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New Mexico Register

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

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The New Mexico Register

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New Mexico Register

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Notices of Rulemaking and Proposed Rules

AGING AND LONG TERM SERVICES DEPARTMENT

NOTICE OF RULEMAKING AND PUBLIC HEARING

The Aging & Long-Term Services Department (Department) is proposing to repeal and replace New Mexico Administrative Code (NMAC) Rule 9.2.24 NMAC - *Rate and Fee Increases by Continuing Care Communities*.

Authority for the proposed rule's repeal and replacement is provided by Subsection E of Section 9-23-6 NMSA 1978, which states the following: "The secretary may make and adopt such reasonable procedural rules as may be necessary to carry out the duties of the department and its divisions."

The Department will hold a public hearing via Zoom link on Thursday May 19, 2022, from 9:00 a.m. to 12:00 p.m. to take comments regarding the proposed amendments to 9.2.24 NMAC.

Notice Date: April 5, 2022
Hearing Date and Time: May 19, 2022, from 9:00 a.m. to 12:00 p.m.
Adoption Date: Proposed as July 1, 2022
Statutory Authority: The Continuing Care Act, Sections 24-17-1 through 24-17-18 NMSA 1978.

The Zoom link for the public hearing: <https://altsd.zoom.us/j/85026024411>
Passcode: 287846
To attend the hearing by telephone please dial: (877) 853-5257 (Toll Free)
Meeting ID: 850 2602 4411
Passcode: 287846

Copies of the notice of rulemaking and proposed rule are available on the New Mexico Sunshine Portal at <https://ssp.nm.gov/> and on the ALTSD website at <https://nmaging.state.nm.us/news-events/ccrc-rule-making>.

Background

The purpose of the proposed repeal and replacement of the rule is to comply with amendments made to the Continuing Care Act, Sections 24-17-1 through 24-17-18 NMSA 1978. The proposed rule will provide guidance on the administration of the Continuing Care Act in accordance with New Mexico law. The rule will no longer only address rate and fee increases by Continuing Care Communities. The rule will now be entitled "*The Administration of the Continuing Care Act*."

The Department is proposing to repeal and replace the rule, and is proposing the following substantive changes:

9.2.24.7 NMAC

Some definitions from the repealed rule are being maintained, including "expenses," "GAAP," "gift income," "income," "net income," "resident," and "return on investment." Some definitions are being maintained but amended, including "cost of care," "cost of operating the continuing care community," "economic necessity," and "investment income." New definitions include "affiliate," "ALTSD," "community," "continuing care," "fees," "liquid reserves," "net operating expenses," "person," "policy," "provider," "reserves," "type A agreement," and "type B agreement."

9.2.24.8 NMAC

This section clarifies that the continuing care contract shall clearly indicate which of the four factors referenced in this rule it will utilize for rate and fee increases.

9.2.24.9 NMAC

This section from the repealed rule is being maintained, except that Subsection B now refers to "assets less liabilities" instead of "owners' investment."

9.2.24.10 NMAC

This section from the repealed rule is being maintained, except that Subsection A now clarifies that rate

and fee increases based on cost of care increases for providing medical care or health-related supportive services are governed by the continuing care contract.

9.2.24.11 NMAC

This section on historical and current data from the repealed rule is being maintained and renumbered, except that Subsection A now allows for a deviation from historical data when exigent circumstances exist, and Subsection C now differentiates between publicly available data and non-public data.

9.2.24.12 NMAC

This section from the repealed rule is being maintained and renumbered, except that it now clarifies that reasonable return on investment pertains to rate and fee increases.

9.2.24.13 NMAC

This section from the repealed rule is being maintained and renumbered.

9.2.24.14 NMAC

This section from the repealed rule is being maintained and renumbered.

9.2.24.15 NMAC

This section discusses liquid reserves and other reserves and delineates the requirements for a certificate of compliance and a corrective action plan. The prior section on reserves in the repealed rule is not being maintained in the new rule.

9.2.24.16 NMAC

This section outlines the requirements for a Continuing Care Community's annual disclosure statement.

9.2.24.17 NMAC

This section outlines the requirements for actuarial studies.

9.2.24.18 NMAC

This section outlines the process for the issuance of a notice of violation to a Continuing Care Community.

Throughout the proposed rule, changes have been made to address formatting requirements.

The register for the proposed repeal and replacement of this rule will be available April 5, 2022, on the ALTSD web site at <https://nmgaming.state.nm.us/news-events/ccrc-rule-making>. If you do not have internet access, a copy of the proposed rule may be requested by contacting ALTSD in Santa Fe at (505) 670-5141.

Interested parties may submit written comments directly to: Aging & Long-Term Services Department, Office of the Secretary, ATT: Continuing Care Act Rules Public Comments, 2550 Cerrillos Rd., Santa Fe, New Mexico 87505.

Interested persons may also send comments via e-mail to: ALTSD-CCRC.Comments@state.nm.us. Written mail and electronic mail must be received no later than 5:00 p.m. MT on May 19, 2022. Written comments will be given the same consideration as oral comments made at the public hearing. All written comments received will be posted as they are received on the ALTSD website at <https://nmgaming.state.nm.us/news-events/ccrc-rule-making> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact ALTSD in Santa Fe at (505) 670-5141. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

**AGRICULTURE,
DEPARTMENT OF
NOTICE OF PROPOSED
RULEMAKING**

NOTICE IS HEREBY GIVEN that the New Mexico Department of Agriculture (NMDA), proposes to repeal and replace 21.17.28 NMAC, PECAN WEEVIL EXTERIOR QUARANTINE and amend 21.17.36 NMAC, PECAN WEEVIL INTERIOR QUARANTINE.

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

The proposed repeal and replace of 21.17.28 NMAC, PECAN WEEVIL EXTERIOR QUARANTINE creates a definition section; updates the list of Texas pecan weevil quarantined counties to correspond with those identified in Texas law; clarifies disposition of non-compliant regulated articles; adds an additional cold storage treatment that provides for treatment of regulated articles at 12.2 F for a period of fourteen days as also provided in California Code of Regulations (CCR) 3273 “Walnut and Pecan Pests”; adds a Liability Disclaimer that relinquishes the board and the department from liability for costs incurred related to inspection, expulsion or disposition of non-compliant regulated articles, or compliance with other provisions of the exterior quarantine rule; and creates additional sections which state that all regulated articles are further subject to the provisions of any other laws, regulations, or regulatory order of the state of New Mexico or the United States Department of Agriculture.

The proposed amendments to 21.17.36 NMAC, PECAN WEEVIL INTERIOR QUARANTINE includes: changing the duration of the rule to permanent; moves the definition for non-compliant to the definitions section; changes treatment certificate documentation requirements to include treatment dates, destination contact information, and other

information as deemed relevant by the department; adds an additional cold storage treatment for regulated articles at 12.2 F for a period of fourteen days to align with cold treatments allowed under California Code of Regulations (CCR) 3273 “Walnut and Pecan Pests”; and updates formatting to comply with state requirements. Amendments to the Disposition of Violations section clarifies authorities related to the expulsion of non-compliant regulated articles for the purpose of addressing specific instances of non-compliance, and adds terms for reimbursement for costs incurred by the department for disposition of non-compliant regulated articles to ensure the state is not held responsible for those costs including non- or delinquent payments.

STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9, NMSA 1978 Compilation and the Pecan Act, Chapter 76, Article 16, Sections 1 through 9, NMSA 1978 compilation.

Copies of the Notice of Proposed Rulemaking and proposed rules (including any technical information) are available by electronic download from the New Mexico Department of Agriculture website (<https://www.nmda.nmsu.edu>) and at agency district and field offices.

Monday, May 23, 2022 at 5:30 pm NMDA will host a public hearing at the Artesia Public Schools Board Room, Admin Building located at 1106 W. Quay in Artesia, New Mexico.

Tuesday, May 24, 2022 at 3:00 pm NMDA will host a public video/ telephonic and in person hearing at the New Mexico Department of Agriculture, at 3190 S. Espina, Las Cruces, NM, on the corner of Espina and Gregg.

Join via Video for Tuesday, May 24, 2022, 3:00 pm hearing:

Meeting URL: <https://nmsu.zoom.us/j/94534518362>
 Meeting ID: 945 3451 8362
 Passcode: 538839
 or
 Join via Phone for Tuesday, May 24, 2022, 3:00 pm hearing:
 +1 669 900 6833 or +1 253 215 8782
 Meeting ID: 945 3451 8362
 Passcode: 538839

The hearing for proposed amendment of 21.17.36 NMAC, PECAN WEEVIL INTERIOR QUARANTINE will immediately follow the hearing for the proposed repeal and replace of 21.17.28 NMAC, PECAN WEEVIL EXTERIOR QUARANTINE. Oral comments will be accepted at the hearing from members of the public and any interested parties. Written comments will be accepted through 5:00 pm on May 24, 2022. Comments may be submitted via email to comments@nmda.nmsu.edu or may be filed by sending original copies to: New Mexico Department of Agriculture, Office of Director MSC 3189, PO Box 30005, 3190 S. Espina, Las Cruces, NM 88003-8005 Only signed statements, proposals or comments will be accepted. Scanned or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, NMDA reserves the right to require that original signatures be provided to verify the electronic or facsimile signature.

SPECIAL NEEDS: If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact NMDA at (575) 646-3702 at least one week prior to the meeting or as soon as possible.

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

ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The Economic Development Department (EDD) will be hosting a virtual public rule hearing on Friday, May 13, 2022, beginning at 9:00am. For instructions on how to attend this meeting, visit the Department's website at: <https://edd.newmexico.gov/about-us/public-notices>. The purpose of the public hearing is to receive public input on the proposed amendments to 5.5.50 NMAC, Industrial Development Training Program (Job Training Incentive Program) and address additional changes that may have been suggested by the Industrial Training Board or other interested parties during the public comment period.

Rule Change Information: The purpose of this rule change is to consider retaining and or revising current COVID-19 language in policy for FY23, retaining or eliminating the additional 5% wage reimbursement for a trainee that has graduated out of the New Mexico Foster Care System, and increasing the Audit Fee schedule associated with an Agreed Upon Procedure requirement to close out JTIP approved projects.

Statutory Authorization: Section 21-19-7 NMSA 1978 grants the Industrial Training Board the authority to promulgate and enforce rule.

Public comment: Interested individuals are strongly encouraged to submit written comments regarding the proposed policy amendments relating to the Job Training Incentive Program to Patrick Gannon, JTIP Program Manager, at patrick.gannon@state.nm.us. Written comments must be received no later than 5:00 pm on Friday, May 6, 2022. EDD encourages the early submission

of written comments. Individuals may also testify at the public hearing.

The proposed policy amendments and current JTIP Policy Manual may be accessed through EDD's website <https://edd.newmexico.gov/about-us/public-notices/> beginning April 5, 2022, or from Patrick Gannon at the contact above.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact Patrick Gannon as soon as possible. The EDD requests at least ten days advanced notice to provide requested special accommodations.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT ENERGY CONSERVATION AND MANAGEMENT DIVISION

NOTICE OF PUBLIC HEARING AND RULEMAKING

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD) hereby gives notice of the following proposed rulemaking. EMNRD proposes to adopt 3.3.35 NMAC, 2021 Sustainable Building Tax Credit and 3.4.22 NMAC, 2021 Sustainable Building Tax Credit.

Purpose of Rules. In 2021 the Legislature passed the 2021 Sustainable Building Tax Credit and in 2022, the Legislature amended it. The 2021 Sustainable Building Tax Credit is established in the Income Tax Act and the Corporate and Franchise Tax Act. The statutes require EMNRD to promulgate rules to certify whether a taxpayer is eligible for the tax credit.

This is a continuation of the rulemaking EMNRD noticed in December 2021. EMNRD has incorporated the amendments to the

tax credit made in the 2022 legislative session.

3.3.35 NMAC, 2021 Sustainable Building Tax Credit. EMNRD proposes to place the residential and commercial building rules into one rule, and provide the requirements and application process to obtain certificates of eligibility for the sustainable building tax credit from EMNRD for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico, or the permanent installation of manufactured housing that is a sustainable building or the installation of energy-conserving production to existing buildings in New Mexico.

3.4.22 NMAC, 2021 Sustainable Building Tax Credit. EMNRD proposes to place the residential and commercial building rules into one rule, and provide the requirements and application process to obtain for certificates of eligibility for the sustainable building tax credit from EMNRD for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico, or the permanent installation of manufactured housing that is a sustainable building or the installation of energy-conserving production to existing buildings in New Mexico.

Legal Authority. EMNRD proposes the rules under the authority of the Income Tax Act, NMSA 1978, Section 7-2-18.32 and the Corporate and Franchise Tax Act, NMSA 1978, Section 7-2A-28.1 and NMSA 1978, Section 9-1-5(E).

The full text of the proposed rules are available from the EMNRD, Energy Conservation and Management Division, 1220 S. Saint Francis Drive, Santa Fe, NM 87505; at <https://www.emnrd.nm.gov/ecmd/ecmd-public-notice/>; or by contacting Harold Trujillo at harold.trujillo@state.nm.us; telephone (505) 490-7912.

Public Hearing and Comment.

EMNRD will hold a virtual public hearing on the proposed rules at 9:30 am on May 9, 2022. The public may join the hearing virtually through WebEx using one of the following:

Sustainable Building Tax Credit 2021 Rules Hearing - Continuation Event Link:

<https://nmemnrd.webex.com/nmemnrd/j.php?MTID=m01380166a5453031ae2dafcbacbf1834>

Event number: 2490 844 9011

Event password: SBTC2021

(72822022 from phones)

Or join by phone:

1-844-992-4726 United States Toll Free

+1-408-418-9388 United States Toll

Access code: 24908449011#72822022

Those wishing to comment on the proposed rules may make oral comments or submit written comments at the hearing or may submit written comments by May 9, 2022, by 5:00 p.m. by mail or e-mail. Please mail written comments to Harold Trujillo, EMNRD, Energy Conservation and Management Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or submit them by e-mail to harold.trujillo@state.nm.us.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Harold Trujillo at (505) 490-7912 or the New Mexico Relay Network at 1-800-659-1779 two weeks prior to the hearing. Public documents can be provided in various accessible formats. Please contact Harold Trujillo at (505) 490-7912, if a summary or other type of accessible format is needed.

Technical Information. Technical information used in the development of the proposed rules can be viewed at <https://www.emnrd.nm.gov/ecmd/ecmd-public-notice/> or by contacting Harold Trujillo at (505)

490-7912. The Technical information includes ENERGY STAR® Program Requirements for Residential Windows, Doors, and Skylights, and 2019 California Residential Compliance Manual.

**HUMAN SERVICES
DEPARTMENT
CHILD SUPPORT
ENFORCEMENT DIVISION**

**NOTICE OF PUBLIC RULE
HEARING**

The Human Services Department through the Child Support Enforcement Division (CSED), is proposing amendments to rules 8.50.125.3 Statutory Authority, 8.50.125.8 Child Support Payments, 8.50.125.5.11 Distribution of Collections (Except for Federal Income Tax Refund Offsets), 8.50.125.12 Distribution of Collections through Federal Income Tax Refund Offset, and 8.50.125.18 Child Support Case Services.

Changes in the rule are to update language including updating statute citation format, changing child support payment EFT options from mandatory to optional and changing payment distribution. The register for these proposed amendments to these rules will be available 4/1/2022 on the HSD web site at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting CSED at (505) 709-5755.

A public hearing to receive testimony on these proposed rules will be held virtually at 9:00 am on Thursday May 5, 2022.

Please join my meeting from your computer, tablet or smartphone.
<https://meet.goto.com/758543741>

You can also dial in using your phone.
United States: +1 (669) 224-3412

Access Code: 758-543-741

Join from a video-conferencing room or system.

Dial in or type: 67.217.95.2 or inroomlink.goto.com
Meeting ID: 758 543 741
Or dial directly:
758543741@67.217.95.2 or
67.217.95.2##758543741
Get the app now and be ready when your first meeting starts: <https://meet.goto.com/install>

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATTN: Child Support Enforcement Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling (505) 709-5755. Electronic comments may be submitted to john.lujan2@state.nm.us. Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. May 5, 2022. All written comments will be posted on the agency's website within 3 days of receipt.

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

The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations. Copies of all comments will be made available by the CSED upon request by providing copies directly to a requestor or by making them available on the CSED website or at a location within the county of the requestor.

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule *8.200.510 NMAC, General Recipient Policies, Resource Standards, 8.200.520 NMAC, General Recipient Rules, Income Standards, and 8.291.430 NMAC, Affordable Care, Financial Responsibility Requirements*. The Department is amending these rules to implement the Department of Health and Human Services (HHS) updates to the Federal Poverty Level (FPL) income limits for Medicaid categories of eligibility to be effective April 01, 2022, as required by HHS. The Department is also implementing the annual cost of living allowance (COLA) increase that went into effect on January 01, 2022. The Department is repromulgating these sections of the rules in full within six months of issuance of the emergency rule in accordance with the New Mexico State Rules Act.

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

Notice Date: April 05, 2022
Hearing Date: May 05, 2022
Adoption Date: Proposed as August 01, 2022
Technical Citations: HHS 2022 Federal Poverty Guidelines and 2022 SSA COLA Fact Sheet

The Department is proposing to amend the rule as follows:
8.200.510 NMAC

Section 11 is amended to reflect current COLA for Community Spouse Resource Allowance.

Section 12 is amended to reflect the

current COLA for Post-Eligibility Calculation (Medical Care Credit).

Section 13 is amended to reflect the current COLA for Average Monthly Cost of Nursing

Facilities for Private Patients.

Section 15 is changed to reflect the COLA for current Excess Home Equity Amount for Long-Term Care Services.

8.200.520 NMAC

Section 11 is amended to reflect updated FPL limits.

Section 12 is amended to reflect the cost of living increase.

Section 13 is amended to reflect the increase in the Federal Benefit Rate.

Section 15 is amended to reflect the increase in SSI living arrangement amounts.

Section 16 is amended to reflect the increase in the monthly income standard for Institutional

Care and Home and Community Based Waiver Services categories.

Section 20 is amended to reflect the increase in the covered quarter income standard.

8.291.430 NMAC

Section 10 is amended to reflect FPL mandates.

This register and the proposed rule are available on the HSD website at: <https://www.hsd.state.nm.us/lookingforinformation/registers/> and <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at (505) 827-1337.

The Department proposes to implement these rules effective April 01, 2022. A public hearing to receive testimony on this proposed rule will be held **via conference call** on Thursday, May 05, 2022, at 9 a.m. Mountain Time (MT). **Conference phone number: 1-800-747-5150.**
Access Code: 2284263.

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

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on May 05, 2022. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

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

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

PUBLIC REGULATION COMMISSION

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

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

The rules which may be adopted as the final rules in this proceeding may include all, part, or none of the language in the proposed rules issued by the commission. The commission may also consider alternative proposals for amending or replacing the current rules.

Concise statement of proposed rules:

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

non-export, limited export, and inadvertent export of energy into the utility system. The rule directs utilities to provide the commission and the public with information about available hosting capacity or constraints on distribution circuits. Citing recently adopted statutes, including the Grid Modernization Act of 2019 (Section 62-8-13 NMSA 1978) the proposed rule provides the commission with options for future determinations of alternatives to the traditional cost-causation model for necessary interconnection-related system upgrades. Additionally, the commission plans to update the provisions in the existing interconnection manual and integrate those provisions into rule 17.9.568 NMAC.

Constitutional and statutory authority:

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

How a copy of the full text of the proposed rule can be obtained: A copy of the full text of the proposed rules may be obtained from the rulemaking proceedings section of the commission’s website at <https://www.nm-prc.org/rulemaking-proceedings/> under Case No. 21-00266-UT or by calling Isaac Sullivan-Leshin in the Office of General Counsel at (505) 670-4830. From the same sources, any person can obtain the commission’s *Agreements Attachment* and *Screening Process Attachment* referenced in the proposed rule.

How a person can comment on the proposed rule, where comments will be received and when comments are due:

Written initial comments and written response comments shall be filed by

the deadlines below in accordance with NMPRC rules of procedure 1.2.2 NMAC. For information as to how to file at the time of filing, please contact Melanie Sandoval, the commission's records bureau chief at (505) 470-8538 or melanie.sandoval@state.nm.us. Written initial comments shall be filed no later than **May 6, 2022** and written response comments shall be filed no later than **May 20, 2022**. Comments shall refer to Case No. 21-00266-UT. All written comments will be posted on the commission's website within three days of their receipt by the records bureau.

When and where a public rule hearing will be held and how a person can participate in the hearing: a public hearing will be held on **May 31, 2022, beginning at 1:00 p.m.** via Zoom platform. The commission's office of general counsel will email a Zoom invitation to the persons on the official service list in this matter prior to the hearing. The Zoom invitation will include a call-in number for those participants who are unable to access the Zoom platform via computer. Any member of the public who wishes to make a comment at the hearing must contact Isaac Sullivan-Leshin at (505) 670-4830 or Isaac.Sullivan-Leshin@state.nm.us by no later than 12:00 p.m. on May 27, 2022 to sign up as a hearing participant. The commission's office of general counsel will email a Zoom invitation to all hearing participants the day before the hearing. The Zoom invitation will include a call-in number for those participants who are unable to access the Zoom platform via computer. The hearing will be held in order to receive oral comments. The first portion of the hearing will allow for any public commenters who have not filed written commentary and the second portion of the hearing will allow for oral argument for parties who have previously filed written commentary. In the interest of administrative efficiency, commenters who have submitted written comments may be restricted from making oral comments in the first portion of the

hearing subject to the discretion of the commission or its designee. In addition, any commenter may be limited to five minutes to speak, subject to the discretion of the commission or its designee. The commission or its designee may also determine that a spokesperson should be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding. A court reporter will prepare a transcript of the hearing for filing the rulemaking docket, Docket No. 21-00266-UT.

The record of this case will close on **June 10, 2022**. From that date through the completion of this proceeding, rulemaking participants will be forbidden from communicating with the commission or its representatives concerning substantive issues in this proceeding.

Any person with a disability requiring special assistance in order to participate in the hearing should contact Renada Peery-Galon at (505) 467-9116 at least 48 hours prior to the commencement of the hearing.

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

Technical information that served as a basis for the proposed rule and how the information can be obtained: When adopting the proposed rule, the commission considered the report titled "*New Mexico Interconnection Rules: Report and Recommendations to the New Mexico Public Regulation Commission*," prepared by the interconnection rulemaking working group, which was filed in Docket No. 20-00171-UT on October 15, 2021. The commission also considered the report titled "*New Mexico Community*

Solar - Stakeholder Participation Pre-Rulemaking Status Report," prepared by Straten Consulting, LLC, which was filed in Docket No. 21-00112-UT on October 15, 2021.

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

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

Notice of termination of previous rulemaking: On December 28, 2021 the commission published a NOPR commencing a rulemaking to repeal and replace 17.9.568 NMAC in Volume XXXII, Issue 24 of the New Mexico Register. The commission hereby gives notice that the rulemaking commenced on December 28, 2021 is hereby terminated and a new

rulemaking will commence as of the date of the publication of this notice. Any comments filed in docket 21-00266-UT prior to the publication of this notice will not be considered to be part of the record of this rulemaking. If any person wishes for previously filed comments to be part of the record of this rulemaking the person must refile them in accordance with the directions in this notice.

PUBLIC REGULATION COMMISSION

NOTICE OF TERMINATION OF RULEMAKING

The New Mexico public regulation commission is providing notice of cancelation of the rulemaking public hearing originally scheduled on Thursday March 10, 2022 at 10:00 a.m., scheduled virtually via Zoom and YouTube, in accordance with Subsection C of section 14-4-5 NMSA 1978.

The rulemaking which commenced for rule 17.9.568 NMAC, entitled INTERCONNECTION OF GENERATING FACILITIES WITH A RATED CAPACITY UP TO AND INCLUDING 10 MW CONNECTING TO A UTILITY SYSTEM, on December 28, 2021 when the commission published a NOPR in Volume XXXII, Issue 24 of the New Mexico Register and the associated rulemaking schedule under case no. 21-00266-UT has been terminated by the New Mexico Public Regulation Commission. The rulemaking proceeding under case no. 21-00266-UT will continue under a revised Notice of Proposed Rulemaking.

PUBLIC SAFETY, DEPARTMENT OF

AMENDED NOTICE OF PUBLIC HEARING*

The New Mexico Department of Public Safety (DPS) will hold a public

hearing via Microsoft Teams, on April 11, 2022, at 10:00 a.m. The members of the public may attend the Microsoft Teams meeting on a computer, mobile device, or telephone. The videoconference's Meeting ID and Password, videoconference link, and telephone number are as follows:

Join Microsoft Teams Meeting on your computer or mobile app

<https://bit.ly/3BrNUam>

Or call in (audio only)

1-505-312-4308

Phone Conference ID: 852 504 202#

The purpose of this public hearing is to receive public comment and input on proposed amendments to 18.19.8 NMAC, Sections 7, 8, 9, 10, 11, 13, 16, 19, 20, 21, 24, 25, 26, 28, 29, 30, 36, 39, 40, 52, 57, 58, 62, 63, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 96 and 99, effective 6/1/2022.

An amendment to NMAC Rule 18.19.8.82 will make the requirement for escort vehicles to accompany overlength vehicles in New Mexico, conform to the practice in states adjacent to New Mexico. The amendment will require any commercial vehicle, combination or load more than 110 feet and one inch, but no more than 120 feet and one inch, in length to travel through New Mexico with a single vehicle escort. Vehicles, combination or loads which exceed 120 feet and one inch in length will be required to be accompanied by two escort vehicles. This change will allow interstate commerce to proceed through New Mexico in a more efficient manner.

The proposed additional amendment to section 82 and the proposed amendments to sections 7, 8, 9, 10, 11, 13, 16, 19, 20, 21, 24, 25, 26, 28, 29, 30, 36, 39, 40, 52, 57, 58, 62, 63, 80, 81, 83, 84, 85, 86, 87, 88, 89, 90, 96 and 99 are for the purpose of distinguishing between the Department of Public Safety and the Department of Transportation, for stylistic purposes or both.

The amendment to the proposed rule

is promulgated pursuant to Section 29-3A-6 NMSA 1978.

Interested persons may comment at the public hearing or submit written statements to DPS c/o Captain Joseph J. Romero, 4491 Cerrillos Road, P.O. Box 1628, Santa Fe, NM 87504, or by electronic mail to: Joseph.Romero12@state.nm.us. All written statements must be received no later than April 6, 2022, or at the public hearing. Early submission of written statements is encouraged.

Copies of the proposed rule may be obtained prior to the hearing at all DPS district, field, ports of entry, and regional offices, at the DPS website, <http://www.dps.state.nm.us>, on the sunshine portal, or by contacting Joseph R. Romero by telephone at (505) 827-9084 or by email at Joseph.Romero12@state.nm.us.

Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Captain Joseph Romero. DPS requires at least ten calendar days advance notice to provide special accommodations.

***this Amended Notice amends the Notice of Hearing published in NM Register Volume XXXIII, Issue 5, on March 5, 2022, and in the Albuquerque Journal on February 21, 2022, in order to correct a typographical error in the e-mail address of Captain Joseph Romero.**

SUPERINTENDENT OF INSURANCE, OFFICE OF THE

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance ("OSI" or "Superintendent") will hold a public video/telephone hearing regarding amendments to 13.2.9 NMAC PROPERTY AND CASUALTY ACTUARIAL OPINIONS. This hearing will

commence on **May 6, 2022 at 9:00 a.m.**

PURPOSE OF THE PROPOSED RULES: The proposed amendments are to update 13.2.9.1 NMAC to reflect the agency (OSI) currently authorized to adopt and implement 13.2.9 NMAC and to update 13.2.9.7(G) NMAC to define “qualified actuary” consistently with changes implemented by the National Association of Insurance Commissioners in its Annual Statement Instructions.

STATUTORY AUTHORITY: Sections 59A-2-9 and 59A-5-29 NMSA 1978.

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

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

Copies of the Notice of Proposed Rulemaking and proposed new rules are available by electronic download from the OSI eDocket <https://edocket.osi.state.nm.us/guest/case-view/5752> or by requesting a copy by calling (505) 476-0333. Note: Due to the COVID-19 pandemic, the physical offices of the OSI remain closed to the public until further notice.

Written comments will be accepted through 4:00 p.m. May 6, 2022. Responses to written comments or oral comments will be accepted through 4:00 p.m. on May 16, 2022. All comments shall be filed electronically through the OSI eDocket <https://edocket.osi.state>.

nm.us/guest/case-view/5752 at or received by mail to:

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

For help submitting a filing, please contact OSI-docketfiling@state.nm.us.

The below docket number must be indicated on filed comments.

Docket No. 2022-0031
IN THE MATTER OF ADOPTION
OF AMENDMENTS TO RULE
13.2.9 NMAC PROPERTY AND
CASUALTY ACTUARIAL
OPINIONS

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

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

DONE AND ORDERED this 5th day of April, 2022
/S/RUSSELL TOAL

TRANSPORTATION, DEPARTMENT OF

NOTICE OF PROPOSED RULEMAKING

The New Mexico Department of Transportation (Aviation Division) is proposing to repeal and replace rule, 18.11.3. NMAC, Air Service Assistance Program.

Approval of the initial rulemaking action for the proposed repeal and replace rule was granted to the Aviation Division by the New Mexico State Transportation Commission on January 6th, 2022, pursuant to Sections 9-5-1, 67-3-8, 67-3-11, 67-1-

13, 67-3-28 and 67-1-13 NMSA 1978. The legal authority authorizing this rulemaking is Section 64-1-13 NMSA 1978.

Purpose: The purpose of this rule is to repeal and replace the Air Service Assistance Program with the Air Service Marketing Assistance Program.

Summary of Full Text: The current rule needs to be repealed and replaced to clarify the intent of the statute and to encourage more participation by municipalities, counties, tribal entities or other public entities located within the state of New Mexico.

Full Text of the Proposed Rule: Copy of the full text of the proposed repeal and replace rule may be found on the NMDOT website at the following internet link, under the *Public Notices* tab: <https://www.dot.nm.gov/public-legal-notice/>. A copy of the proposed rule may also be requested by contracting Daniel R. Moran at: Telephone (505) 699-5462 or Email: dan.moran@state.nm.us. A reasonable fee may be charged for printed copies.

Rulemaking Hearing: NMDOT will hold a public hearing for the purpose of receiving oral and written public comment from interested parties on the proposed repeal and replace rule, 18.11.3 NMAC. The hearing is scheduled on May 5, 2022, from 10:00 a.m. to 11:30 a.m. at New Mexico Department of Transportation, district three auditorium, 7500 Pan American Fwy. NE, Albuquerque, New Mexico.

Written Comments: To submit written comments on or before May 5, 2022, please send to: Daniel R Moran, Aviation Division, New Mexico Department of Transportation, 3501 Access Rd C., Albuquerque, New Mexico 87106, Telephone (505) 699-5462; Email: dan.moran@state.nm.us. Written comments will be accepted from the date this notice is published in the New Mexico Register, April 5, 2022, and until the

close of the hearing scheduled in this rulemaking, May 5, 2022. If you plan to submit written comments, argument or data at the hearing, please make sure any documentation contains your name, phone number and email address, and please bring (3) copies of any documents to the hearing. If submitting written comments by email, please indicate the rule number in the subject line. Oral comments will only be accepted at the public hearing, and may be subject to time limitations. After the close of the hearing scheduled in this rulemaking, the rulemaking record will be closed, and no other comments will be accepted. All written comments will be posted on the department's website within three days of receipt.

Accommodations: Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule revisions in an accessible form may contact: Daniel R. Moran at (505) 699-5462 or dan.moran@state.nm.us at least ten days before the hearing.

**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.

ENVIRONMENT DEPARTMENT

This is an amendment to 20.6.4 NMAC, Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 97, 103, 108, 112, 115, 116, 126, 128, 140, 204, 206, 207, 208, 209, 215, 220, 231, 307, 309, 311, 312, 318, 405, 408, 900 and 901, effective 4/23/2022.

20.6.4.6 OBJECTIVE:

A. The purpose of this part is to establish water quality standards that consist of the designated use or uses of surface waters of the state, the water quality criteria necessary to protect the use or uses and an antidegradation policy.

B. The state of New Mexico is required under the New Mexico Water Quality Act (Subsection C of Section 74-6-4 NMSA 1978) and the federal Clean Water Act, as amended (33 U.S.C. Section 1251 *et seq.*) to adopt water quality standards that protect the public health or welfare, enhance the quality of water and are consistent with and serve the purposes of the New Mexico Water Quality Act and the federal Clean Water Act. It is the objective of the federal Clean Water Act to restore and maintain the chemical, physical and biological integrity of the nation's waters, including those in New Mexico. This part is consistent with Section 101(a) (2) of the federal Clean Water Act, which declares that it is the national goal that wherever attainable, an interim goal of water quality that provides for the protection and propagation of fish, shellfish and wildlife and provides for recreation in and on the water be achieved by July 1, 1983. Agricultural, municipal, domestic and industrial water supply are other essential uses of New Mexico's surface water; however,

water contaminants resulting from these activities will not be permitted to lower the quality of surface waters of the state below that required for protection and propagation of fish, shellfish and wildlife and recreation in and on the water, where practicable.

C. Pursuant to Subsection A of Section 74-6-12 NMSA 1978, this part does not grant to the water quality control commission or to any other entity the power to take away or modify property rights in water.

D. These surface water quality standards serve to respond to the inherent threats of climate change and provide resiliency for the continued protection and enhancement of water quality.

[20.6.4.6 NMAC - Rp 20 NMAC 6.1.1006, 10/12/2000; A, 5/23/2005; A, 4/23/2022]

20.6.4.7 DEFINITIONS:

Terms defined in the New Mexico Water Quality Act, but not defined in this part will have the meaning given in the Water Quality Act.

A. Terms beginning with numerals or the letter "A," and abbreviations for units.

(1) "4Q3"
means the critical low flow as determined by the minimum average flow over four consecutive days that occurs with a frequency of once in three years.

[(+)] (2) "4T3 temperature" means the temperature not to be exceeded for four or more consecutive hours in a 24-hour period on more than three consecutive days.

[(-)] (3) "6T3 temperature" means the temperature not to be exceeded for six or more consecutive hours in a 24-hour period on more than three consecutive days.

[(+)] (4) Abbreviations used to indicate units are defined as follows:

(a)
"cfu/100 mL" means colony-forming units per 100 milliliters; the results for *E. coli* may be reported as either colony forming units (CFU) or the most probable number (MPN), depending on the analytical method used;

(b)
"cfs" means cubic feet per second;

(c)
"µg/L" means micrograms per liter, equivalent to parts per billion when the specific gravity of the solution equals 1.0;

(d)
"µS/cm" means microsiemens per centimeter; one µS/cm is equal to one µmho/cm;

(e)
"mg/kg" means milligrams per kilogram, equivalent to parts per million;

(f)
"mg/L" means milligrams per liter, equivalent to parts per million when the specific gravity of the solution equals 1.0;

(g)
"MPN/100 mL" means most probable number per 100 milliliters; the results for *E. coli* may be reported as either CFU or MPN, depending on the analytical method used;

(h)
"NTU" means nephelometric turbidity unit;

(i)
"pCi/L" means picocuries per liter;

(j)
"pH" means the measure of the acidity or alkalinity and is expressed in standard units (su).

[(+)] (5) "Acute toxicity" means toxicity involving a stimulus severe enough to induce a response in 96 hours of exposure or less. Acute toxicity is not always measured in terms of lethality, but may include other toxic effects that occur within a short time period.

~~(5)~~ (6)

“Adjusted gross alpha” means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample, including radium-226, but excluding radon-222 and uranium. Also excluded are source, special nuclear and by-product material as defined by the Atomic Energy Act of 1954.

~~(6)~~ (7) “Aquatic

life” means any plant or animal life that uses surface water as primary habitat for at least a portion of its life cycle, but does not include avian or mammalian species.

~~(7)~~ (8)

“Attainable Use” means a use that is achievable by the imposition of effluent limits required under sections 301(b) and 306 of the federal Clean Water Act and implementation of cost-effective and reasonable best management practices for nonpoint source control. An attainable use may or may not have criteria as stringent as the criteria for the designated use.

B. Terms beginning with the letter “B”.

(1) “Best management practices” or “BMPs”:

(a)

for national pollutant discharge elimination system (NPDES) permitting purposes means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollution of “waters of the United States;” BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage; or

(b)

for nonpoint source pollution control purposes means methods, measures or practices selected by an agency to meet its nonpoint source control needs; BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures; BMPS can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction

of pollutants into receiving waters; BMPs for nonpoint source pollution control purposes shall not be mandatory except as required by state or federal law.

(2)

“Bioaccumulation” refers to the uptake and retention of a substance by an organism from its surrounding medium and food.

(3)

“Bioaccumulation factor” is the ratio of a substance’s concentration in tissue versus its concentration in ambient water, in situations where the organism and the food chain are exposed.

(4)

“Biomonitoring” means the use of living organisms to test the suitability of effluents for discharge into receiving waters or to test the quality of surface waters of the state.

C. Terms beginning with the letter “C”.

(1) “CAS

number” means an assigned number by chemical abstract service (CAS) to identify a substance. CAS numbers index information published in chemical abstracts by the American chemical society.

(2) “Chronic

toxicity” means toxicity involving a stimulus that lingers or continues for a relatively long period relative to the life span of an organism. Chronic effects include, but are not limited to, lethality, growth impairment, behavioral modifications, disease and reduced reproduction.

(3)

“Classified water of the state” means a surface water of the state, or reach of a surface water of the state, for which the commission has adopted a segment description and has designated a use or uses and applicable water quality criteria in 20.6.4.101 through 20.6.4.899 NMAC.

(4) “Climate

change” refers to any significant change in the measures of climate lasting for an extended period of time, typically decades or longer, and includes major changes in temperature, precipitation, wind

patterns or other weather-related effects.

~~(4)~~ (5) “Closed

basin” is a basin where topography prevents the surface outflow of water and water escapes by evapotranspiration or percolation.

~~(5)~~ (6)

“Coldwater” in reference to an aquatic life use means a surface water of the state where the water temperature and other characteristics are suitable for the support or propagation or both of coldwater aquatic life._

~~(6)~~ (7)

“Coolwater” in reference to an aquatic life use means the water temperature and other characteristics are suitable for the support or propagation of aquatic life whose physiological tolerances are intermediate between and may overlap those of warm and coldwater aquatic life.

~~(7)~~ (8)

“Commission” means the New Mexico water quality control commission.

~~(8)~~ (9) “Criteria”

are elements of state water quality standards, expressed as constituent concentrations, levels or narrative statements, representing a quality of water that supports a use. When criteria are met, water quality will protect the designated use.

D. Terms beginning with the letter “D”.

(1) “DDT and

derivatives” means 4,4’-DDT (CAS number 50293), 4,4’-DDE (CAS number 72559) and 4,4’-DDD (CAS number 72548).

(2)

“Department” means the New Mexico environment department.

(3)

“Designated use” means a use specified in 20.6.4.97 through 20.6.4.899 NMAC for a surface water of the state whether or not it is being attained.

(4)

“Dissolved” refers to the fraction of a constituent of a water sample that passes through a 0.45-micrometer pore-size filter. The “dissolved”

fraction is also termed “filterable residue.”

(5) **“Domestic water supply”** means a surface water of the state that could be used for drinking or culinary purposes after disinfection.

E. **Terms beginning with the letter “E”.**

(1) **“E. coli”** means the bacteria Escherichia coli.

(2) **“Emerging contaminants”** refer to water contaminants that may cause significant ecological or human health effects at low concentrations. Emerging contaminants are generally chemical compounds recognized as having deleterious effects at environmental concentrations whose negative impacts have not been fully quantified and may not have regulatory numeric criteria.

(2) (3) **“Ephemeral”** when used to describe a surface water of the state means the water body contains water briefly only in direct response to precipitation; its bed is always above the water table of the adjacent region.

(2) (3) (4) **“Existing use”** means a use actually attained in a surface water of the state on or after November 28, 1975, whether or not it is a designated use.

F. **Terms beginning with the letter “F”.**

(1) **“Fish culture”** means production of coldwater or warmwater fishes in a hatchery or rearing station.

(2) **“Fish early life stages”** means the egg and larval stages of development of fish ending when the fish has its full complement of fin rays and loses larval characteristics.

G. **Terms beginning with the letter “G” [RESERVED]**

H. **Terms beginning with the letter “H”.**

(1) **“Hardness”** means the measure of dissolved calcium and magnesium salts in water expressed in units of dissolved calcium carbonate (CaCO₃) concentration unless otherwise noted.

(2) **“Harmonic mean flow”** is the number of daily flow measurements divided by the sum of the reciprocals of the flows; that is, it is the reciprocal of the arithmetic mean of reciprocal daily flow measurements consistent with the equations in Paragraph (1) of Subsection B of 20.6.4.11 NMAC.

(+) (3) **“High quality coldwater”** in reference to an aquatic life use means a perennial surface water of the state in a minimally disturbed condition with considerable aesthetic value and superior coldwater aquatic life habitat. A surface water of the state to be so categorized must have water quality, stream bed characteristics and other attributes of habitat sufficient to protect and maintain a propagating coldwater aquatic life population.

(2) (4) **“Human health-organism only”** means the health of humans who ingest fish or other aquatic organisms from waters that contain pollutants.

I. **Terms beginning with the letter “I”.**

(1) **“Industrial water supply”** means the use or storage of water by a facility for process operations unless the water is supplied by a public water system. Industrial water supply does not include irrigation or other agricultural uses.

(2) **“Intermittent”** when used to describe a surface water of the state means the water body contains water for extended periods only at certain times of the year, such as when it receives seasonal flow from springs or melting snow.

(3) **“Interstate waters”** means all surface waters of the state that cross or form a part of the border between states.

(4) **“Intrastate waters”** means all surface waters of the state that are not interstate waters.

(5) **“Irrigation”** means application of water to land areas to supply the water needs of beneficial plants.

(6) **“Irrigation storage”** means storage of water to supply the needs of beneficial plants.

J. **Terms beginning with the letter “J”. [RESERVED]**

K. **Terms beginning with the letter “K”. [RESERVED]**

L. **Terms beginning with the letter “L”.**

(1) **“LC-50”** means the concentration of a substance that is lethal to fifty percent of the test organisms within a defined time period. The length of the time period, which may vary from 24 hours to one week or more, depends on the test method selected to yield the information desired.

(2) **“Limited aquatic life”** as a designated use, means the surface water is capable of supporting only a limited community of aquatic life. This subcategory includes surface waters that support aquatic species selectively adapted to take advantage of naturally occurring rapid environmental changes, [~~ephemeral or intermittent water,~~] low-flow, high turbidity, fluctuating temperature, low dissolved oxygen content or unique chemical characteristics.

(3) **“Livestock watering”** means the use of a surface water of the state as a supply of water for consumption by livestock.

M. **Terms beginning with the letter “M”.**

(1) **“Marginal coldwater”** in reference to an aquatic life use means that natural [~~intermittent or low flows, or other natural~~] habitat conditions severely limit maintenance of a coldwater aquatic life population during at least some portion of the year or historical data indicate that the temperature [~~it~~] of the surface water of the state may exceed that which could continually support aquatic life adapted to coldwater [25°C (77°F)].

