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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

Volume XXXIV, Issue 5

March 14, 2023

Table of Contents

Notices of Rulemaking and Proposed Rules

HIGHER EDUCATION DEPARTMENT

Notice of Proposed Rulemaking.....	215
Notice of Proposed Rulemaking.....	215
Notice of Proposed Rulemaking.....	216

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

Notice of Rulemaking.....	217
---------------------------	-----

PUBLIC EDUCATION COMMISSION

Notice of Termination of Public Hearing.....	217
--	-----

REGULATION AND LICENSING DEPARTMENT

DENTAL HEALTH CARE, BOARD OF

Notice of Public Rule Hearing and Regular Board Meeting.....	217
--	-----

PHARMACY, BOARD OF

Notice of Public Rule Hearing and Regular Board Meeting.....	219
--	-----

SIGN LANGUAGE INTERPRETING PRACTICES BOARD

Notice of Proposed Rulemaking and Rule Hearing.....	221
---	-----

WORKFORCE SOLUTIONS, DEPARTMENT OF

Notice of Rulemaking.....	221
---------------------------	-----

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

8.102.500 NMAC	A	Eligibility Policy - General Information.....	223
8.106.500 NMAC	A	Eligibility Policy - General Information.....	224
8.139.120 NMAC	A	Case Administration - Case Management.....	225

MEDICAL ASSISTANCE DIVISION

8.321.2 NMAC	A/E	Specialized Behavioral Health Services - Specialized Behavioral Health Provider Enrollment and Reimbursement.....	229
--------------	-----	--	-----

REGULATION AND LICENSING DEPARTMENT

FINANCIAL INSTITUTIONS DIVISION

12.18.11 NMAC	N	New Mexico Annual Percentage Rate Calculation.....	231
12.18.3 NMAC	A	Mandatory Brochure for Small Loan Businesses.....	232
12.18.4 NMAC	A	Mandatory Signage for Small Loan Businesses.....	233
12.18.8 NMAC	A	Licensing of Nonresident Lenders.....	234
12.18.9 NMAC	A	Refund Anticipation Loans.....	235
12.18.10 NMAC	A	Electronic Media Requirements.....	235

REGULATION AND LICENSING DEPARTMENT

MASSAGE THERAPY BOARD

16.7.4 NMAC	R	Requirements for Licensure.....	236
16.7.8 NMAC	R	Licensure for Military Service Members, Spouses and Veterans.....	236
16.7.4 NMAC	N	Requirements for Licensure by Examination.....	236
16.7.8 NMAC	N	Expedited by Credentials Licensure.....	241
16.7.3 NMAC	A	Fees.....	243
16.7.10 NMAC	A	Examinations.....	244

TAXATION AND REVENUE DEPARTMENT

18.19.5 NMAC	R	Driver’s License.....	244
18.19.5 NMAC	N	Driver’s License.....	244

Other Material Related to Administrative Law

GOVERNOR, OFFICE OF THE

Governor’s Executive Order 2023-036.....	265
--	-----

Notices of Rulemaking and Proposed Rules

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public video/telephonic rulemaking hearing on April 17, 2023. The hearing will begin at 10:00 a.m. and will be held via Microsoft Teams. The purpose of the hearing is to take public comment regarding proposed amendments to **5.7.3 NMAC, NEW MEXICO HEALTH PROFESSIONAL LOAN REPAYMENT PROGRAM (HPLRP)**.

Join via Microsoft Teams:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_M2NiYmY4ZjAtZWM4ZS00Yjk2LWl0NmMtNWVmNTk4YjQ1OTcz%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)
 +1 (505) 312-4308
 Phone Conference ID: 774 653 882#

Purpose:

The purpose of the proposed amendment is to change the number of hours per week which qualify as full-time employment for a program participant. This change will expand eligibility to hospitalists and providers who are employed full-time at 36 hours per week. In addition, the proposed amendment expands the definition of “eligible participant” to include registered nurses.

Summary of proposed rule:

The amendment to 5.7.3.7 NMAC expands the definition of “eligible participant” to include registered nurses. The amendment to Section 5.7.3.9 NMAC changes the number of hours required for full-time

employment from 40 hours per week to 36 hours per week.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.nm.gov> under the “Events” section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on April 17, 2023 from 10:00 a.m. until 10:30 a.m. via Microsoft Teams. Any person who is or may be affected by this proposed rule may participate.

Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. Written comments must be received no later than 4:00 p.m. on April 15, 2023. Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Sections 21-1-26 and 21-22D NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public video/telephonic rulemaking hearing on April 17, 2023. The hearing will begin at 9:00 a.m. and will be held via Microsoft Teams. The purpose of the hearing is to take public comment regarding repeal of **5.7.22 NMAC, LEGISLATIVE ENDOWMENT SCHOLARSHIP**

Join via Microsoft Teams:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_OTQ2ZTlkOGEtODM5Yi00MGQxLTgxMwItNGZiZDBhMjcxYTAw%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)
 +1 (505) 312-4308
 Phone Conference ID: 645 972 642#

Purpose:

The proposed repeal of 5.7.22 NMAC is in alignment with the repeal of Sections 21-21J-1 through 21-21J-8 (being Laws 1995, Chapter 35, Sections 1 through 8). The Sections were repealed by the New Mexico Opportunity Scholarship Act or S.B.140, 55th Leg., 1st Sess. (N.M. 2022).

Summary of proposed rule:

The proposed repeal of 5.7.22 NMAC is in alignment with the repeal of Sections 21-21J-1 through 21-21J-8 (being Laws 1995, Chapter 35, Sections 1 through 8). The Sections were repealed by the New Mexico Opportunity Scholarship Act or S.B.140, 55th Leg., 1st Sess. (N.M. 2022). The Opportunity Scholarship program provides financial support to qualified New Mexico students

who are enrolled at an eligible New Mexico public post-secondary educational institution or tribal college. The scholarship is intended to help defray the cost of tuition and fees. The Department established regulations and procedures for the program in 5.7.37 NMAC NEW MEXICO OPPORTUNITY SCHOLARSHIP PROGRAM effective 7/12/2022.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.nm.gov> under the “Events” section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on April 17, 2023 from 9:00 a.m. until 9:30 a.m. via Microsoft Teams. Any person who is or may be affected by this proposed rule may participate.

Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. Written comments must be received no later than 4:00 p.m. on April 15, 2023. Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978 and Chapter 42, Laws of 2022.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate

in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public video/telephonic rulemaking hearing on April 17, 2023. The hearing will begin at 9:30 a.m. and will be held via Microsoft Teams. The purpose of the hearing is to take public comment regarding repeal of **5.7.23 NMAC, COLLEGE AFFORDABILITY GRANT.**

Join via Microsoft Teams:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_OGI2YmY5MTtZmIzZi00MTQ0LTg0OGMtMWMyNjk1NTk0NWl3%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)
 +1 (505) 312-4308
 Phone Conference ID: 302 658 195#

Purpose:

The proposed repeal of 5.7.23 NMAC is in alignment with the repeal of 21-21L-1 through 21-21L-8 NMSA 1978 (being Laws 2005, Chapter 192, Sections 1 through 8). The Sections were repealed by the New Mexico Opportunity Scholarship Act or S.B.140, 55th Leg., 1st Sess. (N.M. 2022).

Summary of proposed rule:

The proposed repeal of 5.7.23 NMAC is in alignment with the repeal of 21-21L-1 through 21-21L-8 NMSA 1978 (being Laws 2005, Chapter 192, Sections 1 through 8). The Sections were repealed by the New Mexico Opportunity Scholarship Act or

S.B.140, 55th Leg., 1st Sess. (N.M. 2022). The Opportunity Scholarship program provides financial support to qualified New Mexico students who are enrolled at an eligible New Mexico public post-secondary educational institution or tribal college. The scholarship is intended to help defray the cost of tuition and fees. The Department established regulations and procedures for the program in 5.7.37 NMAC NEW MEXICO OPPORTUNITY SCHOLARSHIP PROGRAM effective 7/12/2022.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.nm.gov> under the “Events” section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on April 17, 2023 from 9:30 a.m. until 10:00 a.m. via Microsoft Teams. Any person who is or may be affected by this proposed rule may participate.

Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. Written comments must be received no later than 4:00 p.m. on April 15, 2023. Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978 and Chapter 42, Laws of 2022.

Any person with a disability who is in need of a reader, amplifier, qualified

sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

NOTICE OF RULEMAKING

New Mexico Human Services Department filed an emergency rule change on March 1, 2023, for 8.321.2 NMAC, Specialized Behavioral Health Provider Enrollment and Reimbursement to ensure the Department is not in conflict with Federal Medicaid law, 42 C.F.R. § 431.52(b), which requires the provision of and payment for, covered services out-of-state when they are unavailable in-state. The Department is re-promulgating this rule in full within six months of issuance of the emergency rule in accordance with the New Mexico State Rules Act.

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

Notice Date: March 14, 2023
Public Hearing: April 13, 2023
Adoption Date: July 1, 2023
Technical Citations: 42 C.F.R. § 431.52(b)

The Department has amended the rule as follows:

8.321.2.37 NMAC

Section A Eligible Agencies

To ensure alignment with federal Medicaid requirements regarding payments for services furnished out-of-state, HSD is amending this section to allow Treatment Foster Care (TFC) to be provided by an out-of-state TFC agency when the agency has equivalent accreditation and is

licensed in their own state as a TFC agency.

These amendments will be contained in 8.321.2 NMAC. The proposed register and rule languages 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 final register and rules may be requested by contacting the Medical Assistance Division at (505) 827-1337.

A public hearing to receive testimony on this rule change will be held via conference call on **Thursday, April 13, 2023, at 10:00 am, Mountain Time (MT). Conference phone number: 1-800-747-5150. Access Code: 2284263.**

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 MAD in Santa Fe at (505) 827-1337. The Department requests at least 10 working days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by 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.

Interested persons may address written comments to:

Human Services Department
Office of the Secretary
ATTN: 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 April 13, 2023. 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.

**PUBLIC EDUCATION
COMMISSION**

**NOTICE OF TERMINATION OF
PUBLIC HEARING**

The New Mexico Public Education Commission (PEC) is providing notice to terminate the public rule hearing scheduled for Friday, March 24, 2023 at 9:00 a.m.. The proposed rulemaking on **6.2.9 NMAC - Public Education Commission Procedures Related to State Charter Schools or by adding new provisions to Title 6, Primary and Secondary Education; Chapter 80, Alternative Education – Charter School, Part 4; Charter School Application and Appeal Requirements; 6.80.4 NMAC** is being terminated at the present time and may be restarted through another public notice posted in the State Registry.

**REGULATION
AND LICENSING
DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

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

The New Mexico Board of Dental Health Care ("Board") will hold a rule hearing on Friday, April 14, 2023, at 8:30 a.m. Following the rule hearing, the Board will convene a regular board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held at the Regulation and Licensing Department at 2550 Cerrillos Rd, Santa Fe, NM 87507 in the Rio Grande Conference Room.

The rule hearing and subsequent Board meeting will also be held virtually via Webex. To join the meeting, please visit the link below:

<https://nmrld.webex.com/nmrld/j.php?MTID=m38fa8115b75aa42a03f6d3d72d5fd8ae>

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

Access Code: 2486 017 9300

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

- 16.5.1 - General Provisions
- 16.5.4 - Emergency Licensure and Certification Provisions
- 16.5.6 - Dentists, Licensure by Examination
- 16.5.8 - Dentists, Licensure by Credentials
- 16.5.9 - Non-Dentist Owners
- 16.5.15 - Dentists, Anesthesia/Sedation Administration
- 16.5.17 - Dentists and Dental Hygienists, Collaborative Practice
- 16.5.19 - Dental Hygienists, Licensure by Examination
- 16.5.20 - Dental Hygienists, Licensure by Credentials
- 16.5.28 - Dental Hygienists, Local Anesthesia Certification
- 16.5.33 - Dental Assistants, Requirements for Certification
- 16.5.39 - Dental Assistants, Practice and Supervision
- 16.5.42 - Expanded Function

Dental Auxiliary, Requirements for Certification

16.5.61 - Dental Therapists, Licensure and Certification

To obtain and review copies of the proposed changes and public comments, you may go to the Board's website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/dental-health-care-overview/dhc-laws-rules-and-policies/> or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public written comments on the proposed amendments. Please submit written comments on the proposed changes to Roberta Perea, Board Administrator, via electronic mail at: Dental.Board@state.nm.us, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Thursday, April 13, 2023. Written comments received prior to the rule hearing will be posted to the RLD website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/dental-health-care-overview/dhc-laws-rules-and-policies/>. Persons will also be given the opportunity to present their written or oral comments at the public rule hearing.

The agenda for the board meeting will be posted and available at least 72 hours before the meeting on the Board website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/dental-health-care-overview/dhc-board-information/dhc-board-meetings/>. Copies of the rules or the agenda may also be obtained by contacting Roberta Perea, Board Administrator at (505) 476-4622.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Roberta Perea, Board Administrator (505) 476-4622.

Statutory Authority:

The Dental Health Care Act, Section Paragraphs (1) thru (5) of Subsection B of Section 61-5A-10 and 61-5A-13.1 NMSA 1978 authorizes the Board to promulgate rules necessary to provide to regulate the practice of dentistry, dental therapy and dental assisting and through the committee, regulate the practice of dental hygiene.

Purpose of the Proposed Rules:

The proposed rules are intended to provide clarity regarding the requirements for licensure and certification under all parts of the board's rules, provide fluidity and correct any existing typographical or grammatical errors.

Summary of Proposed Changes:

16.5.1 - General Provisions

The proposed amendments to this part updates the definitions and continuing legal education sections to provide clarity, fluidity and correct any existing typographical or grammatical errors.

16.5.4 - Emergency Licensure and Certification Provisions

The proposed amendments to this part delete language which required applications to be signed and notarized and submit of proof of identity because the board is utilizing an online licensing system for all applications including initial applications and renewal applications.

16.5.6 - Dentists, Licensure by Examination

The proposed amendments to this part replaces language under Subsection C of 16.5.6.8 NMAC to require that licensees take an examination which includes hands on periodontal and restorative procedures. Additionally, this part deletes language under Subsection E of 16.5.6.8 NMAC which required a level II and level III background status report and now requires only one type of background check be done by a designated professional background service. Finally, the proposed amendments to

this section deletes language which required applicants for licensure by examination to submit a signed and notarized application along with a quality photo because the board is utilizing an online licensing system for all applications for licensure by examination.

16.5.8 - Dentists, Licensure by Credentials

The proposed amendments to this section deletes language which required applicants for licensure by credentials to submit a signed and notarized application along with a quality photo because the board is utilizing an online licensing system for all applications for licensure by credentials.

16.5.9 - Non-Dentist Owners

The proposed amendments to this part deletes language under 16.5.9.10 NMAC which required a level II status report and now requires only one type of background check be done by a designated professional background service. Additionally, the proposed amendments to this section deletes language which required non-dentist owners to submit a signed and notarized application because the board is utilizing an online licensing system for all applications for licensure by examination. Finally, the proposed amendments delete language that required non-dentist owners to be residents of New Mexico. The amendment was made to comply with Section 61-1-37 NMSA 1978 which does not require licensees to be residents of New Mexico.

16.5.15 - Dentists, Anesthesia/Sedation Administration

The proposed amendments to this section deletes language which required applicants under this section to submit a notarized affidavit of compliance because the board is utilizing an online licensing system for all applications under this section.

16.5.17 - Dentists and Dental Hygienists, Collaborative Practice

The proposed amendments to this section deletes language which

required dental hygienists to submit notarized letters from employers, supervisors, etc. as proof of active practice of dental hygiene. This is because the board is utilizing on online licensing system for all applications and supporting documents submitted by applicants under this section.

16.5.19 - Dental Hygienists, Licensure by Examination

The amendments to this part deletes language under Subsection E of 16.5.19.8 NMAC which required a level III background status report. The rule now only requires one type of background check be done by a designated professional background service. The proposed amendments to Subsection A of 16.5.19.9 NMAC delete s language which required applicants for licensure by examination to submit a signed and notarized application along with a quality photo because the board is utilizing an online licensing system for all applications for licensure by examination.

16.5.20 - Dental Hygienists, Licensure by Credentials

The amendments to this part deletes language under Subsection F of 16.5.20.8 NMAC which required a level II background status report. The rule now only requires that a background check be done by a designated professional background service. The proposed amendments to Subsection A of 16.5.20.9 NMAC deletes language which required applicants for licensure by credentials to submit a signed and notarized application along with a quality photo because the board is utilizing an online licensing system for all applications for licensure by credentials.

16.5.28 - Dental Hygienists, Local Anesthesia Certification

The amendments to this part are intended to provide clarity regarding the licensure requirements for certification of local anesthesia administration, including requirements for continuing education

courses necessary to maintain certification.

16.5.33 - Dental Assistants, Requirements for Certification

The proposed amendments to this section deletes language which required applicants under this section to submit a passport quality photo because the board is utilizing an online licensing system for all applications for certification under this section.

16.5.39 - Dental Assistants, Practice and Supervision

The proposed amendments to Subsection C of 16.5.39.10 to prohibit the delegation of final impressions for multiple unit restorations. Additionally, Subsection D of 16.5.39.10 NMAC is revised to provide that delegation of final fitting and adaption of prostheses are non-delegable.

16.5.42 - Expanded Function Dental Auxiliary, Requirements for Certification

The proposed amendments to this section deletes language which required applicants under this section to submit a passport quality photo because the board is utilizing an online licensing system for all applications for certification under this section.

16.5.61 - Dental Therapists, Licensure and Certification

The proposed amendments to section deletes language which required applicants for licensure by credentials to submit a signed and notarized application along with a quality photo because the board is utilizing an online licensing system for all applications for licensure and certification under this section.

REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

NOTICE OF REGULAR BOARD MEETING AND RULE HEARING

The New Mexico Board of Pharmacy will convene on April 20th and 21st, 2023 at 9:00 a.m. and continue until finished in the Board of Pharmacy Conference Room located at 5500 San Antonio Dr., NE, Albuquerque, NM 87109 for the purpose of conducting a regular board meeting.

The agenda is posted 72 hours prior to the scheduled meeting. You may view and download a copy of the agenda through the board's website: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/pharmacy/pharmacy-board-information/pharmacy-board-meetings/>. All proposed language regarding rule hearings is linked to the *Agenda*, the *Notice to the Public* on our website and the *New Mexico Sunshine Portal*.

Individuals petitioning the board regarding requests/waivers and/or interested persons wishing to comment on proposed language regarding rule hearings must submit documentation for presentation; via fax (505) 222-9845, mail or email to the Board Administrator, Davilyn Valencia at the general e-mail pharmacy.board@rld.nm.gov at least one week in advance of the scheduled meeting, as public comment is allowed during the rule hearing.

The board may go into Executive Session to discuss items pursuant to Paragraph (1) of Section 10-15-1H, Paragraph (2) of Section 10-15-1H, Paragraph (3) of Section 10-15-1H or Paragraph (7) of Section 10-15-1H of the Open Meeting Act. Agenda items may be executed at any time during the meeting to accommodate hearings.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Gabriella Romero 505-222-9835 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided

in various accessible formats. Please contact Board Administrator, Davilyn Valencia, at 505-222-9830 or e-mail pharmacy.board@rld.nm.gov if a summary or other type of accessible format is needed.

The Board will address:

All Board Matters:

Rule Hearings: April 20, 2023 at 9:10 a.m.

16.19.10 NMAC – LIMITED DRUG CLINICS – Subsection T of Section 11 is clarified by specifying that supplying of methadone is pouring and labeling the take home dose.

STATUTORY AUTHORITY:

Paragraph (6) of Subsection A of Section 61-11-6 NMSA 1978 requires the Board of Pharmacy to provide for the licensing of industrial and public health clinics and for the inspection of their facilities and activities. Pursuant to Paragraphs (6), (7), (12), and (13) of Subsection B of Section 61-11-14 NMSA 1978, the Board is authorized to issue drug permits, as defined and limited by Board regulation, for industrial health clinics, community health clinics, animal control facilities, and wholesalers, retailers and distributors of veterinary drugs. Subsection (A) of Section 26-1-16 NMSA 1978 prohibits the sale, disposal or possession of any dangerous drug except by individuals and entities identified in the statute, including clinics licensed by the Board.

16.19.20 NMAC – CONTROLLED SUBSTANCES – Section 41, removal of reference to DATA waived practitioner. Section 65, addition of numerous substances to schedule I: opioids (renumber fentanyl related substances, add several fentanyl analogs and other opioids), add substances to opium derivatives, depressants, and hallucinogens sections. Section 66, add substances to opioids section. Section 68, add brexanolone (depressant), deschedule fenfluramine. Add substances to

stimulants and other substances section. Section 69, add substances to depressants section. All additions are for the purposes of aligning part 20 with federal DEA schedules, including emergency scheduling actions. Bromazolam has not been federally scheduled, however the board is proposing placement in Schedule I. Bromazolam is expected to have similar actual or relative abuse, pharmacological effect, and potential to produce psychic or physiological dependence liability similar to the other benzodiazepines that were added to Schedule I by the DEA under emergency scheduling in December of 2022. In addition, the board has received reports indicative of abuse in New Mexico (forensic laboratory findings of bromazolam in tablets bearing markings of alprazolam and in fentanyl tablets). Central nervous system depressants, if ingested with opioids, can significantly increase risk of overdose death.

STATUTORY AUTHORITY:

Section 30-31-11 of the Controlled Substances Act, 30-31-1 through 30-31-42 NMSA 1978, authorizes the board of pharmacy to promulgate regulations and charge reasonable fees for the registration and control of the manufacture, distribution and dispensing of controlled substances. Paragraph (2) of Subsection B of Section 61-11-6 NMSA 1978 authorizes the board to provide by regulation for the electronic transmission of prescriptions.

Disciplinary Hearing(s): no disciplinary hearings are currently scheduled. If scheduling occurs, the final hearing date and time for each case will be included in the agenda posted to the board's website at least 72 hours before the meeting.

Executive Director's Report:

Published in NM Register: March 14, 2023

Published in Albuquerque Journal: March 14, 2023

**REGULATION
AND LICENSING
DEPARTMENT
SIGN LANGUAGE
INTERPRETING PRACTICES
BOARD**

**NOTICE OF PROPOSED
RULEMAKING AND RULE
HEARING**

The New Mexico Signed Language Interpreting Practices Board will hold a rule hearing on, Friday, April 28th, 2023, at 9:00 a.m. Following the rule hearing, the Board will convene a regular board meeting to consider and adopt the rules and take care of regular business. The meeting will be held at the Regulation and Licensing Department at 2550 Cerrillos Rd, Santa Fe, NM 87507.

The rule hearing and subsequent Board meeting will also be held virtually via Microsoft Teams. To join the meeting please visit this link: Microsoft Teams

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

**16.28.2 NMAC - EDUCATION
AND CONTINUING EDUCATION
REQUIREMENTS**

**16.28.3 NMAC - APPLICATION
AND LICENSURE
REQUIREMENTS**

**16.28.7 NMAC - LICENSURE FOR
MILITARY SERVICE MEMBERS,
SPOUSES, AND VETERANS**

The amendments to Parts 2, 3 and 7 are intended to address and update the Board's rules to incorporate changes made by the Register of Interpreters for the Deaf (RID) regarding credential verification for purposes of tracking continuing education credits for community, educational and provisional signed language interpreter licensure applicants. The amendments also remove typographical, grammatical and formatting errors.

To obtain and review copies of the proposed changes and public comments, you may go to the Board's website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/signed-language-interpreting-practices/slip-board-information/slip-board-meetings/> or contact the Boards and Commissions Division at (505) 476-4930 or by email at signlanguage.board@rld.nm.gov.

The Board is currently accepting public written comments on the proposed amendments. Please submit written comments on the proposed changes to Phyllis Gilmore, Senior Board Administrator, via electronic mail to signlanguage.board@rld.nm.gov, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Thursday, April 27th, 2023. Written comments received prior to the rule hearing will be posted to the RLD website at [Signed Language Interpreting Practices Rules and Laws - NM RLD](#). Persons will also be given the opportunity to present their written or oral comments at the public rule hearing.

The agenda for the board meeting will be posted and available at least 72 hours before the meeting on the Board website at Signed Language Interpreting Practices Board Meetings - NM RLD. Copies of the agenda may also be obtained by contacting Phyllis Gilmore, Senior Board Administrator at (505) 476-4930.

An individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or other forms of auxiliary aid or service to attend or participate in the hearing, please contact Phyllis Gilmore, Senior Board Administrator (505)476- 4613.

