be load bearing by a licensed engineer or the manufacturer. Permanent perimeter enclosements are defined as constructed or assembled components consisting of durable materials (i.e. concrete, masonry, treated wood or other approved materials) or other materials approved by the division.

(2) "Perimeter marriage band" is defined as the covering placed over the gap that exists between the exterior, at the unit's floor level and the perimeter enclosement. The materials used shall be appropriate for the weather and designed and installed in a manner consistent with good construction and engineering standards.

(3) "Permanent foundations" are defined as constructed or assembled components consisting of durable materials (i.e. concrete, masonry, treated wood or other approved materials), and are required to be constructed on-site and shall have attachments points to anchor and stabilize the manufactured home. The design of the foundation shall be DAPIA approved or designed by a licensed professional engineer in accordance with the manufacturer's specifications.

(4) "Pre-owned home" or **"pre-owned manufactured home"** means a manufactured home of which title has been issued to a consumer or a manufacturer's statement of origin has been issued and a unit has been subsequently declared as real property, pursuant to New Mexico property tax laws.

(5) "Prohibited sales notice" means a printed notification, issued by the division, that a manufactured home may not be offered for sale because of violations of these rules.

Q. Terms starting with the letter 'Q' are defined as follows. **[RESERVED]**

R. Terms starting with the letter 'R' are defined as follows.

(1) "Regulation" means the rules of the manufactured housing division.

(2) "Real estate" means land, improvements, leaseholds and other interests in real property that are less than a fee simple ownership interest, whether tangible or intangible.

(3) "Retailer" is used interchangeably with the word "dealer" throughout these rules, these words are synonymous, and they mean "dealer" as defined pursuant to Subsection E of Section 60-14-2 NMSA 1978.

(4) "Retail installment contract" means the contract as defined in Subsection H of Section 56-1-1 NMSA 1978. The contract must conform to Section 56-1-2 NMSA 1978.

(a) Suggested examples of when a retail installment contract will be contemplated as part of the transaction: (a) chattel mortgage from a third party lender; (b) security agreement; (c) conditional sale contract; (d) contract in form of a bailment.

(b) Suggested examples of when a retail installment contract will not be contemplated as part of the transaction: (a) cash sale.

(5) "Retaining walls" are defined as a barrier with a minimum differential height of eighteen inches (18"), which retains a lateral load.

(6) "Riser" means that portion of the yardline, which protrudes through the grade level of the ground.

S. Terms starting with the letter 'S' are defined as follows. **"Superintendent"** means the superintendent of the regulation and licensing department.

T. Terms starting with the letter 'T' are defined as follows. **[RESERVED]**

U. Terms starting with the letter 'U' are defined as follows.

(1) "Unavailability of the manufacturer's installation manual" shall mean the inability to obtain such manual after undertaking a reasonable and diligent effort to obtain the same prior to the installation of a home; and includes, but is not limited to, circumstances where the customer of a used home has lost or misplaced the manual, the manufacturer is no longer in business and manuals are unavailable, or no such manual was ever printed or delivered at the time of the manufacture of a home and a photocopy of the manual could not be obtained at the manufactured housing division.

(2) "Utility" means electric, gas, water or sewer services, but does not include refuse services.

(3) "Utility supplier" means any person, park owner, municipality or public utility that supplies electricity, water, liquefied petroleum gas, natural gas or sewer service to a manufactured home.

V. Terms starting with the letter 'V' are defined as follows. **[~~RESERVED~~] "Veteran"** means a person who has received an honorable discharge or separation from military service.

W. Terms starting with the letter 'W' are defined as follows**. [RESERVED]**

X. Terms starting with the letter 'X' are defined as follows. **[RESERVED]**

Y. Terms starting with the letter 'Y' are defined as follows. **"Yardline"** means a buried material providing utilities from the on-site utility terminal to the manufactured home.

Z. Terms starting with the letter 'Z' are defined as follows. **[RESERVED]**

[14.12.1.7 NMAC - Rp, 14.12.2.7 NMAC, 12/1/2010; A, 4/22/2022]

REGULATION AND LICENSING DEPARTMENT
MANUFACTURED HOUSING DIVISION

This is an amendment to 14.12.2 NMAC, amending Section 8, effective April 22, 2022.

14.12.2.8 LICENSING PROCEDURES:

A. Any person or business, prior to engaging in any scope of practice regulated by the act, shall obtain a license in accordance with the act and these regulations. Licensees shall at all times display their license at their primary place of business within public view.

B. Application for any license required by these regulations shall be made on a form provided by the division. Each application shall be accompanied by the required nonrefundable fee as provided by 14.12.10 NMAC. A military service member or veteran as defined in these rules shall not be charged a licensing fee for the first three years a license issued under these rules is valid.

C. If an application is not complete, the applicant will be notified of all deficiencies within 20 days of the division's receipt. If an incomplete application is not completed within 30 days after written notification by the division, the division shall close the license application file.

D. Within 20 days of the division receiving a completed application, the applicant or his designated qualifying party shall be notified that they are eligible to take the required examination. Examinations will be administered by the division at its office in Santa Fe, New Mexico or at locations designated by the division.

E. Any occupational or professional license pursuant to these rules shall be issued as soon as practicable, but no later than 30 days after a military service member or a veteran as defined in these rules files an application and successfully passes any required examination, pays any required fees, and provides a background check if required.

[~~E.~~] **F.** No license shall be issued until the applicant or his designated qualifying party has passed the required examination, has tendered all fees and has posted all necessary bonds required by 14.12.4 NMAC.

[~~F.~~] **G.** Any applicant who has not completed an application for licensure within one year after notification that he has successfully passed the entry examination shall be required to reapply for licensure and retake the examination.

H. An application for a license under the Manufactured Housing Act shall be denied pursuant to Section 28-2-4 NMSA 1978 if the applicant has been convicted of a felony enumerated as a disqualifying criminal conviction. A conviction for any one of the following offenses, or their equivalents in any other jurisdiction, is a disqualifying criminal conviction.

(1) homicide;

(2) convictions involving physical harm to a person, including assault and battery, sexual offenses;

(3) kidnapping and human trafficking;

(4) crimes against children and dependents, including sexual crimes or offenses, and child abuse or neglect;

(5) arson;

(6) property damage;

(7) larceny and theft, including computer crimes, and unlawful taking of a motor vehicle;

(8) crimes involving fraud, including theft of identity, and money laundering;

(9) attempt, conspiracy, and solicitation of any disqualifying crime.

I. Any person who applies for a license or certification or renewal under these rules who is convicted of a disqualifying crime in New Mexico or any other state on or after the date of application shall notify the division within 10 days of

the conviction, along with the date, crime and case number.

J. Upon denial of a license including denial based on a disqualifying criminal conviction, the applicant shall be provided notice and an opportunity to be heard pursuant to the pertinent notice and hearing provisions of the Uniform Licensing Act.

[~~G.~~] **K.** Any person applying for a license whose business is a corporation, limited liability company, limited partnership, limited liability partnership or general partnership must submit a certified copy of the articles of incorporation, articles of organization, certificate of registration, or statement of qualification at the time the application is filed with the division.

[14.12.2.8 NMAC - Rp, 14.12.2.24 NMAC, 12/10/2010; A, 4/22/2022]

REGULATION AND LICENSING DEPARTMENT
MANUFACTURED HOUSING DIVISION

This is an amendment to 14.12.8 NMAC, amending Section 8, effective April 22, 2022.

14.12.8.8 RENEWALS:

A. Each license shall be renewed annually during its anniversary month. The division shall mail a renewal notice to each current licensee at least 30 days prior to the expiration date of the license.

B. Renewal notices will be mailed to the last known address on file with the division. It is the responsibility of the licensee to keep the division informed of any changes in address.

C. The licensee is responsible for renewing his license. Failure to receive the renewal notice shall not relieve the licensee of the responsibility of renewing his license before the expiration date.

D. The filling date of a renewal application shall be the date the envelope is postmarked or, if hand delivered, the date the renewal application is received by the division.

E. The division shall allow a 30-day grace period after a license has expired for a licensee to renew without penalty. After the 30-day grace period the licensee must pay a late renewal fee equal to one dollar ($1.00) for each day, up to 30 days, that has elapsed since the 30-day grace period and thereafter for a fee equal to twice the amount of the annual license fee.

F. A renewal application for a license under the Manufactured Housing Act shall be denied pursuant to Section 28-2-4 NMSA 1978 if the applicant has been convicted of a felony enumerated as a disqualifying criminal conviction as defined in these rules.

G. Any person who applies for renewal of a license or certification under these rules who is convicted of a disqualifying crime in New Mexico or any other state on or after the date of any renewal application shall notify the division within 10 days of the conviction, along with the date, crime, and case number.

[~~F.~~] **H.** If a license is expired for one-year following the expiration date the license shall be cancelled and the licensee must re-apply for licensure, which includes taking and passing any required examination.

I. Renewal of any occupational or professional license pursuant to these rules shall be issued as soon as practicable, but no later than 30 days after a military service member or a veteran as defined in these rules files an application and successfully passes any required examination, pays any required fees, and provides a background check if required.

J. Upon denial of a renewal for a license including denial based on a disqualifying criminal conviction, the applicant shall be provided notice and an opportunity to be heard pursuant to the pertinent notice and hearing provisions of the Uniform Licensing Act.

K. A military service member or veteran as defined in these rules shall not be charged a licensing fee for the first three years a license issued under these rules is valid.

[14.12.8.8 NMAC - Rp, 14.12.2.26 NMAC, 12/01/2010; A, 4/22/2022]

REGULATION AND LICENSING DEPARTMENT
MANUFACTURED HOUSING DIVISION

This is an amendment to 14.12.10 NMAC, amending Section 8, effective April 22, 2022.

14.12.10.8 FEES:

A. Fees shall not be refunded, except that upon written request, the director shall have the discretion to refund any fees.

B. Examination fee is fifty dollars ($50).

C. Annual license fees.

(1) A military service member or veteran as defined in these rules shall not be charged a licensing fee for the first three years a license issued under these rules is valid.

[~~(1)~~] **(2)** Manufacturer I: five hundred dollars ($500).

[~~(2)~~] **(3)** Manufacturer II-re-furbisher: four hundred dollars ($400).

[~~(3)~~] **(4)** Dealer: two hundred dollars ($200).

[~~(4)~~] **(5)** Installer and repairman: two hundred dollars ($200).

[~~(5)~~] **(6)** Salesperson: fifty dollars ($50).

[~~(6)~~] **(7)** Broker: two hundred dollars ($200).

[~~(7)~~] **(8)** Associate broker: fifty dollars ($50).

D. Re-inspection fee(s): sixty five dollars ($65).

E. Inspection Permits: sixty five dollars ($65). The permit will be for the installation, permanent foundation and utility connections.

F. Transfer of salesperson's license: twenty-five dollars ($25).

G. Re-issuance of qualifying party certificate from one business to another: twenty-five dollars ($25).

H. Manufacturer II-re-furbisher inspection permit: one hundred and twenty dollars ($120).

I. Contractors and journeyman licensed by the construction industries division performing work on manufactured homes shall be registered with the manufactured housing division (MHD) and pay an annual registration fee of one hundred dollars ($100) per licensee and post with MHD an installer's or repairman's consumer protection bond, pursuant to 14.12.4.13 NMAC.

J. Addition of a qualifying party to an existing license: twenty-five dollars ($25).

K. Bad or returned checks:

(1) An additional charge of twenty ($20) shall be made for any check, which fails to clear or is returned for any reason.

(2) Such returned checks shall cause any license issued, renewed or test scheduled as the result of such payment to be immediately suspended until proper payment in full is received.

L. Consumer complaint inspections: sixty five dollars ($65) for each inspection. Inspections shall be paid by the installer/repairman, dealer, manufacturer or broker, as appropriate.

M. Pre-owned label: forty dollars ($40).

N. Change of a licensee's name, address or license status: twenty-five dollars ($25).

O. Inspection fee for removal of a "Prohibited Sales Notice" by the division: sixty dollars ($60).

P. Requested inspection: sixty five dollars ($65).

Q. Manufacturer's supervision or compliance monitoring, pursuant to an amount approved by HUD.

R. Alteration, modification, or repair fee: fifteen dollars ($15).

S. Conversion fee: fifteen dollars ($15).

[14.12.10.8 NMAC - Rp, 14.12.2.25 NMAC, 12/01/2010; A, 11/15/2017; A, 4/22/2022]

REGULATION AND LICENSING DEPARTMENT
MANUFACTURED HOUSING DIVISION

This is an amendment to 14.12.11 NMAC, amending Section 8, effective April 22, 2022.

14.12.11.8 COMPLAINTS AND HEARINGS:

A. A person claiming to be injured by an alleged violation of the Act or these regulations or by reason of any other cause set forth in Section 60-14-6, NMSA 1978, may file with the division a written complaint which shall state the name and address of the licensee against whom the complaint is made and shall include a concise statement of the alleged violation. If it is determined by the division that the complaint is insufficient or defective, the complainant shall be promptly notified and permitted to amend the complaint.

B. Upon receipt of a written complaint, the division shall investigate by telephone or by personal contacts within 30 days of receipt of the complaint the alleged violation to determine whether cause exists to investigate further. If such cause exists, an on-site inspection will be made within 30 days of such determination. The consumer shall make himself available during reasonable business hours within the prescribed 30 days.

(1) The division shall contact the licensee by mail and request correction of the violations within 40 day's of receipt of the complaint. The letter may also request investigation according to Subpart I of the *Federal Manufactured Home Construction and Safety Standards, Federal Procedural and Enforcement Regulations*, which require investigation of class or re-occurrences of non-conformances to the federal standards.

(2) Following this initial 40 day period, if it is determined that there is no cause for the complaint, the complaint shall be dismissed. The division shall also place all information in their consumer complaint files for five years after closing of the case. This information shall include: [~~(a) the determination; (b) who made the determination; and (c) how the determination was made.~~]

(a) the determination;

(b) who made the determination; and

(c) how the determination was made.

(3) If the committee determines that there is cause for the complaint, the division shall attempt to achieve a satisfactory resolution of the complaint through correspondence or informal conference. All resolutions are pending final approval of the committee.

(4) If the committee determines that the items requested to be corrected by the complainant are the responsibility of the manufacturer, and that these items are required to be corrected under the federal regulations, the manufacturer will be requested to submit a notification and correction plan to the director of the manufactured housing division within 20 days of receipt of the letter and as required under Subpart I of the federal regulations. If, within 20 days and there does not seem to be a reoccurrence of the same deficiencies, no formal plan needs to be submitted if the division has granted waiver to the plan. If a plan is submitted to the division, the division shall approve or modify the plan and send it back to the manufacturer for remedial action. The plan shall include, but not be limited to, a list of manufactured homes affected, method of correction, content of notification notice to consumer and the requirements as detailed under Subpart I of the federal regulations. The manufacturer shall have 60 days

to notify and correct and an additional 30 days to submit closeout reports of all action taken by the manufacturer in the case.

C. The discovery by the committee or the division that an applicant for a license or permit or renewal of a license or permit under these rules has a disqualifying criminal conviction as defined herein and has failed to disclose this fact on the application, or failed to inform the division within 10 days of conviction shall be grounds for discipline under this rule.

[~~**C.**~~] **D.** If the complaint is not completely resolved by the foregoing method, the committee may proceed with formal disciplinary action in accordance with the Uniform Licensing Act, Sections 61-1-1, et seq., NMSA 1978, as amended, and the division may conduct further inspections or investigations.

[~~**D.**~~] **E.** The division will charge a re-inspection fee each time a re-inspection is performed on a home that is involved in a consumer complaint. Those consumer complaints that the division investigates that are dismissed by the committee, no fee will be charged. The fee shall be charged to the dealer, manufacturer, installer/repairman, or broker as appropriate.

[14.12.11.8 NMAC - Rp, 14.12.2.42 NMAC, 12/01/2010; A, 4/22/2022]

REGULATION AND LICENSING DEPARTMENT
MASSAGE THERAPY BOARD

This is an amendment to 16.7.4 NMAC, Section 10 and 16 and adding a new Section 24 effective 04/09/2022.

16.7.4.10 GENERAL PROVISIONS FOR LICENSURE:

A. Age: The applicant must be 18 years of age or older on the date the application is submitted.

B. Pre-requisite education [~~**to massage therapy training**~~]**:** The applicant must have completed high school or its equivalent.

C. Photograph: The applicant must provide a 2"x 2" passport photo taken of the applicant within the six months prior to making application for licensure.

D. Application fee: The applicant must pay the required application-processing fee as set forth in Subsection D of 16.7.3.8 NMAC of the board's regulations.

E. Board-approved application form: The applicant must provide a completed, legible board-approved application form that must either be typed or printed in black ink, along with any other documents required in the board's application process.

(1) incomplete application for licensure forms will be returned to the applicant for completion;

(2) faxed application for licensure forms will not be accepted.

F. First Aid and Cardiopulmonary Resuscitation (CPR): The applicant must have completed four [~~(4)~~] contact course hours of cardiopulmonary resuscitation (CPR) to include automatic external defibrillator (CPR/AED) and four contact course hours of first aid and must provide proof, with the application, of current [~~accepted by~~] certification in basic life support [~~EMS safety services, the American heart association, pro-training, LLC, or the American red cross.~~] *No* on-line courses will be accepted. Courses must be maintained in current standing.

[16.7.4.10 NMAC - Rp, 16.7.4.10 NMAC, 11/15/2019; A, 04/09/2022]

16.7.4.16 SPECIFIC PROVISIONS FOR A TEMPORARY LICENSE: A license issued one time only for a maximum period of three months to practice massage therapy while the application for permanent license is in process, and which may only be issued to applicants who have never sat for a licensing examination.

A. Qualifications for temporary license:

(1) the applicant for temporary license must meet all the requirements set forth in Sections 16.7.4.10 through 16.7.4.15 NMAC;

(2) the applicant for temporary license must not have previously sat for a certification examination for therapeutic massage and bodywork (NCETMB), the national certification examination for therapeutic massage (NCETM), the massage board licensing examination (MBLEx), or other examining or certification agency approved by the board;

(3) the applicant may obtain a temporary license while waiting to sit for the national examination;

(4) upon submitting the application for licensure, the applicant for a temporary license must submit a temporary license fee, as set forth in Subsection D of 16.7.3.8 NMAC;

(5) the board may deny issuance of a temporary license for the same reasons a permanent license may be denied.

B. Issuance of the temporary license:

(1) the applicant for temporary license may not begin work until the temporary license has been issued by the board, has been received by the licensee, and has been publicly posted in principal place of practice;

(2) the temporary licensee may *not* advertise in the yellow pages or other similar advertising book;

(3) the temporary licensee must keep the board informed at all times of any change in address and contact phone number(s);

[~~**(4)** if the temporary license has not yet expired and the board receives official notice that the temporary licensee has passed a national examination, the temporary license will automatically become null and void. Provided that all other requirements have been met, a permanent license will be issued when payment of the initial license fee has been made.~~]

C. Surrender of temporary license required:

(1) if a temporary license holder fails the national examination, the temporary license immediately becomes null and void and must be surrendered directly to the board office within 15 days of the examination date; and the privileges to practice authorized by the temporary license are no longer valid;

(2) Expired or null and void temporary licenses shall be surrendered to the board;

(3) If an applicant, who holds a temporary license that must be surrendered, has misplaced or lost the temporary license and cannot return it to the board as required, the applicant must provide the board with an affidavit attesting that the license has been lost or misplaced and that the applicant is no longer practicing massage therapy.

[16.7.4.16 NMAC - Rp, 16.7.4.16 NMAC, 11/15/2019; A, 04/09/2022]

16.7.4.24 CRIMINAL CONVICTIONS:

A. Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or a licensee retaining a license issued by the board:

(1) homicide or manslaughter;

(2) kidnapping, false imprisonment, aggravated assault or aggravated battery;

(3) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, promoting prostitution, accepting the earnings of a prostitute, human trafficking, willfully or knowingly failing to comply with the registration or verification requirements of the sex offender registration and notification act, or other related felony sexual offenses;

(4) crimes involving robbery, larceny, extortion, burglary, bribery, fraud, forgery, embezzlement, credit card fraud, or receiving stolen property;

(5) failure to comply with a proclamation of the governor; or

(6) an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

B. The board shall not consider the fact of a criminal conviction as part of an application for licensure or licensure renewal unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

C. The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of 16.7.4.24 NMAC.

D. Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Massage Therapy Practice Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

E. In connection with an application for licensure or license renewal, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of 16.7.4.21 NMAC.

[16.7.4 NMAC - N, 04/09/2022]

REGULATION AND LICENSING DEPARTMENT
MASSAGE THERAPY BOARD

This is an amendment to16.7.8 NMAC, Section 6 through 9 effective 04/09/2022.

