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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 13

July 18, 2023

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## Notices of Rulemaking and Proposed Rules

### ARCHITECTS, BOARD OF EXAMINERS FOR

#### NOTICE OF PUBLIC HEARING

**Public Notice.** The New Mexico Board of Examiners for Architects (NMBEA) gives notice that it will conduct a public hearing and regular meeting of the Board on August 25, 2023 at 10:00 am in person at the Toney Anaya Building, Third Floor, Board Conference Room, 2550 Cerrillos Road, Santa Fe, NM 87505. The purpose of the public hearing is to receive public input on the proposed amendment to 16.30.1 NMAC- General Provisions, 16.30.2 NMAC- Organization and Administration, 16.30.3 NMAC- Registration and Renewal, Duplicate Certificates, Seal Specifications and Document Identification, and 16.30.6 NMAC- Minimum Standards for the Practice of Architecture in New Mexico. The board will hold a regular board meeting following the public hearing.

**Purpose.** The purpose of the proposed change to 16.30.1.7 is to define the term “architect-of-record” and to correct minor errors of spelling and grammar. The purpose of the proposed changes to 16.30.2.10 NMAC and 16.30.2.11 serve to correct minor errors of spelling and grammar. The purpose of the proposed changes to 16.30.3.9 NMAC is to adjust registration standards to correspond with the standards of NCARB as described in the latest editions of the NCARB Certification Guidelines and the NCARB Education Guidelines, and to adjust the timeframe of A.R.E. score validity to correspond with the NCARB score validity policy in effect at the time of the application. The purpose of the proposed changes to 16.30.3.10 is to correct minor errors in spelling and grammar. The purpose of the proposed changes to 16.30.3.12 is to clarify language about when continuing education hours can be carried forward and which candidates

are exempt from reporting continuing education hours, and to correct minor errors in spelling and grammar. The purpose of the proposed changes to 16.30.6.8 are to correct minor errors in spelling and grammar. The changes will be made by repealing and replacing the rules and updating to current formatting requirements as required by the Commission of Public Records.

#### **The statutory authorization.**

Section 61-15-4 NMSA 1978 grants the board authority to make rules not inconsistent with law in order to promote the public welfare and protect the citizens of New Mexico.

#### **No technical information serves as a basis for this proposed rule change.**

**Public comment.** Interested parties may provide comment on the proposed amendments of this state rule at the public hearing or may submit written comments to Erin Durbin-Sherer, New Mexico Board of Examiners for Architects, P. O. Box 509, Santa Fe, New Mexico 87504, or by electronic mail at [erin.durbin-sherer@bea.nm.gov](mailto:erin.durbin-sherer@bea.nm.gov), or fax to (505) 476-4829. All written comments must be received no later than 5:00 p.m. (MDT) on the day before the date of the public hearing. The public comment period is from July 18, 2023 to August 24, 2023 at 5:00 p.m. (MDT).

#### **Copies of the proposed rules.**

Copies of proposed rules may be accessed through the New Board of Examiners for Architect’s website at <https://www.bea.state.nm.us>, or may be obtained from Erin Durbin-Sherer by contacting her at (505) 476-4831 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Erin Durbin-Sherer at (505) 476-4831 as soon

as possible before the date set for the public hearing. The NMBEA requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

#### **Summary of Proposed Changes.**

The Board summarizes its proposed changes to its administrative rules as follows:

##### 16.30.1.7 NMAC – General Provisions

As a general summary, the proposed changes to 16.30.1.7 NMAC insert a definition of the term “architect-of-record” to clarify the meaning as it is used in subsequent parts of the rules, adjust the numbering to reflect the addition of the new definition, and correct minor errors in spelling and grammar.

##### 16.30.2.10 NMAC– Duties of Officers

As a general summary, the proposed changes to 16.30.2.10 NMAC serve to correct minor errors in spelling and grammar.

##### 16.30.2.11 NMAC– Committees

As a general summary, the proposed changes to 16.30.2.11 NMAC serve to correct minor errors in spelling and grammar.

##### 16.30.3.9 NMAC- Registration Through Education, Training, and Examination

As a general summary, the proposed changes to 16.30.3.9 NMAC are to adjust registration standards to correspond with the standards of NCARB as described in the latest editions of the National Council of Architectural Registration Boards (“NCARB”) Certification Guidelines and the NCARB Education Guidelines, and to adjust the timeframe of architectural registration examination (“A.R.E.”) score validity to correspond with the NCARB score validity policy in effect at the time of the application.

##### 16.30.3.10 NMAC– Registration Through Reciprocity

As a general summary, the proposed

changes to 16.30.3.10 NMAC serve to correct minor errors in spelling and grammar.

#### 16.30.3.12 NMAC– Continuing Education

As a general summary, the proposed changes to 16.30.3.12 NMAC serve to clarify that continuing education hours may not be carried forward to future registration periods, that architects applying for initial registration through examination are not required to report continuing education hours, and to correct minor errors in spelling and grammar.

#### 16.30.6.8 NMAC- Design and Construction Documents

As a general summary, the proposed changes to 16.30.6.8 NMAC serve to correct minor errors in spelling and grammar.

## GAME AND FISH DEPARTMENT STATE GAME COMMISSION

### STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission (“Commission”) will be hosting a rule hearing on Friday, August 25, 2023 beginning at 9:00 a.m. at the Raton City Hall Commission Chambers located at 224 Savage Avenue, Raton, NM 87740. For instructions on how to attend this meeting either in person or virtually, visit the Department’s website at <http://www.wildlife.state.nm.us/commission/webcast/>. The purpose of this meeting is to hear and consider action as appropriate on proposed changes for the Fisheries Rule.

#### Synopsis for the Fisheries Rule

The proposal is to amend the Fisheries Rule, 19.31.4 NMAC, which will include changes from the existing rule and will become effective September 12, 2023.

The proposed amendment to the Fisheries Rule will add the first Sunday of June and last Sunday of September as Free Fishing Days, per changes to Section 17-3-17 NMSA 1978 during the 2023 legislative session.

A full text of changes is available on the Department’s website at: [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us).

Interested persons may submit comments on the proposed changes to the Fisheries Rule at: [DGF-FisheriesRule@state.nm.us](mailto:DGF-FisheriesRule@state.nm.us); or individuals may submit written comments to the physical address below. Comments are due by 5:00 p.m. on August 24, 2023. The final proposed rules will be voted on by the Commission during a rule hearing on August 25, 2023. Interested persons may also provide data, views or arguments, orally or in writing.

Full copies of the text of the proposed new rule, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico, 87507, or from the Department’s website at <https://www.wildlife.state.nm.us/commission/proposals-under-consideration/>. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director’s Office at (505) 476-8000, or the Department’s website at [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) for updated information.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 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 the Department at (505) 476-8000 if a

summary or other type of accessible format is needed.

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission, Sections 17-1-14, et seq. NMSA 1978; Commission’s Power to establish rules and regulations Sections 17-1-26, et seq. NMSA 1978.

## 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 August 18, 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 proposed amendments to **5.7.37 NMAC, NEW MEXICO OPPORTUNITY SCHOLARSHIP PROGRAM.**

Join via Microsoft Teams:

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_YzQ5NGQwY2QtYTI1MS00YjU2LWlyMTctNzk2NTA2MTUxNmRl%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](https://teams.microsoft.com/l/meetup-join/19%3ameeting_YzQ5NGQwY2QtYTI1MS00YjU2LWlyMTctNzk2NTA2MTUxNmRl%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: 224 993 802#

#### **Purpose:**

The purpose of the proposed amendment is to clarify differences in how scholarship funds are distributed to recent graduate learners and returning student learners. A definition for cumulative grade point average is added. Language is added regarding eligibility for active members of the New Mexico National Guard. A

reference to the definition of “full-time” for students with disabilities is removed as it is not applicable. The amendment removes inaccurate language regarding the Department’s ability to authorize credit hours beyond 90 attempted credit hours for completion of an associate degree or 160 attempted credit hours for completion of a bachelor’s degree.

**Summary of proposed rule:**

The amendment to Section 5.7.37.3 NMAC updates the Statutory Authority. Section 5.7.37.6 NMAC is reorganized for better clarity. Information regarding returning student learners and recent graduate learners is separated into different Subsections. Information about the credit hour requirements is removed as it is already included in Section 5.7.37.8 NMAC. Language is added to clarify that recent graduate learners are eligible to receive Opportunity Scholarship funds during the qualifying semester or summer semesters after any available state and institutional aid has been awarded. Language is added to clarify that if sufficient funding exists in the Opportunity Scholarship Program Fund it may be used to supplement, but not supplant New Mexico Legislative Lottery Tuition Scholarship awards. In Section 5.7.37.7 a definition for cumulative grade point average is added. Subsequent definitions are re-lettered. References in the rule that would be affected by the re-lettering are updated to directly refer to the applicable definition. In Section 5.7.37.8 language is added regarding eligibility for active members of the New Mexico National Guard. A reference to the definition of “full-time” for students with disabilities is removed as it is not applicable. The amendment removes inaccurate language regarding the Department’s ability to authorize credit hours beyond 90 attempted credit hours for completion of an associate degree or 160 attempted credit hours for completion of a bachelor’s degree. In Section 5.7.37.10 NMAC language that clarifies differences in how

scholarship funds are distributed to recent graduate learners and returning student learners is added. Various grammatical and stylistic changes are made through the rule.

**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](mailto:HigherEd.Info@hed.nm.gov) or (505)476-8411.

A public hearing will be held on August 18, 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](mailto:HigherEd.Info@hed.nm.gov). Written comments must be received no later than 4:00 p.m. on August 17, 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 Section 21-21R-1 et seq.

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](mailto:HigherEd.Info@hed.nm.gov) ten (10) business days prior to the hearing.

**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION**

**AMENDED NOTICE OF PUBLIC  
HEARING**

**Amended Notice of Public Hearing:**

The Human Services Department through Income Support Division (ISD) is amending the notice of public hearing and Human Services Register (HSR) Vol. XXVI NO. 1, published on May 16, 2023, in Volume XXXIV Issue 9. The amendment is being done to have in a hybrid setting on August 18, 2023, at 11:00 a.m.- 12:00 p.m. for the proposed rule will be pursuant to Section 14-4-5.6 NMSA 1978.

You may attend in person at the HSD Sandoval County Field Office, 4363 Jager Dr., Rio Rancho, NM 87144, in the large conference room or; You may join my meeting from your computer, tables or smartphone <https://meet.goto.com/388851165> You can also dial in using your phone: United States: +1 (646) 749-3122 Access Code: 388-851-165 Get the app now and be ready when your first meeting starts: <https://meet.goto.com/install>.

Recorded comments may be left at (505) 396-0313. You may send comments electronically to: [HSD-isdrules@hsd.nm.gov](mailto:HSD-isdrules@hsd.nm.gov). Written and recorded comments will be posted to the agency’s website within 3 days of receipt. All comments will be given the same consideration as oral testimony made at the public hearing.

Link to previous posting issued in Volume XXXIV Issue 9 [https://www.srca.nm.gov/nmac/nmregister/xxxiv/HSD-ISDnotice\\_xxxiv09.html](https://www.srca.nm.gov/nmac/nmregister/xxxiv/HSD-ISDnotice_xxxiv09.html)

**Notice of Hearing Published  
5/16/2023 is below:**

The Human Services Department through Income Support Division (ISD) is proposing Amend/ Repeal/Replace to rules 8.102.100 NMAC Definitions and Acronyms, 8.102.520.9 NMAC Eligibility



Policy-Income, 8.106.100 NMAC  
Definitions and Acronyms, 8.106.520  
NMAC Eligibility Policy-Income,  
8.139.100 NMAC General Provisions  
for the Food Stamp Program,  
8.139.520 NMAC Eligibility Policy/  
Income and Deductions, 8.139.527  
NMAC Income and Resources  
Excluded by Federal Law. Changes  
in the rule are to update language,  
incorporate standardized rule  
language, correcting citation format.

Specifically, the changes include:

#### **8.102.100 NMAC**

Repeal/replace to comply with federal  
regulations as well as NMAC rule  
requirements. (Specifically, section 7  
& 8).

#### **8.102.520 NMAC**

Repeal/replace to comply with federal  
regulations as well as NMAC rule  
requirements. (Specifically, section 9).

#### **8.106.100 NMAC**

Repeal/replace to comply with federal  
regulations as well as NMAC rule  
requirements. (Specifically, section 7  
& 8).

#### **8.106.520 NMAC**

Repeal/replace to comply with federal  
regulations as well as NMAC rule  
requirements. (Specifically, section 9).

#### **8.139.100 NMAC**

Repeal/replace to comply with federal  
regulations as well as NMAC rule  
requirements. (Specifically, section 7  
& 8).

#### **8.139.520 NMAC**

Repeal/replace to comply with federal  
regulations as well as NMAC rule  
requirements.

#### **8.139.527 NMAC**

Repeal/replace to comply with federal  
regulations as well as NMAC rule  
requirements.

Regulations issued pursuant to the  
act are contained in 7 CFR 270-282  
and 45 CFR Parts 200-299. State  
Authority for administering the  
food stamp program is contained  
in Chapter 27 NMSA, 1978.  
Administration of the Human Services  
Department (HSD), including its  
authority to promulgate regulations,  
is governed by Chapter 9, Article 8,  
NMSA 1978 (Repl. 1983).  
A public hearing to receive testimony  
on this proposed rule will be held  
virtually, pursuant to Section 14-4-5.6  
NMSA 1978, will be held on June 20,  
2023, 11:00 a.m.-12:00 p.m.  
Please join my meeting from your  
computer, tablet or smartphone  
<https://meet.goto.com/292123245>  
You can also dial in using your phone:  
United States: +1 (224) 501-3412  
Access Code: 292-123-245 Get the  
app now and be ready when your first  
meeting starts: <https://meet.goto.com/>  
install.

All Written comment may be dropped  
off by 5:00 pm, June 20, 2023 at the  
HSD Sandoval County Field Office,  
4363 Jager Dr., Rio Rancho, NM  
87144.

Individuals wishing to testify may  
contact the Income Support Division  
(ISD), P.O. Box 2348, Santa Fe, NM  
87504- 2348, or by calling 505-396-  
0313. This register and the proposed  
changes are available on the HSD  
website at Income Support Division  
Registers | New Mexico Human  
Services Department [state.nm.us](http://state.nm.us)).  
If you do not have internet access, a  
copy of the proposed rules may be  
requested by contacting the Income  
Support Department P.O. Box 2348,  
Santa Fe, New Mexico 87504-2348 or  
by calling (505) 396-0313.

If you are a person with a disability  
and you require this information  
in an alternative format, or you  
require a special accommodation  
to participate in any HSD public  
hearing, program, or service, please  
contact the American Disabilities Act  
Coordinator, at Office-505-709-5468,  
Fax-505-827-6286 or through the  
New Mexico Relay system, toll free

at #711. The Department requests  
at least a 10-day advance notice to  
provide requested alternative formats  
and special accommodations.

Individuals who do not wish to attend  
the hearing may submit written  
or recorded comments. Written  
or recorded comments must be  
received by 5:00 p.m. on the date of  
the hearing, June 20, 2023. Please  
send comments to: Human Services  
Department, P.O. Box 2348, Santa Fe,  
NM 87504-2348.

Recorded comments may be left  
at (505) 396-0313. You may send  
comments electronically to: [HSD-  
isdrules@hsd.nm.gov](mailto:HSD-isdrules@hsd.nm.gov). Written and  
recorded comments will be posted to  
the agency's website within 3 days  
of receipt. All comments will be  
given the same consideration as oral  
testimony made at the public hearing.

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## **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.

### EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

This is an amendment to 8.9.3 NMAC, Sections 6, 7, 11, 12, 13, 15, 17, 21, and 24, effective 8/1/2023.

#### 8.9.3.6 OBJECTIVE:

A. To establish standards and procedures for the provision of child care assistance benefits to eligible clients and to establish the rights and responsibilities of child care providers who receive payment for providing child care services to clients receiving benefits. To establish minimum requirements for eligibility for program participation and for the provision of child care services to children whose families are receiving benefits and to allow children receiving these benefits access to quality child care settings that promote their physical, mental, emotional, and social development in a safe environment. To establish standards and procedures that promote equal access to services and prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

B. To establish child care assistance rates in accordance with the requirements of the Child Care and Development Block Grant (CCDBG) and the Child Care Development Fund (CCDF), which is the primary federal funding source of child care assistance to enable parents to work or pursue education and training so that they may better support their families while at the same time promoting the learning and development of their children. The CCDBG requires every state to submit an updated CCDF plan every

three years. A key requirement of the CCDBG Act is that lead agencies establish subsidy payment rates that ensure equal access to child care for children receiving child care assistance. States have two options to establish subsidy payment rates that ensure equal access: lead agencies must collect and analyze data through either a statistically valid and reliable market rate survey, or through an ACF pre-approved alternative methodology, such as a cost estimation model. New Mexico's rates, as set forth herein, and effective [July 1, 2021] August 1, 2023, were informed by a cost estimation model and with extensive statewide stakeholder engagement. This new cost estimation model was developed in collaboration with fiscal experts and local stakeholders to set subsidy rates at a level that supports the true cost of delivering high quality early childhood education to New Mexico's children and families. The child care subsidy rates set forth herein are designed to ensure equal access to child care for children on child care assistance and ensure parental choice by offering a full range of child care services.

C. Permissive language such as "may or may be" when referring to actions taken by the department, address situations where it is not always prudent or practical to apply these actions. It is not meant to reduce the weight of these actions nor should the intent of the policies be circumvented due to this wording. This language is intended to be construed in a fiscally responsible and equitable manner, keeping in mind that consistency in application is the ultimate goal. [8.9.3.6 NMAC - N, 11/01/2022; A, 8/1/2023]

#### 8.9.3.7 DEFINITIONS:

A. Terms beginning with the letter "A":

(1)

"Attending a job training or educational program" means actively participating in an in-person or online job training or educational program.

(2) "At-risk

child care" means a program for families at-risk as determined by the department.

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

C. Terms beginning with the letter "C":

(1) "CACFP"

means the child and adult care food program, administered by the Early Childhood Education and Care Department.

(2) "Child with a disability or special needs"

means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, under an individualized education plan (IEP) or an individualized family service plan (IFSP), or other specialized services and supports; or children without identified conditions, but requiring specialized services, supports, or monitoring.

(3) "Client"

means the parent or legal guardian of the child that the department has determined is eligible for child care assistance benefits.

(4) "Closure"

means the client's child care case is closed with the department.

(5) "[~~Cop~~

payment]" "Copayment" means the portion of the approved and agreed upon monthly child care cost for clients receiving child care assistance that the client is required to pay to the

child care provider. The department's payment to the provider is reduced by the [co-payment] copayment amount.