Statutory Authority: Legal authority for this rulemaking may be found in the Signed Language Interpreting Practices Act, Section 61-34-8 NMSA 1978, among other provisions which specifically authorizes the Board to "promulgate rules pursuant to the State Rules Act [Chapter 14, Article

4, 1978] to effectively carry out and enforce the provisions of the Signed Language Interpreting Practices Act."

Summary and Purpose of Proposed Rules:

16.28.2 Education and Continuing Education Requirements - the amendments to this part clarify which documents must be submitted by RID and BEI interpreters for compliance with the Board's continuing education requirements.

16.28.3 Application and Licensure Requirements - the amendments to this part clarifies the types of proof that must be submitted by applicants for community, educational and provisional signed language interpreter licenses.

16.28.7 Licensure for Military Service Members, Spouses and Veterans - the amendments to this part clarify that types of proof that must be submitted by applicants for community, education and provisional licensure under this rule. The amendments are also made to be consistent with other parts of the Board's rules regarding licensure, specifically 16.28.3 NMAC.

**WORKFORCE
SOLUTIONS,
DEPARTMENT OF
NOTICE OF RULEMAKING**

The New Mexico Department of Workforce Solutions ("Department" or "NMDWS") hereby gives notice that the Department will conduct a public hearing in the conference room of the Leo Griego Auditorium located in the State Personnel Office (Wille Ortiz Building) at 2600 Cerrillos Road in Santa Fe, New Mexico, 87505 on April 18, 2023 from 10:00 am to 12:00 pm.

The purpose of the public hearing will be to obtain input and public comment on proposed amendments to Sections 18 and 20 of 11.1.2 NMAC.

Summary: The proposed amendment creates job classifications for roofer helpers and probationary ironworkers, incorporates the rates for these job classifications into the public works prevailing wage rates and corrects rates to be consistent with the collective bargaining agreements.

Under Section 9-26-4, NMSA 1978, the Workforce Solutions Department is responsible for the administration of the labor relations division which oversees setting the prevailing wage and fringe benefit rates.

Pursuant to Section 13-4-11, NMSA 1978, the Director of the Labor Relations Division shall determine the prevailing wage rates and the prevailing fringe benefit rates and the Director shall issue rules necessary to administer and accomplish the purposes of the Public Works Minimum Wage Act.

Interested individuals are encouraged to submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman prior to the hearing for consideration. Written comments must be received no later than 5 p.m. on April 17, 2022. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed online at <https://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@dws.nm.gov. The proposed rule will be made available at least thirty days prior to the hearing.

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

End of Notices of Rulemaking and Proposed Rules

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.102.500 NMAC, Section 8 effective 04/01/2023.

8.102.500.8 GENERAL REQUIREMENTS:

A. Need determination process: Eligibility for NMW, state funded qualified aliens and EWP cash assistance based on need requires a finding that:

(1) the benefit group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group.

(2) the benefit group's countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;

(3) the countable resources owned by and available to the benefit group do not exceed the \$1,500 liquid and \$2,000 non-liquid resource limits;

(4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

B. Gross income limits: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

	(a)
one person	[\$913] <u>\$963</u>
	(b)
two persons	[\$1,234] <u>\$1,297</u>
	(c)
three persons	[\$1,556] <u>\$1,632</u>
	(d)
four persons	[\$1,878] <u>\$1,966</u>
	(e)
five persons	[\$2,199] <u>\$2,300</u>
	(f)
six persons	[\$2,520] <u>\$2,635</u>
	(g)
seven persons	[\$2,842] <u>\$2,969</u>
	(h)
eight persons	[\$3,164] <u>\$3,303</u>
	(i)
add	[\$322] <u>\$335</u> for each additional person.

C. Eligibility for support services only: Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than one hundred percent of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:

	(1)	one person
[\$1,074]	<u>\$1,133</u>	
	(2)	two
persons	[\$1,452]	<u>\$1,526</u>
	(3)	three
persons	[\$1,830]	<u>\$1,920</u>
	(4)	four
persons	[\$2,209]	<u>\$2,313</u>
	(5)	five
persons	[\$2,587]	<u>\$2,706</u>
	(6)	six persons
[\$2,965]	<u>\$3,100</u>	
	(7)	seven
persons	[\$3,344]	<u>\$3,493</u>
	(8)	eight
persons	[\$3,722]	<u>\$3,886</u>
	(9)	add [\$379]
<u>\$394</u>		for each additional person.

D. Standard of need:

(1) The standard of need is based on the number of participants included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the participant's share of benefit group supplies.

(3) The financial standard includes approximately \$91 per month for each participant in the benefit group.

(4) The standard of need for the NMW, state funded qualified aliens, and EWP cash assistance benefit group is:

	(a)
one person	\$266
	(b)
two persons	\$357
	(c)
three persons	\$447
	(d)
four persons	\$539
	(e)
five persons	\$630
	(f)
six persons	\$721
	(g)
seven persons	\$812
	(h)
eight persons	\$922
	(i)
add	\$91 for each additional person.

E. Special needs:

(1) **Special clothing allowance:** A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school

age if the child is six years of age or older and less than age 19 by the end of August.

(b)

The clothing allowance shall be allowed for each school-age child who is included in the NMW, TBP, state funded qualified aliens, or EWP cash assistance benefit group, subject to the availability of state or federal funds.

(c)

The clothing allowance is not allowed in determining eligibility for NMW, TBP, state funded qualified aliens, EWP cash assistance, or wage subsidy.

(2) **Layette:**

A one-time layette allowance of \$25 is allowed upon the birth of a child who is included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

(3) **Special**

circumstance: Dependent upon the availability of funds and in accordance with the federal act, the HSD secretary, may establish a separate, non-recurring, cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation. This cash assistance program shall not exceed a four month time period, and is not intended to meet recurrent or ongoing needs.

F. Non-inclusion of legal guardian in benefit group:

Based on the availability of state and federal funds, the department may limit the eligibility of a benefit group due to the fact that a legal guardian is not included in the benefit group. [8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A, 07/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 11/15/2007; A, 01/01/2008; A/E, 10/01/2008; A, 08/01/2009; A, 08/14/2009; A/E, 10/01/2009; A, 10/30/2009; A, 01/01/2011; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A/E, 10/01/2013;

A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017; A, 02/01/2018; A/E, 10/01/2018; A, 03/01/2019; A/E, 10/01/2019; A, 03/01/2020; A/E, 10/01/2020; A, 03/01/2021; A/E, 10/01/2021; A 04/01/2022; A/E,10/01/2022; A, 04/01/2023]

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is amendment to 8.106.500 NMAC, Section 8 effective 04/01/2023.

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. Limited state funds may result in a suspension or reduction in general assistance benefits without eligibility and need considered.

B. Need determination process: Eligibility for the GA program based on need requires a finding that the:

(1) countable resources owned by and available to the benefit group do not exceed either the \$1,500 liquid or \$2,000 non-liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent of the federal poverty guideline for the size of the benefit group; and

(3) benefit group's countable net income does not equal or exceed the standard of need for the size of the benefit group.

C. GA payment determination: The benefit group's cash assistance payment is determined after subtracting from the standard of need the benefit group's countable income and any payment sanctions or recoupments.

D. Gross income test: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

	(a)	
one person	[\$913]	\$963
	(b)	
two persons	[\$1,234]	\$1,297
	(c)	
three persons	[\$1,556]	\$1,632
	(d)	
four persons	[\$1,878]	\$1,966
	(e)	
five persons	[\$2,199]	\$2,300
	(f)	
six persons	[\$2,520]	\$2,635
	(g)	
seven persons	[\$2,842]	\$2,969
	(h)	
eight persons	[\$3,164]	\$3,303
	(i)	
add	[\$318]	\$335 for each additional person.

E. Standard of need:

(1) As published monthly by the department, the standard of need is an amount provided to each GA cash assistance benefit group on a monthly basis and is based on availability of state funds, the number of individuals included in the benefit group, number of cases, number of applications processed and approved, application approval rate, number of case closures, IAR caseload number and expenditures, and number of pending applications.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and an individual benefit group member's share of supplies.

(3) **Notice:** The department shall issue prior public notice identifying any change(s) to the standard of need amounts for the next quarter, as discussed at 8.106.630.11 NMAC.

F. Net income test: The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group. After the countable net income is determined it is rounded down prior

to the comparison of the household's income to the standard of need to determine the households monthly benefit amount.

G. Special clothing allowance for school-age dependent children: A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age as defined by PED.

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group, subject to the availability of state or federal funds.

(3) The clothing allowance is not counted in determining eligibility for GA cash assistance.

H. Supplemental issuance: A one-time supplemental issuance may be distributed to recipients of GA for disabled adults based on the sole discretion of the secretary of the human services department and the availability of state funds.

(1) The one time supplemental issuance may be no more than the standard GA payment made during the month the GA payment was issued.

(2) To be eligible to receive the one time supplement, a GA application must be active and determined eligible no later than the last day of the month in the month the one time supplement is issued.

I. Minimum Benefit Amount: Benefits less than ten dollars (\$10.00) will not be issued for the initial month or subsequent months. ISD shall certify household beginning the month of application. [8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008; A, 06/16/2008; A/E, 10/01/2008;

A, 07/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 12/01/2009; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A, 07/01/2013; A/E, 10/01/2013; A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017; A, 2/01/2018; A/E, 10/01/2018; A, 3/1/2019; A/E, 10/01/2019; A, 3/1/2020 A/E, 10/01/2020; A, 3/1/2021; A/E, 10/01/2021; A, 04/01/2022; A/E, 10/01/2022; A, 04/01/2023]

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.139.120 NMAC, Section 9 effective 04/01/2023.

8.139.120.9 SIMPLIFIED REPORTING: All households will be assigned to simplified reporting (SR). Households must submit an interim report once every six or 12 months, depending on their certification period. Households assigned to a 12-month certification period have an interim report form due at six months. Households assigned to a 24-month certification period have an interim report form due at 12 months.

A. Household certification periods: A household that is approved for SNAP benefits shall be assigned the longest certification period possible in accordance with the household's circumstances. Households wherein all adult members are elderly or disabled, with no earned income, will be assigned a 24-month certification period. All other households will be assigned a 12-month certification period.

B. Household responsibility to turn in interim report form:

(1) A household assigned to a 12-month certification period shall be required to file an interim report form no later than the tenth day of the sixth month of the certification period in order to receive uninterrupted benefits.

(2) A household assigned to a 24-month certification period shall be required to file an interim report form no later than the tenth day of the twelfth month of the certification period in order to receive uninterrupted benefits.

C. Information that ISD is responsible to provide to households regarding simplified reporting: At the initial certification and at recertification, ISD shall provide the household with the following:

(1) a written and oral explanation of how simplified reporting works;

(2) a written and oral explanation of the reporting requirements including:

(a) what needs to be reported and verified;

(b) when the interim report form is due;

(c) how to obtain assistance; and

(d) the consequences of failing to file an interim report form.

(3) special assistance in completing and filing interim reports to households whose adult members are all either mentally or physically handicapped or are non-English speaking or otherwise lacking in reading and writing skills such that they cannot complete and file the required report; and

(4) a toll-free number which the household may call to ask questions or to obtain help in completing the interim report.

D. Information requirements for the interim report form: The interim report form will be written in clear, simple language, include information on the availability of a bilingual version of the document described in 7 CFR 272.4(b), and shall specify:

(1) the deadline date to submit the form to ISD to ensure uninterrupted benefits if the household is determined eligible;

(2) the consequences of submitting a late or

incomplete form including whether ISD shall delay benefits if the form is not received by the due date;

(3) verification the household must submit with the form;

(4) a statement to be signed by a member of the household indicating his or her understanding that the information provided may result in a reduction or termination of benefits;

(5) where to call for help in completing the form;

(6) a statement explaining that ISD will not change certain deductions until the household's next recertification and identify those deductions if ISD has chosen to disregard reported changes that affect certain deductions in accordance with paragraph (c) of section 7 CFR 273.12;

(7) a brief explanation of fraud penalties; and

(8) how the agency may use social security numbers.

E. The following information, along with required verification, must be returned to ISD with the interim report form:

(1) a change of more than [~~one hundred dollars (\$100)~~] one hundred twenty-five dollars (\$125) in the amount of unearned income, except changes relating to public assistance (PA) or general assistance (GA) programs when jointly processed with SNAP cases;

(2) a change in the source of income, including starting or stopping a job or changing jobs, if the change in employment is accompanied by a change in income;

(3) changes in either:

(a) the wage rate or salary or a change in full-time or part-time employment status as defined in Subsection C of 8.102.461.11 NMAC, provided the household is certified for no more than six months; or

(b) a change in the amount earned of more than [~~one hundred dollars (\$100)~~] one

hundred twenty-five dollars (\$125) a month from the amount last used to calculate the household's allotment, provided the household is certified for no more than six months.

(4) all changes in household composition, such as the addition or loss of a household member;

(5) changes in residence and the resulting shelter costs;

(6) the acquisition of a licensed vehicle, unless the household is categorically eligible as defined at Sections 8 and 9 of 8.139.420 NMAC or the vehicle is not fully excludable under 8.139.527 NMAC;

(7) when cash on hand, stocks, bonds and money in a bank account or savings institution reach or exceed the resource limit set at 8.139.510.8 NMAC, unless the household is categorically eligible as defined at Sections 8 and 9 of 8.139.420 NMAC;

(8) changes in the legal obligation to pay child support;

(9) for able-bodied adults subject to the time limit of 7 CFR 273.24, any changes in work hours that bring an individual below 20 hours per week, averaged monthly, as defined in 7 CFR 273.24(a)(1)(i); and

(10) In accordance with 7 CFR 273.12(a)(2), SNAP households must report substantial lottery and gambling winnings;

(a) if the substantial lottery and gambling winning is won by multiple beneficiaries and is over the elderly and disabled resource standard, each SNAP member's share must be reported;

(b) if the winning is less than the elderly and disabled resource standard it does not need to be reported;

F. ISD's responsibility with interim report forms:

(1) **Interim report form is not received:** If

a household fails to file a report by the specific filing date, defined in Subsection B of 8.139.120.9 NMAC, ISD will send a notice to the household advising of the missing report no later than 10 calendar days from the date the report should have been submitted. If the household does not respond to the notice, the household's participation shall be terminated.

(2) **Incomplete interim report form is received:**

(a) An interim report form that is not signed shall be returned to the household for a signature. The household:

(i) shall be notified that the form is incomplete;

(ii) what needs to be completed to complete the interim report form; and

(iii) shall be given 10 calendar days to provide the signed interim report form to be reviewed for completeness.

(b) An interim report form that is incomplete because required verification is not provided shall not be returned to the household. The household:

(i) shall be notified that the form is incomplete;

(ii) what information must be provided to complete the interim report form; and

(iii) shall be given 10 calendar days to provide the verification to process the interim report form.

(3) **Complete interim report form is received:**

(a) A form that is complete and all verifications are provided, shall be processed within 10 calendar days of receipt.

(b) A form that is complete, and all verifications are provided except for verification of an allowable deduction, shall be processed, unless the verification is otherwise questionable,

in accordance with 8.100.130.12 NMAC. The household:

(i) shall be notified that verification is questionable; and

(ii) shall be given 10 calendar days to provide the verification to process the allowable deduction.

(c) A deduction that is verified within the month the interim report form is due shall be processed as part of the interim report form.

(d) A deduction that is verified in the month after the interim report form is due shall be processed as a change reported by the household.

(e) If the household files a timely and complete report resulting in reduction or termination of benefits, ISD shall send a notice of case action. The notice must be issued so that the household will receive it no later than the time that its benefits are normally received. If the household fails to provide sufficient information or verification regarding a deductible expense, ISD will not terminate the household, but will instead determine the household's benefits excluding the deduction from the benefit calculation.

G. Changes that must be reported at any time during certification period: Households must report changes no later than 10 days from the end of the calendar month in which the change occurred, provided that the household has at least 10 calendar days within which to report the change. If there are not 10 days remaining in the month, the household must report within 10 days from the date the work hours fall below 20 hours per week, averaged monthly or when income exceeding the gross federal poverty limit as mentioned below is first received. The interim report form is the sole reporting requirement for any information that is required to be reported on the form, except that a household must report at any time during the certification period:

(1) the household must report when its monthly gross income exceeds one hundred thirty percent of poverty level. A categorically eligible household defined in accordance with 8.139.420.8 NMAC, must report when its monthly gross income exceeds one hundred sixty-five percent of poverty level. The household shall use the monthly gross income limit for the household size that existed at the time of certification or recertification regardless of any subsequent changes to its household size; and

(2) able-bodied adults subject to the time limit in accordance with 7 CFR 273.24 shall report whenever their work hours fall below 20 hours per week, averaged monthly.

(3) in accordance with 7 CFR 273.12(a)(2), SNAP households must report substantial lottery and gambling winnings within 10 days of the end of the month in which the household received the winnings.

(a) if the substantial lottery and gambling winning is won by multiple beneficiaries and is over the elderly and disabled resource standard, each SNAP member's share must be reported.

(b) if the winning is less than the elderly and disabled resource standard it does not need to be reported.

H. Action on changes reported outside of the interim report form: In addition to changes that must be reported in accordance with Subsection G of 8.139.120.9 NMAC, ISD must act on changes in between interim report forms, if it would increase the household's benefits. ISD shall not act on changes that would result in a decrease in the household's benefits unless:

(1) The household has voluntarily requested that its case be closed.

(2) ISD has information about the household's circumstances considered verified upon receipt. Verified upon receipt is defined:

(a) information is not questionable; and
 (b) the provider of the information is the primary source of information; or
 (c) the recipient's attestation exactly matches the information received from a third party.

(3) A household member has been identified as a fleeing felon or probation violator in accordance with 7 CFR 273.11(n);

(4) There has been a change in the household's cash grant, or where cash and SNAP cases are jointly processed in accordance with 7 CFR 273.2(j)(2).

I. Responsibilities on reported changes outside of the interim report form: When a household reports a change, ISD shall take action to determine the household's eligibility or SNAP benefit amount within 10 working days of the date the change is reported.

(1) During the certification period, action shall not be taken on changes to medical expenses of households eligible for the medical expense deduction which ISD learns of from a source other than the household and which, in order to take action, requires ISD to contact the household for verification. ISD shall act only on those changes in medical expenses that it learns about from a source other than the household, if those changes are verified upon receipt and do not necessitate contact with the household.

(2) **Decreased or termination of benefits:** For reported and verified changes that result in a decrease or termination of household benefits, ISD shall act on the change as follows:

(a) Issue a notice of adverse action within 10 calendar days of the date the change was reported and verified unless one of the exemptions to the notice of adverse action in 7 CFR 273.13 (a)(3) or (b) applies.

(b) When a notice of adverse action is used, the decrease in the benefit

level shall be made effective no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested.

(c)

When a notice of adverse action is not used due to one of the exemptions in 7 CFR 273.13 (a)(3) or (b), the decrease shall be made effective no later than the month following the change. Verification which is required by 7 CFR 273.2(f) must be obtained prior to recertification.

(3) **Increased**

benefits: For reported and verified changes that result in an increase of household benefits, ISD shall act on the change as follows:

(a)

For changes which result in an increase in a household's benefits, other than changes described in paragraph (b) of this section, ISD shall make the change effective no later than the first allotment issued 10 calendar days after the date the change was reported to ISD.

(b)

For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of fifty dollars (\$50) or more in the household's gross monthly income, ISD shall make the change effective not later than the first allotment issued 10 calendar days after the date the change was reported.

(i)

In no event shall these changes take effect any later than the month following the month in which the change is reported.

(ii)

If the change is reported after the last day to make changes and it is too late for ISD to adjust the following month's allotment, ISD shall issue a supplement or otherwise provide an opportunity for the household to obtain the increase in benefits by the tenth day of the following month, or the household's normal issuance cycle in that month, whichever is later.

(4) **No change**

in SNAP benefit amount: When a reported change has no effect on the SNAP benefit amount, ISD shall document the change in the case file and notify the household of the receipt of the report.

(5) **Providing**

verification: The household shall be allowed 10 calendar days from the date a change is reported to provide verification, if necessary. If verification is provided at the time a change is reported or by the deadline date, the increase in benefits shall be effective in accordance with (a) and (b) above. If the household fails to provide the verification by the deadline date, but does provide it at a later date, the increase shall be effective in the month following the month the verification is provided. If the household fails to provide necessary verification, its' SNAP benefit amount shall revert to the original benefit amount.

J. Resolving unclear information:(1) **During**

the certification period, ISD may obtain information about changes in a household's circumstances from which ISD cannot readily determine the effect of the change on the household's benefit amount. The information may be received from a third party or from the household itself. ISD must pursue clarification and verification of household circumstances using the following procedure if unclear information received outside the periodic report is:

(a)

information fewer than 60 days old relative to the current month of participation; and,

(b) **if**

accurate, would have been required to be reported under simplified reporting rules, in accordance with 8.139.120.9 NMAC.

(c)

ISD must pursue clarification and verification of household circumstances in accordance with the process outlined in Subsection B of 8.100.130.12 NMAC, for any unclear information that appears to present

significantly conflicting information from that used by ISD, at the time of certification.

(2) **Unclear**

information resulting from certain data matches:

(a)

if the department receives match information from a trusted data source as described in 7 CFR 272.13 or 7 CFR 272.14, ISD shall send a notice in accordance with Subsection B of 8.100.130.12 NMAC in accordance with 7 CFR 272.13(b)(4) and 7 CFR 272.14 (c)(4). The notices must clearly explain what information is needed from the household and the consequences of failing to respond to the notice.

(b)

if the household fails to respond to the notice or does respond but refuses to provide sufficient information to clarify its circumstances, ISD shall remove the individual and the individual's income from the household and adjust benefits accordingly. As appropriate, ISD shall issue a notice of adverse action.

K. Failure to report

changes: If ISD discovers that the household failed to report a change as required, ISD shall evaluate the change to determine whether the household received benefits to which it was not entitled or if the household is entitled to an increased benefit amount.

(1) **Decreased**

benefit amount: After verifying the change, ISD shall initiate a claim against the household for any month in which the household was over issued SNAP benefits. The first month of the over issuance is the month following the month the adverse action notice time limit would have expired had the household timely reported the change. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if its benefits will be reduced. No claim shall be established because of a change in circumstances that a household is not required to report in accordance with Subsection G of 8.139.120.9 NMAC above.

(2) Increased benefit amount: When a household fails to make a timely report of a change which will result in an increased SNAP benefit amount, the household is not entitled to a supplement for any month prior to and including the month in which the change was reported. The household is entitled to an increased benefit amount effective no later than the first benefit amount issued 10 calendar days after the date the change was reported.

[2/1/1995, 10/01/1995, 06/15/1996, 09/14/1996, 11/01/1996, 07/01/1998, 06/01/1999; 8.139.120.9 NMAC - Rn, 8 NMAC 3 FSP.123, 05/15/2001; 8.139.120.9 - N, 02/14/2002; A, 01/01/2004; A, 07/16/2008; A, 08/15/2008; A/E, 10/15/2008; A, 12/31/2008; A, 09/01/2017; A, 09/01/2017; A/E, 10/01/2021; A, 04/01/2022; A/E, 10/1/2022; A, 04/01/2023]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.321.2 NMAC, Section 37, effective 3/1/2023.

8.321.2.37 TREATMENT FOSTER CARE I and II: MAD pays for medically necessary services furnished to an eligible recipient under 21 years of age who has an identified need for treatment foster care (TFC) and meets the TFC I or TFC II level of care (LOC) as part of the EPSDT program. MAD covers those services included in the eligible recipient's individualized treatment plan which is designed to help him or her develop skills necessary for successful reintegration into his or her family or transition back into the community. TFC I agency provides therapeutic services to an eligible recipient who is experiencing emotional or psychological trauma and who would optimally benefit from the services and supervision provided in a TFC I setting. The TFC II agency

provides therapeutic family living experiences as the core treatment service to which other individualized services can be added. The need for TFC I and II services must be identified in the tot to teen health check or other diagnostic evaluation furnished through the eligible recipient's health check referral.

A. Eligible agencies:

In addition to the requirements of Subsections A and B of 8.321.2.9 NMAC, in order to be eligible to be reimbursed for providing TFC services to an eligible recipient, the agency must be a CYFD certified TFC agency and be licensed as a child placement agency by CYFD protective services. In lieu of New Mexico CYFD licensure and certification, an out-of-state TFC agency must have equivalent accreditation and be licensed in its own state as a TFC agency.