[~~16.7.8.6 OBJECTIVE:~~ ~~The purpose of this part is to expedite licensure for military service members, spouses and veterans seeking licensure to practice under Chapter 61, Article 12C NMSA1978.~~

~~[16.7.8.6 NMAC - N, 3/31/2015]~~

~~16.7.8.7 DEFINITIONS:~~

~~A. "Military service member"~~ ~~means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.~~

~~B. "Recent Veteran"~~ ~~means a person who has received an honorable discharge or separation from military service within the two (2) years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.~~

~~[16.7.8.7 NMAC - N, 3/31/2015]~~

~~16.7.8.8 APPLICATION REQUIREMENTS:~~

~~A~~~~. Applications for registration shall be completed on a form provided by the board~~**~~:~~**

~~B.~~ ~~A completed application shall include:~~

~~(1)~~ ~~The required fee as outlined in 16.7.3 NMAC;~~

~~(2)~~ ~~Satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States, that has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license applied for pursuant to Chapter 61, Article 12C NMSA 1978; and~~

~~(3)~~ ~~Proof~~

~~of honorable discharge (DD214), military ID card, or accepted proof of military spouse status.~~
[~~16.7.8.8 NMAC - N, 3/31/2015~~]

~~**16.7.8.9 RENEWAL REQUIREMENTS:** A license issued pursuant to this section shall not be renewed unless the license holder submits the following:~~

~~**A.** A completed renewal application accompanied by the required documents listed under 16.7.12 NMAC;~~

~~**B.** Payment of required renewal fees under 16.7.3 NMAC; and~~

~~**C.** Documentation required for initial licensure under 16.7.4 NMAC.~~]
[~~16.7.8.9 NMAC - N, 3/31/2015; A, 04/09/2022~~]

16.7.8.6 OBJECTIVE:
The purpose of this part is to expedite licensure for military service members, their spouses, their dependent children and for veterans pursuant to 61-1-34 NMSA 1978.
[16.7.8.6 NMAC - Rp. 16.7.8.6 NMAC, 3/31/2015; A, 04/09/2022]

16.7.8.7 DEFINITIONS:
A. "License" has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.
B. "Licensing fee" has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA 1978.
C. "Military service member" has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.
D. "Substantially equivalent" means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the Massage Therapy Practices Act.
E. "Veteran" has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.
[16.7.8.7 NMAC - Rp. 16.7.8.7, 3/31/2015; A, 04/09/2022]

16.7.8.8 APPLICATION REQUIREMENTS:
A. Applications for registration shall be completed on a form provided by the board.
B. The applicant shall provide a complete application that includes the following information:
(1) applicant's full name;
(2) current mailing address;
(3) current electronic mail address, if any;
(4) date of birth;
(5) background check, if required; and
(6) proof as described in Subsection C below.
C. The applicant shall provide the following satisfactory evidence as follows:
(1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;
(2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and
(3) the following documentation:
(a) for military service member: copy of military orders;
(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;
(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;
(d) for dependent children of military service members: copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;
(e) for veterans (retired or separated): copy of DD 214 showing proof of honorable discharge.
D. The license or registration shall be issued by the board/commission as soon as practicable but no later than 30 days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.
E. Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.
F. A license issued pursuant to this section shall be valid for the time period that is specified in the Massage Therapy Practices Act.
[16.7.8.8 NMAC - Rp. 16.7.8.8, 3/31/2015; A, 04/09/2022]

16.7.8.9 RENEWAL REQUIREMENTS:
A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.7.12.10 NMAC pursuant to Chapter 61, Article 12C NMSA 1978.
B. As a courtesy, the board will send via electronic mail license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.
[16.7.8.9 NMAC - Rp. 16.7.8.9, 3/31/2015; A, 04/09/2022]

REGULATION AND LICENSING DEPARTMENT
RESPIRATORY CARE ADVISORY BOARD

The Regulation and Licensing Department - Advisory Board of Respiratory Care Practitioners reviewed at its 11/19/2021 hearing, 16.23.1 NMAC, "Respiratory Care Practitioners - General Provisions", (filed 6/6/2000). The Board has decided to repeal 16.23.1 NMAC, "Respiratory Care Practitioners - General Provisions", (filed 6/6/2000) and replace it with 16.23.1 NMAC, "Respiratory Care Practitioners - General Provisions", adopted 3/8/2022 and effective 04/21/2022.

The Regulation and Licensing Department - Advisory Board of Respiratory Care Practitioners reviewed at its 11/19/2021 hearing, 16.23.3 NMAC, "Respiratory Care Practitioners – Qualifications for Practitioner License", (filed 6/6/2000). The Board has decided to repeal 16.23.3 NMAC, "Respiratory Care Practitioners – Qualifications for Practitioner License", (filed 6/6/2000) and replace it with 16.23.3 NMAC, "Respiratory Care Practitioners – Qualifications for Practitioner License", adopted 3/8/2022 and effective 04/21/2022.

The Regulation and Licensing Department - Advisory Board of Respiratory Care Practitioners reviewed at its 11/19/2021 hearing, 16.23.4 NMAC, Application Procedures for Practitioner License (filed 6/15/2017). The Board has decided to repeal 16.23.4 NMAC, Application Procedures for Practitioner License (filed 6/15/2017 effective 04/21/2022.

The Regulation and Licensing Department - Advisory Board of Respiratory Care Practitioners reviewed at its 11/19/2021 hearing, 16.23.5 NMAC, "Respiratory Care Practitioners – Licensure for Military Service Members, Spouses and Veterans", (filed 6/6/2000). The Board has decided to repeal 16.23.5 NMAC, "Respiratory Care Practitioners – Licensure for Military Service Members, Spouses and Veterans", (filed 6/6/2000) and replace it with 16.23.5 NMAC, "Respiratory Care Practitioners – Licensure for Military Service Members, Spouses and Veterans", adopted 3/8/2022 and effective 04/21/2022.

The Regulation and Licensing Department - Advisory Board of Respiratory Care Practitioners reviewed at its 11/19/2021 hearing, 16.23.6 NMAC, "Respiratory Care Practitioners – Temporary Permits", (filed 6/6/2000). The Board has decided to repeal 16.23.6 NMAC, "Respiratory Care Practitioners – Temporary Permits", (filed 6/6/2000) and replace it with 16.23.6 NMAC, "Respiratory Care Practitioners – Temporary Permits", adopted 3/8/2022 and effective 04/21/2022.

The Regulation and Licensing Department - Advisory Board of Respiratory Care Practitioners reviewed at its 11/19/2021 hearing, 16.23.7 NMAC, Temporary Student Permit Renewal (filed 6/15/2017). The Board has decided to repeal 16.23.7 NMAC, Temporary Student Permit Renewal (filed 6/15/2017 effective 04/21/2022.

The Regulation and Licensing Department - Advisory Board of Respiratory Care Practitioners reviewed at its 11/19/2021 hearing, 16.23.8 NMAC, Renewal and Expiration of Practitioner License (filed 6/15/2017). The Board has decided to repeal 16.23.8 NMAC, Renewal and Expiration of Practitioner License (filed 6/15/2017 effective 04/21/2022.

The Regulation and Licensing Department - Advisory Board of Respiratory Care Practitioners reviewed at its 11/19/2021 hearing, 16.23.9 NMAC, Inactive Status for Practitioner License (filed 6/15/2017). The Board has decided to repeal 16.23.9 NMAC, Inactive Status for Practitioner License (filed 6/15/2017) effective 04/21/2022.

The Regulation and Licensing Department - Advisory Board of Respiratory Care Practitioners reviewed at its 11/19/2021 hearing, 16.23.11 NMAC, License Reactivation, License Lapse (filed 6/15/2017). The Board has decided to repeal 16.23.11 NMAC, License Reactivation, License Lapse (filed 6/15/2017) effective 04/21/2022.

The Regulation and Licensing Department - Advisory Board of Respiratory Care Practitioners reviewed at its 11/19/2021 hearing, 16.23.12 NMAC, "Respiratory Care Practitioners – Continuing Education", (filed 6/6/2000). The Board has decided to repeal 16.23.12 NMAC, "Respiratory Care Practitioners – Continuing Education", (filed 6/6/2000) and replace it with 16.23.12 NMAC, "Respiratory Care Practitioners – Continuing Education", adopted 3/8/2022 and effective 04/21/2022.

The Regulation and Licensing Department - Advisory Board of Respiratory Care Practitioners reviewed at its 11/19/2021 hearing, 16.23.13 NMAC, "Respiratory Care Practitioners – Expanded Practice", (filed 6/6/2000). The Board has decided to repeal 16.23.13 NMAC, "Respiratory Care Practitioners - Expanded Practice", (filed 6/6/2000) and replace it with 16.23.13 NMAC, "Respiratory Care Practitioners - Expanded Practice", adopted 03/08/2022 and effective 04/21/2022.

The Regulation and Licensing Department - Advisory Board of Respiratory Care Practitioners reviewed at its 11/19/2021 hearing, 16.23.15 NMAC, Parental Responsibility Act Compliance (filed 12/20/2002). The Board has decided to repeal 16.23.15 NMAC, Parental Responsibility Act Compliance (filed 12/20/2002 effective 04/21/2022.

The Regulation and Licensing Department - Advisory Board of Respiratory Care Practitioners reviewed at its 11/19/2021 hearing, 16.23.16 NMAC, Disciplinary

Proceedings (filed 12/30/2002). The Board has decided to repeal 16.23.16 NMAC, Disciplinary Proceedings (filed 12/30/2002) effective 04/21/2022.

The Regulation and Licensing Department - Advisory Board of Respiratory Care Practitioners reviewed at its 11/19/2021 hearing, 16.23.17 NMAC, "Respiratory Care Practitioners - Grounds for Disciplinary Action", (filed 6/6/2000). The Board has decided to repeal 16.23.17 NMAC, "Respiratory Care Practitioners - Grounds for Disciplinary Action", (filed 6/6/2000) and replace it with 16.23.17 NMAC, "Respiratory Care Practitioners - Grounds for Disciplinary Action", adopted 3/8/2022 and effective 04/21/2022.

The Regulation and Licensing Department - Advisory Board of Respiratory Care Practitioners reviewed at its 11/19/2021 hearing, 16.23.18 NMAC, "Respiratory Care Practitioners - Disciplinary Guidelines for Impaired Practitioner", (filed 6/6/2000). The Board has decided to repeal 16.23.18 NMAC, "Respiratory Care Practitioners - Disciplinary Guidelines for Impaired Practitioner", (filed 6/6/2000) and replace it with 16.23.18 NMAC, "Respiratory Care Practitioners - Disciplinary Guidelines for Impaired Practitioner", adopted 3/8/2022 and effective 04/21/2022.

REGULATION AND LICENSING DEPARTMENT
RESPIRATORY CARE ADVISORY BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 23 RESPIRATORY CARE PRACTITIONERS
PART 1 GENERAL PROVISIONS

16.23.1.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners.
[16.23.1.1 NMAC - Rp, 16.23.1.1 NMAC, 04/21/2022]

16.23.1.2 SCOPE: The provisions of Part 1 of Chapter 23 apply to all Parts of Chapter 23 and provide relevant information to anyone affected or interested in the licensing and regulation of the practice of respiratory care as set forth in Chapter 23.
[16.23.1.2 NMAC - Rp, 16.23.1.2 NMAC, 04/21/2022]

16.23.1.3 STATUTORY AUTHORITY: Part 1 of Chapter 23 is promulgated pursuant to the Respiratory Care Act Section 61-12B-6 NMSA 1978.
[16.23.1.3 NMAC - Rp, 16.23.1.3NMAC, 04/21/2022]

16.23.1.4 DURATION: Permanent.
[16.23.1.4 NMAC - Rp, 16.23.1.4NMAC, 04/21/2022]

16.23.1.5 EFFECTIVE DATE: April 21, 2022, unless a later date is cited at the end of a section.
[16.23.1.5 NMAC - Rp, 16.23.1.5NMAC, 04/21/2022]

16.23.1.6 OBJECTIVE: The objective of Part 1 of Chapter 23 is to set forth the provisions which apply to all of Title 16, Chapter 23 NMAC of the New Mexico Administrative Code and to all persons and entities affected by Title 16, Chapter 23 NMAC.
[16.23.1.6 NMAC - Rp, 16.23.1.6NMAC, 04/21/2022]

16.23.1.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 16, Chapter 23 NMAC, have the same meanings as set forth in the Respiratory Care Act or in other cited New Mexico statutes:

A. Definitions beginning with "A":

(1) "Applicant" means a person who has applied to the department for a temporary permit or a respiratory care practitioner's license.

(2) "Approval" means the review and acceptance of a specific activity.

(3) "Approval body" means the agency, institution, or organization with the authorization to award continuing education credit.

(4) "Approved training and education program" means a program supported by the commission accreditation for respiratory care (COARC), or its predecessor the joint review committee for respiratory therapy education (JRCRTE), or accredited by the commission on accreditation of allied health education programs (CAAHEP), or its successor approval body.

(5) "Audit" means an examination and verification of continuing education documents by the department.

B. Definitions beginning with "B": "Board" has the same meaning as defined in Subsection A of Section 61-12B-3 NMSA 1978.

C. Definitions beginning with "C":

(1) "Clock hour" means a unit of measurement to describe a continuing education offering which equals a 60-minute clock hour.

(2) "Complaint" means a complaint, which has been filed with the department or the board, against a temporary permittee, respiratory care practitioner licensee, or applicant for either permit or license.

(3) "Complainant" means the party who files a complaint against a temporary permittee, a respiratory care practitioner licensee, or an applicant for either a permit or a license governed by the Respiratory Care Act.

(4) "Continuing education" or "CE" means a learning experience intended to enhance professional development and includes continuing education units (CEUs) and continuing medical education (CME).

(5) **"Controlled Substances Act"** refers to Section 30-31-1 through Section 30-31-41 NMSA 1978.

(6) "CRT" means certified respiratory therapist. This is the entry level of respiratory care.

(7) "CRTT" means a certified respiratory therapy technician. This is the entry level of respiratory care.

D. Definitions beginning with "D":

(1) **"Department"** has the same meaning as defined in Subsection B of Section 61-12B-3 NMSA 1978.

(2) "Direct supervision" means direction and control by a training supervisor over a student extern temporary permittee or a graduate temporary permittee while the permittee is providing respiratory care procedures under the authority of the training supervisor's license.

(3) "DME or DME company" refers to durable medical equipment or companies that provide durable medical equipment in the health care industry.

E. Definitions beginning with "E":

(1) **"Electronic signature"** has the same meaning as defined in Subsection 7 of Section 14-16-2 NMSA 1978.

(2) "Expired license" means a license that has not been renewed on or before the end of the license renewal period.

(3) **"Expanded practice"** has the same meaning as the definition in Subsection E of Section 61-12B-3 NMSA 1978.

F. Definitions beginning with "F": "Facility" means the employer of a licensed respiratory care practitioner or temporary permit holder.

G. Definitions beginning with "G":

(1) **"Graduate"** means a non-licensed person who has completed an approved respiratory care training program and is employed by a supervisory facility to provide respiratory care for remuneration and in accordance with the provisions for a temporary permit issued under these regulations.

(2) **"Gratuitous"** means to receive no form of payment or remuneration.

H. Definitions beginning with "H": "Home care setting" as it applies to respiratory care, means any facility, including a patient's home that would usually not employ respiratory care practitioners, specifically those facilities visited by a person from outside the facility to provide respiratory care services.

I. Definitions beginning with "I":

(1) "Impaired Health Care Provider Act" refers to Section 61-7-1 through Section 61-7-12 NMSA 1978.

(2) "Initial licensure" means the process of achieving the legal privilege to practice within a professional category upon the completion of educational and other licensing requirements.

(3) **"Inspection of Public Records Act"** refers to Section 14-2-1 through Section 14-2-12, NMSA 1978.

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

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

L. Definitions beginning with "L":

(1) "Lapsed license" means an expired license which has not been reactivated within the time limitations set forth in Section 11 in 16.23.11 NMAC.

(2) "License" means a document identifying the legal privilege and authorization to practice within a professional category. In the context of military and veterans applications submitted pursuant to 16.23.5 NMAC, "license" has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

(3) "License reactivation" means the process of making current a license that has expired as a result of failure to comply with the necessary renewal requirements.

(4) "Licensing fee" has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA 1978.

(5) "Licensing period for extern permits" means a one year period from the date of issuance to the last day of the same month, one year later.

(6) "Licensing period for graduate permits" means six months from the date of application and is not renewable; or until receipt of failing national board of respiratory care (NBRC) registered respiratory therapist (RRT) exam results. Initial applicants who do not become licensed within one year of becoming national board of respiratory care (NBRC) credentialed are issued a one year graduate permit from the date of application.

M. Definitions beginning with "M":

(1) "Medical board" as it applies to respiratory care, means a group of medical experts that review clinical practice in a facility to assure that the practice of health care meets the standard of care in the health care community.

(2) "Medical direction" as it applies to respiratory care, means a prescription or order by a physician authorized to practice medicine or by any other person authorized to prescribe under the laws of New Mexico.

(3) "Military service member" has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

(4) "Must" has the same meaning as defined in Subsection A of Section 12-2A-4 NMSA 1978.

N. Definitions beginning with "N":

(1) "NBRC" means the national board for respiratory care, inc.

(2) "National licensing exam" means the national examination for respiratory care practitioners administered by the

national board for respiratory care resulting in obtaining CRTT, CRT, or RRT credentials.

(3) "New Mexico Administrative Code" or "NMAC" means the organizing structure for rules filed by New Mexico state agencies. The NMAC is also the body of filed rules and the published versions thereof. The NMAC is structured by Title, Chapter, and Part.

(4) "Non-traditional training program" refers to a respiratory care training program in which a person receives on-the-job training in respiratory care from a supervising medical director, a supervising physician, or a licensed respiratory care practitioner, and in which the trainee may receive compensation while in such a training program.

(5) "Notice of contemplated action" or "NCA" means the administrative action provided for by the Uniform Licensing Act, whereby the respondent is given notice of a pending disciplinary action against his or her application, permit or license, based upon violations of the department's rules and regulations governing the practice of respiratory care or the Respiratory Care Act, which have been alleged in a complaint filed with the department or the board. The respondent is afforded an opportunity for a formal hearing before the department, in consultation with the board.

O. Definitions beginning with "O":

(1) "Open Meetings Act" refers to Section 10-15-1 through Section 10-15-4, NMSA 1978.

P. Definitions beginning with "P":

(1) "Prescription" means an order given individually for the person for whom prescribed, either directly from the prescriber to the person licensed to fill the prescription or indirectly by means of a written order signed by the prescriber.

(2) "Parental Responsibility Act" or "PRA" refers to Section 40-5A-1 through Section 40-5A-13, NMSA 1978 (1995 Supp.) herein referred to as the Parental Responsibility Act or PRA.

(3) "Permittee" means a person who has been granted a temporary permit by the department, in consultation with the board.

(4) "Public health emergency" is an emergency declared pursuant to the All Hazards Emergency Management Act, Sections 12-10-1 to 12-10-21 NMSA 1978, and the Public Health Emergency Response Act, Sections 12-10A-1 to 12-10A-19 NMSA 1978.

(5) "Public Records Act" refers to Section 14-3-1 through Section 14-3-25, NMSA 1978.

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

R. Definitions beginning with "R":

(1) "Redacted" means the act or process of editing or revising the complaint so that the parties, which are the subject of the complaint, are unknown to the board.

(2) "Reinstatement" means the process whereby a license that has been subject to revocation or suspension is returned to former status.

(3) "Respiratory Care Act" refers to Section 61-12B-1 through Section 61-12B-16, NMSA 1978.

(4) "Respiratory Care Practitioner" or "RCP" means a person who is licensed to practice respiratory care in New Mexico.

(5) "Respiratory Therapy Training Program" means a program approved by the commission on accreditation of allied health education programs (CAHEP), or its successor approval body.

(6) "Respondent" means the permit or license applicant or the temporary permittee or licensed practitioner who is the subject of the complaint.

(7) "RRT" means a registered respiratory therapist. This is the advanced level of respiratory care.

S. Definitions beginning with "S":

(1) "Shall" has the same meaning as defined in Subsection A of Section 12-2A-4 NMSA 1978.

(2) "State Rules Act" refers to Section 14-4-1 through Section 14-4-9, NMSA 1978.

(3) "Student" means a person enrolled in an approved respiratory care training and education program and who receives *no remuneration* for respiratory care services performed in a supervisory facility as part of an approved respiratory care training program.

(5) "Student extern" means a person who is engaged by a supervisory facility to provide respiratory care for remuneration while enrolled in an approved respiratory care training and education program, and in accordance with the provisions for a temporary permit issued under these regulations.

(6) "Substantially equivalent" means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience required by the Respiratory Care Act.

(7) "Superintendent" has the same meaning as defined in Subsection I of Section 61-12B-3 NMSA 1978.

(8) "Supervisory facility" means the employer of a temporary permit holder.

T. Definitions beginning with "T":

(1) "Telemedicine" means the use of telephonic or electronic communications to provide clinical services to patients without an in-person visit.

(2) "Traditional training program"

refers to a respiratory care training program that provides classroom instruction and clinical experience only to students or student externs under direct supervision of a licensed and responsible professional.

(3) "Training supervisor" means a New Mexico licensed respiratory care practitioner or a New Mexico licensed physician who agrees to be responsible for the respiratory care administered by student externs and graduates while these individuals are employed by a supervisory facility and are being trained there.

U. Definitions beginning with "U": "Uniform Licensing Act" or **"ULA"** refers to Section 61-1-1 through Section 61-1-36, NMSA 1978.

V. Definitions beginning with "V": "Veteran" has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

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

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

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

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

[16.23.1.7 NMAC - Rp, 16.23.1.7 NMAC, 04/21/2022]

16.23.1.8 SEVERABILITY: Should any part or application of Title 16, Chapter 23 NMAC NMAC be declared invalid, the remainder shall remain in full force and effect.

[16.23.1.8 NMAC - RP, 16.23.1.8 NMAC, 04/21/2022]

16.23.1.9 EXCEPTIONS: Title 16, Chapter 23 NMAC NMAC does not apply to the following:

A. Other persons and health care providers licensed by appropriate agencies of New Mexico.

B. Persons providing self-care to themselves.

C. Persons who do not represent themselves or hold themselves out to be a respiratory care practitioner who are providing gratuitous care to a friend or family member.