(2) **“Marginal warmwater”** in reference to an aquatic life use means natural intermittent or low flow or other natural habitat conditions severely limit the ability of the surface water

of the state to sustain a natural aquatic life population on a continuous annual basis; or historical data indicate that natural water temperature routinely exceeds 32.2°C (90°F).

(3)

“Maximum temperature” means the instantaneous temperature not to be exceeded at any time.

(4)

“Minimum quantification level” means the minimum quantification level for a constituent determined by official published documents of the United States environmental protection agency.

N. Terms beginning with the letter “N”.

(1) “Natural

background” means that portion of a pollutant load in a surface water resulting only from non-anthropogenic sources. Natural background does not include impacts resulting from historic or existing human activities.

(2) “Natural

causes” means those causal agents that would affect water quality and the effect is not caused by human activity but is due to naturally occurring conditions.

(3) “Nonpoint

source” means any source of pollutants not regulated as a point source that degrades the quality or adversely affects the biological, chemical or physical integrity of surface waters of the state.

O. Terms beginning with the letter “O”.

(1)

“Organoleptic” means the capability to produce a detectable sensory stimulus such as odor or taste.

(2)

“Oversight agency” means a state or federal agency, such as the United States department of agriculture forest service, that is responsible for land use or water quality management decisions affecting nonpoint source discharges where an outstanding national resource water is located.

P. Terms beginning with the letter “P”.

(1) “Playa”

means a shallow closed basin lake

typically found in the high plains and deserts.

(2)

“Perennial” when used to describe a surface water of the state means the water body typically contains water throughout the year and rarely experiences dry periods.

(3)

“Persistent toxic pollutants” means pollutants, generally organic, that are resistant to environmental degradation through chemical, biological and photolytic processes and can bioaccumulate in organisms, causing adverse impacts on human health and aquatic life.

~~(3)~~ (4) “Point

source” means any discernible, confined and discrete conveyance from which pollutants are or may be discharged into a surface water of the state, but does not include return flows from irrigated agriculture.

~~(4)~~ (5)

“Practicable” means that which may be done, practiced or accomplished; that which is performable, feasible, possible.

~~(5)~~ (6) “Primary

contact” means any recreational or other water use in which there is prolonged and intimate human contact with the water, such as swimming and water skiing, involving considerable risk of ingesting water in quantities sufficient to pose a significant health hazard. Primary contact also means any use of surface waters of the state for cultural, religious or ceremonial purposes in which there is intimate human contact with the water, including but not limited to ingestion or immersion, that could pose a significant health hazard.

~~(6)~~ (7) “Public

water supply” means the use or storage of water to supply a public water system as defined by New Mexico’s Drinking Water Regulations, 20.7.10 NMAC. Water provided by a public water system may need to undergo treatment to achieve drinking water quality.

Q. Terms beginning with the letter “Q”. [RESERVED]

R. Terms beginning with the letter “R”. [RESERVED]

S. Terms beginning with the letter “S”.

(1)

“Secondary contact” means any recreational or other water use in which human contact with the water may occur and in which the probability of ingesting appreciable quantities of water is minimal, such as fishing, wading, commercial and recreational boating and any limited seasonal contact.

(2)

“Segment” means a classified water of the state described in 20.6.4.101 through 20.6.4.899 NMAC. The water within a segment should have the same uses, similar hydrologic characteristics or flow regimes, and natural physical, chemical and biological characteristics and exhibit similar reactions to external stresses, such as the discharge of pollutants.

(3) “Specific

conductance” is a measure of the ability of a water solution to conduct an electrical current.

(4) “State”

means the state of New Mexico.

(5) “Surface

water(s) of the state”

(a)

means all surface waters situated wholly or partly within or bordering upon the state, including the following:

(i)

lakes [] ;

(ii)

rivers [] ;

(iii)

streams (including intermittent and ephemeral streams) [] ;

(iv)

mudflats [] ;

(v)

sandflats [] ;

(vi)

wetlands [] ;

(vii)

sloughs [] ;

(viii)

prairie potholes [] ;

(ix)

wet meadows [] ;

(x)

playa lakes [] ;

(xi) reservoirs [ˌrɪːvɔː] and natural ponds.

(b) [Surface waters of the state] also means all tributaries of such waters, including adjacent wetlands, any manmade bodies of water that were originally created in surface waters of the state or resulted in the impoundment of surface waters of the state, and any “waters of the United States” as defined under the Clean Water Act that are not included in the preceding description.

(c) [Surface waters of the state] does not include private waters that do not combine with other surface or subsurface water or any water under tribal regulatory jurisdiction pursuant to Section 518 of the Clean Water Act. Waste treatment systems, including treatment ponds or lagoons designed and actively used to meet requirements of the Clean Water Act (other than cooling ponds as defined in 40 CFR Part 423.11(m) that also meet the criteria of this definition), are not surface waters of the state, unless they were originally created in surface waters of the state or resulted in the impoundment of surface waters of the state.

T. Terms beginning with the letter “T”.

(1) **“TDS”** means total dissolved solids, also termed “total filterable residue.”

(2) **“Toxic pollutant”** means those pollutants, or combination of pollutants, including disease-causing agents, that after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, shortened life spans, disease, adverse behavioral changes, reproductive or physiological impairment or physical deformations in such organisms or their offspring.

(3) **“Tributary”** means a perennial, intermittent or ephemeral waterbody

that flows into a larger waterbody, and includes a tributary of a tributary.

(4) **“Turbidity”** is an expression of the optical property in water that causes incident light to be scattered or absorbed rather than transmitted in straight lines.

U. Terms beginning with the letter “U”. [RESERVED]

(1) **“Unclassified waters of the state”** means those surface waters of the state not identified in 20.6.4.101 through 20.6.4.899 NMAC.

(2) **“Use attainability analysis”** means a scientific study conducted for the purpose of assessing the factors affecting the attainment of a use.

V. Terms beginning with the letter “V” [RESERVED]

W. Terms beginning with the letter “W”.

(1) **“Warmwater”** with reference to an aquatic life use means that water temperature and other characteristics are suitable for the support or propagation or both of warmwater aquatic life.

(2) **“Water contaminant”** means any substance that could alter if discharged or spilled the physical, chemical, biological or radiological qualities of water. “Water contaminant” does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, but may include all other radioactive materials, including but not limited to radium and accelerator-produced isotopes.

(3) **“Water pollutant”** means a water contaminant in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property.

(4) **“Wetlands”** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation

typically adapted for life in saturated soil conditions in New Mexico. Wetlands that are constructed outside of a surface water of the state for the purpose of providing wastewater treatment and that do not impound a surface water of the state are not included in this definition.

(5) **“Wildlife habitat”** means a surface water of the state used by plants and animals not considered as pathogens, vectors for pathogens or intermediate hosts for pathogens for humans or domesticated livestock and plants.

X. Terms beginning with the letters “X” through “Z”. [RESERVED]

[20.6.4.7 NMAC - Rp 20 NMAC 6.1.1007, 10/12/2000; A, 7/19/2001; A, 5/23/2005; A, 7/17/2005; A, 8/1/2007; A, 12/1/2010; A, 1/14/2011; A, 3/2/2017; A, 4/23/2022]

20.6.4.8 ANTIDegradation Policy AND IMPLEMENTATION PLAN:

A. Antidegradation Policy: This antidegradation policy applies to all surface waters of the state.

(1) Existing [instream water] uses, as defined in Paragraph (4) of Subsection E of 20.6.4.7 NMAC, and the level of water quality necessary to protect the existing uses shall be maintained and protected in all surface waters of the state.

(2) Where the quality of a surface water of the state exceeds levels necessary to support the propagation of fish, shellfish, and wildlife, and recreation in and on the water, that quality shall be maintained and protected unless the commission finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state’s continuing planning process, that allowing lower water quality is necessary to accommodate important economic and social development in the area in which the water is located. In allowing such degradation or lower water quality, the state shall assure water quality adequate to protect existing uses fully. Further,

the state shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable BMPs for nonpoint source control. Additionally, the state shall encourage the use of watershed planning as a further means to protect surface waters of the state.

(3) No degradation shall be allowed in waters designated by the commission as outstanding national resource waters (ONRWs), except as provided in Subparagraphs (a) through (e) of this paragraph and in Paragraph (4) of this Subsection A.

(a) After providing a minimum 30-day public review and comment period, the commission determines that allowing temporary and short-term degradation of water quality is necessary to accommodate public health or safety activities in the area in which the ONRW is located. Examples of public health or safety activities include but are not limited to replacement or repair of a water or sewer pipeline or a roadway bridge. In making its decision, the commission shall consider whether the activity will interfere with activities implemented to restore or maintain the chemical, physical or biological integrity of the water. In approving the activity, the commission shall require that:

(i) the degradation shall be limited to the shortest possible time and shall not exceed six months;

(ii) the degradation shall be minimized and controlled by best management practices or in accordance with permit requirements as appropriate; all practical means of minimizing the duration, magnitude, frequency and cumulative effects of such degradation shall be utilized;

(iii) the degradation shall not result in water quality lower than necessary to protect any existing use in the ONRW; and

(iv) the degradation shall not alter the essential character or special use that makes the water an [ONRW] ONRW.

(b) Prior to the commission making a determination, the department or appropriate oversight agency shall provide a written recommendation to the commission. If the commission approves the activity, the department or appropriate oversight agency shall oversee implementation of the activity.

(c) Where an emergency response action that may result in temporary and short-term degradation to an ONRW is necessary to mitigate an immediate threat to public health or safety, the emergency response action may proceed prior to providing notification required by Subparagraph (a) of this paragraph in accordance with the following:

(i) only actions that mitigate an immediate threat to public health or safety may be undertaken pursuant to this provision; non-emergency portions of the action shall comply with the requirements of Subparagraph (a) of this paragraph;

(ii) the discharger shall make best efforts to comply with requirements (i) through (iv) of Subparagraph (a) of this paragraph;

(iii) the discharger shall notify the department of the emergency response action in writing within seven days of initiation of the action;

(iv) within 30 days of initiation of the emergency response action, the discharger shall provide a summary of the action taken, including all actions taken to comply with requirements (i) through (iv) of Subparagraph (a) of this paragraph.

(d) Preexisting land-use activities, including grazing, allowed by federal or state law prior to designation as an ONRW, and controlled by best management practices (BMPs), shall be allowed to continue so long

as there are no new or increased discharges resulting from the activity after designation of the ONRW.

(e) Acequia operation, maintenance, and repairs are not subject to new requirements because of ONRW designation. However, the use of BMPs to minimize or eliminate the introduction of pollutants into receiving waters is strongly encouraged.

(4) This antidegradation policy does not prohibit activities that may result in degradation in surface waters of the state when such activities will result in restoration or maintenance of the chemical, physical or biological integrity of the water.

(a) For ONRWs, the department or appropriate oversight agency shall review on a case-by-case basis discharges that may result in degradation from restoration or maintenance activities, and may approve such activities in accordance with the following:

(i) the degradation shall be limited to the shortest possible time;

(ii) the degradation shall be minimized and controlled by best management practices or in accordance with permit requirements as appropriate, and all practical means of minimizing the duration, magnitude, frequency and cumulative effects of such degradation shall be utilized;

(iii) the degradation shall not result in water quality lower than necessary to protect any existing use of the surface water; and

(iv) the degradation shall not alter the essential character or special use that makes the water an [ONRW] ONRW.

(b) For surface waters of the state other than ONRWs, the department shall review on a case-by-case basis discharges that may result in degradation from restoration or maintenance activities, and may approve such activities in accordance

with the following:

(i) the degradation shall be limited to the shortest possible time;

(ii) the degradation shall be minimized and controlled by best management practices or in accordance with permit requirements as appropriate, and all practical means of minimizing the duration, magnitude, frequency and cumulative effects of such degradation shall be utilized; and

(iii) the degradation shall not result in water quality lower than necessary to protect any existing use of the surface water.

(5) In those cases where potential water quality impairment associated with a thermal discharge is involved, this antidegradation policy and implementing method shall be consistent with Section 316 of the federal Clean Water Act.

(6) In implementing this section, the commission through the appropriate regional offices of the United States environmental protection agency will keep the administrator advised and provided with such information concerning the surface waters of the state as he or she will need to discharge his or her responsibilities under the federal Clean Water Act.

B. Implementation

Plan: The department, acting under authority delegated by the commission, implements the water quality standards, including the antidegradation policy, by describing specific methods and procedures in the continuing planning process and by establishing and maintaining controls on the discharge of pollutants to surface waters of the state. The steps summarized in the following paragraphs, which may not all be applicable in every water pollution control action, list the implementation activities of the department. These implementation activities are supplemented by detailed antidegradation review procedures developed under the state’s continuing planning process. The department:

(1) obtains information pertinent to the impact of the effluent on the receiving water and advises the prospective discharger of requirements for obtaining a permit to discharge;

(2) reviews the adequacy of existing data and conducts a water quality survey of the receiving water in accordance with an annually reviewed, ranked priority list of surface waters of the state requiring total maximum daily loads pursuant to Section 303(d) of the federal Clean Water Act;

(3) assesses the probable impact of the effluent on the receiving water relative to its attainable or designated uses and numeric and narrative criteria;

(4) requires the highest and best degree of wastewater treatment practicable and commensurate with protecting and maintaining the designated uses and existing water quality of surface waters of the state;

(5) develops water quality based effluent limitations and comments on technology based effluent limitations, as appropriate, for inclusion in any federal permit issued to a discharger pursuant to Section 402 of the federal Clean Water Act;

(6) requires that these effluent limitations be included in any such permit as a condition for state certification pursuant to Section 401 of the federal Clean Water Act;

(7) coordinates its water pollution control activities with other constituent agencies of the commission, and with local, state and federal agencies, as appropriate;

(8) develops and pursues inspection and enforcement programs to ensure that dischargers comply with state regulations and standards, and complements EPA’s enforcement of federal permits;

(9) ensures that the provisions for public participation required by the New Mexico Water Quality Act and the federal Clean Water Act are followed;

(10) provides continuing technical training for wastewater treatment facility operators through the utility operators training and certification programs;

(11) provides funds to assist the construction of publicly owned wastewater treatment facilities through the wastewater construction program authorized by Section 601 of the federal Clean Water Act, and through funds appropriated by the New Mexico legislature;

(12) conducts water quality surveillance of the surface waters of the state to assess the effectiveness of water pollution controls, determines whether water quality standards are being attained, and proposes amendments to improve water quality standards;

(13) encourages, in conjunction with other state agencies, implementation of the best management practices set forth in the New Mexico statewide water quality management plan and the nonpoint source management program, such implementation shall not be mandatory except as provided by federal or state law;

(14) evaluates the effectiveness of BMPs selected to prevent, reduce or abate sources of water pollutants;

(15) develops procedures for assessing use attainment as required by 20.6.4.15 NMAC and establishing site-specific standards; and

(16) develops list of surface waters of the state not attaining designated uses, pursuant to Sections 305(b) and 303(d) of the federal Clean Water Act.

[20.6.4.8 NMAC - Rp 20 NMAC 6.1.1101, 10/12/2000; A, 5/23/2005; A, 8/1/2007; A, 1/14/2011; A, 4/23/2022]

20.6.4.9 OUTSTANDING NATIONAL RESOURCE WATERS:

A. Procedures for nominating an ONRW: Any person may nominate a surface water of the state for designation as an ONRW by

filing a petition with the commission pursuant to [~~the guidelines for water quality control commission regulation hearings~~] 20.1.6 NMAC, Rulemaking Procedures - Water Quality Control Commission. A petition to designate a surface water of the state as an ONRW shall include:

(1) a map of the surface water of the state, including the location and proposed upstream and downstream boundaries;

(2) a written statement and evidence based on scientific principles in support of the nomination, including specific reference to one or more of the applicable ONRW criteria listed in Subsection B of this section;

(3) water quality data including chemical, physical or biological parameters, if available, to establish a baseline condition for the proposed ONRW;

(4) a discussion of activities that might contribute to the reduction of water quality in the proposed ONRW;

(5) any additional evidence to substantiate such a designation, including a discussion of the economic impact of the designation on the local and regional economy within the state of New Mexico and the benefit to the state; and

(6) affidavit of publication of notice of the petition in a newspaper of general circulation in the affected counties and in a newspaper of general statewide circulation.

B. Criteria for

ONRWs: A surface water of the state, or a portion of a surface water of the state, may be designated as an ONRW where the commission determines that the designation is beneficial to the state of New Mexico, and:

(1) the water is a significant attribute of a state special trout water, national or state park, national or state monument, national or state wildlife refuge or designated wilderness area, or is part of a designated wild river under the federal Wild and Scenic Rivers Act; or

(2) the water has exceptional recreational or ecological significance; or

(3) the existing water quality is equal to or better than the numeric criteria for protection of aquatic life and contact uses and the human health-organism only criteria, and the water has not been significantly modified by human activities in a manner that substantially detracts from its value as a natural resource.

C. Pursuant to a petition filed under Subsection A of this section, the commission may classify a surface water of the state or a portion of a surface water of the state as an ONRW if the criteria set out in Subsection B of this section are met.

D. Waters classified as ONRWs: The following waters are classified as ONRWs:

(1) Rio Santa Barbara, including the west, middle and east forks from their headwaters downstream to the boundary of the Pecos Wilderness; and

(2) the waters within the United States forest service Valle Vidal special management unit including:

(a) Rio Costilla, including Comanche, La Cueva, Fernandez, Chuckwagon, Little Costilla, Powderhouse, Holman, Gold, Grassy, LaBelle and Vidal creeks, from their headwaters downstream to the boundary of the United States forest service Valle Vidal special management unit;

(b) Middle Ponil creek, including the waters of Greenwood Canyon, from their headwaters downstream to the boundary of the Elliott S. Barker wildlife management area;

(c) Shuree lakes;

(d) North Ponil creek, including McCrystal and Seally Canyon creeks, from their headwaters downstream to the boundary of the United States forest service Valle Vidal special management unit; and

(e) Leandro creek from its headwaters downstream to the boundary of the United States forest service Valle Vidal special management unit.

(3) the named perennial surface waters of the state, identified in Subparagraph (a) below, located within United States department of agriculture forest service wilderness. Wilderness are those lands designated by the United States congress as wilderness pursuant to the Wilderness Act.

Wilderness areas included in this designation are the Aldo Leopold wilderness, Apache Kid wilderness, Blue Range wilderness, Chama River Canyon wilderness, Cruces Basin wilderness, Dome wilderness, Gila wilderness, Latir Peak wilderness, Pecos wilderness, San Pedro Parks wilderness, Wheeler Peak wilderness, and White Mountain wilderness.

(a) The following waters are designated in the Rio Grande basin:

(i) in the Aldo Leopold wilderness: Byers Run, Circle Seven creek, Flower canyon, Holden Prong, Indian canyon, Las Animas creek, Mud Spring canyon, North Fork Palomas creek, North Seco creek, Pretty canyon, Sids Prong, South Animas canyon, Victorio Park canyon, Water canyon;

(ii) in the Apache Kid wilderness Indian creek and Smith canyon;

(iii) in the Chama River Canyon wilderness: Chavez canyon, Ojitos canyon, Rio Chama;

(iv) in the Cruces Basin wilderness: Beaver creek, Cruces creek, Diablo creek, Escondido creek, Lobo creek, Osha creek;

(v) in the Dome wilderness: Capulin creek, Medio creek, Sanchez canyon/ creek;

(vi) in the Latir Peak wilderness: Bull creek, Bull Creek lake, Heart lake, Lagunitas Fork, Lake Fork creek, Rito del Medio, Rito Primero, West Latir creek;

(vii) in the Pecos wilderness: Agua Sarca, Hidden lake, Horseshoe lake (Alamitos), Jose Vigil lake, Nambe lake, Nat lake IV, No Fish lake, North Fork Rio Quemado, Rinconada, Rio Capulin, Rio de las Trampas (Trampas creek), Rio de Truchas, Rio Frijoles, Rio Medio, Rio Molino, Rio Nambe, Rio San Leonardo, Rito con Agua, Rito Gallina, Rito Jaroso, Rito Quemado, San Leonardo lake, Santa Fe lake, Santa Fe river, Serpent lake, South Fork Rio Quemado, Trampas lake (East), Trampas lake (West);

(viii) in the San Pedro Parks wilderness: Agua Sarca, Cañon Madera, Cave creek, Cecilia Canyon creek, Clear creek (North SPP), Clear creek (South SPP), Corralitos creek, Dove creek, Jose Miguel creek, La Jara creek, Oso creek, Rio Capulin, Rio de las Vacas, Rio Gallina, Rio Puerco de Chama, Rito Anastacio East, Rito Anastacio West, Rito de las Palomas, Rito de las Perchas, Rito de los Pinos, Rito de los Utes, Rito Leche, Rito Redondo, Rito Resumidero, San Gregorio lake;

(ix) in the Wheeler Peak wilderness: Black Copper canyon, East Fork Red river, Elk lake, Horseshoe lake, Lost lake, Sawmill creek, South Fork lake, South Fork Rio Hondo, Williams lake.

(b) The following waters are designated in the Pecos River basin:

(i) in the Pecos wilderness: Albright creek, Bear creek, Beatty creek, Beaver creek, Carpenter creek, Cascade canyon, Cave creek, El Porvenir creek, Hollinger creek, Holy Ghost creek, Horsethief creek, Jack’s creek, Jarosa canyon/creek, Johnson lake, Lake Katherine, Lost Bear lake, Noisy brook, Panchuela creek, Pecos Baldy lake, Pecos river, Rio Mora, Rio Valdez, Rito Azul, Rito de los Chimayosos, Rito de los Esteros, Rito del Oso, Rito del Padre, Rito las Trampas, Rito Maestas, Rito Oscuro, Rito Perro, Rito Sebadillooses, South Fork Bear creek, South Fork Rito Azul, Spirit lake, Stewart lake, Truchas lake (North), Truchas lake (South), Winsor creek;

(ii) in the White Mountain wilderness: Argentina creek, Aspen creek, Bonito creek, Little Bonito creek, Mills canyon/creek, Rodamaker creek, South Fork Rio Bonito, Turkey canyon/creek.

(c) The following waters are designated in the Gila River basin:

(i) in the Aldo Leopold wilderness: Aspen canyon, Black Canyon creek, Bonner canyon, Burnt canyon, Diamond creek, Falls canyon, Fisherman canyon, Running Water canyon, South Diamond creek;

(ii) in the Gila wilderness: Apache creek, Black Canyon creek, Brush canyon, Canyon creek, Chicken Coop canyon, Clear creek, Cooper canyon, Cow creek, Cub creek, Diamond creek, East Fork Gila river, Gila river, Gilita creek, Indian creek, Iron creek, Langstroth canyon, Lilley canyon, Little creek, Little Turkey creek, Lookout canyon, McKenna creek, Middle Fork Gila river, Miller Spring canyon, Mogollon creek, Panther canyon, Prior creek, Rain creek, Raw Meat creek, Rocky canyon, Sacaton creek, Sapillo creek, Sheep Corral canyon, Skeleton canyon, Squaw creek, Sycamore canyon, Trail canyon, Trail creek, Trout creek, Turkey creek, Turkey Feather creek, Turnbo canyon, West Fork Gila river, West Fork Mogollon creek, White creek, Willow creek, Woodrow canyon.

(d) The following waters are designated in the Canadian River basin: in the Pecos wilderness Daily creek, Johns canyon, Middle Fork Lake of Rio de la Casa, Middle Fork Rio de la Casa, North Fork Lake of Rio de la Casa, Rito de Gascon, Rito San Jose, Sapello river, South Fork Rio de la Casa, Sparks creek (Manuelitas creek).

(e) The following waters are designated in the San Francisco River basin:

(i) in the Blue Range wilderness: Pueblo creek;

(ii) in the Gila wilderness: Big Dry creek, Lipsey canyon, Little Dry creek, Little Whitewater creek, South Fork Whitewater creek, Spider creek, Spruce creek, Whitewater creek.

(f) The following waters are designated in the Mimbres Closed basin: in the Aldo Leopold wilderness Corral canyon, Mimbres river, North Fork Mimbres river, South Fork Mimbres river.

(g) The following waters are designated in the Tularosa Closed basin: in the White Mountain wilderness Indian creek, Nogal Arroyo, Three Rivers.

(h) The wetlands designated are identified on the *Maps and List of Wetlands Within United States Forest Service Wilderness Areas Designated as Outstanding National Resource Waters* published at the New Mexico state library and available on the department’s website.

[20.6.4.9 NMAC - Rn, Subsections B, C and D of 20.6.4.8 NMAC, 5/23/2005; A, 5/23/2005; A, 7/17/2005; A, 2/16/2006; A, 12/1/2010; A, 1/14/2011; A, 4/23/2022]

20.6.4.10 REVIEW OF STANDARDS; NEED FOR ADDITIONAL STUDIES:

A. Section 303(c)(1) of the federal Clean Water Act requires that the state hold public hearings at least once every three years for the purpose of reviewing water quality standards and proposing, as appropriate, necessary revisions to water quality standards.

B. In accordance with 40 CFR 131.10(i), when an existing use, as defined under 20.6.4.7 NMAC, is higher quality water than prescribed by the designated use and supporting evidence demonstrates the presence of that use, the designated use shall be amended accordingly to have criteria no less stringent than the existing use.

[B:] C. It is recognized that, in some cases, numeric criteria [have been adopted that reflect use designations rather than existing

conditions of surface waters of the state.] for a particular designated use may not adequately reflect the local conditions or the aquatic communities adapted to those localized conditions. In these cases, a water quality criterion may be modified to reflect the natural condition of a specific waterbody. The modification of the criterion does not change the designated use; the modification only changes the criterion for that specific waterbody. [Narrative criteria are required for many constituents because accurate data on background levels are lacking. More intensive water quality monitoring may identify surface waters of the state where existing quality is considerably better than the established criteria.] When justified by sufficient data and information, a numeric [the] water quality [criteria] criterion [with] may be adopted or modified in accordance with Subsection F of 20.6.4.10 and Subsection G of 20.6.4.10 NMAC, to protect the attainable uses of the waterbody.

D. The removal or amendment of a designated use to a designated use with less stringent criteria can only be done through a use attainability analysis in accordance with 20.6.4.15 NMAC.

~~[E.] E.~~ It is also recognized that contributions of water contaminants by diffuse nonpoint sources of water pollution may make attainment of certain criteria difficult. Revision of these criteria may be necessary as new information is obtained on nonpoint sources and other problems unique to semi-arid regions.

~~[D.] E.~~ **Site-specific criteria.**

(1) The commission may adopt site-specific numeric criteria applicable to all or part of a surface water of the state based on relevant site-specific conditions such as:

- (a) actual species at a site are more or less sensitive than those used in the national criteria data set;
- (b) physical or chemical characteristics at

a site such as pH or hardness alter the biological availability and/or toxicity of the chemical;

(c) physical, biological or chemical factors alter the bioaccumulation potential of a chemical;

(d) the concentration resulting from natural background exceeds numeric criteria for aquatic life, wildlife habitat or other uses if consistent with Subsection [E] G of 20.6.4.10 NMAC; or

(e) other factors or combination of factors that upon review of the commission may warrant modification of the default criteria, subject to EPA review and approval.

(2) Site-specific criteria must fully protect the designated use to which they apply. In the case of human health-organism only criteria, site-specific criteria must fully protect human health when organisms are consumed from waters containing pollutants.

(3) Any person may petition the commission to adopt site-specific criteria. A petition for the adoption of site-specific criteria shall:

- (a) identify the specific waters to which the site-specific criteria would apply;
- (b) explain the rationale for proposing the site-specific criteria;
- (c) describe the methods used to notify and solicit input from potential stakeholders and from the general public in the affected area, and present and respond to the public input received;
- (d) present and justify the derivation of the proposed criteria.

(4) A derivation of site-specific criteria shall rely on a scientifically defensible method, such as one of the following:

- (a) the recalculation procedure, the water-effect ratio for metals procedure or the resident species procedure as described in the water quality standards handbook (EPA-823-B-94-005a, 2nd edition, August 1994);

(b) the streamlined water-effect ratio procedure for discharges of copper (EPA-822-R-01-005, March 2001);

(c) the biotic ligand model as described in aquatic life ambient freshwater quality criteria - copper (EPA-822-R-07-001, February 2007);

(d) the methodology for deriving ambient water quality criteria for the protection of human health (EPA-822-B-00-004, October 2000) and associated technical support documents; or

(e) a determination of the natural background of the water body as described in Subsection [E] G of 20.6.4.10 NMAC.

~~[E.] G.~~ **Site-specific criteria based on natural background.** The commission may adopt site-specific criteria equal to the concentration resulting from natural background where that concentration protects the designated use. The concentration resulting from natural background supports the level of aquatic life and wildlife habitat expected to occur naturally at the site absent any interference by humans. Domestic water supply, primary or secondary contact, or human health-organism only criteria shall not be modified based on natural background. A determination of natural background shall:

- (1) consider natural spatial and seasonal to interannual variability as appropriate;
- (2) document the presence of natural sources of the pollutant;
- (3) document the absence of human sources of the pollutant or quantify the human contribution; and
- (4) rely on analytical, statistical or modeling methodologies to quantify the natural background.

~~[F.] H.~~ **Temporary standards [±].**

(1) Any person may petition the commission to adopt a temporary standard applicable to

all or part of a surface water of the state as provided for in this section and applicable sections in 40 CFR Part 131, Water Quality Standards; specifically, Section 131.14. The commission may adopt a proposed temporary standard if the petitioner demonstrates that:

(a) attainment of the associated designated use may not be feasible in the short term due to one or more of the factors listed in 40 CFR 131.10(g), or due to the implementation of actions necessary to facilitate restoration such as through dam removal or other significant wetland or water body reconfiguration activities as demonstrated by the petition and supporting work plan requirements in Paragraphs (4) and (5) of Subsection [F] H of 20.6.4.10 NMAC;

(b) the proposed temporary standard represents the highest degree of protection feasible in the short term, limits the degradation of water quality to the minimum necessary to achieve the original standard by the expiration date of the temporary standard, and adoption will not cause the further impairment or loss of an existing use;

(c) for point sources, existing or proposed discharge control technologies will comply with applicable technology-based limitations and feasible technological controls and other management alternatives, such as a pollution prevention program; and

(d) for restoration activities, nonpoint source or other control technologies shall limit downstream impacts, and if applicable, existing or proposed discharge control technologies shall be in place consistent with Subparagraph (c) of Paragraph (1) of Subsection [F] H of 20.6.4.10 NMAC.

(2) A temporary standard shall apply to specific designated use(s), pollutant(s), or permittee(s), and to specific water body segment(s). The adoption of a temporary standard does not exempt dischargers from complying with all other applicable

water quality standards or control technologies.

(3) Designated use attainment as reported in the federal Clean Water Act, Section 305(b)/303(d) Integrated Report shall be based on the original standard and not on a temporary standard.

(4) A petition for a temporary standard shall:

(a) identify the currently applicable standard(s), the proposed temporary standard for the specific pollutant(s), the permittee(s), and the specific surface water body segment(s) of the state to which the temporary standard would apply;

(b) include the basis for any factor(s) specific to the applicability of the temporary standard (for example critical flow under Subsection B of 20.6.4.11 NMAC);

(c) demonstrate that the proposed temporary standard meets the requirements in this subsection;

(d) present a work plan with timetable of proposed actions for achieving compliance with the original standard in accordance with Paragraph (5) of Subsection [F] H of 20.6.4.10 NMAC;

(e) include any other information necessary to support the petition.

(5) As a condition of a petition for a temporary standard, in addition to meeting the requirements in this Subsection, the petitioner shall prepare a work plan in accordance with Paragraph (4) of Subsection [F] H of 20.6.4.10 NMAC and submit the work plan to the department for review and comment. The work plan shall identify the factor(s) listed in 40 CFR 131.10(g) or Subparagraph (a) of Paragraph (1) of Subsection [F] H of 20.6.4.10 NMAC affecting attainment of the standard that will be analyzed and the timeline for proposed actions to be taken to achieve the uses attainable over the term of the temporary standard, including baseline water quality, and any investigations,

projects, facility modifications, monitoring, or other measures necessary to achieve compliance with the original standard. The work plan shall include provisions for review of progress in accordance with Paragraph (8) of Subsection [F] H of 20.6.4.10 NMAC, public notice and consultation with appropriate state, tribal, local and federal agencies.

(6) The commission may condition the approval of a temporary standard by requiring additional monitoring, relevant analyses, the completion of specified projects, submittal of information, or any other actions.

(7) Temporary standards may be implemented only after a public hearing before the commission, commission approval and adoption pursuant to Subsection [F] H of 20.6.4.10 NMAC for all state purposes, and the federal Clean Water Act Section 303 (c) approval for any federal action.

(8) All temporary standards are subject to a required review during each succeeding review of water quality standards conducted in accordance with Subsection A of 20.6.4.10 NMAC. The petitioner shall provide a written report to the commission documenting the progress of proposed actions, pursuant to a reporting schedule stipulated in the approved temporary standard. The purpose of the review is to determine progress consistent with the original conditions of the petition for the duration of the temporary standard. If the petitioner cannot demonstrate that sufficient progress has been made the commission may revoke approval of the temporary standard or provide additional conditions to the approval of the temporary standard.

(9) The commission may consider a petition to extend a temporary standard. The effective period of a temporary standard shall be extended only if demonstrated to the commission that the factors precluding attainment of the underlying standard still apply, that the petitioner is meeting the conditions required for approval of

the temporary standard, and that reasonable progress towards meeting the underlying standard is being achieved.

(10) A temporary standard shall expire no later than the date specified in the approval of the temporary standard. Upon expiration of a temporary standard, the original standard becomes applicable.

(11) Temporary standards shall be identified in 20.6.4.97-899 NMAC as appropriate for the surface water affected.

(12) "Temporary standard" means a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the temporary standard.

[20.6.4.10 NMAC - Rp 20 NMAC 6.1.1102, 10/12/2000; Rn, 20.6.4.9 NMAC, 5/23/2005; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017; A, 4/23/2022]

20.6.4.11 APPLICABILITY OF WATER QUALITY STANDARDS:

A. [RESERVED]

B. **Critical low flow:** The critical low flow of a stream at a particular site shall be used in developing point source discharge permit requirements to meet numeric criteria set in 20.6.4.97 through 20.6.4.900 NMAC and Subsection F of 20.6.4.13 NMAC.

(1) For human health-organism only criteria, the critical low flow is the harmonic mean flow [~~“harmonic mean flow” is the number of daily flow measurements divided by the sum of the reciprocals of the flows; that is, it is the reciprocal of the mean of reciprocals~~]. For ephemeral waters the calculation shall be based upon the nonzero flow intervals and modified by including a factor to adjust for the proportion of intervals with zero flow. The equations are as follows:

$$\text{Harmonic Mean} = \frac{n}{\sum 1/Q}$$

where n = number of flow values

and Q = flow value

$$\text{Modified Harmonic Mean} = \left[\frac{\sum_{i=1}^{Nt-N_0} \frac{1}{Q_i}}{Nt - N_0} \right]^{-1} \times \left[\frac{Nt - N_0}{Nt} \right]$$

where Q_i = nonzero flow

Nt = total number of flow values

and N_0 = number of zero flow values

(2) For all other narrative and numeric criteria, the critical low flow is the minimum average four consecutive day flow that occurs with a frequency of once in three years (4Q3). The critical low flow may be determined on an annual, a seasonal or a monthly basis, as appropriate, after due consideration of site-specific conditions.

C. **Guaranteed minimum flow:** The commission may allow the use of a contractually guaranteed minimum streamflow in lieu of a critical low flow determined under Subsection B of this section on a case-by-case basis and upon consultation with the interstate stream commission. Should drought,

litigation or any other reason interrupt or interfere with minimum flows under a guaranteed minimum flow contract for a period of at least 30 consecutive days, such permission, at the sole discretion of the commission, may then be revoked. Any minimum flow specified under such revoked permission shall be superseded by a critical low flow determined under Subsection B of this section. A public notice of the request for a guaranteed minimum flow shall be published in a newspaper of general circulation by the department at least 30 days prior to scheduled action by the commission. These water quality standards do not grant to the commission or any other entity the power to create, take away or modify

property rights in water.

D. **Mixing zones:** A limited mixing zone, contiguous to a point source wastewater discharge, may be allowed in any stream receiving such a discharge. Mixing zones serve as regions of initial dilution that allow the application of a dilution factor in calculations of effluent limitations. Effluent limitations shall be developed that will protect the most sensitive existing, designated or attainable use of the receiving water.

E. **Mixing zone limitations:** Wastewater mixing zones, in which the numeric criteria set under Subsection F of 20.6.4.13 NMAC, 20.6.4.97 through 20.6.4.899 NMAC or 20.6.4.900 NMAC may

be exceeded, shall be subject to the following limitations:

(1) Mixing zones are not allowed for discharges to lakes, reservoirs, or playas; these effluents shall meet all applicable criteria set under Subsection F of 20.6.4.13 NMAC, 20.6.4.97 through 20.6.4.899 NMAC and 20.6.4.900 NMAC at the point of discharge.

(2) The acute aquatic life criteria, as set out in Subsection I, Subsection J, and Subsection K of 20.6.4.900 NMAC, shall be attained at the point of discharge for any discharge to a surface water of the state with a designated aquatic life use.

(3) The general criteria set out in Subsections A, B, C, D, E, G, H and J of 20.6.4.13 NMAC, and the provision set out in Subsection D of 20.6.4.14 NMAC are applicable within mixing zones.

(4) The areal extent and concentration isopleths of a particular mixing zone will depend on site-specific conditions including, but not limited to, wastewater flow, receiving water critical low flow, outfall design, channel characteristics and climatic conditions and, if needed, shall be determined on a case-by-case basis. When the physical boundaries or other characteristics of a particular mixing zone must be known, the methods presented in Section 4.4.5, "Ambient-induced mixing," in "Technical support document for water quality-based toxics control" (March 1991, EPA/505/2-90-001) shall be used.

(5) All applicable water quality criteria set under Subsection F of 20.6.4.13 NMAC, 20.6.4.97 through 20.6.4.899 NMAC and 20.6.4.900 NMAC shall be attained at the boundaries of mixing zones. A continuous zone of passage through or around the mixing zone shall be maintained in which the water quality meets all applicable criteria and allows the migration of aquatic life presently common in surface waters of the state with no effect on their populations.

F. Multiple uses:
When a surface water of the state has

more than a single designated use, the applicable numeric criteria shall be the most stringent of those established for such water.

G. Human health-organism only criteria in Subsection J of 20.6.4.900 NMAC apply to those waters with a designated, existing or attainable aquatic life use. When limited aquatic life is a designated use, the human health-organism only criteria apply only if adopted on a segment-specific basis. The human health-organism only criteria for persistent toxic pollutants, as identified in Subsection J of 20.6.4.900 NMAC, also apply to all tributaries of waters with a designated, existing or attainable aquatic life use.

H. Unclassified waters of the state: [~~Unclassified waters of the state are those surface waters of the state not identified in 20.6.4.101 through 20.6.4.899 NMAC.~~] An unclassified surface water of the state is presumed to support the uses specified in Section 101(a)(2) of the federal Clean Water Act. As such, it is subject to 20.6.4.98 NMAC if nonperennial or subject to 20.6.4.99 NMAC if perennial. The commission may include an ephemeral unclassified surface water of the state under 20.6.4.97 NMAC only if a use attainability analysis demonstrates pursuant to 20.6.4.15 NMAC that attainment of Section 101(a)(2) uses is not feasible.

I. Exceptions:
Numeric criteria for temperature, dissolved solids, dissolved oxygen, sediment or turbidity adopted under the Water Quality Act do not apply when changes in temperature, dissolved solids, dissolved oxygen, sediment or turbidity in a surface water of the state are attributable to:

(1) natural causes (discharges from municipal separate storm sewers are not covered by this exception.); or

(2) the reasonable operation of irrigation and flood control facilities that are not subject to federal or state water pollution control permitting; major reconstruction of storage dams or

diversion dams except for emergency actions necessary to protect health and safety of the public are not covered by this exception.

[20.6.4.11 NMAC - Rp 20 NMAC 6.1.1103, 10/12/2000; A, 10/11/2002; Rn, 20.6.4.10 NMAC, 5/23/2005; A, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

20.6.4.12 COMPLIANCE WITH WATER QUALITY STANDARDS:

The following provisions apply to determining compliance for enforcement purposes; they do not apply for purposes of determining attainment of uses. The department has developed assessment protocols for the purpose of determining attainment of uses that are available for review from the department's surface water quality bureau.

A. Compliance with acute water quality criteria shall be determined from the analytical results of a single grab sample. Acute criteria shall not be exceeded.

B. Compliance with chronic water quality criteria shall be determined from the arithmetic mean of the analytical results of samples collected using applicable protocols. Chronic criteria shall not be exceeded more than once every three years.

C. Compliance with water quality standards for total ammonia shall be determined by performing the biomonitoring procedures set out in Subsections D and E of 20.6.4.14 NMAC, or by attainment of applicable ammonia criteria set out in Subsections K, L and M of 20.6.4.900 NMAC.

D. Compliance with the human health-organism only criteria shall be determined from the analytical results of representative grab samples, as defined in the water quality management plan. Human health-organism only criteria shall not be exceeded.

E. The commission may establish a numeric water quality criterion at a concentration that is below the minimum quantification level. In such cases, the water quality standard is enforceable at the minimum quantification level.

F. For compliance with hardness-dependent numeric criteria, [~~dissolved~~] hardness (as mg CaCO₃/L) shall be determined from a sample taken at the same time that the sample for the contaminant is taken.

G. Compliance schedules: [~~It shall be the policy of the commission to allow on a case-by-case basis the~~] The commission may allow the inclusion of a schedule of compliance in a NPDES permit issued to an existing facility on a case-by-case basis. Such schedule of compliance will be for the purpose of providing a permittee with adequate time to make treatment facility modifications necessary to comply with water quality based permit limitations determined to be necessary to implement new or revised water quality standards or wasteload allocation. Compliance schedules may be included in NPDES permits at the time of permit renewal or modification and shall be written to require compliance at the earliest practicable time. Compliance schedules shall also specify milestone dates so as to measure progress towards final project completion (e.g., design completion, construction start, construction completion, date of compliance).

H. It is a policy of the commission to allow a temporary standard approved and adopted pursuant to Subsection [F] H of 20.6.4.10 NMAC to be included in the applicable federal Clean Water Act permit as enforceable limits and conditions. The temporary standard and any schedule of actions may be included at the earliest practicable time, and shall specify milestone dates so as to measure progress towards meeting the original standard. [20.6.4.12 NMAC - Rp 20 NMAC 6.1.1104, 10/12/2000; A, 10/11/2002; Rn, 20.6.4.11 NMAC, 5/23/2005; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017; A, 4/23/2022]

20.6.4.13 GENERAL

CRITERIA: General criteria are established to sustain and protect existing or attainable uses of surface waters of the state. These general

criteria apply to all surface waters of the state at all times, unless a specified criterion is provided elsewhere in this part. Surface waters of the state shall be free of any water contaminant in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or unreasonably interfere with the public welfare or the use of property.

A. Bottom deposits and suspended or settleable solids:

(1) Surface waters of the state shall be free of water contaminants including fine sediment particles (less than two millimeters in diameter), precipitates or organic or inorganic solids from other than natural causes that have settled to form layers on or fill the interstices of the natural or dominant substrate in quantities that damage or impair the normal growth, function or reproduction of aquatic life or significantly alter the physical or chemical properties of the bottom.