B. Coverage criteria:

(1) The treatment foster care agency provides intensive support, technical assistance, and supervision of all treatment foster parents.

(2) A TFC I and II parent is either employed or contracted by the TFC agency and receives appropriate training and supervision by the TFC agency.

(3) Placement does not occur until after a comprehensive assessment of how the prospective treatment foster family can meet the recipient's needs and preferences, and a documented determination by the agency that the prospective placement is a reasonable match for the recipient.

(4) An initial treatment plan must be developed within 72 hours of admission and a comprehensive treatment plan must be developed within 14 calendar days of the eligible recipient's admission to a TFC I or II program. See the BH policy and billing manual for the specific requirements of a TFC treatment plan.

(5) The treatment team must review the treatment plan every 30 calendar days.

(6) TFC families must have one parent readily accessible at all times, cannot schedule work when the eligible recipient is normally at home, and is able to be physically present to meet the eligible recipient's emotional and behavioral needs.

(7) In the event the treatment foster parents request a treatment foster recipient be removed from their home, a treatment team meeting must be held and an agreement made that a move is in the best interest of the involved recipient. Any treatment foster parent(s) who demands removal of a treatment foster recipient from his or her home without first discussing with and obtaining consensus of the treatment team, may have their license revoked.

(8) A recipient eligible for treatment foster care services, level I or II, may change treatment foster homes only under the following circumstances:

(a) an effort is being made to reunite siblings; or

(b) a change of treatment foster home is clinically indicated, as documented in the client's record by the treatment team.

C. Identified population:

(1) TFC I services are for an eligible recipient who meets the following criteria:

(a) is at risk for placement in a higher level of care or is returning from a higher level of care and is appropriate for a lower level of care; or

(b) has complex and difficult psychiatric, psychological, neurobiological, behavioral, psychosocial problems; and

(c) requires and would optimally benefit from the behavioral health services and supervision provided in a treatment foster home setting.

(2) TFC II services are for an eligible recipient who meets the criteria listed in Section 25 Subsection B of 8.321.2.9

NMAC and also meet one of the following criteria:

- (a) has successfully completed treatment foster care services level I (TFC I), as indicated by the treatment team; or
 - (b) requires the initiation or continuity of treatment and support of the treatment foster family to secure or maintain therapeutic gains; or
 - (c) requires this treatment modality as an appropriate entry level service from which the client will optimally benefit.
- (3) An eligible recipient has the right to receive services from any MAD TFC enrolled agency of his or her choice.

D. Covered services:

The family living experience is the core treatment service to which other individualized services can be added, as appropriate to meet the eligible recipient's needs.

(1) The TFC parental responsibilities include, but are not limited to:

- (a) meeting the recipient's base needs, and providing daily care and supervision;
- (b) participating in the development of treatment plans for the eligible recipient by providing input based on his or her observations;
- (c) assuming the primary responsibility for implementing the in-home treatment strategies specified in the eligible recipient's treatment plan;
- (d) recording the eligible recipient's information and documentation of activities, as required by the TFC agency and the standards under which it operates;
- (e) assisting the eligible recipient with maintaining contact with his or her family and enhancing that relationship;
- (f) supporting efforts specified by the treatment plan to meet the eligible recipient's permanency planning goals;

(g) reunification with the recipient's family. The treatment foster parents work in conjunction with the treatment team toward the accomplishment of the reunification objectives outlined in the treatment plan;

(h) assisting the eligible recipient obtain medical, educational, vocational and other services to reach goals identified in treatment plan;

(i) ensuring proper and adequate supervision is provided at all times. Treatment teams determine that all out-of-home activities are appropriate for the recipient's level of need, including the need for supervision; and

(j) working with all appropriate and available community-based resources to secure services for and to advocate for the eligible recipient.

(2) The treatment foster care agency provides intensive support, technical assistance, and supervision of all treatment foster parents. The following services must be furnished by both TFC I and II agencies unless specified for either I or II. Payment for performance of these services is included in the TFC agency's reimbursement rate:

- (a) facilitation, monitoring and documenting of treatment of TFC parents initial and ongoing training;
- (b) providing support, assistance and training to the TFC parents;
- (c) providing assessments for pre placement and placement to determine the eligible recipient's placement is therapeutically appropriate;
- (d) ongoing review of the eligible recipient's progress in TFC and assessment of family interactions and stress;
- (e) ongoing treatment planning as defined in Subsection G of 8.321.2.9 NMAC and treatment team meetings;

(f) provision of individual, family or group psychotherapy to recipients as described in the treatment plan. The TFC therapist is an active treatment team member and participates fully in the treatment planning process;

(g) family therapy is required when client reunification with their family is the goal;

(h) ensuring facilitation of age-appropriate skill development in the areas of household management, nutrition, physical and emotional health, basic life skills, time management, school attendance, money management, independent living, relaxation techniques and self-care techniques for the eligible recipient;

(i) providing crisis intervention on call to treatment foster parents, recipients and their families on a 24-hour, seven days a week basis including 24-hour availability of appropriate staff to respond to the home in crisis situations;

(j) assessing the family's strengths, needs and developing a family service plan when an eligible recipient's return to his or her family is planned;

(k) conducting a private face-to-face visit with the eligible recipient within the first two weeks of TFC I placement and at least twice monthly thereafter by the treatment coordinator;

(l) conducting a face-to-face interview with the eligible recipient's TFC parents within the first two weeks of TFC I placement and at least twice monthly thereafter by the treatment coordinator;

(m) conducting at a minimum one phone contact with the TFC I parents weekly; phone contact is not necessary in the same week as the face-to-face contact by the treatment coordinator;

(n) conducting a private face-to-face interview with the eligible recipient's

TFC II parent within the first two weeks of TFC II placement and at least once monthly thereafter by the treatment coordinator;

(o) conducting a face-to-face interview with the eligible recipient’s TFC II parent within the first two weeks of TFC II placement and at least once monthly thereafter by the treatment coordinator; and

(p) conducting at a minimum one phone contact with the TFC II parents weekly; phone contact is not necessary in the same week as the face-to-face contact by the treatment coordinator.

E. Non-covered service: TFC I and II services are subject to the limitations and coverage restrictions that exist for other MAD services. See Subsection G of 8.321.2.9 NMAC for all non-covered MAD behavioral health services or activities. Specific to TFC I and II services MAD does not cover:

(1) room and board;

(2) formal educational or vocational services related to traditional academic subjects or vocational training;

(3) respite care; and

(4) CCSS except as part of the discharge planning from either the eligible recipient’s TFC I or II placement.

F. Prior authorization: Before any TFC service is furnished to an eligible recipient, prior authorization is required from MAD or its UR contractor. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

G. A TFC agency must submit claims for reimbursement on the CMS-1500 form or its successor. See Subsection H of 8.321.2.9 NMAC for MAD general reimbursement requirements and see 8.302.2 NMAC. [8.321.2.37 NMAC - Rp, 8.321.2.37 NMAC, 8/10/2021; A/E, 3/1/2023]

REGULATION AND LICENSING DEPARTMENT FINANCIAL INSTITUTIONS DIVISION

TITLE 12 TRADE, COMMERCE AND BANKING CHAPTER 18 LOAN COMPANIES PART 11 NEW MEXICO ANNUAL PERCENTAGE RATE CALCULATION

12.18.11.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department. [12.18.11.1 NMAC – N, 03/29/2023]

12.18.11.2 SCOPE: Small loan licensees conducting business in New Mexico. [12.18.11.2 NMAC – N, 03/29/2023]

12.18.11.3 STATUTORY AUTHORITY: Section 58-15-11 NMSA 1978. [12.18.11.3 NMAC – N, 03/29/2023]

12.18.11.4 DURATION: Permanent. [12.18.11.4 NMAC – N, 03/29/2023]

12.18.11.5 EFFECTIVE DATE: March 29, 2023, unless a later date is cited at the end of a section. [12.18.11.5 NMAC – N, 03/29/2023]

12.18.11.6 OBJECTIVE: The objective of this part is to establish regulations governing the conduct of small loan licensees. [12.18.11.6 NMAC – N, 03/29/2023]

12.18.11.7 DEFINITIONS:
A. “Truth in Lending Annual Percentage Rate” (“TIL-APR”) means the calculation of an Annual Percentage Rate mandated pursuant to Federal Law (12 CFR Part 1026 – Truth in Lending Act). It is intended to provide a single value for a consumer to compare the cost of credit between one lender and another.

B. “New Mexico Annual Percentage Rate” (“NM-APR”) means the calculation of an Annual Percentage Rate pursuant to New Mexico law (Section 58-7-7 NMSA 1978 and Section 58-15-17 NMSA 1978), which may include charges that are either excluded or may be excluded under certain conditions in the TIL-APR calculation. [12.18.11.7 NMAC – N, 03/29/2023]

12.18.11.8 NEW MEXICO ANNUAL PERCENTAGE RATE EXCLUSIONS:

A. The following charges, based solely on a borrower’s individual behavior after the extension of credit, cannot reasonably be predicted and are therefore excluded from the calculation of the NM-APR:

(1) Actual expenditures, including reasonable attorney fees, for legal process or proceedings to collect on a loan pursuant to statutory limitation

(2) Ancillary products, such as insurance, sold after the extension of credit that are not required as a condition for extension of credit, are properly disclosed, which the customer authorizes a minimum of seven calendar days after the extension of the credit;

(3) Delinquency fee charges pursuant to statutory limitations and as properly disclosed in loan agreements;

(4) Force placed or similar collateral insurance in the event that a borrower fails to maintain in effect any collateral insurance required in connection with a loan transaction, pursuant to statutory conditions;

(5) Charges imposed by third parties in connection with credit or debit card transactions, automated clearing house (ACH) payments, or similar, provided that a specific method of payment by the borrower is not required as a condition of the extension of credit;

(6) Non-sufficient funds (NSF) charges for debits not honored by the drawee’s financial institutions and

are subsequently reversed from the lender's account, subject to statutory limitations;

(7) Parking or similar fees if they are charged to all individuals who utilize the parking area for which the fees are associated;

(8) Reimbursement for Global Positioning Systems (GPS) or similar devices installed on vehicles or other movable collateral when required as a condition of the extension of credit, when those devices are removed or destroyed by the borrower without the lender's authorization and subsequently not returned in working order to the lender within 15 days of such removal;

(9) Any other charges arising solely from the borrower's behavior that are not required by the lender as a condition for the extension of credit and are not either prohibited or prohibited from exclusion by law.

B. Any amount paid to a public official in relation to the extension of credit, including fees to record or release liens.

C. For loans of five hundred dollars (\$500) or less, a fee not exceeding five percent of the total principal of the loan, provided that such fee is not imposed on any borrower more than one time per 12-month period, may be excluded from the calculation of the NM-APR. [12.18.11.8 NMAC – N, 03/29/2023]

History of 12.18.11 NMAC:
[RESERVED]

**REGULATION
AND LICENSING
DEPARTMENT
FINANCIAL INSTITUTIONS
DIVISION**

**This is an amendment to 12.18.3
NMAC, Section 8, effective
03/29/2023.**

**12.18.3.8 MANDATORY
BROCHURE FOR SMALL LOAN
[BUSINESS] BUSINESSES**

A. All small loan companies licensed by the state of New Mexico must have an informational brochure readily available to all small loan consumers.

B. The brochure rack containing the brochure must be placed by the main door entrance. The brochure rack must always be stocked with the brochure.

C. Using lettering no smaller than 24-point font, the front of the brochure shall have in bold capital letters, the words, "IMPORTANT CONSUMER INFORMATION" followed by the words in bold 14-point font, "This brochure contains some common terms and definitions, which are intended to help you better understand your credit transaction. Credit costs money, so it is important that you fully understand the terms of your credit transaction. If you come across terms you do not understand, look up the terms, or ask our personnel to explain the terms to you. Ask questions. Make certain the questions that you ask are answered. Make certain you understand the terms and costs of your loan."

D. Using lettering no smaller than 12-point font, the brochure shall state:

(1) Common Terms and Definitions

(2) Equal Credit Opportunity Act (ECOA). A federal regulation which requires lenders to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to whether all or part of the applicant's income derives from a public assistance program; or to whether the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits creditor practices that discriminate on the basis of any of these factors.

(3) Contract. A written binding document, describing terms of an agreement between two or more persons. (Keep all paperwork. Later, if there are any questions, you will have your agreement in writing.)

(4) Annual percentage rate (APR). The cost of your credit as a yearly rate. APR is a combination of the interest rate plus the fees charged on your loan. APR is higher than the interest rate because it includes both fees and interest as finance charges. The calculation of APR is mandated pursuant to Federal Law (12 CFR Part 1026 – Truth in Lending Act ("TIL-APR")). It is intended to provide a single value for a consumer to compare the cost of credit between one lender and another. Under New Mexico law, an additional type of annual percentage rate ("NM-APR") must be disclosed, which may include additional charges that are not included in the TIL-APR. [the APR for a loan in an amount of \$5,000 or less made pursuant to the Small Loan Act of 1955 or the Bank Installment Loan Act of 1959 cannot exceed one hundred seventy-five percent, effective January 1, 2018.] The NM-APR for a loan in an amount of more than \$500 and up to \$10,000 made pursuant to the Small Loan Act of 1955 or the Bank Installment Loan Act of 1959 cannot exceed thirty-six percent. The NM-APR for a loan in an amount of \$500 or less made pursuant to the Small Loan Act of 1955 or the Bank Installment Loan Act of 1959 cannot exceed thirty-six percent plus a fee that shall not exceed five percent of the total principal of the loan and shall not be imposed on any borrower more than once per 12-month period.

(5) Finance charge. The dollar amount the credit will cost you. Finance charges include interest, and may also include transaction fees and service fees.

(6) Principal. The amount of money owed on a debt, on which interest is calculated.

(7) Interest. The cost of borrowing money, generally a percentage of the amount owed.

(8) Balance. The total amount of money owed to a lender.

(9) Default. Failure to pay a debt as agreed to on a contract. When a loan is in default,

the lender may demand full payment of the remaining debt.

(10) Collateral.

Security pledged by a borrower to protect the interests of the lender; in case of default, the lender may take ownership of the security, if any, pledged by the borrower.

(11) Credit

bureau. A private company that keeps a record of your credit history for distribution upon request by authorized parties. When you apply for credit, a lender may request a credit report to review when considering your application.

(12) Credit

history. A record containing information about you, including your payment history on previous debts.

(13) Credit

report. A report of the credit history and other information about you that is kept by credit bureaus, which may include: your name, address, social security number, payment history (good and bad), current and previous debts, employers, income, etc. Accurate information on a credit report may not be legally removed. Incorrect information may be removed by disputing the information to the credit bureau involved.

E. The brochure shall have the following words, using lettering no smaller than 12-point font: "New Mexico Only: This lender is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico 87504. To report any unresolved problems or complaints, contact the division by telephone at (505) 476-4885 or visit the website: [<http://www.rld.state.nm.us/financialinstitutions/>] www.rld.nm.gov/financial-institutions/." [12.18.3.8 NMAC - N, 10/1/2001; A, 08/13/2004; A, 09/15/2018; A, 03/29/2023]

**REGULATION
AND LICENSING
DEPARTMENT
FINANCIAL INSTITUTIONS
DIVISION**

This is an amendment to 12.18.4 NMAC, Part name change and Section 8, effective 03/29/2023.

**PART 4: MANDATORY
SIGNAGE FOR ~~[ALL]~~
SMALL LOAN ~~[COMPANIES]~~
BUSINESSES**

**12.18.4.8 MANDATORY
SIGNAGE FOR ~~[ALL]~~
SMALL LOAN ~~[COMPANIES]~~
BUSINESSES:**

A. All small loan companies must display in each licensed place of business a prominent sign, readily visible to borrowers, disclosing the annual percentage rate and fees. The prominent sign in a reduced form, with font, no smaller than 10-point, must be displayed at every workstation where loans are originated. On all company websites, social media pages, and mobile applications where content regarding loans offered or made to borrowers in New Mexico may be accessed by consumers, the prominent sign, in a reduced form, shall be easily accessible to consumers to review via an interactive link to a New Mexico specific web page maintained by the company containing all information required to be on the sign mandated by this section.

B. The lettering on the prominent sign must be no smaller than 24-point font, unless specified otherwise.

C. The sign must state in bold capital letters, the words, "LOAN RATES AND FEES."

D. Below the words "loan rates and fees," in bold capital letters, the sign shall state, "BELOW IS GENERAL INFORMATION REGARDING ALL RATES AND FEES THAT WILL ASSIST YOU IN MAKING YOUR LOAN DECISION. IF YOU HAVE ANY QUESTIONS, OR WOULD LIKE MORE INFORMATION, PLEASE

ASK. MAKE CERTAIN THE QUESTIONS THAT YOU ASK ARE ANSWERED. MAKE CERTAIN YOU UNDERSTAND THE TERMS AND COSTS OF YOUR LOAN."

E. The disclosure shall consist of two distinctive sections. Each section heading must be printed from left to right. The borders for the two section headings must be more prominent than the others.

(1) The first heading shall have in bold capital letters the words, "ANNUAL PERCENTAGE RATE (APR)" followed by the words in bold font, "The cost of your credit as a yearly rate. APR is a combination of the interest rate plus the fees charged on your loan. APR is higher than the interest rate because it includes both fees and interest as finance charges."

(a) Below the preceding sentences in bold type the following words shall appear: "Your actual terms and the Annual percentage rate (APR) will be determined at the time your application is submitted and will be based upon your application and credit information. Not all applicants will qualify for the lowest rate."

(b) Below the preceding sentences in bold type the following words shall appear: [~~"Under New Mexico law, the APR for a loan in an amount of \$5,000 or less made pursuant to the Small Loan Act of 1955 or the Bank Installment Loan Act of 1959 cannot exceed one hundred and seventy-five percent, effective January 1, 2018."~~] "The calculation of APR is mandated pursuant to Federal Law (12 CFR Part 1026 – Truth in Lending Act ("TIL-APR")). It is intended to provide a single value for a consumer to compare the cost of credit between one lender and another. Under New Mexico law, an additional type of annual percentage rate ("NM-APR") must be disclosed, which may include additional charges that are not included in the TIL-APR. The NM-APR for a loan in an amount of more than \$500 and up to \$10,000 made pursuant to the Small Loan Act of 1955 or the Bank Installment

Loan Act of 1959 cannot exceed thirty-six percent. The NM-APR for a loan in an amount of \$500 or less made pursuant to the Small Loan Act of 1955 or the Bank Installment Loan Act of 1959 cannot exceed thirty-six percent plus a fee that shall not exceed five percent of the total principal of the loan and shall not be imposed on any borrower more than once per 12-month period.

(2) The second heading shall have in bold capital letters the words, "FEES" followed by the words: "A list of all fees that you may be charged." The heading shall be followed with a table containing a list of all fees that a borrower may be charged.

F. Below the second heading in bold capital letters the following words shall appear: "TO REPORT A PROBLEM OR COMPLAINT WITH THIS LENDER, YOU MAY WRITE OR CALL _____." The blank shall be filled in with a position title, address, phone number, and email address of the company's problem resolution person.

G. The bottom of the sign shall have the following words, "New Mexico Only: This lender is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico 87504. To report any unresolved problems or complaints, contact the division by telephone number (505) 476-4885 or visit the website: [<http://www.rld.state-nm.us/financialinstitutions/>] www.rld.state-nm.gov/financial-institutions/." [12.18.4.8 NMAC - N, 10/1/2001; A, 08/13/2004; A, 09/15/2018; A, 03/29/2023]

**REGULATION
AND LICENSING
DEPARTMENT
FINANCIAL INSTITUTIONS
DIVISION**

This is an amendment to 12.18.8 NMAC, Section 8, effective 03/29/2023.

12.18.8.8 LICENSING OF NONRESIDENT LENDERS:

A. When the proceeds of a small loan in the amount or of the value of [~~\$5,000~~] **\$10,000** or less have been delivered to a New Mexico resident borrower by mail within New Mexico or have been otherwise made available to a New Mexico resident borrower within New Mexico, by a lender who solicited such small loan by mail or otherwise and the solicitation is received by a New Mexico resident in New Mexico, the loan is considered to have been made in New Mexico for the purposes of the New Mexico Small Loan Act of 1955, and both the lender and the loan are thereby subject to the provisions contained in said act. Any person making small loans under such circumstances is deemed to be engaging in the business of lending, as that term is used in Section 58-15-3 NMSA 1978, and the person must first have obtained a license from the director under the provisions of the New Mexico Small Loan Act of 1955 and this regulation if the person contracts for, exacts or receives, directly or indirectly on or in connection with the loan, charges, whether for interest, compensation, consideration or expense, which in the aggregate are greater than the maximum as provided by the applicable laws of New Mexico.

B. Such loans and licensees must comply with all the requirements and provisions contained in the New Mexico Small Loan Act of 1955, including the limitations on the maximum allowable charges contained in Section 58-15-14.1 NMSA 1978.

C. Such a loan made by a licensee under such conditions is not considered to have been made outside of New Mexico so as to be unenforceable under Section 58-15-24 NMSA 1978, even though the lender's place of business is located outside of New Mexico.

D. If a person applies for a small loan license in order to engage in the business of making small loans to resident borrowers solely from locations outside of New Mexico, the "community" in which the business of the applicant is to be conducted, as that term is used in Section 58-15-5 NMSA 1978, shall mean the geographic area, which may be statewide, in which the applicant proposes to solicit such small loans.

E. Upon the granting of a small loan license to a lender who indicates an intention to conduct a small loan business solely from locations outside of New Mexico, that lender shall establish and maintain a toll-free telephone service available in New Mexico to resident borrowers, or shall agree to accept collect calls at the lender's principal place of business from resident borrowers so that borrowers may contact the lender or his representatives concerning details of their loan transactions. Upon the delivery of the proceeds of such a small loan to a resident of New Mexico, the licensee shall immediately notify the borrower in writing of the existence of such toll-free telephone service, or of the agreement to accept collect calls.

F. If a licensee engages in the business of making small loans to New Mexico residents solely from locations outside of New Mexico, the director will conduct, in his discretion, the examinations authorized by Section 58-15-9 NMSA 1978, in either of two ways:

(1) the licensee may be required to make available to the director for examination at the offices of the director such of the loans, transactions, books, papers and records of the licensee, insofar as they pertain to the business licensed under the New Mexico Small Loan Act of 1955, as the director may deem necessary; or

(2) the examinations of the loans, transactions, books, papers and records of the licensee, insofar as they pertain to the business licensed under the New Mexico Small Loan

Act of 1955, may be conducted by the director or the director’s authorized representative at the licensee’s principal place of business outside of New Mexico, and the licensee shall be required to pay to the director the actual and reasonable travel and living expenses incurred during such examinations for one examiner per examination. Said payments for expenses shall be in addition to such other fees and expenses as may be authorized under the New Mexico Small Loan Act of 1955. The director may require the licensee to pay such expenses prior to the examination. [12.18.8.8 NMAC - Rp, 12.18.8.8 NMAC, 09/15/2018; A, 03/29/2023]

**REGULATION
AND LICENSING
DEPARTMENT
FINANCIAL INSTITUTIONS
DIVISION**

This is an amendment to 12.18.9 NMAC, Section 8, effective 03/29/2023.

12.18.9.8 MANDATORY DISCLOSURE OF LOAN INFORMATION: All small loan companies engaged in the business of making refund anticipation loans must provide a form to consumers that includes the following:

A. a statement that “refund anticipation loan” means a loan that is secured by or that the creditor arranges or expects to be repaid, directly or indirectly, from the proceeds of the consumer’s federal or state personal income tax refunds or tax credits, including any sale, assignment or purchase of a tax refund or tax credit at a discount or for a fee;

B. a list of the annual percentage rate and all fees that the borrower may be charged upon entering the refund anticipation loan agreement;

C. the estimated time to which the consumer may receive the proceeds from their anticipated tax refund or tax credit; and

D. the following statement in at least 12-point bold type:

(1) This agreement is considered to be a loan and not your actual tax refund or tax credit. You are borrowing money against your anticipated tax return.

(2) Neither the internal revenue service (IRS) nor the New Mexico taxation and revenue department guarantees that you be paid the full anticipated amount of a tax refund or tax credit, nor do they guarantee that a tax refund or tax credit will be deposited into your bank account or mailed on a specific date.

(3) You are responsible for the full repayment of this refund anticipation loan and for the payment of the total interest, fees, and charges incurred.