**D. Terms beginning with the letter "D":**

(1)

**"Demonstration of incapacity"** means written documentation that an individual is unable to fulfill an eligibility requirement, such as work, school, or the ability to provide child care, and should otherwise be excluded, in whole or in part, from the determination of eligibility. Written documentation of incapacity includes, but is not limited to, the following: statements or letters on a physician's/ medical professional's/treatment provider's letterhead stationary; statements, records or letters from a federal government agency that issues or provides disability benefits; statements, records or letters from a state vocational rehabilitation agency counselor; records or letters from a treatment facility/counselor; certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits.

(2)

**"Department"** means the New Mexico Early Childhood Education and Care Department ("ECECD").

**E. Terms beginning with the letter "E":**

(1)

**"Earned income"** means income received as gross wages from employment or as profit from self-employment.

(2)

**"Essential worker"** means those who conduct a range of operations and services in industries that are essential to ensure the continuity of critical functions in the economy of our nation and state. During this period of economic recovery and subject to budgetary considerations, the presumption is that all workers are essential to the well being of the state's economy.

**F. Terms beginning with the letter "F":**

(1)

**"Federal poverty level"** means a measure of income issued every year by the U.S. department of health and human services (HHS) that is used to determine eligibility for various

programs and benefits, including New Mexico's Child Care Assistance Program.

(2)

**"Fluctuation of earnings"** means a family with inconsistent or variable income

Throughout the year. To calculate fluctuation of earning the department may:

[(+)] (a)

average family earnings over a period of time (e.g., 12 months); or

[-] (b)

choose to discount temporary increases in income provided that a family demonstrates an isolated increase in pay (e.g., short-term overtime pay, temporary increase to pay, etc.) and is not indicative of a permanent increase in income.

**G. Terms beginning with the letter "G": [RESERVED]**

**H. Terms beginning with the letter "H":**

(1)

**"Homeless children and youth"** means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

(a)

Children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(b)

children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(c)

children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(d)

migratory children who qualify as homeless for the purposes of this subtitle because the children are

living in circumstances described in Subparagraphs (a) through (c) of this Paragraph.

(2)

**"Household"** means the household as defined below in Paragraph (1) of Subsection C of 8.9.3.11 NMAC.

(3)

**"Household income"** means household income as defined below in Paragraph (3) of Subsection C of 8.9.3.11 NMAC.

**I. Terms beginning with the letter "I":**

(1)

**"Incidental money"** means earnings of a minor child for occasional work performed such as baby-sitting, cutting lawns, and other similar activities.

(2)

**"Infant, toddler, preschool, school age"**

means the age categories used for assigning child care provider reimbursement rates, defined as follows:

(a)

infant: zero - 23 months;

(b)

toddler: 24 -35 months;

(c)

preschool: three to five year olds; and

(d)

school age: six year olds and older.

**J. Terms beginning with the letter "J": "Job training and educational program"**

means participation in a short or long term educational or training program, including online programs that provide specific job skills which allow the participant to enter the workforce and directly relates to enhancing job skills, including but not limited to the acquisition of a general equivalency diploma (GED), English as a second language, literacy training, vocational education training, secondary education including adult basic education and accredited high school programs, and post-secondary institutions. Educational programs include graduate and post graduate programs or classes.

**K. Terms beginning with the letter "K": [RESERVED]**

**L. Terms beginning with the letter "L": [RESERVED]**

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

**N. Terms beginning with the letter “N”:**

(1) **“National accreditation status”** means the achievement and maintenance of accreditation status by an accrediting body that has been approved by ECECD. ECECD determines the program criteria and standards to evaluate and approve accrediting bodies.

(a) The following are the only national accrediting bodies that are approved by ECECD:

(i) the association of Christian schools international (ACSI);

(ii) the council on accreditation (COA) for early childhood education and after school programs;

(iii) the international Christian accrediting association (ICAA);

(iv) the national accreditation commission for early care and education programs (NAC);

(v) the national association for the education of young children (NAEYC) academy for early childhood program accreditation;

(vi) the national association of family child care (NAFCC); or

(vii) the national early childhood program accreditation (NECPA).

(b) Effective July 15, 2014 accrediting bodies that have been previously approved that are not on the above list will no longer be ECECD approved national accrediting bodies.

(2) **“Non-temporary change in activity”** means the family has experienced a change in activity that does not meet the definition of a “temporary change in activity” as defined in Paragraph (3) of Subsection T of 8.9.3.7 NMAC.

(3) **“Non-traditional hours of care”** means care provided between the afterhours of

7:00 p.m. and 7:00 a.m. Monday through Friday or care provided during weekend hours between 12:00 a.m. Saturday morning and 12:00 a.m. Monday morning.

**O. Terms beginning with the letter “O”:**

(1) **“Open case”** means a case that has not been closed as a result of a failure to recertify, or that has not been closed due to becoming otherwise ineligible for child care assistance benefits.

(2) **“Overpayment”** means a payment of child care assistance benefits received by a client or provider for which they are ineligible based on incomplete or inaccurate information provided by either the client or the provider, or agency error.

**P. Terms beginning with the letter “P”:** “Provider types” means the characteristics of child care providers, which determine their approved reimbursement rate, capacity, staffing levels etc. as follows:

(1) **“In-home”** care means care provided in the child’s own home.

(2) **“Registered home”** means child care provided in the home of a provider who is registered with the department to care for up to four children. All registered homes receiving child care assistance subsidies must be enrolled and participate in the child and adult care food program (CACFP), unless they are exempt.

(3) **“Licensed family child care home”** means child care provided in the home of a provider who is licensed by the department to care for up to six children.

(4) **“Licensed group child care home”** means child care provided in the home of a provider who is licensed by the department to care for up to 12 children.

(5) **“Licensed center”** means child care provided in a non-residential setting, which is licensed by the department to provide such care.

(6) **“Out-of-school time care”** means child care provided to a kindergartner or school age child up to age 13 immediately before or immediately after a regularly scheduled school day or when regular school is not in session.

(7) **“Family, friend, or neighbor (FFN)”** means care provided temporarily in a home and only in the case of a public health emergency.

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

**R. Terms beginning with the letter “R”:**

(1) **“Recertification”** means the process by which a client’s eligibility to continue to receive child care assistance benefits are determined.

(2) **“Registration/educational fee”** means a fee charged to private pay and families receiving child care assistance for materials and supplies.

**S. Terms beginning with the letter “S”:**

(1) **“Sanctions”** means a measure imposed by the department for a violation or violations of applicable regulations.

(2) **“SNAP”** means the supplemental nutrition assistance program administered by the U.S. department of agriculture, which helps low-income families purchase healthy food. SNAP was previously referred to as food stamps employment and training program.

(3) **“Special supervision”** means the special supervision for child(ren) as defined below in Subsection G of 8.9.3.11 NMAC.

(4) **“Star level”** means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

(5) **“Suspension”** means the voluntary cessation of child care benefits at the client’s request, during which the client remains eligible.

**T. Terms beginning with the letter “T”:**

(1) **“TANF”** means the temporary assistance to needy families program administered by the U.S. department of health and human services. TANF is the successor to the aid to families with dependent children (AFDC) program and provides cash assistance to qualified low-income families with dependent children.

(2) **“Teen parent”** means a biological parent under the age of 20 who is attending high school, working towards a general equivalency diploma (GED) or attending any other job skills training or educational programs directly related to enhancing employment opportunities.

(3) **“Temporary change of activity”** means one of the following events:

(a) limited absence from work for employed parents or legal guardians for periods of family leave (including parental leave) or sick leave;

(b) interruption in work for a seasonal worker who is not working between regular industry work seasons;

(c) student holiday or break for a parent or legal guardian participating in training or education;

(d) reduction in work, training or education hours, as long as the parent or legal guardian is still working or attending training or education; and

(e) cessation of work or attendance at a training or education program less than three months.

(4) **“Termination”** means the client’s child care case will be closed due to cause.

(5) **“Tribal per capita payments”** means cash distributions from tribal trust funds or casino revenues to individual tribal members.

**U. Terms beginning with the letter “U”:**

(1) **“Underpayment”** means a payment made by the department for services provided which did not fully reimburse the client or provider.

(2) **“Unearned income”** means income in the form of benefits such as TANF, workmen’s compensation, social security, supplemental security income; child support, pensions, contributions, gifts, loans, grants and other income which does not meet the definition of earned income.

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

**W. Terms beginning with the letter “W”: “Working”** means employment of any type, including self-employment and teleworking. For TANF recipients, this includes work experience or community service or any other activity that meets the TANF work activity requirements.

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

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

**Z. Terms beginning with the letter “Z”: [RESERVED]** [8.9.3.7 NMAC - N, 11/01/2022; A, 8/1/2023]

**8.9.3.11 ELIGIBILITY REQUIREMENTS:** Clients are eligible for child care assistance benefits upon meeting the requirements for eligibility as determined by the department and federal regulation.

**A.** Child care staff will initiate communication at the initial determination of their eligibility period to provide outreach and consumer education with a case management approach and coordination of services to support families.

**B.** Eligibility period: Based upon the client meeting all eligibility requirements, a 12-month certification period will be granted.

(1) Eligibility may be granted for less than 12 months at the parent or legal guardian’s request. The parent or legal guardian will, however, remain

eligible for the approved 12-month eligibility period.

(2) At-risk child care may be granted for less than 12 months as determined by the department.

(3) Eligibility may be granted for up to three months for seeking employment. The eligibility may be closed if the client fails to obtain a qualifying activity within three months. The department has the discretion to extend the job search period.

(4) The client will remain eligible if a temporary change of activity occurs.

(5) If a client experiences a non-temporary change in activity, the child care placement agreement may close; however, the client will remain eligible for the approved 12-month eligibility period.

**C. Income eligibility determination:**

(1) The household: The household includes biological parents, stepparents, legal guardians of the child(ren) for whom child care assistance is sought, and any legal dependents of the aforementioned, living in the household, thereby constituting an economic unit. Grandparents who are not legal guardians living in the household are counted as members of the household, but their earned and unearned income is excluded from the eligibility calculations. Periods of absences: A household member may be absent from the home and will be considered as living in the home and be counted in the household composition as long as the absent household member plans to return to the home. Any parent or legal guardian who remains in the home must be working, attending school, or participating in a job training or educational program. Temporary absence may include, but are not limited to, attending school, working, training, medical or other treatment, or military service.

(2) Legal guardians who are not the parents of the child(ren) for whom child care assistance is sought, are required to

qualify for child care assistance as per Paragraph (3) below and, upon qualification, have the required [~~co-payment~~] copayment waived.

**(3) Household income:** The household's gross monthly or annual average countable earned and unearned income, taking into account any fluctuation(s) of earnings, and will always be calculated in favor of eligibility as Paragraphs (7) and (8) of Subsection C of 8.9.3.11 NMAC. Household income does not include any earned and unearned income received by grandparents who are not legal guardians, and any legal dependents of the biological parents, stepparents, or legal guardians of the child(ren) for whom child care assistance is sought, living in the household.

**(4) Family assets:** A family's assets may not exceed one million dollars.

**(5) Countable earned and unearned income:** The following sources of income are counted when computing a family's eligibility for assistance and for determining the [~~co-payment~~] copayment (if applicable): income from employment by working for others or from self-employment; alimony payments; veterans administration (VA) payments except VA payments that are specifically exempted in Paragraph (6) of Subsection C of 8.9.3.11 NMAC; workman's compensation; railroad retirement benefits; pensions; royalties; income from rental property; social security benefits except social security payments that are specifically exempted in Paragraph (6) of Subsection C of 8.9.3.11 NMAC; overtime shall be counted at ECECD's discretion if ECECD determines that the applicant is paid overtime on a regular basis.

**(6) Exempt income:** The types of income not counted when computing eligibility or [~~co-payments~~] copayments include but are not limited to: earnings of household dependents; earnings of household grandparents who are not the legal guardians of the child(ren) for whom child care assistance is

sought; SNAP; TANF benefits, including diversion payments; supplemental security income (SSI); social security disability insurance (SSDI); social security benefits received by household children; any VA payments made on behalf of the child(ren); VA benefits for educational purposes or for disability; unemployment benefits; work study income; child support payments; military food and housing allowances; an increase in military salary or allowances due to "temporary national emergency status beginning September 11, 2001"; third party payments; energy assistance benefits; foster care payments; adoption subsidies; loans; child or adult nutrition programs; income tax refunds; payments for educational purposes including graduate and other educational stipends; compensation under the Domestic Volunteer Services Act and the volunteers in service to America (VISTA) program or AmeriCorps; Work Investment Act (WIA) payments made to dependent children; relocation payments; department of vocational rehabilitation (DVR) training payments; in-kind gifts; cash gifts; employer reimbursements; overtime, unless ECECD determines that the applicant is paid overtime on a regular basis; payments from special funds such as the agent orange settlement fund or radiation exposure compensation settlement fund; lump sum payments such as those resulting from insurance settlements and court judgments; Tribal per capita payments; or other resources such as savings, individual retirement accounts (IRAs), vehicles, certificates of deposits (CDs) or checking accounts. In the case of an emergency, or under extenuating circumstances, the department secretary may disregard certain temporary income, such as federal stimulus payments or hazard pay.

**(7) Verification of household countable earned and unearned income:** Clients applying for child care assistance benefits are required to verify household countable earned

and unearned income by providing current documentation of income for biological parents, stepparents, and legal guardians of the child(ren) for whom child care assistance is sought, living in the household, who receive such income. A self-employed individual who does not show a profit that is equal to federal minimum wage times the amount of hours needed per week within 24 months from the start date of receiving child care assistance will be evaluated by the child care assistance supervisor, at which point services may be reduced or discontinued.

**(8) Calculating income:**

**(a)** Current income provided to determine eligibility shall be used as an indicator of the income that is and shall be available to the household during the certification period. Fluctuation(s) of earnings may be taken into account as specified in Paragraph (3) of Subsection C of 8.9.3.11 NMAC.

**(b)** Conversion factors: When income is received on a weekly, biweekly, or semimonthly basis, the income shall be converted to monthly amount as follows:

**(i)** Income received on a weekly basis is averaged and multiplied by four and three-tenths. Weekly income is defined as income received once per week.

**(ii)** Income received on a biweekly basis is averaged and multiplied by two and fifteen one-hundredths. Biweekly income is defined as income received once every two weeks. Income is received on the same day of the week each pay period, therefore receiving 26 payments per year.

**(iii)** Income received on a semimonthly basis is averaged and multiplied by two. Semimonthly income is defined as income received twice per month every month of the year. Income is received on specific dates of the month, therefore receiving 24 payments per year.

(iv) Income received on a monthly basis is averaged and multiplied by one. Monthly income is defined as income received once per month.

**D. Residency requirement:** An applicant of child care assistance and a child care provider must be a resident of the state of New Mexico. Proof of residency is required.

**E. Citizenship and eligible immigration status:** Any child receiving child care assistance must be a citizen or legal resident of the United States; or a qualified immigrant as defined by the United States department of health and human services, administration for children and families, office of child care.

**F. Age requirement:** Child care benefits are paid for children between the ages of six weeks up to the day in which the child turns 13 years old. Eligibility determinations made prior to a child turning 13 years old may be granted a 12-month eligibility period or a lesser period of time as determined by the department for at-risk child care.

**G. Special supervision:** Children between the ages of 13 and 18 who are under the supervision of a court of law, or who are determined by a medical or treatment professional to require supervision.

**H. Work/education requirement:** Child care benefits are paid only for families who are working, attending school or participating in a job training or educational program and who demonstrate a need for care during one or more of these activities. Clients who are receiving TANF are required to submit verification of the TANF approved activity unless they are exempt by TANF. The department may, in its discretion, exempt a client or applicant from the work/education requirement upon submission of a demonstration of incapacity.

**I. Calculating Need for Care:** The department determines the number of hours of care needed in consultation with the parent or legal guardian at the time of certification

and approved hours are reflected in the child care placement agreement covering the certification period. The department determines the number of hours of care needed based on the qualifying activity of the parent or legal guardian and physical custody of the child, as applicable. Clients and caseworkers shall negotiate a reasonable amount of study and travel time, which is an individualized determination based on each client's specific needs, during the application process and special attention shall be paid to the child's specific needs. The department determines the number of hours of care needed based on a maximum weekly need and approved based on the units of service set forth below in Subsection E and F of 8.9.3.17 NMAC.

**J. Children enrolled in head start, kindergarten, school or other programs:** Child care benefits are not paid during the hours that children are attending head start, kindergarten, New Mexico pre-k, school or other programs, such as online or home-schooling. Child care benefits are paid during the hours that children are attending a dedicated early head start-child care partnerships program funded by the U.S. department of health and human services, administration for children and families, office of child care. [8.9.3.11 NMAC - N, 11/01/2022; A, 8/1/2023]

#### **8.9.3.12 RECERTIFICATION:**

Clients must recertify for services at the end of their eligibility period by complying with all requirements of initial certification. Clients who recertify will qualify at or below two hundred and fifty percent of the federal poverty level. Clients above two hundred and fifty percent of the federal poverty level must qualify as an essential worker as defined in Paragraph (2) of Subsection E of 8.9.3.7 NMAC. Clients designated as essential workers who recertify must be at or below four hundred and twenty-five percent of the federal poverty level. If recertification is not completed in a timely manner, the

case may be closed on the last day of the month for which assistance is provided under the previous child care placement agreement. At time of recertification, clients must provide documentation of income, or proof of school enrollment. Changes in income, household size, employment, training or educational status are noted in the client's record. [~~Co-payment~~] Copayment, if applicable, is re-determined at the time of recertification. A 12-month certification period will be granted in accordance with eligibility requirements outlined in Subsection B of 8.9.3.11 NMAC.

[8.9.3.12 NMAC - N, 11/01/2022; A, 8/1/2023]

#### **8.9.3.13 CLIENT**

**RESPONSIBILITIES:** Clients must abide by the regulations set forth by the department and utilize child care assistance benefits only while they are working, seeking employment, attending school or participating in a training or educational program.

**A. [~~Co-payments~~]**  
Copayments: [~~Co-payments~~] Copayments are paid by all clients receiving child care assistance benefits, except for at-risk child care and qualified grandparents or legal guardians. [~~Co-payments~~] Copayments are determined by income and household size. The [~~co-payment~~] copayment schedule is published yearly at <https://www.nmececd.org/child-care-assistance/>. In the case of an emergency, or under extenuating circumstances, the department secretary may waive copayments for families receiving child care, during which period, the department will pay providers the client's approved rate, including required copayments. If copayments are waived, three months notice will be given to providers and families prior to reinstatement.

**B. [~~Co-payments~~]**  
Copayments described in Subsection A of 8.9.3.13 NMAC, are used for determining the base [~~co-payment~~] copayment for the first eligible child. The formula for determining the [~~co-~~

payment] copayment amount based on the [eo-payment] copayment schedule [for the first full time child is (low end of the monthly income bracket on the eo-payment schedule divided by 200 percent of annual federal poverty level for household size) multiplied by (low end of the monthly income bracket on the eo-payment schedule) multiplied by 1.1 equals the monthly copayment for first full time child] is the gross monthly household income multiplied by the applicable percent of the federal poverty level percentage (FPL) for family size (see, Subsection D of 8.9.3.13 NMAC), which will equal the monthly copayment. [Base] The base copayments for [each additional] the second child in the family [are] is determined at one half of the copayment for the previous child. If there are more than two children in the household accessing child care assistance, the copayment will be waived for any additional children.