(2) Suspended or settleable solids from other than natural causes shall not be present in surface waters of the state in quantities that damage or impair the normal growth, function or reproduction of aquatic life or adversely affect other designated uses.

B. Floating solids, oil and grease: Surface waters of the state shall be free of oils, scum, grease and other floating materials resulting from other than natural causes that would cause the formation of a visible sheen or visible deposits on the bottom or shoreline, or would damage or impair the normal growth, function or reproduction of human, animal, plant or aquatic life.

C. Color: Color-producing materials resulting from other than natural causes shall not create an aesthetically undesirable condition nor shall color impair the use of the water by desirable aquatic life presently common in surface waters of the state.

D. Organoleptic quality:

(1) Flavor of fish: Water contaminants from other

than natural causes shall be limited to concentrations that will not impart unpalatable flavor to fish.

(2) Odor and taste of water: Water contaminants from other than natural causes shall be limited to concentrations that will not result in offensive odor or taste arising in a surface water of the state or otherwise interfere with the reasonable use of the water.

E. Plant nutrients: Plant nutrients from other than natural causes shall not be present in concentrations that will produce undesirable aquatic life or result in a dominance of nuisance species in surface waters of the state.

F. Toxic pollutants:
(1) Except as provided in 20.6.4.16 NMAC, surface waters of the state shall be free of toxic pollutants from other than natural causes in amounts, duration, concentrations, or combinations that affect the propagation of fish or that are toxic to humans, livestock or other animals, fish or other aquatic organisms, wildlife using aquatic environments for habitation or aquatic organisms for food, or that will or can reasonably be expected to bioaccumulate in tissues of fish, shellfish and other aquatic organisms to levels that will impair the health of aquatic organisms or wildlife or result in unacceptable tastes, odors or health risks to human consumers of aquatic organisms.

(2) Pursuant to this section, the human health-organism only criteria shall be as set out in 20.6.4.900 NMAC. When a human health-organism only criterion is not listed in 20.6.4.900 NMAC, the following provisions shall be applied in accordance with 20.6.4.11, 20.6.4.12 and 20.6.4.14 NMAC.

(a) The human health-organism only criterion shall be the recommended human health criterion for "consumption of organisms only" published by the U.S. environmental protection agency pursuant to Section 304(a) of the federal Clean Water Act. In determining such criterion for a cancer-causing toxic pollutant,

a cancer risk of 10^{-5} (one cancer per 100,000 exposed persons) shall be used.

(b)

When a numeric criterion for the protection of human health for the consumption of organism only has not been published by the U.S. environmental protection agency, a quantifiable criterion may be derived from data available in the U.S. environmental protection agency's Integrated Risk Information System (IRIS) using the appropriate formula specified in *Methodology for Deriving Ambient Water Quality Criteria for The Protection Of Human Health (2000)*, EPA-822-B-00-004.

(3) Pursuant

to this section, the chronic aquatic life criteria shall be as set out in 20.6.4.900 NMAC. When a chronic aquatic life criterion is not listed in 20.6.4.900 NMAC, the following provisions shall be applied in sequential order in accordance with 20.6.4.11, 20.6.4.12 and 20.6.4.14 NMAC.

(a)

The chronic aquatic life criterion shall be the "freshwater criterion continuous concentration" published by the U.S. environmental protection agency pursuant to Section 304(a) of the federal Clean Water Act;

(b)

If the U.S. environmental protection agency has not published a chronic aquatic life criterion, a geometric mean LC-50 value shall be calculated for the particular species, genus or group that is representative of the form of life to be preserved, using the results of toxicological studies published in scientific journals.

(i)

The chronic aquatic life criterion for a toxic pollutant that does not bioaccumulate shall be ten percent of the calculated geometric mean LC-50 value; and

(ii)

The chronic aquatic life criterion for a toxic pollutant that does bioaccumulate shall be: the calculated geometric mean LC-50 adjusted by a bioaccumulation factor for the particular species, genus or group

representative of the form of life to be preserved, but when such bioaccumulation factor has not been published, the criterion shall be one percent of the calculated geometric mean LC-50 value.

(4) Pursuant

to this section, the acute aquatic life criteria shall be as set out in 20.6.4.900 NMAC. When an acute aquatic life criterion is not listed in 20.6.4.900 NMAC, the acute aquatic life criterion shall be the "freshwater criterion maximum concentration" published by the U.S. environmental protection agency pursuant to Section 304(a) of the federal Clean Water Act.

(5) Within

90 days of the issuance of a final NPDES permit containing a numeric criterion selected or calculated pursuant to Paragraph (2), Paragraph (3) or Paragraph (4) of Subsection F of this section, the department shall petition the commission to adopt such criterion into these standards.

G. Radioactivity:

The radioactivity of surface waters of the state shall be maintained at the lowest practical level and shall in no case exceed the criteria set forth in the New Mexico Radiation Protection Regulations, 20.3.1 and 20.3.4 NMAC.

H. Pathogens:

Surface waters of the state shall be free of pathogens from other than natural causes in sufficient quantity to impair public health or the designated, existing or attainable uses of a surface water of the state.

I. Temperature:

Maximum temperatures for surface waters of the state have been specified in 20.6.4.97 through 20.6.4.900 NMAC. However, the introduction of heat by other than natural causes shall not increase the temperature, as measured from above the point of introduction, by more than 2.7°C (5°F) in a stream, or more than 1.7°C (3°F) in a lake or reservoir. In no case will the introduction of heat be permitted when the maximum temperature specified for the reach would thereby be exceeded. These temperature criteria shall not apply to impoundments constructed

offstream for the purpose of heat disposal. High water temperatures caused by unusually high ambient air temperatures are not violations of these criteria.

J. Turbidity:

Turbidity attributable to other than natural causes shall not reduce light transmission to the point that the normal growth, function or reproduction of aquatic life is impaired or that will cause substantial visible contrast with the natural appearance of the water. Activities or discharges shall not cause turbidity to increase more than 10 NTU over background turbidity when the background turbidity, measured at a point immediately upstream of the activity, is 50 NTU or less, nor to increase more than twenty percent when the background turbidity is more than 50 NTU. However, limited-duration turbidity increases caused by dredging, construction or other similar activities may be allowed provided all practicable turbidity control techniques have been applied and all appropriate permits, certifications and approvals have been obtained.

K. Total dissolved solids (TDS): TDS attributable to other than natural causes shall not damage or impair the normal growth, function or reproduction of animal, plant or aquatic life. TDS shall be measured by either the "calculation method" (sum of constituents) or the filterable residue method. Approved test procedures for these determinations are set forth in 20.6.4.14 NMAC.

L. Dissolved gases:

Surface waters of the state shall be free of nitrogen and other dissolved gases at levels above one hundred ten percent saturation when this supersaturation is attributable to municipal, industrial or other discharges.

M. Biological

integrity: Surface waters of the state shall support and maintain a balanced and integrated community of aquatic organisms with species composition, diversity and functional organization comparable to those of natural or

minimally impacted water bodies of a similar type and region.

[20.6.4.13 NMAC - Rp 20 NMAC 6.1.1105, 10/12/2000; A, 10/11/2002; Rn, 20.6.4.12 NMAC, 5/23/2005; A, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

20.6.4.14 SAMPLING AND ANALYSIS:

A. Sampling and analytical techniques shall conform with methods described in the following references unless otherwise specified by the commission pursuant to a petition to amend these standards:

(1)

“Guidelines Establishing Test Procedures For The Analysis Of Pollutants Under The Clean Water Act,” 40 CFR Part 136 or any test procedure approved or accepted by EPA using procedures provided in 40 CFR Parts 136.3(d), 136.4, and 136.5;

(2) *Standard*

Methods For The Examination Of Water And Wastewater, latest edition, American public health association;

(3) *Methods*

For Chemical Analysis Of Water And Waste, and other methods published by EPA office of research and development or office of water;

(4) *Techniques*

Of Water Resource Investigations Of The U.S. Geological Survey;

(5) *Annual*

Book Of ASTM Standards: volumes 11.01 and 11.02, water (I) and (II), latest edition, ASTM international;

(6) *Federal*

Register, latest methods published for monitoring pursuant to Resource Conservation and Recovery Act regulations;

(7) *National*

Handbook Of Recommended Methods For Water-Data Acquisition, latest edition, prepared cooperatively by agencies of the United States government under the sponsorship of the U.S. geological survey; or

(8) *Federal*

Register, latest methods published for monitoring pursuant to the Safe Drinking Water Act regulations.

B. Bacteriological Surveys: The monthly geometric

mean shall be used in assessing attainment of criteria when a minimum of five samples is collected in a 30-day period.

C. Sampling Procedures:

(1) Streams:

Stream monitoring stations below discharges shall be located a sufficient distance downstream to ensure adequate vertical and lateral mixing.

(2) Lakes:

Sampling stations in lakes shall be located at least 250 feet from a discharge.

(3)

Lakes: Except for the restriction specified in Paragraph (2) of this subsection, lake sampling stations shall be located at any site where the attainment of a water quality criterion is to be assessed. Water quality measurements taken at intervals in the entire water column at a sampling station shall be averaged for the epilimnion, or in the absence of an epilimnion, for the upper one-third of the water column of the lake to determine attainment of criteria, except that attainment of criteria for toxic pollutants shall be assessed during periods of complete vertical mixing, e.g., during spring or fall turnover, or by taking depth-integrated composite samples of the water column.

D. Acute toxicity

of effluent to aquatic life shall be determined using the procedures specified in U.S. environmental protection agency “*Methods for Measuring The Acute Toxicity of Effluents and Receiving Waters To Freshwater and Marine Organisms*” (5th Ed., 2002, EPA 821-R-02-012), or latest edition thereof if adopted by EPA at 40 CFR Part 136, which is incorporated herein by reference. Acute toxicities of substances shall be determined using at least two species tested in whole effluent and a series of effluent dilutions. Acute toxicity due to discharges shall not occur within the wastewater mixing zone in any surface water of the state with an existing or designated aquatic life use.

E. Chronic toxicity of effluent or ambient surface waters

of the state to aquatic life shall be determined using the procedures specified in U.S. environmental protection agency “*Short-Term Methods For Estimating The Chronic Toxicity Of Effluents And Receiving Waters To Freshwater Organisms*” (4th Ed., 2002, EPA 821-R-02-013), or latest edition thereof if adopted by EPA at 40 CFR Part 136, which is incorporated herein by reference. Chronic toxicities of substances shall be determined using at least two species tested in ambient surface water or whole effluent and a series of effluent dilutions. Chronic toxicity due to discharges shall not occur at the critical low flow, or any flow greater than the critical low flow, in any surface water of the state with an existing or designated aquatic life use more than once every three years.

F. Emerging

Contaminants Monitoring: The department may require monitoring, analysis and reporting of emerging contaminants as a condition of a federal permit under Section 401 of the federal Clean Water Act.

[20.6.4.14 NMAC - Rp 20 NMAC 6.1.1106, 10/12/2000; Rn, 20.6.4.13 NMAC, 5/23/2005 & A, 5/23/2005; A, 12/1/2010; A 4/23/2022]

20.6.4.15 USE ATTAINABILITY ANALYSIS:

A. Regulatory

requirements for a use attainability analysis. [A use attainability analysis is a scientific study conducted for the purpose of assessing the factors-affecting the attainment of a use.] Whenever a use attainability analysis is conducted, it shall be subject to the requirements and limitations set forth in 40 CFR Part 131, Water Quality Standards; specifically, Subsections 131.3(g), 131.10(g), 131.10(h) and 131.10(j) shall be applicable. In accordance with 40 CFR 131.10(i), and 20.6.4.10 NMAC, the amendment of a designated use, based on an existing use with more stringent criteria, does not require a use attainability analysis.

(1) The commission may remove a designated use, that is not an existing use,

specified in Section 101(a)(2) of the federal Clean Water Act or adopt subcategories of a use in Section 101(a)(2) of the federal Clean Water Act [use] requiring less stringent criteria only if a use attainability analysis demonstrates that attaining the use is not feasible because of a factor listed in 40 CFR 131.10(g). Uses in Section 101(a)(2) of the federal Clean Water Act [uses], which refer to the protection and propagation of fish, shellfish and wildlife and recreation in and on the water, are also specified in Subsection B of 20.6.4.6 NMAC.

(2) A designated use cannot be removed if it is an existing use unless a use requiring more stringent criteria is designated.

B. Methods for developing a use attainability analysis. A use attainability analysis shall assess the physical, chemical, biological, economic or other factors affecting the attainment of a use. The analysis shall rely on scientifically defensible methods such as the methods described in the following documents:

(1) *Technical Support Manual: Waterbody Surveys And Assessments For Conducting Use Attainability Analyses*, volume I (November 1983) and volume III (November 1984) or latest editions, United States environmental protection agency, office of water, regulations and standards, Washington, D.C., for the evaluation of aquatic life or wildlife uses;

(2) the department's *Hydrology Protocol*, latest edition, approved by the commission, for identifying ephemeral, [and] intermittent, and perennial waters; or

(3) *Interim Economic Guidance For Water Quality Standards - Workbook*, March 1995, United States environmental protection agency, office of water, Washington, D.C. for evaluating economic impacts.

C. Determining the highest attainable use. If the use attainability analysis determines that

~~the designated use is not attainable based on one of the factors in 40 CFR 131.10(g), the use attainability analysis shall demonstrate the support for removing the designated use and then determine the highest attainable use, as defined in 40 CFR 131.3(m), for the protection and propagation of fish, shellfish and wildlife and recreation in and on the water based on methods described in Subsection B of this section.~~

D. Process to amend a designated use through a use attainability analysis.

(1) The process for developing a use attainability analysis and petitioning the commission for removing a designated use and establishing the highest attainable use shall be done in accordance with the State's current *Water Quality Management Plan/Continuing Planning Process*.

~~(2) If the findings of a use attainability analysis, conducted by the department, [based on] in accordance with the department's *Hydrology Protocol* (latest edition) [approved by the commission,] demonstrates [to the satisfaction of the department] that federal Clean Water Act Section 101(a)(2) uses, that are not existing uses, are not feasible in an ephemeral water body due to the factor in 40 CFR 131.10(g)(2), the department may consider proceeding with the expedited use attainability analysis process in accordance with the State's current *Water Quality Management Plan/Continuing Planning Process*. The following elements must be met for the expedited use attainability analysis process to be authorized and implemented:~~

(a) The department is the primary investigator of the use attainability analysis;

(b) The use attainability analysis determined, through the application of the *Hydrology Protocol*, that the water being investigated is ephemeral and has no effluent discharges of sufficient volume that could compensate for the low-flow;

(c) The use attainability analysis determined that the criteria associated with the existing uses of the water being investigated are not more stringent than those in 20.6.4.97 NMAC;

(d) The designated uses in 20.6.4.97 NMAC have been determined to be the highest attainable uses for the water being analyzed;

(e) The department [shall post] posted the use attainability analysis on its water quality standards website and [notify] notified its interested parties list of a 30-day public comment period [-];

(f) [After reviewing] The department reviewed and responded to any comments received during the 30-day public comment period [-]; and

(g) The department [may proceed by submitting] submitted the use attainability analysis and response to comments to region 6 EPA for technical approval. If EPA approves the revision under section 303(c) of the Clean Water Act [technical approval is granted], the water shall be subject to 20.6.4.97 NMAC for federal Clean Water Act purposes. The use attainability analysis, the technical support document, [approval,] and the applicability of 20.6.4.97 NMAC to the water shall be posted on the department's water quality standards website. The department shall periodically petition the commission to list ephemeral waters under Subsection C of 20.6.4.97 NMAC and to incorporate changes to classified segments as appropriate.

~~(E.)~~ **E. Use attainability analysis conducted by an entity other than the department.** Any person may submit notice to the department stating [the] their intent to conduct a use attainability analysis.

(1) The proponent shall provide such notice along with [develop] a work plan supporting [to conduct] the development of a use attainability

analysis [~~and shall submit the work plan~~] to the department and region 6 EPA for review and comment.

(2) Upon approval of the work plan by the department, the proponent shall conduct the use attainability analysis in accordance with the applicable portions of Subsections A through D of this Section and implement public noticing in accordance with the approved work plan.

(3) Work plan elements. The work plan shall identify, at a minimum:

(a) the waterbody of concern and the reasoning for conducting a use attainability analysis;

(b) the [scope] source and validity of data [currently available and the scope of data to be gathered] to be used to demonstrate whether the current designated use is not attainable; [;]

(c) the factors in 40 CFR 131.10(g) affecting [use] the attainment of that use;

(d) [that will be analyzed] a description of the data being proposed to be used to demonstrate the highest attainable use;

(e) [and] the provisions for consultation with appropriate state and federal agencies;

(f) a description of how stakeholders and potentially affected tribes will be identified and engaged;

(g) a description of the public notice mechanisms to be employed; and [consultation with appropriate state and federal agencies]

(h) the expected timelines outlining the administrative actions to be taken for a rulemaking petition, pending the outcome of the use attainability analysis.

(4) [Upon approval of the work plan by the department, the proponent shall conduct the use attainability analysis in accordance with the approved

~~work plan. The cost of such analysis shall be the responsibility of the proponent.] Upon completion of the use attainability analysis, the proponent shall submit the data, findings and conclusions to the department, and provide public notice of the use attainability analysis in accordance with the approved work plan.~~

(5) Pending the conclusions of the use attainability analysis and as described in the approved work plan, [The] the department or the proponent may petition the commission to modify the designated use [if the conclusions of the analysis support such action]. The cost of such use attainability analysis shall be the responsibility of the proponent. Subsequent costs associated with the administrative rulemaking process shall be the responsibility of the petitioner.

[20.6.4.15 NMAC - Rp 20 NMAC 6.1.1107, 10/12/2000; Rn, 20.6.4.14 NMAC, 5/23/2005; A, 5/23/2005; A, 7/17/2005; A, 12/1/2010; A, 4/23/2022]

20.6.4.97 EPHEMERAL WATERS: Ephemeral surface waters of the state as identified below and additional ephemeral waters as identified on the department's water quality standards website pursuant to Paragraph (2) of Subsection [E] D of 20.6.4.15 NMAC are subject to the designated uses and criteria as specified in this section. Ephemeral waters classified in 20.6.4.101-899 NMAC are subject to the designated uses and criteria as specified in those sections.

A. Designated uses: livestock watering, wildlife habitat, limited aquatic life and secondary contact.

B. Criteria: the use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses.

C. Waters:
(1) the following waters are designated in the Rio Grande basin:

(a) Cunningham gulch from Santa Fe

county road 55 upstream 1.4 miles to a point upstream of the Lac minerals mine, identified as Ortiz mine on U.S. geological survey topographic maps;

(b) an unnamed tributary from Arroyo Hondo upstream 0.4 miles to the Village of Oshara water reclamation facility outfall;

(c) an unnamed tributary from San Pedro creek upstream 0.8 miles to the PAA-KO community sewer outfall;

(d) Inditos draw from the crossing of an unnamed road along a power line one-quarter mile west of McKinley county road 19 upstream to New Mexico highway 509;

(e) an unnamed tributary from the diversion channel connecting Blue canyon and Socorro canyon upstream 0.6 miles to the New Mexico firefighters academy treatment facility outfall;

(f) an unnamed tributary from the Albuquerque metropolitan arroyo flood control authority (AMAFCA) Rio Grande south channel upstream of the crossing of New Mexico highway 47 upstream to I-25;

(g) the south fork of Cañon del Piojo from [~~Cañon~~] Cañon del Piojo upstream 1.2 miles to an unnamed tributary;

(h) an unnamed tributary from the south fork of Cañon del Piojo upstream 1 mile to the Resurrection mine outfall;

(i) Arroyo del Puerto from San Mateo creek upstream 6.8 miles to the Ambrosia Lake mine entrance road;

(j) an unnamed tributary from San Mateo creek upstream 1.5 miles to the Roca Honda mine facility outfall;

(k) San Isidro arroyo, including unnamed tributaries to San Isidro arroyo, from Arroyo Chico upstream to its headwaters;

(l) Arroyo Tinaja, including unnamed tributaries to Arroyo Tinaja, from San Isidro arroyo upstream to 2 miles

northeast of the Cibola national forest boundary;

(m)

Mulatto canyon from Arroyo Tinaja upstream to 1 mile northeast of the Cibola national forest boundary; and

(n)

Doctor arroyo, including unnamed tributaries to Doctor arroyo, from San Isidro arroyo upstream to its headwaters, and excluding Doctor Spring and Doctor arroyo from the spring to its confluence with the unnamed tributary approximately one-half mile downstream of the spring.

(2) the

following waters are designated in the Pecos river basin:

(a) an

unnamed tributary from Hart canyon upstream 1 mile to South Union road;

(b)

Aqua Chiquita from Rio Peñasco upstream to McEwan canyon; and

(c)

Grindstone canyon upstream of Grindstone reservoir.

(3) the

following waters are designated in the Canadian river basin:

(a)

Bracket canyon upstream of the Vermejo river;

(b)

an unnamed tributary from Bracket canyon upstream 2 miles to the Ancho mine; and

(c)

Gachupin canyon from the Vermejo river upstream 2.9 miles to an unnamed west tributary near the Ancho mine outfall.

(4) in the San

Juan river basin an unnamed tributary of Kim-me-ni-oli wash upstream of the mine outfall.

(5) the

following waters are designated in the Little Colorado river basin:

(a)

Defiance draw from County Road 1 to upstream of West Defiance Road; and

(b)

an unnamed tributary of Defiance draw from McKinley county road 1 upstream to New Mexico highway 264.

(6) the

following waters are designated in the closed basins:

(a)

in the Tularosa river closed basin San Andres canyon downstream of South San Andres canyon; and

(b)

in the Mimbres river closed basin San Vicente arroyo from the Mimbres river upstream to Maudes canyon. [20.6.4.97 NMAC - N, 5/23/2005; A, 12/1/2010; A, 3/2/2017; A, 12/17/2019; A, 4/23/2022]

20.6.4.103 RIO GRANDE BASIN: ~~[The main stem of the Rio Grande from the headwaters of Caballo reservoir upstream to Elephant Butte dam and perennial]~~ Perennial reaches of tributaries to the Rio Grande in Sierra and Socorro counties not specifically identified under other sections of 20.6.4 NMAC, excluding waters on tribal lands.

A. Designated

uses: irrigation, livestock watering, wildlife habitat, marginal coldwater aquatic life, secondary contact and warmwater aquatic life.

B. Criteria: the use-

specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

~~[C. — Remarks: flow in this reach of the Rio Grande main stem is dependent upon release from Elephant Butte dam.]~~

[20.6.4.103 NMAC - Rp 20 NMAC 6.1.2103, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

[NOTE: This segment was divided effective 4/23/2022. The standards for the main stem of the Rio Grande from the headwaters of Caballo reservoir upstream to Elephant Butte dam, perennial reaches of Palomas creek, perennial reaches of Rio Salado, perennial reaches of Percha creek, perennial reaches of Alamosa creek, Las Animas creek, and perennial reaches of Abo arroyo are under 20.6.4.112 NMAC.]

20.6.4.108 RIO GRANDE BASIN: Perennial reaches of the Jemez river upstream of Soda

dam near the town of Jemez Springs and [all-its] perennial reaches of tributaries to the Jemez river except those not specifically identified under other sections of 20.6.4 NMAC [above Soda dam near the town of Jemez Springs, except San Gregorio lake and Sulphur creek above its confluence with Redondo creek], and perennial reaches of the Guadalupe river and perennial reaches of [all-its] tributaries to the Guadalupe river, and Calaveras canyon.

A. Designated uses:

domestic water supply, fish culture, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

B. Criteria: the use-

specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 400 µS/cm or less (800 µS/cm or less on Sulphur creek); the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less; and pH within the range of 2.0 to 8.8 on Sulphur creek.

[20.6.4.108 NMAC - Rp 20 NMAC 6.1.2106, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 7/10/2012; A, 4/23/2022]

[NOTE: The segment covered by this section was divided effective 5/23/2005. The standards for the additional segment are under 20.6.4.124 NMAC. The standards for San Gregorio lake are in 20.6.4.134 NMAC, effective 7/10/2012]

20.6.4.112 [RESERVED] RIO GRANDE BASIN: The main stem of the Rio Grande from the headwaters of Caballo reservoir upstream to Elephant Butte dam, perennial reaches of Palomas creek, perennial reaches of Rio Salado, perennial reaches of Percha creek, perennial reaches of Alamosa creek, Las Animas creek, and perennial reaches of Abo arroyo.

A. Designated uses:

irrigation, livestock watering, wildlife habitat, marginal coldwater aquatic

life, primary contact and warmwater aquatic life.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

C. Remarks: flow in this reach of the Rio Grande main stem is dependent upon release from Elephant Butte dam.

[20.6.4.112 NMAC - Rp 20 NMAC 6.1.2109, 10/12/2000; A, 5/23/2005; Repealed, 12/1/2010; A, 4/23/2022]

20.6.4.115 RIO GRANDE BASIN: The perennial reaches of Rio Vallecitos, ~~and its~~ perennial reaches of tributaries to Rio Vallecitos except Hopewell lake, and perennial reaches of Rio del Oso and perennial reaches of El Rito creek above the town of El Rito.

A. Designated uses: domestic water supply, irrigation, high quality coldwater aquatic life, livestock watering, wildlife habitat and primary contact; public water supply on the Rio Vallecitos and El Rito creek.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300 µS/cm or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.115 NMAC - Rp 20 NMAC 6.1.2112, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 7/10/2012; A, 4/23/2022]

[NOTE: The standards for Hopewell lake are in 20.6.4.134 NMAC, effective 7/10/2012]

20.6.4.116 RIO GRANDE BASIN: The Rio Chama from its mouth on the Rio Grande upstream to Abiquiu reservoir, perennial reaches of the Rio Tusas, perennial reaches of the Rio Ojo Caliente, perennial reaches of Abiquiu creek and perennial reaches of El Rito creek downstream of the town of El Rito.

A. Designated uses: irrigation, livestock watering, wildlife habitat, coldwater aquatic life, warmwater aquatic life and ~~secondary~~ primary contact.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 31°C (87.8°F) or less.

[20.6.4.116 NMAC - Rp 20 NMAC 6.1.2113, 10/12/2010; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017; A, 4/23/2022]

20.6.4.126 RIO GRANDE BASIN: Perennial waters within lands managed by the U.S. department of energy (DOE) within Los Alamos National Laboratory (LANL), including but not limited to: ~~portions of~~ Cañon de Valle from ~~Los Alamos national laboratory~~ (LANL) stream gage E256 upstream to Burning Ground spring, Sandia canyon upstream to LANL NPDES outfall 001, Pajarito canyon from 0.5 miles below Arroyo de La Delfe upstream to Homestead spring, Arroyo de la Delfe from Pajarito canyon to Kielling spring, ~~into~~ Starmers gulch and Starmers spring and Water canyon from Area-A canyon upstream to State Route 501.

A. Designated uses: coldwater aquatic life, livestock watering, wildlife habitat and secondary contact.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.126 NMAC - N, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

20.6.4.128 RIO GRANDE BASIN: Ephemeral and intermittent watercourses within lands managed by U.S. department of energy (DOE) within LANL[-], including but not limited to: Mortandad canyon, Cañada del Buey, Ancho canyon, Chaquehui canyon, Indio

canyon, Fence canyon, Potrillo canyon, and portions of Cañon de Valle, Los Alamos canyon, Sandia canyon, Pajarito canyon and Water canyon not ~~specifically~~ identified in 20.6.4.126 NMAC or 20.6.4.140 NMAC. (Surface waters within lands scheduled for transfer from DOE to tribal, state or local authorities are specifically excluded.)

A. Designated uses: livestock watering, wildlife habitat, limited aquatic life and secondary contact.

B. Criteria: the use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the acute total ammonia criteria set forth in Subsection [K] L of 20.6.4.900 NMAC ([salmonids] *Oncorhynchus* spp. absent).

[20.6.4.128 NMAC - N, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

[NOTE: This section was divided effective 4/23/2022. The standards for some intermittent waters within LANL are in 20.6.4.140 NMAC.]

20.6.4.140 RIO GRANDE BASIN: Effluent canyon from Mortandad canyon to its headwaters, intermittent portions of S-Site canyon from monitoring well MSC 16-06293 to Martin spring, and intermittent portions of Twomile canyon from its confluence with Pajarito canyon to Upper Twomile canyon. (Surface waters within lands scheduled for transfer from DOE to tribal, state or local authorities are specifically excluded.)

A. Designated uses: livestock watering, wildlife habitat, marginal warmwater aquatic life and secondary contact.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.140 NMAC - N, 4/23/2022]

20.6.4.204 PECOS RIVER BASIN: The main stem of the Pecos river from the headwaters

of Avalon reservoir upstream to Brantley dam.

A. Designated uses: irrigation, livestock watering, wildlife habitat, [secondary] primary contact and warmwater aquatic life.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.204 NMAC - Rp 20 NMAC 6.1.2204, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

[NOTE: The segment covered by this section was divided effective 5/23/2005. The standards for Avalon Reservoir are under 20.6.4.219 NMAC.]

20.6.4.206 PECOS RIVER BASIN: ~~[The main stem of the Pecos river from the headwaters of Brantley reservoir upstream to Salt creek (near Acme), perennial reaches of the Rio Peñasco downstream from state highway 24 near Dunken, perennial reaches of the Rio Hondo and its]~~ Perennial reaches of the Rio Felix and perennial reaches of tributaries to the Rio Hondo downstream of Bonney canyon, excluding North Spring river [and perennial reaches of the Rio Felix].

A. Designated uses: irrigation, livestock watering, wildlife habitat, secondary contact and warmwater aquatic life.

B. Criteria:
(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

(2) At all flows above 50 cfs: TDS 14,000 mg/L or less, sulfate 3,000 mg/L or less and chloride 6,000 mg/L or less.

[20.6.4.206 NMAC - Rp 20 NMAC 6.1.2206, 10/12/2010; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017; A, 4/23/2022]

[NOTE: This segment was divided effective 4/23/2022. The standards for the main stem of the Pecos river from the headwaters of Brantley reservoir upstream to Salt creek (near Acme), perennial reaches of the Rio Peñasco downstream from

state highway 24 near Dunken, and perennial reaches of the Rio Hondo are under 20.6.4.231 NMAC.]

20.6.4.207 PECOS RIVER BASIN: The main stem of the Pecos river from Salt creek (near Acme) upstream to Sumner dam.

A. Designated uses: irrigation, marginal warmwater aquatic life, livestock watering, wildlife habitat and [secondary] primary contact.

B. Criteria:
(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

(2) At all flows above 50 cfs: TDS 8,000 mg/L or less, sulfate 2,500 mg/L or less and chloride 4,000 mg/L or less.

[20.6.4.207 NMAC - Rp 20 NMAC 6.1.2207, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

20.6.4.208 PECOS RIVER BASIN: Perennial reaches of the Rio Peñasco above state highway 24 near Dunken, [and its] perennial reaches of tributaries to the Rio Peñasco above state highway 24 near Dunken, perennial reaches of the Rio Bonito downstream from state highway 48 (near Angus), the Rio Ruidoso downstream of the U.S. highway 70 bridge near Seeping Springs lakes, perennial reaches of the Rio Hondo upstream from Bonney canyon and perennial reaches of Agua Chiquita.

A. Designated uses: fish culture, irrigation, livestock watering, wildlife habitat, coldwater aquatic life and primary contact.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: temperature 30°C (86°F) or less, and phosphorus (unfiltered sample) less than 0.1 mg/L.

[20.6.4.208 NMAC - Rp 20 NMAC 6.1.2208, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

20.6.4.209 PECOS RIVER BASIN: Perennial reaches of Eagle creek upstream of Alto dam to the Mescalero Apache boundary, perennial reaches of the Rio Bonito upstream of state highway 48 (near Angus) excluding Bonito lake, [and its] perennial reaches of tributaries to the Rio Bonito upstream of state highway 48 (near Angus) [-], [and] perennial reaches of the Rio Ruidoso upstream of the U.S. highway 70 bridge near Seeping Springs lakes [5] above and below the Mescalero Apache boundary and [its] perennial reaches of tributaries to the Rio Ruidoso upstream of the U.S. highway 70 bridge near Seeping Springs lakes [5] above and below the Mescalero Apache boundary.

A. Designated uses: domestic water supply, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat, public water supply and primary contact.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 600 µS/cm or less in Eagle creek, 1,100 µS/cm or less in Bonito creek and 1,500 µS/cm or less in the Rio Ruidoso; phosphorus (unfiltered sample) less than 0.1 mg/L; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.209 NMAC - Rp 20 NMAC 6.1.2209, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 7/10/2012; A, 4/23/2022]

[NOTE: The standards for Bonito lake are in 20.6.4.223 NMAC, effective 7/10/2012]

20.6.4.215 PECOS RIVER BASIN: Perennial reaches of the Gallinas river upstream of the diversion for the Las Vegas municipal reservoir, [and all its] perennial reaches of tributaries to the Gallinas river upstream of the diversion for the Las Vegas municipal reservoir, perennial

reaches of Tecolote creek upstream of Blue creek [5] and all perennial reaches of tributaries [of] to Tecolote creek upstream of Blue creek.

A. Designated uses: domestic water supply, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat, industrial water supply and primary contact; and public water supply on the Gallinas river.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300 μ S/cm or less (450 μ S/cm or less in Wright Canyon creek); the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.215 NMAC - Rp 20 NMAC 6.1.2212, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 2/13/2018; A, 4/23/2022]

[NOTE: This segment was divided effective 2/13/2018. The standards for Tecolote creek from I-25 to Blue creek are under 20.6.4.230 NMAC.]

20.6.4.220 PECOS RIVER BASIN: Perennial reaches of the Gallinas river and [its] perennial reaches of tributaries to the Gallinas river from its mouth upstream to the diversion for the Las Vegas municipal reservoir, except Pecos Arroyo.

A. Designated uses: irrigation, livestock watering, wildlife habitat, marginal coldwater aquatic life and primary contact.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 30°C (86°F) or less.

[20.6.4.220 NMAC - N, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

20.6.4.231 PECOS RIVER BASIN: The main stem of the Pecos river from the headwaters of Brantley reservoir upstream to Salt creek (near Acme), perennial

reaches of the Rio Peñasco downstream from state highway 24 near Dunken, perennial reaches of North Spring river and perennial reaches of the Rio Hondo downstream of Bonney canyon.

A. Designated uses: irrigation, livestock watering, wildlife habitat, primary contact and warmwater aquatic life.

B. Criteria:
(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

(2) At all flows above 50 cfs: TDS 14,000 mg/L or less, sulfate 3,000 mg/L or less and chloride 6,000 mg/L or less. [20.6.4.231 NMAC - N, 4/23/2022]

20.6.4.307 CANADIAN RIVER BASIN: Perennial reaches of the Mora river from the USGS gaging station near Shoemaker upstream to the state highway 434 bridge in Mora, all perennial reaches of tributaries to the Mora river downstream from the USGS gaging station at La Cueva in San Miguel and Mora counties except lakes identified in 20.6.4.313 NMAC, perennial reaches of Ocate creek downstream of Ocate, [and its] perennial reaches of tributaries to Ocate creek downstream of Ocate, and perennial reaches of Rayado creek downstream of Miami lake diversion in Colfax county.

A. Designated uses: marginal coldwater aquatic life, warmwater aquatic life, primary contact, irrigation, livestock watering and wildlife habitat.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses. [20.6.4.307 NMAC - Rp 20 NMAC 6.1.2305.3, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 7/10/2012; A, 4/23/2022]

20.6.4.309 CANADIAN RIVER BASIN: The Mora river and perennial reaches of its tributaries upstream from the

state highway 434 bridge in Mora except lakes identified in 20.6.4.313 NMAC, all perennial reaches of tributaries to the Mora river upstream from the USGS gaging station at La Cueva, perennial reaches of Coyote creek, [and its] perennial reaches of tributaries to Coyote creek, the Cimarron river above state highway 21 in Cimarron, [and its] perennial reaches of tributaries to the Cimarron river above state highway 21 in Cimarron except Eagle Nest lake, all perennial reaches of tributaries to the Cimarron river north and northwest of highway 64 except north and south Shuree ponds, perennial reaches of Rayado creek above Miami lake diversion, [and its] perennial reaches of tributaries to Rayado creek above Miami lake diversion, Ocate creek and perennial reaches of its tributaries upstream of Ocate, perennial reaches of the Vermejo river upstream from Rail canyon and all other perennial reaches of tributaries to the Canadian river northwest and north of U.S. highway 64 in Colfax county unless included in other segments.

A. Designated uses: domestic water supply, irrigation, high quality coldwater aquatic life, livestock watering, wildlife habitat, and primary contact; and public water supply on the Cimarron river upstream from Cimarron, [and] on perennial reaches of Rayado creek and on perennial reaches of [its] tributaries to Rayado creek.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 500 μ S/cm or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.309 NMAC - Rp 20 NMAC 6.1.2306, 10/12/2000; A, 7/19/2001; A, 5/23/2005; A, 12/1/2010; A, 7/10/2012; A, 4/23/2022]

[NOTE: The segment covered by this section was divided effective

5/23/2005. The standards for the additional segment are under 20.6.4.310 NMAC. The standards for Shuree ponds are in 20.6.4.314 NMAC and the standards for Eagle Nest lake are in 20.6.4.315 NMAC, effective 7/10/2012]

20.6.4.311 CANADIAN RIVER BASIN: **Lake Alice.**

A. Designated uses: marginal coldwater aquatic life, irrigation, livestock watering, wildlife habitat, primary contact and public water supply.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.
[20.6.4.311 NMAC - N, 12/1/2010; A, 4/23/2022]

20.6.4.312 CANADIAN RIVER BASIN: **Lake Maloya.**

A. Designated uses: coldwater aquatic life, irrigation, livestock watering, wildlife habitat, primary contact and public water supply.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.
[20.6.4.312 NMAC - N, 12/1/2010; A, 4/23/2022]

20.6.4.318 CANADIAN RIVER BASIN: **Doggett creek.**

A. Designated uses: Warm water aquatic life, livestock watering, wildlife habitat and primary contact.

B. Criteria: The use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses, except that the following site-specific criteria apply: the monthly geometric mean of E. coli bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

C. Discharger-specific temporary standard:

(1)

Discharger: City of Raton wastewater treatment plant

(2) **NPDES**

permit number: NM0020273, Outfall 001

(3) **Receiving waterbody:** Doggett creek, 20.6.4.318 NMAC

(4) **Discharge latitude/longitude:** 36° 52' 13.91» N / 104° 25' 39.18» W

(5) **Pollutant(s):** nutrients; total nitrogen and total phosphorus

(6) **Factor of issuance:** substantial and widespread economic and social impacts (40 CFR 131.10(g)(6))

(7) **Highest attainable condition:** interim effluent condition of 8.0 mg/L total nitrogen and 1.6 mg/L total phosphorus as 30-day averages. The highest attainable condition shall be either the highest attainable condition identified at the time of the adoption, or any higher attainable condition later identified during any reevaluation, whichever is more stringent (40 CFR 131.14(b)(1)(iii)).

(8) **Effective date of temporary standard:** This temporary standard becomes effective for Clean Water Act purposes on the date of EPA approval.

(9) **Expiration date of temporary standard:** no later than 20 years from the effective date.

(10) **Reevaluation period:** at each succeeding review of water quality standards and at least once every five years from the effective date of the temporary standard (Paragraph (8) of Subsection H of 20.6.4.10 [-F-(8)] NMAC, 40 CFR 131.14(b)(1)(v)). If the discharger cannot demonstrate that sufficient progress has been made the commission may revoke approval of the temporary standard or provide additional conditions to the approval of the temporary standard. If the reevaluation is not completed at the frequency specified or the Department does not submit the reevaluation to EPA within 30 days of completion, the underlying designated use and criterion will be the applicable water quality standard for Clean Water Act purposes until the Department completes and submits the reevaluation to EPA. Public input on

the reevaluation will be invited during NPDES permit renewals or triennial reviews, as applicable, in accordance with the State's most current approved water quality management plan and continuing planning process.

(11) **Timeline for proposed actions.** Tasks and target completion dates are listed in the most recent, WQCC-approved version of the New Mexico Environment Department, Surface Water Quality Bureau's "Nutrient Temporary Standards for City of Raton Wastewater Treatment Plant, NPDES No. NM0020273 to Doggett Creek."

[20.6.4.318 NMAC - N, 05/22/2020; A, 4/23/2022]

20.6.4.405 SAN JUAN RIVER BASIN: **The main stem of the San Juan river from [~~Canyon~~] Cañon Largo upstream to the Navajo dam.**

A. Designated uses: high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat, public water supply, industrial water supply and primary contact.

B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 400 µS/cm or less; the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.405 NMAC - Rp 20 NMAC 6.1.2405, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

20.6.4.408 SAN JUAN RIVER BASIN: **The main stem of the San Juan river from its confluence with the Animas river upstream to its confluence with [~~Canyon~~] Cañon Largo.**

A. Designated uses: public water supply, industrial water supply, irrigation, livestock watering, wildlife habitat, primary contact, marginal coldwater aquatic life and warmwater aquatic life.

B. Criteria: the use-specific numeric criteria set forth in

20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 32.2°C (90°F) or less.

[20.6.4.408 NMAC - N, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

20.6.4.900 CRITERIA APPLICABLE TO EXISTING, DESIGNATED OR ATTAINABLE USES UNLESS OTHERWISE SPECIFIED IN 20.6.4.97

THROUGH 20.6.4.899 NMAC:

A. Fish culture

and water supply: Fish culture, public water supply and industrial water supply are designated uses in particular classified waters of the state where these uses are actually being realized. However, no numeric criteria apply uniquely to these uses. Water quality adequate for these uses is ensured by the general criteria and numeric criteria for bacterial quality, pH and temperature.

B. Domestic water

supply: Surface waters of the state designated for use as domestic water supplies shall not contain substances in concentrations that create a lifetime cancer risk of more than one cancer per 100,000 exposed persons. Those criteria listed under domestic water supply in Subsection J of this section apply to this use.

C. Irrigation and

irrigation storage: the following numeric criteria and those criteria listed under irrigation in Subsection J of this section apply to this use:

(1) dissolved

selenium
0.13 mg/L

(2) dissolved

selenium in presence of >500 mg/L
SO₄ 0.25 mg/L.

D. Primary contact:

The monthly geometric mean of *E. coli* bacteria of 126 cfu/100 mL or MPN/100 mL, [and] a single sample of *E. coli* bacteria of 410 cfu/100 mL or MPN/100 mL, a single sample of total microcystins of 8 µg/L with no more than three exceedances within a 12-month period and a single sample of cylindrospermopsin of 15 µg/L with no more than three exceedances

within a 12-month period, and pH within the range of 6.6 to 9.0 apply to this use. The results for *E. coli* may be reported as either colony forming units (CFU) or the most probable number (MPN) depending on the analytical method used.

E. Secondary contact:

The monthly geometric mean of *E. coli* bacteria of 548 cfu/100 mL or MPN/100 mL and single sample of 2507 cfu/100 mL or MPN/100 mL apply to this use. The results for *E. coli* may be reported as either colony forming units (CFU) or the most probable number (MPN), depending on the analytical method used.

F. Livestock

watering: the criteria listed in Subsection J of this section for livestock watering apply to this use.