(4) Prior to executing a refund anticipation loan agreement, a small loan licensee shall require the borrower to provide a hand written or electronic signature acknowledging that the borrower understands the all required disclosures and has received a copy of the required disclosure. A copy of the acknowledgment form must be permanently kept with the loan records.

(5) This business is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico 87504. To report any unresolved problems or complaints, contact the division by telephone at (505) 476-4885 or visit the website: [www.state.nm.us/financialinstitutions/] www.rld.nm.gov/financial-institutions/. [12.18.9.8 NMAC - N, 09/15/2018; A, 03/29/2023]

**REGULATION
AND LICENSING
DEPARTMENT
FINANCIAL INSTITUTIONS
DIVISION**

This is an amendment to 12.18.10 NMAC, Sections 7, 8 and 9 effective 03/29/2023.

12.18.10.7 DEFINITIONS:

A. “**Business of lending**” means any person or business entity engaged in the origination of any extension of credit in the amount e amount of [~~\$5,000.00~~] \$10,000 or less, or the acceptance of a credit application containing a consumer’s personal information beyond the below listed items:

- (1) consumer’s name;
- (2) consumer’s home address;
- (3) consumer’s phone number or electronic mail address;
- (4) purpose of the potential loan; and
- (5) loan amount requested.

B. “**Marketing site**” means any website, social media page, or mobile application utilized only for marketing, advertising, or referring a consumer to complete a credit application and which is not utilized by a small loan business for the business of lending.

C. “**Business site**” means any website, social media page, or mobile application which a small loan business utilizes to engage in the business of lending through such site. [12.18.10.7 NMAC - N, 09/15/2018; A, 03/29/2023]

12.18.10.8 MARKETING SITE REQUIREMENTS:

A. Small loan businesses operating one or more marketing site(s) shall be responsible for providing all mandatory disclosures and consumer information as required by Subsection C of 12.18.3.8 NMAC and Subsection A of 12.18.4.8 NMAC to consumers. The required disclosures and consumer information shall be easily accessible to consumers to review on a New Mexico specific web page maintained by the small loan-company. The small

loan company must ensure active links to the New Mexico specific web page are included on all company marketing sites utilized for loans made to borrowers in New Mexico.

B. All small loan businesses operating one or more marketing site(s) shall provide a disclosure in a location or locations on the marketing site that will be easily accessible and visible to consumers accessing such marketing site with the following words “TO REPORT A PROBLEM OR COMPLAINT WITH THIS LENDER, YOU MAY WRITE OR CALL _____.” The blank shall be filled in with a position title, address, phone number, and email address of the company’s problem resolution person.

C. The above shall also contain a separate disclosure stating the following words, “New Mexico Only: This lender is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico 87504. To report any unresolved problems or complaints, contact the division by telephone at (505) 476-4885 or visit the website: [<http://www.rld.state.nm.us/financialinstitutions/>] www.rld.nm.gov/financial-institutions/.” [12.18.10.8 NMAC - N, 09/15/2018; A, 03/29/2023]

12.18.10.9 BUSINESS SITE REQUIREMENTS:

A. Small loan businesses operating one or more business site(s) shall obtain a separate license for each site pursuant to Subsection A of Section 58-15-3 NMSA 1978.

B. Small loan businesses shall make the most current small loan license certificate easily accessible and available for review within the business site.

C. Small loan businesses operating one or more business site(s) shall be responsible for all disclosures to be posted on such site(s). This shall include making the mandatory consumer

information brochure pursuant to Subsection C of 12.18.3.8 NMAC and the mandatory signage for all small loan companies pursuant to Subsection A of 12.18.4.8 NMAC.

D. All small loan businesses operating one or more business site(s) shall provide a disclosure in an easily accessible and visible location the following words “TO REPORT A PROBLEM OR COMPLAINT WITH THIS LENDER, YOU MAY WRITE OR CALL _____.” The blank shall be filled in with a position title, address, phone number, and email address of the company’s problem resolution person.

E. The above shall also contain a separate disclosure stating the following words: “New Mexico Only: This lender is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico 87504. To report any unresolved problems or complaints, contact the Division by telephone at (505) 476-4885 or visit the website: [<http://www.rld.state.nm.us/financialinstitutions/>] www.rld.nm.gov/financial-institutions/.” [12.18.10.9 NMAC - N, 09/15/2018; A, 03/29/2023]

REGULATION AND LICENSING DEPARTMENT MASSAGE THERAPY BOARD

The Regulation and Licensing Department - Massage Therapy Board reviewed at its 12/1/2022 hearing, 16.7.4 NMAC, Massage Therapists - Requirements for License filed 12/1/2022. The Board has decided to repeal 16.7.4 NMAC, Massage Therapists - Requirements for License filed 10/16/2019 and replace it with 16.7.4 NMAC, Massage Therapists - Requirements For Licensure By Examination, adopted 2/21/2023 and effective 03/14/2023.

The Regulation and Licensing Department - Massage Therapy Board reviewed at its 12/1/2022 hearing, 16.7.8 NMAC, Massage Therapists - License for Military Service Members, Spouses, and Veterans filed 12/1/2022. The Board has decided to repeal 16.7.8 NMAC, Massage Therapists - License for Military Service Members, Spouses, and Veterans filed 03/17/2015 and replace it with 16.7.8 NMAC, Massage Therapists - Expedited Licensure by Credentials, adopted 2/21/2023 and effective 03/14/2023.

REGULATION AND LICENSING DEPARTMENT MASSAGE THERAPY BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 7 MASSAGE THERAPISTS PART 4 REQUIREMENTS FOR LICENSURE BY EXAMINATION

16.7.4.1 ISSUING AGENCY: Regulation and Licensing Department, Massage Therapy Board. [16.7.4.1 NMAC - Rp, 16.7.4.1 NMAC, 03/14/2023]

16.7.4.2 SCOPE: This part applies to applicants for licensure. [16.7.4.2 NMAC - Rp, 16.7.4.2 NMAC, 03/14/2023]

16.7.4.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Massage Therapy Practice Act, Sections 61-12C-1 to -28 NMSA 1978. [16.7.4.3 NMAC - Rp, 16.7.4.3 NMAC, 03/14/2023]

16.7.4.4 DURATION: Permanent. [16.7.4.4 NMAC - Rp, 16.7.4.4 NMAC, 03/14/2023]

16.7.4.5 EFFECTIVE DATE: March 14, 2023, unless

a later date is cited at the end of a section.

[16.7.4.5 NMAC - Rp, 16.7.4.5 NMAC, 03/14/2023]

16.7.4.6 OBJECTIVE:

The objective of Part 4 is to promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for licensure by examination and temporary licensure.

[16.7.4.6 NMAC - Rp, 16.7.4.6 NMAC, 03/14/2023]

16.7.4.7 DEFINITIONS:

(Refer to 16.7.1.7 NMAC).

[16.7.4.7 NMAC - Rp, 16.7.4.7 NMAC, 03/14/2023]

16.7.4.8 LICENSE OR REGISTRATION REQUIRED:

A. Massage

therapists: A person must be licensed by the board in order to legally provide or offer to provide massage therapy as defined in 16.7.1.7 NMAC; or to use the title or represent themselves to be a massage therapist; or to use any other title, abbreviations, letters, figures, signs or devices that indicate the person is a massage therapist.

B. Massage therapy schools: Massage therapy schools must be registered by the board, as set forth in 16.7.5 NMAC, before they can legally operate and offer education, instruction or training in massage therapy.

[16.7.4.8 NMAC - Rp, 16.7.4.8 NMAC, 03/14/2023]

16.7.4.9 LICENSURE EXEMPTIONS:

A. The following are exempted from licensure by the board pursuant to the Massage Therapy Practice Act:

(1) qualified members of other recognized professions that are licensed or regulated under New Mexico law when rendering services within the scope of their licenses or regulations, provided that they do not represent themselves as massage therapists;

(2) students within the course of study of a registered massage therapy school; and

(3) sobadores; Hispanic traditional healers; Native American healers; reflexologists whose practices are limited to hands, feet and ears; practitioners of polarity, Trager approach, Feldenkrais method, craniosacral therapy, Roling structural integration, reiki, orthobionomy or ch'i gung; or practitioners of healing modalities not listed in this subsection who do not manipulate the soft tissues for therapeutic purposes.

B. An exempt practitioner who applies for a license pursuant to the Massage Therapy Practice Act shall comply with all licensure requirements of the act and rules of the board.

[16.7.4.9 NMAC - Rp, 16.7.4.9 NMAC, 03/14/2023]

16.7.4.10 GENERAL PROVISIONS FOR LICENSURE BY EXAMINATION:

A. Age: The applicant must be 18 years of age or older on the date the application is submitted.

B. Pre-requisite education: The applicant must have completed high school or its equivalent.

C. Application fee: The applicant must pay the required application-processing fee as set forth in Subsection D of 16.7.3.8 NMAC of the board's regulations.

D. Application form: The applicant must complete the application on an approved form; incomplete applications will not be accepted or will be returned to the applicant.

E. First Aid and cardiopulmonary resuscitation (CPR): The applicant must have completed four contact course hours of cardiopulmonary resuscitation (CPR) to include automatic external defibrillator (CPR/AED) and four contact course hours of first aid and must provide proof, with the application, of current certification in basic life support. *No* on-line courses will be accepted. Courses must be

maintained in current standing. [16.7.4.10 NMAC - Rp, 16.7.4.10 NMAC, 03/14/2023]

16.7.4.11 MASSAGE SCHOOL REQUIREMENT: The applicant for licensure by examination as a massage therapist must have graduated from a massage therapy school approved to operate as a private post-secondary educational institution or its equivalent.

A. Out-of-state or multiple schools: The applicant who has graduated from an out-of-state massage therapy school or who has attended more than one massage therapy school must make arrangements for the school to provide the following items.

(1) the board's form "A" completed and submitted directly to the board by the massage therapy school(s) that the applicant attended as provided in 16.7.4.13 NMAC;

(2) an official transcript submitted directly to the board by the school(s) that meets the requirements in Subsection B of 16.7.4.11 NMAC;

(3) proof that the school is approved to operate as a private post-secondary educational institution or its equivalent. The respective state's department of higher education usually grants this approval. The name of the agency or entity may vary from state to state.

B. Official transcripts of massage therapy training: The applicant shall make arrangements for official transcript(s) to be sent directly to the board by the educational institution documenting that the applicant has completed the minimum curricula of 650 hours of massage therapy training as provided in 16.7.4.12 NMAC.

(1) if more than one massage therapy school was attended, at least one official transcript must document a minimum of 300 class hours of training in massage therapy as defined in 16.7.4.7 NMAC above;

(2) continuing education (CE) or continuing

education units (CEU) may be accepted toward the educational requirements for licensure;

(3) if official transcripts are not available due to unusual circumstances (example: school closure, destroyed records), the applicant will be responsible to provide satisfactory evidence to the board of completion of the required massage therapy training. The board shall consider such documentation on a case-by-case basis.

[16.7.4.11 NMAC - Rp, 16.7.4.11 NMAC, 03/14/2023]

16.7.4.12 MINIMUM CURRICULA OF MASSAGE THERAPY TRAINING:

The applicant for licensure by examination must have completed at least the 650 hour minimum curricula of massage therapy training. The massage therapy training must meet the following minimum curriculum requirements:

A. one hundred sixty five (165) hours minimum of anatomy and physiology, to include:

- (1) physiology;
- (2) anatomy;
- (3) kinesiology; and
- (4) 40 hours minimum of pathology.

B. one hundred fifty (150) hours minimum of training in massage therapy as defined in 16.7.1.7 NMAC.

(1) the massage therapy training shall include contraindications of massage therapy;

(2) a minimum of 100 hours of hands on training must be completed before the student is allowed to begin a clinical practicum as defined in 16.7.1.7 NMAC.

C. seventy-five hours minimum of general instruction to include.

(1) business; effective October 31, 2021, minimum of 20 hours;

(2) hydrotherapy; effective October 31, 2021, minimum of eight hours;

- (3) 30 hours minimum of professional ethics;
- (4) four hours of first aid; and
- (5) four hours of cardiopulmonary resuscitation to include automatic external defibrillation (CPR/AED).

D. Electives may include:

- (1) additional massage therapy;
- (2) related hands-on modalities;
- (3) additional anatomy and physiology;
- (4) clinical practicum (not to exceed 150 hours);
- (5) counseling;
- (6) herbology;
- (7) homeopathy;
- (8) nutrition;
- (9) breathing and stretching techniques;
- (10) theory; and
- (11) other

courses with prior board approval. See 16.7.4.14 NMAC for instructions.

E. The total number of hours in the massage therapy program is a minimum of 650 hours.

F. If an applicant is missing a core curriculum course or is missing a small portion of the core curriculum to complete the 650 hour requirement, the applicant may obtain the training course(s) from a continuing education provider, or from a massage therapy school that meets the requirements in 16.7.4.13 NMAC.

G. The board will accept professional work experience (not to exceed 150 hours) from applicants with documented proof accounting for all hours by completing Form C. These hours must have been performed legally and the applicant must provide proof of licensure or registration during the time the work was performed.

[16.7.4.12 NMAC - Rp, 16.7.4.12 NMAC, 03/14/2023]

16.7.4.13 FORM "A" FROM MASSAGE SCHOOL REQUIREMENT:

A. The following circumstances require that the applicant's massage school(s) submit a completed "form A for massage school" to the board office along with an official transcript and proof that the massage therapy school(s) is/was approved to operate as a private post-secondary educational institution or its equivalent at the time the applicant attended the school(s):

- (1) if the applicant attended a massage school that is located out-of-state; or
- (2) if the applicant has attended more than one massage therapy school whether in-state or out-of-state; or
- (3) if the applicant graduated from a massage therapy school more than two years ago.

B. The "form A for massage school" contains four sections corresponding to Subsections A, B, C, and D of 16.7.4.12 NMAC, and each section must be completed correctly to prevent delays in the applicant's licensure process.

(1) an hourly breakdown must be provided for each course/category/subject listed that the school provided in the curriculum that the applicant completed. If a subject is taught within another subject, the school should provide a written explanation on school letterhead and attached to the form "A";

(2) If there are no hours specified next to a course/category/subject, it will be an indication to the board that the course/category/subject was *not* part of the school's curriculum.

[16.7.4.13 NMAC - Rp, 16.7.4.13 NMAC, 03/14/2023]

16.7.4.14 ELECTIVE COURSES IN THE "OTHER" CATEGORY:

If an applicant has attended a massage therapy training program that is not a registered massage therapy school or provides proof of completion of elective courses that falls under the "other" category in Paragraph (11) of Subsection D of 16.7.4.12 NMAC, the course(s) will be reviewed on a case-

by-case basis and may be accepted by the board. The applicant must provide the following.

A. A separate written request for consideration of the course(s).

B. An official transcript that clearly names the course(s) to be considered.

C. A copy of the school catalog that clearly describes the course(s) to be considered. In accordance with Paragraph (2) of Subsection B of 16.7.4.11 NMAC, continuing education will *NOT* be accepted.

D. An administrative review fee as set forth in Paragraph (7) of Subsection A of 16.7.3.8 NMAC. [16.7.4.14 NMAC - Rp, 16.7.4.14 NMAC, 03/14/2023]

16.7.4.15 DOCUMENTS IN A FOREIGN LANGUAGE: Any document submitted in a foreign language must be accompanied by an accurate translation in English.

A. each translated document must bear the affidavit of the certified translator attesting to it being a true and complete translation of the original document;

B. the affidavit must also contain the translator's contact information, including name, address and phone number of the organization that granted the translator certification;

C. each translated document must bear a notary seal and signature swearing that the document is that of the applicants; and

D. translation of any document relevant to a person's application will be at the expense of the applicant.

[16.7.4.15 NMAC - Rp, 16.7.4.15 NMAC, 03/14/2023]

16.7.4.16 SPECIFIC PROVISIONS FOR A TEMPORARY LICENSE: A

license issued one time only for a maximum period of three months to practice massage therapy while the application for permanent license is in process, and which may only be

issued to applicants who have never sat for a licensing examination.

A. Qualifications for temporary license:

(1) the applicant for temporary license must meet all the requirements set forth in 16.7.4.10 through 16.7.4.15 NMAC;

(2) the applicant for temporary license must not have previously sat for a certification examination for therapeutic massage and bodywork (NCETMB), the national certification examination for therapeutic massage (NCETM), the massage board licensing examination (MBLEx), or other examining or certification agency approved by the board;

(3) the applicant may obtain a temporary license while waiting to sit for the national examination;

(4) upon submitting the application for licensure, the applicant for a temporary license must submit a temporary license fee, as set forth in Subsection D of 16.7.3.8 NMAC;

(5) the board may deny issuance of a temporary license for the same reasons a permanent license may be denied.

B. Issuance of the temporary license:

(1) the applicant for temporary license may not begin work until the temporary license has been issued by the board, has been received by the licensee, and has been publicly posted in principal place of practice;

(2) the temporary licensee may *not* advertise in the yellow pages or other similar advertising book;

(3) the temporary licensee must keep the board informed at all times of any change in address and contact phone number(s).

C. Surrender of temporary license required:

(1) if a temporary license holder fails the national examination, the temporary license immediately becomes null and void and must be surrendered

directly to the board office within 15 days of the examination date; and the privileges to practice authorized by the temporary license are no longer valid;

(2) expired or null and void temporary licenses shall be surrendered to the board;

(3) if an applicant, who holds a temporary license that must be surrendered, has misplaced or lost the temporary license and cannot return it to the board as required, the applicant must provide the board with an affidavit attesting that the license has been lost or misplaced and that the applicant is no longer practicing massage therapy. [16.7.4.16 NMAC - Rp, 16.7.4.16 NMAC, 03/14/2023]

16.7.4.17 SPECIFIC PROVISION FOR PERMANENT LICENSURE: The applicant must meet all the requirements set forth in 16.7.4.10 through 16.7.4.15 NMAC, in addition to the following requirements:

A. Jurisprudence examination: The applicant for permanent licensure must successfully pass the board's jurisprudence examination as set forth in 16.7.10.8 NMAC.

B. Pass a licensing or certification exam approved by the board (including MBLEx, NCETM or NCETMB), and must make arrangements for the national examining agency to send official examination results, as defined in 16.7.4.7 NMAC, directly to the board.

C. Licensure fee: Upon written notification, sent by the board that the applicant has met all other requirements for licensure, the applicant must submit the initial license fee as stated in the notification based on the fee structure set forth in Subsection A of 16.7.3.8 NMAC.

(1) the initial licensure fee must be paid in full before the permanent license will be issued;

(2) if the applicant fails to pay the initial license fee within 30 days of receipt of the notification of approval, the

application will be deemed withdrawn and subject to the provisions in 16.7.4.19 NMAC.

[16.7.4.17 NMAC - Rp, 16.7.4.17 NMAC, 03/14/2023]

16.7.4.18 APPLICATION EXPIRATION, WITHDRAWAL, AND DESTRUCTION:

A. Expiration or withdrawal of application: The application for licensure expires as follows and all previously paid fees will be forfeited if:

- (1) the applicant fails to complete all requirements for temporary or permanent licensure within one year from the date the applicant's application file is started by board office staff; or
- (2) the applicant withdraws the application, either by notifying the board in writing or by not paying the initial license fee within the time allowed in Subsection C of 16.7.4.17 NMAC.

B. If the applicant still wishes to seek licensure after the application has expired or been withdrawn and it is still within one year after the application expired was withdrawn, the applicant shall complete the following procedure.

- (1) submit a "reapplication form for withdrawn or expired application;"
- (2) submit whatever the application fee is at the time of reapplication;
- (3) complete any other requirements or submit any other documentation pending when the application was expired or withdrawn.

C. Application destruction: The board will maintain the expired or withdrawn application file for a period of one year after the expiration or withdrawal date.

- (1) after that date, the file will be purged from the board's records and destroyed;
- (2) the applicant whose application has been purged from the board's records must complete the entire application process again if, in the future, they are interested in licensure.

D. Temporary license unavailable: The option for a temporary license will no longer be available to a person whose application has expired, been withdrawn, or been destroyed from the board's records.

[16.7.4.18 NMAC - Rp 16.7.4.19 NMAC, 03/14/2023]

16.7.4.19 INITIAL LICENSE PERIOD: Initial licenses, including initial licenses issued to applicants for expedited licensure by credentials, shall be issued for a period of up to two years, depending on when in the renewal cycle the initial license is issued, in order to schedule the license to renew on October 31.

A. The first renewal cycle may be for as short a period as one year and the initial license fee may be prorated accordingly based on the fee structure set forth in Subsection A of 16.7.3.8 NMAC.

B. After the license is renewed the first time, the license will be scheduled into a biennial cycle and will be renewed every two years.
[16.7.4.19 NMAC - Rp 16.7.4.20 NMAC, 03/14/2023]

16.7.4.20 DISPLAY OF LICENSE: While performing massage therapy the, licensee must display their current license to practice massage therapy in a conspicuous place of their practice location or place of their business.
[16.7.4.20 NMAC - Rp 16.7.4.21 NMAC, 11/15/2019]

16.7.4.21 ADDRESS AND EMPLOYMENT PRACTICE CHANGES: It is the licensee's responsibility to provide written notification to the board of any changes in addresses, phone numbers, and practice location(s) within 30 days in order that renewal notices and other correspondence from the board will be received by the licensee in a timely manner, and in order for the board to be able to maintain accurate licensing records. A form is available for this purpose from the board office or from the board's website at www.

rld.state.nm.us, or a letter to the board advising of the changes will also be adequate.

[16.7.4.21 NMAC - Rp 16.7.4.22 NMAC, 03/14/2023]

16.7.4.22 ELECTRONIC APPLICATIONS: In accordance with the Uniform Electronic Transactions Act, Sections 14-16-1 through 14-16-21 NMSA 1978, the board or its designee will accept electronic application.

A. A person seeking licensure as a New Mexico massage therapist or registrant may do so by submitting an electronic application. Applicants shall submit all information as required by 16.7.4 NMAC.

B. A massage therapist may renew his or her license, and a registrant may renew his or her registration, electronically through a designated website provided by the board. A person renewing his or her license or certificate shall submit all documentation as required by 16.7.12 NMAC.

C. A massage therapist or registrant who is currently on inactive status may submit an electronic applications requesting reactivation of his or her license or registration. A person requesting reactivation of his or her license or registration shall submit all documentation as required by the Massage Therapy Practice Act, Section 61-12C-18 NMSA 1978, and 16.7.12.9 and 16.7.12.15 NMAC.

D. A person whose massage therapy license or registration has been suspended or revoked, or has expired, may in accordance with the Massage Therapy Act, the board's rules and any lawful board or court order, submit an electronic application seeking reinstatement. Applicants shall submit all information as required by the Massage Therapy Practice Act, NMSA 1978. Chapter 61, Article 12C NMSA and the board's rules.
[16.7.4.22 NMAC - Rp 16.7.4.23 NMAC, 03/14/2023]

16.7.4.23 CRIMINAL CONVICTIONS:

A. Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or a licensee retaining a license issued by the board:

(1) homicide or manslaughter;

(2) kidnapping, false imprisonment, aggravated assault or aggravated battery;

(3) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, promoting prostitution, accepting the earnings of a prostitute, human trafficking, willfully or knowingly failing to comply with the registration or verification requirements of the sex offender registration and notification act, or other related felony sexual offenses;

(4) crimes involving robbery, larceny, extortion, burglary, bribery, fraud, forgery, embezzlement, credit card fraud, or receiving stolen property;

(5) failure to comply with a proclamation of the governor; or

(6) an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

B. The board shall not consider the fact of a criminal conviction as part of an application for licensure or licensure renewal unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of 16.7.4.24 NMAC.

C. The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of 16.7.4.24 NMAC.

D. Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Massage Therapy

Practice Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of 16.7.4.24 NMAC.

E. In connection with an application for licensure or license renewal, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of 16.7.4.21 NMAC.

[16.7.4.23 NMAC - Rp 16.7.4.24 NMAC, 03/14/2023]

16.7.4.24 [RESERVED]

HISTORY OF 16.7.4 NMAC:

Pre-NMAC History: The material in this part is derived from that previously filed with the State Records Center and Archives under: Rule 92-2, Requirements for Licensure, 1/17/1992.

Rule 92-2, Requirements for Licensure, 9/9/1992;

Regulation 2, Requirements for Licensure, 1/5/1994;

Rule 92-3, Licensure Without Examination, 1/17/1992;

Rule 92-3, Licensure by Credentials, 9/9/1992;

Regulation 3, Licensure by Credentials, 1/5/1994;

Rule 92-4, Application Procedure, 1/17/1992;

Rule 92-4, Application Procedure, 9/9/1992;

Regulation 4, Application Procedure, 1/5/1994;

Rule 92-5, Provisional License, 1/17/1992;

Rule 92-5, Provisional License,

9/9/1992; Regulation 5, Temporary License, 1/5/1994.