(1) The first child is identified as the child requiring the most hours of child care.

(2) [Each additional child will be ranked based on the most number of hours needed for child care to the least number of hours needed for child care.] The second child is identified as the child with the second most number of hours needed for child care.

C. Each child's [eo-payment] copayment will be adjusted based on the units of services described in Subsection E of 8.9.3.17 NMAC, as follows:

(1) full time care will be based on one hundred percent of the base [eo-payment] copayment;

(2) part time 1 care will be based on seventy-five percent of the base [eo-payment] copayment;

(3) part time 2 care will be based on fifty percent of the base [eo-payment] copayment; and

(4) part time 3 care will be based on twenty-five percent of the base [eo-payment] copayment.

**D.** Below is the cost sharing chart with the formula used to determine child care copayments as set forth immediately above and as published yearly at <https://www.nmeccd.org/child-care-assistance/>:

FPL Percent Income Increments	Percent of Gross Income (Monthly) to Determine Copay
0.00 to 185.00	0.00%
185.01 to 200	0.29%
200.01 to 210	0.59%
210.01 to 220	0.88%
220.01 to 230	1.18%
230.01 to 240	1.47%
240.01 to 250	1.76%
250.01 to 260	2.06%
260.01 to 270	2.35%
270.01 to 280	2.65%
280.01 to 290	2.94%
290.01 to 300	3.24%
300.01 to 310	3.53%
310.01 to 320	3.82%
320.01 to 330	4.12%
330.01 to 340	4.41%
340.01 to 350	4.71%
350+	5.00%

**[D] E.** Clients pay [eo-payments] copayments directly to their child care provider and must remain current in their payments. A client who does not pay [eo-payments] copayments may be subject to sanctions.

**[E] E.** In-home providers: Parents or legal guardians who choose to use an in-home provider become the employer of the child care provider and must comply with all federal and state requirements related to employers, such as the payment of all federal and state employment taxes and the provision of wage information. Any parent or legal guardian who chooses to employ an in-home provider releases and holds the department harmless from any and all actions resulting from their status as an employer. Payments for in-home provider care are made directly to the parent or legal guardian.

**[F] G.** Notification of changes: Clients must provide notification of changes via fax, e-mail, or telephone that affect the need for care to their local child care assistance office.

(1) A client must notify the department of any non-temporary change in activity or changes to household composition. Notifications must be provided within 14 calendar days of the change.

(2) A client must notify the department when their household income exceeds eighty-five percent of the state median income, taking into account any fluctuation(s) of income.

(3) A client must notify the department of any changes to their contact information.

(4) A client who changes a provider must notify the department and the current provider 14 calendar days prior to the expected last day of enrollment. If this requirement for notification is met by the client, the current provider will be paid through the 14th calendar day. If this notification



requirement is not met, the current provider will be paid 14 calendar days from the last date of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases. The client will be responsible for payment to the new provider beginning on the start date at the new provider and until the final date of payment to the former provider.

(5) If the client has not used the authorized provider for 14 consecutive calendar days, the child will be disenrolled from that provider and the client will remain eligible for the remainder of their eligibility period.

(6) Clients who do not comply with this requirement may be sanctioned. [8.9.3.13 NMAC - N, 11/01/2022; A, 8/1/2023]

#### 8.9.3.15 PROVIDER

**REQUIREMENTS:** Child care providers must abide by all department regulations. Child care provided for recreational or other purposes, or at times other than those outlined in the child care placement agreement, are paid for by the client.

A. All child care providers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. Beginning July 1, 2012, child care programs holding a 1-star license are not eligible for child care assistance subsidies. The department honors properly issued military child care licenses to providers located on military bases and tribal child care licenses properly issued to providers located on tribal lands.

B. Signed child care placement agreements (including electronically signed child care placement agreements) must be returned by hand delivery, mail, email, fax, or electronic submission to the local child care office within

30 calendar days of issuance. Failure to comply may affect payment for services and the child care placement agreement will be closed. The department will provide reasonable accommodations to allow a client or provider to meet this requirement.

C. Child care providers collect required [~~co-payments~~] copayments from clients and provide child care according to the terms outlined in the child care placement agreement.

D. Notification of changes: Child care providers must notify the department if a child is disenrolled or child care has not been used for 14 consecutive calendar days without notice from the client. If a client notifies the provider of non-attendance beyond 14 consecutive calendar days, the department will continue to pay the provider for the period of non-attendance, not to exceed six weeks following the first date of nonattendance.

(1) If the provider notifies the department of the above, the provider will be paid through the period of nonattendance, not to exceed six weeks.

(2) If a provider does not notify the department of disenrollment or of non-use for 14 consecutive calendar days, the provider will be paid through the last date of attendance.

(3) If a child was withdrawn from a provider because the health, safety, or welfare of the child was at risk, as determined by a substantiated complaint against the child care provider, payment to the former provider will be made through the last day that care was provided.

(4) Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided in 8.9.3.21 NMAC.

E. Child care providers accept the rate the department pays for child care and are not allowed to charge families receiving child care assistance above the department rate for the hours listed on the child care placement agreement. Failure to

comply with this requirement may result in sanctions.

(1) Providers are not allowed to charge clients a registration/educational fee for any child who is receiving child care assistance benefits as listed under 8.9.3 NMAC. The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.9.3 NMAC.

(2) In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families.

(3) Child care providers are allowed to charge child care assistance families the applicable gross receipts tax for the sum of the child care assistance benefit and [~~co-payment~~] copayment.

F. Under emergency circumstances, when ECECD has reason to believe that the health, safety or welfare of a child is at risk, the department may immediately suspend or terminate assistance payments to a licensed or registered provider. The child care resource and referral will assist clients with choosing another ECECD approved provider.

G. Owners and licensees may not receive child care subsidy payments to provide care for their own children.

H. Providers who are found to have engaged in fraud relating to any state or federal programs, or who have pending charges for or convictions of any criminal charge related to financial practices will not be eligible to participate in the subsidy program.

I. Providers must promote the equal access of services for all children and families by developing and implementing policies and procedures that prohibit discrimination based on race, color,

religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older). [8.9.3.15 NMAC - N, 11/01/2022; A, 8/1/2023]

**8.9.3.17 PAYMENT FOR SERVICES:** The department pays child care providers on a monthly basis, according to standard practice for the child care industry. Payment is based upon the child’s enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. A signed child care placement agreement must be returned to the department for payment to be issued to the provider. The following circumstances under which the department may close placements or discontinue payment at a time other than the end of the month:

**A.** When the child care placement agreement expires during the month, or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

**B.** Payment for notification of changes:

**(1)** If a client fails to notify the department within 14 calendar days of their expected last day of enrollment, the department will pay the provider 14 calendar days from the last day of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases.

**(2)** If the provider notifies the department of a child who is disenrolled or child care has not been used for 14 consecutive calendar days, the provider will be paid through the 14th calendar day following the last day of attendance.

**(3)** If a provider does not notify the department of disenrollment or of nonattendance for 14 consecutive calendar days, the provider will be paid through the last date of attendance.

**(4)** If a provider notifies the department that it has received notification from a client of non-attendance beyond 14 consecutive calendar days, the department will continue to pay the provider for the period of non-attendance, not to exceed six weeks, following the period of non-attendance. The provider must submit documentation of the client notification and reasoning to the department.

**(+)(5)** If a child was withdrawn from a provider because the health, safety, or welfare of the child was at risk, as determined by a substantiated complaint against the child care provider, payment to the former provider will be made through the last day that care was provided.

**C.** The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.9.3 NMAC.

**D.** The amount of the payment is based upon the age of the child and average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent or legal guardian at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care placement agreement covering the certification period.

**E.** The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2 (only for split custody or in cases where a child may have two providers)	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 8-29 hours per week per month	Care provided for an average of 8-19 hours per week per month	Care provided for an average of 7 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

**F.** Hours of care shall be rounded to the nearest whole number. Hours for seeking employment is set at full-time.

**G.** Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age
<del>[\$880.00]</del> <u>1,075.00</u>	<del>[\$635.00]</del> <u>775.00</u>	<del>[\$575.00]</del> <u>700.00</u>	<del>[\$441.00]</del> <u>500.00</u>
Licensed group homes (capacity: 7-12)			
Infant	Toddler	Pre-school	School-age
<del>[\$855.00]</del> <u>1,040.00</u>	<del>[\$830.00]</del> <u>1,000.00</u>	<del>[\$680.00]</del> <u>830.00</u>	<del>[\$428.00]</del> <u>475.00</u>

Licensed family homes (capacity: 6 or less)			
Infant	Toddler	Pre-school	School-age
<del>[\$875.00]</del> <u>1,100.00</u>	<del>[\$850.00]</del> <u>1,075.00</u>	<del>[\$700.00]</del> <u>870.00</u>	<del>[\$412.00]</del> <u>530.00</u>
Registered homes, in-home child care, and FFN			
Infant	Toddler	Pre-school	School-age
<del>[\$375.00]</del> <u>425.00</u>	<del>[\$375.00]</del> <u>425.00</u>	<del>[\$350.00]</del> <u>375.00</u>	<u>350.00</u>

**H.** The department pays a differential rate according to the license or registration status of the provider, national accreditation status of the provider if applicable, and star level status of the provider if applicable. In the case of a public health emergency, the department secretary may approve a differential rate be paid to licensed providers.

**I.** Providers holding and maintaining ECECD approved national accreditation status will receive the differential rate listed in Subsection I below, per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child. All providers who maintain ECECD approved national accreditation status will be paid at the accredited rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement. The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee's national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. All providers are required to notify the department immediately when a change in accreditation status occurs.

**J.** The department will pay a differential rate per child per month for full time care above the base reimbursement rate to providers achieving higher Star levels by meeting FOCUS essential elements of quality as follows:

Licensed Child Care Centers			
2+ Star FOCUS			
Infant	Toddler	Pre-school	School-age
<del>[\$100.00]</del> <u>75.00</u>	<del>[\$100.00]</del> <u>90.00</u>	<u>100.00</u>	<del>[\$100.00]</del> <u>50.00</u>
3 Star FOCUS			
Infant	Toddler	Pre-school	School-age
<del>[\$100.00]</del> <u>75.00</u>	<del>[\$100.00]</del> <u>90.00</u>	<u>100.00</u>	<del>[\$100.00]</del> <u>50.00</u>
4 Star FOCUS			
Infant	Toddler	Pre-school	School-age
<del>[\$335.00]</del> <u>425.00</u>	<del>[\$290.00]</del> <u>325.00</u>	<del>[\$250.00]</del> <u>300.00</u>	<del>[\$180.00]</del> <u>150.00</u>
5 Star FOCUS or ECECD approved national accreditation			
Infant	Toddler	Pre-school	School-age
<del>[\$640.00]</del> <u>850.00</u>	<del>[\$550.00]</del> <u>725.00</u>	<del>[\$350.00]</del> <u>425.00</u>	<u>250.00</u>
Licensed Family and Group Homes			
2+ Star FOCUS			
Infant	Toddler	Pre-school	School-age
<del>[\$130.00]</del> <u>75.00</u>	<del>[\$130.00]</del> <u>50.00</u>	<del>[\$130.00]</del> <u>80.00</u>	<del>[\$100.00]</del> <u>70.00</u>
3 Star FOCUS			
Infant	Toddler	Pre-school	School-age
<del>[\$130.00]</del> <u>75.00</u>	<del>[\$130.00]</del> <u>50.00</u>	<del>[\$130.00]</del> <u>80.00</u>	<del>[\$100.00]</del> <u>70.00</u>
4 Star FOCUS			
Infant	Toddler	Pre-school	School-age
<del>[\$195.00]</del> <u>175.00</u>	<del>[\$195.00]</del> <u>175.00</u>	<del>[\$195.00]</del> <u>205.00</u>	<del>[\$180.00]</del> <u>150.00</u>
5 Star FOCUS or ECECD approved national accreditation			
Infant	Toddler	Pre-school	School-age
<del>[\$260.00]</del> <u>275.00</u>	<del>[\$260.00]</del> <u>250.00</u>	<del>[\$260.00]</del> <u>290.00</u>	<del>[\$250.00]</del> <u>195.00</u>

**K.** In order to continue at the FOCUS reimbursement rates, a provider must meet and maintain the most recent FOCUS eligibility requirements and star level criteria. If the provider fails to meet the FOCUS eligibility requirements and star level criteria the provider reimbursement will revert to the FOCUS criteria level demonstrated.

**L.** The department pays a differential rate equivalent to five percent, ten percent or fifteen percent of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
After hours	5%	10%	15%
	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
Weekend hours	5%	10%	15%

**M.** If a significant change occurs in the client's circumstances, (see Subsection F of 8.9.3.13 NMAC) the child care placement agreement may be modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

**N.** The department may conduct provider, parent, or legal guardian, audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

**O.** Payments are made to the provider for the period covered in the child care placement agreement or based on the availability of funds.

[8.9.3.17 NMAC - N, 11/01/2022; A, 8/1/2023]

**8.9.3.21 SANCTIONS:** Sanctions may be imposed according to the severity of the infraction as determined by the department as detailed below.

**A.** Providers or clients who fail to make timely payments in the case of recoupment of overpayments may be referred to a collection agency.

**B.** The department may initiate the recoupment process against any provider who fail to report in a timely manner that a child has not been in attendance for 14 consecutive calendar days.

**C.** Providers who allow their registration or license to lapse without renewal will not be paid during the periods for which the license or registration is not current. Providers who lose national accreditation status or lose eligibility for payment at any level of reimbursement for failure to maintain the standards required to be paid at that level of reimbursement, will not be paid at that level of reimbursement beginning with the first day of the month during which the loss of accreditation or eligibility occurred. Payment recoupment will be sought for any period for which excessive benefits have been paid.

**D.** Clients who fail to pay [~~co-payments~~] copayments may be disqualified until the [~~co-payment~~] copayment is paid or until an agreement is made between the client and the provider to bring the [~~co-payment~~] copayment current.

[8.9.3.21 NMAC - N, 11/01/2022; A, 8/1/2023]

**8.9.3.24 [~~CO-PAYMENT~~] COPAYMENT SCHEDULE:** The department will develop and publish an annual schedule based on the federal poverty guidelines.

[8.9.3.24 NMAC - N, 11/01/2022; A, 8/1/2023]

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## HOMELAND SECURITY AND EMERGENCY MANAGEMENT, DEPARTMENT OF STATE FIRE MARSHAL OFFICE

**This is an amendment to 10.25.2 NMAC, Sections 1, 8, and 9, effective 7/18/2023.**

**10.25.2.1 ISSUING AGENCY:** [~~New Mexico Public Regulation Commission:~~] Department of Homeland Security and Emergency Management.

[10.25.2.1 NMAC - N, 11/15/2007; A/E, 10/7/2022; A, 7/18/2023]

**10.25.2.8 TYPES OF CERTIFICATES REQUIRED:**

**A.** When required. No person shall install, inspect, maintain, service, tag or repair fire protection equipment or systems unless he has obtained a certificate of fitness from the fire marshal in compliance with these rules. Any person holding a certificate of fitness shall have a copy of it available in all service vehicles and offices for review if requested during inspection by the fire marshal or AHJ. Certificates of fitness are not transferable.

**B.** Types of certificates. The fire marshal or AHJ may issue certificates of fitness for installation, inspection, maintenance, repair, recharging or tagging in the following disciplines:

- (1) automatic fire suppression systems and fire pumps;
- (2) automatic fire detection and alarm systems;
- (3) chemical fire suppression systems; and
- (4) portable fire extinguishers; and
- (5) fire and smoke dampers.

[10.25.2.8 NMAC - N, 11/15/2007; A/E, 10/7/2022; A, 7/18/2023]

#### 10.25.2.9 APPLICATION

**PROCEDURE:** Any person may apply for a certificate of fitness by submitting the required application to the fire marshal as provided in 10.25.1.9 NMAC or to an AHJ. The mandatory applications described in 10.25.1.9 NMAC are available as indicated in 10.25.1.9 NMAC.

**A.** Information required for initial application. Each application for a certificate of fitness shall include:

- (1) the applicant's name, mailing address, telephone number and signature of authorized representative;
- (2) the disciplines for which certification is requested, listed in 10.25.2.8 NMAC;
- (3) a statement that the applicant agrees to be inspected by the fire marshal, his designees or an AHJ at any time during normal business hours;
- (4) for certification for automatic fire suppression systems and fire pumps: the name of the qualified party, the type and number of his CID license and a copy of his license;
- (5) for certification for automatic fire detection and alarm systems: the name of the qualified party, the type and number of his CID license and a copy of his license;

(6) for certification for chemical fire suppression systems: the name of the qualified party, the type and number of his CID license and a copy of his license;

(7) for certification for portable fire extinguishers, a statement indicating that the applicant:

(a) operates from a fixed location, provides mobile recharging service, or both;

(b) agrees to allow only trained personnel to maintain, service and recharge portable fire extinguishers; and

(c) agrees to provide its personnel with all service manuals and documentation, proper tools, recharging materials, lubricants and manufacturers' recommended replacement parts or parts specifically listed for use in fire extinguishers.

(8) for certification to inspect and test fire and smoke dampers, an application shall include:

(a) for mechanically actuated fire and smoke dampers, applicants shall provide documentation of a valid NFPA-Certified Fire Protection Specialist certification or of an approved fire and life safety certification from a program accredited by the American National Standards Institute (ANSI).

(b) for electrically actuated fire and smoke dampers monitored by a fire alarm system, applicants shall comply with requirements of Paragraph (5) of Subsection A of 10.25.2.9 NMAC.

(c) for fire and smoke dampers with both mechanical and electrical components, the applicant inspecting the mechanical components shall provide documentation pursuant to Subparagraph (a) of this paragraph and the applicant inspecting the electrical components shall provide documentation pursuant to Subparagraph (b) of this paragraph.

**B.** Requirements for renewal. Any person seeking to renew a certificate of fitness shall apply following the process provided, and submit all information required, for an initial application.

[10.25.2.9 NMAC - N, 11/15/2007; A/E, 10/7/2022; A, 7/18/2023]

### MEDICAL BOARD

By emergency rule, the New Mexico Medical Board is repealing 16.10.2 NMAC - Physicians: Licensure Requirements filed 3/18/2002 and replacing it with 16.10.2 NMAC - Physicians: Licensure Requirements, effective 7/7/2023.

By emergency rule, the New Mexico Medical Board is repealing 16.10.5 NMAC - Disciplinary Power Of The Board filed 3/18/2022 and replacing it with 16.10.5 NMAC - Disciplinary Power Of The Board, effective 7/7/2023.

By emergency rule, the New Mexico Medical Board is repealing 16.10.6 NMAC - Complaint Procedure And Institution Of Disciplinary Action filed 3/18/2022 and replacing it with 16.10.6 NMAC - Complaint Procedure And Institution Of Disciplinary, effective 7/7/2023.