G. Wildlife habitat:

Wildlife habitat shall be free from any substances at concentrations that are toxic to or will adversely affect plants and animals that use these environments for feeding, drinking, habitat or propagation; can bioaccumulate; or might impair the community of animals in a watershed or the ecological integrity of surface waters of the state. The numeric criteria listed in Subsection J for wildlife habitat apply to this use.

H. Aquatic life:

Surface waters of the state with a designated, existing or attainable use of aquatic life shall be free from any substances at concentrations that can impair the community of plants and animals in or the ecological integrity of surface waters of the state. Except as provided in Paragraph (7) of this subsection, the acute and chronic aquatic life criteria set out in Subsections I, J, K and L of this section and the human health-organism only criteria set out in Subsection J of this section are applicable to all aquatic life use subcategories. In addition, the specific criteria for aquatic life subcategories in the following paragraphs apply to waters classified under the respective designations.

(1) High

quality coldwater: dissolved oxygen 6.0 mg/L or more, 4T3 temperature

20°C (68°F), maximum temperature 23°C (73°F), pH within the range of 6.6 to 8.8 and specific conductance a segment-specific limit between 300 µS/cm and 1,500 µS/cm depending on the natural background in the particular surface water of the state (the intent of this criterion is to prevent excessive increases in dissolved solids which would result in changes in community structure). Where a single segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature and no 4T3 temperature applies.

(2)

Coldwater: dissolved oxygen 6.0 mg/L or more, 6T3 temperature 20°C (68°F), maximum temperature 24°C (75°F) and pH within the range of 6.6 to 8.8. Where a single segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature and no 6T3 temperature applies.

(3) Marginal

coldwater: dissolved oxygen 6 mg/L or more, 6T3 temperature 25°C (77°F), maximum temperature 29°C (84°F) and pH within the range from 6.6 to 9.0. Where a single segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature and no 6T3 temperature applies.

(4)

Coolwater: dissolved oxygen 5.0 mg/L or more, maximum temperature 29°C (84°F) and pH within the range of 6.6 to 9.0.

(5)

Warmwater: dissolved oxygen 5 mg/L or more, maximum temperature 32.2°C (90°F) and pH within the range of 6.6 to 9.0. Where a segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature.

(6) Marginal

warmwater: dissolved oxygen 5 mg/L or more, pH within the range of 6.6 to 9.0 and [~~maximum temperature~~] temperatures that may routinely exceed 32.2°C (90°F). Where a segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature.

(7) **Limited aquatic life:** The acute aquatic life criteria of Subsections I and J of this section apply to this subcategory. Chronic aquatic life criteria do not apply unless adopted on a segment-specific basis. Human health-organism only criteria apply only for persistent toxic pollutants unless adopted on a segment-specific basis.

I. Hardness-dependent acute and chronic aquatic life criteria for metals are calculated using the following equations. The criteria are expressed as a function of [~~dissolved~~] hardness (as mg CaCO₃/L). With the exception of aluminum, the equations are valid only for [~~dissolved~~] hardness concentrations of 0-400 mg/L. For [~~dissolved~~] hardness concentrations above 400 mg/L, the criteria for 400 mg/L apply. For aluminum the equations are valid only for [~~dissolved~~] hardness concentrations of 0-220 mg/L. For [~~dissolved~~] hardness concentrations above 220 mg/L, the aluminum criteria for 220 mg/L apply. Calculated criteria must adhere to the treatment of significant figures and rounding identified in *Standard Methods For The Examination Of Water And Wastewater*, latest edition, American public health association.

(1) **Acute aquatic life criteria for metals:** The equation to calculate acute criteria in µg/L is $\exp(m_A [\ln(\text{hardness})] + b_A)(CF)$. Except for aluminum, the criteria are based on analysis of dissolved metal. For aluminum, the criteria are based on analysis of total recoverable aluminum in a sample that has a pH between 6.5 and 9.0 and is filtered to minimize mineral phases as specified by the department. [~~The EPA has disapproved the hardness-based equation for total recoverable aluminum in waters where the pH is less than 6.5 in the receiving stream for federal purposes of the Clean Water Act.~~] The equation parameters are as follows:

Metal	m_A	b_A	Conversion factor (CF)
Aluminum (Al)	1.3695	1.8308	
Cadmium (Cd)	[0.8968] <u>0.9789</u>	[-3.5699] <u>-3.866</u>	$1.136672 - [(\ln \text{hardness})(0.041838)]$
Chromium (Cr) III	0.8190	3.7256	0.316
Copper (Cu)	0.9422	-1.700	0.960
Lead (Pb)	1.273	-1.460	$1.46203 - [(\ln \text{hardness})(0.145712)]$
Manganese (Mn)	0.3331	6.4676	
Nickel (Ni)	0.8460	2.255	0.998
Silver (Ag)	1.72	-6.59	0.85
Zinc (Zn)	0.9094	0.9095	0.978

(2) **Chronic aquatic life criteria for metals:** The equation to calculate chronic criteria in µg/L is $\exp(m_C [\ln(\text{hardness})] + b_C)(CF)$. Except for aluminum, the criteria are based on analysis of dissolved metal. For aluminum, the criteria are based on analysis of total recoverable aluminum in a sample that has a pH between 6.5 and 9.0 and is filtered to minimize mineral phases as specified by the department. [~~The EPA has disapproved the hardness-based equation for total recoverable aluminum in waters where the pH is less than 6.5 in the receiving stream for federal purposes of the Clean Water Act.~~] The equation parameters are as follows:

Metal	m_C	b_C	Conversion factor (CF)
Aluminum (Al)	1.3695	0.9161	
Cadmium (Cd)	[0.7647] <u>0.7977</u>	[-4.2180] <u>-3.909</u>	$1.101672 - [(\ln \text{hardness})(0.041838)]$
Chromium (Cr) III	0.8190	0.6848	0.860
Copper (Cu)	0.8545	-1.702	0.960
Lead (Pb)	1.273	-4.705	$1.46203 - [(\ln \text{hardness})(0.145712)]$
Manganese (Mn)	0.3331	5.8743	
Nickel (Ni)	0.8460	0.0584	0.997
Zinc (Zn)	0.9094	0.6235	0.986

(3) Selected values of calculated acute and chronic criteria ($\mu\text{g/L}$).

Hardness as CaCO_3 , dissolved (mg/L)		Al	Cd	Cr III	Cu	Pb	Mn	Ni	Ag	Zn
		[25] 25.0	Acute	512	[0.51] 0.490	[180] 183	[4] 3.64	[14] 13.9	[1,881] 1,880	[140] 145
	Chronic	205	[0.17] 0.253	[24] 23.8	[3] 2.74	[1] 0.541	1,040	[16] 16.1		[34] 34.4
[30] 30.0	Acute	658	[0.59] 0.581	[210] 212	[4] 4.32	[17] 17.0	[1,999] 2,000	[170] 169	[0.4] 0.40	[54] 53.5
	Chronic	263	[0.19] 0.290	[28] 27.6	[3] 3.20	[1] 0.664	[1,105] 1,100	[19] 18.8		[41] 40.5
[40] 40.0	Acute	975	[0.76] 0.761	[270] 269	[6] 5.67	[24] 23.5	2,200	[220] 216	[0.7] 0.66	[70] 69.5
	Chronic	391	[0.23] 0.360	[35] 35.0	[4] 4.09	[1] 0.916	[1,216] 1,220	[24] 24.0		[53] 52.7
[50] 50.0	Acute	[1,324] 1,320	[0.91] 0.938	[320] 323	[7] 6.99	[30] 30.1	2,370	260	[1.0] 0.98	[85] 85.2
	Chronic	530	[0.28] 0.426	[42] 42.0	[5] 4.95	[1] 1.17	[1,309] 1,310	[29] 28.9		[65] 64.5
[60] 60.0	Acute	[1,699] 1,700	[1.07] 1.11	[370] 375	[8] 8.30	[37] 36.9	[2,519] 2,520	[300] 304	1.3	[101] 100
	Chronic	681	[0.31] 0.489	[49] 48.8	[6] 5.79	[1] 1.44	[1,391] 1,390	[34] 33.8		[76] 76.2
[70] 70.0	Acute	[2,099] 2,100	[1.22] 1.28	[430] 425	[10] 9.60	[44] 43.7	[2,651] 2,650	[350] 346	1.7	116
	Chronic	841	[0.35] 0.549	[55] 55.3	[7] 6.60	[2] 1.70	[1,465] 1,460	[38] 38.5		[88] 87.6
[80] 80.0	Acute	2,520	[1.37] 1.46	[470] 474	[11] 10.9	[51] 50.6	[2,772] 2,770	[390] 388	2.2	131
	Chronic	1,010	[0.39] 0.607	[62] 61.7	[7] 7.40	[2] 1.97	[1,531] 1,530	[43] 43.0		[99] 98.9
[90] 90.0	Acute	[2,961] 2,960	[1.51] 1.62	[520] 523	[12] 12.2	[58] 57.6	[2,883] 2,880	[430] 428	2.7	145
	Chronic	[1,186] 1,190	[0.42] 0.664	[68] 68.0	[8] 8.18	[2] 2.24	[1,593] 1,590	[48] 47.6		110
100	Acute	[3,421] 3,420	[1.65] 1.79	570	[13] 13.4	[65] 64.6	[2,986] 2,980	[470] 468	3.2	160
	Chronic	1,370	[0.45] 0.718	[74] 74.1	[9] 8.96	[3] 2.52	1,650	[52] 52.0		121
200	Acute	[8,838] 8,840	[2.98] 3.43	[1,010] 1,000	[26] 25.8	[140] 136	[3,761] 3,760	[840] 842	[11] 10	[301] 300
	Chronic	[3,541] 3,540	[0.75] 1.21	[130] 131	[16] 16.2	[5] 5.30	[2,078] 2,080	[90] 93.5		228
220	Acute	[10,071] 10,100	[3.23] 3.74	[1,087] 1,090	[28] 28.2	151	[3,882] 3,880	912	[13] 12	328

Hardness as CaCO ₃ , dissolved (mg/L)										
		Al	Cd	Cr III	Cu	Pb	Mn	Ni	Ag	Zn
	Chronic	[4,035] 4,030	[0.80] 1.30	141	[18] 17.6	[6] 5.87	[2,145] 2,140	101		248
300	Acute		[4.21] 5.00	1,400	[38] 37.8	[210] 208	[4,305] 4,300	[1190] 1,190	21	[435] 434
	Chronic		[1.00] 1.64	[180] 182	[23] 22.9	[8] 8.13	[2,379] 2,380	[130] 132		329
400 and above	Acute		[5.38] 6.54	1,770	[50] 49.6	[280] 281	[4,738] 4,740	[1510] 1,510	35	564
	Chronic		[1.22] 2.03	[230] 231	[29] 29.3	[11] 10.9	[2,618] 2,620	[170] 168		428

J. Use-specific numeric criteria.

(1) **Table of numeric criteria:** The following table sets forth the numeric criteria applicable to existing, designated and attainable uses. For metals, criteria represent the total sample fraction unless otherwise specified in the table. Additional criteria that are not compatible with this table are found in Subsections A through I, K and L of this section.

Pollutant	CAS Number	DWS	Irr/Irr storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
Aluminum, dissolved	7429-90-5		5,000			750 i	87 i		
Aluminum, total recoverable	7429-90-5					a	a		
Antimony, dissolved	7440-36-0	6						640	P
Arsenic, dissolved	7440-38-2	10	100	200		340	150	9.0	C,P
Asbestos	1332-21-4	7,000,000 fibers/L							
Barium, dissolved	7440-39-3	2,000							
Beryllium, dissolved	7440-41-7	4							
Boron, dissolved	7440-42-8		750	5,000					
Cadmium, dissolved	7440-43-9	5	10	50		a	a		
Chloride	1688-70-06					860,000	230,000		
Chlorine residual	7782-50-5				11	19	11		
Chromium III, dissolved	16065-83-1					a	a		
Chromium VI, dissolved	18540-29-9					16	11		
Chromium, dissolved	7440-47-3	100	100	1,000					
Cobalt, dissolved	7440-48-4		50	1,000					
Copper, dissolved	7440-50-8	1300	200	500		a	a		
Cyanide, total recoverable	57-12-5	200			5.2	22.0	5.2	[140] 400	
Iron	7439-89-6						1,000		
Lead, dissolved	7439-92-1	15	5,000	100		a	a		
Manganese, dissolved	7439-96-5					a	a		
Mercury	7439-97-6	2		10	0.77				
Mercury, dissolved	7439-97-6					1.4	0.77		
Methylmercury	22967-92-6							0.3 mg/kg in fish tissue	P
Molybdenum, dissolved	7439-98-7		1,000						
Molybdenum, total recoverable	7439-98-7					7,920	1,895		

Pollutant	CAS Number	DWS	Irr/Irr storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
Nickel, dissolved	7440-02-0	700				a	a	4,600	P
Nitrate as N		10 mg/L							
Nitrite + Nitrate				132 mg/L					
Selenium, dissolved	7782-49-2	50	b	50				4,200	P
Selenium, total recoverable	7782-49-2				5.0	20.0	5.0		
Silver, dissolved	7440-22-4					a			
Thallium, dissolved	7440-28-0	2						0.47	P
Uranium, dissolved	7440-61-1	30							
Vanadium, dissolved	7440-62-2		100	100					
Zinc, dissolved	7440-66-6	10,500	2,000	25,000		a	a	26,000	P
Adjusted gross alpha		15 pCi/L		15 pCi/L					
Radium 226 + Radium 228		5 pCi/L		30.0 pCi/L					
Strontium 90		8 pCi/L							
Tritium		20,000 pCi/L		20,000 pCi/L					
Acenaphthene	83-32-9	2,100						[990] 90	
Acrolein	107-02-8	18				3.0	3.0	[9] 400	
Acrylonitrile	107-13-1	0.65						[2.5] 70	C
Aldrin	309-00-2	0.021				3.0		[0.00050] 0.0000077	C,P
Anthracene	120-12-7	10,500						[40,000] 400	
Benzene	71-43-2	5						[510] 160	C
Benzidine	92-87-5	0.0015						[0.0020] 0.11	C
Benzo(a)anthracene	56-55-3	0.048						[0.18] 0.013	C
Benzo(a)pyrene	50-32-8	0.2						[0.18] 0.0013	C,P
Benzo(b)fluoranthene	205-99-2	0.048						[0.18] 0.013	C
Benzo(k)fluoranthene	207-08-9	0.048						[0.18] 0.13	C
alpha-BHC	319-84-6	0.056						[0.049] 0.0039	C
beta-BHC	319-85-7	0.091						[0.17] 0.14	C
[Gamma] gamma-BHC (Lindane)	58-89-9	0.20				0.95		[1.8] 4.4	
Bis(2-chloroethyl) ether	111-44-4	0.30						[5.3] 22	C
Bis([2-chloroisopropyl] 2-chloro-1-methylethyl) ether	108-60-1	1,400						[65,000] 4,000	
Bis(2-ethylhexyl) phthalate	117-81-7	6						[22] 3.7	C
Bis(chloromethyl) ether	542-88-1							0.17	C

Pollutant	CAS Number	DWS	Irr/Irr storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
Bromoform	75-25-2	44						[1,400] 1,200	C
Butylbenzyl phthalate	85-68-7	7,000						[1,900] 1	C
Carbaryl	63-25-2					2.1	2.1		
Carbon tetrachloride	56-23-5	5						[16] 50	C
Chlordane	57-74-9	2				2.4	0.0043	[0.0081] 0.0032	C,P
Chlorobenzene	108-90-7	100						[1,600] 800	
Chlorodibromomethane	124-48-1	4.2						[130] 210	C
Chloroform	67-66-3	57						[4,700] 2,000	[e]
Chlorpyrifos	2921-88-2					0.083	0.041		
2-Chloronaphthalene	91-58-7	2,800						[1,600] 1,000	
2-Chlorophenol	95-57-8	175						[150] 800	
Chrysene	218-01-9	0.048						[0.18] 1.3	C
Demeton	8065-48-3						0.1		
Diazinon	333-41-5					0.17	0.17		
2,4-Dichlorophenoxyacetic acid	94-75-7							12,000	
Dichlorodipenyldichloroethane (DDD)	72-54-8							0.0012	C
Dichlorodipenyldichloroethylene (DDE)	72-55-9							0.00018	C
Dichlorodipenyiltrichloroethane (DDT)	50-29-3							0.0003	C,P
4,4'-DDT and derivatives		1.0			0.001	1.1	0.001	[0.0022]	[e,P]
Dibenzo(a,h)anthracene	53-70-3	0.048						[0.18] 0.0013	C
Dibutyl phthalate	84-74-2	3,500						[4,500] 30	
1,2-Dichlorobenzene	95-50-1	600						[1,300] 3,000	
1,3-Dichlorobenzene	541-73-1	469						[960] 10	
1,4-Dichlorobenzene	106-46-7	75						[190] 900	
3,3'-Dichlorobenzidine	91-94-1	0.78						[0.28] 1.5	C
Dichlorobromomethane	75-27-4	5.6						[170] 270	C
1,2-Dichloroethane	107-06-2	5						[370] 6,500	C
1,1-Dichloroethylene	75-35-4	7						[7,100] 20,000	[e]
2,4-Dichlorophenol	120-83-2	105						[290] 60	
1,2-Dichloropropane	78-87-5	5.0						[150] 310	C
1,3-Dichloropropene	542-75-6	3.5						[210] 120	C
Dieldrin	60-57-1	0.022				0.24	0.056	[0.00054] 0.000012	C,P
Diethyl phthalate	84-66-2	28,000						[44,000] 600	
Dimethyl phthalate	131-11-3	350,000						[1,100,000] 2,000	

Pollutant	CAS Number	DWS	Irr/Irr storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
2,4-Dimethylphenol	105-67-9	700						[850] 3,000	
<u>Dinitrophenols</u>	<u>25550-58-7</u>							1,000	
2,4-Dinitrophenol	51-28-5	70						[5,300] 300	
2,4-Dinitrotoluene	121-14-2	1.1						[34] 17	C
Dioxin	<u>1746-01-6</u>	3.0E-05						5.1E-08	C,P
1,2-Diphenylhydrazine	122-66-7	0.44						2.0	C
alpha-Endosulfan	959-98-8	62				0.22	0.056	[89] 30	
beta-Endosulfan	33213-65-9	62				0.22	0.056	[89] 40	
Endosulfan sulfate	1031-07-8	62						[89] 40	
Endrin	72-20-8	2				0.086	0.036	[0.060] 0.03	
Endrin aldehyde	7421-93-4	10.5						[0.30] 1	
Ethylbenzene	100-41-4	700						[2,100] 130	
Fluoranthene	206-44-0	1,400						[140] 20	
Fluorene	86-73-7	1,400						[5,300] 70	
<u>Guthion</u>	<u>86-50-0</u>						0.01		
Heptachlor	76-44-8	0.40				0.52	0.0038	[0.00079] 0.000059	C
Heptachlor epoxide	1024-57-3	0.20				0.52	0.0038	[0.00039] 0.00032	C
Hexachlorobenzene	118-74-1	1						[0.0029] 0.00079	C,P
Hexachlorobutadiene	87-68-3	4.5						[180] 0.1	C
<u>Hexachlorocyclohexane (HCH)-Technical</u>	<u>608-73-1</u>							0.1	C
Hexachlorocyclopentadiene	77-47-4	50						[1,100] 4	
Hexachloroethane	67-72-1	25						[33] 1	C
Ideno(1,2,3-cd)pyrene	193-39-5	0.048						[0.18] 0.013	C
Isophorone	78-59-1	368						[9,600] 18,000	C
<u>Malathion</u>	<u>121-75-5</u>						0.1		
<u>Methoxychlor</u>	<u>72-43-5</u>						0.03	0.02	
Methyl bromide	74-83-9	49						[1,500] 10,000	
<u>3-Methyl-4-chlorophenol</u>	<u>59-50-7</u>							2,000	
2-Methyl-4,6-dinitrophenol	534-52-1	14						[280] 30	
Methylene chloride	75-09-2	5						[5,900] 10,000	C
<u>Mirex</u>	<u>2385-85-5</u>						0.001		
Nitrobenzene	98-95-3	18						[690] 600	
<u>Nitrosamines</u>	<u>Various</u>							12.4	C
<u>Nitrosodibutylamine</u>	<u>924-16-3</u>							2.2	C
<u>Nitrosodiethylamine</u>	<u>55-18-5</u>							12.4	C
N-Nitrosodimethylamine	62-75-9	0.0069						30	C

Pollutant	CAS Number	DWS	Irr/Irr storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
N-Nitrosodi-n-propylamine	621-64-7	0.050						5.1	C
N-Nitrosodiphenylamine	86-30-6	71						60	C
N-Nitrosopyrrolidine	930-55-2							340	C
Nonylphenol	84852-15-3					28	6.6		
Parathion	56-38-2					0.065	0.013		
[Polychlorinated Biphenyls (PCBs)]	[1336-36-3]	[0.50]			[0.014]	[2]	[0.014]	[0.00064]	[C,P]
Pentachlorobenzene	608-93-5							0.1	
Pentachlorophenol	87-86-5	1.0				19	15	[30] 0.4	C
Phenol	108-95-2	10,500						[860,000] 300,000	
Polychlorinated Biphenyls (PCBs)	1336-36-3	0.50			0.014	2	0.014	0.00064	C,P
Pyrene	129-00-0	1,050						[4,000] 30	
1,2,4,5-Tetrachlorobenzene	95-94-3							0.03	
1,1,2,2-Tetrachloroethane	79-34-5	1.8						[40] 30	C
Tetrachloroethylene	127-18-4	5						[33] 290	C,P
Toluene	108-88-3	1,000						[15,000] 520	
Toxaphene	8001-35-2	3				0.73	0.0002	[0.0028] 0.0071	C
1,2-Trans-dichloroethylene	156-60-5	100						[10,000] 4,000	
Tributyltin (TBT)	Various					0.46	0.072		
1,2,4-Trichlorobenzene	120-82-1	70						[70] 0.76	C
1,1,1-Trichloroethane	71-55-6	200						200,000	
1,1,2-Trichloroethane	79-00-5	5						[160] 89	C
Trichloroethylene	79-01-6	5						[300] 70	C
2,4,5-Trichlorophenol	95-95-4							600	
2,4,6-Trichlorophenol	88-06-2	32						[24] 28	C
2-(2,4,5-Trichlorophenoxy) propionic acid (Silvex)	93-72-1							400	
Vinyl chloride	75-01-4	2						[24] 16	C

(2) Notes applicable to the table of numeric criteria in Paragraph (1) of this subsection.

(a) Where the letter “a” is indicated in a cell, the criterion is hardness-based and can be referenced in Subsection I of 20.6.4.900 NMAC.

(b) Where the letter “b” is indicated in a cell, the criterion can be referenced in Subsection C of 20.6.4.900 NMAC.

(c) Criteria are in µg/L unless otherwise indicated.

(d) Abbreviations are as follows: CAS - chemical abstracts service (see definition for “CAS number” in 20.6.4.7 NMAC); DWS - domestic water supply; Irr/Irr storage- irrigation [ø] and irrigation storage; LW - livestock watering; WH - wildlife habitat; HH-OO - human health-organism only; C - criteria based on cancer-causing endpoint; P - persistent toxic pollutant.

(e) The criteria are based on analysis of an unfiltered sample unless otherwise indicated. The acute and chronic aquatic life criteria for aluminum are based on analysis of total recoverable aluminum in a sample that is filtered to minimize mineral phases as specified by the department.

(f) The criteria listed under human health-organism only (HH-OO) are intended to protect human health when aquatic organisms are consumed from waters containing pollutants. These criteria do not protect the aquatic life itself; rather, they protect the health of humans who ingest fish or other aquatic organisms.

(g) The dioxin criteria apply to the sum of the dioxin toxicity equivalents expressed as 2,3,7,8-TCDD dioxin.

(h) The criteria for polychlorinated biphenyls (PCBs) apply to the sum of all congeners, to the sum of all homologs or to the sum of all aroclors.

(i) The acute and chronic aquatic life criteria for dissolved aluminum only apply when the concurrent pH is less than 6.5 or greater than 9.0 S.U. If the concurrent pH is between 6.5 and 9.0 S.U. then the hardness-dependent total recoverable aluminum criteria in Paragraphs (1) and (2) of Subsection I of 20.6.4.900 NMAC apply.

[K. Acute aquatic life criteria for total ammonia are dependent on pH and the presence or absence of salmonids. The criteria in mg/L as N based on analysis of unfiltered samples are as follows:

pH	Where Salmonids Present	Where Salmonids Absent
6.5 and below	32.6	48.8
6.6	31.3	46.8
6.7	29.8	44.6
6.8	28.1	42.0
6.9	26.2	39.1
7.0	24.1	36.1
7.1	22.0	32.8
7.2	19.7	29.5
7.3	17.5	26.2
7.4	15.4	23.0
7.5	13.3	19.9
7.6	11.4	17.0
7.7	9.65	14.4
7.8	8.11	12.1
7.9	6.77	10.1
8.0	5.62	8.40
8.1	4.64	6.95
8.2	3.83	5.72
8.3	3.15	4.71
8.4	2.59	3.88
8.5	2.14	3.20
8.6	1.77	2.65
8.7	1.47	2.20
8.8	1.23	1.84
8.9	1.04	1.56
9.0 and above	0.885	1.32

L. Chronic aquatic life criteria for total ammonia are dependent on pH, temperature and whether fish in early life stages are present or absent. The criteria are based on analysis of unfiltered samples and are calculated according to the equations in Paragraphs (1) and (2) of this subsection. For temperatures from below 0 to 14°C, the criteria for 14°C apply; for temperatures above 30°C, the criteria for 30°C apply. For pH values below 6.5, the criteria for 6.5 apply; for pH values above 9.0, the criteria for 9.0 apply.

(1) **Chronic aquatic life criteria for total ammonia when fish early life stages are present:**

(a) The equation to calculate chronic criteria in mg/L as N is:

$$((0.0577/(1 + 10^{7.688-pH})) + (2.487/(1 + 10^{pH-7.688})) \times \text{MIN}(2.85, 1.45 \times 10^{0.028 \times (25-T)})$$

(b) Selected values of calculated chronic criteria in mg/L as N:

pH	Temperature (°C)									
	14 and below	15	16	18	20	22	24	26	28	30 and above
6.5 and below	6.67	6.46	6.06	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	6.57	6.36	5.97	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	6.44	6.25	5.86	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	6.29	6.10	5.72	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	6.12	5.93	5.56	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	5.91	5.73	5.37	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	5.67	5.49	5.15	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	5.39	5.22	4.90	4.31	3.78	3.33	2.92	2.57	2.26	1.99
7.3	5.08	4.92	4.61	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	4.73	4.59	4.30	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	4.36	4.23	3.97	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.98	3.85	3.61	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	3.58	3.47	3.25	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	3.18	3.09	2.89	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.80	2.71	2.54	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	2.43	2.36	2.21	1.94	1.71	1.50	1.32	1.16	1.02	0.897
8.1	2.10	2.03	1.91	1.68	1.47	1.29	1.14	1.00	0.879	0.773
8.2	1.79	1.74	1.63	1.43	1.26	1.11	0.973	0.855	0.752	0.661
8.3	1.52	1.48	1.39	1.22	1.07	0.941	0.827	0.727	0.639	0.562
8.4	1.29	1.25	1.17	1.03	0.906	0.796	0.700	0.615	0.541	0.475
8.5	1.09	1.06	0.990	0.870	0.765	0.672	0.591	0.520	0.457	0.401
8.6	0.920	0.892	0.836	0.735	0.646	0.568	0.499	0.439	0.386	0.339
8.7	0.778	0.754	0.707	0.622	0.547	0.480	0.422	0.371	0.326	0.287
8.8	0.661	0.641	0.601	0.528	0.464	0.408	0.359	0.315	0.277	0.244
8.9	0.565	0.548	0.513	0.451	0.397	0.349	0.306	0.269	0.237	0.208
9.0 and above	0.486	0.471	0.442	0.389	0.342	0.300	0.264	0.232	0.204	0.179

(2) Chronic aquatic life criteria for total ammonia when fish early life stages are absent:

(a) The equation to calculate chronic criteria in mg/L as N is:

$$((0.0577/(1 + 10^{7.688-pH})) + (2.487/(1 + 10^{pH-7.688})) \times 1.45 \times 10^{(0.028 \times (25-MAX(1,7)))}$$

(b) Selected values of calculated chronic criteria in mg/L as N:

pH	Temperature (°C)									
	7 and below	8	9	10	11	12	13	14	15 and above	
6.5 and below	10.8	10.1	9.51	8.92	8.36	7.84	7.35	6.89	6.46	
6.6	10.7	9.99	9.37	8.79	8.24	7.72	7.24	6.79	6.36	
6.7	10.5	9.81	9.20	8.62	8.08	7.58	7.11	6.66	6.25	
6.8	10.2	9.58	8.98	8.42	7.90	7.40	6.94	6.51	6.10	
6.9	9.93	9.31	8.73	8.19	7.68	7.20	6.75	6.33	5.93	
7.0	9.60	9.00	8.43	7.91	7.41	6.95	6.52	6.11	5.73	
7.1	9.20	8.63	8.09	7.58	7.11	6.67	6.25	5.86	5.49	
7.2	8.75	8.20	7.69	7.21	6.76	6.34	5.94	5.57	5.22	
7.3	8.24	7.73	7.25	6.79	6.37	5.97	5.60	5.25	4.92	
7.4	7.69	7.21	6.76	6.33	5.94	5.57	5.22	4.89	4.59	
7.5	7.09	6.64	6.23	5.84	5.48	5.13	4.81	4.51	4.23	
7.6	6.46	6.05	5.67	5.32	4.99	4.68	4.38	4.11	3.85	
7.7	5.81	5.45	5.11	4.79	4.49	4.21	3.95	3.70	3.47	
7.8	5.17	4.84	4.54	4.26	3.99	3.74	3.51	3.29	3.09	
7.9	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89	2.71	

pH	Temperature (°C)								
	7 and below	8	9	10	11	12	13	14	15 and above
8.0	3.95	3.70	3.47	3.26	3.05	2.86	2.68	2.52	2.36
8.1	3.41	3.19	2.99	2.81	2.63	2.47	2.31	2.17	2.03
8.2	2.91	2.73	2.56	2.40	2.25	2.11	1.98	1.85	1.74
8.3	2.47	2.32	2.18	2.04	1.91	1.79	1.68	1.58	1.48
8.4	2.09	1.96	1.84	1.73	1.62	1.52	1.42	1.33	1.25
8.5	1.77	1.66	1.55	1.46	1.37	1.28	1.20	1.13	1.06
8.6	1.49	1.40	1.31	1.23	1.15	1.08	1.01	0.951	0.892
8.7	1.26	1.18	1.11	1.04	0.976	0.915	0.858	0.805	0.754
8.8	1.07	1.01	0.944	0.855	0.829	0.778	0.729	0.684	0.641
8.9	0.917	0.860	0.806	0.756	0.709	0.664	0.623	0.584	0.548
9.0 and above	0.790	0.740	0.694	0.651	0.610	0.572	0.536	0.503	0.471

At 15°C and above, the criterion for fish early life stages absent is the same as the criterion for fish early life stages present (refer to table in Paragraph (1) of this subsection).]

K. The criteria for total ammonia consider sensitive freshwater mussel species in the family Unionidae, freshwater non-pulmonate snails, and *Oncorhynchus* spp. (a genus of fish in the family Salmonidae), hence further protecting the aquatic community. The total ammonia criteria magnitude is measured as Total Ammonia Nitrogen (TAN) mg/L. TAN is the sum of NH_4^+ and NH_3 . TAN mg/L magnitude is derived as a function of pH and temperature (EPA 2013).

L. The acute aquatic life criteria for TAN (mg/L) was derived by the EPA (2013) as the one-hour average concentration of TAN mg/L that shall not be exceeded more than once every three years on average. The EPA acute criterion magnitude was derived using the following equation:

$$\text{Acute TAN Criterion Magnitude for 1-hour average} = \text{MIN} \left(\left(\frac{0.275}{1+10^{7.204-pH}} + \frac{39}{1+10^{pH-7.204}} \right), \left(0.7249x \left(\frac{0.0114}{1+10^{7.204-pH}} + \frac{1.6181}{1+10^{pH-7.204}} \right) x (23.12 \times 10^{0.036(20-T)}) \right) \right)$$

T (temperature C) and *pH* are defined as the paired values associated with the TAN sample.

pH	Temperature (°C)																													
	0-10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30									
6.5	51	48	44	41	37	34	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9									
6.6	49	46	42	39	36	33	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5									
6.7	46	44	40	37	34	31	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9									
6.8	44	41	38	35	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5									
6.9	41	38	35	32	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9									
7.0	38	35	33	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9	7.3									
7.1	34	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7									
7.2	31	29	27	25	23	21	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6									
7.3	27	26	24	22	20	18	17	16	14	13	12	11	10	9.5	8.7	8	7.4	6.8	6.3	5.8	5.3									
7.4	24	22	21	19	18	16	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7									
7.5	21	19	18	17	15	14	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4									
7.6	18	17	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5									

7.7	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	2.9
7.8	13	12	11	10	9.3	8.5	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4	3.7	3.4	3.2	2.9	2.7	2.5
7.9	11	9.9	9.1	8.4	7.7	7.1	6.6	3	5.6	5.1	4.7	4.3	4	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8.0	8.8	8.2	7.6	7	6.4	5.9	5.4	5	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6	2.4	2.2	2	1.9	1.7
8.1	7.2	6.8	6.3	5.8	5.3	4.9	4.5	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4
8.2	6	5.6	5.2	4.8	4.4	4	3.7	3.4	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	4.9	4.6	4.3	3.9	3.6	3.3	3.1	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1	0.96
8.4	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79
8.5	3.3	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.98	0.9	0.83	0.77	0.71	0.65
8.6	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.5	1.3	1.2	1.1	1	0.96	0.88	0.81	0.75	0.69	0.63	0.58	0.54
8.7	2.3	2.2	2	1.8	1.7	1.6	1.4	1.3	1.2	1.1	1	0.94	0.87	0.8	0.74	0.68	0.62	0.57	0.53	0.49	0.45
8.8	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37
8.9	1.6	1.5	1.4	1.3	1.2	1.1	1	0.93	0.85	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.4	0.37	0.34	0.32
9.0	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.29	0.27

(1) Temperature and pH-dependent values of the acute TAN criterion magnitude -when *Oncorhynchus* spp. absent.

(2) Temperature and pH-dependent values for the acute TAN criterion magnitude- when *Oncorhynchus* spp. are present.

pH	Temperature (°C)																		
	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30		
6.5	33	33	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9		
6.6	31	31	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5		
6.7	30	30	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9		
6.8	28	28	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5		
6.9	26	26	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9		
7.0	24	24	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	8	7.3		
7.1	22	22	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7		
7.2	20	20	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6		
7.3	18	18	17	16	14	13	12	11	10	9.5	8.7	8	7.4	6.8	6.3	5.8	5.3		
7.4	15	15	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7		
7.5	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4		
7.6	11	11	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5		
7.7	9.6	9.6	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	3		
7.8	8.1	8.1	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4	3.7	3.4	3.2	2.9	2.7	2.5		
7.9	6.8	6.8	6.6	6	5.6	5.1	4.7	4.3	4	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1		
8.0	5.6	5.6	5.4	5	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6	2.4	2.2	2	1.9	1.7		
8.1	4.6	4.6	4.5	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4		
8.2	3.8	3.8	3.7	3.5	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2		
8.3	3.1	3.1	3.1	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1	1		
8.4	2.6	2.6	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.9	0.9	0.8		
8.5	2.1	2.1	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	1	0.9	0.8	0.8	0.7	0.7		
8.6	1.8	1.8	1.7	1.6	1.5	1.3	1.2	1.1	1	1	0.9	0.8	0.8	0.7	0.6	0.6	0.5		
8.7	1.5	1.5	1.4	1.3	1.2	1.1	1	0.9	0.9	0.8	0.7	0.7	0.6	0.6	0.5	0.5	0.5		
8.8	1.2	1.2	1.2	1.1	1	0.9	0.9	0.8	0.7	0.7	0.6	0.6	0.5	0.5	0.4	0.4	0.4		
8.9	1	1	1	0.9	0.9	0.8	0.7	0.7	0.6	0.6	0.5	0.5	0.4	0.4	0.4	0.3	0.3		
9.0	0.88	0.9	0.9	0.8	0.7	0.7	0.6	0.6	0.5	0.5	0.4	0.4	0.4	0.3	0.3	0.3	0.3		

M. The chronic aquatic life criteria for TAN (mg/L) was derived by the EPA (2013) as a thirty-day rolling average concentration of TAN mg/L that shall not be exceeded more than once every three years on average. In addition, the highest four-day average within the 30-day averaging period should not be more than 2.5 times the CCC (e.g., 2.5 x 1.9 mg TAN/L at pH 7 and 20°C, or 4.8 mg TAN/L) more than once in three years on average. The EPA chronic criterion magnitude was derived using the following equation:

$$0.8876 \times \left(\frac{0.0278}{1 + 10^{7.688 - pH}} + \frac{1.1994}{1 + 10^{pH - 7.688}} \right) \times (2.126 \times 10^{0.028 \times (20 - \text{MAX}(T,7))})$$

Chronic TAN Criterion Magnitude for 30-day average=
T (temperature °C) and *pH* are defined as the paired values associated with the TAN sample.

Temperature and pH-Dependent Values of the Chronic TAN Criterion Magnitude.

	Temperature (°C)																													
pH	0-7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30						
6.5	4.9	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.6	1.5	1.5	1.4	1.3	1.2	1.1						
6.6	4.8	4.5	4.3	4	3.8	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1						
6.7	4.8	4.5	4.2	3.9	3.7	3.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1						
6.8	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1						
6.9	4.5	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1						
7.0	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1						
7.1	4.2	3.9	3.7	3.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	1						
7.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	1	0.9						
7.3	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	1	0.9	0.9						
7.4	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	1	0.9	0.9	0.8						
7.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	1	0.9	0.8	0.8	0.7						
7.6	2.9	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.6	1.5	1.4	1.4	1.3	1.2	1.1	1.1	1	0.9	0.9	0.8	0.8	0.7	0.7						
7.7	2.6	2.4	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.9	0.9	0.8	0.8	0.7	0.7	0.6	0.6						
7.8	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	1	0.9	0.8	0.8	0.7	0.7	0.7	0.6	0.6	0.5						
7.9	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	1	0.9	0.8	0.8	0.7	0.7	0.7	0.6	0.6	0.5	0.5	0.5						
8.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.9	0.9	0.8	0.8	0.7	0.7	0.6	0.6	0.6	0.5	0.5	0.4	0.4	0.4						
8.1	1.5	1.5	1.4	1.3	1.2	1.1	1.1	1	0.9	0.9	0.8	0.8	0.7	0.7	0.6	0.6	0.6	0.5	0.5	0.5	0.4	0.4	0.4	0.4						
8.2	1.3	1.2	1.2	1.1	1	1	0.9	0.8	0.8	0.7	0.7	0.7	0.6	0.6	0.5	0.5	0.5	0.4	0.4	0.4	0.4	0.3	0.3	0.3						
8.3	1.1	1.1	1	0.9	0.9	0.8	0.8	0.7	0.7	0.6	0.6	0.6	0.5	0.5	0.5	0.4	0.4	0.4	0.4	0.3	0.3	0.3	0.3	0.3						
8.4	1	0.9	0.8	0.8	0.7	0.7	0.7	0.6	0.6	0.5	0.5	0.5	0.4	0.4	0.4	0.4	0.3	0.3	0.3	0.3	0.3	0.3	0.2	0.2						
8.5	0.8	0.8	0.7	0.7	0.6	0.6	0.6	0.5	0.5	0.5	0.4	0.4	0.4	0.4	0.3	0.3	0.3	0.3	0.3	0.2	0.2	0.2	0.2	0.2						
8.6	0.7	0.6	0.6	0.6	0.5	0.5	0.5	0.4	0.4	0.4	0.4	0.3	0.3	0.3	0.3	0.3	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2						
8.7	0.6	0.5	0.5	0.5	0.4	0.4	0.4	0.4	0.3	0.3	0.3	0.3	0.3	0.3	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.1	0.1						
8.8	0.5	0.5	0.4	0.4	0.4	0.4	0.3	0.3	0.3	0.3	0.3	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.1	0.1	0.1	0.1	0.1						
8.9	0.4	0.4	0.4	0.3	0.3	0.3	0.3	0.3	0.3	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1						
9.0	0.4	0.3	0.3	0.3	0.3	0.3	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1						

[20.6.4.900 NMAC - Rp 20 NMAC 6.1.3100, 10/12/2010; A, 10/11/2002; A, 5/23/2005; A, 7/17/2005; A, 12/1/2010; A, 3/2/2017; A, 4/23/2022]

20.6.4.901 PUBLICATION REFERENCES: These documents are intended as guidance and are available for public review during regular business hours at the offices of the surface water quality bureau. Copies of these documents have also been filed with the New Mexico state records center in order to provide greater access to this information.

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[K:] L. [~~Ambient-induced mixing, in~~] United States environmental protection agency. 1991. *Ambient-induced mixing, in Technical Support Document For Water Quality-Based Toxics Control*. Office of water, Washington, D.C. (EPA/505/2-90-001). [2] 335 p.

[L:] M. United States environmental protection agency. 1983. *Technical Support Manual: Waterbody Surveys And Assessments For Conducting Use Attainability Analyses, Volume I*. Office of water, regulations and standards, Washington, D.C. [251] 232 p. [<http://www.epa.gov/OST/library/wqstandards/uaavol123.pdf>]

[M:] N. United States environmental protection agency. 1984. *Technical Support Manual: Waterbody Surveys And Assessments For Conducting Use Attainability Analyses, Volume [I:] III: Lake*

Systems. Office of water, regulations and standards, Washington, D.C. 208 p. [<http://www.epa.gov/OST/library/wqstandards/uaavol123.pdf>] [20.6.4.901 NMAC - Rp 20 NMAC 6.1.4000, 10/12/2010; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017; A, 4/23/2022]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.291.400 NMAC, Sections 7, 8, 12, 13 and 14, effective 4/5/2022.

8.291.400.7 DEFINITIONS:

A. Action: an approval, termination, suspension, or reduction of medicaid eligibility or a reduction in the level of benefits and services, including a determination of income for the purposes of imposing any premiums, enrollment fees, or cost-sharing. It also means determinations made by skilled nursing facilities and nursing facilities to transfer or discharge residents and adverse determination made by a state with regard to the preadmission screening and resident review requirements.

B. Advance payments of the premium tax credit (APTC): payment of the tax credits specified in Section 36B of the Internal Revenue Code which are provided on an advance basis to an eligible individual enrolled in a qualified health plan through an exchange.

C. Affordable Care Act (ACA): the Patient Protection and Affordable Care Act of 2010 (Public Law 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) and the Three Percent Withholding Repeal and Job Creation Act (Public Law 112-56).

D. Affordable insurance exchanges (exchanges): a governmental agency or non-profit entity that meets the applicable requirements and makes qualified health plans available to qualified

individuals and qualified employers. Unless otherwise identified, this term refers to state exchanges, regional exchanges, subsidiary exchanges, and a federally-facilitated exchange.