History of Repealed Material:

16 NMAC 7.4, Requirements for Licensure - Repealed 12/24/1999.

16.7.4 NMAC, Requirements for Licensure - Repealed 5/29/2001.

16.7.4 NMAC, Requirements for Licensure filed 6/28/2005, Repealed 11/15/2019.

16.7.4 NMAC, Requirements for Licensure filed 10/16/2019, Repealed 03/14/2023.

Other History:

16.7.4 NMAC, Requirements for Licensure filed 6/28/2005 was replaced by 16.7.4 NMAC, Requirements for Licensure effective 11/15/2019.

16.7.4 NMAC, Requirements for Licensure filed 10/16/2019 was replaced by 16.7.4 NMAC, Requirements for Licensure effective 03/14/2023.

REGULATION AND LICENSING DEPARTMENT

MESSAGE THERAPY BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 7 MESSAGE THERAPISTS

PART 8 EXPEDITED LICENSURE BY CREDENTIAL

16.7.8.1 ISSUING

AGENCY: New Mexico Massage Therapy Board.

[16.7.8.1 NMAC - Rp, 16.7.8.1 NMAC, 03/14/2023]

16.7.8.2 SCOPE:

The provisions in Part 8 of Chapter 7 apply to all applicants for expedited licensure, also referred to as expedited licensure by credentials in Section 61-12C-16 NMSA 1978.

[16.7.8.1 NMAC - Rp, 16.7.8.1 NMAC, 03/14/2023]

16.7.8.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Massage Therapy Practice Act, Sections 61-12C-1 to -28 NMSA 1978. [16.7.8.3 NMAC - Rp, 16.7.8.3 NMAC, 03/14/2023]

16.7.8.4 DURATION: Permanent. [16.7.8.4 NMAC - Rp, 16.7.8.4 NMAC, 03/14/2023]

16.7.8.5 EFFECTIVE DATE: March 14, 2023, unless a later date is cited at the end of a section. [16.7.8.5 NMAC - Rp, 16.7.8.5 NMAC, 03/14/2023]

16.7.8.6 OBJECTIVE: The objective of Part 8 is to promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for expedited licensure. [16.7.8.6 NMAC - Rp, 16.7.8.6 NMAC, 03/14/2023]

16.7.8.7 DEFINITIONS:
A. "Eligible jurisdiction" means any state or territory of the United States except those included in the list of disapproved licensing jurisdictions in 16.7.8.8 NMAC.

B. "Expedited license" means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.

C. "Good standing" means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

D. "Jurisdiction" has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

E. "Licensing fee" has the same meaning as defined in Paragraph (1) of Subsection E 61-1-34 NMSA 1978.

F. "Military service member" has the same meaning as defined in Paragraph (2) Subsection E of Section 61-1-34 NMSA 1978.

G. "Qualified applicant" means an applicant who:

(1) holds a current license in good standing in another jurisdiction, provided that an applicant who is not a military service member or veteran must hold a current license in good standing in an eligible jurisdiction;

(2) does not have a disqualifying criminal conviction, as defined the board's rules; and

(3) is not subject to pending disciplinary action in New Mexico.

H. "Veteran" has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.7.8.7 NMAC - Rp, 16.7.8.7 NMAC, 03/14/2023]

16.7.8.8 LIST OF DISAPPROVED LICENSING JURISDICTIONS; REASONS:

A. Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure under Section 61-12C-16 NMSA 1978 of the Massage Therapy Practice Act:

(1) U.S. Virgin Islands, on the grounds that the board cannot determine the education and training requirements for this jurisdiction; and

(2) Vermont, on the grounds that this jurisdiction does not impose educational or examination requirements.

B. An applicant may not apply for expedited licensure on the basis of practice in any jurisdiction that does not license, register, or certify massage therapists, including each of the following:

(1) American Samoa;

(2) California;

(3) Guam;

(4) Kansas;

(5) Minnesota;

(6) Northern Mariana Islands;

(7) Wyoming. [16.7.8.8 NMAC - Rp, 16.7.8.8 NMAC, 03/14/2023]

16.7.8.9 [RESERVED]

16.7.8.10 EXPEDITED LICENSURE APPLICATION:

A. A candidate for expedited licensure under Section 61-1-31.1 NMSA 1978 must submit to the board a complete application containing all of the following:

(1) a completed and signed application form;

(2) proof of current licensure in an eligible jurisdiction as defined in these rules;

(3) certificate of good standing for the license held by the applicant in an eligible jurisdiction; and

(4) payment of the required application fee.

B. An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Subsection A of 16.7.8.10 NMAC, including documentation from third parties.

C. Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

D. If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-12C-24.1 NMSA 1978:

(1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the

application as provided by the board's rules.
[16.7.8.10 NMAC - N, 03/14/2023]

16.7.8.11 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS AND VETERANS:

A. A candidate for expedited licensure under Section 61-1-34 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) a completed and signed application form;
- (2) proof of current licensure in another jurisdiction;
- (3) certificate of good standing for the license held by the applicant in another jurisdiction, including a branch of the United States armed forces;
- (4) submission of the following documentation:
 - (a) for military service member: a 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: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a 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), proof of honorable discharge such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, a driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

B. An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by subsection A, including documentation from third parties.

C. Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

D. If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-12C-24.1 NMSA 1978:

- (1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;
- (2) the license may not be issued within 30 days of submission of the complete application; and
- (3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

E. A military service member or veteran who is issued an expedited license shall not be charged a licensing fee for the first three years of licensure with the board.
[16.7.8.11 NMAC - N, 03/14/2023]

16.7.8.12 EXPEDITED LICENSE DURATION AND RENEWAL:

A. An expedited license shall be valid for the same length of time as a regular initial license issued by the board.

B. A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules, provided that, upon renewal, the licensee must also satisfy the following examination requirements:

- (1) The licensee shall be required to pass the New Mexico jurisprudence examination.

(2) If the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass the MBLEx, NCETM, or NCETMB, the licensee shall be required to pass one of these three examinations as a prerequisite to license renewal.

C. Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to these rules.
[16.7.8.12 NMAC - N, 03/14/2023]

HISTORY OF 16.7.8 NMAC: [RESERVED]

History of Repealed Material:
16.7.8 NMAC - Massage Therapists - Expedited Licensure filed 3/17/2015, Repealed effective 03/14/2023.

Other History: 16.7.8 NMAC - Massage Therapists - Expedited Licensure filed 3/17/2015, was replaced by 16.7.8 NMAC - Massage Therapists - Expedited Licensure effective 03/14/2023.

REGULATION AND LICENSING DEPARTMENT MASSAGE THERAPY BOARD

This is an amendment to 16.7.3 NMAC, Section 8 effective 03/14/2023.

16.7.3.8 FEE SCHEDULE: Massage therapist:

- (1) Application: \$75.00.
- (2) Initial license: Pro-rated at \$5.00 per month of initial license term.
- (3) Temporary license: \$25.00.
- (4) Expedited license: Pro-rated at \$5.00 per month of initial license term.
- (5) Biennial renewal: \$125.00.
- (6) Late renewal penalty: \$75.00.

(7) Renewal during the grace period: \$125.00 plus late renewal penalty fee.

(8) Reactivation from inactive status: \$125.00 plus late renewal penalty fee.

(9) Review fee for “other” elective courses as provided in 16.7.4.14 NMAC: \$50.00.

B. Massage therapy school:

(1) Registration: \$50.00.

(2) Annual renewal: \$50.00.

(3) Late renewal penalty: \$75.00.

(4) Application review: \$400.00.

(5) Curriculum change review: \$50.00.

C. Administrative fees:

(1) Paper lists: \$50.00.

(2) Labels: \$75.00.

(3) Electronic list: \$125.00.

(4) Replacement license: \$25.00.

(5) Verification of license \$15.00.

(6) Other administrative fees (at the discretion of the board or board administrator) not to exceed \$500.00.

D. Continuing education fees:

(1) One-time fee for course taught by a continuing education provider who was an active New Mexico registered independent massage therapy instructor on February 4, 2019: \$50.00.

(2) One-time application fee for a course taught by an individual or other entity who is not a continuing education provider, per each new course: \$50.00.

E. *All fees collected by the board are non-refundable.*
[16.7.3.8 NMAC - Rp 16.7.3.8 NMAC, 11/15/2019; A, 03/14/2023]

REGULATION AND LICENSING DEPARTMENT MASSAGE THERAPY BOARD

This is an amendment to 16.7.10 NMAC, Section 8 effective 03/14/2023.

16.7.10.8 JURISPRUDENCE EXAMINATION:

A. All massage therapy licensure applicants applying for licensure by examination, and licensees that received their license under expedited licensure, prior to renewal of their license after initial licensure under expedited licensure must successfully pass the board’s open-book jurisprudence examination.

(1) the applicant will receive the jurisprudence examination with instructions from the board office after the board office receives both the application and application fee;

(2) to complete the jurisprudence examination, the applicant will use the statute and regulations received either from the board or which the applicant downloaded from the board’s website at www.rld.state.nm.us;

(3) the applicant must pass the jurisprudence examination with a minimum score of seventy percent;

(4) the applicant must return the completed jurisprudence examination to the board office as required.

B. Applicants may retake the examination as many times as necessary to achieve a passing grade.

C. The jurisprudence examination shall not be reproduced or shared in any manner.
[16.7.10.8 NMAC - Rp 16.7.10.8 NMAC, 11/15/2019; A, 03/14/2023]

TAXATION AND REVENUE DEPARTMENT

The New Mexico Taxation and Revenue Department approved the

repeal of 18.19.5 NMAC, Motor Vehicle Code - Driver’s License (filed 8/31/2000) and replaced it with Motor Vehicle Code - Driver’s License (adopted on 2/28/2023), effective 3/14/2023.

TAXATION AND REVENUE DEPARTMENT

TITLE 18: TRANSPORTATION AND HIGHWAYS

CHAPTER 19: MOTOR VEHICLE PROCEDURES, LICENSES, PERMITS PART 5: DRIVER’S LICENSE

18.19.5.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.
[18.19.5.1 NMAC - Rp, 18.19.5.1 NMAC 3/14/2023]

18.19.5.2 SCOPE: Holders of and applicants for any type of New Mexico driver’s license or permit; employers of individuals holding commercial driver’s licenses; persons whose driving license or privilege to drive has been suspended or revoked; uninsured motorists.
[18.19.5.12 NMAC - Rp, 18.19.5.2 NMAC 3/14/2023]

18.19.5.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[18.19.5.3 NMAC - Rp, 18.19.5.3 NMAC 3/14/2023]

18.19.5.4 DURATION: Permanent.
[18.19.5.4 NMAC - Rp, 18.19.5.4 NMAC 3/14/2023]

18.19.5.5 EFFECTIVE DATE: March 14, 2023, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[18.19.5.5 NMAC - Rp, 18.19.5.5 NMAC 3/14/2023]

18.19.5.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Motor Vehicle Code, including compliance with regulations for the REAL ID Act of 2005, Title 6 C.F.R. Chapter 1, Section 37. [18.19.5.6 NMAC - Rp, 18.19.5.6 NMAC 3/14/2023]

18.19.5.7 DEFINITIONS:
A. As used in regulations under the provisions of the New Mexico Commercial Driver's License Act:

(1) "commercial driver's license" means a license issued by a state or other jurisdiction which authorizes the holder to operate a commercial motor vehicle;

(2) "commercial motor vehicle" means a motor vehicle of a type used in commerce:

(a) if the vehicle has a gross vehicle weight rating of 26,001 or more pounds;

(b) if the vehicle is designed to transport sixteen or more passengers, including the driver; or

(c) if the vehicle is transporting hazardous materials and is required to be placarded pursuant to applicable law;

(3) "combination vehicle" means a power or tractor unit with one or more semi-trailers, trailers or semi-trailers converted to trailers by means of a converter gear;

(4) "disqualified" means a driver who has had the qualification to drive a commercial motor vehicle removed and whose New Mexico commercial driver's license is canceled; for purposes of this definition and Section 66-5-68 NMSA 1978, "canceled" shall mean that the commercial driver's license is in "revocation" as that term is defined in Subsection B of Section 66-5-1 NMSA 1978, and the driver is not eligible to apply for a commercial driver's license until the period of time for which the driver was disqualified has elapsed; and

(5) "resident" means a person who intends to reside in New Mexico evidenced by registration to vote or other action acceptable to the motor vehicle division.

B. As used in Subsection C of Section 66-5-6 NMSA 1978, "healing arts practitioner" means a person licensed to practice in this state medicine, osteopathic medicine, oriental medicine, chiropractic, or similar medical services for human beings. The term also includes a person licensed to practice in this state as a certified nurse practitioner, clinical nurse specialist, physician assistant or osteopathic physician assistant.

C. As used in regulations under the provisions of the New Mexico Motor Vehicle Code:

(1) "driver's license" means any license, permit or driving authorization card issued by a state or other jurisdiction recognized under the laws of New Mexico pertaining to the authorizing of persons to operate motor vehicles and including a REAL ID-compliant driver's license and a standard driver's license;

(2) "identification card" means a document issued by the department or the motor vehicle administration of a state or other jurisdiction recognized under the laws of New Mexico that identifies the holder and including a REAL ID-compliant identification card and a standard identification card;

(3) "license" without modification means any license, permit or driving authorization card issued by a state or other jurisdiction under the laws of New Mexico pertaining to authorizing of persons to operate motor vehicles including a REAL ID-compliant driver's license and a standard driver's license;

(4) "REAL ID-compliant driver's license" means a license or a class of license issued by a state or other jurisdiction pertaining to the authorizing of persons to operate motor vehicles and

that meets federal requirements to be accepted by federal agencies for official federal purposes;

(5) "REAL ID-compliant identification card" means an identification card that meets federal requirements to be accepted by federal agencies for official federal purposes;

(6) "sex" male, female or gender x;

(7) "standard driver's license" means a license or a class of license issued by a state or other jurisdiction recognized by the law of New Mexico that authorizes the holder to operate motor vehicles and is not guaranteed to be accepted for official federal purposes;

(8) "standard identification card" means an identification card that is not guaranteed to be accepted for official federal purposes.

[18.19.5.7 NMAC - Rp, 18.19.5.7 NMAC 3/14/2023]

18.19.5.8 [RESERVED]

18.19.5.9 PRORATING OF DRIVER'S LICENSE FEES:

A. The fees imposed for the issuance of a driver's license or commercial driver's license may be prorated if the licensure period is shortened pursuant to Section 66-5-19 NMSA 1978. Fees shall be prorated on an annual basis. In no case shall the fee be less than the prorated fee for one full year.

B. A person whose license or identification card expires on or after July 1, 2020 may apply for a license or identification card acceptable for federal purposes upon submission of all required documents. The person shall receive a new license or identification card that contains the same expiration date as the one previously issued. The person shall receive credit for the period remaining on the license or identification card toward the cost of the new license or identification card.

[18.19.5.9 NMAC - Rp, 18.19.5.9 NMAC 3/14/2023]

18.19.5.10 DRIVER'S LICENSES - MEMBER OF A NATO FORCE:

A. For purposes of 18.19.5.10 NMAC:

(1) "NATO signatory" means a nation, other than the United States, that is a contracting party to the north Atlantic treaty;

(2) "NATO force" means any NATO signatory's military unit or force or civilian component thereof present in New Mexico in accordance with the north Atlantic treaty; and

(3) "member of a NATO force" means the military and civilian personnel of the NATO force and their dependents.

B. Pursuant to Article IV(a) of the north Atlantic treaty the department will accept as valid, without a written or driving test or fee, the driving permit or license or military driving permit issued by the NATO force or NATO signatory or any sub-division thereof to a member of a force.

C. Pursuant to Article IV(b) of the north Atlantic treaty, at the member's request the department shall issue, without a written or driving test or fee, a driver's permit or license to a member of a force who holds the driving permit or license or military driving permit issued by the NATO force or NATO signatory or any sub-division thereof.
[18.19.5.10 NMAC - Rp, 18.19.5.10 NMAC 3/14/2023]

18.19.5.11 CONTRACTING DRIVER'S KNOWLEDGE AND SKILL TESTS:

A. Under Subsection C of Section 66-5-14 NMSA 1978, the department is permitted to contract for certain testing of individuals applying for driver's licenses. Any contract entered into may provide that all or only some of the individuals applying for driver's licenses are to be tested by the contractor. Any contract entered into may be limited to testing at certain field offices or within certain political subdivisions or geographic areas.

B. Only the following persons are eligible to enter into contracts authorized under Subsection C of Section 66-5-14 NMSA 1978:

- (1) public educational institutions; and
- (2) commercial driving schools licensed by the department of transportation pursuant to the Driving School Licensing Act and regulations thereunder.

C. Any contract entered into will specify an expiration date, provided the department may terminate the contract prior to its expiration date.

[18.19.5.11 NMAC - Rp, 18.19.5.11 NMAC 3/14/2023]

18.19.5.12 REAL ID-COMPLIANT DRIVER'S LICENSES AND IDENTIFICATION CARDS FOR UNITED STATES CITIZENS, UNITED STATES NATIONALS OR PERMANENT RESIDENT ALIENS:

A. A United States citizen, United States national or permanent resident alien applying for a REAL ID compliant New Mexico driver's license or identification card, other than a commercial driver's license, must provide documentary proof of their identification number, identity, age, indication of sex, lawful status and New Mexico residency.

B. Proof of identity and age: To establish identity and age the applicant must present at least one of the following documents:

- (1) a valid, unexpired United States passport;
- (2) a valid, unexpired United States passport card;
- (3) a valid foreign passport with I-551 stamp;
- (4) an original or a certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's place (state) of birth;
- (5) a consular report of birth abroad (CRBA) issued by the U.S. department of state, form FS-240, DS-1350 or FS-545;

(6) a valid, unexpired permanent resident card (form I-551) issued by the U.S. department of homeland security (DHS) or immigration and naturalization service (INS);

(7) a certificate of naturalization issued by DHS, form N-550 or form N-570;

(8) a certificate of citizenship, form N-560 or form N-561, issued by DHS;

(9) a valid unexpired employment authorization document (EAD) issued by DHS, form I-766 or form I-688B, verified through the systematic alien verification for entitlement system (SAVE);

(10) a foreign passport with unexpired U.S. visa affixed, accompanied by the approved I-94 form documenting the applicant's most recent admittance into the U.S., verified by SAVE;

(11) REAL ID driver's license or ID card combined proof of legal presence if legal presence is temporary; or

(12) other documents as allowed by an approved DHS exception process.

C. Proof of Identification number: Along with the proof of identity and age document listed above, an applicant must also present one the following documents, provided that the document bears the applicant's social security number:

- (1) a social security number (SSN) card;
- (2) a W-2 form;
- (3) a social security administration (SSA)-1099 form;
- (4) a non-SSA-1099 form; or
- (5) a pay stub with the applicant's name and social security number on it.

D. Proof of New Mexico residency: The applicant must present at least two of the following documents that include the individual's name and principal residence:

(1) a current real property rental agreement or a purchase agreement;

(2) a utility bill dates within 60 days of the application and that is not a cellular phone bill;

(3) an insurance bill, card or binder dated within the past six months of the application;

(4) a bank or credit card statement dated within 60 days of the application;

(5) an employment pay stub containing applicant's name and address, dated within 60 days of the application;

(6) a local property tax statement from the county assessor's office of the county where the property is located;

(7) a documentation from an educational institution such as a transcript, report card or enrollment confirmation, dated within 60 days of the application;

(8) original documentation from a city, county, state, tribal or federal government organization or community organization attesting to the applicant's New Mexico residency;

(9) a New Mexico medical or public assistance card with address on card, letter from issuing agency that came with the card, showing name and address, or profile print-out from issuing agency;

(10) documents indicating membership in a New Mexico religious organization provided applicant is less than 18 years of age;

(11) documents indicating membership in a New Mexico sports organization provided applicant is less than 18 years of age;

(12) if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico identification card, or two proofs of residency of the parent/guardian; or

(13) a document evidencing eligibility and proof that the applicant is currently receiving services from a non-profit organization qualified pursuant to Section 501 (c)(3) of the Federal Internal Revenue Code of 1986 provided the document displays the applicant's address.

E. Indication of Sex:

An applicant must indicate their sex as either male, female or gender x.

F. Proof of lawful

status: An applicant must present one of the documents listed in Paragraph (1) a valid unexpired US passport, Paragraph (2) a valid unexpired US passport card, Paragraph (4) an original or a certified copy of birth certificate filed with a state office of vital statistics or equivalent agency in the individual's place (state) of birth, Paragraph (5) a consular report of birth abroad, Paragraph (6) a valid unexpired permanent resident card, or Paragraph (7) a certificate of naturalization of Subsection (B) of 18.19.5.12 NMAC.

G. Exceptions

process: A process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity or age. Alternative documents to demonstrate lawful status will only be allowed to demonstrate U.S. citizenship. Circumstances deemed "beyond the person's control" include but are not limited to: an event occurred prior to the year official documents are available from the state or territory; natural disaster circumstances; customer provides proof from the issuing agency that documents were destroyed; or non-issuance of official records.

(1) Defined exception process #1: Certified letter of enrollment or of Indian blood & affidavit of birth. If the applicant is a member of a federally- recognized Indian nation, tribe or pueblo and does not have a birth certificate because they were not born in a hospital, the motor vehicle division will accept their certified letter of enrollment or valid identification

card issued by a federally recognized Indian nation, tribe or pueblo and the applicant's birth registration notification issued by the U.S. census office for the applicant's federally- recognized Indian nation, tribe or pueblo so long as the letter contains the applicant's name and date of birth and the applicant provides a letter from the New Mexico department of health, bureau of vital statistics rejecting the applicant's request for a delayed birth registration. The combination of these documents provides proof of U.S. citizenship and identity.

(2) Defined exception process #2: Certified letter of enrollment or valid identification card issued by a federally recognized Indian Nation, tribe or pueblo as proof of age. If the applicant is a member of a federally- recognized Indian nation, tribe or pueblo and does not have a birth certificate to demonstrate proof of age, the applicant may use a certified letter of enrollment or valid photo-identification card issued by a federally- recognized Indian nation, tribe or pueblo as documentary proof of the applicant's age so long as the letter contains the applicant's name and date of birth and the applicant provides a letter from the New Mexico department of health, bureau of vital statistics rejecting the applicant's request for a delayed birth registration.

(3) Defined exception process #3: Baptismal certificate as proof of age. If the applicant was born before December 31, 1941, the applicant may use an original baptismal record or certified copy of a baptismal record as documentary proof of the applicant's age so long as the baptismal record contains the applicant's name and date of birth or date of baptism and the applicant provides a letter from the New Mexico department of health, bureau of vital records and health statistics rejecting the applicant's request for a delayed birth registration.

(4) Defined exception process #4: Military records as proof of age. If the

applicant was born before December 31, 1941, the applicant may use a certified copy of military records as documentary proof of the applicant's age so long as the record contains the applicant's name and date of birth and the applicant provides a letter from the New Mexico department of health, bureau of vital records and health statistics rejecting the applicant's request for a delayed birth registration.

[18.19.5.12 NMAC - Rp, 18.19.5.12 NMAC 3/14/2023]

18.19.5.13 [RESERVED]

18.19.5.14 REAL ID-COMPLIANT DRIVER'S LICENSE AND IDENTIFICATION CARDS FOR LAWFUL UNITED STATES RESIDENTS:

A. A person who is legally in the United States but not a United States citizen, United States national or permanent resident alien may apply for a REAL ID compliant New Mexico driver's license, or identification card other than a commercial driver's license, and must provide documentary proof of their identification number, identity, age, indication of sex, lawful status and New Mexico residency.

B. Proof of identity and age: To establish identity and age, the applicant must present one of the following documents:

- (1) an unexpired employment authorization document issued by U.S. department of homeland security (DHS), form I-766 or form I-688B, verified by the systematic alien verification for entitlements system (SAVE);
- (2) an unexpired foreign passport with a valid, unexpired U.S. visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States, verified by SAVE. This document can be used to satisfy both the identity and age requirement, and proof of identification number requirement for a REAL ID compliant credential.

(3) REAL ID driver's license or identification card issued in compliance with the standards established by this part.