D. Persons who provide respiratory care services in a case of emergency.

E. Title 16 Chapter 23 NMAC does not prohibit the following from performing recognized functions and duties of medical laboratory personnel for which they are appropriately trained and certified.

(1) Qualified clinical laboratory personnel working in facilities licensed by the federal Clinical Laboratories Improvement Act of 1967, as amended, or any subsequent act.

(2) Persons accredited by the college of American pathologists; or

(3) Qualified clinical laboratory personnel who work in facilities accredited by the joint commission on accreditation of health care organizations.

[16.23.1.9 NMAC - RP, 16.23.1.9 NMAC, 04/21/2022]

16.23.1.10 INSPECTION OF PUBLIC RECORDS: The board operates in compliance with the Inspection of Public Records Act, Section 14-2-1 through Section 14-2-12, NMSA 1978. The board administrator is the custodian of the board's records.

[16.23.1.10 NMAC - Rp, 16.23.1.10 NMAC, 04/21/2022]

16.23.1.11 TELEPHONE CONFERENCES: When it is difficult or impossible for a board member to attend a board meeting in person, the member may participate by means of a conference telephone or similar communications equipment as authorized by the Open Meetings Act, Subsection C of Section 61-15-1, NMSA 1978.

A. Participation by such means shall constitute presence in person at the meeting.

B. Each member participating by conference telephone must be identified when speaking.

C. All participants must be able to hear each other at the same time.

D. Members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

[16.23.1.11 NMAC - Rp, 16.23.1.11 NMAC, 04/21/2022]

16.23.1.12 INCOMPLETE APPLICATIONS PURGED: Incomplete applications for licensure will be purged from board files two years from the date the file is closed.

[16.23.1.12 NMAC - N, 04/21/2022]

16.23.1.13 LEGAL NAME CHANGE: If a licensee or permit holder requests a new license or permit, wall or renewal, to be compatible with a legal name change, the department will issue a new license upon receipt of the following:

A. the old license(s) or permit(s);

B. legal proof of the name change;

C. a written request for name change to be made on licensing or permit records; and

D. fee(s) in an amount provided in 16.23.2.8 NMAC.

[16.23.1.13 NMAC - N, 04/21/2022]

16.23.1.14 ADDRESS OR EMPLOYMENT CHANGES: It is the licensee's or permitee's responsibility to keep the department informed immediately of any changes in residential and employment addresses and phone numbers so that renewal notices and correspondence from the department will be received by the licensee or permitee, by sending an email to the following board email address: respiratorycarebd@state.nm.us.

[16.23.1.14 NMAC - N, 04/21/2022]

16.23.1.15 DUPLICATE LICENSE: In the event a license or permit is lost or destroyed, the department will issue a duplicate license or permit upon receipt of the following.

A. Notice to the department of the loss by the licensee or permitee.

B. A request for a duplicate.

C. Administrative fee(s) in an amount as provided in 16.23.2.8 NMAC.

[16.23.1.15 NMAC - N, 04/21/2022]

16.23.1.16 INACTIVE STATUS REQUIREMENTS: Currently licensed practitioners who are not currently practicing in New Mexico under the terms and provisions authorized by the Respiratory Care Act, or who are working for the federal government, may place their licenses on inactive status at the time of renewal rather than let their licenses expire.

A practitioner's license will be placed on inactive status by the department after the licensee has provided the following:

A. a completed renewal application signed by the applicant under penalty of perjury, on which the "inactive status requested" box has been checked;

B. documentation verifying that the continuing education requirements were met as set forth 16.23.12 NMAC; and

C. the applicable fee for inactive status set forth in 16.23.2.8 NMAC.

D. the practitioner must submit the completed renewal application form marked for inactive status with a postmark dated on or before September 30 in order to be processed for inactive status.

E. Upon approval of the inactive status application request, the department will send the licensee notice that the license has been placed on inactive status.

F. A license on inactive status must be reactivated before September 30 of the *next* odd-numbered year, or the license shall lapse and become null and void (see 16.23.11.11 NMAC).

G. Until the inactive status license has been reactivated, the respiratory care practitioner may not practice respiratory care in New Mexico unless employed by the federal government.

H. Inactive status reactivation: The individual who has placed his or her license on inactive status may reactivate the license before September 30 of the next odd-numbered year by completing the following procedure.

(1) Request a reactivation application form from the department or download it from the board's website.

(2) Complete, sign, and return the reactivation application form with a postmark dated on or before September 30 of the odd-numbered year and within the time limitation set forth in 16.23.9.14 NMAC.

(3) Remit the applicable fee for reactivation from inactive status set forth in 16.23.2.8 NMAC.

I. Upon review and approval of the reactivation application, the department will issue a reactivated license to the licensee. The license number will remain the same.

J. Upon receipt of the reactivated license, the licensee may resume the practice of respiratory care in New Mexico.

K. Continuing Education Requirements for Reactivation: For the next renewal cycle, the number of continuing education hours that will be required will depend upon the reactivation date as follows:

(1) Twenty clock hours per renewal cycle. If the completed reactivation application is received by the department postmarked *on or before* September 30 of the *even*-numbered year, the number of continuing education hours due at the next renewal (September 30 of the next odd-numbered year) will be 20.

(2) Ten clock hours per renewal cycle. If the completed reactivation application is received by the department postmarked *on or after* October 1 of the *even*-numbered year through May 31 of the odd-numbered year, the number of continuing education hours due at the next renewal (September 30 of the same year) will be 10.

(3) Zero clock hours. If the completed reactivation application is approved by the department postmarked *on or after* June 1 of the *odd*-numbered (renewal) year through July 31 of the same year, the number of continuing education hours due at the next renewal (September 30 of the same year) will be zero.

[16.23.1.16 NMAC - N, 04/21/2022]

16.23.1.17 LICENSE EXPIRATION AND LAPSE DUE TO NON-RENEWAL: Respiratory care practitioner licenses not renewed or which have not been placed on inactive status by the end of the renewal cycle will be deemed expired and invalid.

A. The individual who has allowed license expiration, must reactivate the expired license before the next scheduled renewal expiration date for licensed respiratory care practitioners on September 30 of the next odd-numbered year. The applicant must complete the following process in order to reactivate the license.

(1) Contact the department to request a reactivation application form or download it from the board's website.

(2) Complete and return to the department, the reactivation application form with the necessary continuing education documentation required in 16.23.12 NMAC.

(3) Submit to the department a check or money order payable to the board in the amount of the renewal and penalty fee (See 16.23.2.8 NMAC).

(4) Submit to the department, proof of 20 clock hours of continuing education per renewal cycle.

B. License lapse: An expired license that has not been reactivated before the next scheduled license expiration date of September 30 of the next odd-numbered year, will lapse and become null and void.

(1) Re-licensure required. Before resuming the practice of respiratory care in New

Mexico, the individual whose license has lapsed must be approved for licensure by the department.

(2) Application required. The applicant with a lapsed license must repeat the entire initial licensure application process as set forth in 16.23.3 and 16.23.4 NMAC.

[16.23.1.17 NMAC - Rp, 16.23.1.17 NMAC, 04/21/2022]

16.23.1.18 PARENTAL RESPONSIBILITY ACT COMPLIANCE: Disciplinary action related to compliance with the provisions in the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13 NMSA 1978, are regulated pursuant to Section 16.1.1 NMAC, Parental Responsibility Act Compliance.

[16.23.1.18 NMAC - N, 04/21/2022]

HISTORY OF REPEALED MATERIAL:

16.23.1 NMAC, "Respiratory Care Practitioners - General Provisions", filed 6/6/2000 - Repealed effective 04/21/2022.

Other History: 16.23.1 NMAC, "Respiratory Care Practitioners - General Provisions", (filed 6/6/2000) was replaced by 16.23.1 NMAC, "General Provisions", effective 04/21/2022.

REGULATION AND LICENSING DEPARTMENT

RESPIRATORY CARE ADVISORY BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 23 RESPIRATORY CARE PRACTITIONERS
PART 3 PRACTITIONER LICENSE QUALIFICATIONS, APPLICATION, RENEWAL, AND EXPIRATION

16.23.3.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners.

[16.23.3.1 NMAC - Rp, 16.23.3.1 NMAC, 04/21/2022]

16.23.3.2 SCOPE: The provisions of Part 3 of Chapter 23 apply to all persons applying to the board for a license to practice respiratory care in New Mexico.

[16.23.3.2 NMAC - Rp, 16.23.3.2 NMAC, 04/21/2022]

16.23.3.3 STATUTORY AUTHORITY: Part 3 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-6 NMSA 1978.

[16.23.3.3 NMAC - Rp, 16.23.3.3 NMAC, 04/21/2022]

16.23.3.4 DURATION: Permanent.

[16.23.3.4 NMAC - Rp, 16.23.3.4 NMAC, 04/21/2022]

16.23.3.5 EFFECTIVE DATE: April 21, 2022 unless a later date is cited at the end of a section.

[16.23.3.5 NMAC - Rp, 16.23.3.5 NMAC, 04/21/2022]

16.23.3.6 OBJECTIVE: The objective of Part 3 of Chapter 23 is to establish the required qualifications necessary for licensure as a respiratory care practitioner.

[16.23.3.6 NMAC - Rp, 16.23.3.6 NMAC, 04/21/2022]

16.23.3.7 DEFINITIONS: All definitions related to this section are in 16.23.1.7 NMAC.

[16.23.3.7 NMAC - Rp, 16.23.3.7 NMAC, 04/21/2022]

16.23.3.8 LICENSE REQUIRED TO PRACTICE: The applicant may not engage in the practice of respiratory care in New Mexico until approval for licensure has been given, and the department has issued an initial license. The applicant may not represent or hold him or herself out to be a respiratory care practitioner or RCP without a valid license.

[16.23.3.8 NMAC - Rp, 16.23.3.8 NMAC, 04/21/2022]

16.23.3.9 LICENSURE REQUIREMENTS: The board only recognizes accreditation by the commission on accreditation for respiratory care (CoARC) or its successor approval body. All references to the national board exams in this part are to the national board for respiratory care, inc (NBRC) examination. In accordance with Section 61-12B-7 and Section 61-12B-8, NMSA 1978, and the qualifications set forth therein, the applicant must provide verification of the following:

A. successful completion of an accredited respiratory care education program;

B. proof of passing the NBRC examination resulting in credentialing as a registered respiratory therapist or RRT and maintaining a current RRT credential; or

C. current licensure in another state that has educational and examination requirements at least equal to or better than those established for licensure in New Mexico at the time of original licensure.

D. Applicants for licensure must provide the following items of documentation to the department:

(1) A completed and signed application on a form approved and provided by the department, that includes the applicant's:

(a) full name;

(b) date and place of birth;

(c) current mailing address;

(d) current electronic mail address for all communications, including renewal notices;

(e) main contact phone number;

(f) description of respiratory care therapy program;

(g) date of program diploma;

(h) type of NBRC certification;

(i) description of other NBRC certifications, if any;

(j) education history; and

(k) licensure history, if any.

(2) A color passport-type photograph of the applicant taken within the last year.

(3) A copy of an official transcript, certificate or diploma showing completion of an approved respiratory care program or a letter sent directly from the program director prior to matriculation as provided in 16.23.3.9. NMAC.

(4) A copy of one of the following documents from the NBRC:

(a) identification card from the NBRC confirming that the applicant holds a current RRT credential; or

(b) the examination results showing successful passing of the NBRC, RRT examination if the applicant has not yet received the NBRC certificate;

(c) a verification letter from the NBRC showing CRT (prior to January 1, of 2018 in New Mexico or another United States jurisdiction), or RRT credential;

(d) upon being credentialed by the NBRC, an applicant has one year to apply to the board for licensure;

(e) an initial applicant may also successfully complete a one year graduate respiratory license in lieu of being credentialed by the NBRC.

(5) Payment to the board of the applicable fee as provided in 16.23.2.8 NMAC.

(6) If applicable**,** verification of licensure status sent directly to the department by all state licensing boards where the applicant is or has ever been licensed.

(7) A resume.

(8) If applicable, those returning to the field and are applying for new licensure shall meet the requirements set in this rule.

E. After the above listed documentation has been reviewed and approved by the department, in consultation with the board, the applicant will be issued a respiratory care practitioner's license valid until September 30 of the next odd numbered year.

F. Initial respiratory care practitioner licenses issued after June 1 of the odd-numbered year, will not expire until September 30 of the next renewal period, see Subsection D of 16.23.3.17 NMAC.

[16.23.3.9 NMAC - Rp, 16.23.3.9 NMAC, 04/21/2022]

16.23.3.10 [RESERVED]

[16.23.3.10 NMAC - Repealed 04/21/2022]

16.23.3.11 REQUIREMENTS FOR UPGRADING LICENSE TYPE: Respiratory therapists wanting to upgrade their license type from CRT to RRT must complete an affidavit and submit the required fee as set forth in 16.23.2.8 NMAC.

[16.23.3.11 NMAC - Rp, 16.23.3.11 NMAC, 04/21/2022]

16.23.3.12 ELECTRONIC SIGNATURES: Electronic signatures will be acceptable for applications submitted pursuant to 14-16-1 through 14-16-21 NMSA 1978.

[16.23.3.12 NMAC - Rp, 16.23.3.12 NMAC, 04/21/2022]

16.23.3.13 EXPEDITED LICENSURE BY RECIPROCITY: The board will issue a license by reciprocity to an applicant who holds a current license in good standing in another United States jurisdiction that meets or exceeds the licensing requirements set out in Section 61-12B-7 NMSA 1978, provided the applicant submits a completed application on a form approved and provided by the department with the information required in 16.23.3.9 D. NMAC and with the required fee, and meets all the other requirements set forth in 16.23.3.9 NMAC.

[16.23.3.13 NMAC - N, 04/21/2022]

16.23.3.14 VERIFICATION OF LICENSURE TO EMPLOYER: A copy of the initial license and any subsequent renewal licenses must be kept on file with the licensee's employer.

16.23.3.15 PRACTITIONER LICENSE EXPIRATION DATE: Respiratory care practitioner licenses expire on September 30 of each odd-numbered year except as provided in Subsection D of 16.23.3.17 NMAC.

[16.23.3.15 NMAC - N, 04/21/2022]

16.23.3.16 RENEWAL OF PRACTITIONER LICENSE, NOTIFICATION: No less than 45 days prior to the license expiration date, notices and renewal applications will be mailed to the licensee at the last official address on file with the department.

A. Failure to receive the renewal application notice will not relieve the licensee of the responsibility of renewing the license by the expiration date.

B. It is the licensee's responsibility to request a renewal application if one has not been received at least thirty days prior to the license expiration date.

C. Practitioner licenses shall be renewed by the department, in consultation with the board, only upon receipt of the following:

(1) a completed renewal application;

(2) certification that the continuing education requirements were met as set forth in 16.23.12 NMAC; and

(3) proof of current national board of respiratory care (NBRC) credential;

(4) payment in the amount of the required fee as provided in 16.23.2.8 NMAC.

[16.23.3.16 NMAC - N, 04/21/2022]

16.23.3.17 RENEWAL DEADLINE: The deadline for renewal of current respiratory care practitioner licenses is September 30 of the odd-numbered year, except as provided in Subsection D below.

A. September 30 postmark requirement. Completed renewal applications must be postmarked or completed on-line on or before September 30 of the renewal year.

B. Application rejected. Incomplete renewal applications will be rejected by the board.

C. Late renewal. Any renewal application, corrected or otherwise returned to the department postmarked after September 30, of the odd-numbered year, is expired and must be accompanied by the penalty fee required for reactivation (see 16.23.2.8 NMAC).

D. A practitioner license issued after June 1 of the renewal (odd-numbered) year will not expire until September 30 of the renewal cycle following the current renewal cycle.

[16.23.3.17 NMAC - N, 04/21/2022]

16.23.3.18 LICENSE EXPIRATION:

A. Respiratory care licenses not renewed by the end of the renewal cycle will be expired and invalid.

B. Official notification of license expiration will be sent via electronic mail to the last electronic mail address on file with the department.

C. A person continuing to practice without a valid license is in violation of Section 61-12B-4 of the Respiratory Care Act, and is guilty of a misdemeanor. The department may seek civil action against the violator in accordance with Section 61-12B-15 NMSA 1978.

[16.23.3.18 NMAC - N, 04/21/2022]

HISTORY OF 16.23.3 NMAC:

PRE-NMAC HISTORY: The material in PART 3 was derived from regulations previously filed with the State Records Center and Archives by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act," filed 1/22/1985**;** HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 5/11/1987; by department name Regulation & Licensing Department, former division name, Boards & Commissions Division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12/10/1987; and by department name Regulation and Licensing Department, Respiratory Care Advisory Board rule numbers, Rule 91-2, "Qualifications for Practitioner Licenses," filed 8/20/1991 and Rule 2, "Qualification for Practitioner License," filed 03/22/1995.

HISTORY OF THE REPEALED MATERIAL:

16.23.3 NMAC, "Qualifications for Practitioner License", filed 12/30/2002 - Repealed effective 7/15/2017.

16.23.3 NMAC, "Qualifications for Practitioner License", filed 6/15/2019 - Repealed effective 04/21/2022.

Other History: Rule 2, "Qualification for Practitioner License," filed 3/22/1995 was renumbered, reformatted and replaced into first version of the New Mexico Administrative Code as 16 NMAC 23.3, "Qualifications for Practitioner License", filed 11/10/1997.

16 NMAC 23.3, "Qualifications for Practitioner License", filed 11/10/1997, renumbered and reformatted **to** 16.23.3 NMAC, "Qualifications for Practitioner License", effective 1/30/2003.

16.23.3 NMAC, "Qualifications for Practitioner License", (filed 12/30/2002) was replaced by 16.23.3 NMAC, "Qualifications for Practitioner License", effective 7/15/2017.

16.23.3 NMAC, "Qualifications for Practitioner License (filed 06/15/2019) was replaced by 16.23.3 NMAC, 'Qualifications for Practitioner License", effective 04/21/2022.

REGULATION AND LICENSING DEPARTMENT

RESPIRATORY CARE ADVISORY BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 23 RESPIRATORY CARE PRACTITIONERS

PART 5 LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, DEPENDENT CHILDREN, AND VETERANS

16.23.5.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners.

[16.23.5.1 NMAC - Rp, 16.23.5.1 NMAC, 04/21/2022]

16.23.5.2 SCOPE: This part sets forth application procedures to expedite licensure for military service members, spouses and veterans.

[16.23.5.2 NMAC - Rp, 16.23.5.2 NMAC, 04/21/2022]

16.23.5.3 STATUTORY AUTHORITY: Part 4 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-6 NMSA 1978.

[16.23.5.3 NMAC - Rp, 16.23.5.3 NMAC, 04/21/2022]

16.23.5.4 DURATION: Permanent.

[16.23.5.4 NMAC - Rp, 16.23.5.4 NMAC, 04/21/2022]

16.23.5.5 EFFECTIVE DATE: April 21, 2022, unless a later date is cited at the end of a section.

[16.23.5.5 NMAC - Rp, 16.23.5.5 NMAC, 04/21/2022]

16.23.5.6 OBJECTIVE: The objective of this part is to expedite licensure for military service members, their spouses and dependent children, and for veterans pursuant to Section 61-1-34, NMSA 1978.

[16.23.5.6 NMAC - Rp, 16.23.5.6 NMAC, 04/21/2022]

16.23.5.7 DEFINITIONS: All definitions related to this section are in 16.23.1.7 NMAC.
[16.23.5.7 NMAC - Rp, 16.23.5.7 NMAC, 04/21/2022]

16.23.5.8 APPLICATION REQUIREMENTS: The applicant shall submit:

A. A completed application on a form approved by the board and provided by the department which includes applicant's:

(1) full name;

(2) current mailing address;

(3) current electronic mail address;

(4) date of birth;

(5) proof as described in subsection B., below.

B. The applicant shall provide the following satisfactory evidence as follows:

(1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and

(3) the following documentation:

(a) for military service member: copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members: copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD 214 showing proof of honorable discharge.

C. The license or registration shall be issued by the department as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application for a license, and any other required fees.

D. Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

E. A license issued pursuant to this section shall be valid for the time period that is specified in the Respiratory Care Act and in 16.23.3 NMAC.
[16.23.5.8 NMAC - Rp, 16.23.5.8 NMAC, 04/21/2022]

16.23.5.9 RENEWAL REQUIREMENTS:

A. A license issued pursuant to this section shall not be renewed unless the licensee satisfies the requirements for renewal set forth in 16.23.3.9 NMAC pursuant to Section 61-12B NMSA 1978.

B. Original and renewal registrations shall be valid until September 30 of every odd-numbered year as set forth in 16.23.3.15 NMAC.

C. Prior to the expiration of the license; licensee shall apply for registration renewal and pay the renewal fee as set forth in 16.23.3 NMAC.

D. As a courtesy, the department will send via electronic mail license renewal notifications to licensees before the license expiration date, to the last known electronic mail address on file with the department. Failure to receive the renewal notification shall not relieve the licensee of the responsibility of timely renewal on or before the expiration date of the license.
[16.23.5.9 NMAC - RP, 16.23.5.9 NMAC, 04/21/2022]

HISTORY OF 16.23.5 NMAC: [RESERVED]

HISTORY OF REPEALED MATERIAL:
16.23.5 NMAC, "Licensure For Military Service Members, Spouses, Dependent Children, And Veterans", filed 6/15/2017 - Repealed effective 04/21/2022].

Other History: 16.23.5 NMAC, "Licensure For Military Service Members, Spouses, Dependent Children, And Veterans", filed 6/15/2017 was replaced by 16.23.5 NMAC, "Licensure For Military Service Members, Spouses, Dependent Children, And Veterans", effective 04/21/2022.