E. Agency: the single state agency designated or established by a state to administer or supervise the administration of the medicaid state plan. This designation includes a certification by the state attorney general, citing the legal authority for the single state agency to make rules and regulations that it follows in administering the plan or that are binding upon local agencies that administer the plan.

F. Appeal record: the appeal decision, all papers and requests filed in the proceeding, and if a hearing was held, the transcript or recording of hearing testimony or an official report containing the substance of what happened at the hearing, and any exhibits introduced at the hearing.

G. Appeal request: a clear expression, either verbally or in writing, by an applicant, enrollee, employer, or small business employer or employee to have any eligibility determination or redetermination contained in a notice issued reviewed by an appeals entity.

H. Appeals entity: a body designated to hear appeals of eligibility determinations or redeterminations contained in notices, or notices issued in accordance with future guidance on exemptions.

I. Appeals decision: a decision made by a hearing officer adjudicating a fair hearing, including by a hearing officer employed by an exchange appeals entity to which the agency has delegated authority to conduct such hearings.

J. Applicable modified adjusted gross income (MAGI) standard: the income standard for each category of ACA eligibility.

K. Application: the single streamlined application required by ACA and other medicaid applications used by the agency.

L. Authorized representative: the agency must permit applicants and beneficiaries

to designate an individual or organization to act responsibly on their behalf in assisting with the individual's application and renewal of eligibility and other ongoing communications with the agency.

(1) Such a designation must be in writing including the applicant's signature, and must be permitted at the time of application and at other times. Legal documentation of authority to act on behalf of an applicant or beneficiary under state law, such as a court order establishing legal guardianship or a power of attorney, shall serve in the place of written authorization by the applicant or beneficiary.

(2) Representatives may be authorized to:

(a) sign an application on the applicant's behalf;

(b) complete and submit a renewal form;

(c) receive copies of the applicant or beneficiary's notices and other communications from the agency; and

(d) act on behalf of the applicant or beneficiary in all other matters with the agency.

(3) The power to act as an authorized representative is valid until the applicant or beneficiary modifies the authorization or notifies the agency that the representative is no longer authorized to act on [~~his or her~~] their behalf, or the authorized representative informs the agency that [~~he or she is~~] they are no longer acting in such capacity, or there is a change in the legal authority upon which the individual's or organization's authority was based. Such notice must be in writing and should include the applicant or authorized representative's signature as appropriate.

(4) The authorized representative is responsible for fulfilling all responsibilities encompassed within the scope of the authorized representation to the same extent as the individual [~~he or she represents~~] they represent, and must agree to

maintain, or be legally bound to maintain, the confidentiality of any information regarding the applicant or beneficiary provided by the agency.

(5) As a condition of serving as an authorized representative, a provider, staff member or volunteer of an organization must sign an agreement that [~~he or she~~] they will adhere to the regulations relating to confidentiality (relating to the prohibition against reassignment of provider claims as appropriate for a health facility or an organization acting on the facility's behalf), as well as other relevant state and federal laws concerning conflicts of interest and confidentiality of information.

M. Beneficiary: an individual who has been determined eligible and is currently receiving medicaid.

N. Citizenship: a national of the United States means a citizen of the United States or a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

O. Code: the internal revenue code.

P. Coordinated content: information included in an eligibility notice regarding the transfer of the individual's or households electronic account to another insurance affordability program for a determination of eligibility.

Q. Current beneficiaries: individuals who have been determined financially eligible for medicaid using MAGI-based methods.

R. Dependent child: an un-emancipated child who is under the age of 19.

S. Documentary evidence: a photocopy facsimile, scanned or other copy of a document must be accepted to the same extent as an original document.

T. Electronic account: an electronic file that includes all information collected and generated by the state regarding each individual's medicaid eligibility and enrollment, including all documentation required to support the agency's decision on the case.

U. Expedited appeals: the agency must establish and maintain an expedited review process for hearings when an individual requests or a provider requests, or supports the individual’s request, that the time otherwise permitted for a hearing could jeopardize the individual’s life or health or ability to attain, maintain, or regain maximum function. If the agency denies a request for an expedited appeal, it must use the standard appeal timeframe.

V. Family size: the number of persons counted as members of an individual’s household. In the case of determining the family size of a pregnant ~~woman, the pregnant woman is counted as herself plus the number of children she is expected to deliver. In the case of determining the family size of other individuals who have a pregnant woman in their household, the pregnant woman is counted as herself plus the number of children she is expected to deliver.] individual, the pregnant individual is counted as themselves plus the number of children they are expected to deliver. In the case of determining the family size of other individuals who have a pregnant individual in their household, the pregnant individual is counted as themselves plus the~~ number of children they are expected to deliver.

W. Insurance affordability program: a state medicaid program under Title XIX of the act, state children’s health insurance program (CHIP) under Title XXI of the act, a state basic health program established under ACA and coverage in a qualified health plan through the exchange with cost-sharing reductions established under Section 1402 of ACA.

X. MAGI-based income: For the purposes of this section, MAGI-based income means income calculated using the same financial methodologies used to determine a modified adjusted gross income as defined in Section 36B(d) (2) (B) of the Internal Revenue Code, with the certain exceptions.

Y. Managed care organization (MCO): an organization licensed or authorized through an agreement among state entities to manage, coordinate and receive payment for the delivery of specified services to medicaid eligible members.

Z. Modified adjusted gross income (MAGI): has the meaning of 26 CFR 1.36B-1 Section (2).

AA. Non-applicant: an individual who is not seeking an eligibility determination for ~~himself or herself] themselves~~ and is included in an applicant’s or beneficiary’s household to determine eligibility for such applicant or beneficiary.

BB. Non-citizen: ~~has the same meaning as the term “alien” and includes any individual] an individual~~ who is not a citizen or national of the United States (8 USC 1101(a)(22)).

CC. Parent caretaker: a relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child’s care (as may, but is not required to, be indicated by claiming the child as a tax dependent for federal income tax purposes) and who is one of the following:

(1) the child’s father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

(2) the spouse of such parent or relative, even after the marriage is terminated by death or divorce; or

(3) other relatives within the fifth degree of relationship (42 CFR 435.4).

DD. Patient Protection and Affordable Care Act (PPACA): also known as the Affordable Care Act (ACA) and is the health reform legislation passed by the 111th congress and signed into law in March of 2010.

EE. Tax dependent: has the same meaning as the term “dependent” under Section 152

of the Internal Revenue Code, as an individual for whom another individual claims a deduction for a personal exemption under Section 151 of the Internal Revenue Code for a taxable year.

[8.291.400.7 NMAC - Rp, 8.291.400.7 NMAC, 10/1/2017; A, 4/5/2022]

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

[8.291.400.8 NMAC - Rp, 8.291.400.8 NMAC, 10/1/2017; A, 4/5/2022]

8.291.400.12 REPORTING REQUIREMENTS: A medicaid eligible recipient is required to report certain changes which might affect ~~his or her] their~~ eligibility to ISD within 10 calendar days from the date the change occurred. A timely change that is reported within 10 calendar days that may result in a more beneficial medicaid eligibility category shall be evaluated in the month the change occurred. An untimely change that is reported after 10 calendar days that may result in a more beneficial medicaid eligibility category shall be evaluated in the month the change was reported. A reported change that does not result in the same or a more beneficial medicaid category is considered an adverse action and is applied prospectively in accordance with 8.100.180.10 NMAC. See 8.100.110.9 NMAC for the various ways applicants and recipients can submit changes to the HSD. The following changes must be reported to ISD:

A. living arrangements or change of address: any change in where an individual lives or receives mail must be reported;

B. household size: any change in the household size must be reported, this includes the death of an individual included in the assistance unit or budget group;

C. enumeration: any new social security number must be reported; or

D. income: any increase or decrease in the amount of income or change in the source of income must be reported.

[8.291.400.12 NMAC - Rp, 8.291.400.12 NMAC, 10/1/2017; A, 4/5/2022]

8.291.400.13 PRESUMPTIVE

ELIGIBILITY: Presumptive eligibility (PE) provides medicaid benefits under one of the eligible groups outlined in Subsection B of 8.291.400.10 NMAC, starting with the date of the PE determination and ending with the last day of the following month or, if an ongoing application is submitted at the time the PE is granted or at any time during the approved PE period, the PE will remain open until the ongoing application is approved or denied.

A. Only one presumptive eligibility period is allowed per pregnancy or per 12-month period for other ACA related categories:

B. Determinations can be made only by individuals employed by eligible entities and certified as presumptive eligibility PE determiners by the medical assistance division. Determiners must notify the medical assistance division (MAD) claims processing contractor of the determination within 24 hours of the determination of presumptive eligibility:

(1) Processing PE information: MAD authorizes certain providers to make PE determinations based on the qualified entity. The provider must notify MAD through an established procedure of the determination within 24 hours of the determination of presumptive eligibility:

(2) PE: The PE provider must process both presumptive eligibility as well as an application for medical assistance:

(3) Provider eligibility: Entities who may participate must be:

(a) a qualified hospital that participates as a provider under the medicaid state plan or a medicaid 1115 demonstration, notifies the medicaid agency of its election to make presumptive eligibility determinations and agrees to make PE determinations consistent with state policies and procedures; or

(b) a qualified hospital that has as not been disqualified by the medicaid agency for failure to make PE determinations in accordance with applicable state policies and procedures or for failure to meet any standards that may have been established by the medicaid agency; or

(c) a federally qualified health center (FQHC), an Indian health service (IHS) facility, a department of health (DOH) clinic, a school, a children, youth and families department (CYFD) child care bureau staff member, a primary care provider who is contracted with at least one HSD contracted MCO, or a head start agency; or

(d) other entities HSD has determined as an eligible presumptive participant.

C. PE approval limitations:

(1) all MAD authorized PE determiners can approve PE for children and pregnant women ACA categories;

(2) hospitals opting to do PE can approve PE for all ACA related categories; and

(3) correctional facilities (state prisons and county jails) and health facilities operated by the Indian health Service, a tribe, or tribal organization, or an urban Indian organization can approve PE for the other adult, parent caretaker, pregnant women, pregnancy-related services, and children under 19 years of age ACA categories:

D. Children's health insurance program (CHIP): to be eligible for CHIP, the child cannot have other health insurance coverage:

E. A PE provider must ensure that a signed application for

medicaid coverage is submitted to the ISD office within 10 days:

F. For pregnant women, PE allows medicaid payment for ambulatory prenatal services furnished to a pregnant woman while her application for medicaid is being processed. Only one presumptive eligibility period is allowed per pregnancy. A pregnant woman can receive ambulatory prenatal care from the date of the PE determination until the end of the month following the month the determination was made:

(1) For PE, an approved PE provider must accept self attestation of pregnancy:

(2) The needs and income of the unborn child(ren) are considered when determining the woman's countable family size.]

A. Only one PE approval is allowed per pregnancy or per 12-month period for other ACA related categories.

B. Determinations can only be made by individuals employed by eligible entities and certified as presumptive eligibility determiners (PEDs) by the medical assistance division (MAD).

(1) Processing PE information: PEDs must notify MAD within 24 hours of the determination of presumptive eligibility.

(2) PE: The PED must process the presumptive eligibility and encourage clients to submit an ongoing application for medicaid eligibility. If the client elects to do so, the PED must assist the client with the submission of an application for medical assistance.

(3) Provider eligibility: Entities who may participate in the PE program must be:

(a) a qualified hospital that participates as a provider under the medicaid state plan or a medicaid 1115 demonstration who notifies the medicaid agency of its election to make presumptive eligibility determinations and agrees to make PE determinations consistent with state policies and procedures; or

(b)
an entity or provider that has not been disqualified by the medicaid agency for failure to make PE determinations in accordance with applicable state policies and procedures or for failure to meet any standards that may have been established by the medicaid agency; or

(c)
a federally qualified health center (FOHC), an Indian health service (IHS) facility, a state of New Mexico agency, a school, or a head start agency or a primary care provider who is contracted with at least one HSD contracted MCO; or

(d)
other entities HSD has determined as an eligible presumptive participant.

C. PE approval limitations:

(1) all MAD authorized PE determiners can approve PE for children and pregnant women ACA categories;

(2) hospitals opting to participate in the PE program and correctional facilities (state prisons and county jails), health facilities operated by the Indian health service, a tribe, or tribal organization or an urban Indian organization can approve PE for all ACA related categories.

D. If, at the time of a PE approval, the client agrees to submit an application for ongoing coverage, the PED must submit the application within ten days of the PE approval.

E. A pregnant individual who has been approved for PE can receive ambulatory prenatal care during the PE approval period as defined in 8.291.400.13 NMAC.

(1) For PE, an approved PED must accept self-attestation of pregnancy.

(2) The needs and income of the unborn child(ren) are considered when determining the woman's countable family size.

[8.291.400.13 NMAC - Rp, 8.291.400.13 NMAC, 10/1/2017; A, 4/5/2022]

8.291.400.14 PREGNANT INDIVIDUALS ELIGIBLE FOR EXTENDED OR CONTINUOUS ELIGIBILITY (42 CFR 435.170):

A. Extended eligibility for pregnant individuals: For a pregnant individual who was eligible and enrolled for mandatory or optional coverage under the state plan on the date their pregnancy ends (regardless of the reason the pregnancy ends), HSD provides full medicaid coverage through the last day of the month in which the 12-month postpartum period ends.

B. Continuous eligibility for pregnant individuals: For a pregnant individual who was eligible and enrolled for mandatory or optional coverage under the state plan and who, because of a change in circumstance (e.g., income, household, composition, aging out etc.), will not otherwise remain eligible, HSD provides full medicaid coverage through the last day of the month in which the 12-month postpartum period ends.

(1) The following populations are provided continuous eligibility effective April 1, 2022:

(a)
Current medicaid recipients who are pregnant as of April 1, 2022 or who enroll based on pregnancy or become pregnant after April 1, 2022.

(b)
Current medicaid recipients who are receiving medicaid while pregnant and who are no longer pregnant as of April 1, 2022, but who are still within a 12-month postpartum period; and

(c)
Individuals who apply for medicaid after their pregnancy ends, who received medicaid-covered services while pregnant on or after April 1, 2022 if such services were received during an approved period of retroactive eligibility.

(2) The following applies to certain categories or individuals:

(a)
An individual approved on the other adult category who becomes pregnant may remain on the adult

category and receive services under the alternative benefit plan (ABP). The ABP is considered full benefits for the purpose of the 12-month extended postpartum period. An individual on the other adult category who becomes pregnant may also transition to another full coverage medicaid category such as pregnant women or parent/caretaker and will remain eligible until their 12-month postpartum period expires.

(b)
Children turning age 19 aging out of a children's medicaid category will remain on a children's medicaid category until their 12-month postpartum period expires.

(c)
An individual covered on the parent/caretaker category during a 12-month postpartum period and who has increased earnings or spousal support above the parent/caretaker category limit will remain on the parent/caretaker category until their 12-month postpartum period expires and then can transition to a four or 12-month transitional medical assistance period.

(d)
An individual who becomes pregnant during the 12-month postpartum period is entitled to 12-months continuous coverage through the end of the second pregnancy and the 12-month postpartum period following.

(e)
The extended 12-month postpartum period applies to individuals receiving medicaid who are lawfully residing children under age 21 and pregnant individuals referred to as "CHIPRA 214".

C. Renewals: Medicaid renewals are conducted at the end of the individual's 12-month postpartum period. Individuals remain enrolled in the eligibility group in which the individual was enrolled during pregnancy through the end of the 12-month postpartum period as described in Subsection C of 8.291.400.14 NMAC.

D. There is not extended or continuous medicaid eligibility for a pregnant individual

covered during a presumptive eligibility period under section 1920 of the ACT.

E. An individual's eligibility may not be terminated during a continuous eligibility period, regardless of any changes in circumstances, unless:

- (1) the individual or their representative requests a voluntary termination of eligibility;
- (2) the individual ceases to be a resident of New Mexico;
- (3) eligibility was determined incorrectly at the most recent determination or redetermination of eligibility because of HSD error or fraud, abuse, or perjury attributed to the individual; or
- (4) the individual dies.

[8.291.400.14 NMAC - N, 4/5/2022]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.293.600 NMAC, Section 8, 9 and 10, effective 4/5/2022.

8.293.600.8 [RESERVED]

MISSION: To transform lives.

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

[8.293.600.8 NMAC - Rp,
8.293.600.8 NMAC, 1/1/2019; A,
4/5/2022]

8.293.600.9 BENEFIT

DESCRIPTION: [This category provides the full range of medicaid coverage for pregnant women.] This category provides the full range of medicaid coverage for the duration of the pregnancy and for the 12-month postpartum period.

[8.293.600.9 NMAC - Rp,
8.293.600.9 NMAC, 1/1/2019; A,
4/5/2022]

8.293.600.10 BENEFIT

DETERMINATION: The HSD income support division (ISD) determines initial and ongoing eligibility. Refer to affordable care general provision chapters located at 8.291.400 through 8.291.430 NMAC for eligibility requirements.

[A woman eligible for pregnancy-medicaid remains eligible throughout her pregnancy and for a 60-day postpartum period. The postpartum period begins on the date the pregnancy ends, extends 60 days, and then ends on the last day of the month in which the 60-day period ends per 42-CFR-435.4.] An individual eligible for pregnant women medicaid remains eligible throughout the pregnancy and for a 12-month postpartum period in accordance with 8.291.400.14 NMAC. Retroactive medicaid coverage is provided in accordance with 8.200.400.14 NMAC.
[8.293.600.10 NMAC - Rp,
8.293.600.10 NMAC, 1/1/2019; A,
4/5/2022]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.294.600 NMAC, Sections 8, 9 and 10, effective 4/5/2022.

8.294.600.8 [RESERVED]

MISSION: To transform lives.

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

[8.294.600.8 NMAC - Rp,
8.294.600.8 NMAC, 1/1/2019; A,
4/5/2022]

8.294.600.9 BENEFIT

DESCRIPTION: [This category provides medicaid services restricted to and related to pregnancy only. These services do not cover procedures, services, pharmaceuticals, or miscellaneous items which are not related to pregnancy.] This category

provides the full range of Medicaid coverage for the duration of the pregnancy and for the 12-month postpartum period.

[8.294.600.9 NMAC - Rp,
8.294.600.9 NMAC, 1/1/2019; A,
4/5/2022]

8.294.600.10 BENEFIT

DETERMINATION: The HSD income support division (ISD) determines initial and ongoing eligibility. Refer to affordable care general provision chapters located at 8.291.400 through 8.291.430 NMAC for eligibility requirements. [A woman eligible for pregnancy-related services remains eligible throughout her pregnancy and for a 60-day postpartum period. The postpartum period begins on the date the pregnancy ends, extends 60 days, and then ends on the last day of the month in which the 60-day period ends per 42-CFR-435.4.] An individual eligible for pregnancy-related services medicaid remains eligible throughout the pregnancy and for a 12-month postpartum period in accordance with 8.291.400.14 NMAC. Retroactive medicaid coverage is provided in accordance with 8.200.400.14 NMAC.

[8.294.600.10 NMAC - Rp,
8.294.600.10 NMAC, 1/1/2019; A,
4/5/2022]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.308.9 NMAC, Sections 7, 8, 11, 13, 15 - 17, 19, 22, 23 and 25, effective 4/5/2022.

8.308.9.7 DEFINITIONS:

A. Alternative

benefits plan services with limitations (ABP): The medical assistance division (MAD) category of eligibility "other adults" has an alternative benefit plan (ABP). The HSD contracted managed care organization (MCO) covers ABP specific services for an ABP member. Services are made available

through MAD under a benefit plan similar to services provided by commercial insurance plans. ABP benefits include preventive services and treatment services. An ABP member has limitations on specific benefits; and does not have all MCO medicaid benefits available. All early and periodic screening, diagnosis and treatment (EPSDT) program services are available to an ABP member under 21 years. ABP services for an ABP member under the age of 21 years are not subject to the duration, frequency, and annual or lifetime benefit limitations that are applied to an ABP eligible recipient 21 years of age and older. A MCO ABP contracted provider and an ABP member have rights and responsibilities as described in Title 8 Chapter 308 NMAC, Social Services.

B. Alternative benefits plan general benefits for ABP exempt member (ABP exempt): An ABP member who self-declares [~~he or she has~~] they have a qualifying condition is evaluated by the MCO’s utilization management for determination if [~~he or she meets~~] they meet the qualifying condition. An ABP exempt member utilizes [~~his or her~~] their benefits described in 8.308.9 NMAC and in 8.308.12 NMAC.

C. Early childhood home visiting program: A program that uses home visiting as a primary service delivery strategy and offers services on a voluntary basis to eligible pregnant [~~women~~] individuals and their children from birth up to kindergarten entry, according to the program standard.

D. Evidence-based, early childhood home visiting program: A home visiting program that is recognized by the U.S. department of health & human services maternal, infant, and early childhood home visiting (MIECHV) project and:

(1) is grounded in relevant, empirically-based best practice and knowledge that:
(a) is linked to and measures the following outcomes:

- (i) babies that are born healthy;
- (ii) children that are nurtured by their parents and caregivers;
- (iii) children that are physically and mentally healthy;
- (iv) children that are ready for school;
- (v) children and families that are safe; and
- (vi) families that are connected to formal and informal supports in their communities;
- (b) has comprehensive home visiting standards that ensure high-quality service delivery and continuous quality improvement; and
- (c) has demonstrated significant, sustained positive outcomes;
- (2) follows program standards that specify the purpose, outcomes, duration and frequency of services that constitute the program;
- (3) follows the curriculum of an evidence-based home visiting model;
- (4) employs well-trained and competent staff and provides continual professional supervision and development relevant to the specific program and model being delivered;
- (5) demonstrates strong links to other community-based services;
- (6) operates within an organization that ensures compliance with home visiting standards;
- (7) continually evaluates performance to ensure fidelity to the program standards;
- (8) collects data on program activities and program outcomes; and
- (9) is culturally and linguistically appropriate.

[8.308.9.7 NMAC - Rp, 8.308.9.7 NMAC, 5/1/2018; A, 1/1/2019; A, 4/5/2022]

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

[8.308.9.8 NMAC - Rp, 8.308.9.8 NMAC, 5/1/2018; A, 4/5/2022]

8.308.9.11 GENERAL PROGRAM DESCRIPTION:

A. The MCO shall provide medically necessary services consistent with the following:

(1) a determination that a health care service is medically necessary does not mean that the health care service is a covered benefit; benefits are to be determined by HSD;
(2) in making the determination of medical necessity of a covered service the MCO shall do so by:

(a) evaluating the member’s physical and behavioral health information provided by a qualified professional who has personally evaluated the member within [~~his or her~~] their scope of practice; who has taken into consideration the member’s clinical history, including the impact of previous treatment and service interventions and who has consulted with other qualified health care professionals with applicable specialty training, as appropriate;

(b) considering the views and choices of the member or [~~his or her~~] their authorized representative regarding the proposed covered service as provided by the clinician or through independent verification of those views; and

(c) considering the services being provided concurrently by other service delivery systems;

(3) not denying physical, behavioral health and long-term care services solely because the member has a poor prognosis; medically necessary services may not be arbitrarily denied

or reduced in amount, duration or scope to an otherwise eligible member solely because of his or her diagnosis, type of illness or condition;

(4) governing decisions regarding benefit coverage for a member under 21 years of age by the EPSDT program coverage rule to the extent they are applicable; and

(5) making services available 24 hours, seven days a week, when medically necessary and are a covered benefit.

B. The MCO shall meet all HSD requirements related to the anti-gag requirement. The MCO shall meet all HSD requirements related to advance directives. This includes but is not limited to:

(1) providing a member or his or her authorized representative with written information on advance directives that include a description of applicable state and federal law and regulation, the MCO's policy respecting the implementation of the right to have an advance directive, and that complaints concerning noncompliance with advance directive requirements may be filed with HSD; the information must reflect changes in federal and state statute, regulation or rule as soon as possible, but no later than 90 calendar days after the effective date of such a change;

(2) honoring advance directives within its UM protocols; and

(3) ensuring that a member is offered the opportunity to prepare an advance directive and that, upon request, the MCO provides assistance in the process.

C. The MCO shall allow second opinions: A member or ~~his or her~~ their authorized representative shall have the right to seek a second opinion from a qualified health care professional within ~~his or her~~ their MCO's network, or the MCO shall arrange for the member to obtain a second opinion outside the network, at no cost to the member. A second opinion may be requested when the member or his or her authorized representative needs

additional information regarding recommended treatment or believes the provider is not authorizing requested care.

D. The MCO shall meet all care coordination requirement set forth in 8.308.10 NMAC, Care Coordination.

E. The MCO shall meet all behavioral health parity requirements as set forth in CFR 42, Chapter IV, subchapter C, 438.905 - Parity requirements. [8.308.9.11 NMAC - Rp, 8.308.9.11 NMAC, 5/1/2018; A, 4/5/2022]

8.308.9.13 SPECIFIC CASE MANAGEMENT PROGRAMS:

The benefit package includes case management services necessary to meet an identified service need of a member. The following are specific case management programs available when a member meets the requirements of a specific service.

A. Case management services for adults with developmental disabilities: Case management services are provided to a member 21 years of age and older who is developmentally disabled as detailed in 8.326.2 NMAC.

B. Case management services for pregnant ~~women~~ individuals and their infants: Case management services are provided to a member who is pregnant up to 60 calendar days following the end of the month of the delivery as detailed in 8.326.3 NMAC.

C. Case management services for traumatically brain injured adults: Case management services are provided to a member 21 years of age and older who is traumatically brain injured as detailed in 8.326.5 NMAC.

D. Case management services for children up to the age of three: Case management services for a member up to the age of three years who is medically at-risk due to family conditions and who does not have a developmental delay as detailed in 8.326.6 NMAC.

E. Case management services for the medically at risk (EPSDT): Case management

services for a member under 21 years of age who is medically at-risk for a physical or behavioral health condition as detailed in 8.320.2 NMAC.

[8.308.9.13 NMAC - Rp, 8.308.9.13 NMAC, 5/1/2018; A, 4/5/2022]

8.308.9.15 EARLY AND PERIODIC SCREENING

DIAGNOSIS AND TREATMENT (EPSDT) SERVICES: The benefit package includes the delivery of the federally mandated EPSDT services (42 CFR Part 441, Subpart B) provided by a primary care provider (PCP) as detailed in 8.320.2 NMAC. The MCO shall provide access to early intervention programs and services for a member identified in an EPSDT screen as being at-risk for developing or having a severe emotional, behavioral or neurobiological disorder. Unless otherwise specified in a service rule, EPSDT services are for a member under 21 years of age. For detailed description of each service, see 8.320.2 NMAC. EPSDT behavioral health services are included in 8.308.9.19 NMAC.

A. EPSDT nutritional counseling and services: The benefit package includes nutritional services furnished to a pregnant member and a member under 21 years of age as detailed in 8.310.2 NMAC.

B. EPSDT personal care: The benefit package includes personal care services for a member.

C. EPSDT private duty nursing: The benefit package includes private duty nursing for a member and the services shall be delivered in either his or her home or school setting.

D. EPSDT rehabilitation services: A member under 21 years of age who is eligible for home and community based waiver services receives medically necessary rehabilitation services through the EPSDT program; see 8.320.2 NMAC for a detailed description. The home and community-based waiver program provides rehabilitation services only for the purpose of community integration.

E. Services provided in schools: The benefit package includes services to a member provided in a school, excluding those specified in ~~[his or her]~~ their individual education plan (IEP) or the individualized family service plan (IFSP); see 8.320.6 NMAC.

F. Tot-to-teen health checks:

(1) The MCO shall adhere to the MAD periodicity schedule and ensure that each eligible member receives age-appropriate EPSDT screens (tot-to-teen health checks), referrals, and appropriate services and follow-up care. See 8.320.2 NMAC for detailed description of the benefits. The services include, but are not limited to:

(a) education of and outreach to a member or the member’s family regarding the importance of regular screens and health checks;

(b) development of a proactive approach to ensure that the member receives the services;

(c) facilitation of appropriate coordination with school-based providers;

(d) development of a systematic communication process with MCO network providers regarding screens and treatment coordination;

(e) processes to document, measure and assure compliance with MAD’s periodicity schedule; and

(f) development of a proactive process to insure the appropriate follow-up evaluation, referral and treatment, including early intervention for developmental delay, vision and hearing screening, dental examinations and immunizations.

(2) The MCO will facilitate appropriate referral for possible or identified behavioral health conditions. See 8.321.2 NMAC for EPSDT behavioral health services descriptions. [8.308.9.15 NMAC - Rp, 8.308.9.15 NMAC, 5/1/2018; A, 4/5/2022]

8.308.9.16 REPRODUCTIVE

HEALTH SERVICES: The benefit package includes reproductive health services as detailed in 8.310.2 NMAC. The MCO shall implement written policies and procedures approved by HSD which define how a member is educated about his or her rights to family planning services, freedom of choice, to include access to non-contract providers, and methods for accessing family planning services.

A. The family planning policy shall ensure that a member of the appropriate age of both sexes who seeks family planning services shall be provided with counseling pertaining to the following:

(1) human immunodeficiency virus (HIV) and other sexually transmitted diseases and risk reduction practices; and

(2) birth control pills and devices including plan B and long acting reversible contraception.

B. The MCO shall provide a member with sufficient information to allow ~~[him or her]~~ them to make informed choices including the following:

(1) types of family planning services available;

(2) the member’s right to access these services in a timely and confidential manner;

(3) freedom to choose a qualified family planning provider who participates in the MCO network or from a provider who does not participate in the member’s MCO network; and

(4) if a member chooses to receive family planning services from a non-contracted provider, the member shall be encouraged to exchange medical information between the PCP and the non-contracted provider for better coordination of care.

C. **Pregnancy termination procedures:** The benefit package includes services for the termination of a pregnancy as detailed in 8.310.2 NMAC. Medically necessary pregnancy terminations

which do not meet the requirements of 42 CFR 441.202 are excluded from the capitation payment made to the MCO and shall be reimbursed solely from state funds pursuant to the provisions of 8.310.2 NMAC. [8.308.9.16 NMAC - Rp, 8.308.9.16 NMAC, 5/1/2018; A, 4/5/2022]

8.308.9.17 PREVENTIVE PHYSICAL HEALTH SERVICES:

The MCO shall follow current national standards for preventive health services, including behavioral health preventive services. Standards are derived from several sources, including the U.S. preventive services task force, the centers for disease control and prevention; and the American college of obstetricians and gynecologists. Any preventive health guidelines developed by the MCO under these standards shall be adopted and reviewed at least every two years, updated when appropriate and disseminated to its practitioners and members. Unless a member refuses and the refusal is documented, the MCO shall provide the following preventive health services or screens or document that the services (with the results) were provided by other means. The MCO shall document medical reasons not to perform these services for an individual member. Member refusal is defined to include refusal to consent to and refusal to access care.

A. Initial assessment:

The MCO shall conduct a health risk assessment (HRA), per HSD guidelines and processes, for the purpose of obtaining basic health and demographic information about the member, assisting the MCO in determining the need for a comprehensive needs assessment (CNA) for care coordination level assignment.

B. Family planning:

The MCO must have a family planning policy. This policy must ensure that a member of the appropriate age of both sexes who seeks family planning services is provided with counseling and treatment, if indicated, as it relates to the following:

(1) methods of contraception; and

(2) HIV and other sexually transmitted diseases and risk reduction practices.

C. Guidance: The MCO shall adopt policies that shall ensure that an applicable asymptomatic member is provided guidance on the following topics unless the member's refusal is documented:

- (1) prevention of tobacco use;
- (2) benefits of physical activity;
- (3) benefits of a healthy diet;
- (4) prevention of osteoporosis and heart disease in a menopausal member citing the advantages and disadvantages of calcium and hormonal supplementation;
- (5) prevention of motor vehicle injuries;
- (6) prevention of household and recreational injuries;
- (7) prevention of dental and periodontal disease;
- (8) prevention of HIV infection and other sexually transmitted diseases;
- (9) prevention of an unintended pregnancy; and
- (10) prevention or intervention for obesity or weight issues.

D. Immunizations:

The MCO shall adopt policies that to the extent possible, ensure that within six months of enrollment, a member is immunized according to the type and schedule provided by current recommendations of the state department of health (DOH). The MCO shall encourage providers to verify and document all administered immunizations in the New Mexico statewide immunization information system (SIIS).

E. Nurse advice line:

The MCO shall provide a toll-free clinical telephone nurse advice line function that includes at least the following services and features:

- (1) clinical assessment and triage to evaluate the

acuity and severity of the member's symptoms and make the clinically appropriate referral; and

(2) pre-diagnostic and post-treatment health care decision assistance based on the member's symptoms.

F. Prenatal care:

The MCO shall operate a proactive prenatal care program to promote early initiation and appropriate frequency of prenatal care consistent with the standards of the American college of obstetrics and gynecology. The program shall include at least the following:

- (1) educational outreach to a member of childbearing age;
- (2) prompt and easy access to obstetrical care, including an office visit with a practitioner within three weeks of having a positive pregnancy test (laboratory or home) unless earlier care is clinically indicated;
- (3) risk assessment of a pregnant member to identify high-risk cases for special management;
- (4) counseling which strongly advises voluntary testing for HIV;
- (5) case management services to address the special needs of a member who has a high risk pregnancy, especially if risk is due to psychosocial factors, such as substance abuse or teen pregnancy;
- (6) screening for determination of need for a post-partum home visit;

(7) coordination with other services in support of good prenatal care, including transportation, other community services and referral to an agency that dispenses baby car seats free or at a reduced price; and

(8) referral to a home visiting pilot program for eligible pregnant ~~women~~ individuals and children residing in the HSD-designated counties for services as outlined at 8.308.9.23 NMAC.

G. Screens: The MCO shall adopt policies which will ensure that, to the extent possible, within

six months of enrollment or within six months of a change in screening standards, each asymptomatic member receives at least the following preventive screening services listed below.

(1) *Screening for breast cancer:* A female member between the ages of 40-69 years shall be screened every one to two years by mammography alone or by mammography and annual clinical breast examination.

(2) *Blood pressure measurement:* A member 18 years of age or older shall receive a blood pressure measurement at least every two years.

(3) *Screening for cervical cancer:* A female member with a cervix shall receive cytopathology testing starting at the onset of sexual activity, but at least by 21 years of age and every three years thereafter until reaching 65 years of age when prior testing has been consistently normal and the member has been confirmed not to be at high risk. If the member is at high risk, the frequency shall be at least annual.

(4) *Screening for chlamydia:* All sexually active female members 25 years of age and younger shall be screened for chlamydia. All female members over 25 years of age shall be screened for chlamydia if they inconsistently use barrier contraception, have more than one sex partner, or have had a sexually transmitted disease in the past.

(5) *Screening for colorectal cancer:* A member 50 years of age and older, who is at normal risk for colorectal cancer shall be screened with annual fecal occult blood testing or sigmoidoscopy or colonoscopy or double contrast barium at a periodicity determined by the MCO.

(6) *EPSDT screening for elevated blood lead levels:* A risk assessment for elevated blood lead levels shall be performed beginning at six months and repeated at nine months of age. A member shall receive a blood lead measurement at 12 months and 24

months of age. A member between the ages of three and six years, for whom no previous test exists, should also be tested, and screenings shall be done in accordance with the most current recommendations of the American academy of pediatrics.

(7) EPSDT

newborn screening: A newborn member shall be screened for those disorders specified in the state of New Mexico metabolic screen and any screenings shall be done in accordance with the most current recommendations of the American academy of pediatrics.

(8) Screening

for obesity: A member shall receive body weight, height and length measurements with each physical exam. A member under 21 years of age shall receive a BMI percentile designation.

(9) Prenatal

screening: All pregnant members shall be screened for preeclampsia, Rh (D) incompatibility, down syndrome, neural tube defects, hemoglobinopathies, vaginal and rectal group B streptococcal infection and screened and counseled for HIV in accordance with the most current recommendations of the American college of obstetricians and gynecologists.

(10) Screening

for rubella: All female members of childbearing ages shall be screened for rubella susceptibility by history of vaccination or by serology.

(11) Screening

for tuberculosis: Routine tuberculin skin testing shall not be required for all members. The following high-risk members shall be screened or previous screenings noted:

(a)

a member who has immigrated from countries in Asia, Africa, Latin America or the middle east in the preceding five years;

(b)

a member who has substantial contact with immigrants from those areas; a member who is a migrant farm worker;

(c)

a member who is an alcoholic,

homeless or is an injecting drug user. HIV-infected persons shall be screened annually; and

(d)

a member whose screening tuberculin test is positive (>10 mm of induration) must be referred to the local DOH public health office in his or her community of residence for contact investigation.

(12) Serum

cholesterol measurement: A male member 35 years and older and a female member 45 years and older who is at normal risk for coronary heart disease shall receive serum cholesterol and HDL cholesterol measurement every five years. A member 20 years and older with risk factors for heart disease shall have serum cholesterol and HDL cholesterol measurements annually.

(13) Tot-to-

teen health checks: The MCO shall operate the tot-to-teen mandated EPSDT program as outlined in 8.320.2 NMAC. Within three months of enrollment lock-in, the MCO shall ensure that the member is current according to the screening schedule, unless more stringent requirements are specified in these standards. The MCO shall encourage its PCPs to assess and document for age, height, gender appropriate weight, and body mass index (BMI) percentage during EPSDT screens to detect and treat evidence of weight or obesity issues in members under 21 years of age.

(14) Screening

for type 2 diabetes: A member with one or more of the following risk factors for diabetes shall be screened. Risk factors include:

(a)

a family history of diabetes (parent or sibling with diabetes); obesity (>twenty percent over desired body weight or BMI >27kg/m²);

(b)

race or ethnicity (e.g. hispanic, native American, African American, Asian-Pacific islander);

(c)

previously identified impaired fasting glucose or impaired glucose tolerance; hypertension (>140/90 mmHg); HDL cholesterol level <35

mg/dl and triglyceride level >250 mg/dl; history of gestational diabetes mellitus (GDM); and

(d)

a delivery of newborn over nine pounds.

(15) A member

21 years of age and older must be screened to detect high risk for behavioral health conditions at his or her first encounter with a PCP after enrollment.

(16) The

MCO shall require its PCPs to refer a member, whenever clinically appropriate, to behavioral health provider, see 8.321.2 NMAC. The MCO shall assist the member with an appropriate behavioral health referral.

(17) Screens

and preventative screens shall be updated as recommended by the United States preventative services task force.

[8.308.9.17 NMAC - Rp, 8.308.9.17 NMAC, 5/1/2018; A, 1/1/2019; A, 4/5/2022]

8.308.9.19 BEHAVIORAL HEALTH SERVICES:

A. The MCO shall

cover the following behavioral health services listed below. When an additional behavioral health service is approved by MAD, the MCO shall cover that service as well. See 8.321.2 NMAC for detailed descriptions of each service. MAD makes available on its website its behavioral health service definitions and crosswalk, along with other information.

(1) Applied

behavior analysis: The benefit package includes applied behavior analysis (ABA) services for [~~a member 12 months of age up to 21 years of age who has a well-documented medical diagnosis of autism spectrum disorder (ASD), and for a member 12 months to three years of age who has a well-documented risk for the development of ASD. The need for ABA services must be identified in the member's tot to teen healthcheck screen or another diagnostic evaluation furnished through a healthcheck referral.~~]

eligible recipients who have a well-documented medical diagnosis of autism spectrum disorder (ASD), and for eligible recipients who have well-documented risk for the development of ASD. As part of a three-stage comprehensive approach consisting of evaluation, assessment, and treatment, ABA services may be provided in coordination with other medically necessary services (e.g., family infant toddler program (FIT) services, occupational therapy, speech language therapy, medication management, developmentally disabled waiver services, etc.). ABA services are part of the early periodic screening, diagnosis and treatment (EPSDT) program (CFR 42 section 441.57). There is no age requirement to receive ABA services and ABA is a covered benefit for medicaid-enrolled adults.

(2) Assertive

community treatment services

(ACT): The benefit package includes assertive community treatment services for a member 18 years of age and older.

(3)

Behavioral health respite:

Behavioral health respite care is provided to a member under 21 years of age to support the member's family and strengthen their resiliency during the respite while the member is in a supportive environment. Respite care is provided to a member with a severe emotional disturbance who resides with his or her family and displays challenging behaviors that may periodically overwhelm the member's family's ability to provide ongoing supportive care. See the New Mexico interagency behavioral health purchasing collaborative service requirements and utilization guidelines-respite services-for a detailed description. Behavioral health respite is not a benefit for ABP eligible recipients.

(4)

Comprehensive community support services: The benefit package includes comprehensive community support services for a member.

(5) Crisis

Services: The benefit package includes three types of crisis services:

(a)

24-hour crisis telephone support; and

(b)

mobile crisis team; and

(c)

crisis triage centers.

(6) Family

support services: The benefit package includes family support services to a member whose focus is on the member and his or her family and the interactive effect through a variety of informational and supportive activities that assists the member and his or her family develop patterns of interaction that promote wellness and recovery over time. The positive interactive effect between the member and his or her family strengthens the effectiveness of other treatment and recovery initiatives. See the New Mexico interagency behavioral health purchasing collaborative service requirements and utilization guidelines -family support services-for a detailed description. Family support services are not a benefit for ABP eligible recipients.

(7) Hospital

outpatient services: The benefit package includes outpatient psychiatric and partial hospitalization services provided in PPS-exempt unit of a general hospital for a member.

(8) Inpatient

hospital services: The benefit package includes inpatient hospital psychiatric services provided in general hospital units and prospective payment system (PPS)-exempt units in a general hospital as detailed in 8.311.2 NMAC.

(9) Intensive

outpatient (IOP) services: The benefit package includes intensive outpatient services for a member 13 years of age.

(10)

Medication assisted treatment (MAT) and Opioid Treatment Programs:

The benefit package includes opioid treatment services for opioid addiction to a member through an opioid treatment center as defined in 42 CFR Part 8, Certification of Opioid Treatment; and buprenorphine and related pharmaceuticals.

Medication assisted treatments include use of buprenorphine and similarly acting products.

(11)

Outpatient therapy services: The benefit package includes outpatient therapy services (individual, family, and group) for a member.

(12)

Psychological rehabilitation

services: The benefit package includes adult psychosocial rehabilitation services for a member 18 years and older.

(13) Recovery

services: The MCO benefit package includes recovery services for a member. Recovery services are peer-to-peer support within a group setting to develop and enhance wellness and healthcare practices. The service enables a member to identify additional needs and goals and link him or herself to additional support as a result. See the New Mexico interagency behavioral health purchasing collaborative service requirements and utilization guidelines -recovery services-for a detailed description. Recovery services are not a benefit for ABP eligible recipients.

B. Behavioral health

EPSDT services: The benefit package includes the delivery of the federally mandated EPSDT services (42 CFR Section 441.57) provided by a behavioral health practitioner for a member under 21 years of age. See 8.321.2 NMAC for a detailed description of each service. The MCO shall provide access to EPSDT for a member identified in his or her EPSDT tot to teen health check screen or another diagnostic evaluation as being at-risk for developing or having a severe emotional, behavioral or neurobiological disorder.

(1)

Accredited residential treatment center (ARTC):

The benefit package includes services furnished in an ARTC furnished as part of the EPSDT program. ARTC services are provided to a member who needs the LOC furnished in an out-of-home residential setting. The need for ARTC services must be identified

in the member's tot to teen health check screen or another diagnostic evaluation furnished through a health check referral.