### MEDICAL BOARD

#### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS PART 2 PHYSICIANS: LICENSURE REQUIREMENTS

**16.10.2.1 ISSUING AGENCY:** New Mexico Medical Board, hereafter called the board.  
[16.10.2.1 NMAC - Rp/E, 16 10.2.1 NMAC 7/7/2023]

**16.10.2.2 SCOPE:** This part applies to all physicians applying for licensure in New Mexico.

[16.10.2.2 NMAC - Rp/E, 16 10.2.2 NMAC 7/7/2023]

**16.10.2.3 STATUTORY**

**AUTHORITY:** This part governs the licensing of physicians in New Mexico and is promulgated pursuant to and in accordance with the Medical Practice Act, Sections 61-6-11, 61-6-11.1, 61-6-12, 61-6-13, 61-6-14, 61-6-15, 61-6-18, 61-6-18.1, and 61-6-19 NMSA 1978.

[16.10.2.3 NMAC - Rp/E, 16 10.2.3 NMAC 7/7/2023]

**16.10.2.4 DURATION:**

Permanent.

[16.10.2.4 NMAC - Rp/E, 16 10.2.4 NMAC 7/7/2023]

**16.10.2.5 EFFECTIVE**

**DATE:** July 7, 2023, unless a later date is cited at the end of a section.

[16.10.2.5 NMAC - Rp/E, 16 10.2.5 NMAC 7/7/2023]

**16.10.2.6 OBJECTIVE:**

This part establishes requirements and procedures for licensure as a physician in New Mexico.

[16.10.2.6 NMAC - Rp/E, 16 10.2.6 NMAC 7/7/2023]

**16.10.2.7 DEFINITIONS:**

**A. “Absence of good moral character”** means any conduct that calls into question an applicant’s fitness or suitability to engage in licensed practice, or that is antithetical to the promotion of the public health, safety, and welfare, as determined by the board, constitutes a lack of good moral character. The conduct subject to the board’s evaluation for good moral character may or may not arise in the context of professional practice.

**B. “ABMS”** means the American board of medical specialties.

**C. “AOA”** means the American osteopathic association.

**D. “AOA-BOS”** means the American osteopathic association bureau of osteopathic specialists.

**E. “Board approved school”** means a medical school that has been approved by the liaison

committee on medical education, composed of the American medical association and the association of American medical colleges, has a liaison council on medical education (LCME)-approved curriculum or equivalent for graduates of Canadian schools, is accredited by the American osteopathic association or commission on osteopathic accreditation, or has been approved by the board. Foreign medical graduates that are vetted and approved for a board approved training program and hold an ECFMG certification are considered to have graduated from an acceptable medical education, as if they have graduated from a board approved school.

**F. “Board approved training program”** means a program approved by the accrediting council on graduate medical education of the American medical association (ACGME), is approved by American osteopathic association (AOA), the royal college of physicians and surgeons of Canada (RCPSC), or a residency program located within an ACGME approved institution that has been approved by the board.

**G. “Board approved credential verification service”** means a credential verification service certified by the national commission on quality assurance (NCQA) and approved by the board.

**H. “Complete application”** means an application for licensure that includes all required documentation in 16.10.2 NMAC and subject to the provisions of section 61-6-11 NMSA 1978.

**I. “Disqualifying criminal conviction”** means a conviction pursuant to the Uniform Licensing Act, Section 61-1-36 NMSA 1978, for a crime that is job-related for the position in question and consistent with business necessity.

**J. “ECFMG”** means educational commission for foreign medical students.

**K. “FCVS”** means the federation credential verification service of the federation of state medical boards.

**L. “Good moral character”** means qualities

evidencing an applicant’s present good moral character for purposes of licensure including candor, honesty, integrity, a respect for the law, regard for the welfare, safety, and rights of another, and fidelity and trustworthiness in the practice of the professions for which they may be licensed. Conversely, an applicant whose conduct reflects the absence of one or more of these qualities may be said to lack the good moral character required for licensure. It is a continuing duty to exhibit good moral character as a licensee. Absence of good moral character means any conduct that calls into question an applicant’s fitness or suitability to engage in licensed practice, or that is antithetical to the promotion of the public health, safety, and welfare, as determined by the board, constitutes a lack of good moral character. The conduct subject to the board’s evaluation for good moral character may or may not arise in the context of professional practice.

**M. “HSC”** means the hospital services corporation, a New Mexico corporation, and a credential verification organization certified by the national commission on quality assurance (NCQA).

**N. “License renewal”** means the renewal of an active license with the required documentation and the submission by the licensee to a state and national background check, as determined by the board.

**O. “Major disaster”** means a declaration of a major disaster by the federal emergency management agency (FEMA).

**P. “Military service member”** means a person who is:

(1) serving in the armed forces of the United States as an active duty member, or in an active reserve component of the armed forces of the United States, including the national guard;

(2) the spouse of a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard, or a surviving spouse of a member who at

the time of the member's death was serving on active duty; or

(3) the child of a military service member if the child is also a dependent of that person for federal income tax purposes.

**Q. "Nationwide criminal history record"** information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states.

**R. "Nationwide criminal history screening"** a criminal history background investigation of an applicant for licensure by examination or endorsement through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant.

**S. "Out of state sports team"** means an entity or organization:

(1) for which athletes engage in sporting events;

(2) headquartered or organized under laws other than the laws of New Mexico; and

(3) a majority of whose staff and athletes are residents of another state.

**T. "Physician"** means allopathic doctor (MD) or doctor of osteopathy (DO).

**U. "Qualified applicant"** means an applicant for licensure who satisfies the requirements and standards for licensure established by the board.

**V. "Sporting event"** means a scheduled sporting event involving an out of state sports team for which an admission fee is

charged to the public, including any preparation or practice related to the activity.

**W. "Telemedicine"** means the practice of medicine across state lines as defined in the Medical Practice Act, Subsection K of Section 61-6-6 NMSA 1978.

**X. "Veteran"** means a person who received an honorable discharge or separation from military service.

[16.10.2.7 NMAC - Rp/E, 16 10.2.7 NMAC 7/7/2023]

**16.10.2.8 CATEGORIES OF ACTIVE LICENSES:** Individuals holding one of the following categories of medical license are eligible to practice medicine and surgery in New Mexico.

**A. Expedited license:** a one-year provisional license that confers the same rights, privileges and responsibilities as a medical license issued by the board.

**B. Medical:** An unrestricted license to practice medicine and surgery.

**C. Telemedicine:** A limited medical license that allows a physician located outside New Mexico to practice medicine on patients located in New Mexico.

**D. Post-graduate:** A limited training license issued by the board to physicians who are enrolled in a board approved training program.

**E. Public service:** A limited license issued by the board to physicians in training who have successfully completed one year of post-graduate training.

**F. Temporary:** A limited license that allows a physician to practice medicine for a limited time after meeting certain specific conditions.

**G. Federal emergency:** An unrestricted license to practice medicine and surgery issued without receipt of all documentation required for a medical license because of a major disaster.

[16.10.2.8 NMAC - Rp/E, 16 10.2.8 NMAC 7/7/2023]

**16.10.2.9 MEDICAL LICENSE BY EXAMINATION:**

**A. Prerequisites for licensure:** Each applicant for a license to practice as a physician in New Mexico must be of good moral character and must possess the following qualifications:

(1) graduated and received a diploma from a board approved school, completed a program determined by the board to be substantially equivalent to a U.S. medical school, based on board review of a full ECFMG certification, or the board shall, in its sole discretion, determine if the applicant's total educational and professional clinical experience is substantially equivalent to that which is required for licensure in New Mexico; and

(2) successfully passed one of the examinations or combinations of examinations defined in 16.10.3 NMAC; and

(3) completed two years of postgraduate training or been approved by the board in accordance with the provisions of Subsection B of Section 61-6-11 NMSA 1978;

(4) when the board has reason to believe that an applicant for licensure is not competent to practice medicine it may require the applicant to complete a special competency examination or to be evaluated for competence by other means that have been approved by the board; and

(5) a qualified applicant who has not been actively and continuously in practice for more than two years prior to application may be required to successfully complete a special examination or evaluation such as, but not limited to, the SPEX (special purpose examination), the PLAS (post-licensure assessment system of the federation of state medical boards), or specialty re-certification.

**B. Required documentation for all applicants:** Each applicant for a license must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation:

(1) a completed signed application with a passport-quality photo taken within the previous six months; applications are valid for one year from the date of receipt by the board;

(2) verification of licensure in all states or territories where the applicant holds or has held a license to practice medicine, or other health care profession; verification must attest to the status, issue date, license number, and other information requested and contained on the form; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(3) two recommendation forms from physicians, chiefs of staff or department chairs or equivalent with whom the applicant has worked and who have personal knowledge of the applicant's character and competence to practice medicine; the recommending physicians must have personally known the applicant and have had the opportunity to personally observe the applicant's ability and performance; forms must be sent directly to the board from the recommending physicians, chiefs of staff, department chairs, or equivalent. This information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(4) verification of all work experience and hospital affiliations in the last two years, if applicable, not to include postgraduate training; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(5) a copy of all American board of medical specialties (ABMS) specialty board certifications, or American osteopathic association bureau of osteopathic specialists (AOA-BOS) if applicable; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board; and

(6) the board may request that applicants be investigated by the biographical section of the American medical association (AMA), the drug enforcement administration (DEA), the federation of state medical boards (FSMB), the national practitioner data bank, and other sources as may be deemed appropriate by the board;

(7) applicants who are not United States citizens must provide proof that they are in compliance with the immigration laws of the United States.

C. Additional documentation for applicants using the FCVS: Applicants are encouraged to use the FCVS as once a credential file is created future applications for medical licensure will be streamlined. However, application through FCVS is not required. Applicants using the FCVS must submit a completed application to the FCVS, who will provide primary source documentation to the board. Only the documents required in Subsection B of 16.10.2.9 NMAC are required in addition to the FCVS report.

D. Additional documentation for applicants using HSC or another board-approved credentials verification service:

(1) status report of educational commission for foreign medical graduates (ECFMG) certification sent directly to the board from ECFMG, if applicable;

(2) copy of ECFMG interim letter documenting additional postgraduate training for international medical graduates applying through the fifth pathway process, if applicable;

(3) certified transcripts of exam scores as required in 16.10.3 NMAC sent directly to the board from the testing agency;

(4) proof of identity may be required; acceptable documents include birth certificate, passport, naturalization documents, and visas.

E. Additional documentation for applicants applying directly to New Mexico and not using FCVS or HSC or another board-approved credentials verification service:

(1) verification of medical education form with school seal or notarized, sent directly to the board from the school;

(2) transcripts sent directly to the board from the medical school;

(3) status report of ECFMG certification sent directly to the board from ECFMG, if applicable;

(4) copy of ECFMG interim letter documenting additional postgraduate training for international medical graduates applying through the fifth pathway process, if applicable;

(5) postgraduate training form sent to the board directly from the training program;

(6) certified transcripts of exam scores as required in 16.10.3 NMAC sent directly to the board from the testing agency; and

(7) proof of identity may be required; acceptable documents include birth certificate, passport, naturalization documents, and visas;

(8) certified copies of source documents obtained directly from another state licensing jurisdiction who has the original document on file will be accepted in lieu of original documents when the originals cannot be obtained for a valid cause.

F. Licensure process: Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal



interview before the board, a board member designated by the board, or an agent of the board and must present original documents as requested by the board. The initial license will be issued following completion of any required interview, or approval by a member or agent of the board.

**G. Initial license expiration:** Medical licenses shall be renewed on July 1 following the date of issue. Initial licenses are valid for a period of not more than thirteen months or less than one month. If New Mexico is the first state of licensure, initial licenses are valid for a period of not less than 24 months or more than 35 months and shall be renewed on July 1.

[16.10.2.9 NMAC - Rp/E, 16 10.2.9 NMAC 7/7/2023]

#### **16.10.2.10 EXPEDITED LICENSURE:**

**A. Prerequisites for licensure:** Each applicant for a license to practice as a physician in New Mexico must be of good moral character, hold a full and unrestricted license to practice medicine in another state, and possess the following qualifications:

(1) have practiced medicine in the United States or Canada immediately preceding the application for at least three years;

(2) be free of disciplinary history, license restrictions, or pending investigations in all jurisdictions where a medical license is or has been held;

(3) graduated from a board approved school or hold current ECFMG certification; and

(4) current certification from a medical specialty board recognized by the ABMS or the AOA-BOS.

**B. Required documentation for all applicants:** Each applicant for a license must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation:

(1) a completed signed application with a

passport-quality photo taken within the previous six months; applications are valid for one year from the date of receipt by the board;

(2) verification of licensure in all states or territories where the applicant holds or has held a license to practice medicine, or other health care profession; verification must attest to the status, issue date, license number, and other information requested and contained on the form;

(3) two recommendation forms from physicians, chiefs of staff or department chairs or equivalent with whom the applicant has worked and who have personal knowledge of the applicant's character and competence to practice medicine; the recommending physician(s) must have personally known the applicant and have had the opportunity to personally observe the applicant's ability and performance; forms must be sent directly to the board from the recommending physician(s), chief(s) of staff, department chair(s) or equivalent(s). This information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board;

(4) verification of all work experience and hospital affiliations in the last three years; if more than one work experience and hospital affiliation, provide at least three verifications of all work and hospital affiliations during the past three years, if applicable, not to include postgraduate training; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board;

(5) a copy of all ABMS or AOA-BOS specialty board certifications, if applicable; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board; and

(6) the board may request that applicants be investigated by the biographical section of the AMA, the DEA, the FSMB, the NPDB, and other sources as may be deemed appropriate by the board. The board shall require fingerprints and, in its discretion, a state and national background check.

(7) applicants who are not U.S. citizens must provide proof that they are in compliance with the immigration laws of the United States.

**C. Licensure process:** Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board and must present original documents as requested by the board. The initial license will be issued following completion of any required interview, or approval by a member or agent of the board.

**D. Initial license expiration:** Medical licenses shall be renewed on July 1. Initial licenses are valid for a period of not more than 24 months or less than one 12 months. If New Mexico is the first state of licensure, initial licenses are valid for a period of not less than 24 months or more than 35 months and shall be renewed on July 1.

**E. Continuous practice:** For at least three years prior to the submission of a completed application for an expedited license, the applicant shall explain any break in practice or service. Any break in service for the three years preceding the application, exceeding 30 days, shall be stated and explained in the application to the satisfaction of the board.

**F. Competency examination:** An applicant for an expedited license may, at the discretion of the Board, be required to undergo a competency examination before the issuance of an expedited license.

**G. Procedure for incomplete application.** If an

incomplete application is received, the board shall notify the applicant in writing within 30 days from the date the incomplete application was received by the board. The written notification shall include how the application is incomplete and what is needed to complete the application; this written notification shall be titled "notice to cure." After receipt of the notice to cure, the applicant must submit a completed application within 30 days of the receipt of the notice to cure. An extension may be granted, at the board's discretion and based on good cause, for submission beyond 30 days after receipt of the notice to cure. [16.10.2.10 NMAC - Rp/E, 16 10.2.10 NMAC 7/7/2023]

**16.10.2.11 TELEMEDICINE LICENSE:**

**A.** Prerequisites for licensure: Each applicant for a telemedicine license must be of good moral character and hold a full and unrestricted license to practice medicine in another state or territory of the United States.

**B.** Required documentation: Each applicant for a telemedicine license must submit the required fees as specified in 16.10.9.8 NMAC and the documentation required by 16.10.2.10 NMAC for an expedited license. An applicant for a telemedicine license shall be subject to the same provisions as an applicant seeking an expedited license.

**(1)** A completed signed application, with a passport quality photo taken within six months. Applications are valid for one year from the date of receipt.

**(2)** Verification of licensure in all states where the applicant holds or has held a license to practice medicine, or other health care profession. Verification must be received directly from the other state(s) board, and must attest to the status, issue date, license number, and other information requested and contained on the form.

**(3)** Applicants who have had previous disciplinary or other action against them may be required to meet with the entire board.

The board may, in its discretion, issue a license to practice medicine across state lines if it finds that the previous disciplinary or other action does not indicate that the physician is a potential threat to the public.

**C.** Licensure process: Upon receipt of a completed application, including all required documentation and fees, board staff will request and review an AMA physician profile and FSMB board action databank search. When the application is complete, a member or agent of the board will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved.

**D.** Initial license expiration: Telemedicine licenses shall be renewed on July 1 following the date of issue. Initial licenses are valid for a period of not more than thirteen months or less than one month.

**E.** Exemption from licensure requirements are defined in Section 61-6-17 NMSA of the Medical Practice Act and include a physician licensed to practice under the laws of another state who acts as a consultant to a New Mexico licensed physician on an irregular or infrequent basis not to exceed ten patients per year.

[16.10.2.11 NMAC - Rp/E, 16 10.2.11 NMAC 7/7/2023]

**16.10.2.12 POSTGRADUATE TRAINING LICENSE:**

A postgraduate training license is required for all interns, residents, and fellows enrolled in board approved training programs within the state. Individuals enrolled in board approved training programs outside of New Mexico may apply for a postgraduate training license as a prerequisite to obtaining a New Mexico public service license.

**A.** Prerequisites for licensure: Each applicant for a postgraduate training license must possess the following qualifications:

**(1)** graduated from a board approved school or completed a program determined

by the board to be substantially equivalent to a U.S. medical school or college of osteopathic medicine;

**(2)** passed part I of the United States medical licensing examination (USMLE) or the comprehensive osteopathic medical licensing examination (COMLEX); and

**(3)** be of good moral character.

**B.** Required documentation: Each applicant shall submit the required fee as specified in 16.10.9.8 NMAC and complete the board-approved application.

**(1)** Applicants enrolled at the university of New Mexico health science center must submit an application through the office of graduate medical education for review before it is forwarded to the board for review and approval.

**(2)** Applicants enrolled at a board-approved training program outside New Mexico must submit the postgraduate training license application directly to the board.

**(3)** A copy of the official examination results must be attached to each application.

**C.** Licensure process: Upon receipt of a completed signed application and fee, a member or agent of the board will review the application and may approve the license. The applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board.

**D.** License expiration: Postgraduate training licenses are valid for no longer than one year, but may be renewed for a period not to exceed eight years or completion of the residency, whichever is shorter, and as long as the license holder is enrolled in a board approved training program. Postgraduate training licenses may be renewed prior to expiration.

[16.10.2.12 NMAC - Rp/E, 16 10.2.12 NMAC 7/7/2023]

**16.10.2.13 PUBLIC SERVICE LICENSE:** A resident

physician may apply for a public service license, which enables him to practice medicine outside the training program. The resident physician must be continuing in the board approved training program.

**A.** Prerequisites for licensure: Each applicant for a public service license shall have graduated from a board approved school, passed all required examinations as defined in 16.10.3 NMAC, and completed one year of postgraduate training. In addition, the applicant shall have completed an application for licensure including all required documentation required in Subsection B through Subsection E of 16.10.2.9 NMAC, as applicable. Other requirements include:

(1) written approval from his training program director;

(2) a postgraduate training license issued by the New Mexico medical board;

(3) a resident physician with one year postdoctoral training may only apply for a public service license when he is under the direct supervision of a New Mexico physician or when employed in a medically underserved area; and

(4) if a physician is not being supervised directly, there must be procedures in place for a licensed New Mexico physician to review, on at least a quarterly basis, prescriptions written and dispensed for controlled substances and operative procedures performed.