C. If the identity document submitted is a REAL ID driver's license or identification card as listed in Paragraph (3) of Subsection B of 18.19.5.14 NMAC, then to establish legal or lawful presence in the United States, the applicant must present one of the following documents issued by the U.S. federal government verified through SAVE:

- (1) an unexpired immigrant or nonimmigrant visa status for admission into the United States;
- (2) a pending or approved application for asylum in the United States;
- (3) documentation of admission into the United States as a refugee;
- (4) a pending or approved application for temporary protected status in the United States;
- (5) documentation of approved deferred action status;
- (6) a pending application for adjustment of status to legal permanent resident or conditional resident;
- (7) conditional permanent resident alien status; or
- (8) other documents as DHS may designate by notice published in the federal register.

D. Proof of identification number: An applicant must also present documentary evidence of their identification number from one of the following documents:

- (1) if, eligible for social security number, one the following documents, provided that the document bears the applicant's social security number:
 - (a) a social security number (SSN) card;
 - (b) a W-2 form;
 - (c) a SSA-1099 form;

(d) a non-SSA-1099 form;

(e) a pay stub with the applicant's name and social security number on it; or.

(2) an unexpired foreign passport with a valid, unexpired U.S. visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States, verified by SAVE. This document can be used to satisfy both the identity and age requirement, and identification number requirement for a Real ID compliant credential.

E. Indication of sex: an applicant must indicate their sex as either male, female or gender x.

F. Proof of New Mexico residency: The applicant must present at least two of the following documents that include the individual's name and principal residence:

- (1) a current real property rental agreement or a purchase agreement;
- (2) a utility bill dates within 60 days of the application and that is not a cellular phone bill;
- (3) an insurance bill, card or binder dated within the past six months of the application;
- (4) a bank or credit card statement dated within 60 days of the application;
- (5) an employment pay stub containing applicant's name and address, dated within 60 days of the application;
- (6) a local property tax statement from the county assessor's office of the county where the property is located;
- (7) documentation from an educational institution such as a transcript, report card or enrollment confirmation, dated within 60 days of the application;
- (8) original documentation from a city, county, state, tribal or federal government organization or community organization attesting to the applicant's New Mexico residency;

(9) a New Mexico medical or public assistance card with address on card, letter from issuing agency that came with the card, showing name and address, or profile print-out from issuing agency;

(10) documents indicating membership in a New Mexico religious organization provided applicant is less than 18 years of age;

(11) documents indicating membership in a New Mexico sports organization provided applicant is less than 18 years of age;

(12) if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico identification card, or two proofs of residency of the parent/guardian; or

(13) a document evidencing eligibility and proof that the applicant is currently receiving services from a non-profit organization qualified pursuant to Section 501 (c)(3) of the Federal Internal Revenue Code of 1986 provided the document displays the applicant's address.

[18.19.5.14 NMAC - Rp, 18.19.5.14 NMAC 3/14/2023]

18.19.5.15 STANDARD DRIVER'S LICENSE OR STANDARD IDENTIFICATION CARD THAT IS NOT ACCEPTABLE FOR FEDERAL PURPOSES:

A. Applicants for a New Mexico standard license or standard identification card that is not acceptable for federal purposes must provide documentary proof of their identity, indication of sex, age and New Mexico residency.

B. Proof of identity and age: To establish identity and age, applicants can use one of the following documents if it contains the applicant's name and date of birth, to provide documentary proof of their identity and age. If the document does not contain the applicant's name and date of birth, two of the following documents will be required:

(1) an original or certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's place of birth;

(2) a consular report of birth abroad issued by the U.S. department of state, form FS-240, DS-1350 or FS-545;

(3) an unexpired employment authorization document issued by the U.S. department of homeland security, form I-766 or form I-688B, verified by SAVE;

(4) an identification card issued by a foreign consulate, such as the consulate of Mexico in El Paso, Texas, or Albuquerque, New Mexico.

(5) a certified letter of enrollment issued by a federally recognized Indian nation, tribe or pueblo;

(6) a valid identification card issued by a federally recognized Indian nation, tribe or pueblo;

(7) certified copy of foreign birth certificate issued by the applicant's place of birth, provided that if the document is not in English, a certified copy of the foreign birth with a notarized English translation;

(8) affidavit of Indian birth;

(9) a state issued driver's license, a driver's license issued by a territory of the United States, or by jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(10) a state government-issued photo identification card, or a photo identification card issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(11) a state government-issued photo learner's permit, or a photo learner's permit issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(12) an American Indian or Alaskan proof of Indian blood, certificate of degree of Indian blood, federal Indian census card or tribal membership card;

(13) a photo identification card issued by the United States military, United States coast guard or New Mexico national guard;

(14) an identification document issued by the United States veterans administration, so long as it is accompanied by a United States veterans administration medical center identification card;

(15) a valid United States active duty/retiree/reservist military identification card (DOD ID DD-2);

(16) a United States, state, or local government-issued photo ID, issued based on name, social security number and date of birth;

(17) N560 certificate of citizenship if verified in SAVE;

(18) N550 certificate of naturalization if verified in SAVE;

(19) a valid permanent resident card issued by the United States government if verified in SAVE;

(20) a valid I-551 resident alien card issued since 1997 if verified in SAVE;

(21) a valid New Mexico license or identification card;

(22) a court order for name change, gender change, adoption or divorce, as long as it includes the legal name, date of birth and court seal;

(23) a New Mexico correction department photo identification card, or a photo identification card issued by the federal bureau of prisons, that includes the name, date of birth and documentation that the card has not expired within the past year;

(24) a social security card;

(25) military discharge/separation papers (DD 214);

(26) selective service card;

(27) an I-94 form presented without a passport if it contains the applicant's photo;

(28) a military dependent identification card that includes the applicant's photo;

(29) a medical insurance card or documentation of medical insurance coverage or eligibility containing an insurance identification number including a Medicaid or Medicare card;

(30) a passport or passport card from the applicant's country of citizenship;

(31) a passport or passport card from the United States if verified through systematic alien verification for entitlements system (SAVE);

(32) individual tax identification number (ITIN);

(33) a medical record less than one year old that is not from a visit to an emergency room or urgent care facility;

(34) proof of eligibility for and receipt of public assistance benefits, including general assistance, temporary assistance for needy families and the supplemental nutrition assistance program with a copy of the state human services department eligibility profile page dated with the last year.

C. Proof of New

Mexico residence: A person must present at least two of the following documents that include the individual's name and principal residence:

- (1) a current real property agreement or a purchase agreement;
- (2) a utility bill dated within 60 days of the application and does not include a cell phone bill;
- (3) an insurance bill, card or binder dated within the past six months of the application;
- (4) a bank or credit card statement dated within 60 days of the application;

(5) an employment pay stub containing applicant's name and address, dated within 60 days of the application;

(6) a local property tax statement from the county assessor's office of the county where the property is located;

(7) documentation from an education institution such as a transcript, report card or enrollment confirmation, dated within 60 days of the application;

(8) original documentation from a city, county, state, tribal or federal government organization or community organization attesting to the applicant's New Mexico residency;

(9) a New Mexico medical or public assistance card with address on card, letter from issuing agency that came with the card, showing name and address, or profile print-out from issuing agency;

(10) documents indicating membership in a New Mexico religious organization provided applicant is less than 18 years of age;

(11) documents indicating membership in a New Mexico sports organization provided applicant is less than 18 years of age;

(12) if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico identification card, or two proofs of residency of the parent/guardian;

(13) a document evidencing eligibility and proof that the applicant is currently receiving services from a non-profit organization qualified pursuant to Section 501 (c)(3) of the Federal Internal Revenue Code of 1986 provided the document displays the applicant's address.

D. Applicants for a standard driver's license or standard identification card not acceptable for federal purposes who are homeless or in temporary lodging and unable to provide two of the documents

identified in Subsection C of 18.19.5.15 NMAC may provide an affidavit or a notarized letter from a representative of a New Mexico governmental entity, not-for-profit organization, assisted care facility/home, adult assisted living facility/home, homeless shelter, transitional service provider, or group/half way house attesting to the address where the applicant resides or receives services *in lieu of* the documents required in Subsection C of 18.19.5.15 NMAC.

E. Indication of sex:

an applicant must indicate their sex as either male, female or gender x. [18.19.5.15 NMAC - Rp, 18.19.5.15 NMAC 3/14/2023]

18.19.5.16 through 18.19.5.29 [RESERVED]

18.19.5.30 DRIVER LICENSE CLASSIFICATIONS:

A. Driver's licenses, other than licenses issued under the New Mexico Commercial Driver's License Act, shall be issued under the following classifications:

<u>Class</u>	<u>Vehicles</u>	<u>Licensee</u>
D	Until October 1, 1996:	Other than any vehicle included in class C, any single vehicle less than 26,001 pounds gross vehicle weight, and such vehicles towing vehicles weighing:
(1)	not more than 10,000 pounds gross vehicle weight, provided that the towing vehicle is of equal or greater weight than the vehicle being towed; or	
(2)	more than 10,000 pounds gross vehicle weight provided that either the towing vehicle is of equal or greater weight than the vehicle being towed or, if the towing vehicle is of lesser weight than the towed vehicle, the weight in the towed vehicle does not exceed the manufacturer's rated capacity and:	
(a)	the towing vehicle has either a class 4 or higher equalizing hitch or a fifth wheel;	
(b)	the vehicle being towed is a trailer; or	

(c) the vehicle combination properly displays slow-moving insignia and moves at speeds of 25 mph or less.

On and after

October 1, 1996: Other than any vehicle included in class C, any single vehicle less than 26,001 pounds gross vehicle weight, and such vehicles towing vehicles provided that:

(1) the towing vehicle is of equal or greater weight than the vehicle being towed; or

(2) if the towing vehicle is of lesser weight than the towed vehicle, the weight in the towed vehicle does not exceed the manufacturer’s rated capacity and:

(a) the towing vehicle has either a class 4 or higher equalizing hitch or a fifth wheel;

(b) the vehicle being towed is a trailer; or

(c) the vehicle combination properly displays slow-moving insignia and moves at speeds of 25 mph or less.

In order to operate a motorcycle a driver must have a motorcycle endorsement.

E Any vehicle or combination of vehicles described in 18.19.5.112 NMAC (vehicle drivers excluded from the requirement to hold a commercial driver’s license) and any class D vehicle. In order to operate a motorcycle a driver must have a motorcycle endorsement.

M Two- or three-wheeled motorcycles. This classification of license must have an endorsement of “Z”, “Y” or “W” to be valid. This class of license is issued to drivers who drive only a motorcycle vehicle.

B. New Mexico driver’s licenses classes 1 through 5 issued under the former classification system remain valid until expiration, replacement with a class A, B, C, D, E or M driver’s license or revocation or cancellation under the provisions of the Motor Vehicle Code.

C. A class E license will be issued only to individuals who are exempt from the requirements of the New Mexico Commercial Driver’s License Act.

[18.19.5.30 NMAC - Rp, 18.19.5.30 NMAC 3/14/2023]

18.19.5.31 DRIVER LICENSE ENDORSEMENTS:

Driver’s licenses, other than licenses issued under the New Mexico Commercial Driver’s License Act, may be issued with one of the following endorsements:

<u>Endorsement</u>	<u>Authorizes</u>
<u>Licensee to Operate</u>	
Z	Any two- or three-wheeled motorcycle with an engine of less than 50 cubic centimeters piston displacement.
Y	Any two- or three-wheeled motorcycle with an engine of at least 50 but less than 100 cubic centimeters piston displacement.
W	Any two- or three-wheeled motorcycle with an engine of 100 or more cubic centimeters piston displacement.

[18.19.5.31 NMAC - Rp, 18.19.5.31 NMAC 3/14/2023]

18.19.5.32 DRIVER LICENSE RESTRICTIONS:

Driver’s licenses, other than licenses issued under the New Mexico Commercial Driver’s License Act, may be issued with one or more of the following restrictions:

<u>Restriction Code</u>	<u>Restriction</u>
B	Driver must wear corrective lenses while driving.
C	Driver limited to vehicles equipped with suitable mechanical aids such as special brakes, hand controls or other adaptive devices.
D	Driver must use prosthetic aids (other than corrective lenses) while driving, except as otherwise provided in Subsection C of 18.19.5.33 NMAC.
E	Driver limited to vehicles with automatic transmissions.
F	Driver limited to vehicles with outside mirrors.
G	Driver limited to driving a vehicle during daylight hours only.

H Driver limited to driving a vehicle for employment reasons only.

I Limited - other.

[18.19.5.32 NMAC - Rp, 18.19.5.32 NMAC 3/14/2023]

18.19.5.33 RESTRICTED LICENSE - INTRASTATE COMMERCIAL DRIVING:

A. A restricted license in Class A, B or C may be issued to an applicant who does not meet the medical requirements for a license issued under the New Mexico Commercial Driver’s License Act if the applicant applies for and is granted a waiver pursuant to 18.19.5.33 NMAC.

B. A restricted license pursuant to 18.19.5.33 NMAC authorizes a driver to operate a commercial motor vehicle only within New Mexico. Any restricted license issued pursuant to 18.19.5.33 NMAC will be issued for a reduced period of time.

C. Waivers may be granted only for one or more of the following diseases or conditions:

(1) diabetes mellitus or other metabolic disorders provided that:

(a) in the case of diabetes mellitus, the disease is stabilized with no episodes of ketosis or altered consciousness for one year and the medication and dosage has not changed within that year; and

(b) in the case of other metabolic disorders, the condition has stabilized under treatment with minimal symptoms which do not affect driving;

(2) cardiovascular disorders:

(a) general heart disease, provided that the condition is AHA Class I with no symptoms;

(b) arrhythmia, provided that the arrhythmia is stabilized with a pace maker for at least six months and the pace maker is certified for a minimum of one year beyond the six-month stability period;

(c) myocardial infarct or surgical treatment for myocardial infarct, provided that at least one year has elapsed since the incident and no symptoms have appeared; and

(d) hypertension, provided that the condition is controlled by medication;

(3) pulmonary disorders, provided that the applicant exhibits symptoms only with greater than ordinary activity and uses steroids no more than intermittently such that FVC and FEV₁ is greater than seventy percent of the predicted normal;

(4) neurologic disorders, provided that the degree of impairment does not prevent the applicant from controlling equipment, driving, walking, lifting or carrying light loads;

(5) epilepsy and other episodic disorders, provided that the applicant is free of any seizures or episodes for at least six months and either is not under medication or is taking medication without side effects;

(6) visual acuity limitations, provided that the condition is correctable to at least 20/40 in one eye with at least 70 degrees in the horizontal meridian; or

(7) loss of limb or appendage which occurred as a result of genetic disorder, birth defect, accident or surgical procedure, provided that a currently-licensed medical doctor attests that the impairment does not prevent the applicant from controlling equipment, walking, driving, or lifting or carrying light loads; the doctor's statement must specify whether or not prosthetic or other adaptive devices are required to allow the applicant to control equipment, walk, drive or lift or carry light loads; if prosthetic devices are not required, the waiver may also permit the applicant to operate commercial vehicles of the type applied for without use of prostheses.

D. The waiver and restricted license provided by 18.19.5.33 NMAC may be applied for by having a licensed medical doctor

complete the appropriate medical form and mailing or delivering it, together with the application for the waiver, to the director, motor vehicle division.

E. The application for waiver will be referred to the medical review board for its recommendation of approval or disapproval. The director, motor vehicle division, shall decide whether to grant or deny the waiver, taking cognizance of the board's recommendation and any other relevant evidence.

F. Any applicant not satisfied with the decision of the director may request an informal hearing. The request and the conduct of the hearing will be as set forth in 18.19.5.56 NMAC.

G. By accepting issuance of a restricted commercial driver's license pursuant to 18.19.5.33 NMAC, the licensee agrees to notify, in accordance with Section 66-5-15.1 NMSA 1978, the motor vehicle division of any change in the licensee's physical or mental condition which would impair the licensee's ability to operate a commercial motor vehicle. Failure to so notify the motor vehicle division cancels the restricted commercial driver's license.

H. A waiver and the restricted commercial driver's license issued based upon the waiver may be granted for a period of no more than one year. The holder of a restricted commercial driver's license who so wishes may apply for another waiver and restricted commercial driver's license, to be valid for a period not to exceed one year following the expiration of the current waiver and restricted license, at any time within the three months immediately prior to the expiration of the current waiver and restricted license.

I. Any waiver granted pursuant to 18.19.5.33 NMAC and any restricted commercial driver's license issued on the basis of that waiver is canceled when any of the conditions under which the waiver was issued no longer exists. Upon occurrence of an event or condition which cancels the restricted

commercial driver's license, the licensee must surrender the restricted commercial driver's license to the motor vehicle division and, if employed as a driver of commercial motor vehicles, notify the licensee's employer. A driver whose waiver has terminated may re-apply for a waiver when the conditions set forth in 18.19.5.33 NMAC are met. [18.19.5.33 NMAC - Rp, 18.19.5.33 NMAC 3/14/2023]

18.19.5.34 SHORTENING OF LICENSURE PERIOD:

A. The division, whenever good cause appears, may issue a restricted license that has a shortened licensure period pursuant to Section 66-5-19 NMSA 1978. The licensure period for a restricted license may be shortened to a period of less than one year depending on the nature of the restriction.

B. Example: Y, who has been issued a New Mexico driver's license, has had a seizure and has informed the motor vehicle division. In order to remain validly licensed in New Mexico, Y must first submit to the division a statement from a licensed physician or licensed osteopathic physician, on the appropriate medical form supplied by the division, attesting that Y has been free of any seizures or episodes for at least six months and either is not under medication or is taking medication without side effects. [18.19.5.34 NMAC - Rp, 18.19.5.34 NMAC 3/14/2023]

18.19.5.35 through 18.19.5.49 [RESERVED]

18.19.5.50 POINT SYSTEM - PURPOSE - DEFINITIONS:

A. Section 66-5-30 NMSA 1978 authorizes the department to suspend the driver's license of an individual who has been convicted of violations of the traffic laws with such frequency as to show disrespect for those laws or has been found to be an habitually reckless or negligent driver of a motor vehicle. To provide a reasonable, objective and fair method by which the

department may determine whether an individual shows disrespect for the traffic laws of this state through frequency of conviction for violations or is habitually reckless or negligent and to promote the public safety by removing such drivers from the roads, the department establishes a “point system” with 18.19.5.50 through 18.19.5.56 NMAC. This point system continues the point system in effect prior to July 1, 1992.

B. For the purposes of 18.19.5.50 through 18.19.5.56 NMAC, “conviction” means an adjudication of guilt including a finding of guilty by a court, a plea of guilty entered by the court, a plea of *nolo contendere* accepted by the court, a plea of guilty pursuant to a penalty assessment misdemeanor (Sections 66-8-116 through 66-8-119 NMSA 1978 or the forfeiture of bail or other collateral deposited to secure the violator’s appearance in court; “conviction” also includes a conviction for a traffic violation in any other state, territory or possession of the United States, the District of Columbia and any province of the Dominion of Canada so long as the conviction in that jurisdiction is for a violation of a traffic law for which points would be assessed if the conviction were for a violation of the traffic laws of this state. “Conviction” does not include the imposition of sentence.

C. For the purposes of 18.19.5.50 through 18.19.5.56 NMAC, “driver” means an individual who operates a motor vehicle upon the traffic-ways of this state whether or not that individual holds a valid driver’s license issued either by this state under the provisions of the Motor Vehicle Code or by another jurisdiction under the laws of that jurisdiction.

D. For the purposes of 18.19.5.50 through 18.19.5.56 NMAC, “traffic-way” means a public highway or any other place, such as a parking lot, which is open for driving of motor vehicles by members of the general public and which is subject to the traffic control regulation of the state or a political subdivision of the state.

[18.19.5.50 NMAC - Rp, 18.19.5.50 NMAC 3/14/2023]

18.19.5.51 POINT SYSTEM - ASSESSMENT AND EXPUNGING OF POINTS FOR VIOLATIONS OF TRAFFIC LAWS:

A. Violations for which points shall be assessed are either violations pursuant to the traffic laws of this state or violations of the traffic laws of other jurisdictions for which points would be assessed if the violation had occurred in New Mexico. Points shall be assessed by the department in accordance with the schedule in 18.19.5.52 NMAC following conviction for any scheduled traffic law violation or the equivalent violation in the other jurisdiction if the violation occurred in another jurisdiction. Notification of a conviction of a traffic violation subject to the assessment of points shall be forwarded to the department by the convicting court. Points shall be assessed regardless of whether the violation occurred on a state, county or municipal road or on another traffic-way. The department shall keep a record of points assessed for a period of one year from the date the violation occurred.

B. Points assessed to a driver will be expunged by the department automatically at the end of the twelfth month following the month in which the violation for which the points were assessed occurred.

[18.19.5.51 NMAC - Rp, 18.19.5.51 NMAC 3/14/2023]

18.19.5.52 POINT SYSTEM - SCHEDULE OF POINTS FOR VIOLATIONS:

A. Points to be assessed for conviction of violations on or after October 1, 1996 of provisions of the Motor Vehicle Code are scheduled in Subsections B through G below.

B. Eight (8) points for violation of the following section:
66-7-301
Speeding 26 or more mph over the posted speed limit on any traffic-way if the limit is 15, 30 or 75 mph

66-7-301
Speeding 26 or more mph over the posted speed limit on any traffic-way if the limit is other than 15, 30 or 75 mph and the speed was at least 76 mph

C. Six (6) points for violations of the following sections:
66-7-347

Passing school bus taking on or discharging passengers or displaying warning not to pass

66-8-113
Reckless driving

66-8-115
Contest racing on public traffic-way

D. Five (5) points for violation of the following section:
66-7-301

Speeding 16 to 25 mph over the posted speed limit on any traffic-way if the limit is 15, 30 or 75 mph

66-7-301
Speeding 16 to 25 mph over the posted speed limit on any traffic-way if the limit is other than 15, 30 or 75 mph and the speed was at least 76 mph

E. Four (4) points for violations of the following section:
66-7-332

Failure to yield right of way to an authorized emergency vehicle

F. Three (3) points for violations of the following sections:
(1)

CARELESSNESS
66-8-114

Careless Driving

(2) FAILURE

TO YIELD/OBEY TRAFFIC CONTROL DEVICES

66-7-104
Failure to obey traffic instructions stated on traffic sign or shown by traffic control device

66-7-328
Failure to yield right of way in a manner required at unsigned intersection

66-7-329
Vehicles turning left at intersection

66-7-330
Failure to yield right of way at yield sign, after stop sign or when emerging from private traffic-way

66-7-331
Failure to yield right of way at yield

sign, after stop sign or when emerging from private traffic-way
66-7-341

Failure to obey traffic instructions stated on traffic sign or shown by traffic control device
66-7-342

Failure to obey traffic instructions stated on traffic sign or shown by traffic control device
66-7-343

Certain vehicles must stop at railroad grade crossings
66-7-346

Failure to yield right of way at yield sign, after stop sign or when emerging from private traffic-way
(3)

FOLLOWING/BACKING
66-7-318

Following too closely
66-7-354

Improper backing
(4) TURNING

MOVEMENTS/LANE POSITION
66-7-322

Making improper turn
66-7-323

Making improper turn
(5) PASSING/

LEFT OF CENTER
66-7-308

Failure to drive on right side of roadway when required
66-7-309

Passing vehicles proceeding in opposite directions
66-7-310

Improper overtaking or passing of a vehicle
66-7-311

Improper overtaking or passing of a vehicle
66-7-312

Passing with insufficient distance allowed for other vehicles or with inadequate visibility
66-7-313

Driving to the left of center of roadway when prohibited
66-7-315

Passing where prohibited by posted signs or pavement markings
(6)

SPEEDING
66-7-301

Speeding 6 to 15 mph over the posted speed limit on any traffic-way if the limit is 15, 30 or 75 mph

66-7-301
Speeding 6 to 15 mph over the posted speed limit on any traffic-way if the limit is other than 15, 30 or 75 mph and the speed is at least 76 mph

G. Two (2) points for violations of the following sections:
66-3-801

Operating with any defective equipment resulting in inability to control vehicle movement properly
66-3-840

Operating with defective brakes
66-3-901

Operating with any defective equipment resulting in inability to control vehicle movement properly
66-7-325

Failure to signal intention to change vehicle direction or to reduce speed suddenly
66-7-326

Giving wrong signal
66-7-357

Overloading vehicle with passengers or cargo
66-7-369

Failure to restrain child passenger properly
66-7-372

Failure to use seatbelt properly
[18.19.5.52 NMAC - Rp, 18.19.5.52 NMAC 3/14/2023]

18.19.5.53 POINT SYSTEM - WARNING AT 6 POINTS: Upon the accumulation by the driver of at least six points, the department may warn the driver of the possibility of suspension of the driver's license.
[18.19.5.53 NMAC - Rp, 18.19.5.53 NMAC 3/14/2023]

18.19.5.54 POINT SYSTEM - SUSPENSION OF DRIVER'S LICENSE AT 7 TO 10 POINTS: If a driver has been assessed from seven to 10 points for violations occurring within a period of one year and the department receives a recommendation from a municipal or magistrate judge that the driver's license be suspended for a period not to exceed three months, the department shall automatically suspend the license for the period recommended by the municipal or magistrate judge up to a period of

three months. If the judge does not specify the recommended length of the period of suspension, the department will presume that the recommendation is for a period of three months. The department shall notify the driver of the fact of the suspension of the driver's license and of the beginning and ending dates of the suspension.
[18.19.5.54 NMAC - Rp, 18.19.5.54 NMAC 3/14/2023]

18.19.5.55 POINT SYSTEM - SUSPENSION AT 12 POINTS: Upon the assessment of points to a driver which causes the total points accumulated by that driver to equal or exceed twelve points for violations occurring within a period of twelve consecutive months, the department shall suspend the driver's license for a period of twelve months. The department shall notify the driver of the fact of the suspension of the driver's license under 18.19.5.55 NMAC, the beginning date of the suspension and the driver's right to a hearing under the provisions of Subsection B of Section 66-5-30 NMSA 1978. The driver shall surrender the driver's license to the department immediately upon receiving notice of the suspension unless the driver requests a hearing under the provisions of Subsection B of Section 66-5-30 NMSA 1978, in which case the license shall be surrendered immediately upon a final decision adverse to the driver.
[18.19.5.55 NMAC - Rp, 18.19.5.55 NMAC 3/14/2023]

18.19.5.56 POINT SYSTEM - HEARINGS:

A. Any hearing conducted pursuant to Subsection B of Section 66-5-30 NMSA 1978 shall be conducted before the director of the motor vehicle division or a person designated by the director. The officer conducting the hearing may postpone or continue the hearing on the officer's own motion or upon application from the driver for good cause shown.