(2) Behavior management skills development services (BMS): The benefit package includes BMS services furnished as part of the EPSDT program. BMS services are provided to a member who has an identified need for such services and meets the required LOC. The need for BMS services must be identified in the member's tot to teen health check screen or another diagnostic evaluation furnished through a health check referral.

(3) Day treatment services: The benefit package includes day treatment services furnished as part of the EPSDT program. Day treatment services are provided to a member who has an identified need for such services and meets the required LOC. The need for day treatment services must be identified in the member's tot to teen health check screen or another diagnostic evaluation furnished through a health check referral.

(4) Inpatient hospitalization services provided in freestanding psychiatric hospitals: The benefit package includes inpatient psychiatric care furnished in a freestanding psychiatric hospital furnished as part of the EPSDT program. Inpatient hospitalization services are provided in a freestanding psychiatric hospital are provided to a member who has an identified need for such services and meet the required LOC. The need for such services must be identified in the member's tot to teen health check screen or another diagnostic evaluation furnished through a health check referral.

(5) Multi-systemic therapy (MST): The benefit package includes MST services furnished as part of the EPSDT program. MST services are provided to a member who has an identified need for such services and meets the required LOC. The need for MST services must be identified in the member's tot to teen health

check screen or another diagnostic evaluation furnished through a health check referral.

(6) Psychosocial rehabilitation services (PSR): The benefit package includes PSR services furnished as part of the EPSDT program. PSR is provided to a member who has an identified need for such services and meets the required LOC. The need for PSR services must be identified in the member's tot to teen health check screen or another diagnostic evaluation furnished through a health check referral.

(7) Treatment foster care I (TFC I): The benefit package includes TFC I furnished as part of the EPSDT program. TFC I services are provided to a member who has an identified need for such services and meets the required LOC. The need for TFC I services must be identified in the member's tot to teen health check or another diagnostic evaluation furnished through a health check referral.

(8) Treatment foster care II (TFC II): The benefit package includes TFC II services furnished as part of the EPSDT program. TFC II is provided to a member who has an identified need for such services and meets the required LOC. The need for TFC II services must be identified in the member's tot to teen health check or another diagnostic evaluation furnished through a health check referral.

(9) Residential non-accredited treatment center (RTC) and group home: The benefit package includes services furnished in a RTC center or group home as part of the EPSDT program. RTC or group home services are provided to a member who needs the LOC furnished in an out-of-home residential setting. The need for RTC and group home services must be identified in the member's tot to teen health check screen or another diagnostic evaluation furnished through a health check referral.

[8.308.9.19 NMAC - Rp, 8.308.9.19 NMAC, 5/1/2018; A, 4/5/2022]

**8.308.9.22 MAD
ALTERNATIVE BENEFITS
PLAN GENERAL BENEFITS
FOR ABP EXEMPT MEMBERS**

(ABP exempt): An ABP member who self-declares [~~he or she has~~] they have a qualifying condition is evaluated by [~~his or her~~] their MCO for determination if [~~he or she meets~~] they meet an ABP qualifying condition. An ABP exempt member may select to no longer utilize [~~his or her~~] their ABP benefits package. Instead, the ABP exempt member will utilize [~~his or her~~] their MCO's medicaid benefits package. See 8.308.9.11-20 NMAC for detailed description of the MCO medicaid benefit services. All services, services limitations and co-payments that apply to full benefit medicaid recipients apply to APB-exempt recipients. An ABP-exempt recipient does not have access to the benefits that only apply to ABP recipients. The ABP co-payments do not apply to an ABP-exempt recipient. The limitations on services that apply only to ABP-recipients do not apply to ABP-exempt recipients. The MCO shall comply with all HSD contractual provisions and with all NMAC rules that pertain to the MCO's responsibilities to its members as listed below:

- A. provider networks found in 8.308.2 NMAC;
- B. managed care eligibility found in 8.308.6 NMAC;
- C. enrollment and disenrollment from managed care found in 8.308.7 NMAC;
- D. managed care member education - rights and responsibilities found in 8.308.8 NMAC;
- E. care coordination found in 8.308.10 NMAC;
- F. transition of care found in 8.308.11 NMAC;
- G. community benefits found in 8.308.12 NMAC;
- H. managed care member rewards found in 8.308.13 NMAC
- I. managed care cost sharing found in 8.308.14 NMAC;

J. managed care grievance and appeals found in 8.308.15 NMAC;

K. managed care reimbursement found in 8.308.20 NMAC;

L. quality management found in 8.308.21 NMAC; and

M. managed care fraud, waste and abuse found in 8.308.22 NMAC.
[8.308.9.22 NMAC - Rp, 8.308.9.22 NMAC, 5/1/2018; A, 4/5/2022]

8.308.9.23 CENTENNIAL HOME VISITING (CHV) PILOT PROGRAM SERVICES:

Beginning January 1, 2019, the benefit is available to approximately 300 eligible pregnant medicaid managed care enrolled members and their children who reside in Bernalillo County (other HSD-designated counties may be included at a later time and with a distinct enrollment limit) in accordance with the program standard. The MCO shall contract with agencies operating in the HSD-designated counties that provide services that are in alignment with one of the two following evidence-based early childhood home visiting delivery models:

A. Nurse Family

Partnership (NFP): The services to be delivered under the NFP national program standards are for first-time parents only. In Bernalillo County, the program is anticipated to serve up to 132 families by the end of the first year of implementation using one NFP team and to approximately 240 eligible members (annual average at full implementation) thereafter using two NFP teams. The number of families served will be determined based on the number of active NFP teams in any program year. HSD may expand this program to other counties at HSD's discretion dependent upon provider capacity. The NFP services will be suspended once the child reaches two years of age.

B. Parents as

Teachers (PAT): The PAT evidence-based program services will adhere to the national model and curriculum and serve approximately

60 families (annual average at full implementation) in Bernalillo County. Services will begin during pregnancy and may continue until the child reaches five years of age or kindergarten entry. HSD may expand this program to other counties at HSD's discretion dependent upon provider capacity. The number of families served in other counties will be determined based on the number of active PAT teams in the program year. The MCO may propose other evidence-based early childhood home visiting delivery models with similar services in lieu of the PAT model if available in the HSD-designated service areas.

C. Description of Services: The services available under the CHV pilot program are described below:

(1) Prenatal

home visits: the benefit package includes the following services for eligible pregnant ~~women~~ individuals during their pregnancy:

- (a) monitoring for high blood pressure or other complications of pregnancy (only covered under the NFP model);
- (b) diet and nutritional education;
- (c) stress management;
- (d) sexually transmitted disease (STD) prevention education;
- (e) tobacco use screening and cessation education;
- (f) alcohol and other substance misuse screening and counseling;
- (g) depression screening; and
- (h) domestic and intimate partner violence screening and education.

(2)

Postpartum home visits: the benefit package includes the following services that may be delivered as part of a postpartum home visit, when provided during the ~~60-day~~ 12-month postpartum period to an eligible member:

- (a) diet and nutritional education;
 - (b) stress management;
 - (c) sexually transmitted disease (STD) prevention education;
 - (d) tobacco use screening and cessation education;
 - (e) alcohol use and other substance misuse screening and counseling;
 - (f) depression screening;
 - (g) domestic and intimate partner violence screening and education;
 - (h) breastfeeding support and education. Members may be referred to a lactation specialist, but lactation consultant services are not covered as a home visiting service;
 - (i) guidance and education regarding wellness visits to obtain recommended preventive services;
 - (j) medical assessment of the postpartum mother and infant (only covered under the NFP model);
 - (k) maternal-infant safety assessment and education, such as safe sleep education for sudden infant death syndrome (SIDS) prevention;
 - (l) counseling regarding postpartum recovery, family planning, and needs of a newborn;
 - (m) assistance to the family in establishing a primary source of care and a primary care provider, including help ensuring that the mother/infant has a postpartum/newborn visit scheduled; and
 - (n) parenting skills and confidence building.
- (3) Infant and children home visits:** the benefit package includes the following services that may be delivered to newborn infants born to CHV Pilot Project members until the child reaches two years of age for NFP and

five years of age or kindergarten entry for PAT, as part of an infant home visit:

(a) breastfeeding support and education. Members may be referred to a lactation specialist, but lactation consultant services are not covered as a home visiting service;

(b) child developmental screening at major developmental milestones from birth to age two for NFP according to the model standard practice, and age five or kindergarten entry for PAT; and

(c) parenting skills and confidence building.
[8.308.9.23 NMAC - N, 1/1/2019; A, 4/5/2022]

8.308.9.25 EMERGENCY AND POST STABILIZATION SERVICES:

A. In this section, emergency medical condition means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following:

(1) Placing the health of the individual (or, for a pregnant ~~woman~~ individual, the health of the ~~woman or her~~ individual or their unborn child) in serious jeopardy.

(2) Serious impairment to bodily functions.

(3) Serious dysfunction of any bodily organ or part.

B. In this section, emergency services means covered inpatient and outpatient services as follows.

(1) Furnished by a provider that is qualified to furnish these services under the federal rules. See 42 CFR 438.114.

(2) Needed to evaluate or stabilize an emergency medical condition.

C. Post-stabilization care services means covered services, related to an emergency medical condition that are provided after a member is stabilized to maintain the stabilized condition, or, under the circumstances described 42 CFR 438.114 (e), to improve or resolve the member's condition.

D. The MCO is responsible for coverage and payment of emergency services and post-stabilization care services. The MCO must cover and pay for emergency services regardless of whether the provider that furnishes the services has a contract with the MCO. The MCO may not deny payment for treatment obtained under either of the following circumstances.

(1) A member had an emergency medical condition, including cases in which the absence of immediate medical attention would not have had the outcomes specified in the definition of emergency medical condition in Subsection A of 8.308.9.24 NMAC.

(2) A representative of the MCO instructs the member to seek emergency services.

E. The MCO may not:

(1) limit what constitutes an emergency medical condition with reference to Subsection A of 8.308.9.24 NMAC on the basis of lists of diagnoses or symptoms; or

(2) refuse to cover emergency services based on the emergency room provider or hospital not notifying the member's PCP or the MCO.

F. A member who has an emergency medical condition may not be held liable for payment of subsequent screening and treatment needed to diagnose the specific condition or stabilize the member.

G. The attending emergency physician, or the provider actually treating the member, is responsible for determining when the member is sufficiently stabilized for transfer or discharge, and that determination is binding on the MCO that is responsible for coverage and payment.

[8.308.9.24 NMAC - Rp, 8.308.9.24 NMAC, 5/1/2018; 8.308.9.25 NMAC - Rn, 8.308.9.24 NMAC, 1/1/2019; A, 4/5/2022]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.308.11 NMAC, Sections 8 and 9, effective 4/5/2022.

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

[8.308.11.8 NMAC - Rp, 8.308.11.8 NMAC, 5/1/2018; A, 4/5/2022]

8.308.11.9 TRANSITION OF CARE: Transition of care refers to movement of an eligible recipient or a manage care organization (MCO) member from one health care practitioner or setting to another as ~~his or her~~ their condition and health care needs change. The MCO shall have the resources, the policies and the procedures in place to actively assist the member with ~~his or her~~ their transition of care.

A. Care coordination will be offered to members who are:

(1) transitioning from a nursing facility or out-of-home placement to the community;

(2) moving from a higher level of care to a lower level of care (LOC);

(3) turning 21 years of age;

(4) changing MCOs while hospitalized;

(5) changing MCOs during major organ and tissue transplantation services; and

(6) changing MCOs while receiving outpatient treatments for significant medical conditions. A member shall continue

to receive medically necessary services in an uninterrupted manner during transitions of care.

B. The following is a list of HSD's general MCO requirements for transition of care.

(1) The MCO shall establish policies and procedures to ensure that each member is contacted in a timely manner and is appropriately assessed by its MCO, using the HSD prescribed timeframes, processes and tools to identify ~~his or her~~ their needs.

(2) The MCO shall have policies and procedures covering the transition of an eligible recipient into a MCO, which shall include:

(a) member and provider educational information about the MCO;

(b) self-care and the optimization of treatment; and

(c) the review and update of existing courses of the member's treatment.

(3) The MCO shall not transition a member to another provider for continuing services, unless the current provider is not a contracted provider.

(4) The MCO shall facilitate a seamless transition into a new service, a new provider, or both, in a care plan developed by the MCO without disruption in the member's services.

(5) When a member of a MCO is transitioning to another MCO, the receiving MCO shall immediately contact the member's relinquishing MCO and request the transfer of "transition of care data" as specified by HSD. If a MCO is contacted by another MCO requesting the transfer of "transition of care data" for a transitioning member, then upon verification of such a transition, the relinquishing MCO shall provide such data in the timeframe and format specified by HSD to the receiving MCO, and both MCOs shall facilitate a seamless transition for the member.

(6) The receiving MCO will ensure that

its newly transitioning member is held harmless by ~~his or her~~ their provider for the costs of medically necessary covered services, except for applicable cost sharing.

(7) For a medical assistance division (MAD) medically necessary covered service provided by a contracted provider, the MCO shall provide continuation of such services from that provider, but may require prior authorization for the continuation of such services from that provider beyond 30 calendar days. The receiving MCO may initiate a provider change only as specified in the MCO agreement with HSD.

(8) The receiving MCO shall continue providing services previously authorized by HSD, its contractor or designee, in the member's approved community benefit care plan, behavioral health treatment plan or service plan without regard to whether such a service is provided by contracted or non-contracted provider. The receiving MCO shall not reduce approved services until the member's care coordinator conducts a comprehensive needs assessment (CNA).

C. Transplant services, durable medical equipment and prescription drugs:

(1) If an eligible recipient has received HSD approval, either through fee-for-service (FFS) or any other HSD contractor, the receiving MCO shall reimburse the HSD approved providers if a donor organ becomes available during the first 30 calendar days of the member's MCO enrollment.

(2) If a member was approved by a MCO for transplant services, HSD shall reimburse the MCO approved providers if a donor organ becomes available during the first 30 calendar days of the eligible recipient's FFS enrollment. The MCO provider who delivers these services will be eligible for FFS enrollment if the provider is willing.

(3) If a member received approval from ~~his or her~~ their MCO for durable medical equipment (DME) costing ~~two thousand dollars (\$2,000)~~ \$2,000 or more, and prior to the delivery of the DME item, was disenrolled from the MCO, the relinquishing MCO shall pay for the item.

(4) If an eligible recipient received FFS approval for a DME costing ~~two thousand dollars (\$2,000)~~ \$2,000 or more, and prior to the delivery of the DME item, ~~he or she is~~ they are enrolled in a MCO, HSD shall pay for the item. The DME provider will be eligible for FFS provider enrollment if the provider is willing.

(5) If a FFS eligible recipient enrolls in a MCO, the receiving MCO shall pay for prescribed drug refills for the first 30 calendar days or until the MCO makes other arrangements.

(6) If a MCO member is later determined to be exempt from MCO enrollment, HSD will pay for prescription drug refills for the first 30 calendar days of ~~his or her~~ their FFS enrollment. The pharmacy provider will be eligible for FFS enrollment if the provider is willing;

(7) If a FFS eligible recipient is later enrolled in a MCO, the receiving MCO will honor all prior authorizations granted by HSD or its contractors for the first 30 calendar days or until it makes other arrangements for the transition of services. A provider who delivered services approved by HSD or through its contractors shall be reimbursed by the receiving MCO.

(8) If a MCO member is later determined to be exempt from MCO enrollment, HSD will honor the relinquishing MCO's prior authorizations for the first 30 calendar days or until other arrangements for the transition of services have been made. The provider will be eligible for FFS enrollment if the provider is willing.

D. Transition of care requirements for pregnant ~~women~~ individuals:

(1) When a member is in [her] their second or third trimester of pregnancy and is receiving medically necessary covered prenatal care services prior to [her] their enrollment in the MCO, the receiving MCO will be responsible for providing continued access to [her] their prenatal care provider (whether a contracted or non-contracted provider) through the [~~two-month~~] 12-month postpartum period without any form of prior approval.

(2) When a newly enrolled member is in [her] their first trimester of pregnancy and is receiving medically necessary covered prenatal care services prior to [her] their enrollment, the receiving MCO shall be responsible for the costs of continuation of such medically necessary prenatal care services, including prenatal care and delivery, without any form of prior approval from the receiving MCO and without regard to whether such services are being provided by a contracted or non-contracted provider for up to 60 calendar days from [her] their MCO enrollment or until [she] they may be reasonably transferred to a MCO contracted provider without disruption in care, whichever is less.

(3) When a member is receiving services from a contracted provider, [her] their MCO shall be responsible for the costs of continuation of medically necessary covered prenatal services from that provider, without any form of prior approval, through the [~~two-month~~] 12-month postpartum period.

(4) When a member is receiving services from a non-contracted provider, [her] their MCO will be responsible for the costs of continuation of medically necessary covered prenatal services, delivery, through the [~~two-month~~] 12-month postpartum period, without any form of prior approval, until such time when [her] their MCO determines it can reasonably transfer [her] them to a contracted provider without impeding service delivery that might be harmful to [her] their health.

E. Transition from institutional facility to community:

(1) The MCO shall develop and implement methods for identifying members who may have the ability, the desire, or both, to transition from institutional care to [his-or-her] their community, such methods include, at a minimum:

- (a) the utilization of a CNA;
- (b) the utilization of the preadmission screening and annual resident review (PASRR);
- (c) minimum data set (MDS);
- (d) a provider referral including hospitals, and residential treatment centers;
- (e) an ombudsman referral;
- (f) a family member referral;
- (g) a change in medical status;
- (h) the member's self-referral;
- (i) community reintegration allocation received;
- (j) state agency referral; and
- (k) incarceration or detention facility referral.

(2) When a member's transition assessment indicates that [he-or-she-is] they are a candidate for transition to the community, [his-or-her] their MCO care coordinator shall facilitate the development and completion of a transition plan, which shall remain in place for a minimum of 60 calendar days from the decision to pursue transition or until the transition has occurred and a new care plan is in place. The transition plan shall address the member's transition needs including but not limited to:

- (a) [his-or-her] their physical and behavioral health needs;
- (b) the selection of providers in [his-or-her] their community;
- (c) continuation of MAP eligibility;

(d) [his-or-her] their housing needs;

(e) [his-or-her] their financial needs;

(f) [his-or-her] their interpersonal skills; and

(g) [his-or-her] their safety.

(3) The MCO shall conduct an additional assessment within 75 calendar days of the member's transition to [his-or-her] their community to determine if the transition was successful and identify any remaining needs of the member.

F. Transition from the New Mexico health insurance exchange:

(1) The receiving MCO must minimize the disruption of the newly enrolled member's care and ensure [he-or-she-has] they have uninterrupted access to medically necessary services when transitioning between a MCO and [his-or-her] their New Mexico health insurance exchange qualified health plan coverage.

(2) At a minimum, the receiving MCO shall establish transition guidelines for the following populations:

- (a) pregnant members, including the [~~two-month~~] 12-month postpartum period;
- (b) members with complex medical conditions;
- (c) members receiving ongoing services or who are hospitalized at the time of transition; and
- (d) members who received prior authorization for services from their qualified health plan.

(3) The receiving MCO is expected to coordinate services and provide phase-in and phase-out time periods for each of these populations, and to maintain written policies and procedures to address these coverage transitions.

[8.308.11.9 NMAC - Rp, 8.308.11.9 NMAC, 5/1/2018; A, 4/5/2022]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.308.20 NMAC, Sections 8 and 9, effective 4/5/2022.

8.308.20.8 MISSION

STATEMENT: ~~[To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.] To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.~~
[8.308.20.8 NMAC - N, 1/1/2014; A, 4/5/2022]

8.308.20.9 REIMBURSEMENT FOR MANAGED CARE:

A. Payment for services: HSD shall make actuarially sound payments, in accordance with 42 C.F.R. 438.6(c), for the provision of the managed care medicaid benefit package, under capitated risk contracts to the designated managed care organizations (MCOs). Rates whether set by HSD or negotiated between HSD and the MCO are confidential.

(1) At the sole discretion of HSD, rates shall be appropriate for the medicaid populations to be covered and the services to be furnished under the contract. Rates may be adjusted based on factors, including but not limited to, changes in the scope of work; CMS requiring a modification of the 1115(a) waiver; new or amended federal or state statutes, regulations or rules; inflation; significant changes in the demographic characteristics of the member population; or the disproportionate enrollment selection of the MCO by members in certain rate cohorts.

(2) The MCO shall be responsible for the provision

of services for members during the month of capitation. A medicaid eligible recipient shall not be liable for debts or costs incurred by an MCO under the MCO's managed care contract for providing health care to ~~[him or her]~~ them. This includes but is not limited to:

- (a) the MCO's debts in the event of its insolvency;
- (b) services provided to the member that are not included in the medicaid benefit package and for which HSD does not pay the MCO, e.g., value added services;
- (c) instances when the MCO does not pay the health care provider who furnishes the services under contractual, referral, or other arrangement;
- (d) payments for covered services furnished under contract, referral, or other arrangement to the extent that those payments are in excess of the amount that the member would owe if the MCO provided the service directly; and

(e) if a MCO member loses eligibility for any reason and is reinstated as eligible by HSD before the end of the month, the MCO shall accept a retroactive capitation payment for that month of eligibility and assume financial responsibility for all medically-necessary covered benefit services supplied to the member.

(3) Retroactive capitation payments may not be issued for a member for the same coverage month in which fee-for-service claims have already been paid by HSD except in special situations determined by HSD.

B. Capitation disbursement requirements: HSD shall pay a capitated amount to the MCO for the provision of the managed care benefit package at specified rates. The monthly rate is based on actuarially sound capitation rate cells. The MCO shall accept the capitation rate paid each month by HSD as payment in full for all services including all administrative

costs associated therewith, including gross receipts tax payable to the provider. The MCO is at risk of incurring losses if the cost of providing the managed care medicaid benefit package exceeds its capitation payment. HSD shall not provide retroactive payment adjustments to the MCO to reflect the actual cost of services furnished by the MCO.

C. Capitation

recoupments: HSD shall have the discretion to recoup capitations or payments as provided for in its contract with the MCO.

(1) Instances when HSD shall recoup payments for members include, but are not limited to:

- (a) member incorrectly enrolled with more than one MCO;
- (b) member who dies prior to the enrollment month for which payment was made; or
- (c) member who HSD later determines was not eligible for medicaid during the enrollment month, including retroactive months for which payment was made.

(2) HSD acknowledges and agrees that in the event of any recoupment pursuant to this rule, the MCO shall have the right to recoup from a provider or another person to whom the MCO has made payment during this period of time; however, may not recoup payments for any value added services provided. Recouped payments to a provider is subject to the time periods governed by the MCO provider agreement.

(3) Any duplicate payment identified by either the MCO or HSD shall be recouped upon identification.

(4) The MCO has the right to dispute any recoupment action in accordance with contractual provisions.

D. Patient liability: HSD monthly capitation payments will be net of patient liability. The capitation payments are developed on "gross" cost and will be reduced by the amount of average patient

member responsibility each month. The MCO shall delegate the collection of patient member liability to the nursing facility or community-based residential alternative facility and shall pay the facility net of the applicable patient member liability amount. The MCO shall submit patient member liability information associated with claim payments in their encounter data submissions.

E. Payment time frames: A clean claim shall be paid by the MCO to contracted and non-contracted providers according to the following timeframe: [~~a~~90] ninety percent within 30 calendar days of the date of receipt and [~~b~~99] ninety-nine percent within 90 calendar days of the date of receipt, as required by federal guidelines in the code of federal regulations Section 42 CFR 447.45. The date of receipt is the date the MCO first receives the claim either manually or electronically. The MCO is required to date stamp all claims on the date of receipt. The date of payment is the date of the check or other form of payment. An exception to this requirement may be made if the MCO and its providers by mutual agreement establish an alternative payment schedule. However, any such alternative payment schedule shall first be incorporated into the contract between HSD and the MCO. The MCO shall be financially responsible for paying all claims for all covered, emergency and post-stabilization services that are furnished by non-contracted providers, at no more than the medicaid fee-for-service rate, including medically or clinically necessary testing to determine if a physical or behavioral health emergency exists.

(1) The MCO shall pay a contracted and non-contracted provider interest on the MCO's liability at the rate of one and one-half percent per month on the amount of a clean claim (based upon the current medicaid fee schedule) submitted by the participating provider and not paid within 30 calendar days of the date of receipt of an electronic claim and 45 calendar

days of receipt of a paper claim. Interest shall accrue from the 31st calendar day for electronic claims and from the 46th calendar day for manual claims. The MCO shall be required to report the number of claims and the amount of interest paid, on a timeframe determined by HSD/MAD.

(2) No contract between the MCO and a participating provider shall include a clause that has the effect of relieving either party of liability for its actions or inactions.

(3) If the MCO is unable to determine liability for or refuses to pay a claim of a participating provider within the times specified above, the MCO shall make a good-faith effort to notify the participating provider by fax, electronically or via other written communication within 30 calendar days of receipt of the claim, stating specific reasons why it is not liable for the claim or request specific information necessary to determine liability for the claim.

F. Special payment requirements: This section lists special payment requirements by provider type.

(1) Reimbursement to a federally qualified health center (FQHC) and a rural health clinic (RHC): a contracted and non-contracted FQHC or RHC shall be reimbursed at a minimum of the prospective payment system (PPS) as determined by HSD or its designee or an alternative payment methodology in compliance with Section 1905(a)(2)(C) of the 1902 Social Security Act, as established by HSD.

(2) Reimbursement to Indian health service (IHS), tribal health providers, and urban Indian providers authorized to provide services as defined in the Indian Health Care Improvement Act, 25 U.S.C. 1601 et seq.

(a) The MCO shall reimburse IHS and tribal compact contracted and non-contracted provider as identified by HSD, at a minimum of [~~100~~] one hundred percent of the rate

established for an IHS facility or federally-leased facility by the office of management and budget (OMB). For services designated by HSD to be paid at fee schedule rates rather than OMB rates, the MCO shall reimburse the IHS or tribal contract provider at not less than the MAD fee schedule rate.

(b) IHS facilities, tribal health providers and urban Indian providers shall have up to two years from a claim's first date of service to submit a claim; claims not submitted within two years of the first date of service are not eligible for reimbursement.

(c) With the exception of residential treatment center services, services provided by IHS or a tribal 638 facility is not subject to prior authorization.

(3) Reimbursement for family planning services: the MCOs shall reimburse an out-of-network family planning provider for services provided to a MCO member at a rate that is at least equal to the MAD fee-schedule rate for the provider type.

(4) Reimbursement for [~~a woman in her~~] an individual in their second or third trimester of pregnancy: If [~~a woman~~] an individual is in the second or third trimester of pregnancy and is receiving medically necessary covered prenatal care services prior to [~~her~~] their enrollment in the MCO, the receiving MCO will be responsible for providing continued access to [~~her~~] their prenatal care provider (whether a contracted or non-contracted provider) through the [~~two month~~] 12-month postpartum period without any form of prior approval.

(5) Reimbursement for a MCO member who disenrolls transitions while hospitalized: If an eligible recipient is hospitalized at the time of enrollment into or disenrollment from managed care or upon an approved switch from one MCO to another, the relinquishing MCO shall be responsible for payment of all covered inpatient facility and

professional services provided within a licensed acute care facility, or a non-psychiatric specialty unit or hospitals as designated by the New Mexico department of health (DOH). The payer at the date of admission remains responsible for the services until the date of discharge. Upon discharge, the member will then become the financial responsibility of the receiving MCO receiving capitation payments. The relinquishing MCO shall be responsible for payment of all covered inpatient facility and professional services up to the date of disenrollment from the MCO.
[8.308.20.9 NMAC - N, 1/1/2014; A, 4/5/2022]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.310.2 NMAC, Sections 12 and 13, effective 4/5/2022.

8.310.2.12 SERVICES:

MAD covers services and procedures that are medically necessary for the diagnosis and treatment of an illness or injury as indicated by the MAP eligible recipient's condition. All services must be furnished within the limits of provider program rules and within the scope of their practice board and licensure.

A. Medical practitioner services:

(1) Second surgical opinions: MAD covers second opinions when surgery is considered.

(2) Services performed in an outpatient setting: MAD covers procedures performed in the office, clinic or as outpatient institutional services as alternatives to hospitalization. These procedures are those for which an overnight stay in a hospital is seldom necessary.

(a) A MAP eligible recipient may be hospitalized if ~~he or she has~~ they have existing medical conditions that predispose ~~him or her~~ them

to complications even with minor procedures.

(b) Claims may be subject to pre-payment or post-payment review.

(c) Medical justification for performance of these procedures in a hospital must be documented in the MAP eligible recipient's medical record.

(3) Noncovered therapeutic radiology and diagnostic imaging services: MAD does not pay for kits, films or supplies as separate charges. All necessary materials and minor services are included in the service or procedure charge. Reimbursement for imaging procedures includes all materials and minor services necessary to perform the procedure. MAD does not pay an additional amount for contrast media except in the following instances:

(a) radioactive isotopes;

(b) non-ionic radiographic contrast material; or

(c) gadolinium salts used in magnetic resonance imaging.

(4) Midwives services: MAD covers services furnished by certified nurse midwives or licensed midwives within the scope of their practice, as defined by state laws and rules and within the scope of their practice board and licensure. Reimbursement for midwife services is based on one global fee, which includes prenatal care, delivery and ~~postnatal~~ postpartum care.

(a) Separate trimesters completed and routine vaginal delivery can be covered if a MAP eligible recipient is not under the care of one provider for the entire prenatal, delivery and ~~postnatal~~ postpartum periods.

(b) MAD covers laboratory and diagnostic imaging services related to pregnancy. These services can be billed separately.

(c) MAD covers gynecological or obstetrical ultrasounds without requiring a prior authorization of any kind.

(d) MAD covers a MAP eligible pregnant recipient's labor and delivery services at a New Mexico department of health (DOH) licensed birth center through the "Birthing Options Program" (BOP). MAD reimburses the birth center facility and the rendered services of a midwife separately. BOP services are provided by an eligible midwife that enrolls as a BOP provider with the human services department/medical assistance division (HSD/MAD). The facility must comply with all DOH licensing requirements, including limiting licensure. The facility must maintain all clinical documentation, including schedules, for the period of time as required under 8.302.1 NMAC. The program does not cover the full scope of midwifery services nor replace pediatric care that should occur at a primary care clinic.

(e) Non-covered midwife services: Midwife services are subject to the limitation and coverage restrictions which exist for other MAD services. MAD does not cover the following specific services furnished by a midwife:

(i) oral medications or medications, such as ointments, creams, suppositories, ophthalmic and otic preparations which can be appropriately self-administered by the MAP eligible recipient;

(ii) services furnished by an apprentice; unless billed by the supervising midwife;

(iii) an assistant at a home birth unless necessary based on the medical condition of the MAP eligible recipient which must be documented in the claim.

B. Pharmaceutical, vaccines and other items obtained from a pharmacy: MAD does not cover drug items that are classified as ineffective by the food and drug administration (FDA) and antitubercular drug items that are available from the public health department. In addition, MAD does

not cover personal care items or pharmacy items used for cosmetic purposes only. Transportation to a pharmacy is not a MAD allowed benefit with the exception for justice-involved MAP eligible recipients who are released from incarceration at a correctional facility within the first seven days of release.

C. Laboratory and diagnostic imaging services: MAD covers medically necessary laboratory and diagnostic imaging services ordered by primary care provider (PCP), physician assistant (PA), certified nurse practitioner (CNP), or clinical nurse specialists (CNS) and performed in the office by a provider or under his or her supervision by a clinical laboratory or a radiology laboratory, or by a hospital-based clinical laboratory or radiology laboratory that are a enrolled MAD provider. See 42 CFR Section 440.30.

(1) MAD covers interpretation of diagnostic imaging with payment as follows: when diagnostic radiology procedures, diagnostic imaging, diagnostic ultrasound, or non-invasive peripheral vascular studies are performed in a hospital inpatient or outpatient setting, payment is made only for the professional component of the service. This limitation does not apply if the hospital does not bill for any component of the radiology procedures and does not include the cost associated with furnishing these services in its cost reports.

(2) A provider may bill for the professional components of imaging services performed at a hospital or independent radiology laboratory if the provider does not request an interpretation by the hospital radiologist.

(3) Only one professional component is paid per radiological procedure.

(4) Radiology professional components are not paid when the same provider or provider group bills for professional components or interpretations and for the performance of the complete procedure.

(5) Professional components associated with clinical laboratory services are payable only when the work is actually performed by a pathologist who is not billing for global procedures and the service is for anatomic and surgical pathology only, including cytopathology, histopathology, and bone marrow biopsies, or as otherwise allowed by the medicare program.

(6) Specimen collection fees are payable when obtained by venipuncture, arterial stick, or urethral catheterization, unless a MAP eligible recipient is an inpatient of a nursing facility or hospital.

(7) **Noncovered laboratory services:** MAD does not cover laboratory specimen handling, mailing, or collection fees. Specimen collection is covered only if the specimen is drawn by venipuncture, arterial stick, or collected by urethral catheterization from a MAP eligible recipient who is not a resident of a NF or hospital. MAD does not cover the following specific laboratory services:

- (a) clinical laboratory professional components, except as specifically described under covered services above;
- (b) specimens, including pap smears, collected in a provider's office or a similar facility and conveyed to a second provider's office, office laboratory, or non-certified laboratory;
- (c) laboratory specimen handling or mailing charges;
- (d) specimen collection fees other than those specifically indicated in covered services; and
- (e) laboratory specimen collection fees for a MAP eligible recipient in NF or inpatient hospital setting.

D. Reproductive health services: MAD pays for family planning and other related health services (see 42 CFR Section 440.40(c)) and supplies furnished by

or under the supervision of a MAD enrolled provider acting within the scope of ~~his or her~~ their practice board or licensure.

(1) Prior to performing medically necessary surgical procedures that result in sterility, providers must complete a "sterilization consent" or a "hysterectomy acknowledgment/consent" form. MAD covers a medically necessary sterilization under the following conditions. See 42 CFR Section 441.251 et seq:

(a) a MAP eligible recipient 21 years and older at the time consent is obtained;

(b) a MAP eligible recipient is not mentally incompetent; mentally incompetent is a declaration of incompetency as made by a federal, state, or local court; a MAP eligible recipient can be declared competent by the court for a specific purpose, including the ability to consent to sterilization;

(c) a MAP eligible recipient is not institutionalized; for this section, institutionalized is defined as:

(i) an individual involuntarily confined or detained under a civil or criminal statute in a correctional or rehabilitative facility, including a psychiatric hospital or an intermediate care facility for the care and treatment of mental illness;

(ii) confined under a voluntary commitment in a psychiatric hospital or other facility for the care and treatment of mental illness;

(d) a MAP eligible recipient seeking sterilization must be given information regarding the procedure and the results before signing a consent form; this explanation must include the fact that sterilization is a final, irreversible procedure; a MAP eligible recipient must be informed of the risks and benefits associated with the procedure;

(e) a MAP eligible recipient seeking sterilization must also be instructed that ~~his or her~~ their consent can be

withdrawn at any time prior to the performance of the procedure and that ~~[he or she does]~~ they would not lose any other MAD benefits as a result of the decision to have or not have the procedure; and

(f)

a MAP eligible recipient voluntarily gives informed consent to the sterilization procedure. See 42 CFR Section 441.257(a); and

(g)

a MAP eligible recipient's informed consent to the sterilization procedure must be attached to the claim.

(2)

Hysterectomies: MAD covers only a medically necessary hysterectomy. MAD does not cover a hysterectomy performed for the sole purpose of sterilization. See 42 CFR Section 441.253.

(a)

Hysterectomies require a signed, voluntary informed consent which acknowledges the sterilizing results of the hysterectomy. The form must be signed by the MAP eligible recipient prior to the operation.

(b)

Acknowledgement of the sterilizing results of the hysterectomy is not required from a MAP eligible recipient who has been previously sterilized or who is past child-bearing age as defined by the medical community. In this instance, the PCP signs the bottom portion of the hysterectomy form which states the MAP eligible recipient has been formerly sterilized, and attaches it to the claim.

(c)

An acknowledgement can be signed after the fact if the hysterectomy is performed in an emergency.

(3) Birthing

options services (BOP): MAD covers a MAP eligible pregnant recipient's labor and delivery services at a New Mexico department of health (DOH) licensed birth center through BOP. The BOP is an out-of-hospital birthing option for pregnant women enrolled in the medicaid program who are at low-risk for adverse birth outcomes. BOP services are provided by an eligible midwife

that enrolls as a BOP provider with human services department/medical assistance division (HSD/MAD).

The BOP services are specifically for basic obstetric care for uncomplicated pregnancies and childbirth, including immediate newborn care that is limited to stabilization of the baby during this transition. The program does not cover the full scope of midwifery services nor replace pediatric care that should occur at a primary care clinic.

(4) Other

covered services: MAD covers medically necessary methods, procedures, pharmaceutical supplies and devices to prevent unintended pregnancy or contraception.

(5)

Noncovered reproductive health care: MAD does not cover the following specific services:

(a)

sterilization reversal services;

(b)

fertility drugs;

(c) in

vitro fertilization;

(d)

artificial insemination;

(e)

hysterectomies performed for the sole purpose of family planning;

(f)

induced vaginal deliveries prior to 39 weeks unless medically indicated;

(g)

caesarean sections unless medically indicated; and

(h)

elective procedures to terminate a pregnancy.

E. Nutritional

services: MAD covers medically necessary nutritional services which are based on scientifically validated nutritional principles and interventions which are generally accepted by the medical community and consistent with the physical and medical condition of the MAP eligible recipient. MAD covers only those services furnished by PCP, licensed nutritionists or licensed dieticians. MAD covers the following services:

(1) Nutritional

assessments for a pregnant MAP

eligible recipient and for a MAP eligible recipient under 21 years of age through the early and periodic screening, diagnosis and treatment (EPSDT) program. Nutritional assessment is defined as an evaluation of the nutritional needs of the MAP eligible recipient based upon appropriate biochemical, anthropometric, physical and dietary data to determine nutrient needs and includes recommending appropriate nutritional intake.

(2) Nutrition

counseling to or on behalf of a MAP eligible recipient under 21 years of age who has been referred for a nutritional need. Nutrition counseling is defined as advising and helping a MAP eligible recipient obtain appropriate nutritional intake by integrating information from the nutrition assessment with information on food, other sources of nutrients and meal preparation, consistent with cultural background and socioeconomic status.

(3)

Noncovered nutritional services: MAD covers only those services furnished by a PCP, licensed nutritionist or licensed dietician. MAD does not cover the following specific services:

(a)

services not considered medically necessary for the condition of the MAP eligible recipient as determined by MAD or its designee;

(b)

dietary counseling for the sole purpose of weight loss;

(c)

weight control and weight management programs; and

(d)

commercial dietary supplements or replacement products marketed for the primary purpose of weight loss and weight management; see 8.324.4 NMAC.

F. Transplant

services: Non-experimental transplant services are covered. MAD covered transplantation services include hospital, a PCP, laboratory, outpatient surgical, and other MAD covered services necessary to perform

the selected transplantation for the MAP eligible recipient and donor.

(1) Due to special medicare coverage available for individuals with end-stage renal disease, medicare eligibility must be pursued by the provider for coverage of a kidney transplant before requesting MAD reimbursement.

(2) MAD covers the MAP eligible recipient's and donor's related medical, transportation, meals and lodging services for non-experimental transplantation.

(3) MAD does not cover transplant procedures, treatments, use of a drug, biological product, a product or a device which are considered unproven, experimental, investigational or not effective for the condition for which they are intended or used.

(4) A written prior authorization must be obtained for any transplant, with the exception of a cornea and a kidney. The prior authorization process must be started by the MAP eligible recipient's attending PCP contacting the MAD UR contractor. Services for which prior approval was obtained remain subject to UR at any point in the payment.

G. Dental services:

Dental services are covered as an optional medical service for a MAP eligible recipient. Dental services are defined as those diagnostic, preventive or corrective procedures to the teeth and associated structures of the oral cavity furnished by, or under the supervision of, a dentist that affect the oral or general health of the MAP eligible recipient. See 42 CFR Section 440.100(a). MAD also covers dental services, dentures and special services for a MAP eligible recipient who qualifies for services under the EPSDT program. See 42 CFR Section 441.55.

(1) Emergency dental care: MAD covers emergency care for all MAP eligible recipients. Emergency care is defined as services furnished when immediate treatment is required to control hemorrhage, relieve pain or eliminate

acute infection. For a MAP eligible recipient under 21 years of age, care includes operative procedures necessary to prevent pulpal death and the imminent loss of teeth, and treatment of injuries to the teeth or supporting structures, such as bone or soft tissue contiguous to the teeth.

(a) Routine restorative procedures and root canal therapy are not emergency procedures.

(b) Prior authorization requirements are waived for emergency care, but the claim can be reviewed prior to payment to confirm that an actual emergency existed at the time of service.

(2) Diagnostic services: MAD coverage for diagnostic services is limited to the following:

(a) for a MAP eligible recipient under 21 years of age, diagnostic services are limited to one clinical oral examination every six months and upon referral one additional clinical oral examination by a different dental provider every six months;

(b) one clinical oral examination every 12 months for a MAP eligible recipient 21 years and older; and

(c) MAD covers emergency oral examinations which are performed as part of an emergency service to relieve pain and suffering.

(3) Radiology services: MAD coverage of radiology services is limited to the following:

(a) one intraoral complete series every 60 months per MAP eligible recipient; this series includes bitewing x-rays;

(b) additional bitewing x-rays once every 12 months per MAP eligible recipient; and

(c) panoramic films performed can be substituted for an intraoral complete series, which is limited to one every 60 months per MAP eligible recipient.

(4) Preventive services: MAD coverage

of preventive services is subject to certain limitations.

(a) Prophylaxis: MAD covers for a MAP eligible recipient under 21 years of age one prophylaxis service every six months. MAD covers for a MAP eligible recipient 21 years of age and older who has a developmental disability, as defined in 8.314.6 NMAC, one prophylaxis service every six months. For a MAP eligible recipient 21 years of age and older without a developmental disability, as defined in 8.314.6 NMAC, MAD covers one prophylaxis service once in a 12 month-period.

(b) Fluoride treatment: MAD covers for a MAP eligible recipient under 21 years of age, one fluoride treatment every six months. For a MAP eligible recipient 21 years of age and older MAD, covers one fluoride treatment once in a 12-month period.

(c) Fluoride varnish: MAD covers for a MAP eligible recipient under 21 years of age, one fluoride varnish treatment every six months.

(d) Molar sealants: MAD only covers for a MAP eligible recipient under 21 years of age, sealants for permanent molars. Each MAP eligible recipient can receive one treatment per tooth every 60 months. MAD does not cover sealants when an occlusal restoration has been completed on the tooth. Replacement of a sealant within the 60-month period requires a prior authorization. For a MAP eligible recipient 21 years of age and older, MAD does not cover sealant services.

(e) Space maintenance: MAD covers for a MAP eligible recipient under 21 years of age fixed unilateral and fixed bilateral space maintainers (passive appliances). For a MAP eligible recipient 21 years of age and older, MAD does not cover space maintenance services.

(5) Restorative services: MAD covers the following restorative services:

(a) amalgam restorations (including polishing) on permanent and deciduous teeth;

(b) resin restorations for anterior and posterior teeth;

(c) one prefabricated stainless steel crown per permanent or deciduous tooth;

(d) one prefabricated resin crown per permanent or deciduous tooth; and

(e) one recementation of a crown or inlay.