REGULATION AND LICENSING DEPARTMENT
RESPIRATORY CARE ADVISORY BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 23 RESPIRATORY CARE PRACTITIONER
PART 6 INITIAL APPLICATION AND RENEWAL OF TEMPORARY PERMITS FOR STUDENTS, STUDENT EXTERNS, AND GRADUATES

16.23.6.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners.
[16.23.6.1 NMAC - Rp, 16.23.6.1 NMAC, 04/21/2022]

16.23.6.2 SCOPE: The provisions of Part 6 of Chapter 23 apply to respiratory care program student externs or graduates applying for temporary permits to work for remuneration under the training, direction, and supervision of a New Mexico licensed respiratory care

practitioner or New Mexico licensed physician who has agreed to be the applicant's training supervisor in a supervisory facility.
[16.23.6.2 NMAC - Rp, 16.23.6.2 NMAC, 04/21/2022]

16.23.6.3 STATUTORY AUTHORITY: Part 6 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-6 NMSA 1978.
[16.23.6.3 NMAC - Rp, 16.23.6.3 NMAC, 04/21/2022]

16.23.6.4 DURATION: Permanent.
[16.23.6.4 NMAC - Rp, 16.23.6.4 NMAC, 04/21/2022]

16.23.6.5 EFFECTIVE DATE: April 21, 2022 unless a later date is cited at the end of a section.
[16.23.6.5 NMAC - Rp, 16.23.6.5 NMAC, 04/21/2022]

16.23.6.6 OBJECTIVE: The objective of Part 6 of Chapter 23 is to establish the qualification requirements and application procedures for a student extern or graduate of a respiratory care program to obtain a temporary permit under the provisions of the Respiratory Care Act in order to become employed in the furnishing of respiratory care under the limitations described herein.
[16.23.6.6 NMAC - Rp, 16.23.6.6 NMAC, 04/21/2022]

16.23.6.7 DEFINITIONS: All definitions related to this section are in 16.23.1.7 NMAC.
[16.23.6.7 NMAC - Rp, 16.23.6.7 NMAC, 04/21/2022]

16.23.6.8 APPLICATION REQUIREMENTS FOR STUDENTS: Persons enrolled in an approved respiratory care training program who are performing respiratory care services in a supervisory facility as part of the training, but receiving no remuneration for those services, are not required to have a temporary permit issued by the department.
[16.23.6.8 NMAC - Rp, 16.23.6.8 NMAC, 04/21/2022]

16.23.6.9 APPLICATION REQUIREMENTS FOR STUDENT EXTERNS: The department, in consultation with the board, will issue temporary permits to respiratory care student externs enrolled in a traditional or non-traditional respiratory care training program approved as set forth in Paragraph (4) of Subsection A and Paragraph (5) of Subsection R of 16.23.1 NMAC, or by the board and who provide satisfactory evidence of the following:

A. Verification of current respiratory care program enrollment sent directly by the educational institution to the department.

B. A color passport-type photograph taken within the past year.

C. A notarized statement or letter sent by the applicant's direct supervisor confirming the location and status of the applicant's employment.

D. An agreement signed by the proposed training supervisor made under penalty of perjury, which certifies that the supervisor will provide training and direct supervision which meets the requirements of these regulations.

E. A temporary permit application form approved and provided by the department, completed by the applicant, and signed by the applicant attesting that the information on the application is complete under penalty of perjury.

F. Payment to the board in the amount set forth in Subsection A of 16.23.2.8 NMAC.
[16.23.6.9 NMAC - Rp, 16.23.6.9 NMAC, 04/21/2022]

16.23.6.10 APPLICATION REQUIREMENTS FOR GRADUATES: The department, in consultation with the board, will issue non-renewable temporary permits to non-licensed graduates from an approved respiratory care training and education program (see Subsections E and GG of 16.23.6.1 NMAC), and who provide the following:

A. the required items listed in of Subsections B, C, D and E of 16.23.6.9 NMAC;

B. a copy of the applicant's graduation certificate or diploma from an approved respiratory care training and educational program; or

C. the applicant's graduate transcript sent directly to the department by the educational institution; or an official copy of the transcripts sent directly from the program; or a letter sent directly from the program director prior to matriculation; and

D. proof of good faith attempts and reasonable progress in pursuing the NBRC credentialing as a RRT, by providing a copy of the letter scheduling the applicant for the NBRC, or RRT credentialing examination if the applicant has not taken the credentialing examination previously but, is scheduled to sit for it.
[16.23.6.10 NMAC - Rp, 16.23.6.10 NMAC, 04/21/2022]

16.23.6.11 INITIAL TEMPORARY PERMIT ISSUANCE UPON APPROVAL: After the applicant has met all the requirements for a temporary permit, and the application has received approval by the department, in consultation with the board, the applicant will be issued a temporary permit for one year.

A. The temporary permit is only valid if the conditions of the permit remain unchanged.

B. A temporary permit will be sent by the department to the person on record as the permittee's training supervisor.
[16.23.6.11 NMAC - Rp, 16.23.6.11 NMAC, 04/21/2022]

16.23.6.12 [RESERVED]
[16.23.6.12 NMAC - Rp, 16.23.6.12 NMAC, 04/21/2022]

16.23.6.13 LIMITATIONS ON STUDENT EXTERN TEMPORARY PERMITS: Student externs and graduates with temporary permits will be limited in

the performance of respiratory care to those competence levels that have written verification and in accordance with the safe practice and patient care safety regulations of the facility.

A. Temporary permits are only valid for the performance of respiratory care under the direct supervision of the training supervisor who signed the supervisor's agreement portion of the applicant's application for the temporary permit.

B. Any change in supervision or in employment by either the permittee or the training supervisor invalidates the permit and must be reported to the department. Since the training supervisor is responsible for the respiratory care administered by the permittee, it is advisable for the training supervisor in this circumstance to document to the department that he or she is no longer professionally responsible for the permittee.

C. A temporary permit issued to a respiratory care student extern is immediately invalid upon the student extern's withdrawal from the respiratory care training and education program.

D. A student extern temporary permit may not be renewed more than two times.

[16.23.6.13 NMAC - Rp, 16.23.6.13 NMAC, 04/21/2022]

16.23.6.14 [RESERVED]

[16.23.6.14 NMAC - Rp, 16.23.6.14 NMAC, 04/21/2022]

16.23.6.15 RE-ENROLLMENT IN NEW PROGRAM: If an applicant has failed or withdrawn from a program and at a later date enrolls in a *new* approved respiratory care program, he or she may apply for a *new* permit under the new program.

A. With the application, the applicant must provide a letter to the department explaining the circumstances of withdrawal from the previous program and of enrollment in the new program.

B. The applicant must meet all the application requirements set forth in 16.23.6.9 NMAC.

C. The previous temporary permit number will be reissued.

D. All applicable provisions in 16.23.6 NMAC and 16.23.7 NMAC will apply to the new temporary permit.

[16.23.6.15 NMAC - Rp, 16.23.6.15 NMAC, 04/21/2022]

16.23.6.16 LICENSE REQUIRED UPON CREDENTIALING: Any respiratory care training program graduate who holds a temporary permit and has successfully passed the NBRC, RRT credentialing examination must apply for and receive a respiratory care practitioner's license before he or she may be recognized as a RCP, and may practice as such, independent of training supervision in New Mexico.

[16.23.6.16 NMAC - Rp, 16.23.6.16 NMAC, 04/21/2022]

16.23.6.17 [RESERVED]

[16.23.6.17 NMAC - Rp, 16.23.6.17 NMAC, 04/21/2022]

16.23.6.18 [RESERVED]

[16.23.6.18 NMAC - Rp, 16.23.6.18 NMAC, 04/21/2022]

16.23.6.19 DIRECT SUPERVISION IN PRACTICE: The training supervisor must hold a current license as a RCP in New Mexico, and shall train the temporary permittee in the performance of respiratory care functions until the training supervisor determines that the permittee is competent to perform those functions independently. The degree of independence extended to the permittee is contingent upon the supervised training received by the permittee from the training supervisor who is ultimately medically and legally liable for the actions of the permittee.

A. The training supervisor is the agent of the facility and trains the trainee permittee in accordance with the safe practice and patient care safety standards of the facility.

B. Before the permittee is allowed to perform respiratory care functions independently, the provisions of 16.23.6.13 NMAC require that the training supervisor file with the facility a written verification that the permittee is competent to perform respiratory care functions.

C. When the facility allows the permittee to perform the approved respiratory care functions on patients, the facility assumes responsibility as well.

[16.23.6.19 NMAC - Rp, 16.23.6.19 NMAC, 04/21/2022]

16.23.6.20 BACK-UP FOR TRAINING SUPERVISOR:

A. The training supervisor shall have a written back-up system to ensure that there is a licensed RCP on site who is privileged to perform all of the duties the institution assigns to a licensed RCP.

B. The training supervisor is ultimately responsible for the actions of the permittee.

[16.23.6.20 NMAC - Rp, 16.23.6.20 NMAC, 04/21/2022]

16.23.6.21 [RESERVED]

[16.23.6.21 NMAC - Rp, 16.23.6.21 NMAC, 04/21/2022]

16.23.6.22 TEMPORARY STUDENT PERMIT EXPIRATION:

A. Temporary permits are issued for a period of one year, and will expire on the last day of the month in which the initial permit was issued.

B. Renewed temporary permits will also expire on the last day of the same month in which the permit was initially issued.

C. The number of permits possible will be a total of three maximum regardless of the period of unemployment while the permittee is enrolled in the respiratory care training program.

[16.23.6.22 NMAC - Rp, 16.23.6.22 NMAC, 04/21/2022]

16.23.6.23 RENEWAL REQUIREMENTS AND PROCESS FOR STUDENT TEMPORARY PERMITS:

A. At least 45 days before the temporary permit expiration date, the department will mail the permittee a temporary permit renewal notice and an application form to apply for permit renewal.

B. Renewal application notices will be mailed to the last residential address on file with the department. It is the permittee's responsibility to request a renewal form if one has not been received 30 days prior to the permit expiration date.

C. The department will send the permittee's training supervisor a copy of the renewal notice, which was sent to the permittee.

D. All applicants for temporary permit renewal must meet the following requirements:

(1) Complete and sign a renewal application form approved by the department.

(2) Submit a check or money order payable to the board for the required fee as provided in 16.23.4.8 NMAC, whichever is applicable.

[16.23.6.23 NMAC - Rp, 16.23.6.23 NMAC, 04/21/2022]

16.23.6.24 APPROVAL REQUIRED: All temporary permit renewal requests are subject to individual review and approval by the department, in consultation with the board. If a temporary permit renewal application is approved, a renewal temporary permit will be mailed to the permittee.

[16.23.6.24 NMAC - Rp, 16.23.6.24 NMAC, 04/21/2022]

16.23.6.25 VERIFICATION OF RENEWAL TO EMPLOYER: A copy of the renewed temporary permit must be kept on file with the temporary permittee's employer. The department will mail a temporary permit to the training supervisor.

[16.23.6.25 NMAC - Rp, 16.23.6.25 NMAC, 04/21/2022]

16.23.6.26 FINAL PERMIT - NO RENEWAL: Forty-five days prior to the expiration date of the third and final permit (initial permit plus two renewals), the permittee and the permittee's training supervisor will be notified that the permittee's permit lapse is imminent, and that the privileges allowed by the permit will no longer be authorized.

A. In order to continue practicing in the profession, the permittee must complete the process for practitioner license application as set forth in 16.23.3 NMAC.

B. Any licensed practitioner who aids and abets the continued practice of a person whose permit privileges have lapsed shall be subject to disciplinary action by the department for violation of the Respiratory Care Act and Subsection H of 16.23.17.8 NMAC.

[16.23.6.26 NMAC - Rp, 16.23.6.26 NMAC, 04/21/2022]

History of 16.23.6 NMAC:

Pre-NMAC History:

The material in Part 6 was derived from regulations previously filed with the State Records Center and Archives Center by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act," filed 1/22/1985**;** HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 5/11/1978**;** and by department name Regulation & Licensing Department, former division name, Boards & Commissions Division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12/10/1987**.** Applicable provisions were also filed by department name Regulation and Licensing Department, Respiratory Care Advisory Board in rule numbers, Rule 91-1, "Definitions," filed 8/20/1991 and Rule 1, "Definitions," filed 3/22/1995; Rule 91-4, "Application Procedure," filed on 8/20/1991; Rule 91-3, "Temporary Permits," filed on 8/20/1991; and Rule 3, "Temporary Permits," filed on 10/7/1992.

HISTORY OF REPEALED MATERIAL:

16.23.6 NMAC, "Temporary Permits", filed 6/6/2002 - Repealed effective 7/15/2017.

16.23.6 NMAC, 'Temporary Permits", filed 06/15/2017 - Repealed effective 04/21/2022.

Other History: 16 NMAC 23.6, "Temporary Permits", was renumbered to 16.23.6 NMAC, filed on 6/6/2000.

16.23.6 NMAC, "Temporary Permits", (filed 6/6/2000) was replaced by 16.23.6 NMAC, "Temporary Permits, effective 7/15/2017.

16.23.6 NMAC, "Temporary Permits", (filed 06/15/2017) was replaced by 16.23.6 NMAC, "Temporary Permits, effective 04/21/2022.

REGULATION AND LICENSING DEPARTMENT

RESPIRATORY CARE ADVISORY BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 23 RESPIRATORY CARE PRACTITIONERS

PART 12 CONTINUING EDUCATION

16.23.12.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners.

[16.23.12.1 NMAC - Rp, 16.23.12.1 NMAC, 04/21/2022]

16.23.12.2 SCOPE: The provisions of Part 12 of Chapter 23 applies to all respiratory care practitioners intending to renew or reactivate their New Mexico license.

[16.23.12.2 NMAC - Rp, 16.23.12.2 NMAC, 04/21/2022]

16.23.12.3 STATUTORY AUTHORITY: Part 12 of Chapter 23 is promulgated pursuant to Section 61-12B-6 NMSA 1978.

[16.23.12.3 NMAC - Rp, 16.23.12.3 NMAC, 04/21/2022]

16.23.12.4 DURATION: Permanent.
[16.23.12.4 NMAC - Rp, 16.23.12.4 NMAC, 04/21/2022]

16.23.12.5 EFFECTIVE DATE: April 21, 2022, unless a later date is cited at the end of a section.
[16.23.12.5 NMAC - Rp, 16.23.12.5 NMAC, 04/21/2022]

16.23.12.6 OBJECTIVE: The objective of Part 12 of Chapter 23 is to set forth the requirements and procedures for the New Mexico licensed respiratory care practitioner to meet the continuing education requirements for license renewal or reactivation.
[16.23.12.6 NMAC - Rp, 16.23.12.6 NMAC, 04/21/2022]

16.23.12.7 DEFINITIONS: All definitions related to this section are in 16.23.1.7 NMAC.
[16.23.12.7 NMAC - Rp, 16.23.12.7 NMAC, 04/21/2022]

16.23.12.8 CONTINUING EDUCATION REQUIREMENTS: The completion of 20 clock hours of continuing education is a requirement for biennial license renewal or license reactivation.

A. Continuing education hours must be directly related to respiratory therapy, pulmonary function technology, or related inter-disciplinary areas of health care.

B. All licensees must complete at least one hour of ethics related continuing education in the license renewal cycle.

C. The department may consult with the board to resolve questions as to appropriate continuing education hours.

(1) The department shall be the final authority on acceptance of any educational activity submitted by a licensee or a sponsor for approval.

(2) Each respiratory care practitioner must participate in at least 20 clock hours of continuing education activities every renewal cycle, or as provided by 16.23.12.12 NMAC and 16.23.12.13 NMAC.

D. A minimum of twelve clock hours of the twenty clock hours of continuing education must be consistent with American Medical Association Category I, which includes any of the following types of educational offerings:

(1) lecture - a discourse given for instruction before an audience or through teleconference;

(2) panel - a presentation of a number of views by several professionals on a given subject with none of the views considered a final solution;

(3) workshop - a series of meetings for intensive, hands on, study or discussion, in a specific area of interest;

(4) seminar - a directed advanced study or discussion in a specific field of interest;

(5) symposium - conference of more than a single session organized for the purpose of discussion of a specific subject from various viewpoints and by various presenters;

(6) distance education - includes such enduring materials as text, internet or CD, provided the provider has included an independently scored test as part of the learning package; and

(7) NBRC- awarded continuing education credit for successful completion of re-credentialing examination(s) for renewal of credential as a CRT (if the CRT was issued prior to January 1, 2018) or RRT.
[16.23.12.8 NMAC - Rp, 16.23.12.8 NMAC, 04/21/2022]

16.23.12.9 APPROVED CONTINUING EDUCATION PROGRAMS:

A. The department will approve, on a clock hour basis, continuing education activities which meet the criteria in Subsection A of 16.23.12.8 NMAC, and which are sponsored or approved for respiratory care practitioners. Below is the list of approved continuing education providers:

(1) AAP, American academy of pediatrics;

(2) ACCP, American college of chest physicians;

(3) ATS, American thoracic society;

(4) AOA, American osteopathic association;

(5) AMA, American medical association;

(6) ASA, American society of anesthesiologists;

(7) ABIM, American board of internal medicine;

(8) ALA, American lung association;

(9) ACC. American college of cardiologists;

(10) AAST American association of sleep technologists;

(11) NMSRC New Mexico society for respiratory care;

(12) AARC American association for respiratory care;

(13) any AARC state affiliate; and

(14) AASM, American academy of sleep medicine.

B. The department will approve, on a clock hour basis, a maximum of eight clock hours per renewal cycle of the following type of educational activities listed within Subsection B of 16.23.12.9 NMAC for licensees:

(1) any hospital or healthcare organization respiratory care-related continuing education in-service;

(2) respiratory care-related science courses taken in an academic setting and received toward RRT credentialing;

(3) infection control certification or re-certification courses;

(4) hazardous materials certification or re-certification courses;

(5) advanced life support courses. This includes training offered by the American heart Association, American safety and health institute, American Academy of Pediatrics, Sugar/Safe Care, Temperature, Airway, Blood Pressure, Lab & Emotional Support (STABLE) program, Neonatal Resuscitation program (NRP), Advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS), or other courses as deemed acceptable by the board; and

(6) Any non-Category 1 CRCE credits granted by the American Association for Respiratory Care or continuing education units granted by the New Mexico Society for Respiratory Care.

C. The department will approve respiratory care-related education taken in an academic setting. One semester hour or its equivalent converts to 15 clock hours.

D. The department will automatically approve for licensed respiratory care practitioners a maximum of six clock hours of continuing education credit for each renewal period for teaching approved respiratory care-related continuing education offerings as provided in 16.23.12 NMAC. Credits will be granted one time only for each course taught no matter how many times or how many years the course is repeated.

[16.23.12.9 NMAC - Rp, 16.23.12.9 NMAC, 04/21/2022]

16.23.12.10 DOCUMENTATION: Licensees shall be responsible for maintaining documentation of their continuing education activities and shall be required to submit copies of proofs of attendance at the time of license renewal if requested by the department.

A. Proofs of attendance. Proofs of attendance, including those for in-services, must clearly state the following:

(1) name, address, and phone number of the sponsor or in-service provider;

(2) date the educational offering or in-service was completed;

(3) location where the educational offering was presented;

(4) complete name of the seminar, course, or in-service (acronyms are not sufficient);

(5) number of clock hours credited;

(6) name of the attendee receiving credit for the continuing education offering or in-service;

(7) signature of the person authorized by the sponsoring agency to verify licensee attendance; and

(8) name of the instructor.

B. Academic credit courses. A copy of the transcript of completed, approved academic credit hour courses as provided in Subsection C of 16.23.12.9 NMAC, must be submitted with the renewal documentation.

C. Teaching activities. A licensed respiratory care practitioner seeking credit for teaching respiratory care related courses must submit documentation of the teaching activity which clearly states the following:

(1) name, address, and phone number of the sponsor or in-service provider;

(2) complete name of the seminar, course, or in-service (acronyms are not sufficient);

(3) date the educational offering or in-service was presented;

(4) location where the educational offering was presented;

(5) name of the licensee instructor;

(6) number of clock hours credited; and

(7) signature of the person authorized by the sponsoring agency to verify the licensee's teaching activity.

[16.23.12.10 NMAC - Rp, 16.23.12.10 NMAC, 04/21/2022]

16.23.12.11 OTHER EDUCATIONAL OFFERINGS: The department, in consultation with the board, has an informal arrangement with the New Mexico Society for Respiratory Care (NMSRC) in which the NMSRC will review for approval other continuing education offerings, for individual licensees or continuing education sponsors.

A. Any continuing education activity that is not covered by 16.23.12.8 NMAC through 16.23.12.10 NMAC must be submitted to the NMSRC for review and approval.

(1) Approval must be granted by the NMSRC before the CE may be considered applicable toward meeting the continuing education renewal requirement for respiratory care practitioners licensed in New Mexico. Any deadlines for submission of these requests to the NMSRC will be established by the NMSRC as needed.

(2) Approval must be granted by the NMSRC before the continuing education can be submitted to the department and the board to meet the licensee's continuing education renewal requirement.

B. The request for approval of an educational seminar or course must include the following, at a minimum. The NMSRC may require additional information to process the request.

(1) Name of the seminar or course.

(2) Sponsoring party.

(3) Objective of the seminar.

(4) Format and subjects of seminar or course.

(5) Number of clock hours credited for the offering.

(6) Sample "proof of attendance" certificate.