**B.** Required documentation: Each applicant for a public service license shall submit the required fee as specified in 16.10.9.8 NMAC and the following documentation:

(1) a completed signed application, with a passport quality photo taken within the previous six months; applications are valid for one year from the date of receipt;

(2) letter of approval from the training program director.

**C.** Licensure process: Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board and must present original documents as requested by the board. The initial license will be issued following completion of any required interview, or approval by a member or agent of the board.

**D.** License expiration: Public service licenses shall be renewed annually on September 1 as long as the applicant remains eligible. [16.10.2.13 NMAC - Rp/E, 16 10.2.13 NMAC 7/7/2023]

**16.10.2.14 TEMPORARY TEACHING, RESEARCH, AND SPECIALIZED DIAGNOSTIC AND TREATMENT LICENSES:**

The board may issue a temporary license to physicians licensed in other states or jurisdictions for the purpose of teaching, conducting research, performing specialized diagnostic and treatment procedures, implementing new technology, or for physician educational purposes in New Mexico on a temporary basis under the supervision of a New Mexico licensed physician.

**A.** Prerequisites for licensure: The applicant must:

(1) be otherwise qualified to practice medicine in New Mexico;

(2) hold an unrestricted license in another state or country;

(3) submit the name of the sponsoring or associating physician(s), who must be actively licensed in New Mexico.

**B.** Required documentation:

(1) specific program or protocol of work planned;

(2) address of sponsoring institution or organization where the work will be performed;

(3) an affidavit from the sponsoring physician attesting to the qualifications of the

applicant and the purpose of the functions or medical procedures the applicant will perform;

(4) verification of licensure in state or jurisdiction where physician is practicing; and  
(5) a license fee as set forth in 16.10.9 NMAC.

**C.** Licensure process: Upon receipt of a completed signed application, including all required documentation and fees, board staff will request and review an AMA physician profile and FSMB board action databank search. When the application is complete, a member or agent of the board will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved or if there are any actions or restrictions on any license held in another state or jurisdiction.

**D.** The applicant may perform only those functions listed in the application. The supervising physician must notify the board and obtain approval prior to any change in the activities of the temporary license holder.

**E.** The duration of a temporary teaching, research, or specialized diagnostic and treatment license shall not exceed three months, provided however that the license may be renewed up to three times upon payment of appropriate fees and written justification for the plan remaining in effect. After the third renewal of a temporary license, the physician shall re-apply under the provisions of this rule. [16.10.2.14 NMAC - Rp/E, 16 10.2.14 NMAC 7/7/2023]

**16.10.2.15 YOUTH CAMP OR SCHOOL LICENSES:**

The board may approve a temporary license for physicians to provide temporary medical services to organized youth camps or schools. Youth camp or school licenses are issued for a period not to exceed three months. Practice under the temporary license shall be limited to enrollees, leaders and employees of the camp or school. Applicants must be qualified

for licensure in New Mexico and shall submit the following documentation:

A. a completed signed application with a passport-quality photograph, taken within the previous six months, attached;

B. a verification of current unrestricted license from state or jurisdiction where applicant is currently practicing or licensed;

C. a verification of DEA permit; and,

D. a temporary license fee as set forth in 16.10.9.8 NMAC.

E. Licensure process:

Upon receipt of a completed application, including all required documentation and fees, board staff will request and review an AMA physician profile and FSMB board action databank search. When the application is complete, a member or agent of the board will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved or if there are any actions or restrictions on any license held in another state or jurisdiction.

[16.10.2.15 NMAC - Rp/E, 16 10.2.15 NMAC 7/7/2023]

**16.10.2.16 PROVISIONS FOR PHYSICIAN LICENSURE DURING A DECLARED**

**DISASTER:** The board will make accommodations for physicians who have been impacted by a major disaster. Based on the nature of the disaster, the extent of the damage, and the number of individuals and institutions that have been affected, the board may waive documentation requirements for any new or pending applications when the disaster delays or prohibits the procuring of the required documents. The board may also waive any required fees for applications submitted after the major disaster. The board will determine the length of time the emergency provisions will be in effect for each major disaster that results in applications for a federal emergency license.

A. Federal emergency license by examination: Physicians

currently licensed in a state in which a major disaster has been declared may be issued a federal emergency license in New Mexico. The board may waive specific documentation required in Subsection B through E of 16.10.2.9 NMAC if the applicant is unable to obtain the documentation from individuals or institutions located in the disaster area. Nothing in this provision shall constitute a waiver of the requirements for licensure contained in Subsection A of 16.10.2.9 NMAC.

B. Federal emergency license by endorsement: Physicians currently licensed in a state in which a major disaster has been issued a federal emergency license in New Mexico. The board may waive specific requirements of Subsection B of 16.10.2.10 NMAC if the applicant is unable to obtain the documentation from individuals or institutions located in the disaster area. Nothing in this provision shall constitute a waiver of the requirements for licensure contained in Subsection A of 16.10.2.10 NMAC. The following requirements will apply to applicants under this provision:

(1) a completed signed application, is required, accompanied by proof of identity, which may include a copy of a driver’s license, passport or other photo identification issued by a governmental entity;

(2) the board will consider the required three years of practice experience to be met through any combination of postgraduate medical education and actual work experience;

(3) the board may waive any requirements for recommendation forms or verification of work experience forms;

(4) other required verification will be obtained online by board staff to include: current licensure status, national practitioners data bank (NPDB), federation of state medical board (FSMB) disciplinary database, American medical association or AOA records of education and postgraduate training, and the records

of the American board of medical specialties or AOA-BOS to confirm board certification status.

C. License expiration: Initial federal emergency licenses shall be valid for not less than three months or more than fifteen months. Licenses shall be renewed on July 1 following the date of issue, pursuant to 16.10.7 NMAC. The board reserves the right to request additional documentation, including but not limited to recommendation forms and work experience verification forms prior to approving license renewal. At the time a federal emergency license is approved for renewal, it will be transferred to a full medical license. [16.10.2.16 NMAC - Rp/E, 16 10.2.16 NMAC 7/7/2023]

**16.10.2.17 EXPEDITED MEDICAL LICENSURE FOR MILITARY AND SPOUSES LICENSED IN ANOTHER**

**JURISDICTION:** If a military service member, the spouse of a military service member, or a recent veteran submits an application for a medical license and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and issue the appropriate license as soon as practicable. Any qualified applicant seeking expedited consideration pursuant to this section shall submit a copy of form DD214 with their application.

[16.10.2.17 NMAC - Rp/E, 16 10.2.17 NMAC 7/7/2023]

**16.10.2.18 TEMPORARY LICENSURE EXEMPTION FOR OUT OF STATE SPORTS TEAM PHYSICIAN:**

A. Physician who is licensed in good standing to practice medicine in another state, and who has never been disciplined by the New Mexico medical board, may practice medicine without a license provided that:

(1) the physician has a written agreement with the out-of-state sports team governing body to provide health care services to an out-of-state sports team

athlete or staff member at a scheduled sporting event;

(2) the physician's practice is limited to medical care to assist injured and ill players and staff and coordinate appropriate referral to in-state health care providers as needed;

(3) the healthcare services to be provided by the physician are within the scope of practice authorized pursuant to the medical practice act and rules of the board; and

(4) the physician has professional liability coverage for the duration of the sporting event.

**B.** Licensure exemption registration. Physician registrants shall submit the following documentation to the board:

(1) copy of the agreement with the out-of-state sports team governing body to provide health care services to an out-of-state sports team athlete or staff member at a scheduled sporting event;

(2) proof of professional liability coverage for the duration of the sporting event;

(3) a signed affidavit that the physician will limit their medical practice in New Mexico to care and assist injured or ill out-of-state team athletes or staff, and

(4) coordinate appropriate referral to in-state health care providers.

**C.** The physician will further attest that they will not provide care or consultation to a resident of New Mexico and will not practice medicine in New Mexico, outside of the sporting event.

[16.10.2.18 NMAC - Rp/E, 16 10.2.18 NMAC 7/7/2023]

#### **16.10.2.19 NATIONWIDE CRIMINAL HISTORY**

**SCREENING:** All applicants for initial licensure in any category in New Mexico are subject to a state and national criminal history screening at their expense. All applicants must submit two full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal

background screening and fee at the time of application.

**A.** Applications for licensure will not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

**B.** Applications will be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

**C.** If the criminal background screening reveals a felony or a violation of the Medical Practice Act, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.10.2.19 NMAC - Rp/E, 16 10.2.19 NMAC 7/7/2023]

#### **16.10.2.20 CRIMINAL ARRESTS AND CONVICTIONS:**

**A.** Arrests: The Board shall not exclude from licensure a person who is otherwise qualified on the sole basis that the person has been previously arrested for or convicted of a crime unless the person has a disqualifying criminal conviction.

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

(1) homicide;

(2) aggravated

assault, aggravated battery, kidnapping, false imprisonment, human trafficking, stalking, or other crimes of violence against persons;

(3) robbery,

larceny, burglary, extortion, receiving stolen property, possession of burglary tools, unlawful taking of a motor vehicle, or other crimes involving theft or appropriation of personal property or funds;

(4) rape,

criminal sexual penetration, criminal

sexual contact, incest, indecent exposure, child solicitation, or other crimes constituting sexual offenses;

(5) crimes against children; crimes involving child abuse or neglect; child sexual exploitation, child pornography;

(6) driving under the influence of intoxicating liquor or drugs;

(7) trafficking controlled substances;

(8) fraud, forgery, money laundering, embezzlement, credit card fraud, counterfeiting, financial exploitation, or other crimes of altering any instrument affecting the rights or obligations of another;

(9) making a false statement under oath or in any official document;

(10) evasion of a lawful debt or obligation, including but not limited to tax obligations; or

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

[16.10.2.20 NMAC - Rp/E, 16 10.2.20 NMAC 7/7/2023]

#### **HISTORY OF 16.10.2 NMAC:**

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

Rule 3, Licensure as a Medical Practitioner, filed 10/26/1994.

Rule 3, Licensure as a Medical Practitioner, filed 06/21/1993.

Rule 4, Temporary Licenses, filed 12/19/1989.

NMBME Rule 88-1, Temporary Licenses, filed 05/31/1988.

#### **History or Repealed Material:**

16 NMAC 10.2, Licensure as a Medical Practitioner - Repealed 4/18/2002.

16 NMAC 10.3, Interim and Temporary Licenses - Repealed 4/18/2002.

16.10.2 NMAC - Physicians: Licensure Requirements filed 3/18/2002 emergency repealed 7/7/2023.

**Other:**  
 16.10.2 NMAC - Physicians:  
 Licensure Requirements filed  
 3/18/2002 was Replaced by 16.10.2  
 NMAC - Physicians: Licensure  
 Requirements 7/7/2023.

**MEDICAL BOARD**

**TITLE 16 OCCUPATIONAL  
 AND PROFESSIONAL  
 LICENSING  
 CHAPTER 10 MEDICINE AND  
 SURGERY PRACTITIONERS  
 PART 5 DISCIPLINARY  
 POWER OF THE BOARD**

**16.10.5.1 ISSUING**  
**AGENCY:** New Mexico Medical  
 Board, hereafter called the board.  
 [16.10.5.1 NMAC - Rp/E, 16.10.5.1  
 NMAC, 7/7/2023]

**16.10.5.2 SCOPE:** This part  
 applies to licensees and applicants for  
 licensure.  
 [16.10.5.2 NMAC - Rp/E, 16.10.5.2  
 NMAC, 7/7/2023]

**16.10.5.3 STATUTORY**  
**AUTHORITY:** This part is  
 promulgated pursuant to and in  
 accordance with the Medical Practice  
 Act, Sections 61-6-1 through 61-6-35  
 NMSA 1978, the Uniform Licensing  
 Act, Section 61-1-1 through 61-1-33  
 NMSA 1978, the Impaired Health  
 Care Provider Act, Section 61-7-1  
 through 61-7-12 NMSA 1978, the  
 Genetic Counseling Act, Section 61-  
 6A-1 through 61-6A-10 NMSA 1978,  
 the Polysomnography Practice Act,  
 Section 61-6B-1 through 61-6B-10  
 NMSA 1978, the Naprapathic Act,  
 Sections 61-12F-1 through 61-12F-13  
 NMSA 1978, and the Naturopathic  
 Doctors' Act, Section 61-12G-1  
 through 61-12G-11 NMSA 1978.  
 [16.10.5.3 NMAC - Rp/E, 16.10.5.3  
 NMAC, 7/7/2023]

**16.10.5.4 DURATION:**  
 Permanent.  
 [16.10.5.4 NMAC - Rp/E, 16.10.5.4  
 NMAC, 7/7/2023]

**16.10.5.5 EFFECTIVE**  
**DATE:** July 7,2023, unless a later  
 date at the end of a section.  
 [16.10.5.5 NMAC - Rp/E, 16.10.5.5  
 NMAC, 7/7/2023]

**16.10.5.6 OBJECTIVE:**  
 This part establishes procedures for  
 license denial, revocation of license,  
 suspension of license, probation,  
 censure and reprimand, fines, costs  
 and stipulations.  
 [16.10.5.6 NMAC - Rp/E, 16.10.5.6  
 NMAC, 7/7/2023]

**16.10.5.7 DEFINITIONS:**  
**A. "License"** means a  
 document granting legal permission to  
 any practitioner licensed pursuant to  
 the medical practice act, to practice in  
 the state of New Mexico.  
**B. "Licensee"** means  
 any practitioner governed by the  
 medical practice act, who has been  
 granted permission to practice in the  
 state of New Mexico.  
 [16.10.5.7 NMAC - Rp/E, 16.10.5.7  
 NMAC, 7/7/2023]

**16.10.5.8 DISCIPLINARY**  
**POWER OF THE BOARD:**  
 Pursuant to Sections 61-6-5, 61-6-8,  
 61-6-15 and 61-7-8 NMSA, 1978,  
 the board has the power to suspend  
 or revoke a license, place a licensee  
 on probation under such terms  
 and conditions as the board deems  
 necessary after a hearing or pursuant  
 to a stipulation with a licensee.  
 Further, under the Medical Practice  
 Act the board has the power to deny a  
 license application, to deny a license  
 renewal, to censure, to reprimand or  
 to fine a licensee.  
 [16.10.5.8 NMAC - Rp/E, 16.10.5.8  
 NMAC, 7/7/2023]

**16.10.5.9 REVOCATION**  
**OF LICENSE:**  
**A.** Action prior to  
 revocation: Prior to revoking any  
 license for any violation of the  
 Medical Practice Act, or the Impaired  
 Health Care Provider Act, the board  
 shall give the licensee written notice  
 and an opportunity to request a  
 hearing pursuant to the Uniform  
 Licensing Act.

**B.** Terms of  
 revocation: A licensee whose license  
 is revoked may not practice in any  
 manner under that license.

**C.** Revocation  
 under the Medical Practice Act:  
 All revocations pursuant to the  
 Medical Practice Act are permanent  
 and no such license revoked shall  
 be reinstated. Persons seeking  
 licensure after revocation under the  
 Medical Practice Act shall file a  
 new application for licensure with  
 the board, under the rules for new  
 applicants.

**D.** Relicensing after  
 revocation under the Impaired Health  
 Care Provider Act: A licensee whose  
 license has been revoked pursuant to  
 the Impaired Health Care Provider  
 Act may petition for reinstatement  
 pursuant to Section 61-7-9 NMSA  
 1978.  
 [16.10.5.9 NMAC - Rp/E, 16.10.5.9  
 NMAC, 7/7/2023]

**16.10.5.10 SUSPENSION OF**  
**LICENSE:**  
**A.** Action prior to  
 suspension: Except as provided in the  
 Impaired Health Care Provider Act,  
 or in a disciplinary order entered after  
 a hearing, or pursuant to Subsection  
 C of 16.10.5.15 NMAC below,  
 prior to suspending any license, the  
 board shall give the licensee written  
 notice and an opportunity to request  
 a hearing pursuant to the Uniform  
 Licensing Act.

**B.** Terms of  
 suspension: The board may suspend a  
 license for a specified period of time.  
 A licensee whose license is suspended  
 may not practice in any manner under  
 that license during the period of  
 suspension.

**C.** Reinstatement:  
 Unless otherwise established by the  
 board:

**(1)** If the  
 board sets a date after which a  
 license may be reinstated, the board  
 will consider an application for  
 reinstatement only after that date. The  
 licensee may apply for reinstatement  
 on a yearly basis thereafter.

**(2)** A licensee  
 whose license has been suspended

pursuant to the Impaired Health Care Provider Act may apply for reinstatement pursuant to Section 61-7-9 NMSA1978, if the licensee can meet the statutory requirements. If the reinstatement is denied, the licensee may apply for reinstatement on a yearly basis thereafter.

[16.10.5.10 NMAC - Rp/E, 16.10.5.10 NMAC, 7/7/2023]

#### **16.10.5.11 PROBATION:**

**A. General:** Probation means to allow, for a stated period of time, the conduct authorized by a license, subject to a licensee's license conditions or other restrictions that are reasonably related to the grounds for such restrictions. The board may stay any disciplinary action taken and place a licensee on probation with a requirement that the licensee comply with certain terms and conditions. The board may also place a licensee on probation without taking other disciplinary action.

**B. Terms of probation:** The terms of the probation shall be set forth in writing. The licensee on probation may continue to practice under the license so long as the licensee complies with all terms of probation.

**C. Violation of probation:** If the terms of the probation are violated, the board shall give the applicant written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act prior to taking further disciplinary action, unless the order of probation contains a provision for the immediate suspension of the license. The initial order of probation may also contain a provision for a new stated period or term of probation if any term of probation is violated.

**D. Conditions of probation:** Conditions of probation may include monitoring or other directed management or supervision during the stated period of probation. [16.10.5.11 NMAC - Rp/E, 16.10.5.11 NMAC, 7/7/2023]

**16.10.5.12 CENSURE AND REPRIMAND:** The board may issue a letter of censure or reprimand

to a licensee for any minor violation of the Medical Practice Act pursuant to Section 61-1-3 of the Uniform Licensing Act.

[16.10.5.12 NMAC - Rp/E, 16.10.5.12 NMAC, 7/7/2023]

#### **16.10.5.13 FINES:**

**A.** The board may impose a fine on a licensee for each violation of the Medical Practice Act after giving the licensee written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act. If the licensee's action constitutes more than one violation of the Medical Practice Act, the board may impose a fine for each violation.

**B.** The board may impose a fine in an amount not to exceed ten thousand dollars (\$10,000) for each violation against a person who, without an active license, engages in a violation of the Medical Practice Act.

**C.** All fines collected by the board pursuant to Subsection B of 16.10.5.13 NMAC shall be deposited to the credit of the current school fund as provided in Section 4 of Article 12 of the constitution of New Mexico.