B. At the beginning of the hearing, the officer conducting

the hearing shall inform the driver of the driver's right to representation. In such hearings, the technical rules of evidence shall not apply but, in ruling on the admissibility of evidence, the officer conducting the hearing may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt. The rules of civil procedure for the district courts shall not apply but the hearing shall be conducted so that both complaints and defenses are amply and fairly presented. To this end, the officer conducting the hearing shall hear arguments, entertain and dispose of motions, require written expositions of the case as circumstances justify and render a decision in accordance with the law and the evidence presented and admitted.

C. The officer conducting the hearing shall make and preserve a complete record of the proceedings. The officer conducting the hearing may announce the decision at the conclusion of the hearing or may take the matter under advisement but shall, in either case, within 20 days inform the driver in writing of the decision and, if the decision is unfavorable to the driver, of the driver's right to and requirements for review of the matter by the courts.

D. Failure of the driver to appear without good cause at the hearing is grounds for an adverse decision.

[18.19.5.56NMAC - Rp, 18.19.5.56 NMAC 3/14/2023]

18.19.5.57 REINSTATEMENT OF SUSPENDED LICENSE - CONDITIONS: The department shall not reinstate a driver's license to any person whose license has been suspended under the provisions of 18.19.5.55 NMAC unless the conditions specified in 18.19.5.57 NMAC are met.

A. That person presents proof satisfactory to the department showing successful completion in a timely manner by that person of an approved driver improvement course. The course

must be approved by the traffic safety bureau of the state highway and transportation department. Completion of the course must have occurred within 90 days immediately preceding the application for reinstatement of the license.

B. The driver must also successfully complete the written driver's examination and the vision examination which are administered by the department prior to the reinstatement of the driver's license. [18.19.5.57 NMAC - Rp, 18.19.5.57 NMAC 3/14/2023]

18.19.5.58 through 18.19.5.69 [RESERVED]

18.19.5.70 LIMITED DRIVER'S LICENSE - PURPOSE - CRITERIA:

A. The director of the motor vehicle division may grant a limited driver's license so that an individual whose driving privileges have been suspended or revoked may obtain or continue to hold employment or to attend school, except in the instances specifically enumerated in Subsection A of Section 66-5-35 NMSA 1978.

B. A limited driver's license is the granting of a privilege to operate a motor vehicle upon the highways of this state but only during certain hours of the day. Unless evidence demonstrates that the limitation is unreasonable for a particular applicant, the general privilege is limited to days in which the applicant works or attends school. Each day the applicant works or attends school, the applicant's driving is limited to a period starting one hour before the applicant's time of beginning work or attending school and terminating one hour after the applicant's time of ending work or attending school. Limited licenses will not be issued for commercial driver's licenses. Limited licenses are available only for class D, E and M licenses.

C. With respect to driver's licenses suspended or revoked on or after July 1, 1999, all of

the following criteria must be met by an applicant for a limited license.

(1) The suspension or revocation of the applicant's general driver's license must not have been a result of:

(a) a revocation for the fourth or subsequent time pursuant to Subsection C of Section 66-8-111 NMSA 1978 or any revocation pursuant to Subsection B of Section 66-8-111 NMSA 1978;

(b) a conviction for committing great bodily harm by vehicle or great bodily injury by vehicle;

(c) a court order resulting from a finding of delinquency, pursuant to the Children's Code;

(d) a failure to appear in court or to pay a penalty assessment; or

(e) non-payment of a judgment or default in payment under a settlement agreement resulting from a motor vehicle accident.

(2) The applicant must be self-employed, gainfully employed by another or enrolled in school.

(a) If the applicant is or will be employed by another person, that current or prospective employer must certify in writing the applicant's employment and the certification must include:

(i) a description of the days and hours during which the applicant is working or will work each week;

(ii) a brief description of the applicant's work duties;

(iii) the specific duties of the applicant which require the operation of a motor vehicle on the job; and

(iv) a brief explanation of how, if at all, the lack of a driver's license would adversely affect the applicant's ability to hold or secure gainful employment with the employer.

(b) If self-employed, the applicant must

certify in writing the self-employment and the certification must include:

- (i) a description of the days and hours during which the applicant works each week;
- (ii) a brief description of the applicant's business or professional activity;
- (iii) the number, if any, of the applicant's employees; and
- (iv) a brief explanation of why the employees, if any, could not perform all of the motor vehicle operations required by the applicant's business or professional activity.

(c)

For the purposes of 18.19.5.70 NMAC, "school" includes any school, institute, college or university, whether public or private, offering courses of instruction to the public. If the applicant is attending school, the school must certify in writing the applicant's attendance and the certification must include:

- (i) a description of the days and hours the applicant is required to attend;
- (ii) a brief description of the program or course(s) the applicant is taking, the expected date of completion and whether the applicant is meeting program requirements; and
- (iii) a brief explanation of how, if at all, the lack of a driver's license would adversely affect the applicant's ability to complete the course of instruction.

(3) The

applicant must meet the requirements of the Mandatory Financial Responsibility Act. If the applicant meets the requirements through automobile insurance, the automobile insurance policy must identify the applicant as the insured and must be maintained for the term of any limited driver's license or permit granted.

(4) The

applicant must take and pass any examination required for the class of license applied for.

(5) The

applicant must agree to notify the

motor vehicle division of any change in the applicant's circumstances affecting the limited license, including change in employment or enrollment, change in employment or enrollment status, a failure to meet the requirements of the Mandatory Financial Responsibility Act or any other circumstance required by the director. In addition, an applicant who is required to have an ignition interlock on each vehicle the applicant drives must also agree to inform the motor vehicle division whenever the applicant is permitted to drive additional vehicles.

(6) The

applicant pays any required fee for the limited license.

(7) Applicants

whose driver's license was revoked for a first, second or third time pursuant to Subsection C of Section 66-8-111 NMSA 1978 of the Implied Consent Act or was revoked as a result of a second or third conviction for driving under the influence of intoxicating liquor or drugs may not be granted a limited license until at least thirty days after the date of revocation. Such applicants must furnish documentation of:

(a)

enrollment in an approved DWI school: proof that the applicant enrolled in an approved DWI school subsequent to the applicant's latest conviction for violation of the Implied Consent Act and completed the course prior to application for a limited license meets this requirement; and

(b)

enrollment in an approved alcohol screening program: proof that the applicant enrolled in an alcohol screening program subsequent to the applicant's latest conviction for violation of the Implied Consent Act and completed the program prior to application for a limited license meets this requirement.

(8) An

applicant whose driver's license was revoked pursuant to Paragraph (3) of Subsection C of Section 66-8-111 NMSA 1978 of the Implied Consent Act shall provide proof that an ignition interlock is installed and

operated according to the rules of the traffic safety bureau on every vehicle the applicant is to operate. The applicant must provide a list of vehicles to be operated by the applicant and proof that an approved and functioning ignition interlock is installed on each listed vehicle.

(9) An

applicant whose driver's license was revoked as a result of a second or third conviction of driving under the influence of intoxicating liquor or drugs shall provide a copy of his judgment and sentence, which must attest that the applicant shall provide proof that each motor vehicle to be operated by the applicant is equipped with an ignition interlock of a type approved by the traffic safety bureau, and shall provide proof that an ignition interlock is installed and operated according to the rules of the traffic safety bureau on every vehicle the applicant is to operate. The applicant must provide a list of vehicles to be operated by the applicant and proof that an approved and functioning ignition interlock is installed on each listed vehicle.

D. Failure at any

time during the period for which the limited license is granted to meet a requirement specified in 18.19.5.72 NMAC that is to be met during the entire period for which the limited license is granted is cause for revocation of the limited license.

[18.19.5.70 NMAC - Rp, 18.19.5.70 NMAC 3/14/2023]

18.19.5.71 LIMITED DRIVER'S LICENSE - APPLICATION - HEARING:

A. Applications for

a limited driver's license are to be submitted to the director of the motor vehicle division for consideration. Upon receipt of the application, the director will determine whether the applicant is eligible to apply for a limited license, based on the reason for the suspension or revocation of the applicant's driving privileges and the requirements of 18.19.5.70 NMAC, and either grant or deny the application. If the application is denied, the department shall schedule

a hearing in the applicant's county of residence, unless the applicant and the department agree to hold the hearing at another place.

B. [RESERVED]

C. [RESERVED]

D. [RESERVED]

E. [RESERVED]

F. The hearing will be conducted by a hearing officer designated by the department. During the hearing, the technical rules of evidence will not apply but the hearing shall be conducted in a manner which allows the applicant ample opportunity to present arguments and evidence in support of the request for a limited driver's license. The applicant's driver history will be part of the evidence introduced and considered.

G. At the conclusion of the hearing, the designated hearing officer shall review the evidence presented and either grant or deny the application for a limited driver's license. A written order shall be entered embodying the decision.

H. Any limited driver's license shall be in standard form approved by the director whether it is issued for employment or school attendance. It is also subject to the condition that the licensee must inform the motor vehicle division immediately of any change in the licensee's circumstances affecting the issuance of the license, including any change in employment, employment status or enrollment status.

I. The application and related documentation shall be retained by the department as part of the applicant's driver history.

J. A limited license issued under Section 66-5-35 NMSA 1978 may be suspended or revoked as any other driver's license or for any violation of the conditions to which the limited license is subject. [18.19.5.71 NMAC - Rp, 18.19.5.71 NMAC 3/14/2023]

18.19.5.72 APPROVED DWI SCHOOL AND APPROVED ALCOHOL SCREENING PROGRAM:

A. An approved DWI

school is any DWI school approved by the traffic safety bureau of the state highway and transportation department.

B. An approved alcohol screening program is any alcohol screening program certified by the traffic safety bureau of the state highway and transportation department as having been approved by any court, as provided for in Section 66-8-102(H) NMSA 1978. [18.19.5.72 NMAC - Rp, 18.19.5.72 NMAC 3/14/2023]

18.19.5.73 through 18.19.5.99 [RESERVED]

18.19.5.100 COMMERCIAL DRIVER'S LICENSE - THIRD PARTY SKILLS TESTING:

A. The department may enter into contracts with public agencies or private entities to administer the skills tests required by Section 66-5-60 NMSA 1978. Any such contract shall specify the area of the state for which the contractor is to provide the testing service, the frequency of the test offerings, the community locations where testing will be offered and a time schedule when testing will be conducted in each location. The contractor shall be fully responsible for all equipment and the state of New Mexico shall have no liability for such equipment owned, rented or otherwise used by the contractor.

B. The contractor is authorized to charge a fee, as determined in the contract with the department, for the administration of each skill test. [18.19.5.100 NMAC - Rp, 18.19.5.100 NMAC 3/14/2023]

18.19.5.101 COMMERCIAL DRIVER'S LICENSE - NOTIFICATION BY DRIVER:

A. Any driver who holds a class A, B or C driver's license issued by the department and who is convicted of a violation of a state law or local ordinance relating to motor vehicle traffic control, other than parking violations, shall notify the motor vehicle division by sending

a letter, postmarked within thirty days of conviction, setting out the following:

- (1) name of licensee;
- (2) licensee's New Mexico driver's license number;
- (3) date of violation;
- (4) date of conviction;
- (5) offense for which convicted;
- (6) state in which violation occurred;
- (7) court in which convicted; and
- (8) whether or not a fine was paid.

B. The letter must be sent to driver services bureau, motor vehicle division, P. O. Box 1028, Santa Fe, N.M. 87504-1028. [18.19.5.101 NMAC - Rp, 18.19.5.101 NMAC 3/14/2023]

18.19.5.102 COMMERCIAL DRIVER'S LICENSE - DISQUALIFICATION FOR VIOLATION OF OUT-OF-SERVICE ORDER: As used in Section 66-5-71 NMSA 1978, "first violation" means the first violation within the ten-year period ending on the date of the driver's conviction of violating an out-of-service order. [18.19.5.102 NMAC - Rp, 18.19.5.102 NMAC 3/14/2023]

18.19.5.103 COMMERCIAL DRIVER'S LICENSE - DISQUALIFICATION PURSUANT TO PARENTAL RESPONSIBILITY ACT - GENERAL - REINSTATEMENT SURCHARGE:

A. The terms "suspension" or "revocation" as used in the Parental Responsibility Act (Laws 1995, Chapter 25) are equivalent to "disqualification" as that term is used in the New Mexico Commercial Driver's License Act.

B. A disqualification pursuant to the Parental Responsibility Act will be entered by the human services department. In accordance with Section 66-5-30

NMSA 1978, the taxation and revenue department will issue a notice to the driver. The driver may request a hearing on the disqualification in accordance with 18.19.5.104 NMAC.

C. Unless reinstatement is required as a result of a hearing, a disqualification pursuant to the Parental Responsibility Act will continue until:

- (1) the human services department issues a written certificate of compliance to the driver;
- (2) the driver presents the certificate of compliance to the motor vehicle division; and;
- (3) the driver pays motor vehicle division both the reinstatement fee required by Section 66-5-33.1 NMSA 1978 and the reinstatement surcharge.

D. Under the authority granted by Section 40-5A-12 NMSA 1978, a reinstatement surcharge of twenty-five dollars (\$25.00) is imposed on reinstatement of a commercial driver's license that had been disqualified pursuant to the Parental Responsibility Act. The surcharge is to cover the costs of implementing and administering the Parental Responsibility Act.

E. This regulation is applicable to disqualifications by the human services department under the Parental Responsibility Act on or after August 1, 1995.

[18.19.5.103 NMAC - Rp,
18.19.5.103 NMAC 3/14/2023]

18.19.5.104 [RESERVED]
[18.19.5.104 NMAC - Rp,
18.19.5.104 NMAC 3/14/2023]

18.19.5.105 [RESERVED]
[18.19.5.105 NMAC - Rp,
18.19.5.105 NMAC 3/14/2023]

18.19.5.106 COMMERCIAL DRIVER'S LICENSE - REDUCTION OF LIFETIME DISQUALIFICATION - GUIDELINES:

A. A driver who has been disqualified for life under Subsection C of Section 66-5-68 NMSA 1978 may apply

to the department to have the disqualification period reduced to a period of not less than ten years after meeting the following guidelines and submitting a letter requesting a review of the disqualification when that driver:

(1) Received a lifetime disqualification resulting from two convictions for driving under the influence of alcohol, or two convictions for driving under the influence of a controlled substance, or a combination of one conviction for driving under the influence of alcohol and one conviction for driving under the influence of a controlled substance. The driver may apply to the department for a review of a lifetime disqualification from driving a commercial motor vehicle when the driver has:

(a) Successfully completed a (licensed) alcohol rehabilitation program if the disqualification is a result of two convictions for driving under the influence of alcohol; or

(b) Successfully completed a (certified) drug rehabilitation program if the disqualification is a result of two convictions for driving under the influence of a controlled substance; or

(c) Successfully completed a (licensed) program in alcohol rehabilitation and a separate (certified) program in drug rehabilitation if the disqualification is a result of one conviction for driving under the influence of alcohol and one conviction for driving under the influence of a controlled substance.

(2) Provides information, satisfactory to the department, that the driver has not abused the use of alcohol or a controlled substance for a period of at least five consecutive years immediately prior to the application for review.

(3) Has held a valid class D license for at least five consecutive years immediately prior to the date of the application for review, and during that time the driver's record has no convictions for moving violations and no convictions

for any offense relating to the use of alcohol or any controlled substance.

B. Lifetime disqualifications which were imposed because of convictions resulting from:

(1) Leaving the scene of an accident involving a commercial vehicle; or

(2) Using a commercial motor vehicle in the commission of a felony; or

(3) A combination of A and B above, may apply to the department for a review of a lifetime disqualification from driving a commercial motor vehicle when the driver has held a valid class D license for at least five consecutive years immediately prior to the date of the application for review and during that time the driver's record contains no convictions for moving violations.

C. A lifetime disqualification may be reduced to not less than 10 years when a driver meets the minimum qualifications set out in the guidelines and submits a letter of request to the director of the motor vehicle division along with any substantiating material. If the director satisfied with the information submitted, the director may reduce the lifetime disqualification to a period of time which, when added to the period of time that has elapsed since the date of the disqualification, will be not less than 10 years.

[18.19.5.106 NMAC - Rp,
18.19.5.106 NMAC 3/14/2023]

18.19.5.107 COMMERCIAL DRIVER'S LICENSE - REDUCTION OF LIFETIME DISQUALIFICATION - REQUEST FOR HEARING - CONDUCT OF HEARING:

A. Any driver who has requested a review of a lifetime disqualification, who is not satisfied with the decision of the director of the motor vehicle division may request an informal hearing. Requests for an informal hearing must be in writing and must be received by the motor vehicle division or postmarked within ten days after receipt of the notification of the director's decision. Requests for an informal hearing

received after this time will not be honored.

B. The time and place of hearing shall be established by the motor vehicle division and notice of such informal hearing shall be given to the requestor by certified mail.

C. The director may designate a hearing officer to conduct the hearing and issue a decision on behalf of the motor vehicle division.

D. The director or hearing officer shall have the duty to conduct a fair and impartial hearing, to take appropriate action to avoid unnecessary delay in the disposition of proceedings, and to maintain good order and decorum.

E. Failure of the driver to appear at a scheduled hearing will result in forfeiture of the opportunity for a review and the determination of the director shall be conclusive.

F. The director or hearing officer shall provide the requestor with a written decision which shall be sent by certified mail not more than 10 days after the close of the informal hearing.
[18.19.5.107 NMAC - Rp,
18.19.5.107 NMAC 3/14/2023]

18.19.5.108 COMMERCIAL DRIVER'S LICENSE - NO "EMPLOYMENT ONLY" COMMERCIAL DRIVER'S LICENSES: During any period in which an individual's commercial driver's license is suspended or revoked, if the individual is eligible for a limited driving privilege under Section 66-5-35 NMSA 1978, the limited driving privilege shall apply only to a Class D, E or M license. The limited driving privilege available under Section 66-5-35 NMSA 1978 does not apply to commercial driver's licenses.
[18.19.5.108 NMAC - Rp,
18.19.5.108 NMAC 3/14/2023]

18.19.5.109 COMMERCIAL DRIVER'S LICENSE - CONSEQUENCES OF SECOND DISQUALIFICATION FOR LIFE: A driver whose lifetime disqualification has been reduced to a period of not less than ten years under

the provisions of this section and regulations thereunder who is again convicted of a violation resulting in a disqualification for life is not eligible to apply to the department for reduction of the disqualification period resulting from the second conviction. Any application for reduction of the subsequent disqualification for life made by such a driver will be disapproved and the department will not grant a hearing with respect to that disapproval.
[18.19.5.109 NMAC - Rp,
18.19.5.109 NMAC 3/14/2023]

18.19.5.110 CANCELLATION OF COMMERCIAL DRIVER'S LICENSE FOR FALSE INFORMATION: Within 10 days of discovery of the falsification, the department shall cancel the commercial driver's license of a driver who falsified any material information on any application or certification required to obtain that license. The driver is disqualified from applying for another commercial driver's license for 60 days following the date of cancellation.
[18.19.5.110 NMAC - Rp,
18.19.5.110 NMAC 3/14/2023]

18.19.5.111 COMMERCIAL DRIVER'S LICENSE - COMMERCIAL DRIVER'S LICENSE TESTING:
A. A New Mexico commercial driver's license shall not be issued to any person who has not successfully completed the knowledge and skills tests specified by 18.19.5.111 NMAC. The knowledge tests for New Mexico are in two forms, form A and form B, for each of seven areas of knowledge: general knowledge, air brakes, combination vehicles, passenger transport, tank vehicles, doubles/triples and hazardous materials (HAZMAT). If a driver fails to pass a knowledge test, either form A or B, the alternate form shall be administered the next time the driver takes the test. Passing grades for each separate test shall be eighty percent or higher. Any driver who does not achieve a score of eighty percent or higher on any knowledge

or skill test may retake a test on that subject after one week or more has intervened since the date last tested. The director, motor vehicle division, however, may waive the time limit when the driver demonstrates that the one week wait would cause undue hardship.

B. A school bus endorsement shall not be issued to any person who has not successfully completed a knowledge test and a skills test in both a passenger commercial motor vehicle and a school bus.

C. The skills tests for New Mexico shall be composed of the three parts set forth in Subsections D through F of 18.19.5.111 NMAC.

- D.** The pre-trip test which shall consist of at least the following parts:
- (1)** Tractor-trailer addressing the following elements:
 - (a)** Engine compartment
 - (b)** Engine start
 - (c)** Front of vehicle
 - (d)** Left or right side of vehicle
 - (e)** Coupling system
 - (f)** Rear of vehicle
 - (2)** Straight truck:
 - (a)** Engine compartment
 - (b)** Engine start
 - (c)** Front of vehicle
 - (d)** Left or right side of vehicle
 - (e)** Rear of vehicle
 - (3)** School bus, coach bus, transit bus:
 - (a)** Engine compartment
 - (b)** Engine start
 - (c)** Front of vehicle

(d) Right side of vehicle

(e) Passenger compartment

(f) Rear of vehicle

E. The basic skills tests which shall consist of one of the following forms:

(1) Form 1 addressing at least the following:

(a) Alley dock

(b) Straight line backing

(c) Sight side parallel park

(d) Conventional parallel park

(2) Form 2 addressing at least the following:

(a) Right turn

(b) Alley dock

(c) Conventional parallel park

(d) Backing serpentine

(3) Form 3 addressing at least the following:

(a) Alley dock

(b) Straight line backing

(c) Conventional parallel park

(d) Backing serpentine

F. The road test shall consist of the following maneuvers:

(1) Four left turns

(2) Four right turns

(3) One stop intersection

(4) One through intersection

(5) Urban straight section

(6) Expressway section or rural section if no expressway available

(7) One drive down grade and one simulated drive down grade

(8) One drive up grade

(9) Stop on downgrade or stop on upgrade

(10) One underpass or one bridge (tractor-trailer only)

(11) One curve (left or right)

(12) Railroad crossing:

(a) For non-bus and non-HAZMAT: One railroad crossing or one extra through intersection

(b) For bus or HAZMAT: One railroad crossing or one simulated railroad crossing.