(7) Name and qualifications of the instructor.

(8) Evaluation mechanism to be used.

C. Any processing fee established by the NMSRC for the

continuing education review service must be payable to the NMSRC and must accompany the request to the NMSRC for approval of an educational offering.

D. The NMSRC will give written notification to the sponsor or licensee of the approval or denial of the educational program or seminar.

[16.23.12.11 NMAC - Rp, 16.23.12.11 NMAC, 04/21/2022]

16.23.12.12 CONTINUING EDUCATION REQUIREMENT PRORATED: Any applicant whose initial licensure application is postmarked on or after October 1 of the even numbered year, through May 31 of the odd-numbered renewal year, shall be required to meet one half (10 clock hours**)** of the continuing education requirements for renewal at the time of renewal.

[16.23.12.12 NMAC - Rp, 16.23.12.12 NMAC, 04/21/2022]

16.23.12.13 CONTINUING EDUCATION REQUIREMENT WAIVED: Any applicant whose initial licensure application is postmarked on or after June 1 of the odd-numbered (renewal) year through July 31 of the same year shall have the continuing education requirement waived for that renewal cycle.

[16.23.12.13 NMAC - Rp, 16.23.12.13 NMAC, 04/21/2022]

16.23.12.14 CONTINUING EDUCATION AUDIT: The department, in consultation with the board, may elect to use an audit system for verifying continuing educational activities at the time of renewal.

A. In this case, the department will randomly select a minimum of ten percent of the currently licensed respiratory care practitioners to provide, with their renewal applications, hard-copy proof of having met the continuing education requirement.

B. Audit requests will be included in the renewal notice.

C. Licensees not selected for audit will be required only to list the continuing education activities completed on their renewal applications. The department shall still have the option to audit these individuals' continuing education records at any time before the next scheduled license renewal.

[16.23.12.14 NMAC - Rp, 16.23.12.14 NMAC, 04/21/2022]

16.23.12.15 [RESERVED]

[16.23.12.15 NMAC - Rp, 16.23.12.15 NMAC, 04/21/2022]

16.23.12.16 [RESERVED]

[16.23.12.16 NMAC - Rp, 16.23.12.16 NMAC, 04/21/2022]

16.23.12.17 EXTENUATING CIRCUMSTANCES - DEFERRAL OR WAIVER OF CONTINUING EDUCATION REQUIREMENT:

A. Licensees generally have 24 months to complete the continuing education requirement for renewal, which is sufficient time to meet the continuing education requirement.

B. In the event a licensee experiences an extenuating circumstance such as a prolonged debilitating personal illness; or a prolonged debilitating illness of an immediate family member; or being mobilized to active duty by the national guard or other branch of service in the United States armed forces, which makes it impossible to meet the continuing education requirement for license renewal, the individual may request an emergency deferral or a waiver of the continuing education requirement by submitting one of the following items to the board before the license expiration date.

(1) A written request for deferral or waiver explaining the circumstances that made it impossible for the licensee to meet the requirement in the 24 months prior to the expiration date of the license.

(2) Documentation accompanying the request for deferral or waiver that verifies the extenuating circumstances, such as a signed affidavit from a physician or medical provider, or a copy of the mobilization orders from the branch of government calling the person to active duty; etc.

C. A licensee mobilized for active military duty, but who is still in training when the license renewal comes due, is required to renew his/her license and meet the continuing education requirements, but the license renewal fee will not be assessed.

D. A licensee mobilized into active military duty, and who is in military action at the time the license renewal comes due, is not required to renew his/her license or meet the continuing education requirements. However, upon return to civilian status, the licensee shall renew the license without having to pay the renewal or late penalty fee.

E. The license of a respiratory therapist who does not earn the required continuing education for renewal due to his/her call to active military duty will not lapse for failure to earn continuing education hours provided the licensee submits a copy of the mobilization orders to the department prior to the expiration of the license.

F. The license renewal extension authorized by this regulation shall end one month after deployment is concluded.

G. Upon return to civilian status, the licensee shall resume earning continuing education prorated as follows after the deployment ends.

(1) If the deployment ends in October of the odd-numbered year through March of the even-numbered year, the licensee will accrue 20 hours of continuing education for the next renewal cycle.

(2) If the deployment ends in April of the even-numbered year through September of the even-numbered year, the licensee will accrue 15 hours of continuing education for the next renewal cycle.

(3) If the deployment ends in October of the even-numbered year through March of the odd-numbered year, the licensee will accrue 10 hours of

continuing education for the next renewal cycle.

(4) If the deployment ends in April of the odd-numbered year through July of the odd-numbered year, the licensee will accrue zero hours of continuing education for the year's renewal cycle.

[16.23.12.17 NMAC - Rp, 16.23.12.17 NMAC, 04/21/2022]

HISTORY OF 16.23.12 NMAC:

Pre-NMAC History: The material in Part 12 was derived from regulations previously filed with the state records center and archives by former department name health and environment department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act," filed 01/22/1985; HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 05/11/1987**;** by department name regulation & licensing department, former division name, boards & commissions division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12/10/1987; and by department name regulation and licensing department, respiratory care advisory board in rule numbers, Rule 91-5, "Renewal of Licenses," filed 08/20/1991; Rule 91-8, "Expiration/License Renewal," filed 08/20/1991; Rule 91-6, "Continuing Education", filed on 08/20/1991; and Rule 6, "Continuing Education," filed on 03/22/1995.

History of Repealed Material:

16.23.12 NMAC, "Continuing Education", filed 12/30/2002 - Repealed effective 7/15/2017.

16.23.12 NMAC, "Continuing Education" filed 6/15/2017 - Repealed effective 04/21/2022.

Other History: Rule 6, "Continuing Education," (filed 03/22/1995) was renumbered, reformatted and replaced into first version of New Mexico Administrative Code as 16 NMAC 23.12, "Continuing Education", effective 11/29/1997.

16 NMAC 23.12, "Continuing Education" (filed 11/10/1997), renumbered and reformatted to 16.23.12 NMAC, "Continuing Education" effective 01/30/2003.

16.23.12 NMAC, "Continuing Education", (filed 12/30/2002) was replaced by 16.23.12 NMAC, "Continuing Education", effective 7/15/2017.

16.23.12 NMAC, "Continuing Education" (filed 06/15/2017) was replaced by 16.23.12 NMAC, "Continuing Education", effective 04/21/2022.

REGULATION AND LICENSING DEPARTMENT

RESPIRATORY CARE ADVISORY BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 23 RESPIRATORY CARE PRACTITIONERS

PART 13 EXPANDED PRACTICE

16.23.13.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners.

[16.23.13.1 NMAC - Rp, 16.23.13.1 NMAC, 04/21/2022]

16.23.13.2 SCOPE: The provisions of Part 13 of Chapter 23 apply to all respiratory care practitioners who intend to practice an expanded scope procedure in a facility; and to the facility that intends to employ a licensed respiratory care practitioner to perform expanded scope procedures.

[16.23.13.2 NMAC - Rp, 16.23.13.2 NMAC, 04/21/2022]

16.23.13.3 STATUTORY AUTHORITY: Part 13 of Chapter 23 is promulgated pursuant to Section 61-12B-6 NMSA 1978.

[16.23.13.3 NMAC - Rp, 16.23.13.3 NMAC, 04/21/2022]

16.23.13.4 DURATION: Permanent.

[16.23.13.4 NMAC - Rp, 16.23.13.4 NMAC, 04/21/2022]

16.23.13.5 EFFECTIVE DATE: April 21, 2022, unless a later date is cited at the end of a section.

[16.23.13.5 NMAC - Rp, 16.23.13.5 NMAC, 04/21/2022]

16.23.13.6 OBJECTIVE: The objective of Part 13 of Chapter 23 is to describe the procedure for gaining department approval for qualified respiratory care practitioners to practice expanded scope procedures.

[16.23.13.6 NMAC - Rp, 16.23.13.6 NMAC, 04/21/2022]

16.23.13.7 DEFINITIONS: All definitions related to this section are in 16.23.1.7 NMAC.

[16.23.13.7 NMAC - Rp, 16.23.13.7 NMAC, 04/21/2022]

16.23.13.8 REQUIREMENTS FOR EXPANDED PRACTICE RECOGNITION: Expanded practice procedures must have the approval of the facility's medical board, and the outcome of initiating the performance of specific expanded practice procedures by respiratory care practitioners should be monitored by the facility. Furthermore, the expanded practice must meet the standard of care in the health care community. In order for a licensed respiratory care practitioner to be permitted to perform expanded practice procedures, the practitioner must meet the following requirements:

A. complete a training program in the expanded practice procedure as defined Section 16.23.13.10, and approved by the facility's medical board;

B. obtain authorization from the facility to perform, under appropriate medical direction, those expanded practice functions;

C. file notice with the board when he or she is approved by the facility to perform procedures that are expanded practice procedures for him or herself; and

D. follow the initial training with ongoing competency verification.

[16.23.13.8 NMAC - Rp, 16.23.13.8 NMAC, 04/21/2022]

16.23.13.9 [RESERVED]

16.23.13.10 TRAINING STANDARDS:

A. The level of training and skill verification for the respiratory care practitioner performing in an area of expanded practice will be consistent with the respiratory care practitioner's facility's risk management guidelines and professional accreditation and licensing requirements.

B. The level of training and skill verification for a respiratory care practitioner performing in an area of expanded practice will be consistent with professional credentialing standards.

[16.23.13.10 NMAC - Rp, 16.23.13.10 NMAC, 04/21/2022]

16.23.13.11 DEVELOPMENT OF AN EXPANDED PRACTICE PROCEDURE: [RESERVED]

[16.23.13.11 NMAC - Rp, 16.23.13.11 NMAC, 04/21/2022]

16.23.13.12 DEVELOPMENT OF AN APPROVED TRAINING PROGRAM: [RESERVED]

[16.23.13.12 NMAC - Rp, 16.23.13.12 NMAC, 04/21/2022]

16.23.13.13 APPROVAL OF TRAINING PROGRAM: [RESERVED]

[16.23.13.13 NMAC - Rp, 16.23.13.13 NMAC, 04/21/2022]

16.23.13.14 CONTINUING EDUCATION:

A. Continuing education of expanded practice skills should be consistent with the facility's accreditation requirements.

B. Respiratory care practitioners who do not perform the expanded practice approved for them frequently enough to maintain performance at a competent and proficient level shall take refresher training courses consistent with the training standards outlined in 16.23.13.10 NMAC.

[16.23.13.14 NMAC - Rp, 16.23.13.14 NMAC, 04/21/2022]

16.23.13.15 PENALTIES:

A. Effective July 1, 1998, any respiratory care practitioner who performs expanded practice procedures without valid approval will be subject to penalties as set forth in the Respiratory Care Act and in accordance with those provisions contained in the Uniform Licensing Act.

B. Any respiratory care practitioner who intentionally falsifies information to the department or allows false information to be submitted on his or her behalf with regards to expanded practice, will be subject to penalties as set forth in the Respiratory Care Act and in accordance with those provisions contained in the Uniform Licensing Act.

[16.23.13.15 NMAC - Rp, 16.23.13.15 NMAC, 04/21/2022]

HISTORY OF 16.23.13 NMAC:

Pre-NMAC History: The material in Part 13 was derived from regulations previously filed with the State Records and Archives Center by department name Regulation and Licensing Department, Respiratory Care Advisory Board in rule number, Rule 8, "Expanded Practice," filed on 3/22/1995.

History of Repealed Material:

16.23.13 NMAC, "Expanded Practice", filed 12/30/2002 - Repealed 04/21/2022.

Other History: Rule 8, "Expanded Practice," filed 03-22-95 was renumbered, reformatted and replaced into first version of the New Mexico Administrative Code as 16 NMAC 23.13, "Expanded Practice", filed on 11/10/1997.

16 NMAC 23.13, "Expanded Practice", filed on 11/10/1997, renumbered and reformatted to 16.23.13 NMAC, "Expanded Practice" effective 1/30/2003.

16.23.13 NMAC, "Expanded Practice", filed 12/30/2002 was replaced by 16.23.13 NMAC, "Expanded Practice", effective 04/21/2022.

REGULATION AND LICENSING DEPARTMENT

RESPIRATORY CARE ADVISORY BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 23 RESPIRATORY CARE PRACTITIONERS

PART 17 GROUNDS FOR DISCIPLINARY ACTION AND DISCIPLINARY PROCEEDINGS

16.23.17.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners.

[16.23.17.1 NMAC - Rp, 16.23.17.1 NMAC, 04/21/2022]

16.23.17.2 SCOPE: The provisions in Part 17 of Chapter 23 apply to any person found to be in violation of the Respiratory Care Act, Section 61-12B-1 through 61-12B-17 NMSA 1978 or the department's regulations governing the practice of respiratory care, Title 16, Article 23 NMAC.

[16.23.17.2 NMAC - Rp, 16.23.17.2 NMAC, 04/21/2022]

16.23.17.3 STATUTORY AUTHORITY: Part 17 of Chapter 23 is promulgated pursuant to Section 61-12B-6 NMSA 1978 and the Uniform Licensing Act, Section 61-1-1 through Section 61-1-36 NMSA 1978.

[16.23.17.3 NMAC - Rp, 16.23.17.3 NMAC, 04/21/2022]

16.23.17.4 DURATION: Permanent.

[16.23.17.4 NMAC - Rp, 16.23.17.4 NMAC, 04/21/2022]

16.23.17.5 EFFECTIVE DATE: April 21, 2022 unless a later date is cited at the end of a section.

[16.23.17.5 NMAC - Rp, 16.23.17.5 NMAC, 04/21/2022]

16.23.17.6 OBJECTIVE: The objective of Part 17 of Chapter 23 is to set forth the grounds which subject the applicant, licensee, or permitee to disciplinary action such as permit or license denial, suspension, or revocation, or to any other penalty provided by the Uniform Licensing Act.
[16.23.17.6 NMAC - Rp, 16.23.17.6 NMAC, 04/21/2022]

16.23.17.7 DEFINITIONS: All definitions related to this section are in 16.23.1.7 NMAC.
[16.23.17.7 NMAC - Rp, 16.23.17.7 NMAC, 04/21/2022]

16.23.17.8 DISCIPLINARY GUIDELINES: The superintendent of the department may refuse to issue or may suspend or revoke any permit or license for any cause listed below:

A. Making fraudulent representations to any respiratory care licensing board in any jurisdiction in the procurement of an initial or a renewal temporary permit or practitioner's license.

B. Having had a temporary permit or practitioner's license denied, suspended or revoked by a respiratory care licensing board in another licensing jurisdiction for any cause listed in this rule. However, the disciplinary action imposed by the department shall not exceed the length of time or severity of the action imposed by the other licensing jurisdiction.

C. Having been convicted of a crime, which substantially relates to the qualifications, functions or duties of a respiratory care practitioner. The record of conviction or the certified copy of the record of conviction shall be conclusive evidence of the conviction.

D. Engaging in the habitual or excessive use of alcohol or controlled substances.

E. Using or being under the influence of alcohol, controlled substances, or drugs that impair judgment, while on duty in any facility of employment.

F. Obtaining, possessing, administering, or using any narcotic or controlled substance in violation of any federal or state criminal law.

G. Being responsible for gross negligence in the performance and delivery of health care while engaged in the practice of respiratory care.

H. Violating any provision of the Respiratory Care Act or the rules and regulations governing respiratory care adopted by the department, or aiding or abetting any other person in violating these laws.

I. Engaging in acts of unprofessional conduct such as, but not limited to, the following:

(1) Failing to maintain minimum acceptable and prevailing standards of respiratory care practice.

(2) Performing procedures and functions beyond which the respondent is individually competent to perform or which are outside the scope of accepted and responsible practice of respiratory care.

(3) Failing to respect and protect the legal and personal rights of the patient, including the right to informed consent and refusal of treatment.

(4) Intentionally or negligently causing physical or emotional injury to a patient.

(5) Assaulting or committing battery on a patient.

(6) Abandoning or neglecting a patient requiring immediate respiratory care without making reasonable arrangements for continuation of such care.

(7) Failing to maintain for each patient a record which accurately reflects the respiratory care treatment of the patient.

(8) Failing to take appropriate action to safeguard the patient's welfare or to follow policies and procedures established by the respiratory care practitioner's employer.

(9) Divulging confidential information regarding any patient or family unless disclosure is required for responsible performance of duty, or as required by law.

(10) Failing or refusing to provide health care to a patient for reasons of discrimination.

(11) Failing to protect the health, safety, and welfare of the patient by abiding by and practicing established policies of disease prevention.

(12) Failing to take appropriate action in the health care setting to protect a patient whose safety or welfare is at risk from incompetent health care practice including, but not limited, to reporting such practice to employment and licensing authorities.

(13) As a supervisor, failing to supervise persons under one's direction or assigning the performance of functions governed by the Respiratory Care Act to persons who are untrained and unqualified to perform those functions.

(14) Removing narcotics, drugs, supplies, or equipment from any health care facility or other work place location without authorization.

J. Committing any fraudulent, dishonest, or unscrupulous act which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. Such acts shall include, but not be limited to:

(1) Engaging in fraud, misrepresentation, or deceit in writing the national licensing exam.

(2) Impersonating an examination candidate in order to write a certification or licensing examination for him or her.

(3) Impersonating another licensed practitioner.

(4) Practicing respiratory care without a current license.

(5) Permitting or allowing another person to use his

or her license for any purpose. [16.23.17.8 NMAC - Rp, 16.23.17.8 NMAC, 04/21/2022]

16.23.17.9 GROSS NEGLIGENCE: In performing respiratory care functions, a temporary permittee or licensed practitioner is under the legal duty to possess and to apply the knowledge, skill, and care that is ordinarily possessed and exercised by other temporary permittees and licensed practitioners and required by the generally accepted standards of the profession. The failure to possess or to apply to a substantial degree such knowledge, skill, and care constitutes gross negligence.

A. Charges of gross negligence may be based upon a single act of gross negligence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate gross negligence.

B. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions so long as the conduct is of such a character that harm could have resulted to the patient or to the public from the act or omission or series of acts or omissions.

C. Proof of intent will not be necessary to establish gross negligence.

D. The following shall be deemed prime examples of activities which demonstrate that the temporary permittee or licensed practitioner has engaged in an act or acts of gross negligence. The department, in consultation with the board, shall not be limited to this list in determining whether an act or acts constitute gross negligence.

(1) Acting in a manner inconsistent with the care for the welfare, health, or safety of patients set forth by the facility in which the temporary permittee or licensed practitioner is employed.

(2) Performance or conduct that substantially departs from, or fails to conform to, the minimal reasonable standards of acceptable and prevailing practice of respiratory care.

(3) Failure to adhere to the facility's quality assurance standards and risk management recommendations.

(4) Failure to maintain an appropriate standard of care.

(5) Failure to follow established policies and procedures.

(6) Performing procedures beyond the scope of one's training and education.

(7) Attempting to treat too many patients simultaneously, resulting in harm to one or more patients.

[16.23.17.9 NMAC - Rp, 16.23.17.9 NMAC, 04/21/2022]

16.23.17.10 CRIMINAL CONVICTIONS:

A. Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the department in consultation with the board:

(1) conviction for a felony violation of the Controlled Substances Act, 30-31 NMSA 1978;

(2) conviction of a felony involving intentionally violent acts, use of a deadly weapon, criminal sexual exploitation or contact; and

(3) conviction of a felony involving Medicaid billing, Medicare billing, or health insurance billing related fraud.

B. The department shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this section.

C. The department shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

D. Nothing in this rule prevents the department from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violates the Respiratory Care Act or the Impaired Health Care Provider Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

E. In connection with an application for licensure, the department shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding, criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

[16.23.17.10 NMAC - Rp, 16.23.17.10 NMAC, 04/21/2022]

16.23.17.11 REQUEST FOR REINSTATEMENT:

A. One year from the date of the revocation of a temporary permit or practitioner license, the permittee or licensee may apply to the superintendent of the department for reinstatement, restoration, or modification of the terms of the judgment order.

B The Superintendent, in consultation with the board, shall have the discretion to accept or deny the application for reinstatement, restoration, or modification when it is deemed appropriate.

C. Denial of reinstatement will be made pursuant to the Uniform Licensing Act.

[16.23.17.11 NMAC - Rp, 16.23.17.11 NMAC, 04/21/2022]

16.23.17.12 DISCIPLINARY PROCEEDINGS: An investigation

may be instituted by the department, in consultation with the board, upon the receipt of a written, complaint filed by any person, and signed under penalty of perjury, including any member of the board.

A. A complaint filed, with the department, will be received by the compliance liaison who will process the complaint and will determine how the complaint will be handled.

B. In cases where it is clearly evident that the complaint does not fall within the board's statutory authority or jurisdiction, the compliance liaison will not process the complaint and will inform the complainant of the reasons.

C. If the complaint appears to contain violations of the board's statute or its rules, the compliance liaison will process the complaint.

D. If the complaint is not lengthy, the compliance liaison may elect to present the processed complaint to the entire board in a redacted form.

E. If the complaint is lengthy or complicated, the compliance liaison shall refer it to the board's complaint committee for review, consideration, and possible investigation.

F. The department may provide the respondent with a copy of the complaint and allow a reasonable time for a response to the allegations in the complaint.

G. The foregoing notwithstanding, the department will not be required to provide the respondent with a notice of the complaint filing, or a copy of the complaint, or any related investigatory evidence prior to the notice of contemplated action if it determines that disclosure may impair, impede, or compromise the efficacy or integrity of an investigation into the matter.