[16.10.5.13 NMAC - Rp/E, 16.10.5.13 NMAC, 7/7/2023]

#### **16.10.5.14 STIPULATION:**

**A.** Power to enter into stipulations: The board may come to an agreement and enter into a stipulation with a licensee at any time. In a stipulation, the parties may agree to any disciplinary or other action that the board is authorized to take by law.

**B. Contents:** The stipulation shall be in writing, shall contain the agreed upon conditions or restrictions on the licensee and shall be signed by the board and the licensee. The stipulation shall contain statements that the licensee:

(1) knows and understands the applicable statutory and regulatory provisions setting forth the authority and power of the board; and

(2) understands that entering into a stipulation regarding the case results

in a waiver of the licensee's rights under the Uniform Licensing Act, the Medical Practice Act, or the Impaired Health Care Provider Act, as applicable, including the right to appeal.

**C.** Violation of a stipulation: The licensee, by accepting a stipulation, agrees the board may immediately suspend a license if the board has reasonable cause to believe that any term of the stipulation has been violated, without the licensee being given an opportunity to request a hearing. The immediate suspension remains in effect until a further order of the board is entered. The board shall issue a notice of contemplated action within 10 days of the issuance of an immediate suspension. In this case, the stipulation shall provide that the board shall give notice of the disciplinary action to the licensee at the address of record maintained by the board of the licensee pursuant to the provisions of the Uniform Licensing Act. An immediate suspension is separate and distinct from a summary suspension described in 16.10.5.15 NMAC below.

[16.10.5.14 NMAC - Rp/E, 16.10.5.14 NMAC, 7/7/2023]

#### **16.10.5.15 SUMMARY**

**SUSPENSION:** This is a formal preliminary disciplinary action that summarily suspends a licensee's right to practice. The summary suspension remains in effect until a further order of the board is entered. The licensee has an opportunity for a full hearing before the board on the summary suspension.

**A.** The board may summarily suspend or restrict a license issued by the board without a hearing, simultaneously with, or at any time after, the issuance of a notice of contemplated action (NCA) and the initiation of proceedings for a hearing provided for under the Uniform Licensing Act on the NCA, if the board finds that evidence in its possession indicates that the licensee:

(1) poses a clear and immediate danger to the public health and safety if the licensee

continues to practice; or

(2) has been adjudged mentally incompetent by a final order or adjudication by a court of competent jurisdiction; or

(3) has pled guilty to or been found guilty of any offense related to their practice or for any violent criminal offense in this state or a substantially equivalent criminal offense in another U.S. jurisdiction.

**B.** A licensee is not required to comply with a summary action until service of the action has been made personally or by certified mail, return receipt requested, at the licensee’s address of record maintained by the board, or the licensee has actual knowledge of the order, whichever occurs first. The board’s executive director may sign a summary suspension order that the board has authorized.

**C.** A licensee whose license is summarily suspended is entitled to a hearing before the board on the summary suspension order, pursuant to the Uniform Licensing Act, within 15 days from the date the licensee requests a hearing. This hearing request shall be in writing, addressed to the board, delivered by certified mail, return receipt requested.

[16.10.5.15 NMAC - Rp/E, 16.10.5.15 NMAC, 7/7/2023]

**16.10.5.16 LIMITATIONS:**

**A.** Limitations on actions are governed by Section 61-6-24 NMSA 1978.

**B.** For purposes of Subsection 1 of Section 61-1-3 NMSA 1978, discovery of the conduct by the board is considered the date on which a complaint or other information that would reasonably connect the allegations to the licensee was received by the board or board staff.

**C.** Receipt of a complaint by the board or board staff is established by the complaint and investigation process published in 16.10.6.8 NMAC.

[16.10.5.16 NMAC - Rp/E, 16.10.5.16 NMAC, 7/7/2023]

**HISTORY OF 16.10.5 NMAC:**

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

Rule 7, Disciplinary Power of Board Over Physician Assistants, filed 6/21/1993.

BME Rule 7, Disciplinary Power of Board Over Physician Assistants filed 12/19/1989.

BME MD01-MD031, Board of Medical Examiners Model Disciplinary Order, filed 1/22/1985.

BME MDG1-MDG20, Manual of Disciplinary Guideline and Model Disciplinary Orders, filed 1/22/1985.

**History of Repealed Material:**

16 NMAC 10.5, Disciplinary Power of the Board - Repealed 4/18/2002.

16.10.5 NMAC - Disciplinary Power of the Board filed 3/18/2002, emergency Repealed 7/7/2023.

**Other:**

16.10.5 NMAC - Disciplinary Power of the Board filed 3/18/2002 was Replaced by 16.10.5 NMAC - Disciplinary Power of the Board 7/7/2023.

**MEDICAL BOARD**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**

**CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS PART 6 COMPLAINT**

**PROCEDURE AND INSTITUTION OF DISCIPLINARY ACTION**

**16.10.6.1 ISSUING**

**AGENCY:** New Mexico Medical Board, hereafter called the board.

[16.10.6.1 NMAC - Rp/E, 16.10.6.1 NMAC, 7/7/2023]

**16.10.6.2 SCOPE:** This part applies to applicants, licensees and members of the board.

[16.10.6.2 NMAC - Rp/E, 16.10.6.2 NMAC, 7/7/2023]

**16.10.6.3 STATUTORY**

**AUTHORITY:** This part is promulgated pursuant to and in accordance with the Medical Practice Act, sections 61-6-1 through 61-6-35 NMSA 1978, the Uniform Licensing Act, Section 61-1-1 through 61-1-33 NMSA 1978, Impaired Physician Act, Section 61-7-1 through 61-7-12 NMSA 1978 and the Parental Responsibility Act Section 40-5A-1 through 13 NMSA 1978.

[16.10.6.3 NMAC - Rp/E, 16.10.6.3 NMAC, 7/7/2023]

**16.10.6.4 DURATION:**

Permanent.

[16.10.6.4 NMAC - Rp/E, 16.10.6.4 NMAC, 7/7/2023]

**16.10.6.5 EFFECTIVE**

**DATE:** July 7, 2023, unless a later date at the end of a section.

[16.10.6.5 NMAC - Rp/E, 16.10.6.5 NMAC, 7/7/2023]

**16.10.6.6 OBJECTIVE:**

This part establishes a procedure for investigating complaints, issuing notices of contemplated action, holding hearings and making decisions in disciplinary proceedings.

[16.10.6.6 NMAC - Rp/E, 16.10.6.6 NMAC, 7/7/2023]

**16.10.6.7 DEFINITIONS:**

“Licensee” as used in this part means a physician, a physician assistant, anesthesiologist assistant, genetic counselor, or polysomnographic technologist who holds a current license to practice in New Mexico or who is applying for licensure, license renewal or license reinstatement.

[16.10.6.7 NMAC - Rp/E, 16.10.6.7 NMAC, 7/7/2023]

**16.10.6.8 COMPLAINTS:**

A complaint may be filed against a physician, physician assistant, anesthesiologist assistant, genetic counselor, or polysomnographic technologist. All complaints must be in writing. The date of receipt of the complaint shall begin the running of the statute of limitation.

[16.10.6.8 NMAC - Rp/E, 16.10.6.8 NMAC, 7/7/2023]



**16.10.6.9 COMPLAINT**

**RECORD:** The board shall maintain a record of all complaints filed. The complaint record is confidential.

[16.10.6.9 NMAC - Rp/E, 16.10.6.9 NMAC, 7/7/2023]

**16.10.6.10 COMPLAINT**

**COMMITTEE:** The chair of the board shall appoint at least one member of the board to serve on each complaint committee. A complaint committee shall review each complaint charging a physician, physician assistant, anesthesiologist assistant, genetic counselor, or polysomnographic technologist with unprofessional conduct or other violations under the Medical Practice Act.

**A.** The complaint committee may refer complaints to other board members or experts in the field for a determination of merit.

**B.** Upon completion of an investigation, the complaint committee shall submit its recommendations to the board. After submitting their recommendations to the board, the members of the complaint committee shall recuse themselves from all further proceedings in that case.

**C.** The complaint committee, on behalf of the board, may issue investigative subpoenas. Failure to comply with a subpoena may result in the initiation of a contempt procedure as set forth in 61-1-10 NMSA 1978 or in the service of a notice of contemplated action (NCA) pursuant Subsection D of Section 61-6-15 NMSA 1978.  
[16.10.6.10 NMAC - Rp/E, 16.10.6.10 NMAC, 7/7/2023]

**16.10.6.11 NOTICE TO ANY PRACTITIONER LICENSED BY THE BOARD:**

If the complaint committee determines that it will not impede an investigation and will not interfere with the procurement of testimony or development of the case, the complaint committee may inform the practitioner licensed by the board about whom the complaint is made, of the nature of the complaint and may request a response to the allegations.

[16.10.6.11 NMAC - Rp/E, 16.10.6.11 NMAC, 7/7/2023]

**16.10.6.12 INVESTIGATIVE**

**SUBPOENA:** Pursuant to Sections 61-6-23 and 61-1-9 NMSA 1978 the board may issue investigative subpoenas. Investigative subpoenas may be signed by the executive director of the board at the request of the chair or complaint committee. Failure to comply with a subpoena may result in the initiation of a contempt procedure as set forth in Section 61-1-10, NMSA 1978 of the service of a notice of contemplated action pursuant to Subsection D of Section 61-6-15 NMSA 1978.  
[16.10.6.12 NMAC - Rp/E, 16.10.6.12 NMAC, 7/7/2023]

**16.10.6.13 NOTICE OF CONTEMPLATED ACTION:**

Pursuant to a complaint or on its own motion, the board may serve upon an applicant or licensee a notice of contemplated action for any alleged violation of the Medical Practice Act or the Impaired Health Care Provider Act. All notices of contemplated action shall comply with the Uniform Licensing Act, Section 61-1-4 NMSA 1978, and shall be served on the applicant or licensee personally or by certified mail, return receipt requested, at the applicant's or licensee's last known address as shown in the board's records. The executive director may sign a notice of contemplated action that is the result of a formal board action.  
[16.10.6.13 NMAC - Rp/E, 16.10.6.13 NMAC, 7/7/2023]

**16.10.6.14 PROCEDURE:**

**A.** If an applicant or licensee requests a hearing after receiving a notice of contemplated action, all proceedings, including the hearing before the board, shall be governed by the Uniform Licensing Act.

**B.** The parties may agree to conduct any hearing by virtual remote means and the hearing shall be recorded.

**C.** Correspondence sent by a licensee, applicant, or

unlicensed person through other methods, including electronic or physical mail, should be reasonably accepted, and processed by the board.

**D.** Correspondence to the board during an administrative prosecution, beginning with the filing of a notice of summary suspension and notice of contemplated action, shall not be accepted and processed by the board or board staff.

**E.** Correspondence during an administrative prosecution shall be sent to the hearing officer for receipt and inclusion in the record. Any action shall be taken by the hearing officer and not a member of the board or board staff.

[16.10.6.14 NMAC - Rp/E, 16.10.6.14 NMAC, 7/7/2023]

**16.10.6.15 CASE**

**MANAGEMENT:** Once the board serves a notice of contemplated action, an administrative prosecutor shall prepare the case for prosecution before the board. The board as a whole shall not participate in the development of the case after it serves a notice of contemplated action.  
[16.10.6.15 NMAC - Rp/E, 16.10.6.15 NMAC, 7/7/2023]

**16.10.6.16 DISQUALIFICATION OF BOARD MEMBERS:**

**A.** Excusal of a board member or hearing officer initiated by a party: Excusal of a board member or hearing officer shall be in accordance with Section 61-1-7 NMSA 1978. Untimely excusals or request for excusals will not be allowed.

**B.** Disqualification of a board member: A board member may disqualify him or herself from hearing and rendering a decision in the case if the board member believes it is in the best interest of the board or the parties to do so. Any member of the board who is unable to make an unbiased decision in a hearing because of pre-hearing review of documents or interview of witnesses must disqualify him or herself from participation in formal disciplinary action.

C. Peremptory challenge of hearing officer in the case of more than one hearing under one case number: When the board initiates a case proceeding under one case number and the proceeding includes both a notice of summary suspension and a notice of contemplated action and the appointment of a hearing officer only one peremptory challenge shall be allowed. Once a peremptory challenge is made for a summary suspension hearing, no additional peremptory challenge is allowed before the hearing on the notice of contemplated action. If no peremptory challenge is made before a summary suspension hearing, a peremptory challenge may be timely made before the hearing on the notice of contemplated action.

[16.10.6.16 NMAC - Rp/E,  
16.10.6.16 NMAC, 7/7/2023]

**16.10.6.17 PRE-HEARING CONFERENCE:** Pursuant to Section 61-1-9 NMSA 1978, or upon the motion of a party, the board or hearing officer may conduct a pre-hearing conference. At the conference the parties shall determine the feasibility of settlement, formulate or simplify the issues in the proceeding, consider the necessity or desirability of amending the pleadings, obtain admissions and stipulations of fact, place limitations upon or determine the number of witnesses, distribute written testimony and exhibits, and dispose of such other matters as may aid in the disposition of the case. The board shall give all parties at least 10 days notice of the pre-hearing conference, provided however that parties may waive the 10 day notice requirement. Any settlement or simplification of issues resulting from the pre-hearing conference must be consented to by the licensee or applicant.

[16.10.6.17 NMAC - Rp/E,  
16.10.6.17 NMAC, 7/7/2023]

**16.10.6.18 MOTIONS MADE PRIOR TO THE HEARING:**

Motions may be made prior to or during a hearing. Motions made

during the hearing are governed by Subsection B of 16.10.6.21 NMAC. Pre-hearing motions may be accompanied by a memorandum of law in support of the motion and must be in writing. The moving party shall serve one copy of the motion on all other parties, including the prosecutor. Unless otherwise agreed upon by the parties, parties opposing the motion must respond within 10 days of service of the motion. If the motion is served within 10 days of the hearing, a response may be given at the hearing, either orally or in writing. The board may consider motions made without response as unopposed motions.

[16.10.6.18 NMAC - Rp/E,  
16.10.6.18 NMAC, 7/7/2023]

**16.10.6.19 EX PARTE**

**COMMUNICATION:** No party in a contested case shall communicate with any member of the board or any board staff, including the executive director, during the administrative proceedings. All communications, including correspondence, shall be directed to the hearing officer for receipt and inclusion in the record in an administrative prosecution.

[16.10.6.19 NMAC - Rp/E,  
16.10.6.19 NMAC, 7/7/2023]

**16.10.6.20 ENTRY OF**

**APPEARANCE:** All attorneys representing physicians, physician assistants, anesthesiologist assistants, genetic counselors, or polysomnographic technologists in matters before the board shall file an entry of appearance.

[16.10.6.20 NMAC - Rp/E,  
16.10.6.20 NMAC, 7/7/2023]

**16.10.6.21 HEARING PROCEDURE:**

A. The board chair, or his designated representative, on behalf of the board, shall decide whether the hearing shall be before the board or a hearing officer. If the chair of the board, or his designated representative, decides that the matter shall be heard before the board or a hearing officer and the board disagrees with that decision, the

board may reverse the decision and designate whether the hearing shall be before it or a hearing officer.

B. If the board or the chair of the board, or the board chair's designated representative, decides that the matter shall be before a hearing officer, the board, the chair of the board, or his designated representative shall appoint a person to act as the hearing officer.

C. Motions may be submitted in writing or made orally during the hearings. The board may request parties to submit a memorandum of law following the hearing in support of a motion made orally. The board may defer judgment on a motion made during the hearing until it has had an opportunity to hear the presentation of evidence. All motions not specifically acted upon during the hearing shall be acted upon in the board's final decision.

D. A hearing is completed and closed after the conclusion of the evidentiary hearing and the date of the final submission of all proposed findings of fact and proposed conclusions of law and arguments, if any, submitted to the hearing officer by the parties. The hearing officer and parties may also agree to a date for the completion and closure of a hearing. Once a hearing is completed and closed, the hearing officer shall prepare and submit to the board a report within 30 days of the completion and closure of the hearing. The hearing officer's report may include recommendations.

E. No other submissions, including evidence, shall be filed by the parties after the completion and closure of the hearing. [16.10.6.21 NMAC - Rp/E,  
16.10.6.21 NMAC, 7/7/2023]

**16.10.6.22 TRANSCRIPTS:**

A. Record of hearing. The board or hearing officer shall cause a record to be made of all formal hearings. The record shall be as recorded by a court reporter appointed by the board or taped (audio or video) at the discretion of the board in the manner authorized by the rules of civil procedure for

the district court. The record shall include all evidence proffered but not admitted and admitted evidence. The record shall also designate and seal those portions of the record that are privileged, confidential or redacted either at the direction of the hearing officer, the request of a party or the request of a witness. Evidence proffered but not admitted shall be separated in the record, marked as proffered but not admitted and not presented to the board.

**B.** Correction: Parties wishing to correct the transcript or record may request correction within 10 calendar days after the transcript is filed in the proceeding. All suggested corrections shall be in writing and shall be served upon each party or his attorney, the official reporter and the board or hearing officer. If no objection is made to the proposed corrections, the board or hearing officer, may direct that the corrections be made.

**C.** Objections to record: Objections shall be made in writing within 10 calendar days from the filing of the suggested correction. The board or hearing officer shall, with or without hearing, determine what changes, if any, shall be made in the record.

**D.** Copies of transcripts and tapes: Any party may request copies of transcripts and tapes of formal proceedings. Any party who requests and receives transcripts and tapes shall pay the specified costs to the reporter.

[16.10.6.22 NMAC - Rp/E,  
16.10.6.22 NMAC, 7/7/2023]

**16.10.6.23 RULES OF EVIDENCE:**

**A.** General: The board shall follow the rules of evidence set forth in Section 61-1-11 NMSA 1978 in proceedings held under the Uniform Licensing Act. Rules regarding evidence, not otherwise addressed by these rules or the Uniform Licensing Act, shall be governed by the rules of evidence for the district courts.

**B.** Testimony under oath: Witnesses testifying by

deposition or before the board in formal hearings shall be placed under oath.

**C.** Stipulation as to facts: The parties to any investigation or proceeding before the board may stipulate to any facts in a document filed with the board or entered orally in the record. The stipulation shall be binding upon the parties and may be regarded and used by either party as evidence at the hearing.

[16.10.6.23 NMAC - Rp/E,  
16.10.6.23 NMAC, 7/7/2023]

**16.10.6.24 PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, BRIEFS AND ORAL ARGUMENTS:**

**A.** Proposed findings of fact and conclusions of law: The board or hearing officer may require all parties to submit proposed findings of fact and conclusions of law.

The board or hearing officer shall determine the time for submission of the proposed findings and conclusions. Each proposed finding and conclusion shall be clearly stated.

**B.** Briefs: The board or the hearing officer may require all parties to submit briefs.

**(1)** Unless otherwise ordered by the board or hearing officer, including directing the submission of briefs on a date certain, the prosecution shall file its brief-in-chief within 15 days after receipt of the transcript. The respondent shall file its answer brief within 15 days thereafter. Reply briefs must be filed within seven days after filing of the answer brief.