G. The skills test required by 18.19.5.111 NMAC shall be deemed to have been met by a driver who has been qualified and employed as a commercial driver for two or more years at the time of application for a class A, B, or C license, and who has not been convicted of a point assessment violation nor had an accident with fault while driving a commercial vehicle within the last three years. [18.19.5.111 NMAC - Rp, 18.19.5.111 NMAC 3/14/2023]

18.19.5.112 COMMERCIAL DRIVER'S LICENSE - VEHICLE DRIVERS EXCLUDED FROM THE REQUIREMENT TO HOLD A COMMERCIAL DRIVER'S LICENSE: For purposes of licensing drivers of commercial vehicles and issuing commercial drivers licenses, the driver of one of the following vehicles is not required to have a commercial drivers license to operate such a vehicle upon the public roads and highways in New Mexico:

A. Recreational vehicles - a vehicle licensed as a recreational vehicle under the provisions of Section 66-1-4 NMSA 1978 and used as a recreational vehicle;

B. Farm and ranch vehicles - vehicles that meet the following criteria:

(1) controlled and operated by a farmer or rancher or an employee of a farmer or rancher;

(2) used to transport agricultural products, agricultural machinery or agricultural supplies to or from a farm or ranch;

(3) used within 150 miles of the persons farm or ranch;

(4) not used in the operations of a common or contract motor carrier or otherwise used "for hire";

C. Firefighting vehicles - vehicles manufactured for and equipped to fight fires and equipped with audible and visual signals and operated by a person who is a member of a volunteer or paid fire organization; or

D. Military vehicles - all vehicles owned or operated by the department of defense and operated by non-civilian operators. [18.19.5.112 NMAC - Rp, 18.19.5.112 NMAC 3/14/2023]

18.19.5.113 COMMERCIAL DRIVER'S LICENSE - CLASSIFICATIONS OF COMMERCIAL DRIVER'S LICENSES:

A. Commercial driver's licenses shall be issued under the following classifications:

Class	Vehicles	Licensee Authorized to Operate
A	Any combination of vehicles with a gross combined vehicle weight rating of 26,001 or more pounds provided the gross vehicle weight rating of the vehicle(s) being towed is in excess of 10,000 pounds, and all lesser classes (B, C and D) of vehicles except motorcycles. In order to drive a motorcycle a driver must have a motorcycle endorsement.	
B	Any single vehicle with a gross vehicle weight rating of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds gross vehicle weight rating, and all lesser classes (C and D) of vehicles except motorcycles. In order to drive a motorcycle a driver must have a motorcycle endorsement.	
C	Any single vehicle less than 26,001 pounds	

gross vehicle weight rating, or any such vehicle towing a vehicle not in excess of 10,000 pounds gross vehicle weight rating, and all lesser classes (D) of vehicles except motorcycles. In order to drive a motorcycle a driver must have a motorcycle endorsement. This "C" classification applies only to vehicles placarded for hazardous materials or designed to transport 16 or more passengers, including the driver.

B. New Mexico's driver's licenses classes 6 through 10 issued under the former classification system are no longer valid. [18.19.5.113 NMAC - Rp, 18.19.5.113 NMAC 3/14/2023]

18.19.5.114 COMMERCIAL DRIVER'S LICENSE - ENDORSEMENTS TO COMMERCIAL DRIVER'S LICENSES:

A. Commercial driver's licenses may have one or more of the following endorsements:

Endorsement Authorizes Licensee to Operate

T
Combination vehicles with double trailers.

N
A tank vehicle intended for hauling liquids in bulk.

P
Any vehicle designed to transport 16 or more passengers, including the driver.

H
Any vehicle used to transport hazardous materials.

X
Any tank vehicle used to transport placarded amounts of hazardous material. This is a combination of endorsements "N" and "H".

S **A**
school bus.

Z
Any two- or three-wheeled motorcycle with an engine of less than 50 cubic centimeters piston displacement.

Y
Any two- or three-wheeled motorcycle with an engine of at least 50 but less than 100 cubic centimeters piston displacement.

W
Any two- or three-wheeled motorcycle with an engine of 100 or more cubic centimeters piston displacement.

O
Other - Reserved for future use.

B. In Subsection D of Section 66-5-65 NMSA 1978, Paragraphs (1) and (3) through (7) specify endorsements. [18.19.5.114 NMAC - Rp, 18.19.5.114 NMAC 3/14/2023]

18.19.5.115 COMMERCIAL DRIVER'S LICENSE - RESTRICTIONS TO COMMERCIAL DRIVER'S LICENSES:

A. Commercial driver's licenses may have one or more of the following restrictions place upon the license:

Restriction Code

B
Driver must wear corrective lenses while driving.

C
Driver limited to vehicles equipped with suitable mechanical aids such as special brakes, hand controls or other adaptive devices.

D
Driver must use prosthetic aids (other than glasses) while driving.

E
Driver limited to vehicles with automatic transmissions.

K
Driver limited to driving a commercial vehicle in intrastate commerce only.

L
Driver limited to driving commercial vehicles which do not have air brakes.

M
Driver not authorized to drive a Class A bus.

N
Driver not authorized to drive a Class A or Class B bus.

O
Driver not authorized to drive a Class A tractor trailer combination vehicle.

R
Driver limited to operating a school bus.

S
Driver authorized to operate only a commercial motor vehicle owned by a governmental entity, and only as a government employee.

T
Driver authorized only to operate a Class B or Class C bus.

B. Paragraph (2) of Subsection D of Section 66-5-65 NMSA 1978 specifies a restriction. [18.19.5.115 NMAC - Rp, 18.19.5.115 NMAC 3/14/2023]

18.19.5.116 COMMERCIAL DRIVER'S LICENSE - SPECIAL REQUIREMENTS FOR COMMERCIAL DRIVER'S LICENSE:

A. Applicants for a commercial driver's license must be 21 years of age or older, and shall have a valid class D license in their possession.

B. Drivers at least 18 but not over 21 years of age may apply for a commercial driver's license with restriction "K" on the license, which restricts its use to driving in intrastate commerce only. An applicant for the intrastate commercial driver's license must have a valid class D license in his or her possession. Applicants for a hazardous material endorsement must be 21 years of age to transport placarded amounts of hazardous material in intrastate commerce. [18.19.5.116 NMAC - Rp, 18.19.5.116 NMAC 3/14/2023]

18.19.5.117 COMMERCIAL DRIVER'S LICENSE - RECIPROCITY:

A. Commercial driver's license - reciprocity with Canada: Pursuant to agreements entered into by the United States, reciprocity is also extended to any person who holds a commercial driver's license issued by the national government of Canada or any of the provinces of Canada if the license is not suspended, revoked or canceled and if the person is not disqualified from driving a commercial motor vehicle or subject to an out-of-service order.

B. Commercial driver's license - Mexican driver's licenses: A Mexican national issued a licencia federal de conductor by the secretariat of communication and transport of the United Mexican States may operate a commercial vehicle in New Mexico.

[18.19.5.117 NMAC - Rp,
18.19.5.117 NMAC 3/14/2023]

18.19.5.118 INSTRUCTION PERMIT - PURPOSE - CRITERIA:

A. For purposes of 18.19.5.118 NMAC:

(1) **“alternative test”** means a test provided by the PED or approved by the PED pursuant to its rules and procedures and administered in a public school, non-public school or by a home school operator to measure a student's proficiency in reading and math in the eighth grade;

(2) **“IDEA”** means the Individuals with Disabilities Education Improvement Act of 2004 [20 U.S. Code Sec. 1400 et seq.], which is a comprehensive federal law that addresses specially designed instruction, at no cost to the parent, to meet the unique needs of a child with disabilities;

(3) **“IEP”** means an individualized education program, which is a written statement designed to meet the unique educational needs of a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR Sections 300.320 through 300.324;

(4) **“minor”** means a person under the age of eighteen (18) years, but at least fifteen (15) years old;

(5) **“nearing an academic proficiency score in reading and math in the eighth grade”** means attaining a minimum score in reading and math during a student's eighth grade as established by the laws, rules or procedures of the PED on the New Mexico standards based assessment;

(6) **“New Mexico standards based assessment”**

means a system for testing students in various grades for their proficiency in the subject areas of mathematics, reading and language arts, writing, science and social studies; pursuant to the Assessment and Accountability Act, Sections 22-2C-1 to 22-2C-11 NMSA 1978 and procedures of the PED, assessments on various subject areas that include science, mathematics and reading are administered annually to students in different grades;

(7) **“ninety percent school attendance”** means one of several indicators used pursuant to the Assessment and Accountability Act, Sections 22-2C-1 to 22-2C-11 NMSA 1978 and procedures of the PED to measure public school improvement, but would not include excused absences;

(8) **“PED”** means the public education department;

(9) **“Section 504”** means Section 504 of the Rehabilitation Act of 1973 [29 U.S. Code Section 794] and its implementing regulations, which provide that “no otherwise qualified individual with a disability shall, solely by reason of her or his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance; and

(10) **“Section 504 plan”** means the accommodation plan required if the individual has a mental or physical impairment that substantially limits one or more of the person's major life activities, including learning, but is not already receiving special education services under the eligibility requirements of the IDEA.

B. The director may issue an instruction permit to a minor under the provisions of Subsection D of Section 66-5-8 NMSA 1978. In order to motivate minors to attend school and succeed in their studies, beginning with applications submitted to the director on or after September 1, 2011, a minor applying

for an instruction permit shall provide evidence of ninety percent school attendance during their ninth grade year and at least nearing an academic proficiency score in reading and math in the eighth grade on the New Mexico standards based assessment or on an alternative test.

C. A minor applying for an instruction permit must provide the following:

(1) satisfactory proof of identity number, identity and residency as set forth in 18.19.5.12 NMAC;

(2) proof of attendance in or completion of a driver education course that includes a DWI prevention and education program approved by the bureau or offered by a public school;

(3) a school compliance verification form approved by the director that shall include parental consent for the release of certain educational information to the director; the school compliance verification form shall be certified by a school official and signed by a parent to indicate consent to release the minor's student information to the director; the form shall certify that the applicant has:

(a) achieved ninety percent school attendance, not including excused absences, during the ninth grade year or portion of the ninth grade year prior to applying for the instructional permit; and

(b) demonstrated at least nearing an academic proficiency score in reading and math in the eighth grade on the New Mexico standards based assessment or on an alternative test.

D. The school compliance verification form shall permit children with disabilities as described in the IDEA and in federal and state regulations and children for whom Section 504 plans are in place to obtain certifications that consider the effect if any of their disabilities in meeting ninety percent school attendance during the ninth grade year or portion of the ninth grade year or demonstrating at least

nearing an academic proficiency score in reading and math in the eighth grade. Any such certification must be based on a written IEP or Section 504 team recommendation contained in the IEP or Section 504 plan of a child with a disability. In making the recommendation to the person or official who enters the certification on the school compliance verification form where a child with a disability fails to satisfy the attendance or proficiency requirements discussed in this rule, the IEP or Section 504 team shall, pursuant to rules and procedures of the PED, consider whether a child's disability affected their ability to satisfy either or both the attendance or proficiency requirements.

E. In lieu of a school compliance verification form, an applicant may provide:

- (1) proof of graduation from a high school; or
- (2) proof of having received a general educational development certificate.

F. A minor enrolled in non-public school or in a home school shall submit satisfactory proof of identity number, identity and residency as set forth in 18.19.5.12 NMAC, proof of attendance, and proof of ninety percent school attendance and at least nearing an academic proficiency score in reading and math in the eighth grade New Mexico standards based assessment or on an alternative test, as established by the laws, rules or procedures of the PED. This evidence shall be submitted on a form approved by the director that shall include parental consent for the release of certain educational information to the director.

G. Failure to demonstrate ninety percent school attendance will result in the minor being ineligible to be issued an instruction permit until six months from the date of application, unless an administrator of a non-public school or operator of a home school certify to their non-maintenance of attendance records.

H. Failure to demonstrate nearing an academic

proficiency score in reading and math in the eighth grade New Mexico standards based assessment or on an alternative test will result in the minor being ineligible to be issued an instruction permit until six months from the date of application.

I. Failure to demonstrate both ninety percent school attendance and nearing an academic proficiency score in reading and math in the eighth grade New Mexico standards based assessment or on an alternative test will result in the minor being ineligible to be issued an instruction permit until one year from the date of application, unless an administrator of a non-public school or operator of a home school certify to their non-maintenance of attendance records.

[18.19.5.118 NMAC - Rp,
18.19.5.118 NMAC 3/14/2023]

HISTORY OF 18.19.5 NMAC:

Pre-NMAC History: Certain material in this part was derived that previously filed with the Commission of Public Records - State Records Center and Archives: MVD 70-4, (Regulation No. 70-1), In the Matter of Fixing Fees for the Purchase of Abstracts of Records of the Department of Motor Vehicles and Text of Motor Vehicle Code, filed 7/1/1970. MVD 70-6, (Regulation No. 70-3), 64-13-40, Persons Not to be Licensed; 64-13-60, Authority of Division to Suspend or Revoke License; In the Matter of the Establishment of a Point System for Violations of Motor Vehicle and Traffic Laws so as to Provide a Fair and Workable Method to Effectuate the Authority Conferred Upon the DMV to Suspend a Driving License by Section 64-13-60 NMSA 1953 Compilation and Inherent in Section 64-13-40(1) Thereof, filed 9/2/1970. MVD 70-27, (Regulation No. 70-3A), 64-13-40, Persons Not to be Licensed; 64-13-60, Authority of Division to Suspend or Revoke License; In the Matter of the Establishment of a Point System for Violations of Motor Vehicle and Traffic Laws so as to Provide a Fair and Workable Method

to Effectuate the Authority Conferred Upon the DMV to Suspend a Driving License by Section 64-13-60 NMSA 1953 Compilation and Inherent in Section 64-13-40(1) Thereof and Amending Regulation No. 70-3, Adopted 8/28/1970, filed 11/25/1970. MVD 72-2, (Regulation No. 72-2), 64-13-40, Persons Not to be Licensed; 64-13-60, Authority of Division to Suspend or Revoke License; In the Matter of the Establishment of a Point System for Violations of Motor Vehicle and Traffic Laws so as to Provide a Fair and Workable Method to Effectuate the Authority Conferred Upon the DMV to Suspend a Driving License by Section 64-13-60 NMSA 1953 Compilation and Inherent in Section 64-13-40(1) Thereof and Amending Regulation No. 70-3A, Adopted 11/20/70, filed 7/20/1972. MVD 73-1, (Regulation No. 73-1), 64-13-40, Persons Not to be Licensed; 64-13-60, Authority of Division to Suspend or Revoke License; In the Matter of the Establishment of a Point System for Violations of Motor Vehicle and Traffic Laws so as to Provide a Fair and Workable Method to Effectuate the Authority Conferred Upon the DMV to Suspend a Driving License by Section 64-13-60 NMSA 1953 Compilation and Inherent in Section 64-13-40(1) Thereof and Amending Regulation No. 72-2, Adopted 7/20/1972, filed 4/10/1973. MVD 73-5, (Regulation No. 73-3), 64-13-40, Persons Not to be Licensed; 64-13-60, Authority of Division to Suspend or Revoke License; In the Matter of the Establishment of a Point System for Violations of Motor Vehicle and Traffic Laws so as to Provide a Fair and Workable Method to Effectuate the Authority Conferred Upon the DMV to Suspend a Driving License by Section 64-13-60 NMSA 1953 Compilation and Inherent in Section 64-13-40(1) Thereof and Replacing Regulation No. 73-1, Adopted 4/10/73, filed 11/7/1973. MVD 75-1, (Regulation No. 75-1), 64-13-40, Persons Not to be Licensed; 64-13-60, Authority of Division to Suspend or Revoke License; In the Matter of the Establishment of a Point System for Violations of Motor

Vehicle and Traffic Laws so as to Provide a Fair and Workable Method to Effectuate the Authority Conferred Upon the DMV to Suspend a Driving License by Section 64-13-60 NMSA 1953 Compilation and Inherent in Section 64-13-40(1) Thereof and Replacing Regulation No. 73-3, Adopted 10/15/1973, filed 3/14/1975. TRD Regulations MVC 5-30:1/8, Regulations Pertaining to the Motor Vehicle Code, Section 66-5-5 NMSA 1978, filed 9/1/1988.

MVD 70-16, (Regulation No. 70-13), In the Matter of Chauffeur's License as Required Under Sections 64-2-4 and 64-13-41 NMSA 1953, filed 9/2/1970.

MVD 78-3, New Mexico Uniform Traffic Ordinance 1978, filed 11/6/1978.

MVD 78-4, (Regulation No. 78-1) 1.00 Authorization: 66-5-7, Driver's License - Classification - Examinations; 66-5-8, Instruction Permits and Temporary Licenses; 66-5-9, Application for License or Instruction Permit; and 66-5-14; Examination of Applicants. 2.00 Classification of Licenses and Permits. 3.00 Waiver of Road Test and Certification Program, filed 12/28/1978.

MVD 79-1, (Regulation No. 79-1) 1.00 Authorization: 66-5-7, Driver's License - Classification - Examinations; 66-5-8, Instruction Permits and Temporary Licenses; 66-5-9, Application for License or Instruction Permit; and 66-5-14; Examination of Applicants. 2.00 Classification of Licenses and Permits. 3.00 Waiver of Road Test and Certification Program, filed 1/3/1979.

Transportation Rule No. 83-2-MVD, Classification of Driver Licenses and Permits, filed 12/9/1983.

Transportation Rule No. 84-2-MVD, Limited Driver's License, filed 12/9/1983.

TRD MVC 5-32:1, Regulations Pertaining to the Motor Vehicle Code, Section 66-5-32 NMSA 1978 (Reinstatement of Suspended License - Conditions), filed 4/7/1989.

TRD MVC 5-7: 1&2, Regulations Pertaining to the Motor Vehicle Code, Section 66-5-7 NMSA 1978,

Driver's License - Classification; Examinations, filed 2/28/1990.

TRD MVC 5-19:1, Regulation Pertaining to the Motor Vehicle Code, Section 66-5-19 NMSA 1978, Restricted Licenses, filed 2/28/1990.

TRD MVC 5-54:1, Regulations Pertaining to the Motor Vehicle Code, Section 66-5-54 NMSA 1978, Definitions, filed 2/28/1990.

TRD MVC 5-57:1, Regulation Pertaining to the New Mexico Commercial Driver's License Act, Section 66-5-57 NMSA 1978, Notification by Driver to the Division, filed 2/28/1990.

TRD MVC 5-60:1&2, Regulations Pertaining to the New Mexico Commercial Driver's License Act, Section 66-5-60 NMSA 1978, Commercial Driver's License - Qualifications - Standards, filed 2/28/1990.

TRD MVC 5-65:1-5, Regulations Pertaining to the New Mexico Commercial Driver's License Act, Section 66-5-65 NMSA 1978, Classifications - Endorsements - Restrictions, filed 2/28/1990.

TRD MVC 5-68:1-4, Regulations Pertaining to the New Mexico Commercial Driver's License Act, Section 66-5-68 NMSA 1978, Disqualifications - Cancellations, filed 2/28/1990.

TRD MVC 5-70:1&2, Regulation Pertaining to the New Mexico Commercial Driver's License Act, Section 66-5-70 NMSA 1978, Reciprocity, filed 2/28/1990.

TRD MVC 5-35:1&2, Regulation Pertaining to the Motor Vehicle Code, Section 66-5-35 NMSA 1978, Limited Driver's License - Purpose, Criteria, Application, Hearing, filed 7/20/1990.

TRD MVC 5-19:2, Regulation Pertaining to the Motor Vehicle Code, Section 66-5-19 NMSA 1978, MVC 5-19:2 - Restricted License Intrastate Commercial Driving, filed 3/16/1992.

TRD MVC 5-93, Regulations Pertaining to the Motor Vehicle Code, Article 5, Chapter 66 NMSA 1978, filed 8/20/1993.

History of Repealed Material:

MVD 78-3, New Mexico Uniform Traffic Ordinance 1978, filed

11/6/1978 - Repealed 5/31/2000.
18.19.5 NMAC, Motor Vehicle Procedures, Licenses, Permits, filed 8/31/2000 - Repealed effective 3/14/2023.

Other:

18.19.5 NMAC, Motor Vehicle Procedures, Licenses, Permits, filed 8/31/2000 - Replaced 18.19.5 NMAC, Motor Vehicle Procedures, Licenses, Permits, effective 3/14/2023.

End of Adopted Rules

Other Material Related to Administrative Law

**GOVERNOR,
OFFICE OF THE**
EXECUTIVE ORDER 2023-017
**RENEWING THE STATE
OF PUBLIC HEALTH
EMERGENCY INITIALLY
DECLARED IN EXECUTIVE
ORDER 2020-004, OTHER
POWERS INVOKED IN
THAT ORDER, AND ALL
OTHER ORDERS AND
DIRECTIVES CONTAINED IN
EXECUTIVE ORDERS TIED
TO THE ONGOING PUBLIC
HEALTH EMERGENCY**

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China, and reported to the World Health Organization (“WHO”). The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease which has been referred to as “COVID-19.”

By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1,000 cases in the United States, spread out over 39 states. The President of the United States declared a national state of emergency for COVID-19 on March 13, 2020. As of March 2, 2023, the Centers for Disease Control and Prevention (“CDC”) reported over 103.4 million people have been infected in the United States, with over 1,117,000 related deaths, and the New Mexico Department of Health has reported 669,666 positive COVID-19 cases and 9,047 related deaths in New Mexico.

Public health organizations have implemented emergency measures intended to slow the

spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly thereafter. All of our sister states subsequently declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19; many have kept such states of emergency in place.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its impacts. I have been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19. Various state agencies have been at the forefront of our State’s response to COVID-19, particularly the New Mexico Department of Health. The hard work of a variety of state employees has made a difference in our fight against COVID-19. New Mexico’s pandemic response saved tens of thousands of lives while ensuring the state’s economy remained poised for growth.

On January 30, 2023, the Biden Administration announced its intent to end the national emergency and public health emergency declarations to the COVID-19 pandemic on May 11, 2023. It is similarly appropriate to allow New Mexico’s public health emergency to expire at the end of this month. New Mexicans now have the tools needed to continue fighting COVID-19, including vaccines, testing, treatments, and other mitigation measures like masking, indoor ventilation, and social distancing. While the state of public health emergency will sunset at the end of this month, I urge all New Mexicans to continue to utilize these tools to protect themselves and their fellow community members.

Therefore, for the reasons

above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby **ORDER** and **DIRECT**:

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-55, 2020-059, 2020-064, 2020-073, 2020-080, 2020-085, 2021-001, 2021-004, 2021-010, 2021-011, 2021-012, 2021-023, 2021-030, 2021-044, 2021-049, 2021-054, 2021-058, 2021-061, 2021-067, 2022-004, 2022-007, 2022-012, 2022-016, 2022-024, 2022-067, 2022-109, 2022-115, 2022-120, 2022-131, 2022-147, 2022-149, 2022-165, 2023-001, and 2023-017 shall be renewed and extended through March 31, 2023.

2. All other powers, directives, and orders invoked in Executive Order 2020-004 remain in effect.

3. Unless previously rescinded, all other Executive Orders with a duration that was tied to the COVID-19 public health emergency or that was not explicitly stated shall continue with the same effect, including any orders appropriating emergency funding as well as Executive Order 2020-020. All such orders shall be automatically rescinded upon the expiration of this Order.

4. This Order supersedes any previous orders, proclamations, or directives in conflict. This Order shall take effect immediately, and shall remain in effect until March 31, 2023.

**ATTEST:
DONE AT THE EXECUTIVE
OFFICE
THIS 3RD DAY OF MARCH
2023**

/ S /

**MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE**

**WITNESS MY HAND AND THE
GREAT SEAL OF THE STATE
OF NEW MEXICO**

/ S /

**MICHELLE LUJAN GRISHAM
GOVERNOR**

**End of Other Material
Related to Administrative
Law**

2023 New Mexico Register Submittal Deadlines and Publication Dates Volume XXXIV, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 5	January 18
Issue 2	January 19	January 31
Issue 3	February 2	February 14
Issue 4	February 16	February 28
Issue 5	March 2	March 14
Issue 6	March 16	March 28
Issue 7	March 30	April 11
Issue 8	April 13	April 25
Issue 9	May 4	May 16
Issue 10	May 18	May 31
Issue 11	June 1	June 13
Issue 12	June 15	June 27
Issue 13	July 7	July 18
Issue 14	July 20	July 31
Issue 15	August 3	August 15
Issue 16	August 17	August 29
Issue 17	August 31	September 12
Issue 18	September 14	September 26
Issue 19	September 28	October 10
Issue 20	October 12	October 24
Issue 21	October 26	November 7
Issue 22	November 9	November 21
Issue 23	November 22	December 5
Issue 24	December 7	December 19

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