[16.23.17.12 NMAC - Rp, 16.23.17.12 NMAC, 04/21/2022]

16.23.17.13 COMPLAINT COMMITTEE:

A. The complaint committee will review all documentation provided to it in reference to the subject complaint.

B. The complaint committee may be authorized by the board to consult with, without prior board approval, an investigator or other persons determined by the committee to be necessary in order to expedite the investigation of a complaint. If necessary, in such cases, the board administrator will contract for any such required services once budgetary availability is determined.

C. Upon completion of its investigation, the complaint committee shall present a summary of the complaint to the board, in a redacted form, for the purpose of enabling the board to act upon the complaint committee's recommendations concerning the disposition of the subject complaint.

D. The complaint committee may be authorized by the board to discuss a settlement agreement with the respondent as a means of resolving the complaint.

(1) The settlement shall be presented to the board for consideration and approval.

(2) Depending on the board's decision and action on any settlement agreement presented, the board may make recommendation for further action to the department superintendent.

E. Members of the complaint committee who participate in the preparation of recommendations on complaints shall not participate further in any actions initiated by the department or the board against the permittee, licensee, or applicant who is the subject of the complaint.

[16.23.17.13 NMAC - Rp, 16.23.17.13 NMAC, 04/21/2022]

16.23.17.14 BOARD ACTION CONCERNING COMPLAINT DISPOSITION: After consideration, the board shall vote upon the proposed recommendations and either uphold, reverse, or modify the complaint committee's recommendations.

A. If the board determines that the department lacks jurisdiction, or that there is insufficient evidence or cause to issue a notice of contemplated action, the board may vote to recommend to the department that the complaint be dismissed and closed.

B. If the board determines that there is sufficient evidence or cause for the department to issue a notice of contemplated action, it may vote to recommend to the department that the complaint be referred to the attorney general's office for possible prosecution in accordance with the provisions contained within the Uniform Licensing Act.

C. The board may recommend that the department take any other action with regard to a complaint which is within the department's authority and which is within the law, including referring the complaint to the attorney general for injunctive proceedings; or referring it to the attorney general or the district attorney for prosecution of persons alleged to be practicing without a valid license, including:

(1) Formal letters of reprimand. The department, in consultation with the board, shall have discretionary authority to issue formal letters of reprimand or warning instead of license revocation or suspension. Issuance of formal letters of reprimand shall be subject to the provisions of the Uniform Licensing Act and shall be a matter of public record.

(2) Pre-referral settlement agreements. Prior to the issuance of a notice of contemplated action, the department, in consultation with the board, may enter into a settlement agreement with the respondent as a means of resolving a complaint.

[16.23.17.14 NMAC - Rp, 16.23.17.14 NMAC, 04/21/2022]

16.23.17.15 DISCIPLINARY HEARING:

A. The superintendent shall appoint a hearing officer preside over a disciplinary hearing. The

hearing officer may decide non-dispositive motions filed prior to the hearing.

B. Following the issuance of a notice of contemplated action, the department, may enter into a settlement agreement with the respondent as a means of resolving a complaint.

C. Any temporary permit, wall license and renewal license issued by the department must be returned to the department subsequent to revocation or suspension. The permit or license(s) must be returned in person or by registered mail no later than 20 days after the suspension or revocation order by the department.

D. The respondent shall bear all costs of disciplinary proceedings unless the respondent is excused by the department from paying all or part of the fees, or if the respondent prevails at the hearing and an action specified in Section 61-1-1-3 NMSA 1978 of the Uniform Licensing Act is not taken by the department.

[16.23.17.15 NMAC - Rp, 16.23.17.15 NMAC, 04/21/2022]

16.23.17.16 PRIVATE CAUSE OF ACTION: Neither the action nor inaction of the department or board on any complaint shall preclude the initiation of any private cause of action by the complainant.

[16.23.17.16 NMAC - Rp, 16.23.17.16 NMAC, 04/21/2022]

16.23.17.17 FEDERAL FRAUD AND ABUSE DATA BANK:

A. In accordance with federal requirements imposed by the enactment of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, the department, in consultation with the board, shall report any final adverse actions taken against a licensee or applicant, which contain an admission or finding of guilt or liability, to the federal fraud and abuse data bank established under HIPAA.

B. The department, in consultation with the board, has the discretion not to report any final adverse action taken against a licensee or applicant, which does not contain an admission or finding of guilt or liability, to the federal fraud and abuse databank established under HIPAA.

[16.23.17.17 NMAC - Rp, 16.23.17.17 NMAC, 04/21/2022]

16.23.17.18 NATIONAL RESPIRATORY CARE DISCIPLINARY DATABASE: All final adverse actions shall also be reported by the department, in consultation with the board, to the national respiratory care disciplinary database established by the NBRC and the AARC in accordance with the provisions in this rule.

[16.23.17.18 NMAC - Rp, 16.23.17.18 NMAC, 04/21/2022]

16.23.17.19 UNLICENSED PRACTICE OF RESPIRATORY CARE - DISCIPLINARY GUIDELINES: In accordance with the provisions contained within the Uniform Licensing Act, the department may take disciplinary action as provided in Section 61-1-3.2, NMSA 1978, if the department, in consultation with the board, determines that the respondent has violated the Respiratory Care Act or the department's rules and regulations governing respiratory care by practicing respiratory care in New Mexico without a valid New Mexico license.

A. The department, in consultation with the board, may impose a civil penalty in an amount not to exceed one thousand dollars ($1,000) against a person who, without a license, engages in the practice of respiratory care.

B. The department, in consultation with the board, may impose a civil penalty in an amount not to exceed one thousand dollars ($1,000) against a company or other business entity that requires an unlicensed person to engage in the practice of respiratory care without a license. The penalty shall be imposed in the amount of one thousand dollars ($1,000) for each individual that the company or business entity employs and who is performing respiratory care scope of practice procedures or protocols without benefit of a valid New Mexico respiratory care license or permit.

C. In addition, the department, in consultation with the board may assess the person, company, or other business entity for administrative costs, including investigative costs and the cost of conducting a hearing.

[16.23.17.19 NMAC - Rp, 16.23.17.19 NMAC, 04/21/2022]

HISTORY OF 16.23.17 NMAC:

PRE-NMAC HISTORY: None

HISTORY OF REPEALED MATERIAL:
16.23.17 NMAC, "Grounds for Disciplinary Action", filed 12/30/2002 - Repealed effective 04/21/2022.

Other History: 16 NMAC 23.17, "Grounds for Disciplinary Action", filed 11/10/1997, renumbered and reformatted to 16.23.17 NMAC, "Grounds for Disciplinary Action", effective 1/30/2003.
16.23.17 NMAC, "Grounds for Disciplinary Action", filed 12/30/2022 was replaced by 16.23.17 NMAC, "Grounds for Disciplinary Action", was replaced by 16.23.17 NMAC, "Grounds for Disciplinary Action and Disciplinary Proceedings", effective 04/21/2022.

REGULATION AND LICENSING DEPARTMENT
RESPIRATORY CARE ADVISORY BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 23 RESPIRATORY CARE PRACTITIONERS
PART 18 DISCIPLINARY GUIDELINES FOR IMPAIRED PRACTITIONER

16.23.18.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department in

consultation with the Advisory Board of Respiratory Care Practitioners.
[16.23.18.1 NMAC - Rp, 16.23.18.1 NMAC, 04/21/2022]

16.23.18.2 SCOPE: The provisions in Part 18 of Chapter 23 apply to any temporary permittee or licensee governed by the Respiratory Care Act who may be subject to investigation and disciplinary action for violations of the Impaired Health Care Provider Act.
[16.23.18.2 NMAC - Rp, 16.23.18.1 NMAC, 04/21/2022]

16.23.18.3 STATUTORY AUTHORITY: Part 18 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-6 NMSA 1978; the Uniform Licensing Act, Section 61-1-1 through Section 61-1-36 NMSA 1978; and the Impaired Health Care Provider Act, Section 61-7-1 through 61-7-12 NMSA 1978.
[16.23.18.3 NMAC - Rp, 16.23.18.3 NMAC, 04/21/2022]

16.23.18.4 DURATION: Permanent.
[16.23.18.4 NMAC - Rp, 16.23.18.4 NMAC, 04/21/2022]

16.23.18.5 EFFECTIVE DATE: April 21, 2022 unless a later date is cited at the end of a section.
[16.23.18.5 NMAC - Rp, 16.23.18.5 NMAC, 04/21/2022]

16.23.18.6 OBJECTIVE: The objective of Part 18 of Chapter 23 is to set forth policies and guidelines for disciplinary action when evidence or allegations of violation of the Impaired Health Care Provider Act a temporary permittee or licensed practitioner have been presented to the department or to the board.
[16.23.18.6 NMAC - Rp, 16.23.18.6 NMAC, 04/21/2022]

16.23.18.7 DEFINITIONS: All definitions related to this section are in 16.23.1.7 NMAC.
[16.23.18.7 NMAC - Rp, 16.23.18.7 NMAC, 04/21/2022]

16.23.18.8 EXCESSIVE OR HABITUAL USE OR ABUSE OF INTOXICANTS OR DRUGS: In cases where the department or the board has reasonable cause to believe that a temporary permittee or a licensed practitioner is engaging in the excessive or habitual use or abuse of intoxicants or drugs, as defined in the Controlled Substances Act, and that such activity may compromise the permittee's or licensee's ability to practice respiratory care with reasonable skill and safety to patients, the department, in consultation with the board, shall conduct an investigation into the matter in accordance with the provisions established in the Impaired Health Care Provider Act.
[16.23.18.8 NMAC - Rp, 16.23.8 NMAC, 04/21/2022]

16.23.18.9 EXAMINING COMMITTEE DESIGNATED: The department, in consultation with the board, shall designate three licensed health care providers as members of an "examining committee" to examine the temporary permittee or licensed practitioner believed to be impaired by the excessive or habitual use or abuse of intoxicants or drugs.
[16.23.18.9 NMAC - Rp, 16.23.18.9 NMAC, 04/21/2022]

16.23.18.10 EXAMINATION CONDUCTED BY EXAMINING COMMITTEE: In accordance with the provisions in the Impaired Health Care Provider Act, the examining committee shall order and conduct an examination and may require a physical examination or drug test of the permittee or licensee, to determine fitness to practice respiratory care with reasonable skill or safety to patients, either on a restricted or unrestricted basis.
[16.23.18.10 NMAC - Rp, 16.23.18.10 NMAC, 04/21/2022]

16.23.18.11 PHYSICAL EXAM OR DRUG TEST ORDERED: The physical examination and drug test ordered by the examination committee shall be performed by a licensed professional designated by the department. The cost of said examination or test shall be borne by the temporary permittee or licensed practitioner.
[16.23.18.11 NMAC - Rp, 16.23.18.11 NMAC, 04/21/2022]

16.23.18.12 EXAMINING COMMITTEE REPORT:

A. The examining committee shall report its findings on the examination and make recommendation to the board and the department.

B. Recommendations made to the board and the department by the examining committee shall be advisory only and shall not be binding on the board or the department.
[16.23.18.12 NMAC - Rp, 16.23.18.12 NMAC, 04/21/2022]

16.23.18.13 RESULTS ADMISSIBLE: The results of the examining committee's findings and the physical exam and drug test shall be admissible in any subsequent review by the board or hearing before the department, notwithstanding any claim of privilege under a contrary rule or law or statute.
[16.23.18.13 NMAC - Rp, 16.23.18.13 NMAC, 04/21/2022]

16.23.18.14 [RESERVED]

16.23.18.15 FAILURE OR REFUSAL TO SUBMIT TO EXAMINATION: Failure or refusal by the temporary permittee or licensed practitioner to comply with an examining committee order to appear before it for examination, or to submit to a physical examination or drug test pursuant to the Impaired Health Care Provider Act, shall be grounds for immediate and summary suspension of the temporary permit or license by the department until further order by the department.
[16.23.18.15 NMAC - Rp, 16.23.18.15 NMAC, 04/21/2022]

16.23.18.16 ACTION ON EXAMINATION COMMITTEE REPORT: The department, in consultation with the board, may accept or reject any finding,

determination, or recommendation made by the examining committee to the board regarding the temporary permittee's or licensee's ability to continue to practice with or without restriction on the temporary permit or the license, or it may refer the matter back to the board or the examination committee for further examination and report, or it may decide that formal disciplinary action is immediately warranted.
[16.23.18.16 NMAC - Rp, 16.23.18.16 NMAC, 04/21/2022]

16.23.18.17 [RESERVED]

16.23.18.18 ENTITLEMENT TO HEARING: Before the department, in consultation with the board, can take action to restrict, suspend, or revoke the temporary permittee's permit or practitioner's license on the evidence reported by the examining committee**,** the temporary permittee or licensed practitioner shall be entitled to a hearing under, and in accordance with, the procedures contained in the Impaired Health Care Provider Act and the Uniform Licensing Act.
[16.23.18.18 NMAC - Rp, 16.23.18.18 NMAC, 04/21/2022]

16.23.18.19 [RESERVED]

16.23.18.20 REQUEST FOR VOLUNTARY RESTRICTION OF THE PERMIT OR LICENSE: In lieu of a formal hearing, the temporary permittee or licensed practitioner may voluntarily request, in writing to the department, a restriction of the temporary permit or the license to practice respiratory care.

A. The department, in consultation with the board, may grant the request for restriction and shall have authority, if it deems appropriate, to attach conditions to the temporary permit or practitioner's license to practice within specified limitations.

B. Upon imposition of voluntary restrictions on the temporary permit or the practitioner's license, the department, in consultation with the board, shall have the authority, if it deems appropriate, to waive the commencement of any further disciplinary proceedings conducted in accordance with the Uniform Licensing Act.
[16.23.18.20 NMAC - Rp, 16.23.18.20 NMAC, 04/21/2022]

16.23.18.21 PETITION FOR REMOVAL OF VOLUNTARY RESTRICTION: The temporary permittee or licensed practitioner shall have a right, at reasonable intervals after a year, to petition the department in writing, for the removal of the voluntary restriction and to demonstrate that he or she is capable of resuming the competent practice of respiratory care with reasonable skill and safety to patients.

A. The department, in consultation with the board, shall act on the petition by referring it to the examining committee, who shall conduct the necessary examination of the temporary permittee or the licensed practitioner, and make written recommendation to the board.

B. Upon consideration of the examining committee's recommendation, the department, in consultation with the board may, in its discretion, remove the voluntary restriction on the temporary permit or practitioner's license.
[16.23.18.21 NMAC - Rp, 16.23.18.21 NMAC, 04/21/2022]

16.23.18.22 ABSENCE OF A VOLUNTARY REQUEST FOR RESTRICTION: In the absence of a request by the temporary permittee or licensed practitioner for voluntary restriction of their temporary permit or practitioner's license as provided in 16.23.18.20 NMAC (this rule), the department may, in its discretion, initiate proceedings for the restriction, suspension, or revocation of the temporary permit or practitioner's license in accordance with the Impaired Health Care Provider Act and the Uniform Licensing Act.
[16.23.18.22 NMAC - Rp, 16.23.18.22 NMAC, 04/21/2022]

16.23.18.23 TEMPORARY SUSPENSION: The department may temporarily suspend the temporary permit or license without a hearing, simultaneously with the institution of proceedings under the Impaired Health Care Provider Act or the Uniform Licensing Act, if it finds that the evidence in support of the examining committee's determination is clear and convincing and that the respondent's continuation in practice would constitute an imminent danger to the health and safety of the public. The respondent shall be entitled to a hearing to set aside the suspension no later than sixty days after the license is suspended.
[16.23.18.23 NMAC - Rp, 16.23.8.23 NMAC, 04/21/2022]

16.23.18.24 PETITION FOR REINSTATEMENT, RESTORATION, OR MODIFICATION OF DISCIPLINARY ORDER: Subsequent to formal proceedings under the Impaired Health Care Provider Act and the Uniform Licensing Act, any temporary permittee or licensed practitioner who is prohibited from practicing respiratory care may, after a year from the date of suspension or revocation of the temporary permit or practitioner's license, petition the department for reinstatement or restoration of his or her temporary permit or license to practice, or for modification of the final disciplinary orders.

A. The application for reinstatement or restoration of the temporary permit or practitioner's license, or for the modification of the disciplinary orders shall be made in writing to the department by the temporary permittee or licensed practitioner.

B. The temporary permittee or licensed practitioner shall be afforded an opportunity to demonstrate that he or she can resume the practice of respiratory care with reasonable skill, competence, and safety to patients and shall be required to provide verifiable proof of

compliance with any stipulations in the disciplinary order.

(1) The department may require an examination by the examining committee for such reinstatement, restoration, or modification of the temporary permit or practitioner's license.

(2) The department may require verification that the temporary permittee or licensed practitioner has completed a treatment program for alcohol or chemical dependency.

(3) The department may require verifiable proof that the temporary permittee or licensed practitioner has remained abstinent from alcohol or chemical dependence, except for drugs prescribed by a licensed physician for a legitimate medical condition, for a minimum of at least one year.

(4) The department may require verifiable proof that the temporary permittee or licensed practitioner has maintained active and uninterrupted participation in a program of aftercare which provides for periodic monitoring and supervision by appropriately trained personnel, and which includes random and unannounced drug and alcohol screening of urine or blood.

(5) The department shall have the discretion to accept or reject the petition for reinstatement or restoration of the temporary permit or practitioner's license, or for modification of the disciplinary orders.

[16.23.18.24 NMAC - Rp, 16.23.18.24 NMAC, 04/21/2022]

HISTORY OF 16.23.18 NMAC:
PRE-NMAC HISTORY: None

HISTORY OF REPEALED MATERIAL:
16.23.18 NMAC, "Disciplinary Guidelines for Impaired Practitioner" filed 12/30/2002 repealed 04/21/2022.

Other History: 16 NMAC 23.18, "Disciplinary Guidelines for Impaired Practitioner", filed 11/10/1997 renumbered and reformatted to 16.23.18 NMAC, "Disciplinary Guidelines for Impaired Practitioner", effective 1/30/2003
16.23.18 NMAC, "Disciplinary Guidelines for Impaired Practitioner" filed 12/30/2002 was replaced by 16.23.18 NMAC, "Disciplinary Guidelines for Impaired Practitioner" effective 04/21/2022.

REGULATION AND LICENSING DEPARTMENT
RESPIRATORY CARE ADVISORY BOARD

This is an amendment to 16.23.2 NMAC, Section 1, 3, 6, 7, and 8 effective 04/21/2022.

16.23.2.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department in consultation with the Advisory Board [~~P.O. Box 25101 Santa Fe, New Mexico 87504.~~] of Respiratory Care Practitioners.
[16.23.2.1 NMAC - Rp, 16.23.2.1 NMAC, 7/15/2017; A, 04/21/2022]

16.23.2.3 STATUTORY AUTHORITY: Part 2 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, [~~Section 61-12B-11 NMSA 1978~~] Section 61-12B-6 NMSA 1978.
[16.23.2.3 NMAC - Rp, 16.23.2.3 NMAC, 7/15/2017; A, 04/21/2022]

16.23.2.6 OBJECTIVE: The objective of Part 2 of Chapter 23 is to establish fees for licenses, temporary permits, and for renewal of [~~temporary permits and licenses~~] licenses and temporary permits, and other related administrative processes.
[16.23.2.6 NMAC - Rp, 16.23.2.6 NMAC, 7/15/2017; A, 04/21/2022]

16.23.2.7 DEFINITIONS: [~~**RESERVED**~~] All definitions related to this section are in 16.23.1.7 NMAC.
[16.23.2.7 NMAC - Rp, 16.23.2.7 NMAC, 7/15/2017; A, 04/21/2022]

16.23.2.8 ADMINISTRATIVE FEES: In accordance with Subsection A of Section 61-12B-11 NMSA 1978, of the New Mexico Respiratory Care Act, [~~the respiratory care advisory board establishes the following nonrefundable fees~~] the board establishes the following nonrefundable fees.

A. fees:

(1) initial practitioner license fee one hundred fifty dollars ($150.00);

(2) initial temporary student extern permit fifty dollars ($50.00);

(3) initial graduate permit one hundred dollars ($100.00);

(4) practitioner reactivation from inactive status fifteen dollars ($15.00);

(5) practitioner reactivation from expired status two hundred fifty dollars ($250.00);

(6) credential upgrade from certified respiratory therapist (CRT) to registered respiratory therapist (RRT) twenty-five dollars ($25.00).

B. annual renewal fees:

(1) active respiratory care practitioner license one hundred fifty dollars ($150.00);

(2) inactive respiratory care practitioner license thirty dollars ($30.00);

(3) temporary student extern permit fifty dollars ($50.00).

C. miscellaneous fees listed below will be approved annually by the board and made available by the board office upon request:

(1) photocopying $0.25;

(2) written license verifications fifteen dollars ($15.00);

(3) list of licensees fifty dollars ($50.00);

(4) duplicate licenses/permit twenty-five dollars ($25.00);

(5) upgrade from a CRT to an RRT twenty-five dollars ($25.00);

(6) copies of statues, rule and regulations are free online at the board website.
[16.23.2.8 NMAC - Rp, 16.23.2.8 NMAC, 7/15/2017; A, 04/21/2022]

SECRETARY OF STATE, OFFICE OF THE

This is an amendment to 1.10.13 NMAC, Sections 2, 6 through 8, 10 through 13, 15, 18, 21 through 22, 25, 29 through 30, and 32, and new Section 33, effective 3/22/2022.