**(2)** Each party must serve one copy of its brief on all other parties.

**(3)** Briefs shall be concise and shall include transcript citations for each statement of fact. Briefs shall contain a table of contents with page references.

**C.** Oral argument: The board or the hearing officer may require all parties to present oral arguments after parties have filed briefs. Even though a hearing officer conducts the hearing the board may

require oral arguments to be presented to it. Any party may request oral arguments before the hearing officer or the board. The hearing officer or the board will determine whether oral argument is necessary.

[16.10.6.24 NMAC - Rp/E,  
16.10.6.24 NMAC, 7/7/2023]

**16.10.6.25 WRITTEN**

**DECISION:** Within 90 days after the completion and closure of the hearing the board shall issue written findings of fact, conclusions of law, and the order of the board regarding any disciplinary action based on the findings of fact and conclusions of law. The board shall also issue a statement informing the applicant or licensee of his right to judicial review and the time within which review must be sought. The board may issue an oral decision prior to issuance of a written order. The board shall serve the written findings, conclusions, order and statements concerning judicial review upon the licensee personally or by certified mail, return receipt requested within 15 days after the decision is rendered and signed.

[16.10.6.25 NMAC - Rp/E,  
16.10.6.25 NMAC, 7/7/2023]

**16.10.6.26 HEARING OFFICER'S REPORT AND RECOMMENDATION:**

If a hearing officer conducts the hearing, the hearing officer shall prepare a report of findings of fact and may make recommendations. All board members participating in the decision making process, but not present at the hearing, shall familiarize themselves with the record and hearing officer's report prior to rendering a decision. The board may adopt, modify or reject the hearing officer's report.

[16.10.6.26 NMAC - Rp/E, 16.10.6.26 NMAC, 7/7/2023]

**16.10.6.27 SIMULTANEOUS ACTIONS UNDER THE MEDICAL PRACTICE ACT AND THE IMPAIRED HEALTH CARE PROVIDERS ACT:**

Formal proceedings against a physician, physician assistant, anesthesiologist assistant, genetic counselor, or

polysomnographic technologist may be taken by the board in accordance with the provisions of the Uniform Licensing Act. No action or investigation or proceedings under the Impaired Health Care Provider Act (Section 61-7-1 through Section 61-7-12 NMSA 1978) precludes the board from investigating or acting simultaneously, in its sole discretion, under the Medical Practice Act. (61-6-1 through 61-6-34 NMSA 1978). [16.10.6.27 NMAC - Rp/E, 16.10.6.27 NMAC, 7/7/2023]

**16.10.6.28 EVALUATION OF COMPETENCE:** When the board has reason to believe that an applicant for licensure or a licensee is not competent to practice, it may require the applicant or licensee to take a competency examination or to be evaluated for competence by any means that has been endorsed or approved the board. [16.10.6.28 NMAC - Rp/E, 16.10.6.28 NMAC, 7/7/2023]

**16.10.6.29 PARENTAL RESPONSIBILITY ACT COMPLIANCE:** This section is adopted pursuant to the Parental Responsibility Act Sections 40-5A-1 through 40-5A-13 NMSA 1978. If an applicant for licensure or a licensee is identified by the state of New Mexico human services department (HSD) as not in compliance with a judgment and order for support relating to child support proceedings, the board shall have grounds to deny an application for a license, deny the renewal of a license or to suspend or revoke a license and shall initiate a notice of contemplated action (NCA) in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-3 NMSA 1978, subject to the following procedures.

**A.** Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the board shall match the obligors' names against the board's list of licensees and applicants.

**B.** By the end of the month in which the certified list is received, the board shall report to

HSD the names of board applicants and licensees who are on the certified list and the action the board has taken in connection with such applicants and licensees.

**C.** Upon determination that an applicant or licensee appears on the certified list, the board shall issue a formal letter giving the licensee until the next certified list is received from HSD to provide the board with a statement of compliance from HSD. If the applicant or licensee fails to provide this statement in the specified time, the board shall, upon its own motion, issue a notice of contemplated action (NCA) in accordance with the Uniform Licensing Act.

**D.** If an applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee shall contact the HSD child support enforcement division.

**E.** In any hearing under this section, relevant evidence is limited to the following: A statement of non-compliance from HSD is conclusive evidence that requires the board to take the appropriate action under the Parental Responsibility Act, unless the applicant or licensee provides the board with a statement of compliance from HSD, which shall preclude the board from taking action under this section.

**F.** When a disciplinary action is taken under this section solely because the applicant or licensee is not in compliance with a judgment and order for support, the board order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance from HSD. The board may also include any other conditions necessary to comply with board requirements for reapplications or reinstatement of lapsed licenses. [16.10.6.29 NMAC - Rp/E, 16.10.6.29 NMAC, 7/7/2023]

**16.10.6.30 VENUE OF HEARING:** Venue shall be

determined by Section 61-1-6 NMSA 1978. In a proceeding involving a licensee without a residence in New Mexico, venue shall be in the county where the board maintains its office. [16.10.6.30 NMAC - N, 7/7/2023]

**History of 16.10.6 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with State Records Center and Archives under: Rule 8, Complaint Procedure Under the Medical Practice and Physician Assistant Acts, filed 6/21/1993. BME Rule 8, Complaint Procedure Under the Medical Practice and Physician Assistant Acts, filed 12/19/1989. Rule 9, Institution of Disciplinary Action and Prehearing Procedure, filed 6/21/1993. BME Rule 9, Institution of Disciplinary Action and Prehearing Procedure, filed 12/19/1989. Rule 10, Hearings, filed 6/21/1993. BME Rule 10, Hearings, filed 12/19/1989. BME Rule 11, Transcripts, filed 12/19/1989. BME R1-15, Transcripts, filed 1/22/1985. Rule 12, Rules of Evidences, filed 6/21/1993. BME Rule 12, Rules of Evidence, filed 12/19/1989. BME Rule 13, Proposed Finding of Fact, Conclusions of Law Decision and Oral Arguments, filed 12/19/1989. BME R1-15, Proposed Finding of Fact, Conclusions of Law, Decision and Oral Arguments, filed 1/22/1985. Rule 14, Finding of Fact, Conclusions of Law, Decision and Order, filed 6/21/1993. BME Rule 14 Finding of Fact, Conclusions of Law, Decision and Order, filed 12/19/1989. Rule 22, Involuntary Restriction of License Under the Impaired Physician Act, filed 6/21/1993.

**History of Repealed Material:**

16 NMAC 10.6 Complaint Procedure and Institution of Disciplinary Action, - Repealed 4/18/2002. 16.10.6 NMAC, Complaint Procedure And Institution Of Disciplinary

Action filed 3/18/2022, Repealed 7/7/2023.

Other:

16.10.6 NMAC, Complaint Procedure And Institution Of Disciplinary Action filed 3/18/2022 was Replaced by 16.10.6 NMAC, Complaint Procedure And Institution Of Disciplinary Action, effective 7/7/2023.

## PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department approved at its 6/21/2023 hearing, to repeal 6.2.8 NMAC, Operational Bylaws of the Professional Practices and Standards Council, filed 01/01/2005, and replace with 6.2.8 NMAC, Operational Bylaws of the Professional Practices and Standards Council, adopted on 07/07/2022 and effective 07/18/2022.

## PUBLIC EDUCATION DEPARTMENT

### TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 2 PUBLIC EDUCATION DEPARTMENT - COMMISSIONS AND ADVISORY BOARDS PART 8 OPERATIONAL BYLAWS OF THE PROFESSIONAL PRACTICES AND STANDARDS COUNCIL

#### 6.2.8.1 ISSUING

**AGENCY:** Public Education Department, hereinafter the department.  
[6.2.8.1 NMAC - Rp, 6.2.8.1 NMAC, 7/18/2023]

**6.2.8.2 SCOPE:** The department hereby creates the professional practices and standards council (PPSC) whose purpose shall be to ensure that high standards are maintained in the preparation and practice of professional educators and support providers licensed by the

department. The PPSC shall advise the secretary of education (secretary) and the department on matters related to the approval of educator preparatory programs, licensure, professional development, and ethics of licensed school personnel.  
[6.2.8.2 NMAC - Rp, 6.2.8.2 NMAC, 7/18/2023]

#### 6.2.8.3 STATUTORY

**AUTHORITY:** Sections 22-2-1, 22-2-2, and 9-24-8, NMSA 1978.  
[6.2.8.3 NMAC - Rp, 6.2.8.3 NMAC, 7/18/2023]

#### 6.2.8.4 DURATION:

Permanent.  
[6.2.8.4 NMAC - Rp, 6.2.8.4 NMAC, 7/18/2023]

#### 6.2.8.5 EFFECTIVE

**DATE:** July 18, 2023, unless a later date is cited at the end of a section.  
[6.2.8.5 NMAC - Rp, 6.2.8.5 NMAC, 7/18/2023]

#### 6.2.8.6 OBJECTIVE:

The purpose of the PPSC is to ensure that high standards are maintained in the preparation and practice of professional licensed school personnel. The creation of the PPPSC recognizes that persons licensed by the department comprise a profession, with all of the rights, responsibilities and privileges accorded professions, having their first obligation to the public they serve. The primary responsibilities of this profession are to educate the children of this state and to improve the professional practices and ethical conduct of the members of the profession.  
[6.2.8.6 NMAC - Rp, 6.2.8.6 NMAC, 7/18/2023]

#### 6.2.8.7 DEFINITIONS: [RESERVED]

#### 6.2.8.8 RECOMMENDATIONS FOR APPROVAL OF EDUCATOR PREPARATION PROGRAMS:

Matters pertaining to educator preparation programs shall include:  
**A.** recommending standards to govern the approval of educator preparation programs; and

**B.** establishing procedures for assessing educator preparation programs in compliance with standards approved by the department; these procedures shall include provisions for a comprehensive evaluation of course content, an on-site visitation, and recommending the approval or disapproval of programs designed to prepare professional education personnel.  
[6.2.8.8 NMAC - Rp, 6.2.8.8 NMAC, 7/18/2023]

#### 6.2.8.9 LICENSURE OF SCHOOL PERSONNEL:

Matters pertaining to licensure of school personnel shall include: recommending licensure standards for all professional and paraprofessional school personnel.  
[6.2.8.9 NMAC - Rp, 6.2.8.9 NMAC, 7/18/2023]

#### 6.2.8.10 PROFESSIONAL DEVELOPMENT OF SCHOOL PERSONNEL:

Matters pertaining to professional development of school personnel shall include:

**A.** recommending professional development standards and framework for all professional and paraprofessional school personnel;

**B.** recommending approval of state funding for professional development providers and projects.  
[6.2.8.10 NMAC - Rp, 6.2.8.10 NMAC, 7/18/2023]

#### 6.2.8.11 ETHICS OF LICENSED SCHOOL PERSONNEL AND RELATED MATTERS:

Matters pertaining to ethics shall include:

**A.** recommending to the department any changes to its code of ethics or standards of professional conduct for all licensed personnel; and

**B.** recommending to the department in cases in which it has been asked by the educator quality division of the department to perform a summary review, that a notice of contemplated action be

issued seeking the reprimand of a licensed educator, or suspension or revocation of a license held by a licensed educator according to law for incompetency, immorality or for any good and just cause.

[6.2.8.11 NMAC - Rp, 6.2.8.11 NMAC, 7/18/2023]

**6.2.8.12 ORGANIZATION:**

**A.** Composition of the council: The PPSC shall consist of 20 voting members appointed to four subcommittees by the secretary according to the following criteria:

**(1)** Five members shall be appointed to each of the following subcommittees of the council:

**(a)** the educator preparation committee;

**(b)** the licensure committee;

**(c)** the professional development committee; and

**(d)** the ethics committee.

**(2)** The educator preparation, licensure, and professional development committees shall have the following representation:

**(a)** three currently licensed teachers or instructional support providers;

**(b)** one currently licensed school administrator; and

**(c)** one professional educator associated with a university, college, or post-secondary department of education that offers educator preparation programs.

**(3)** The ethics committee shall have the following representation:

**(a)** three currently licensed teachers or instructional support providers;

**(b)** one currently licensed school administrator; and

**(c)** one lay member or business representative with interest and knowledge of public schools.

**(4)** the department shall give due consideration to maintaining the representative nature of the PPSC with regard to geographic distribution, membership in professional organizations, and grade level assignments. Each member shall be a resident of New Mexico.

**B.** Term of service  
**(1)** Members of the PPSC shall be appointed to a three-year term beginning on July 1 of the calendar year in which the appointment is made. In the initial year of organization of the PPSC the secretary may establish terms from two years to four years for members. In the event that a member is no longer employed in the classification to which the member was appointed, leaves the state, or resigns from the PPSC, the secretary shall appoint a successor to serve for the remainder of the term.

**(2)** The secretary may designate an alternate to serve in each of the above listed categories as it deems necessary should the appointee be unable to fulfill the appointee's term. The alternate shall automatically assume membership on the PPSC for the remaining of the term when a vacancy occurs.

**(3)** The secretary may appoint or remove any member or dissolve the PPSC through official action.

**C.** The secretary shall designate the chairperson and vice-chair of the PPSC.

**D.** Each subcommittee shall elect a chairperson for the subcommittee who shall serve a one-year term and may be reelected at the pleasure of the subcommittee members.

**E.** Task forces  
**(1)** Task forces to study and advise on specific issues may be appointed by the secretary.

**(2)** Each task force shall solicit information, gather and evaluate data, and report its findings and recommendations in writing to one of the subcommittees. Each task force shall include at least

two members of the PPSC, one of whom shall serve as chairperson of the task force.

[6.2.8.12 NMAC - Rp, 6.2.8.12 NMAC, 7/18/2023]

**6.2.8.13 MEETINGS:**

**A.** Time and frequency: The full PPSC shall meet at the call of the chairperson or at the request of the secretary. Subcommittees shall meet as needed at the call of the chairperson of each subcommittee in collaboration with department staff. Notification of meetings will be given in accordance with the PPSC's open meeting policy pursuant to the Open Meeting Act, Section 10-15-1 et sq. NMSA 1978 but at least 10 days prior to the day of the meeting. Eleven members shall constitute a quorum of the entire PPSC. Three members shall constitute a quorum of the subcommittees.

**B.** Rules and procedures: Meetings of the PPSC, subcommittees, and task forces shall be governed by the following rules.

**(1)** The chairperson and vice-chair or designee in their absence shall preside at all meetings.

**(2)** The presiding officer shall neither introduce nor second a motion.

**(3)** A motion shall require a simple majority of those present to pass.

**(4)** A motion shall be in order as long as no previous motion is on the floor.

**(5)** Minutes shall be taken at all open sessions of the PPSC and subcommittees. The minutes shall be made available to public inspection.

**(6)** The PPSC may develop rules of procedure consistent with the provisions of this rule.

**C.** Council agenda  
**(1)** An agenda will be formulated by the chairperson and will be distributed to members of the PPSC at least 10 days prior to the meeting.

(2)

Any member of the PPSC or its subcommittees may submit an item for the agenda through the chairperson. Items for discussion may be added to or deleted from the agenda at the beginning of a meeting by concurrence of a majority of the PPSC or its subcommittees. Interested parties, other than PPSC members, asking for the inclusion of an agenda item must present the item in writing.

**D.** Announcements of meetings

(1) The chairperson of the PPSC or any of its subcommittees will provide reasonable notice to the public, school districts, and appropriate professional associations of items pending before the PPSC.

(2)

All meetings of the PPSC or subcommittees shall be open, except those in which personnel or ethics cases will be discussed.

**E.** Absences: A member who is unable to attend a PPSC or subcommittee meeting may not send an alternate or proxy. The PPSC may recommend to the secretary that a member who has two or more absences during a calendar year be replaced.

[6.2.8.13 NMAC - Rp, 6.2.8.13 NMAC, 7/18/2023]

#### 6.2.8.14 REPORTS TO THE SECRETARY:

**A.** The PPSC or subcommittee chairperson will prepare a written or oral report after each meeting and will present it to the secretary. The decision of the secretary will be reported to the PPSC or its subcommittee(s) at the next meeting.

**B.** Recommendations to be submitted to the secretary for action shall require a simple majority approval by the PPSC.

[6.2.8.14 NMAC - Rp, 6.2.8.14 NMAC, 7/18/2023]

#### 6.2.8.15 SUPPORT OF THE COUNCIL:

**A.** The educator

quality division of the department shall serve as the staff office of the PPSC. All communications to the PPSC shall be addressed to: Professional Practices and Standards Council, c/o Educator Quality and Ethics, Public Education Department, Jerry Apodaca Education Building, Santa Fe, New Mexico 87501-2786.

**B.** PPSC members may submit travel claims to the department under the provisions of the Per Diem and Mileage act Sections 10-8-1 et Seq NMSA 1978. Such claims will be reviewed by the fiscal office of the department for compliance with the state statutes and department procedures. Under no condition shall a member claim mileage and per diem from the department when such a claim has been made to another agency.

[6.2.8.15 NMAC - Rp, 6.2.8.15 NMAC, 7/18/2023]

**HISTORY OF 6.2.8 NMAC:**  
[RESERVED]

## PUBLIC EDUCATION DEPARTMENT

**This is an amendment to 6.29.5 NMAC, Sections 3, 6, 11, 12, and 13, effective 07/18/2023.**

#### 6.29.5.3 STATUTORY AUTHORITY:

~~[A.] Section 22-2-2 NMSA 1978 grants the authority and responsibility for the assessment and evaluation of public schools, state-supported educational institutions and educational programs conducted in state institutions other than New Mexico military institute.~~

~~**B.** Section 22-2-2 NMSA 1978 directs the department to set graduation expectations and hold schools accountable. Section 22-2C-3 NMSA 1978 requires the department to adopt academic content and performance standards and to measure the performance of public schools in New Mexico.] This rule is being promulgated pursuant to Sections 9-24-8, 22-2-1, 22-2-2, and 22-2C-3 NMSA 1978.~~

[6.29.5.3 NMAC - N, 8/31/2009; A, 7/18/2023]

#### 6.29.5.6 OBJECTIVE:

The department-approved English language development standards provide a companion piece to the New Mexico content standards for English language arts [(6.29.4 NMAC)]. The approved standards shall guide second-language instruction for PreK-12 English language learner students. The English language learner population falls into three basic categories: students whose primary or home language (L1) is other than English including recent immigrants; students from heritage language groups needing enrichment and further development of academic English, some of whom maintain degrees of fluency in their heritage language; and any other students needing enrichment and further development of academic English. Because instruction must address the appropriate proficiency level of the individual student, which may vary greatly for any age, some consideration ~~[must]~~ shall be made for the student's maturity level.

[6.29.5.6 NMAC - N, 8/31/2009; A, 8/29/2014; A, 7/18/2023]

#### 6.29.5.11 IDENTIFICATION OF ENGLISH LANGUAGE LEARNERS:

The department-approved New Mexico language usage survey shall be completed for all new students initially enrolling in a public school.