(6) Endodontic services: MAD covers therapeutic pulpotomy for a MAP eligible recipient under 21 years of age if performed on a primary or permanent tooth and no periapical lesion is present on a radiograph.

(7) Periodontic services: MAD covers for a MAP eligible recipient certain periodontics surgical, non-surgical and other periodontics services subject to certain limitations:

(a) a collaborative practice dental hygienist may provide periodontal scaling and root planning, per quadrant after diagnosis by a MAD enrolled dentist; and

(b) a collaborative practice dental hygienist may provide periodontal maintenance procedures with prior authorization.

(8) Removable prosthodontic services: MAD covers two denture adjustments per every 12 months per MAP eligible recipient. MAD also covers repairs to complete and partial dentures.

(9) Fixed prosthodontics services: MAD covers one recementation of a fixed bridge.

(10) Oral surgery services:

(a) simple and surgical extractions: MAD coverage includes local anesthesia and routine post-operative care; erupted surgical extractions are defined as extractions requiring elevation of mucoperiosteal flap and removal of bone, or section of tooth and closure;

(b) autogenous tooth reimplantation of a permanent tooth: MAD covers for a MAP eligible recipient under 21 years of age; and

(c) the incision and the drainage of an abscess for a MAP eligible recipient.

(11) Adjunctive general services: MAD covers emergency palliative treatment of dental pain for a MAP eligible recipient. MAD also covers general anesthesia and intravenous sedation for a MAP eligible recipient. Documentation of medical necessity must be available for review by MAD or its designee. For a MAP eligible recipient under 21 years of age, MAD covers the use of nitrous oxide analgesia. For a MAP eligible recipient 21 years of age and older, MAD does not cover the use of nitrous oxide analgesia.

(12) Hospital care: MAD covers dental services normally furnished in an office setting if they are performed in an inpatient hospital setting only with a prior authorization, unless one of the following conditions exist:

(a) the MAP eligible recipient is under 21 years of age; or

(b) the MAP eligible recipient under 21 years of age has a documented medical condition for which hospitalization for even a minor procedure is medically justified; or

(c) any service which requires a prior authorization in an outpatient setting must have a prior authorization if performed in an inpatient hospital.

(13) Behavioral management: Dental behavior management as a means to assure comprehensive oral health care for persons with developmental disabilities is covered. This code allows for additional compensation to a dentist who is treating persons with developmental disabilities due to the increased time, staffing, expertise, and adaptive equipment required for treatment of a special needs MAP eligible recipient. Dentists who have

completed the training and received their certification from DOH are eligible for reimbursement.

(14)

Noncovered dental services: MAD does not cover dental services that are performed for aesthetic or cosmetic purposes. MAD covers orthodontic services only for a MAP eligible recipient under 21 years of age and only when specific criteria are met to assure medical necessary. MAD does not cover the following specific services:

(a) surgical tray is considered part of the surgical procedure and is not reimburse separately for tray;

(b) sterilization is considered part of the dental procedure and is not reimbursed separately for sterilization;

(c) oral preparations, including topical fluorides dispensed to a MAP eligible recipient for home use;

(d) permanent fixed bridges;

(e) procedures, appliances or restorations solely for aesthetic, or cosmetic purposes;

(f) procedures for desensitization, remineralization or tooth bleaching;

(g) occlusal adjustments, disking, overhang removal or equilibration;

(h) mastic or veneer procedures;

(i) treatment of TMJ disorders, bite openers and orthotic appliances;

(j) services furnished by non-certified dental assistants, such as radiographs;

(k) implants and implant-related services; or

(l) removable unilateral cast metal partial dentures.

H. Podiatry and procedures on the foot: MAD covers only medically necessary podiatric services furnished by a provider, as required by the condition

of the MAP eligible recipient. All services must be furnished within the scope and practice of the podiatrist as defined by state law, the New Mexico board of podiatry licensing requirements, and in accordance with applicable federal, state, and local laws and rules. MAD covers routine foot care if certain conditions of the foot, such as corns, warts, calluses and conditions of the nails, post a hazard to a MAP eligible recipient with a medical condition. MAD covers the treatment of warts on the soles of the feet (plantar warts). Medical justification for the performance of routine care must be documented in the MAP eligible recipient's medical record. MAD covers the following specific podiatry services.

(1) Routine foot care: Routine foot care services that do not meet the coverage criteria of medicare part B are not covered by MAD. MAD covers services only when there is evidence of a systemic condition, circulatory distress or areas of diminished sensation in the feet demonstrated through physical or clinical determination. A MAP eligible recipient with diagnoses marked by an asterisk(*) in the list below must be under the active care of a physician or physician assistant (PA). to qualify for covered routine foot care, and must have been assessed by that provider for the specified condition within six months prior to or 60-calendar days after the routine foot care service. A CNP, PA and a CNS do not satisfy the coverage condition of "active care by a PCP".

(2) Common billed diagnoses: The following list of systemic diseases is not all-inclusive and represents the most commonly billed diagnoses which qualify for medically necessary foot care:

- (a)** diabetes mellitus*;
- (b)** arteriosclerosis obliterans;
- (c)** buerger's disease;
- (d)** chronic thrombophlebitis*;

- (e)** neuropathies involving the feet associated with:
 - (i)** malnutrition and vitamin deficiency*;
 - (ii)** malnutrition (general, pellagra);
 - (iii)** alcoholism;
 - (iv)** malabsorption (celiac disease, tropical sprue);
 - (v)** pernicious anemia;
 - (vi)** carcinoma*;
 - (vii)** diabetes mellitus*;
 - (viii)** drugs or toxins*;
 - (ix)** multiple sclerosis*;
 - (x)** uremia (chronic renal disease)*;
 - (xi)** traumatic injury;
 - (xii)** leprosy or neurosyphilis;
 - (xiii)** hereditary disorders;
 - (xiv)** hereditary sensory radicular neuropathy;
 - (xv)** fabry's disease; and
 - (xvi)** amyloid neuropathy.

(3) Routine foot care services: MAD covers routine foot care services for a MAP eligible recipient who has a systemic condition and meets the severity in the class findings as follows: one of class A findings; or two of class B findings; or one of the class B findings and two of the following class C findings:

- (a)** class A findings: non-traumatic amputation of foot or integral skeletal portion thereof;
- (b)** class B findings:
 - (i)** absent posterior tibial pulse;
 - (ii)** absent dorsalis pedis pulse; and

- (iii)** advanced trophic changes as evidenced by any three of the following: hair growth (decrease or increase); nail changes (thickening); pigmentary changes (discoloring); skin texture (thin, shiny); or skin color (rubor or redness);

- (c)** class C findings:
 - (i)** claudication;
 - (ii)** temperature changes (e.g., cold feet);
 - (iii)** edema;
 - (iv)** paresthesias (abnormal spontaneous sensations in the feet); or
 - (v)** burning.

(4) Subluxated foot structure: Non-surgical and surgical correction of a subluxated foot structure that is an integral part of the treatment of foot pathology or that is undertaken to improve the function of the foot or to alleviate an associated symptomatic condition, including treatment of bunions, is covered when medical necessity has been documented. Treatment for bunions is limited to capsular or bony surgery. The treatment of subluxation of the foot is defined as partial dislocations or displacements of joint surfaces, tendons, ligaments or muscles in the foot.

(5) Foot warts: MAD covers the treatment of warts on the feet.

(6) Asymptomatic mycotic nails: MAD covers the treatment of asymptomatic mycotic nails in the presence of a systemic condition that meets the clinical findings and class findings as required for routine foot care.

(7) Mycotic nails: MAD covers the treatment of mycotic nails in the absence of a covered systemic condition if there is clinical evidence of mycosis of the toenail and one or more of the following conditions exist and results from the thickening and dystrophy of the infected nail plate:

(a) marked, significant limitation;

(b) pain; or

(c) secondary infection.

(8) Orthopedic shoes and other supportive devices: MAD only covers these items when the shoe is an integral part of a leg brace or therapeutic shoes furnished to diabetics who is a MAP eligible recipient.

(9) Hospitalization: If the MAP eligible recipient has existing medical condition that would predispose him or her to complications even with minor procedures, hospitalization for the performance of certain outpatient podiatric services may be covered.

(10) Noncovered podiatric services: A provider is subject to the limitations and coverage restrictions that exist for other medical services. MAD does not cover the following specific services or procedures.

(a) Routine foot care is not covered except as indicated under "covered services" for a MAP eligible recipient with systemic conditions meeting specified class findings. Routine foot care is defined as:

(i) trimming, cutting, clipping and debriding toenails;

(ii) cutting or removal of corns, calluses, or hyperkeratosis;

(iii) other hygienic and preventative maintenance care such as cleaning and soaking of the feet, application of topical medications, and the use of skin creams to maintain skin tone in either ambulatory or bedfast MAP eligible recipient; and

(iv) any other service performed in the absence of localized illness, injury or symptoms involving the foot.

(b) Services directed toward the care or the correction of a flat foot condition are not covered. Flat foot is defined as a condition in which one or more arches of the foot have flattened out.

(c) Orthopedic shoes and other supportive devices for the feet are generally not covered. This exclusion does not apply if the shoe is an integral part of a leg brace or therapeutic shoes furnished to a diabetic MAP eligible recipient.

(d) Surgical or nonsurgical treatments undertaken *for the sole purpose* of correcting a subluxated structure in the foot as an isolated condition are not covered. Subluxations of the foot are defined as partial dislocations or displacements of joint surfaces, tendons, ligaments, or muscles of the foot.

(e) MAD will not reimburse for services that have been denied by medicare for coverage limitations.

I. Anesthesia: MAD covers anesthesia and monitoring services which are medically necessary for performance of surgical or diagnostic procedures, as required by the condition of the MAP eligible recipient. All services must be provided within the limits of MAD benefit package, within the scope and practice of anesthesia as defined by state law and in accordance with applicable federal and state and local laws and rules.

(1) When a provider performing the medical or surgical procedure also provides a level of anesthesia lower in intensity than moderate or conscious sedation, such as a local or topical anesthesia, payment for this service is considered to be part of the underlying medical or surgical service and will not be covered in addition to the procedure.

(2) An anesthesia service is not covered if the medical or surgical procedure is not a MAD covered service.

(3) Separate payment is not allowed for qualifying circumstances. Payment is considered bundled into the anesthesia allowance.

(4) Separate payment is not allowed for the anesthesia complicated by the physical status of the MAP eligible recipient.

J. Vision: MAD covers specific vision care services that are medically necessary for the diagnosis of and treatment of eye diseases for a MAP eligible recipient. MAD pays for the correction of refractive errors required by the condition of the MAP eligible recipient. All services must be furnished within the limits of the MAD benefits package, within the scope and practice of the medical professional as defined by state law and in accordance with applicable federal, state and local laws and rules.

(1) Vision exam: MAD covers routine eye exams. Coverage for an eligible adult recipient 21 years of age and older of age is limited to one routine eye exam in a 36-month period. An exam for an existing medical condition, such as cataracts, diabetes, hypertension, and glaucoma, will be covered for required follow-up and treatment. The medical condition must be clearly documented on the MAP eligible recipient's visual examination record and indicated by diagnosis on the claim. Exam coverage for a MAP eligible recipient under 21 years of age is limited to one routine eye exam in a 12-month period.

(2) Noncovered vision services: MAD does not cover vision services that are performed for aesthetic or cosmetic purposes. MAD covers orthoptic assessments and treatments only when specific criteria are met to assure medical necessity.

K. Hearing: All audiology screening, diagnostic, preventive or corrective services require medical clearance. Audiologic and vestibular function studies are rendered by an audiologist or a PCP. Hearing aid dealers and dispensers are not reimbursed for audiological, audiometric or other hearing tests. Only licensed audiologists and PCPs are reimbursed for providing these testing services.

L. Client medical transportation: MAD covers expenses for transportation, meals, and lodging it determines are necessary to secure MAD covered

medical or behavioral health examination and treatment for a MAP eligible recipient in or out of his or her home community. See 42 CFR 440.170. Travel expenses include the cost of transportation by long distance common carrier, taxicab, handivan, and ground or air ambulance, all as appropriate to the situation and location of the MAP eligible recipient. When medically necessary, MAD covers similar expenses for an attendant who accompanies the MAP eligible recipient to the medical or behavioral health examination or treatment. MAD reimburses a MAP eligible recipient or the transportation provider for medically necessary transportation subject to the following.

(1)

Free alternatives: Alternative transportation services which may be provided free of charge include volunteers, relatives or transportation services provided by a nursing facility (NF) or another residential center. A MAP eligible recipient must certify in writing that he or she does not have access to free alternatives.

(2) Least

costly alternatives: MAD covers the most appropriate and least costly transportation alternatives suitable for the MAP eligible recipient's medical or behavioral health condition. If a MAP eligible recipient can use a private vehicle or public transportation, those alternatives must be used before the MAP eligible recipient can use more expensive transportation alternatives.

(3) Non-

emergency transportation service:

(a)

MAD covers non-emergency transportation services for a MAP eligible recipient who does not have primary transportation to a MAD covered service and who is unable to access a less costly form of public transportation.

(b)

MAP eligible recipients released from incarceration at a correctional facility may be transported by a New Mexico medicaid transportation provider to a pharmacy to fill and

retrieve prescribed medication. The eligible recipient must have a valid prescription that is qualified to be filled or re-filled at the time of their release from incarceration.

(4) Long

distance common carriers: MAD covers long distance services furnished by a common carrier if the MAP eligible recipient must leave his or her home community to receive medical or behavioral health services. Authorization forms for direct payment to long distance bus common carriers by MAD are available through the MAP eligible recipient's local county income support division (ISD) office.

(5) Ground

ambulance services: MAD covers services for a MAP eligible recipient provided by ground ambulances when:

(a)

an emergency which requires ambulance service is certified by the attending provider or is documented in the provider's records as meeting emergency medical necessity as defined as:

(i)

an emergency condition that is a medical or behavioral health condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the MAP eligible recipient (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to body function or serious dysfunction of any bodily organ or part; and

(ii)

medical necessity for ambulance services is established if the MAP eligible recipient's condition is such that the use of any other method of transportation is contraindicated and would endanger the MAP eligible recipient's health.

(b)

Scheduled, non-emergency ambulance services: These services

are covered when ordered by the MAP eligible recipient's attending provider who certifies that the use of any other method of non-emergency transportation is contraindicated by the MAP eligible recipient's medical or behavioral condition.

(c)

Reusable items and oxygen: MAD covers non-reusable items and oxygen required during transportation. Coverage for these items is included in the base rate reimbursement for a ground ambulance;

(6) Air

ambulance services: MAD covers services for a MAP eligible recipient provided by an air ambulance, including a private airplane, if an emergency exists and the medical necessity for the service is certified by [his or her] their attending provider.

(a)

An emergency condition is a medical or behavioral health condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the MAP eligible recipient (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to body function or serious dysfunction of any bodily organ or part.

(b)

MAD covers the following services for air ambulances:

(i)

non-reusable items and oxygen required during transportation;

(ii)

professional attendants required during transportation; and

(iii)

detention time or standby time up to one hour without provider documentation; if the detention or standby time is more than one hour, a statement from the attending provider or flight nurse justifying the additional time is required.

(7) Lodging

services: MAD covers lodging

services if a MAP eligible recipient is required to travel to receive medical or behavioral health services and an overnight stay is required due to medical necessity or cost considerations. If medically justified and approved, in-state lodging is initially set for up to five continuous days. For a longer stay, the need for lodging must be re-evaluated by the fifth day to authorize up to an additional 15 days. Re-evaluation must be made every 15-calendar days for extended stays, prior to the expiration of the existing authorization. Approval of lodging is based on the attending provider's statement of need. Authorization forms for direct payment to a MAD approved lodging provider by MAD are available through local county ISD offices. In addition, overnight lodging could include the following situations:

(a)

a MAP eligible recipient who is required to travel more than four hours each way to receive medical or behavioral health services; or

(b)

a MAP eligible recipient who is required to travel less than four hours each way and is receiving daily medical or behavioral health services and is not sufficiently stable to travel or must be near a facility because of the potential need for emergency or critical care.

(8) Meal

services: MAD covers meals if a MAP eligible recipient is required to leave his or her home community for eight hours or more to receive medical or behavioral health services. Authorization forms for direct payment to a meal provider by MAD are available through local county ISD offices.

(9) Coverage

for attendants: MAD covers transportation, meals and lodging in the same manner as for a MAP eligible recipient for one attendant if the medical necessity for the attendant is certified in writing by the MAP eligible recipient's attending provider or the MAP eligible recipient who is receiving medical service is under

18 years of age. MAD only covers transportation services or related expenses for a MAP eligible recipient and as certified, his or her attendant. Transportation services and related expenses will not be reimbursed by MAD for any other individual accompanying the MAP eligible recipient to a MAD covered medical or behavioral health service.

(10) Coverage

for a MAP eligible waiver recipient: Transportation of a MAP eligible waiver recipient to a provider of a waiver service is only covered when the service is occupational therapy, physical therapy, speech therapy or an outpatient behavioral health therapy.

(11)

Out-of-state transportation and related expenses: All out-of-state transportation, meals and lodging must be prior approved by MAD or its designee. Out-of-state transportation is approved only if the out-of-state medical or behavioral health service is approved by MAD or its designee. Documentation must be available to the reviewer to justify the out-of-state travel and verify that treatment is not available in the state of New Mexico.

(a)

Requests for out-of-state transportation must be coordinated through MAD or its designee;

(b)

Authorization for lodging and meal services by an out-of-state provider can be granted for up to 30-calendar days by MAD or its designee.

Re-evaluation authorizations are completed prior to expiration and every 30-calendar days, thereafter.

(c)

Border cities: A border city is a city within 100 miles of a New Mexico border (Mexico excluded). Transportation to a border city is treated as in-state provider service. A MAP eligible recipient who receives a MAD reimbursable service from a border area provider is eligible for transportation services to that provider. See 8.302.4 NMAC, to determine when a provider is considered an out-of-state provider or a border area provider.

(12) Client

medical transportation fund: In a non-emergency situation, a MAP eligible recipient can request reimbursement from the client medical transportation (CMT) fund through his or her local county ISD office for money spent on transportation, meals and lodging by the MAP eligible recipient; for reimbursement from the CMT fund, a MAP eligible recipient must apply for reimbursement within 30-calendar days from the date of appointment or the date ~~he or she is~~ they are discharged from the hospital.

(a)

Information requirements: The following information must be furnished to the ISD CMT fund custodian within 30-calendar days of the MAD approved provider visit to receive reimbursement:

(i)

submit a letter on the provider's stationary which indicates that the MAP eligible recipient kept the appointment for which the CMT fund reimbursement is requested; for medical or behavioral health services, written receipts confirming the date of service must be given to the MAP eligible recipient for submission to the local county ISD office;

(ii)

proper referral with original signatures and documentation stating that the MAD services are not available within the community from the MAD requesting provider, when a referral is necessary;

(iii)

verification of current eligibility of the recipient for a MAD service for the month the appointment and travel is made;

(iv)

certification that free alternative transportation services are not available and that the MAP eligible recipient is not enrolled in a HSD contracted managed care organization (MCO);

(v)

verification of mileage; and

(vi)

documentation justifying a medical attendant.

(b) Preparation of referrals for travel outside the home community: If a MAP eligible recipient must travel over 65 miles from his or her home community to receive medical care, the transportation provider must obtain a written verification from the referring provider or from the service provider containing the following information for the provider to retain with ~~his or her~~ their billing records:

- (i) the medical, behavioral health or diagnostic service for which the MAP eligible recipient is being referred;
- (ii) the name of the out of community medical or behavioral health provider; and
- (iii) justification that the medical or behavioral health care is not available in the home community.

(c) Fund advances in emergency situations: Money from the CMT fund is advanced for travel only if an emergency exists. An emergency is defined in this instance as a non-routine, unforeseen accident, injury or acute illness demanding immediate action and for which transportation arrangements could not be made five calendar days in advance of the visit to the provider. Advance funds must be requested and disbursed prior to the medical or behavioral health appointment.

(i) The ISD CMT fund custodian or a MAD FFS coordinated service contractor or the appropriate utilization review (UR) contractor verifies that the recipient is eligible for a MAD service and has a medical or behavioral health appointment prior to advancing money from the CMT fund and that the MAP eligible recipient is not enrolled in a HSD contracted MCO;

(ii) written referral for out of community service must be received by the CMT fund custodian or a MAD FFS coordinated service contractor or the appropriate UR contractor no later than 30-calendar days from the

date of the medical or behavioral health appointment for which the advance funds were requested. If a MAP eligible recipient fails to provide supporting documentation, recoupment proceedings are initiated; see Section OIG-900, Restitutions.

(d) MAP Eligible recipients enrolled in a HSD contracted MCO: A member enrolled in HSD contracted MCO on the date of service is not eligible to use the client medical transportation fund for services that are the responsibility of the MAP eligible recipient's MCO.

(13) Noncovered transportation services: Transportation services are subject to the same limitations and coverage restrictions which exist for other services. A payment for transportation to a non-covered MAD service is subject to retroactive recoupment. MAD does not cover the following services or related costs of travel:

(a) an attendant where there is not the required certification from the MAP eligible recipient's medical or behavioral health provider;

(b) minor aged children of the MAP eligible recipient that are simply accompanying ~~him or her to medical or behavioral health service~~ them to medical or behavioral health services;

(c) transportation to a non-covered MAD service;

(d) transportation to a pharmacy provider with the exception for justice-involved MAP eligible recipients who are released from incarceration at a correctional facility within the first seven days of release; see 8.324.7 NMAC.

M. Telehealth services:

(1) Telemedicine visits: An interactive HIPAA compliant telecommunication system must include both interactive audio and video and be delivered on a real-time basis at the originating and distant sites. If real-time audio/

video technology is used in furnishing a service when the MAP eligible recipient and the practitioner are in the same institutional or office setting, then the practitioner should bill for the service furnished as if it was furnished in person as a face to face encounter. Coverage for services rendered through telemedicine shall be determined in a manner consistent with medicaid coverage for health care services provided through in person consultation. For telemedicine services, when the originating-site is in New Mexico and the distant-site is outside New Mexico, the provider at the distant-site must be licensed for telemedicine to the extent required by New Mexico state law and regulations or meet federal requirements for providing services to IHS facilities or tribal contract facilities. Provision of telemedicine services does not require that a certified medicaid healthcare provider be physically present with the MAP eligible recipient at the originating site unless the telemedicine consultant at the distant site deems it necessary.

(a) Telemedicine originating-site: The location of a MAP eligible recipient at the time the service is being furnished via an interactive telemedicine communications system. The origination-site can be any of the following medically warranted sites where services are furnished to a MAP eligible recipient.

(i) The office of a physician or practitioner.

(ii) A critical access hospital (as described in section 1861 (mm)(1) of the Act).

(iii) A rural health clinic (as described in 1861 (mm)(2) of the Act).

(iv) A federally qualified health center (as defined in section 1861 (aa)(4) of the Act).

(v) A hospital (as defined in section 1861 (e) of the Act).

(vi) A hospital-based or critical access

hospital-based renal dialysis center (including satellites).

(vii)

A skilled nursing facility (as defined in section 1819(a) of the Act).

(viii)

A community mental health center (as defined in section 1861(ff)(3)(B) of the Act).

(ix)

A renal dialysis facility (only for the purposes of the home dialysis monthly ESRD-related clinical assessment in section 1881(b)(3)(B) of the Act).

(x)

The home of an individual (only for purposes of the home dialysis ESRD-related clinical assessment in section 1881(b)(3)(B) of the Act).

(xi)

A mobile stroke unit (only for the purposes of diagnosis, evaluation, or treatment of symptoms of an acute stroke provided in accordance with section 1834(m)(6) of the Act).

(xii)

The home of an individual (only for the purposes of treatment of a substance use disorder or a co-occurring mental health disorder), furnished on or after July 1, 2019, to an individual with a substance use disorder diagnosis.

(xiii)

The home of an individual when an interactive audio and video telecommunication system that permits real-time visit is used between the eligible provider and the MAP eligible recipient.

(xiv)

A School Based Health Center (SBHC) as defined by section 2110(c) (9) of the Act.

(b)

Telemedicine distant-site: The location where the telemedicine provider is physically located at the time of the telemedicine service.

All services are covered to the same extent the service and the provider are covered when not provided through telemedicine. For these services, use of the telemedicine communications system fulfills the requirement for a face-to-face encounter.

(c)

Telemedicine reimbursement: MAD covers both distant (where the eligible provider is located) as well as the originating sites (where the MAP eligible recipient is located, if another eligible provider accompanies the patient). If audio/video technology is used in furnishing a service when the MAP eligible recipient and the practitioner are in the same institutional or office setting, then the practitioner should bill for the service furnished as if it was furnished in person and no additional reimbursement is made.

(d)

Telemedicine providers: Reimbursement for professional services at the originating-site and the distant-site are made at the same rate as when the services provided are furnished without the use of a telecommunication system. In addition, reimbursement is made to the originating-site for a real-time interactive audio/video technology telemedicine system fee (where the MAP eligible recipient is located, if another eligible provider accompanies the patient) at the lesser of the provider's billed charge, or the maximum allowed by MAD for the specific service or procedure. If the originating site is the patient's home, the originating site fee should not be billed if the eligible provider does not accompany the MAP eligible recipient. The MAP eligible recipient is not reimbursed for their computer/internet.

(e)

A telemedicine originating-site communication system fee is covered if the MAP eligible recipient was present at and participated in the telemedicine visit at the originating-site and the system that is used meets the definition of a telemedicine system.

(2) Telephone

visits: MAD will reimburse eligible providers for limited professional services delivered by telephone without video. No additional reimbursement is made to the originating-site for an interactive telemedicine system fee.

(3) MAD

will reimburse for services delivered through store-and-forward. To be eligible for payment under store-and-forward, the service must be provided through the transference of digital images, sounds, or previously recorded video from one location to another; to allow a consulting provider to obtain information, analyze it, and report back to the referring physician providing the telemedicine consultation. Store-and-forward telemedicine includes encounters that do not occur in real time (asynchronous) and are consultants that do not require face-to-face live encounter between patient and telemedicine provider.

(4)

Noncovered telemedicine services: A service provided through telemedicine is subject to the same program restrictions, limitations and coverage which exist for the service when not provided through telemedicine. Telemedicine services are not covered when audio/video technology is used in furnishing a service when the MAP eligible recipient and the practitioner are in the same institutional or office setting.

N. Pregnancy

termination services: MAD does not cover the performance of 'elective' pregnancy termination procedures. MAD will only pay for services to terminate a pregnancy when certain conditions are met.

(1) Prior to

performing pregnancy termination services providers must complete and file in the MAP eligible recipient medical record, a consent for pregnancy termination that includes written certification of a provider that the procedure meets one of the following conditions:

(a)

the procedure is necessary to save the life of the MAP eligible recipient as certified in writing by a provider;

(b)

the pregnancy is a result of rape or incest, as certified by the treating provider, the appropriate reporting agency, or if not reported, the MAP eligible recipient is not physically

or emotionally able to report the incident; or

(c)

the procedure is necessary to terminate an ectopic pregnancy; or

(d)

the procedure is necessary because the pregnancy aggravates a pre-existing condition, makes treatment of a condition impossible, interferes with or hampers a diagnosis, or has a profound negative impact upon the physical, emotional or mental health of the MAP eligible recipient.

(2)

Psychological services: MAD covers behavioral health services for a pregnant MAP eligible recipient.

(3) Oral

medications: MAD covers oral medications approved by the FDA have been determined a benefit by MAD for pregnancy termination. MAD will cover oral medications when administered by a provider acting within the scope of his or her practice board and licensure.

(4) Informed

consent: Under New Mexico law, the provider may not require any MAP eligible recipient to accept any medical service, diagnosis, or treatment or to undergo any other health service provided under the plan if the MAP eligible recipient objects on religious grounds or in the case of a non-emancipated MAP eligible recipient, the legal parent or guardian of the non-emancipated MAP eligible recipient objects.

(a)

Consent: Voluntary, informed consent by a MAP eligible recipient 18 years of age and older, or an emancipated minor MAP eligible recipient must be given to the provider prior to the procedure to terminate pregnancy, except in the following circumstances:

(i)

in instances where a medical emergency exists; a medical emergency exists in situations where the attending PCP certifies that, based on the facts of the case presented, in his or her best clinical judgment, the life or the health of the MAP eligible recipient is endangered by the pregnancy so as to require an

immediate pregnancy termination procedure;

(ii)

in instances where the MAP eligible recipient is unconscious, incapacitated, or otherwise incapable of giving consent; in such circumstances, the consent shall be obtained as prescribed by New Mexico law;

(iii)

in instances where pregnancy results from rape or incest or the continuation of the pregnancy endangers the life of the MAP eligible recipient;

(iv)

consent is valid for 30-calendar days from the date of signature, unless withdrawn by the MAP eligible recipient prior to the procedure.

(b)

Required acknowledgements: In signing the consent, the MAP eligible recipient must acknowledge that she has received, at least, the following information:

(i)

alternatives to pregnancy termination;

(ii)

medical procedure(s) to be used;

(iii)

possibility of the physical, mental, or both, side effects from the performance of the procedure;

(iv)

right to receive pregnancy termination behavioral health services from an independent MAD provider; and

(v)

right to withdraw consent up until the time the procedure is going to be performed.

(c)

Record retention: A dated and signed copy of the consent, with counseling referral information, if requested, must be given to the MAP eligible recipient. The provider must keep the original signed consent with the MAP eligible recipient's medical records.

(d)

Consent for a MAP eligible recipient under 18 years of age who is not an emancipated minor, in instances not involving life endangerment, rape or incest: Informed written consent for an non-emancipated minor to terminate a pregnancy must

be obtained, dated and signed by a parent, legal guardian, or another adult acting 'in loco parentis' to the minor. An exception is when the minor objects to parental involvement for personal reasons or the parent, guardian or adult acting 'in loco parentis' is not available. The treating PCP shall note the minor's objections or the unavailability of the parent or guardian in the minor's chart, and:

(i)

certify in his or her best clinical judgment, the minor is mature enough and well enough informed to make the decision about the procedure; in the circumstance where sufficient maturity and information is not present or apparent, certify that the procedure is in the minor's best interests based on the information provided to the treating PCP by the minor; or

(ii)

refer the minor to an independent MAD behavioral health provider in circumstances where the treating PCP believes behavioral health services are necessary before a clinical judgment can be rendered on the criteria established in Paragraph (1) above; the referral shall be made on the same day of the visit between the minor and the treating PCP where consent is discussed; the independent MAD behavioral health provider shall meet with the minor and confirm in writing to the treating PCP whether or not the minor is mature enough and sufficiently informed to make the decision about the procedure; in the circumstance where sufficient maturity and information is not present or apparent, that the procedure is in the minor's best interests based on the information provided to the independent MAD behavioral health provider by the minor; this provider's written report is due to the treating PCP within 72 hours of initial referral;

(iii)

a minor shall not be required to obtain behavioral health services referenced in Paragraph (2) above; however, if the treating PCP is unable or unwilling to independently certify the requirements established in Paragraph (1) above, the minor must

be informed by the treating PCP that written consent must be obtained by the parent, legal guardian or parent 'in loco parentis' prior to performing the procedure; or, that the minor must obtain a court order allowing the procedure without parental consent.

O. Behavioral health professional services: Behavioral health services are addressed specifically in 8.321.2 NMAC.

P. Experimental or investigational services: MAD covers medically necessary services which are not considered unproven, investigational or experimental for the condition for which they are intended or used as determined by MAD. MAD does not cover experimental or investigational medical, surgical or health care procedures or treatments, including the use of drugs, biological products, other products or devices, except the following:

(1) Phase I, II, III or IV: MAD may approve coverage for routine patient care costs incurred as a result of the MAP eligible recipient's participation in a phase I, II, III, or IV cancer trial that meets the following criteria. The cancer clinical trial is being conducted with the approval of at least one of the following:

(a) one of the federal national institutes of health;

(b) a federal national institutes of health cooperative group or center;

(c) the federal department of defense;

(d) the FDA in the form of an investigational new drug application;

(e) the federal department of veteran affairs; or

(f) a qualified research entity that meets the criteria established by the federal national institutes of health for grant eligibility.

(2) Review and approval: The clinical trial has been reviewed and approved by an institutional review board that has a multiple project assurance contract

approved by the office of protection from research risks of the federal national institutes of health.

(3) Experimental or investigational interventions: Any medical, surgical, or other healthcare procedure or treatment, including the use of a drug, a biological product, another product or device, is considered experimental or investigational if it meets any of the following conditions:

(a) current, authoritative medical and scientific evidence regarding the medical, surgical, or other health care procedure or treatment, including the use of a drug, a biological product, another product or device for a specific condition shows that further studies or clinical trials are necessary to determine benefits, safety, efficacy and risks, especially as compared with standard or established methods or alternatives for diagnosis or treatment or both outside an investigational setting;

(b) the drug, biological product, other product, device, procedure or treatment (the "technology") lacks final approval from the FDA or any other governmental body having authority to regulate the technology;

(c) the medical, surgical, other health care procedure or treatment, including the use of a drug, a biological product, another product or device is the subject of ongoing phase I, II, or III clinical trials or under study to determine safety, efficacy, maximum tolerated dose or toxicity, especially as compared with standard or established methods or alternatives for diagnosis or treatment or both outside an investigational setting.

(4) Review of conditions: On request of MAD or its designee, a provider of a particular service can be required to present current, authoritative medical and scientific evidence that the proposed technology is not considered experimental or investigational.

(5) Reimbursement: MAD does not reimburse for medical, surgical, other

health care procedures or treatments, including the use of drugs, biological products, other products or devices that are considered experimental or investigational, except as specified as follows. MAD will reimburse a provider for routine patient care services, which are those medically necessary services that would be covered if the MAP eligible recipient were receiving standard cancer treatment, rendered during the MAP eligible recipient's participation in phase I, II, III, or IV cancer clinical trials.

(6) Experimental or investigational services: MAD does not cover procedures, technologies or therapies that are considered experimental or investigational.

Q. Smoking/Tobacco cessation: MAD covers tobacco cessation services for all MAP eligible recipients.

(1) Eligible medical, dental, and behavioral health practitioner: Cessation counseling services may be provided by one of the following:

(a) by or under the supervision of a physician; or

(b) by any other MAD enrolled health care professional authorized to provide other MAD services who is also legally authorized to furnish such services under state law;

(c) generally, eligible practitioners would be medical practitioners, including independently enrolled CNPs, behavioral health and dental practitioners; physician assistants and CNPs not enrolled as independent MAD providers, and registered nurses and dental hygienists may bill for counseling services through the enrolled entity under which their other services are billed, when under the supervision of a dentist or physician;

(d) counseling service must be prescribed by a MAD enrolled licensed practitioner.

(2) Eligible pharmacy providers: For rendering

tobacco cessation services, eligible pharmacists are those who have attended at least one continuing education course on tobacco cessation in accordance with the federal public health guidelines found in the United States department of health and human services; public health services' *quick reference guide for clinicians*, and *treating tobacco use and dependence*.

(3) Tobacco cessation drug items: MAD covers all prescribed tobacco cessation drug items for a MAP eligible recipient as listed in this section when ordered by a MAD enrolled prescriber and dispensed by a MAD enrolled pharmacy. MAD does not require prior authorization for reimbursement for tobacco cessation products, but the items must be prescribed by a MAD enrolled practitioner. Tobacco cessation products include, but are not limited to the following:

(a) sustained release bupropion products;
 (b) varenicline tartrate tablets; and
 (c) prescription and over-the-counter (OTC) nicotine replacement drug products, such as lozenges, patches, gums, sprays and inhalers.

(4) Covered services: MAD makes reimbursement for assessing all MAP eligible recipient's tobacco dependence including a written tobacco cessation treatment plan of care as part of an evaluation and management (E&M) service, and may bill using the E&M codes. MAD covers face-to-face counseling when rendered by an appropriate provider. The effectiveness of counseling is comparable to pharmacotherapy alone. Counseling plus medication provides additive benefits. Treatment may include prescribing any combination of tobacco cessation products and counseling. Providers can prescribe one or more modalities of treatment. Cessation counseling session refers face-to-face MAP eligible recipient contact of either

(a) intermediate session (greater than

three minutes up to 10 minutes); or
 (b) intensive session (greater than 10 minutes).

(5) Documentation for counseling services: Ordering and rendering practitioners must maintain sufficient documentation to substantiate the medical necessity of the service and the services rendered, which may consist of documentation of tobacco use. The rendering practitioner must maintain documentation that face-to-face counseling was prescribed by a practitioner, even if the case is a referral to self, consistent with other NMAC rules and other materials.

(6) Limitations on counseling sessions: The services do not have any limits on the length of treatment or quit attempts per year. The program also allows participants to try multiple treatments and does not impose any requirement to enroll into counseling. During the 12-month period, the practitioner and the MAP eligible recipient have flexibility to choose between intermediate or intensive counseling modalities of treatment for each session.

R. Screening, brief intervention and referral to treatment (SBIRT) service: SBIRT is a community-based practice designed to identify, reduce and prevent problematic substance use or misuse and co-occurring mental health disorders as an early intervention. Through early identification in a medical setting, SBIRT services expand and enhance the continuum of care and reduce costly health care utilization. The primary objective is the integration of behavioral health with physical health care. SBIRT is delivered through a process consisting of universal screening, scoring the screening tool and a warm hand-off to a SBIRT trained professional who conducts a face-to-face brief intervention for positive screening results. If the need is identified for behavioral health treatment, the certified SBIRT staff, with the eligible recipient's approval, assists in securing behavioral health services. Only a physical health

office, clinic, or facility who has been certified by a HSD approved SBIRT trainer and uses the approved healthy lifestyle questionnaire (HLQ) can complete the screen. The physical office, clinic or facility must be the billing provider, not the individual practitioner. All practitioners must be SBIRT certified and are employees or contractors of a SBIRT physical health office, clinic or facility. See the SBIRT policy and billing manual for detailed description of the service and billing requirements.

S. Other services: Other covered and noncovered services including hospitalization and other residential facilities, devices for hearing and vision correction, behavioral health services, home and community based services, EPSDT services, case management and other adjunct and specialty services are described in other NMAC rules. [8.310.2.12 NMAC - Rp, 8.310.2.12 NMAC, 1/1/2014; A, 8/10/2021; A, 4/5/2022]

8.310.2.13 GENERAL NONCOVERED SERVICES

A. General noncovered services: MAD does not cover certain procedures, services, or miscellaneous items. See specific provider or service rules or sections of this rule for additional information on service coverage and limitations. A provider cannot turn an account over to collections or to any other factor intending to collect from the MAP eligible recipient or his or her authorized representative; see 8.302.2 NMAC. A provider cannot bill a MAP eligible recipient or his or her authorized representative for the copying of the MAP eligible recipient's records, and must provide copies of the MAP eligible recipient's records to other providers upon request of the MAP eligible recipient.

B. Appointment, interest and carrying charges: MAD does not cover penalties on payments for broken or missed appointments, costs of waiting time, or interest or carrying charges on accounts. A provider may not bill a MAP eligible recipient or his or her

authorized representative for these charges or the penalties associated with missed or broken appointments or failure to produce eligibility cards, with the exception of MAP recipient eligibility categories of CHIP or WDI who may be charged up to \$5 for a missed appointment.

C. Contract services:

Services furnished by a contractor, an organization, or an individual who is not the billing provider must meet specific criteria for coverage as stated in MAD or its designee's NMAC rules, billing instructions, policy manuals; see 8.302.2 NMAC.

D. Cosmetic services

and surgeries: MAD does not cover cosmetic items or services that are prescribed or used for aesthetic purposes. This includes items for aging skin, for hair loss, and personal care items such as non-prescription lotions, shampoos, soaps or sunscreens. MAD does not cover cosmetic surgeries performed for aesthetic purposes. "*Cosmetic surgery*" is defined as a procedure performed to improve the appearance of physical features that may or may not improve the functional ability of the area of concern. MAD covers only a surgery that meets specific criteria and is approved as medically necessary reconstructive surgery.

E. Postmortem

examinations: MAD does not cover postmortem examinations.

F. Education or

vocational services: MAD does not cover literature, booklets, and other educational materials. Dietary counseling is covered only for a MAP eligible recipient under 21 years of age, as part of the EPSDT program and for a pregnant MAP eligible recipient. MAD does not cover formal educational or vocational training services, unless those services are included as active treatment services for a MAP eligible recipient in intermediate care facility for individuals with intellectual disabilities (ICF-IID) or for a MAP eligible recipient under 21 years of age receiving inpatient psychiatric services [42 CFR 441.13(b)].

"*Formal educational services*" relate

to training in traditional academic subjects. Vocational training services relate to organized programs directly related to the preparation of a MAP eligible recipient for paid or unpaid employment.

G. Hair or nail

analysis: MAD does not cover hair or nail analysis.

H. Preparations

dispensed for home use: MAD does not cover oral, topical, otic, or ophthalmic preparations dispensed to a MAP eligible recipient by a PCP, a CNP, a P.A., or an optometrist for home use or self administration unless authorized by MAD to assure the availability of medications.

I. Routine physical

examinations: MAD only covers a routine physical examination for:

(1) a MAP eligible recipient residing in a NF or an ICF-IID facility.

(2) a MAP eligible recipient under 21 years of age through the tot to teen health check screen, New Mexico's EPSDT screening program. Included in the coverage is the physical examinations, screenings and treatment.

J. Screening services:

MAD does not cover screening services that are not used to make a diagnosis, such as chromosome screening, hypertension screening, diabetic screening, general health panels, executive profiles, paternity testing, or premarital screens. MAD covers screening services for a MAP eligible recipient under 21 years of age through the tot to teen healthcheck program. MAD covers screening services ordered by a provider for cancer detection such as pap smears and mammograms for a MAP eligible recipient when medically appropriate.

K. Services not

covered by medicare: MAD does not cover services, procedures, or devices that are not covered by medicare due to their determination that the service is not medically necessary or that the service is experimental or not effective.

L. Bariatric surgery

services: Bariatric surgery services

are covered only when medically indicated and alternatives are not successful.

M. Services and tests which are not routinely warranted due to the MAP eligible recipient's age:

MAD does not reimburse for routine screening, tests, or services which are not medically necessary due to the age of the MAP eligible recipient:

(1)

Papanicolaou test (pap smear) for women under 21 years of age unless prior history or risk factors make the test medically warranted; and

(2)

prostate specific antigen (PSA) test for men under age 40 unless prior history or risk factors make the test medically warranted.

N. Services for

surrogate mothers: MAD does not pay for services for pregnancy, complications encountered during pregnancy related conditions, prenatal care and [post partum] postpartum care, or delivery for services to a surrogate mother for which an agreement or contract between the surrogate mother and another party exists.

[8.310.2.13 NMAC - Rp, 8.310.2.14 NMAC, 1/1/2014; A, 8/10/2021; A, 4/5/2022]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.326.3 NMAC, Sections 8 - 10, 12, 13, 15 and part name change, effective 4/5/2022.