1.10.13.2 SCOPE: This rule applies to all persons, candidates and committees covered by the Campaign [~~Practices~~] Reporting Act, Sections [~~1-19-1~~] 1-19-25 through 1-19-37 NMSA 1978.
[1.10.13.2 NMAC - N, 10/10/2017; A, 3/22/2022]

1.10.13.6 OBJECTIVE: The objective of this rule is to provide clear guidance regarding the application and implementation of the provisions of the Campaign [~~Practices~~] Reporting Act, Sections [~~1-19-1 through 1-19-37~~] 1-19-25 through 1-19-36 NMSA 1978 to affected parties while also providing for clear and specific guidance to the secretary of state in administering and enforcing the law.
[1.10.13.6 NMAC - N, 10/10/2017; A, 10/29/2019; A, 3/22/2022]

1.10.13.7 DEFINITIONS:

A. [~~**"Advertisement"** pursuant to Subsection A of Section 1-19-26 NMSA 1978, means a communication referring to a candidate or ballot question that is published, disseminated, distributed or displayed to the public by print, broadcast, satellite, cable or electronic media, including recorded phone messages, internet videos, paid online advertising, recordings, or by printed materials, including mailers, handbills, signs and billboards, but "advertisement" does not include:~~

~~**(1)** a communication by a membership organization or corporation to its current members, stockholders or executive or administrative personnel;~~

~~**(2)** a communication appearing in a news story or editorial distributed through a print, broadcast, satellite, cable or electronic medium;~~

~~**(3)** a candidate debate or forum, or a communication announcing a candidate debate or forum, paid for on behalf of the debate or forum sponsor; provided that two or more candidates for the same position have been invited to participate, or provided that the single candidate is invited in the event that there is only one candidate for that position;~~

~~**(4)** nonpartisan voter guides allowed by the federal Internal Revenue Code of 1986 for Section 501(c)(3) organizations; or~~

~~**(5)** statements made to a court or administrative board in the course of a formal judicial or administrative proceeding.~~

~~**B.]**~~ **"Agent"** means a person with express or implied authorization to engage in campaign related activities on behalf of a candidate or committee.

[~~C.~~] B. "Aggregate contributions" means the sum total of all contributions given to a candidate, campaign committee, or political committee by the same donor in [~~the same~~] a primary or general election cycle. Aggregate contributions may not exceed contribution limits.

[~~D. "Ballot question"~~ ~~means a constitutional amendment, bond, tax or other question submitted to the voters in an election, as defined in Subsection C of Section 1-19-26 NMSA 1978.~~

~~**E.]** **C. "Clearly identified"** means: (1) the name of the candidate or ballot question appears; (2) a photograph or drawing of the candidate appears; or (3) the identity of the candidate or ballot question is otherwise apparent by unambiguous reference.

[~~F.~~] D. "Committee" means a political committee or campaign committee covered under the Campaign Reporting Act.

[~~**G.**~~] **E. "Contribution or coordination political committee"** means a type of political committee that makes contributions or coordinated expenditures to candidates or committees.

[~~**H. "Coordinated expenditure"** means an expenditure that is made by a person other than a candidate or campaign committee at the request or suggestion of, or in cooperation, consultation, or concert with, a candidate, the candidate's campaign committee or a political party or any agent or representative of a candidate, campaign committee or political party, including a legislative caucus committee for the purpose of:~~

~~**(1)** supporting or opposing the nomination or election of a candidate; or~~

~~**(2)** paying for an advertisement that refers to a clearly identified candidate and is published and disseminated to the relevant electorate in New Mexico within 30 days before the primary election or 60 days before the general election in which the candidate is on the ballot.~~

~~**I.]** **F. "Debt"** means an outstanding expenditure or loan which is not fully paid at the time it is reported in the campaign finance information system and is therefore reported as unpaid debt.

[~~**J.**~~] **G. "Donor"** means contributor.

[~~**K.**~~] **H. "Earmarking"** means making a contribution in which the original donor expresses an intention for the contribution to pass through some other person to a specific candidate or committee or to be used for a specific purpose, such as funding independent expenditures.

[~~L. "Election cycle"~~ ~~for purposes of applying the disclosure of reporting requirements of the act and this rule, the definition of this term is the definition set forth in Subsection A of Section 1-1-3.1 NMSA 1978 and means the period beginning on January 1 after the last general election and ending December 31 after the general election.~~

~~M.~~] **I. "Expressly advocate"** means that the communication contains a phrase including, but not limited to, "vote for," "re-elect," "support," "cast your ballot for," "candidate for elected office," "vote against," "defeat," "reject," or "sign the petition for," or a campaign slogan or words that in context and with limited reference to external events, such as the proximity to the election, can have no reasonable meaning other than to advocate the election, passage, or defeat of one or more clearly identified ballot questions or candidates.

[~~N.~~] **J. "Final report"** means the last report electronically filed under the Campaign Reporting Act in accordance with Subsection F of Section 1-19-29 NMSA 1978 indicating that:

(1) there are no outstanding campaign debts

(2) all money has been expended in accordance with the provisions of Section 1-19-29.1 NMSA 1978; and

(3) the bank accounts have been closed.

K. "Finding" means a determination made by the secretary of state based upon an administrative examination or inquiry.

[~~O.~~] **L. "Foreign nationals"** means an individual who is not a citizen or a national of the United States (as defined in 8 U.S.C. §1101(a)(22)) and who is not lawfully admitted for permanent residence, as defined by 8 U.S.C. §1101(a)(20).

[~~P. "General election cycle" means the period beginning on the day after the primary election and ending December 31 after the general election.~~

~~Q. "Independent expenditure" pursuant to Subsection N of Section 1-19-26 NMSA 1978, means an expenditure that is:~~

~~(1) made by a person other than a candidate or campaign committee;~~

~~(2) not a coordinated expenditure as defined in the Campaign Reporting Act; and~~

~~(3) made to pay for an advertisement that:~~

~~(a) expressly advocates for the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified ballot question;~~

~~(b) is susceptible to no other reasonable interpretation than as an appeal to vote for or against a clearly identified candidate or ballot question; or~~

~~(c) refers to a clearly identified candidate or ballot question and is published and disseminated to the relevant electorate in New Mexico within 30 days before the primary election or 60 days before the general election in which the candidate or ballot question is on the ballot.~~

~~R.~~] **M. "In-kind contributions"** means goods or services or anything of value contributed to a candidate or committee other than money. The provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is an in-kind contribution. Examples of such goods or services include, but are not limited to: securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.

[~~S.~~] **N. "Legislative Caucus Committee"** means a political committee established by the members of a political party in a chamber of the legislature pursuant to the provisions of Subsection O of Section 1-19-26 NMSA 1978 and Section 2-21-1 NMSA 1978. A legislative caucus committee is also a political committee pursuant to Subsection Q of Section 1-19-26 NMSA 1978.

[~~T.~~] **O. "Loan"** means an extension of credit to a candidate or committee by any person, including the candidate themselves, for use as monies spent toward the election of a candidate or other political purpose.

[~~U.~~] **P. "Members"** means all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, and either:

(1) have some financial attachment to the membership organization; or

(2) pay membership dues at least annually, of a specific amount predetermined by the organization; or

(3) have an organizational attachment to the membership organization that includes: affirmation of membership on at least an annual basis and direct participatory rights in the governance of the organization. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization's annual budget; or the right to participate directly in similar aspects of the organization's governance.

[~~V.~~] **Q. "Membership organization"** means an unincorporated association, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

(1) is composed of members;

(2) expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents;

(3) makes its articles, bylaws, constitution or other formal organizational documents available to its members;

(4) expressly solicits persons to become members;

(5) expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list; and

(6) is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual for offices covered under the Campaign Reporting Act.

[~~W.~~] **R. "Mixed purpose political committee"** means a type of political committee that makes independent expenditures and coordinated expenditures or contributions and that segregates funds used for coordinated expenditures and contributions subject to contribution limits into a separate bank account from funds used for independent expenditures.

[~~X. "Person"~~ means individual or entity pursuant to Subsection P of Section 1-19-26 NMSA 1978.

~~Y.~~] **S. "Pledge"** means a promise from a contributor to send or deliver a contribution by a specified time.

[~~Z. "Political party"~~ means an association that has qualified as a political party pursuant to the provisions of Section 1-7-2 NMSA 1978.

~~AA. "Primary election cycle"~~ means the period beginning January 1 after the last general election and ending on the day of the primary election.

~~BB.~~] **T. "Primary purpose"** means the purpose for which an entity or committee:

(1) was created, formed or organized; or

(2) has made more than fifty percent of its expenditures during the current election cycle exclusive of salaries and administrative costs; or

(3) has devoted more than fifty percent of the working time of its personnel during the current election cycle.

[~~CC.~~] **U."Relevant electorate"** means the constituency eligible to vote for the candidate or ballot question.

[~~DD. "Reporting individual"~~ means a public official, candidate or treasurer of a campaign committee or a treasurer of a political committee pursuant to Subsection V of Section 1-19-26 NMSA 1978.

~~EE.~~] **V. "Solicit"** means to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether it is to be made or provided directly to the candidate or committee, or through a conduit or intermediary.

[~~FF.~~] **W. "Sponsoring organization"** means an organization that has provided more than twenty-five percent of the total contributions to a political committee as of the time the committee is required to register under this rule.

[~~GG.~~] X. "Special event" means a barbeque, tea, coffee, dinner, reception, dance, concert or similar fundraiser where tickets costing twenty-five dollars ($25) or less are sold and no more than one thousand dollars ($1,000) net contributions are received.

[~~HH.~~] Y."Statement of no activity" means the prescribed form used by a reporting individual to indicate that no contributions were raised or expenditures were made during a particular reporting period.

[~~H.~~] **Z. "Treasurer"** means an individual explicitly designated by a candidate or committee to authorize disbursements, receive contributions, maintain a proper record of the campaign finances, and who, along with the candidate, is personally liable for discrepancies in the finances and reports of the committee.

AA. "Unresolved discrepancy" means a finding of an actual or perceived inconsistency, conflict, or contradiction that is not resolved after attempts to seek voluntary compliance.

[1.10.13.7 NMAC - N, 10/10/2017; A, 10/29/2019; A, 3/22/2022]

1.10.13.8 CANDIDATE CAMPAIGN COMMITTEE REGISTRATIONS:

A. A candidate for a non-statewide office shall register the candidate's campaign committee with the secretary of state within 10 days of receiving contributions or expending one thousand dollars ($1,000) or more for campaign expenditures or filing a declaration of candidacy; whichever occurs earlier.

B. A candidate for statewide office shall register the candidate's campaign committee with the secretary of state within 10 days of receiving contributions or expending three thousand dollars ($3,000) or more or filing a declaration of candidacy; whichever occurs earlier.

C. All candidates shall complete a campaign committee registration form [~~and submit the completed form to the secretary of state, or otherwise with the proper filing officer, if completed at the time the declaration of candidacy is submitted~~] online via the registration process in the campaign finance information system (CFIS). Following acceptance of the campaign committee registration form, the secretary of state will create a user account for the candidate in [~~the campaign finance information system (CFIS)~~] CFIS and will issue the candidate a unique CFIS user identification [~~and password~~].

D. A candidate is responsible for entering accurate and current contact information in CFIS, including mailing address and email address. Failure to provide accurate or current contact information does not limit the candidate's liability regarding fines and civil actions against the candidate or public official related to campaign reporting.

E. Section 1-19-27 NMSA 1978 requires that all campaign finance reports be filed electronically with the secretary of state's office. In order to file electronically, the candidate must, at all times, maintain a valid email address on file with the secretary of state.

F. A candidate may serve as the candidate's own treasurer. If the candidate does not serve as the candidate's own treasurer, then the candidate shall appoint a treasurer who shall be jointly responsible as a reporting individual with the candidate for the campaign committee.

G. If the candidate does not serve as the candidate's own treasurer, in the event of a vacancy in the position of treasurer, the candidate shall appoint a successor treasurer within 10 days of the vacancy by updating the information electronically in CFIS.

H. The candidate is deemed to have authorized and approved each report entry submitted to CFIS.

I. A candidate may only have one campaign committee at a time [~~Any candidate campaign committee registration form received will result in the secretary of state moving the last reported campaign balance, including debts, to the new campaign committee account in CFIS~~] unless the candidate is seeking public financing and must keep a previous campaign account open and separated.

J. A candidate seeking re-election to the same office is not required to submit a new campaign committee registration form if the candidate already has an open campaign account.

K. A candidate seeking election to a new office covered by the campaign reporting act than what the candidate previously registered is required to submit a new campaign committee registration form. If a new candidate campaign committee registration form is submitted by a candidate with an open campaign committee for a new office, the candidates shall expend all funds in accordance with the Campaign Reporting Act or transfer any remaining funds from the old campaign committee to the new campaign committee and file a final report to close the old campaign committee within ten days from the date the registration form is accepted by the secretary of state unless the candidate is seeking public financing and must keep a previous campaign account open and separated.

[1.10.13.8 NMAC - N, 10/10/2017; A, 10/29/2019; A, 3/22/2022]

1.10.13.10 POLITICAL COMMITTEE REGISTRATIONS:

A. Registration.

(1) Prior to receiving or making any contribution or expenditure for a political purpose. All political committees shall complete a political committee registration form/ statement of organization online via the registration process in CFIS and submit the completed form, along with a fifty dollar ($50) filing fee, to the secretary of state. The form shall include:

(a) the full name of the political committee, which shall fairly and accurately reflect the identity of the committee, including any sponsoring organization;

(b) the physical address of the political committee, a mailing address if different from the physical address, and an email address;

(c) a statement of the purpose for which the political committee was organized; under this section, the committee shall designate the type of expenditures it will be making; the committee will have the option of registering as:

(i) an independent expenditure political committee;

(ii) a contribution or coordination political committee; or

(iii) a mixed purpose political committee; [~~or~~

~~**(iv)** other; if a political committee selects other, then the political committee shall submit a written explanation to the secretary of state as to why the categories of independent expenditure political committee, contribution or coordination political committee, and mixed purpose political committee do not apply~~]

(d) the names and addresses of the officers of the committee;

(e) an identification of the bank(s) used by the committee for all expenditures or contributions made or received; this shall include the name of the bank(s), business address(es) of the branch office(s) where the account(s) was/ were opened, and telephone number for the bank(s); and

(f) the treasurer's name, mailing address, email address, and contact information.

(2) Following acceptance of the political committee registration form, the secretary of state [~~will create a user account for the political committee in the (CFIS) and~~] will issue the treasurer a unique CFIS user identification [~~and password~~].

(3) The provisions of this section do not apply to a political committee that is located in another state and is registered with the federal election commission (FEC). If the political committee is located in another state and reports to the FEC, the committee shall file a copy of either the full report or the cover sheet and the portions of the federal reporting forms that contain the information on expenditures for and contributions made to reporting individuals in New Mexico with the secretary of state within 10 days of filing the report to the FEC.

(4) If a political committee is located in another state and is making contributions and expenditures to New Mexico reporting individuals, but is not registered with the FEC, then the out-of-state political committee must register and report its New Mexico contributions and expenditures in accordance with the provisions of the Campaign Reporting Act and this rule.

(5) If a political committee is located in New Mexico and is required to register as a political committee under this rule, the political committee must register with the secretary of state even if it is also registered with the FEC.

(6) The political committee's treasurer is responsible for carrying out the duties described in the Campaign Reporting Act and this rule [~~, and should understand the responsibilities and potential liabilities associated with those duties. Under the Campaign Reporting Act, the treasurer is a reporting individual who can be named in a complaint or official action by the secretary of state. Additionally, a treasurer may be found~~] and may be personally liable if he or she knowingly and willfully violates the Campaign Reporting Act.

(7) [~~If a change is made to a treasurer of a political committee, the political committee shall appoint a successor treasurer within 10 days of the vacancy by updating the information~~] An individual who resigns as treasurer of a political committee shall submit a resignation statement on a form prescribed by the secretary of state. An individual's resignation is not effective until a replacement treasurer is appointed, and the treasurer's information is updated electronically in CFIS.

(8) A political committee shall not continue to receive or make any contributions or expenditures unless the name of the current treasurer is on file with the secretary of state by [~~filing an updated political committee registration form~~] updating the information in CFIS.

(9) A political committee is responsible for entering accurate and current contact information in CFIS, including mailing address and email address. Failure to provide accurate or current contact information does not limit the political committee's liability regarding fines and civil actions related to campaign reporting.

(10) Any changes to the information provided in the registration form/statement of registration shall be [~~reported to the secretary of state~~] filed in CFIS within 10 days.

B. Section 1-19-27 NMSA 1978 requires that all campaign finance reports be filed electronically with the secretary of state's office. In order to file electronically, the political committee must maintain a valid email address on file with the office.

C. Political party registration: Qualified political parties that file rules in accordance with Article 7 of the Election Code with the secretary of state or county clerk are required to complete and file the political committee registration form with the secretary of state and must adhere to the provisions of the Campaign Reporting Act and this rule.

D. Legislative caucus committee registration: a legislative caucus committee is required to complete and file the political committee registration form with the secretary of state and must adhere to the provisions of the Campaign Reporting Act.

E. Notice of cancellation:

(1) A political committee, other than a political party or a legislative caucus committee, that has not received any contribution or made any coordinated or independent expenditures for a continuous period of at least one year [~~may cancel its registration as a political committee by completing and submitting a prescribed cancellation form to the secretary of state~~] pursuant to Subsection G of Section 1-19-29 NMSA 1978 shall be advised of their right to cancel the political committee's registration without obligation to file a final report. The political committee shall notify the secretary of state of the political committee's intention to remain active or will otherwise be marked as inactive by January 1 of the next even numbered year.

(2) A political committee that has cancelled its registration pursuant to Subsection G of Section 1-19-29 NMSA 1978, shall submit a new registration [~~in the event that its future activities meet the requisites for registration pursuant to Section 1-19-26.1 NMSA 1978.~~

~~**(a)** a political committee submitting a new registration must file with the secretary of state~~] within 24 hours of receiving any contribution or making any expenditure for a political purpose.

[~~**(b)** a~~] A new registration shall include:

[~~**(i)**~~] **(a)** current bank account balance(s); and

[~~**(ii)**~~] **(b)** a certification that no contributions have been received or any expenditures made for a political purpose during the period wherein the political committee's registration was cancelled pursuant to Subsection G or Section 1-19-29 NMSA 1978.

[1.10.13.10 NMAC - N, 10/10/2017; A, 10/29/2019; A, 3/22/2022]

1.10.13.11 REPORTING OF INDEPENDENT EXPENDITURES:

[~~**A.** A person who makes an independent expenditure not otherwise required to be reported under the Campaign Reporting Act shall file a prescribed report with the secretary of state within:~~

~~**(1)** three days of making the expenditure if the expenditure, by itself or aggregated with all independent expenditures made by the same person during the election cycle, exceeds one thousand dollars ($1,000) in a non-statewide election(s) or question(s) or in an amount that exceeds three thousand dollars ($3,000) in a statewide race(s) or ballot measure(s).~~

~~**(2)** 24 hours of making the expenditure if the expenditure is in an amount of three thousand dollars ($3,000) or more and is made within seven days before a non-statewide election.~~

~~**B.** The report required by Subsection A of this section shall include:~~

~~**(1)** The name and address of the person who made the independent expenditure.~~

~~**(2)** The name and address of the person to whom the independent expenditure was made and the amount, date and purpose of the independent expenditure. If no reasonable estimate of the monetary value of a particular expenditure is practicable, a description of the services, property or rights furnished through the expenditure;~~

~~**(3)** The source of the contributions used to make the independent expenditure as provided in Subsections C and D of this section.~~

~~**C.** A person who makes independent expenditures totaling three thousand dollars ($3,000) or less in a non-statewide election or ballot question, or nine thousand dollars ($9,000)or less in a statewide election or ballot~~

~~question, shall report the name and address of each person who has made contributions of more than a total of two hundred dollars ($200) in the previous 12 months that were earmarked or made in response to a solicitation to fund independent expenditures, and shall report the amount of each such contribution made by that person. For purposes of this Subsection C, of 1.10.13.11 NMAC, a contribution is earmarked or made in response to a solicitation to fund independent expenditures, if the person making the contribution:~~

~~(1) designates, requests, or suggests that the amounts be used for independent expenditures. A person "designates, requests, or suggests" that amounts be used for independent expenditures if, at any time, there is an agreement, suggestion, designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, that all or any part of the transfer or payment be used to fund independent expenditures;~~

~~(2) provided the amounts in response to a solicitation or other request, whether direct or indirect, express or implied, oral or written, for a transfer or payment to fund independent expenditures; or~~

~~(3) knew or had reason to know from the surrounding circumstances that the amounts would be used to fund independent expenditures.~~

~~D. A person who makes independent expenditures totaling more than three thousand dollars ($3,000) for a non-statewide election or ballot question or more than nine thousand ($9,000) for a statewide election or ballot question during an election cycle, in addition to reporting the information specified in Subsection C of this section, shall report the following information:~~

~~(1) if the expenditures were made exclusively from a segregated bank account that contains only funds contributed to the account by individuals for the purpose of making independent expenditures, the name and address of, and the amount of each contribution not previously reported for, each contributor who contributed more than two hundred dollars ($200) in the aggregate to the account in the election cycle; or~~

~~(2) if the expenditures were made in whole or in part from funds other than a bank account of the kind described in Paragraph (1), the name and address of, and amount of each contribution made by, each contributor who contributed more than a total of five thousand dollars ($5,000) during the election cycle, to the person making the independent expenditures; provided, however, that a contribution is exempt from reporting pursuant to this paragraph if the contributor requested in writing that the contribution not be used to fund independent or coordinated expenditures or make contributions to a candidate, campaign committee or political committee.~~

~~E.~~ **A.** A person reporting an independent expenditure [~~under this section~~] that is not otherwise required to register as a political committee or report under the Campaign Reporting Act shall complete the online registration process [~~prescribed by the secretary of state in order to access the required disclosure reporting system. All reports of independent expenditures under this section shall be filed using the required system.~~] in CFIS for setting up an account as an independent expenditure filer.

[~~F.~~] **B.** Time requirements:

~~(1)~~ An independent expenditure is considered to be made on the first date on which the communication or advertisement is published, broadcast or otherwise publicly disseminated.

~~[(2) If any person making independent expenditures incurs subsequent independent expenditures, the person shall report such expenditures pursuant to this section.~~

~~G.~~ **C.** No person may make contributions or expenditures with an intent to conceal the names of persons who are the true source of funds used to make independent expenditures, or the true recipients of the expenditure.

[~~H.~~] **D.** Both a person who makes an independent expenditure pursuant to Section 1-19-27.3 NMSA 1978 or a registered political committee that files reports in accordance with Section 1-19-29 NMSA 1978 is required to disclose the candidate(s) or ballot question(s) being supported or opposed by each independent expenditure made.

E. If a person declines to identify a contributor pursuant to Paragraph (2) of Subsection D of Section 1-19-27.3 NMSA 1978 on the basis that the contributor requested in writing that the contribution not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee, or political committee, the person making the independent expenditure shall, contemporaneously with the filing of the report required under this Section and Section 1-19-27.3 NMSA 1978, submit to the secretary of state a statement under penalty of perjury that:

(1) a contributor requested that a contribution not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee, or political committee; and

(2) the person making the independent expenditure, coordinated expenditures, or contributions to a candidate, campaign committee or political committee did not use any of the funds received from the contributor for those purposes.

[1.10.13.11 NMAC - N, 10/10/2017; A, 10/29/2019; A, 3/22/2022]

1.10.13.12 GENERAL REPORTING RULES:

A. Candidate campaign committees.

(1) All campaign committees shall file reports according to the schedule set forth in Section 1-19-29 NMSA 1978. Reports shall be accepted until

midnight mountain time on the date of filing without penalty. In the event that a filing deadline falls on a state holiday, the report shall be made on the following day. Beginning after 12:01 a.m. mountain time on the day after the due date of the report, penalties for late filing shall begin to accrue.

(2) Campaign committees shall report all contributions, in-kind contributions known to the campaign committee, loans, expenditures, loan repayments, and debt forgiven by the lender.

(3) Coordinated expenditures made on behalf of the candidate or campaign committee shall be reported by the campaign committee as in-kind contributions received from the coordinating political committee and are subject to contribution limits. Any committee reporting an expenditure that is in-kind to another committee registered pursuant to the Campaign Reporting Act is required to disclose the name of the committee benefiting from the in-kind contribution.

(4) Candidates must file all required reports while they are an active candidate and continue to file timely reports until such time as they meet the requirements to file a final report. For example, a primary election candidate that loses the primary election must file all reports included in the primary election cycle and continue to file reports until the candidate files a final report. Losing an election does not terminate a candidate's requirement to file under the Campaign Reporting Act.

(5) A candidate's personal funds spent in support of a candidate's own campaign are considered a contribution and shall be disclosed by filing the required reports in CFIS; however, these funds are not subject to contribution limits.

(6) Upon request by the secretary of state, the campaign committee shall provide a copy of bank statements, for all accounts, for any reporting period.

(7) Candidates benefiting from independent expenditures or in-kind contributions the candidate has no knowledge of have no obligation to report the [~~independent expenditure~~] item as a contribution to the candidate's campaign committee.

B. Political committees.

(1) [~~All political~~] Political committees shall file reports according to the schedule set forth in Section 1-19-29 NMSA 1978. Reports shall be accepted until midnight on the date of filing deadline without penalty. In the event that a filing deadline falls on a state holiday, the report shall be made on the following day. Beginning after 12:01 a.m. mountain time on the date after the filing deadline of the report, penalties for late filing shall begin to accrue.

(2) Political committees shall report all contributions, in-kind contributions known to the political committee, loans, expenditures, loan repayments, and debt forgiven by the lender.

(3) In addition to disclosing the information required by the Campaign Reporting Act for expenditures, a political committee making coordinated expenditures, including in-kind, shall also disclose the name of the candidate, campaign committee, or political committee with whom the expenditure is being coordinated or is benefitting.

(4) Upon request by the secretary of state, the political committee shall provide a copy of bank statements, for all accounts, for the political committee for any reporting period.

C. Hardship waivers.

(1) All reports required by these rules shall be filed electronically in the manner and on forms as prescribed by the secretary of state. Reporting individuals required to file reports may apply to the secretary of state for exemption from electronic filing in case of hardship by submitting a hardship waiver request form prescribed by the secretary of state. The secretary of state may approve or deny this request. Approval may be granted at the discretion of the secretary of state only if the reporting individual has no way to access CFIS.

(2) Upon approval of a hardship waiver, the reporting individual shall submit the report on a prescribed paper form. Approval of a hardship waiver by the secretary of state, authorizes the secretary of state to enter the report into the electronic system on behalf of the reporting individual. A copy of the electronic report entered by the secretary of state will be mailed to the reporting individual once it has been entered into CFIS.

(3) Submission of a hardship waiver request does not constitute meeting the reporting requirements including the statutory reporting deadlines. Failure to adhere to a report deadline may still result in fines pursuant to Section 1-19-35 NMSA 1978. Reporting individuals shall make arrangements for hardship approval with the secretary of state in advance of report deadlines to ensure timely filing.

[1.10.13.12 NMAC - N, 10/10/2017; A, 10/29/2019; A, 3/22/2022]

1.10.13.13 NO ACTIVITY:

A. All candidates are required to register and file reports in CFIS according to the reporting schedule outlined in the Campaign Reporting Act once a declaration of candidacy has been filed, even if the candidate does not raise or spend any funds. Candidates who have collected no contributions and made no expenditures shall file a statement of no activity.

B. Candidates who do not raise funds are not required to open a campaign bank account.

C. Receiving funds as a publicly financed candidate pursuant to the Voter Action Act is considered raising funds for the purpose of this rule.

D. Candidates who maintain a zero balance in CFIS for the duration of a primary or

general election cycle shall be administratively closed by the secretary of state.
[1.10.13.13 NMAC - N, 10/10/2017; A, 3/22/2022]

1.10.13.15 LATE FILING OF REPORTS:

A. If a reporting individual or person required to file a report [~~under 1.10.13.11 NMAC~~] pursuant to Section 1-19-27.3 NMSA 1978 fails to timely file a report in CFIS, or fails to file a report, a written notice will be sent by the secretary of state to the reporting individual or person required to file a report explaining the violation and the fine imposed.

B. The reporting individual or person required to file a report is afforded 10 working days from the date of the written notice to file, if needed, and provide a written explanation within CFIS indicating why the violation occurred.

C. If a timely explanation is provided and the report is filed within the timeframe provided by the notice, the secretary of state will make a determination whether good cause exists to fully or partially waive the fine.

D. If the reporting individual or person required to file the report fails to provide a written response or fails to file a report within the timeframe provided by the notice, the secretary of state shall issue a notice of final action requiring the reporting individual or person required to file the report to file the late report, provide a written explanation of why the violation occurred, and pay the fine owed.

E. Fines for late filing will accrue beginning the day after the filing deadline until the report is filed at the statutory rate of fifty dollars ($50) per day up to a maximum fine [~~of five thousand dollars ($5,000)~~] pursuant to Subsection H of Section 1-19-35 NMSA 1978 per report. Candidates required to file supplemental reports are subject to additional fines pursuant to Subsection C of Section 1-19-35 NMSA 1978.

[~~**F.** The reporting individual or person required to file the report may challenge the imposition of a fine within 10 working days of the date of the notice of final action by filing a request for arbitration on the prescribed arbitration request form. The arbitrator shall conduct the hearing within 30 days of the request for arbitration. The arbitrator may schedule the arbitration beyond the 30-day timeframe with the agreement of the parties.~~

~~**G.** The arbitrator shall issue a binding written decision in accordance with Subsection F of Section 1-19-34.4 NMSA 1978, which shall be a public record. The decision shall be issued and filed with the secretary of state within 30 days of the arbitration hearing.~~]

F. If a reporting individual or person required to file a report desires to come into voluntary compliance after a notice of final action has been issued but prior to a referral pursuant to Section 1-19-34.6 NMSA 1978, the secretary of state may, at the secretary of state's sole discretion, file a petition with the court requesting the court to waive fines for good cause.

[~~**H.**~~] **G.** Failure to respond to the notice of final action [~~may~~] shall result in a referral to the [~~attorney general's office or district attorney's office, or effective January 1, 2020, the~~] state ethics commission.
[1.10.13.15 NMAC - N, 10/10/2017; A, 10/29/2019; A, 3/22/2022]

1.10.13.18 IN-KIND CONTRIBUTIONS:

A. In-kind contributions must be reported with the actual value of the contribution. If an actual value is not available, an estimated value of the contribution may be used.

B. Coordinated expenditures are treated as in-kind contributions and must be reported as such.

C. If a committee or person makes an in-kind contribution that benefits multiple candidates, each candidate must report the estimated benefit received per person.

D. Goods, such as facilities, equipment, or supplies, are valued at the price the item or facility would have cost, given its age and condition, at the time the contribution was made.

E. If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged to the candidate or committee.

F. The value of in-kind contributions from a political party or legislative caucus committee to a candidate nominated by that party in a general election cycle do not apply to the limitations on contributions to candidates or campaign committees.

G. If a committee makes an expenditure that is reported as coordinated or in-kind to another campaign or political committee, the committee making the expenditure must disclose the candidate or political committee that is benefitting from the expenditure.
[1.10.13.18 NMAC - N, 10/10/2017; A, 10/29/2019; A, 9/28/2021; A, 3/22/2022]

1.10.13.21 [~~CANDIDATE DESIGNATIONS OF CONTRIBUTIONS OVER THE LIMIT.~~] [RESERVED]

~~**A.** When a person makes a contribution above the contribution limits to a candidate in the primary cycle, the candidate may re-designate the excessive portion to the general election cycle if the contribution:~~

~~**(1)** is made during that candidate's primary election cycle;~~

~~**(2)** is not designated in writing for a particular election;~~

~~**(3)** would be excessive if treated as a primary election contribution; and~~

~~**(4)** if re-designated, does not cause the contributor to exceed any contribution limit.~~

~~B. If a candidate receives a contribution for the general election prior to the start of the general election cycle that candidate must segregate those funds and not use them until the start of the general election cycle.~~

~~C. A candidate who receives funds in the primary election cycle that are designated for use in the general election cycle and who loses the primary election must return the funds to the original donor or must donate the excessive contribution to the public election fund. A candidate or committee must disclose refunds of contributions in reports filed in CFIS using the refund contributions option.~~] [1.10.13.21 NMAC - N, 10/10/2017; Repealed, 3/22/2022]

1.10.13.22 EXCESSIVE OR PROHIBITED CONTRIBUTIONS:

A. Excessive or prohibited contributions shall [~~may~~] be returned to the donor upon receipt, without penalty to the reporting individual [~~, if the candidate or committee voluntarily returns the contribution without a finding of violation by the secretary of state~~]. However, if the secretary of state discovers a discrepancy or otherwise makes a [~~formal~~] finding that an excessive or illegal contribution has been received by a candidate or committee, the candidate or committee shall forfeit the excessive or illegal contribution in accordance with [~~Subsection D of Section 1-19-34 NMSA 1978 or~~] Subsection G of Section 1-19-34.7 NMSA 1978. A candidate or political committee shall disclose refunds of contributions or expenditures to the public election fund in CFIS in the reporting period in which the refund was made.

B. Excess anonymous funds pursuant to Subsections B and C of Section 1-19-34 NMSA 1978 shall be donated pursuant to the requirements of Subsection D of Section 1-19-34 NMSA 1978. The candidate or political committee shall disclose the details of the disbursement of excess anonymous funds in CFIS in the reporting period in which the disbursement was made.

[~~B.~~] C. The reporting individual must check committee records regularly to reasonably ensure that aggregate contributions from one contributor do not exceed the contribution limits of the Campaign Reporting Act.

[~~C.~~] D. When an excessive contribution is made via written instrument with more than one individual's name on it, but only has one signature, the permissible portion may be attributed to the signer and the excessive portion may be attributed to the other individual whose name is printed on the written instrument, without obtaining a second signature. This may be done so long as the reattribution does not cause the other contributor to exceed any contribution limit.

[~~D.~~] E. An excessive contribution which is not designated for either the primary or general election cycle, and which is made after the primary, but before the general election, may be applied to the outstanding debts from the primary election cycle if the campaign committee has more net debts outstanding from the primary election cycle than the excessive portion of the contribution. The re-designation must not cause the contributor to exceed any contribution limits.

[~~E.~~] F. Contributions and donations may not be solicited, accepted, received from, or made directly or indirectly by, foreign nationals who do not have permanent residence in the United States. [1.10.13.22 NMAC - N, 10/10/2017; A, 10/29/2019; A, 3/22/2022]

1.10.13.25 CANDIDATE EXPENDITURES:

A. Candidates who use the candidate's own personal funds for expenditures of the campaign committee must report the funds as either contributions to the campaign committee, which cannot be repaid to the candidate, or as loans to the campaign committee, which can be repaid from other campaign contributions received by the campaign committee. A candidate may also pay for expenditures of the campaign committee out of personal funds and obtain reimbursement from the campaign committee, but the campaign committee must itemize the expenditures reimbursed and otherwise comply with the disclosure requirements of Section 1-19-31 NMSA 1978 including disclosure of the original payee. A candidate may not, for instance, report a single payment to a credit card in lieu of reporting each individual expenditure paid for out of personal funds. Use of a credit card specifically designated for campaign expenses is permissible but expenditures must be itemized when reported.

B. Permissible expenditures.

(1) Use of campaign funds must be in accordance with Section 1-19-29.1 NMSA 1978. Candidates and committees must provide a purpose or description detailed enough to associate the expense to the campaign. For example, an expense of "taxi" is not appropriately descriptive to determine that it is related to a campaign. Such an expense should be reported as "taxi for travel to campaign meeting."

(2) Expenditures that are reasonably attributable to the candidate's campaign and not to personal use or personal living expenses are permissible campaign expenditures. Personal use of campaign funds is any use of funds in a campaign account to fulfill a commitment, obligation or expense of any candidate or legislator that would exist regardless of the candidate's campaign or responsibilities as a legislator. If the expense would exist even in the absence of the candidacy, or even if the legislator were not in office, then it is not considered to be a campaign-related expenditure. The following is a non-exhaustive list of items considered to be per se personal use and are, therefore, not allowable expenditures:

(a) household food items or supplies;

(b) funeral, cremation, or burial expenses

except those incurred for a candidate or an employee or volunteer of an authorized committee whose death arises out of, or in the course of, campaign activity;

(c) clothing, other than items of de minimis value that are used in the campaign, such as campaign t-shirts or camps with campaign slogans;

(d) tuition payments, other than those associated with training campaign staff;

(e) mortgage, rent or utility payments:

(1) for any part of any personal residence of the candidate or a member of the candidate's family; or

(2) for real or personal property that is owned by the candidate or a member of the candidate's family and is used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.

(f) admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign or officeholder activity;

(g) dues, fees, or gratuities at a country clubs, health club, recreational facility or other nonpolitical organizations, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises;

(h) payments to candidate's family unless the family member is providing a bona fide service to the campaign. If a family member provides bona fide services to the campaign, any salary payment in excess of the fair market value of the services provided is personal use; and

(i) a vacation.

(3) [~~Legal expenses specifically related to the campaign or legislative office are permissible uses of campaign funds. Such expenses include, but are not limited to, presenting a legal challenge to an opponent's qualifications for election, participating in such a challenge or defending such a challenge. Permissible legal expenditures also include defending or filing a complaint with the office of secretary of state or any ethics authority.~~

~~(4)~~ ~~Candidates and public officials shall not use campaign funds to pay any fine or penalty imposed by the secretary of state or any court of competent jurisdiction.~~] Legal expenses reasonably attributable to the candidate's campaign are permissible campaign expenditures.

[~~**(5)**~~] **(4)** Candidates and political committees may use campaign funds to [~~pay fines and penalties imposed by the secretary of state~~] satisfy fines and other non-criminal penalties as a result of violating a provision of the Campaign Reporting Act.

[~~**(6)**~~] **(5)** Wear and tear on a vehicle is a permissible expense of the campaign and candidates shall claim mileage rather than actual repairs for travel solely related to the campaign. Mileage shall be calculated at no more than the published rate pursuant to the Mileage and Per Diem Act. Candidates must keep a log for the candidate's own records regarding miles traveled for campaign purposes and calculate the per diem based on this log. Mileage rates are meant to account for both wear and tear on a vehicle as well as costs for gas; therefore, candidates may not charge for both gas and mileage.

[~~**(7)** A candidate, candidate's agent, or committee's agent may seek an agency opinion or declaratory ruling from the secretary of state on the lawfulness of expenditures made prior to the campaign committee facing an enforcement action. A declaratory ruling made by the secretary of state shall be issued in accordance with the Administrative Procedures Act, Section 12-8-9 NMSA 1978. To the extent that an expenditure is determined unlawful pursuant to an agency declaratory ruling, the campaign committee shall be given the opportunity to amend any inconsistent reports and take other necessary steps to come into voluntary compliance~~]

[1.10.13.25 NMAC - N, 10/10/2017; A, 3/22/2022]

1.10.13.29 RECORDS RETENTION:

A. A reporting individual shall obtain and preserve all records, including bank statements and receipts, necessary to substantiate the campaign finance reports required pursuant to the Campaign Reporting Act for a period of two years from the date of the filing of the report containing such items.

B. A reporting individual shall make such records available to the secretary of state, state ethics commission, attorney general or district attorney upon written request.

[1.10.13.29 NMAC - N, 10/10/2017; A, 3/22/2022]

1.10.13.30 RANDOM REPORT SELECTION AND REPORT REVIEW PROCESS:

A. Pursuant to Section 1-19-32.1 NMSA 1978, a randomly selected list of current and past candidates and political committees is computer generated by the secretary of state.

B. The secretary of state conducts a review of the reports filed during the election year or reporting period being reviewed for compliance with 1.10.13 NMAC and the Campaign Reporting Act. Areas of review during the report examination include:

(1) Campaign committees or political committees who fail to register or fail to register timely.

(2) Contributions, including loans and anonymous contributions, which exceed allowable contribution limits.

(3) Expenditures that may not be permissible.

(4) To the extent possible, cross checking with other reporting entities including those filing under the Lobbyist Regulation Act.

(5) Other report errors such as incomplete reporting or failure to disclose the originating donor of a contribution.

C. Pursuant to Section 1-19-32.1 NMSA 1978, the secretary of state shall notify potential violators that a possible discrepancy has been found and allow the candidates or committees 10 working days from the date of the notice to submit a written explanation and come into voluntary compliance.

[~~**D.** After a written response is received, the secretary of state will issue a notice of final action which may include dismissal of the finding upon explanation or correction or could include a penalty pursuant to Section 1-19-34.4 NMSA 1978.~~

~~**E.** Upon~~] **D.** After the secretary of state deems efforts at voluntary compliance have been exhausted and upon completion of the random review, the secretary of state shall [~~generate a report that details the findings and actions taken by the candidates, committees, and the secretary of state which shall be made publicly available~~] prepare a report that includes the committees included in the random examination, the outcome of voluntary compliance efforts, and any unresolved discrepancies. The report shall be maintained and forwarded pursuant to the requirements set forth in Subsection B of Section 1-19-32.1 NMSA 1978.

[1.10.13.30 NMAC - N, 10/10/2017; A, 3/22/2022]

1.10.13.32 LEGISLATIVE CAUCUS COMMITTEE:

A. Only one legislative caucus committee may exist for the majority and minority of each legislative chamber.

B. The speaker and the minority floor leader of the house of representatives and the majority floor leader and the minority floor leader of the senate shall be the designated leaders of the legislative caucus committees for the members of their political party in their legislative chamber unless:

(1) two-thirds of the members of a political party in a legislative chamber vote to designate a different leader from among their members; and

(2) the results of that vote are recorded with the secretary of state.

C. A legislative caucus committee must comply with all statutes and rules applicable to political committees, with the exception of in-kind contributions from a legislative caucus committee to a candidate nominated by that party in a general election cycle, which do not apply to limitation on contributions.

D. No funds belonging to a legislative caucus committee shall be expended by the committee unless a current designated leader of the committee is on file with the secretary of state using the campaign registration form prescribed by the secretary of state.

E. Funds belonging to a legislative caucus committee shall be managed by the designated leader or the leader's designee as designated on the campaign registration form prescribed by the secretary of state.

F. A legislative caucus committee cannot be dissolved or cancel its registration as a political committee pursuant to Subsection G of Section 1-19-29 NMSA 1978.

[1.10.13.32 NMAC – N, 10/29/2019; A, 3/22/2022]

1.10.13.33 PROHIBITED PERIOD: Candidates and officeholders impacted by the prohibited period pursuant to Section 1-19-34.1 NMSA 1978 are not required to cancel or pause automatic recurring contributions that were solicited and established prior to the start of the prohibited period.

[1.10.13.33 NMAC – N, 3/22/2022]

HISTORY OF 1.10.13 NMAC: [RESERVED]

End of Adopted Rules

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Issue 5	February 24	March 8
Issue 6	March 10	March 22
Issue 7	March 24	April 5
Issue 8	April 7	April 19
Issue 9	April 21	May 3
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