**PART 3 CASE MANAGEMENT
SERVICES FOR PREGNANT
[WOMEN] INDIVIDUALS AND
THEIR INFANTS**

**8.326.3.8 MISSION
STATEMENT:** [The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of medicaid-eligible individuals by furnishing payment

for quality health services at levels comparable to private health plans.] To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[2/1/1995; 8.326.3.8 NMAC - Rn, 8 NMAC 4.MAD.002, 3/1/2012; A, 4/5/2022]

8.326.3.9 CASE MANAGEMENT SERVICES FOR PREGNANT ~~WOMEN~~ INDIVIDUALS AND THEIR INFANTS:

The New Mexico medical assistance program (medicaid) pays for medically necessary health services furnished to eligible recipients, including case management services furnished to medicaid eligible pregnant ~~women~~ up to sixty (60) days following the end of the month of the delivery [42 U.S.C. Section 1396n(g)(1)(2)] individuals on the day the pregnancy ends through the last day in which the 12-month postpartum period ends.

This part describes eligible providers, eligible recipients, covered services, service limitations and general reimbursement methodology. [2/1/1995; 5/15/1996; 8.326.3.9 NMAC - Rn, 8 NMAC 4.MAD.772, 3/1/2012; A, 4/5/2022]

8.326.3.10 ELIGIBLE PROVIDERS:

A. Upon approval of New Mexico medical assistance program provider participation agreements by the New Mexico medical assistance division (MAD), the following certified agencies are eligible to be reimbursed for furnishing case management services to eligible pregnant ~~women~~ individuals and their infants:

- (1) public health offices of the New Mexico department of health;
- (2) Indian tribal governments or Indian health services;
- (3) federally qualified health centers (FQHC); and

(4) other community-based agencies which meet the requirements for participation.

B. Agency qualifications: Community-based agencies must be certified by the department of health and meet the following criteria:

- (1) agencies must have demonstrated direct experience in successfully serving the target population; and
- (2) agencies must have demonstrated knowledge of available community services and methods for accessing them.

C. Case manager qualifications: Case managers employed by the agency must possess the education, skills, abilities, and experience to perform case management services. It can be important that case managers have language skills, cultural sensitivity and acquired knowledge and expertise unique to the geographic area. At a minimum, case managers must have one of the following qualifications:

- (1) case managers must be licensed as a registered nurse and have a bachelors degree in nursing or be licensed as a social worker; the nurse or social worker must have two [(2)] years of experience in community health and at least one [(+)] year of experience in maternal health or child health;
- (2) or be a licensed registered nurse or have a bachelors degree in social work with a minimum of two [(2)] years of experience in community health and at least two [(2)] years experience in maternal health or child health nursing;

(3) in the event that there are no candidates with the above qualifications, an individual with an associates degree and four [(4)] years of experience in social, community health ~~and/or~~ or maternal health and child health may be employed as a case manager;

(4) if no individuals with a college degree and appropriate experience are available, an individual with a high school

diploma and five years of experience in social services, community health or maternal health and child health may be considered; agencies that are considering hiring individuals ~~in option 3 or 4~~ listed in Paragraph (3) and (4) of 8.326.3.10 NMAC must complete a waiver process.

D. Once enrolled, providers receive a packet of information, including medicaid program policies, billing instructions, utilization review instructions and other pertinent material from MAD. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from MAD.

[2/1/1995; 5/15/1996; 8.326.3.10 NMAC - Rn, 8 NMAC 4.MAD.772.1, 3/1/2012; A, 4/5/2022]

8.326.3.12 ELIGIBLE RECIPIENTS: Case management services are available to medicaid eligible pregnant ~~women and their infants up to sixty (60) days following the end of the month of the delivery~~ individuals and their infants up to 12-months following the delivery in accordance with 8.291.400.14 NMAC.

[2/1/1995; 5/15/1996; 8.326.3.12 NMAC - Rn, 8 NMAC 4.MAD.772.3, 3/1/2012; A, 4/5/2022]

8.326.3.13 COVERED SERVICES AND SERVICE LIMITATIONS: Medicaid covers case management services for pregnant ~~women~~ individuals and their infants which help recipients gain access to medical, social, educational or other needed services. Case management services provide necessary coordination with providers of non-medical services, such as nutrition or education programs, when these services are necessary to enable recipients to benefit from the health services paid for by medicaid.

A. Medicaid covers the following case management service activities furnished to pregnant ~~women up to sixty (60) days following the end of the month of the delivery~~ individuals:

(1) identification of programs appropriate for the recipient's needs, including those which teach basic maternal and child health skills;

(2) help in accessing the identified programs;

(3) assessment of the service needs of recipients to coordinate the delivery of services when multiple providers or programs are involved in the provision of care;

(4) reassessment to ensure that the services which were obtained are necessary and appropriate in meeting the recipient's needs; and

(5) determination of whether any additional services are warranted.

B. Medicaid covers five [(5)] hours of case management services per client per pregnancy. The five [(5)] hours include services to both the pregnant recipient and the infant. Additional units of service require prior approval by MAD or its designee.

[2/1/1995; 5/15/1996; 8.326.3.13 NMAC - Rn, 8 NMAC 4.MAD.772.4, 3/1/2012; A, 4/5/2022]

8.326.3.15 PLAN OF CARE:

A. Case managers develop and implement plans of care for each medicaid recipient. Plans of care are developed in consultation with the recipients, families or legal guardian(s), physicians and others involved with care.

B. The following must be contained in the plan of care or documents used in the development of the plan of care. The plan of care and all supporting documentation must be available for review in the recipient's file:

(1) statement of the nature of the specific problem and needs of the woman or infant;

(2) description of the intermediate and long-range goals with the projected timetable for their attainment, including specific information on the duration and scope of services; and

(3) statement and rationale of the plan of treatment

for achieving these intermediate and long-range goals, including review and modification of the plan.

C. The plan of care must be retained by agency providers and be available for utilization review purposes. Plans of care must be updated and revised, as indicated, at least every six [(6)] months or more often, as indicated by the recipient's condition.

[2/1/1995; 5/15/1996; 8.326.3.15 NMAC - Rn, 8 NMAC 4.MAD.772.6, 3/1/2012; A, 4/5/2022]

PUBLIC EDUCATION DEPARTMENT

At a public hearing on March 15, 2022, the Public Education Department agreed to repeal 6.64.3 NMAC, Competencies for Entry-Level Reading Teachers, filed 10/31/2001, and replace it with 6.64.3 NMAC, Competencies for Entry-Level Reading Teachers, adopted 3/24/2022 and effective 04/05/2022.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 64 SCHOOL PERSONNEL - COMPETENCIES FOR LICENSURE PART 3 COMPETENCIES FOR ENTRY-LEVEL READING TEACHERS

6.64.3.1 ISSUING AGENCY: Public Education Department (PED).

[6.64.3.1 NMAC - Rp, 6.64.3.1, 4/5/2022]

6.64.3.2 SCOPE: Chapter 64, Part 3, governs the competencies used by New Mexico institutions of higher education to establish a curriculum for persons seeking an endorsement in reading to a New Mexico educator license.

[6.64.3.2 NMAC - Rp, 6.64.3.2, 4/5/2022]

6.64.3.3 STATUTORY AUTHORITY: Sections 9-24-8, 22-2-1, 22-2-2, and 22-10A-3 NMSA 1978.

[6.64.3.3 NMAC - Rp, 6.64.3.3, 4/5/2022]

6.64.3.4 DURATION: Permanent

[6.64.3.4 NMAC - Rp, 6.64.3.4, 4/5/2022]

6.64.3.5 EFFECTIVE DATE: April 5, 2022, unless a later date is cited at the end of a section.

[6.64.3.5 NMAC - Rp, 6.64.3.5, 4/5/2022]

6.64.3.6 OBJECTIVE: This rule establishes entry-level reading competencies based on what beginning reading teachers are required to know and be able to do to provide effective reading instruction in New Mexico schools. The competencies were developed to ensure alignment with the New Mexico's content standards and benchmarks for reading and with the national standards of the international reading association.

[6.64.3.6 NMAC - Rp, 6.64.3.6, 4/5/2022]

6.64.3.7 DEFINITIONS: [RESERVED]

6.64.3.8 REQUIREMENTS:

A. Beginning teachers seeking an endorsement in reading to an initial level 1 New Mexico teaching license shall complete 24 to 36 hours in the teaching of reading and pass a content area test in the teaching of reading.

B. Teachers seeking to add an endorsement in the teaching of reading to an existing New Mexico teaching license of any level shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments as provided in 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted

comparable licensure test(s) from another state in reading; or

(2)

successfully complete an undergraduate academic major comprising 24 to 36 semester hours, or coursework equivalent to an undergraduate major or a graduate degree in the teaching of reading; or

(3) obtain

certification in reading for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards; or

(4)

successfully complete a minimum of 80 hours of professional development and submit a statement of impact that includes the instructional changes the teacher made based on the teacher’s learning within the professional development. The professional development shall include 40 hours of documented live sessions – virtually or in person – with a certified facilitator and a minimum of 40 hours of online coursework, which shall include assessments of knowledge and understanding, for which a score of at least eighty percent is required. The professional development shall be provided by an organization accredited by the international dyslexia association, and which aligns with the science of reading and a structured literacy approach that:

(a)

promotes explicit, systematic, and cumulative instruction as the primary approach;

(b)

promotes an understanding of how language, reading, and writing relate to one another;

(c)

promotes strategies for differentiated instruction for students with reading difficulties and disabilities and English language learners;

(d)

focuses on all five components of literacy instruction – phonemic awareness, phonics, fluency, vocabulary, and comprehension; and

(e)

allows participants to implement the strategies into a classroom

environment with the opportunity for feedback throughout the professional development experience.

[6.64.3.8 NMAC - Rp, 6.64.3.8, 4/5/2022]

6.64.3.9 COMPETENCIES FOR ENTRY-LEVEL READING TEACHERS:

A. Philosophy of reading instruction.

(1) Reading

as a complex, interactive, and constructive process.

(a)

Recognizes the importance of teaching reading as a balanced process incorporating skills and strategies in a meaningful context.

(b)

Recognizes the importance of using a wide variety of print throughout the curriculum, including high-quality children’s or adolescent literature and diverse expository materials appropriate to the age and developmental level of learners.

(c)

Has knowledge of current and historical perspectives about the nature and purposes of reading and about widely used approaches to reading instruction.

(d)

Recognizes and appreciates the role and value of language, language diversity, and culture in the reading and learning processes.

(e)

Recognizes the importance of embedding reading instruction in a meaningful context for the purpose of accomplishing specific, authentic tasks or for pleasure.

(f)

Recognizes the value of reading aloud to learners.

(g)

Recognizes the influence and value of family in reading development.

(2)

Professionalism.

(a)

Pursues knowledge of reading, learning processes, and other key educational developments by reading professional journals and publications and participating in conferences and

other professional activities such as technology, bilingualism, and multiculturalism.

(b)

Uses what is learned through professional inquiry and reflection to improve teaching and assessment techniques.

(c)

Interacts and participates in decision-making with teachers, teacher educators, parents, and researchers and plays an active role in schools, classrooms, and the wider professional community.

(d)

Supports and participates in efforts to improve the reading profession by being knowledgeable about licensure, certification, and other professional issues.

(e)

Participates in local, state, national, and international professional organizations whose mission is the improvement of literacy.

(f)

Promotes collegiality with other literacy professionals through regular conversations, discussions, and consultations about learners, literacy theory, and instruction.

(g)

Shares knowledge, collaborates, and teaches with colleagues, across the full range of school and educational programs.

(3) Moral

dimensions and values.

(a)

Recognizes the importance of literacy as a mechanism for personal and social growth.

(b)

Recognizes that literacy can be a means for transmitting moral and cultural values within a community.

(c)

Recognizes values and is sensitive to human diversity.

(d)

Recognizes and is sensitive to the needs and rights of individual learners.

(4)

Perspectives about readers and reading.

(a) Understands and accepts the importance of reading as a means to learn, to access information, and to enhance the quality of life.	(c) Is aware of the linguistic, sociological, cultural, cognitive, and psychological bases of the reading process.	(j) Understands the relationship of phonemic, morphemic, and semantic syntactic systems of language to the reading process.
(b) Understands and is sensitive to differences among learners and how these differences influence reading.	(d) Is aware of the impact of physical, emotional, social, cultural, environmental, and intellectual factors on learning, language development, and reading.	(7) A literate environment.
(c) Understands and respects cultural, linguistic, and ethnic diversity, and recognizes the positive contributions of diversity.	(e) Recognizes dialect variations and respects linguistic differences.	(a) Promotes the development of a literate environment that fosters interest and growth in all aspects of literacy.
(d) Understands importance of integrated community and school efforts in meeting the needs of diverse learners.	(6) Knowledge of the reading process.	(b) Uses texts to stimulate interest, promote reading growth, foster appreciation for the written word, and increase the motivation of learners to read widely and independently for information and for pleasures.
(e) Understands the importance of making reading relevant to the learners' lives.	(a) Perceives reading as the process of constructing meaning through the interaction of the reader's existing knowledge, the information suggested by the written language, and the context of the reading situation.	(c) Models and discusses reading as a valuable activity.
(f) Believes all students can learn to read and share in the communication process.	(b) Understands the spectrum of the pre-K-12 reading process and how to effectively address the needs of learners of different ages.	(d) Engages students in activities that develop their image of themselves as literate.
(g) Recognizes the importance of using reading in positive ways in the classroom.	(c) Uses the relationships among reading, writing, listening, and speaking to reinforce learning.	(e) Promotes feelings of pride and ownership for the process and content of reading.
(h) Recognizes the value and importance of creating a supportive and positive environment for literacy learning.	(d) Has knowledge of developmentally appropriate practices that support emergent literacy, particularly of diverse learners.	(f) Provides regular opportunities for learners to select from and be exposed to a wide variety of books or other quality written materials.
(i) Recognizes the importance of providing learners opportunities in all aspects of literacy.	(e) Is aware that reading develops best through activities that embrace concepts about the purpose and function of reading and writing and the conventions of print.	(g) Provides opportunities for students to be exposed to various purposes for reading and writing, to experience reading and writing as relevant to themselves, and to write and have their writing responded to in a positive way.
(j) Recognizes the importance of implementing literacy programs designed to meet the needs of the students.	(f) Is able to explain and model the various word recognition, vocabulary, and comprehension strategies used by fluent readers.	(h) Recognizes the importance of providing time for reading of extended text for authentic purposes.
(k) Recognizes the importance of building on the strengths of individual learners.	(g) Understands the role of metacognition in reading.	(i) Provides opportunities for students to respond personally, analytically, and critically to a variety of texts.
(5) Language development, cognition, and learning. (a) Understands that language is a symbolic system.	(h) Has knowledge of the importance of reading for language development; listening ability; cognitive, social, and emotional development; and perceptual motor abilities.	B. Organization of effective instruction.
(b) Understands and uses major theories of language development, cognition, and learning and uses them in a well-planned and comprehensive reading program.	(i) Understands the nature and multiple causes of reading disabilities.	(1) Knowledge of contextual factors. (a) Understands that all students have the ability to learn to read and that certain

conditions are necessary for this to happen.

(b)

Understands how factors such as content, purpose, tasks, and settings influence the reading process.

(c)

Provides flexible grouping based on students' instructional levels, rates of progress, interests, or instructional goals.

(d)

Understands how assessment and grouping procedures can influence motivation and learning.

(e)

Understands the relationship between environmental factors, cultural factors, and students' performance on measures of reading achievement.

(f)

Understands the relationship home factors, social factors, cultural factors, and reading habits have in students' performance.

(g)

Understands the influence of school programs (e.g., remedial, gifted, tracking) on students' learning.

(2) Knowledge

of individual differences (possesses strategies to deal with differences).

(a)

Understands what the reader brings to the reading experience (e.g., prior knowledge, metacognitive abilities, aptitudes, motivation, attitude).

(b)

Understands the influence of cultural, ethnic, and linguistic backgrounds on the reading process.

(c)

Understands the relationship among reader's self-concept, attitudes, and learning.

(d)

Understands the interactive nature and multiple causes of reading difficulties.

(3) Knowledge

of instructional materials.

(a)

Understands how to design, select, modify, and evaluate materials that reflect curriculum goals, current knowledge, and the interests, motivation, and needs of individual learners.

(b)

Has a thorough understanding of literature for children and young adults, including multicultural literature.

(c)

Understands the structure and content of various texts used for instruction.

(d)

Understands and uses new instructional technologies.

(e)

Understands methods for determining whether materials are clear and appropriate for individual students.

C. Knowledge of

instructional strategies.

(1) Teaching

strategies.

(a)

Understands the importance of using a balanced approach to the teaching of reading that integrates the full range of effective instructional strategies.

(b)

Has a thorough understanding of phonics including effective strategies for teaching sounds, blends, diagraphs, diphthongs, and other key aspects of reading.

(c)

Has a thorough understanding of comprehension including effective strategies for teaching the use of background knowledge, summarizing, prediction, synthesizing, and other key aspects of reading.

(d)

Has a thorough understanding of children's literature including strategies for teaching children to use language and literature to gain insight into their own and others' lives, to build understanding of moral and aesthetic dimensions of human experience, and other key aspects of reading.

(e)

Understands the importance of modeling reading for children, including strategies for oral reading, questioning strategies, reading for pleasure, and reading for understanding.

(f)

Provides direct instruction and models what, when, and how to use reading strategies with narrative and expository texts.

(g)

Uses strategies to encourage and motivate students to pursue and respond to reading and writing for personal growth and fulfillment.

(h)

Teaches effective study strategies.

(2) Learning

strategies.

(a)

Helps students learn and apply comprehension strategies for a variety of purposes.

(b)

Helps students monitor their comprehension and reading processes.

(c)

Understands and helps students learn and apply reading comprehension strategies in the content areas.

(d)

Helps students gain understanding of the conventions of language and literacy.

(e)

Teaches word recognition through the use of phonics, contextual analysis, word analysis, and syntactic cueing strategies.

(f)

Helps students learn that word recognition strategies aid comprehension.

(g)

Helps students learn effective techniques and strategies for the ongoing development of vocabulary.

(h)

Helps students analyze information presented in a variety of texts including narratives, expository, practical, and technical documents.

(i)

Helps students connect prior knowledge with new information.

(j)

Assists students in becoming self-sufficient and independent readers.

(k)

Helps students use new technology and media effectively.

(3)

Demonstrate knowledge of assessment principles and techniques.

(a)

Recognizes that a critical goal of assessment is to help the student become a more reflective and self-sufficient learner.

(b) Recognizes assessment as an ongoing and indispensable part of reflective teaching and learning.	(f) Interprets and communicates research findings related to the improvement of instruction to colleagues and the wider community.	(f) Understands and uses multiple indices of professional growth.
(c) Recognizes and understands that assessment must consider the complex nature of reading, writing, and language, and must be based on a range of authentic literacy tasks using a variety of texts.	(g) Communicates with allied professionals in assessing and planning instruction.	(3) Research. (a) Initiates, participates in, or applies research on reading.
(d) Is able to conduct assessments that involve multiple measures over time and in different contexts.	D. Planning and enhancing programs. (1) Curriculum and development.	(b) Reads or conducts research within a range of methodologies (e.g., ethnographic, descriptive, experimental, historical).
(e) Uses information from norm-referenced tests, criterion-referenced tests, formal and informal inventories, constructed-response measures, portfolio-based assessment, observations, anecdotal records, journals, and other indicators of students' progress as basis for instruction.	(a) Initiates and participates in ongoing curriculum development and assessment.	(c) Promotes and facilitates teacher- and classroom-based research.
(f) Recognizes and understands the importance of using meaningful assessment to improve curriculum and instruction.	(b) Adapts programs to the needs of different learners to accomplish different purposes.	(d) Is a knowledgeable consumer of research.
(4) Communicate information about reading.	(c) Is able to coordinate and support all services associated with reading programs.	(4) Reading instruction in New Mexico. (a) Is knowledgeable about the New Mexico Standards of Excellence, including goals for all students, educational plan for student success, and the content standards with benchmarks for pre-K-12.
(a) Communicates effectively with students, parents, teachers, and support personnel about strengths and areas that need improvement.	(d) Understands and uses multiple indicators of curriculum effectiveness.	(b) Is knowledgeable about current policy and legislation that affects reading. [6.64.3.9 NMAC - Rp, 6.64.3.9, 4/5/2022]
(b) Able to communicate to parents important information about the developmental nature of reading and expectations for achievement.	(e) Is able to evaluate adoption materials and other instructional materials to best support and develop a balanced curriculum.	6.64.3.10 IMPLEMENTATION: Institutions of higher education that prepare teachers shall deliver the competencies in a PED-approved endorsement program within a range of 24 to 36 semester hours of credit, 12 semester hours of which must be upper division credit. [6.64.3.10 NMAC - Rp, 6.64.3.10, 4/5/2022]
(c) Understands how to involve parents in cooperative efforts and programs to help students with reading development.	(2) Professional development.	HISTORY OF 6.64.3 NMAC: 6.64.3 NMAC, Competencies for Entry-Level Reading Teachers, filed 6/30/2006, was repealed and replaced by 6.64.3 NMAC, Competencies for Entry-Level Reading Teachers, effective 4/5/2022.
(d) Communicates information about reading programs to administrators, staff members, school board members, parents, and the community.	(a) Engages in an ongoing program of personal professional development.	
(e) Effectively communicates information and data about reading to the media, policymakers, and the public.	(b) Has a knowledge of resources, organizations, web sites, and other sources that provide opportunities and support for professional development.	
	(c) Incorporates what is learned from personal professional development into the classroom and is able to share this information with others.	
	(d) Facilitates an inclusive approach to professional development by respecting and appreciating each participant's potential contributions.	
	(e) Provides professional development experiences that effectively meet and are appropriate for school needs.	

**REGULATION AND LICENSING DEPARTMENT
BARBERS AND COSMETOLOGISTS, BOARD OF**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 17 LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, DEPENDENT CHILDREN AND VETERANS**

16.34.17.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists.
[16.34.17.1 NMAC – N, 4/15/2022]

16.34.17.2 SCOPE: Part 17 of Chapter 34 sets forth application procedures to expedite licensure for military service members, spouses and veterans.
[16.34.17.2 NMAC – N, 4/15/2022]

16.34.17.3 STATUTORY AUTHORITY: Part 17 of Chapter 34 is promulgated pursuant to and in accordance with Sections 61-17A-7 and 61-1-34 NMSA 1978.
[16.34.17.3 NMAC – N, 4/15/2022]

16.34.17.4 DURATION: Permanent.
[16.34.17.4 NMAC – N, 4/15/2022]

16.34.17.5 EFFECTIVE DATE: April 14, 2022, unless a later date is cited at the end of this section.
[16.34.17.5 NMAC – N, 4/15/2022]

16.34.17.6 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.
[16.34.17.6 NMAC – N, 4/15/2022]

16.34.17.7 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 Barbers and Cosmetologists Act 61-17A-1 to 25 NMSA 1978.

E. “Veteran” has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.
[16.34.17.7 NMAC – N, 4/15/2022]

16.34.17.8 APPLICATION REQUIREMENTS:

A. Applications for registration shall be completed on a form provided by the Barbers and Cosmetologists 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 as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

E. Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

F. A license issued pursuant to this section shall be valid for the time period that is specified in the Barbers and Cosmetologists Act.
[16.34.17.8 NMAC – N, 4/15/2022]

16.34.17.9 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 16.34.2 NMAC pursuant to Chapter 61, Articles 2 through 34 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.

[16.34.17.9 NMAC – N, 4/15/2022]

HISTORY OF 16.34.17 NMAC:
[RESERVED]

REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS, BOARD OF

This is an amendment to 16.34.2 NMAC, Sections 7, 13, 14 and 15, effective 4/15/2022.

16.34.2.7 DEFINITIONS:

~~**A.** Military service member: means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.~~

~~**B.** Recent veteran: means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.]~~

RESERVED

[16.34.2.7 NMAC - Rp 16 NMAC 34.2.7, 6/16/2001; A, 12/17/2015; Repealed, 4/15/2022]

16.34.2.13 ~~[EXPEDITED-LICENSURE – MILITARY SERVICE MEMBERS, SPOUSES & VETERANS:~~

~~**A.** Applications shall be completed on a form provided by the board.~~

~~**B.** The information shall include:~~

~~**(1)** Completed application and fee pursuant to 16.34.2 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 the applicant applies for pursuant to Chapter 61, Articles 2 through 34 NMSA 1978.~~

~~**(3)** Proof of honorable discharge (DD214) or military ID card or accepted proof of military spouse status.~~

~~**C.** Electronic signatures will be acceptable for applications submitted pursuant to 16.34.1 NMAC through 16.34.16 NMAC.~~

~~**D.** Renewal for a license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance set forth in 16.34.2 NMAC pursuant to Chapter 61, Articles 2 through 34 NMSA 1978.] **RESERVED**
[16.34.2.13 NMAC - N, 12/17/2015; Repealed, 4/15/2022]~~

16.34.2.14 ~~[RENEWALS-EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES & VETERANS:~~

~~**A.** Timely renewal of license(s) is the full and complete responsibility of the LICENSEE. Failure to renew the license by the expiration date will result in late fees or reexamination as set forth in the act.~~

~~**B.** Practitioner licenses expire every year, at the end of the practitioner's birth month.~~

~~**C.** A licensee, with a valid instructor license for the preceding 12 months, may use the instructor license to renew or reinstate his original practitioner license.~~

~~**D.** The board will issue renewal licenses within fifteen working days of receipt of the renewal request and applicable fee.~~

~~**E.** Electronic signatures will be acceptable for applications submitted pursuant to 16.34.1 NMAC through 16.34.16 NMAC.] **RESERVED**~~

[16.34.2.14 NMAC - N, 12/17/2015; Repealed 4/15/2022]

16.34.2.15 CRIMINAL CONVICTIONS:

~~**A.** Felony 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 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, or other related felony sexual offenses;~~

~~**(4)** crimes involving child abuse or neglect;~~

~~**(5)** crimes involving fraud, forgery, embezzlement, credit card fraud, or receiving stolen property; 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 felony criminal conviction as part of an application for licensure unless the felony conviction in question is one of the disqualifying felony 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 felony criminal conviction unless the felony conviction in question is one of the disqualifying felony criminal convictions listed in Subsection A of this rule.~~

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 Barbers and Cosmetologists 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 felony criminal convictions listed in Subsection A of this rule.

E. 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 Subsection A of this rule.
 [16.34.2.15 NMAC - N, 4/15/2022]

REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS, BOARD OF

This is an amendment to 16.31.14 NMAC, Section 8, effective 4/15/2022.

16.34.14.8 FEES: The fees for examination, original licensure and annual renewal, licensure by reciprocity and special fees are as follows:

- A.** Enterprise or establishment license (original) \$200.00
- B.** Enterprise or establishment license (renewal) \$50.00
- C.** Booth establishment license (original) \$200.00

- D.** Booth establishment license (renewal) \$50.00
- E.** School license (original and renewal) \$500.00
- F.** Relocation of a school \$185.00
- G.** Barber license (original and renewal) [~~\$50.00~~] \$100.00
- H.** Cosmetologist license (original and renewal) [~~\$50.00~~] \$100.00
- I.** Hairstylist license (original and renewal) \$50.00
- J.** Manicurist/pedicurist license (original and renewal) [~~\$50.00~~] \$100.00
- K.** Manicurist/esthetician license (original and renewal) [~~\$50.00~~] \$100.00
- L.** Electrologist license (original and renewal) [~~\$50.00~~] \$100.00
- M.** Esthetician license (original and renewal) [~~\$50.00~~] \$100.00
- N.** Instructor license (original and renewal) [~~\$50.00~~] \$100.00
- O.** Reciprocity (original) \$150.00
- P.** Administrative fee (other examination administrative costs) a maximum of \$100.00
- Q.** Administrative fee (lists on disks) \$95.00
- R.** Administrative fee (relocation of establishments, etc.) \$25.00
- S.** Examinations and re-examinations all licenses except instructor a maximum of \$100.00
- T.** Instructor examination and re-examination a maximum of \$100.00
- U.** Duplicate licenses \$25.00

- V.** Student permit license \$25.00
 - W.** Barber apprentice license \$25.00
 - X.** Late fee \$40.00
 - Y.** Provider approval, initial and renewal \$50.00
 - Z.** Re-inspection fee up to \$200.00.
- [16.34.14.8 NMAC - Rp 16 NMAC 34.14.8, 6/16/2001; A, 7/16/2004; A, 10/04/2007; A, 4/12/2010; A, 10/29/2016; A, 7/14/2018; A, 4/15/2022]

REGULATION AND LICENSING DEPARTMENT PODIATRY BOARD

This is an amendment to 16.21.6 NMAC, Section 2, 6, 7, 8, 9 and part name change effective 04/23/2022

PART 6 LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, DEPENDENT CHILDREN AND VETERANS

16.21.6.2 SCOPE: This part sets forth application procedures to expedite licensure for military service members, spouses, dependent children and veterans.
 [16.21.6.2 NMAC - N, 3/13/2014; A, 04/23/2022]

16.21.6.6 OBJECTIVE: The purpose of this part is to expedite licensure for military service members, spouses, dependent children and veterans pursuant to [NMSA-1978, Section 61-1-34] Section 61-1-34 NMSA 1978.
 [16.21.6.6 NMAC - N, 3/13/2014; A, 04/23/2022]

16.21.6.7 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.] **“License”** has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

B. [“Recent veteran” means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.] **“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 Podiatry Act, Section 61-8-1 through 61-8-17 NMSA 1978.

E. **“Veteran”** has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

[16.21.6.7 NMAC - N, 3/13/2014; A, 04/23/2022]

16.21.6.8 APPLICATION REQUIREMENTS:

A. Applications for registration shall be completed on a form provided by the [department] board.

B. The applicant shall provide a complete application that includes, but is not limited to the following items:

(1) a completed application and corresponding fee pursuant to 16.21.2.8 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 the United States armed forces, that has met the minimal licensing

requirement that are substantially equivalent to the licensing requirements for the occupational or professional license the applicant applies for pursuant to Chapter 61, Article 8 NMSA 1978; and

(3) proof of honorable discharge (DD214) or military ID card or accepted proof of military spouse status;

C. Electronic signatures will be acceptable for applications submitted pursuant to section 14-16-1 through section 14-16-19 NMSA 1978.:

(1) applicant’s full name;

(2) current mailing address;

(3) current electronic mail address;

(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 the 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 member: copy of spouse’s military orders, and a copy of marriage license;

(c) for spouses of deceased military service members; copy of spouse’s DD214 and copy of marriage license;

(d) for dependent children of military

service members; copy of military order listing dependent child, or copy of military service member’s federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD214 showing proof of honorable discharge.

D. the license or registration shall be issued by the board as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

E. Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

F. A license issued pursuant to this section shall be valid for the time period that is specified in the Podiatry Act.

[16.21.6.8 NMAC - N, 3/13/2014; A, 04/23/2022]

16.21.6.9 RENEWAL REQUIREMENTS:

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance and for the renewal of a license pursuant to Chapter 61, Articles 8 NMSA 1978.

B. A license issued pursuant to this section shall be valid until the next renewal, which is the next January 1.

C. The board office mails license renewal notifications to licensees before the license expiration date. Failure to receive the renewal notification shall not relieve the licensee of the responsibility of renewing the license by the expiration date.

D. The renewal application will be available online at the board’s website and in paper copy if requested from the board office and must be post-marked or hand-

delivered on or before January 1 of each year:

~~E. To renew a license, the licensee must submit the following documentation on or before January 1 a completed license renewal application, verification of continuing education, and the applicable renewal fee at the time of renewal.~~

~~F. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance specified in 16.21.3 or 16.21.4 NMAC and for the renewal of a license specified in 16.21.7 and 16.21.8 NMAC pursuant to Chapter 61, Articles 8 through 16 NMSA 1978.]~~

B. As a courtesy, the board wills end via electronic mail license renewal notifications to licensees or registrants before the license expiration date to the last know 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.
[16.21.6.9 NMAC - N, 3/13/2014; A, 04/23/2022]

**REGULATION AND LICENSING DEPARTMENT
PODIATRY BOARD**

This is an amendment to 16.21.11 NMAC, Section 10 effective 04/23/2022.

16.21.11.10 SUSPENSION, REVOCATION OR REFUSAL OF A LICENSE: For the purpose of the Podiatry Act, Section 61.8.11.10 NMSA 1978 of, the following may apply.

A. "Gross negligence" or "gross incompetency" means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients, or any act or omission by a podiatrist such as to indicate a willful act or injury to the patient, or such incompetence on the part of the podiatrist as to render the

podiatrist unfit to hold himself out to the public as a licensed podiatrist.

B. "Unprofessional conduct" means, but is not limited to:

(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 profession;

(2) practicing beyond the scope of practice of a podiatrist as defined by the Podiatry Act, Section 61-8-1 NMSA 1978, or board rule;

(3) failure of a podiatrist to comply with the following advertising guidelines:

(a) shall not advertise in a false, fraudulent or misleading manner;

(b) shall include in the advertisement the podiatrist's name or medical group name, address and telephone number.

(4) the making of false or misleading statement in communication with patients or potential patients;

(5) the use of misleading or deceptive titles or designations in a name or title of a podiatric practice, including the unauthorized advertisement of a specialty designation;

(6) failure to release to a patient copies of that patient's records and x-rays;

(7) ~~[conviction of a felony; a certified copy of the record of the court of conviction shall be proof of such conviction]~~ disqualifying felony criminal conviction, defined below in Section C of this part;

(8) impersonating another person licensed to practice podiatry or permitting or allowing any person to use his license or certificate of registration;

(9) deliberate and willful failure to reveal, at the

request of the board, the incompetent, dishonest, or corrupt practices of another podiatrist licensed or applying for licensure by the board;

(10) accept rebates, or split fees or commissions from any source associated with the service rendered to a patient; provided, however, the sharing of profits in a professional partnership, association, HMO, or similar association shall not be construed as fee-splitting;

(11) injudicious prescribing, administration, or dispensing of any drug or medicine;

(12) sexual misconduct;

(13) the use of a false, fraudulent or deceptive statement in any document connected with the practice of podiatry;

(14) the falsifying of medical records, whether or not for personal gain;

(15) any intentional conduct or practice which is harmful or dangerous to the health of the patient;

(16) fraud, deceit or misrepresentation in any renewal or reinstatement application;

(17) obtaining or attempting to obtain a license through fraud, misrepresentation, or other dishonesty;

(18) cheating on an examination for licensure;

(19) violation of any order of the board, including any probation order;

(20) treating patients when the podiatrist is under the influence of alcohol, illegal drugs, or injudicious use of prescription medications; or

(21) failure to report to the board the involuntary surrender of a license to practice in another state, or involuntary surrender of membership on any medical staff or in any podiatric or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(22) willful abandonment of a patient;

(23) has failed to furnish the board, its investigators or its representatives with information requested by the board or the committee in the course of an official investigation;

(24) breach of ethical standards, an inquiry into which the board will begin by reference to the code of ethics of the American podiatric medical association.

C. “Disqualifying criminal conviction” has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

(1) Convictions for any of the following felony offenses, or their equivalents in any other jurisdiction, are disqualifying criminal conviction that may disqualify an applicant from receiving or retaining a license issued by the board:

- (a) homicide or manslaughter;
- (b) trafficking, or trafficking a controlled substance;
- (c) kidnapping, false imprisonment, aggravated assault or aggravated battery;
- (d) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;
- (e) crimes involving adult abuse, neglect or financial exploitation;
- (f) crimes involving child abuse or neglect;
- (g) crimes involving robbery, larceny, extortion, burglary, bribery, fraud, forgery, embezzlement, credit card fraud, or receiving stolen property;
- (h) practicing medicine without a license;
- (i) failure to comply with a proclamation of the governor; or
- (j) an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

(2) 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 in this subsection.

(3) 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 this subsection.

(4) 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 Podiatry 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 the subsection.

(5) 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:

- (a) an arrest not followed by a valid conviction;
- (b) a conviction that has been sealed, dismissed, expunged or pardoned;
- (c) a juvenile adjudication; or
- (d) a conviction for any crime other than the disqualifying criminal convictions listed in this subsection.

[16.21.11.10 NMAC - Rp,
16.21.11.10 NMAC 5/3/2019, A,
04/23/2022]

End of Adopted Rules

Other Material Related to Administrative Law

**AUDITOR, OFFICE OF
THE STATE**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Office of the State Auditor gives Notice of a Minor, Nonsubstantive Correction to 2.2.2 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

Section 15: In subsection D, there was paragraph (1) without a paragraph (2). The erroneous paragraph number was renumbered to conform to correct legislative style.

A copy of this Notification will be filed with the official version of each of the above rules.

**HEALTH,
DEPARTMENT OF**

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH
ACTING SECRETARY DAVID
R. SCRASE, M.D.**

March 18, 2022

**Public Health Emergency Order
Clarifying that Current Guidance
Documents, Advisories, and
Emergency Public Health Orders
Remain
in Effect; and Amending Prior
Public Health Emergency Orders
to
Impose Certain Public Health
Measures**

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). While vaccines are the most effective method to prevent the spread of COVID-19, masks, social distancing and self-isolation measures continue to be necessary to protect New Mexicans who are ineligible to receive a COVID-19 vaccine or who choose not to receive a vaccine. All New Mexicans should continue to adhere to social distancing protocols when required to protect our State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans continue social distancing measures.

It is hereby **ORDERED** that

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. December 15, 2020 Amended Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition COVID- 19 Test Results to the New Mexico Epidemiology and Response Division;

B. January 8, 2021 Emergency Order Implementing Administration and Reporting Requirements for All COVID-19 Vaccine Providers;

C. April 5, 2021 Amended Public Health

Emergency Order Temporarily Limiting Long-Term Care Facilities Visitation Due to COVID-19;

D. February 26, 2021 Public Health Emergency Order Implementing Administration Requirements for all COVID-19 Vaccine Providers and Requiring Accurate Information be Provided by Individuals Registering to Receive the COVID-19 Vaccine; and

E. December 2, 2021 Amended Public Health Emergency Order Requiring All School Workers Comply with Certain Health Requirements and Requiring Congregate Care Facility Workers, Hospital Workers, and Employees of the Office of the Governor Be Fully Vaccinated and Receive Booster Vaccines.

3. The February 17, 2022 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Impose Certain Public Health Measures is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through April 1, 2022;

WHEREAS, confirmed cases in the United States have risen to more than 79 million and confirmed COVID-19 infections

in New Mexico have risen to over 500,000;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 900,000 Americans and over 7,000 New Mexicans;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, vaccination, social distancing and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, David R. Scrase, M.D., Acting Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her

emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

I HEREBY DIRECT AS FOLLOWS:

(1) Unless a healthcare provider instructs otherwise, all individuals ages 2 years and older shall wear a mask or multilayer cloth face covering in all public hospitals, profit or nonprofit private hospitals, general hospitals, special hospitals, nursing homes, assisted living facilities, adult day cares, hospice facilities, rehabilitation facilities, State correctional facilities, juvenile justice facilities, residential treatment centers, the New Mexico State Veterans' Home, and community homes except when eating or drinking. Nothing in this Order shall be construed as prohibiting any business, house of worship, non-profit entity, or other entity from imposing more stringent requirements.

(2) Any business, establishment, or non-profit (other than those which are a healthcare operation, utility, or indigent care services) which members of the public regularly visit must report to the New Mexico Environment Department when there is an occurrence of a rapid response. The New Mexico Environment Department shall monitor when an entity has four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Businesses, establishments, or non-profits with four or more rapid responses shall not be required to

cease operations. However, the rapid responses must be reported to the Environment Department so that the public may be made aware of the positive cases.

(3) All businesses, establishments, and non-profit entities must adhere to the pertinent COVID-Safe Practices

(4) Private educational institutions serving children and young adults from pre-Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall continue to adhere to the face covering requirements contained in the New Mexico Public Education Department's "COVID-19 Response Toolkit for New Mexico's Public Schools", available at <https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>, until the school district, governing local education agency, or private educational institution elects otherwise. Public and private educational institutions shall adhere to the other COVID-Safe Practices requirements for in-person instruction contained in the COVID-19 Response Toolkit for New Mexico's Public Schools, and may operate up to maximum capacity. Public and private educational institutions shall follow the reporting, testing, and closure requirements set forth by the Public Education Department in the COVID-19 Response Toolkit for New Mexico's Public Schools.

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from

enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect immediately and remain in effect through April 15, 2022.

(5) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(6) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under NMSA 1978, Section 12-10A-19.

**ATTEST:
DONE AT THE EXECUTIVE
OFFICE
THIS 18TH DAY OF MARCH
2022**

**WITNESS MY HAND AND THE
GREAT SEAL OF THE STATE
OF NEW MEXICO**

/ S /

**MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE**

/ S /

**DAVID R. SCRASE, M.D.
ACTING SECRETARY OF THE
NEW MEXICO DEPARTMENT
OF HEALTH**

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Human Services Department, Medical Assistance Division gives Notice of a Minor, Nonsubstantive Correction to 8.314.5 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

Section 11: In subsection C, statutory citation within paragraph (1) was corrected to conform to correct legislative style.

A copy of this Notification will be filed with the official version of each of the above rules.

**REGULATION AND
LICENSING DEPARTMENT
CANNABIS CONTROL DIVISION**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Regulation and Licensing Department, Cannabis Control Division gives Notice of a Minor, Nonsubstantive Correction to 16.8.7 NMAC and 16.8.3 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

16.8.7 NMAC

The effective date on Transmittal Form has incorrect date of "03/09/2022". By operation of law, the effective date for an emergency rule filing can be the date of filing or later.

Section 8: In subsection A, sentence underneath first table should be, "*Pesticide testing required unless exempted by Subsection E below." It is incorrect to refer to "paragraph E". In subsection E, there was change from "ninety days" to "90 days" to conform to correct legislative style.

16.8.3 NMAC

The effective date for this

Amendment on this Transmittal Form has incorrect date of "03/22/2022". By operation of law, because this new rule does not take effect until April 1, 2022, the earliest this amendment can become effective is also April 1, 2022.

Section 8: In subsection A, paragraph (3), subparagraphs were incorrectly numbered as (1) through (5). These subparagraphs were renumbered as (a) through (e) to conform to correct legislative style.

A copy of this Notification will be filed with the official version of each of the above rules.

**REGULATION AND
LICENSING DEPARTMENT
RESPIRATORY CARE
ADVISORY BOARD**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Regulation and Licensing Department, Respiratory Care Advisory Board gives Notice of a Minor, Nonsubstantive Correction to 16.23.1 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

Section 7: In subsections B, U and V, there were paragraph (1) without a paragraph (2). The erroneous paragraph number was renumbered to conform to correct legislative style.

A copy of this Notification will be filed with the official version of each of the above rules.

**End of Other Material
Related to Administrative
Law**

2022 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXIII, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 11
Issue 2	January 13	January 25
Issue 3	January 27	February 8
Issue 4	February 10	February 22
Issue 5	February 24	March 8
Issue 6	March 10	March 22
Issue 7	March 24	April 5
Issue 8	April 7	April 19
Issue 9	April 21	May 3
Issue 10	May 5	May 24
Issue 11	May 26	June 7
Issue 12	June 9	June 21
Issue 13	July 1	July 12
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Issue 17	August 25	September 13
Issue 18	September 15	September 27
Issue 19	September 29	October 11
Issue 20	October 13	October 25
Issue 21	October 27	November 8
Issue 22	November 17	November 29
Issue 23	December 1	December 13
Issue 24	December 15	December 27

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

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