**A.** Students for whom the department-approved New Mexico language usage survey indicates a language other than English shall be screened with the department-approved English language proficiency screening assessment.

**B.** Students receiving scores below the composite score established by the department to be used to determine English language proficiency will be classified as English language learners and are eligible to receive English language development services.

C. The department-approved New Mexico language usage survey and the English language proficiency screening assessment results shall be kept in each student's cumulative file.

D. Initial identification of a student as an English language learner and parent notification [must] shall occur not later than 30 days after the beginning of the school year, or within two weeks of initial enrollment if not enrolled at the beginning of the school year.

E. Students classified as English language learners [must] shall be assessed annually with the department-approved English language proficiency assessment and the results shall be kept in each student's cumulative file.  
[6.29.5.11 NMAC - N, 8/29/2014; A, 10/31/2016; A, 7/18/2023]

#### **6.29.5.12 EXIT CRITERIA FOR ENGLISH LANGUAGE LEARNER STATUS:**

A. English language learners attaining a composite score as determined by the department on the department-approved English language proficiency assessment will exit English language learner status and shall be reclassified as fluent English proficient.

B. Students attaining the composite score identified in Subsection A [must] shall be monitored for academic progress for two subsequent school years by the school district.  
[6.29.5.12 NMAC - N, 8/20/2014; A, 10/31/2016; A, 7/18/2023]

#### **6.29.5.13 REQUIRED INSTRUCTION FOR ENGLISH LANGUAGE LEARNERS:**

A. Designated English language development – instruction to develop the English language proficiency of ELLs based on the student's English language proficiency level and grade level; instruction shall be distinct from content area instruction.

B. Integrated English language development – Integrated instruction to attain English language

proficiency and to meet content standards and benchmarks; shall occur in all content area instruction.  
[6.29.5.13 NMAC - N, 7/18/2023]

### **PUBLIC EDUCATION DEPARTMENT**

**This is an amendment to 6.32.2 NMAC, Sections 1, 3, 4, 6, 7, 9, 10, 11, 12 and 16, effective 07/18/2023.**

**6.32.2.1 ISSUING AGENCY:** Public Education Department, [herein after] hereinafter the department.  
[6.32.2.1 NMAC - Rp, 6.32.2.1 NMAC, 7/1/2018; A, 7/18/2023]

**6.32.2.3 STATUTORY AUTHORITY:** This regulation is adopted pursuant to Sections 9-24-8, 22-2-1, 22-2-2, and 22-23-1 through 22-23-6 NMSA 1978.  
[6.32.2.3 NMAC - Rp, 6.32.2.3 NMAC, 7/1/2018; A, 7/18/2023]

**6.32.2.4 DURATION:** Permanent. ~~[-in the event that any provision of this regulation is deemed to be legally void, the remainder of the provisions of the regulation shall remain in full force and effect until otherwise repealed or expired.]~~  
[6.32.2.4 NMAC - Rp, 6.32.2.4 NMAC, 7/1/2018; A, 7/18/2023]

**6.32.2.6 OBJECTIVE:** This regulation provides requirements for developing and implementing bilingual multicultural education and language revitalization programs ~~[in accordance with Section 22-23-4 NMSA 1978 and standards for excellence, Subsection B of 6.30.2.11 NMAC]~~ and supports the state of New Mexico's long-standing policy in furthering bilingual multicultural education.  
[6.32.2.6 NMAC - Rp, 6.32.2.6 NMAC, 7/1/2018; A, 7/18/2023]

**6.32.2.7 DEFINITIONS:** ~~[As used in the Bilingual Multicultural Education Act, Section 22-23-1 NMSA 1978:]~~

A. **“bilingual multicultural education program”** means a program using two languages, including English and the home or heritage language, as a medium of instruction in the teaching and learning process;

B. **“culturally and linguistically different”** means students who are of a different cultural background than mainstream United States culture and whose home or heritage language, inherited from the student's family, tribe, or country of origin, is a language other than English;

C. **“district”** means a public school or any combination of public schools in a district;

D. **“English language learner”** means a student whose first or heritage language is not English and who is unable to read, write, speak, or understand English at a level comparable to grade-level English proficient peers and native English speakers;

E. **“heritage language”** means a language other than English that is inherited from a family, tribe, community, or country of origin;

F. **“home language”** means a language other than English that is the primary or heritage language spoken at home or in the community;

G. **“school board”** means a local school board; and

H. **“standardized curriculum”** means a district curriculum that is aligned with the state academic content standards, benchmarks, and performance standards.

[6.32.2.7 NMAC - Rp, 6.32.2.7 NMAC, 7/1/2018; A, 7/18/2023]

**6.32.2.9 PROGRAM GOALS:** ~~[As stated in the Bilingual Multicultural Education Act, Section 22-23-1 NMSA 1978, the]~~ The state's bilingual multicultural education program goals are [for all students, including English language learners,] to:

A. become bilingual and biliterate in English and a



second language, including Spanish, a Native American language (with appropriate approval from tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children), or another language. For Native American languages that are oral only, the literacy component shall be measured only in the skill [areas/domains] areas or domains of listening, speaking, and comprehension; and

B. meet state academic content standards and benchmarks in all subject areas. [6.32.2.9 NMAC - Rp, 6.32.2.9 NMAC, 7/1/2018; A, 7/18/2023]

**6.32.2.10 PROGRAM**

**ELIGIBILITY:** To be eligible for financial support, each program shall:

A. provide for the educational needs of linguistically and culturally different students, including Native American children and other students who may wish to participate, in grades kindergarten through 12, with priority to be given to programs in grades kindergarten through three, in any public school or any combination of public schools in a district;

B. fund programs for culturally and linguistically different students in the state in grades kindergarten through three, for which there is an identifiable need to improve the language capabilities of both English and the home language of these students, before funding programs at higher grade levels;

C. use two languages as mediums of instruction for any part or all [of] the curriculum of the grade levels within the program;

D. establish a parent advisory committee, representative of the languages and cultures of [aH] the students in the program, to assist and advise in the development, implementation, and evaluation of the program;

E. provide procedures to ensure that parental notification is given annually prior to program placement; and

F. provide personnel endorsed in bilingual education, modern classical and native languages, TESOL, or certified in Native American language and culture. The secretary of education may authorize other personnel to implement programs if qualified personnel are not available by the submission of an approved program design that addresses recruitment, professional development, and staffing patterns.

[6.32.2.10 NMAC - Rp, 6.32.2.10 NMAC, 7/1/2018; A, 7/18/2023]

**6.32.2.11 PROGRAM APPROVAL:**

A. A public school district shall submit an initial application to the department by the date of the preceding school year as specified by the department for each school requesting program approval. A proposed bilingual multicultural education program shall be eligible pursuant to Section 22-23-1 NMSA 1978 and 6.32.2 NMAC.

B. The initial application shall include:

(1) projected number of students to be served;

(2) assurances that [aH] district and school personnel are knowledgeable of the requirements to comply with Section 22-23-1 NMSA 1978 and 6.32.2 NMAC; signatures of school board president, superintendent, bilingual multicultural education director, school principal, and a parent advisory committee representative who shall not be employed by the district or school;

(3) a program plan;

(4) a resource allocation plan that supports program implementation;

(5) evidence of prior tribal consultation in program planning in accordance with the Indian Education Act, Sections 22-23A-1 through 22-23A-8 NMSA 1978; public schools providing a Native American language revitalization program, or other approved Native American bilingual

multicultural education model, shall obtain approval from tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children; and

(6) districts providing a Native American language revitalization program, or other approved Native American bilingual multicultural education model, shall provide notification of approval and the application approved by the department to tribal councils or other appropriate tribal entities with authority to make education decisions on behalf of Native American children.

C. The department shall review initial applications for approval. Districts with approved applications shall submit by the [fortieth] 40th day of the target school year the following:

(1) instructional plan; and

(2) actual number of students to be served. [6.32.2.11 NMAC - Rp, 6.32.2.11 NMAC, 7/1/2018; A, 7/18/2023]

**6.32.2.12 PROGRAM ELEMENT - INSTRUCTION:**

A. Public schools providing an approved bilingual multicultural education program shall include:

(1) instruction to attain language proficiency and literacy skills in two languages, one of which is English;

(2) instruction to attain academic achievement in two languages, one of which is English;

(3) sheltered content instruction;

(4) standardized curriculum, including instructional materials with scope and sequence, that is aligned with the state academic content standards, benchmarks, and performance standards;

(5) instruction in the history and cultures of New Mexico; and

(6) culturally and linguistically responsive

instruction designed to develop cross-cultural skills.

**B.** Public schools providing a Native American language revitalization program, or other approved Native American bilingual multicultural education model, shall obtain approval from tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children. An approved program shall include:

(1) instruction to attain language proficiency and literacy skills in English and a Native American language (where tribal language is written); for Native American languages that are oral only, the literacy component shall be measured only in the skill areas or domains of listening, speaking and comprehension;

(2) instruction to attain academic achievement in English and a Native American language;

(3) sheltered content instruction;

(4) standardized curriculum, including instructional materials with scope and sequence, that is aligned with the state academic content standards, benchmarks, and performance standards, unless otherwise agreed to in writing by the department in accordance with the Indian Education Act [Article 23A];

(5) instruction in the history and cultures of New Mexico Native American tribes; and

(6) culturally and linguistically responsive instruction designed to develop cross-cultural skills.

**C.** The following content areas shall be included, as appropriate:

(1) language arts in the home or heritage language - for funding purposes, time allotted for instruction in the home language ~~must~~ shall be equivalent to the time provided for English language arts and ~~must~~ shall be consecutive in nature (that is, not fragmented throughout the day);

(2) English language development - English language instruction to develop the English language proficiency of English language learners based on the student's English language proficiency level; instruction shall be distinct from content area instruction; and

~~(3)~~ language acquisition in the home or heritage language - instruction to develop language proficiency based on the student's home or heritage language proficiency level; and

~~(3)~~ (4) depending on the time allotted for program:

(a) content area instruction in the home or heritage language of the program that utilizes the student's language, history, and culture; or

(b) fine arts instruction in the home or heritage language of the program that utilizes the student's language, history, culture, and the arts traditions of the student's community.

**D.** All programs shall implement one or more of the following bilingual multicultural education models in the public school:

(1) dual language immersion: designed to develop proficiency in two languages;

(2) enrichment: designed to further develop the home language, as defined in Subsection G of Section 22-23-2 NMSA 1978, of fully English proficient students;

(3) heritage language: designed to support and revitalize a student's heritage language and culture through oral and written communication; for Native American languages that are oral only, the literacy component shall be measured only in the skill areas or domains of listening, speaking and comprehension;

(4) maintenance: designed to develop and maintain proficiency and literacy in the home language while developing a student's literacy and oral skills in English; and

(5) transitional: designed to develop skills in the home language and culture while developing continued skills and proficiency in English. [6.32.2.12 NMAC - Rp, 6.32.2.12 NMAC, 7/1/2018; A, 7/18/2023]

**6.32.2.16 PROGRAM RENEWAL:**

~~(A)~~ Based on program monitoring and review of the annual report, the department will determine whether the bilingual multicultural education program is compliant pursuant to Section 22-23-1 NMSA 1978 and 6.32.2 NMAC.

~~(B)~~ A. If the department determines that a program is compliant, the public school district may continue the program as authorized in the approved application; districts providing a Native American language revitalization program, or other approved Native American bilingual multicultural education model, shall notify tribal councils or other appropriate tribal entities with authority to make educational decisions on behalf of Native American children of compliance and program continuation.

~~(2)~~ B. If the department determines that a program is not compliant, the department shall notify the district of such non-compliance, including specific areas of non-compliance.

~~(A)~~ (1) Upon receipt of a notice of non-compliance from the department, the district shall develop a program improvement plan, with technical assistance from the department, to address the non-compliance. This plan shall include provisions to adjust the curriculum, program components or method of instruction, as necessary. The plan ~~must~~ shall be submitted to the department within 30 days, or, with prior written approval of the department, additional time not to exceed 90 days, from receipt by the district of the notice of non-compliance. The district shall implement this plan during the school year in which the district received the notice of non-compliance.

~~(b)~~ (2) A district in the process of implementing a program improvement plan shall submit its annual report to the department and will be evaluated by the department for compliance based on the standards articulated in 6.32.2.15 NMAC, and not solely on the basis of whether they have fully implemented and complied with the program improvement plan.

~~(e)~~ (3) If upon review, after receipt of the annual report submitted by a district with a program improvement plan, the department determines that the district remains non-compliant; the department shall ~~so~~ notify the district. If the district remains non-compliant after the first year of implementation of the program improvement plan, the district will be required to re-evaluate the program improvement plan and make necessary adjustments. The district ~~must~~ shall report the results of this evaluation and any revisions to the original program improvement plan to the department within 30 days, or, with prior written approval of the department, additional time not to exceed 90 days, of receipt of the notice of non-compliance.

~~(d)~~ (4) If a program is determined to be non-compliant after receiving three consecutive notices of non-compliance, the department shall notify the district and shall discontinue the program at the end of the third school year unless the district can verify compliance to the satisfaction of the department.

~~(e)~~ (5) A district may not apply for approval for a bilingual multicultural education program for the school year immediately following a discontinuation by the department.

~~(f)~~ (6) Districts providing a Native American language revitalization program, or other approved Native American bilingual multicultural education model, shall notify tribal councils or other appropriate tribal entities with authority to make educational decisions on behalf of Native

American children of non-compliance and provide evidence of tribal consultation in the development of a program improvement plan in accordance with the Indian Education Act, Sections 22-23A-1 through 22-23A-8 NMSA 1978 and the Bilingual Multicultural Education Act, Section 22-23-1 NMSA 1978.

~~(g)~~ (7)

All districts, regardless of any discontinuation by the department, shall submit the annual report to the department, for any year in which the district has provided assurances to the department.

[6.32.2.16 NMAC - Rp, 6.32.2.16 NMAC, 7/1/2018; A, 7/18/2023]

**REGULATION  
AND LICENSING  
DEPARTMENT  
INTERIOR DESIGN BOARD**

**This is an amendment to 16.42.1 Sections 1, 2, 3, 6 through 10, and 12, effective July 18, 2023.**

**16.42.1.1 ISSUING**

**AGENCY:** Regulation and Licensing Department [~~New Mexico Interior Design Board~~].

[11/10/97; 16.42.1.1 NMAC - Rn, 16 NMAC 42.1.1, 10/26/2002; A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

**16.42.1.2 SCOPE:** The provisions in Part 1 of Chapter 42 apply to all parts and provide relevant information to the [board], licensees, applicants and the general public.

[11/10/97; 16.42.1.2 NMAC - Rn, 16 NMAC 42.1.2, 10/26/2002; A, 7/18/2023]

**16.42.1.3 STATUTORY**

**AUTHORITY:** [~~This rule is adopted~~] These rules are promulgated pursuant to the Interior Design Act, Section 61-24C-5 NMSA 1978 [and Section 61-24C-7].

[11/10/97; 16.42.1.3 NMAC - Rn, 16 NMAC 42.1.3, 10/26/2002; A, 7/18/2023]

**16.42.1.6 OBJECTIVE:**

[~~This part is to establish board meetings dates, and the election of officers;~~] To define the terms relevant to interior design and establish display of license and advertising requirements.

[11/10/97; 16.42.1.6 NMAC - Rn, 16 NMAC 42.1.6, 10/26/2002; A, 7/18/2023]

**16.42.1.7 DEFINITIONS:**

**A. "applicant"** has the same meaning as defined in Subsection A of Section 61-24C-3 NMSA 1978;

**B. "department"** has the same meaning as defined in Subsection B of Section 61-24C-3 NMSA 1978;

**C. "interior design"** has the same meaning as defined in Subsection C of Section 61-24C-3 NMSA 1978;

**D. "licensed interior designer" or "licensed designer"** has the same meaning as defined in Subsection D of Section 61-24C-3 NMSA 1978.  
[16.42.1.7 NMAC - N, 7/18/2023]

**16.42.1.8 [GENERAL PROVISIONS:**

~~A. Purpose: These rules and regulations are promulgated pursuant to the Interior Design Act, Section 61-24C-1 through 61-24C-16 NMSA 1978, enacted to ensure public safety, health and welfare by registration of interior designers.~~

~~B. Amendments: These rules and regulations may be amended at any regular or special meeting of the board of interior design by majority vote in compliance with the laws and regulations concerning the formulation of administrative rules and regulations by a state agency.] [RESERVED]~~

[11/10/97; 16.42.1.8 NMAC - Rn, 16 NMAC 42.1.8, 10/26/2002; Repealed, 7/18/2023]

**16.42.1.9 [ORGANIZATION**

~~A. Officers: The board shall elect annually a president, vice-president, and secretary-treasurer~~

who shall be chosen from among its members. Each officer shall hold office until their successors have been duly elected and qualified.

~~B. Meetings: The board will meet at least two times each year for the purpose of transacting such business as may lawfully come before the board. Times and places for the meeting will be established by the board and advertised prior to the meetings. Meetings will be conducted in compliance with the annual notice requirements adopted by the board. Members may be excused for cause such as illness or accident, as determined by the chairman.]~~

**[RESERVED]**

[11/10/97; 16.42.1.9 NMAC - Rn, 16 NMAC 42.1.9, 10/26/2002; Repealed, 7/18/2023]

**16.42.1.10 ADMINISTRATION**

~~A. The president shall, when present, preside at all meetings, appoint all committees subject to confirmation by vote of the board and perform all other duties ordinarily pertaining to the office of president.~~

~~B. The vice-president will in the absence of the president, preside at the meetings and execute the duties of the president.~~

~~C. The secretary-treasurer shall oversee and report to the board the activities of the administrative staff including all financial matters.~~

~~D. Committees: Subject to the board's confirmation, the presiding officer at any meeting of the board is authorized to appoint special and standing committees from the membership of the board. The duties of such committees shall be assigned at the time the committee is appointed.]~~ **[RESERVED]**

[11/10/97; 16.42.1.10 NMAC - Rn, 16 NMAC 42.1.10, 10/26/2002; A, 08/15/2014; Repealed, 7/18/2023]

**16.42.1.12 ADVERTISING:**

A. Each licensed interior designer (LID), shall include their name, state and license number in any newspaper, telephone directory, or any other advertising medium used

by the LID. A sole proprietorship, corporation, limited liability company or partnership advertising interior design services is required to display the name, state and license number of at least one LID employed by or working within that business entity.

**B. Definition:**

(1) When using the words "licensed interior designer" or "licensed interior design" in any advertising medium, LIDs shall include their position, job description, or title and include the state and license number. A license number is not required unless the individual is a LID and using the terms "licensed interior design" or "licensed interior designer".

(2) The term "newspaper, telephone directory, or other advertising medium" as used in Subsection A, shall mean any of the following when paid for or produced by or for a licensed interior designer (LID) (telephone business directory listings are deemed to be produced for a LID notwithstanding whether the listings are paid for):

- (a) telephone directory listings;
- (b) construction site signs;
- (c) airwave transmissions;
- (d) handbills;
- (e) all billboards, on or off site;
- (f) shopping and service guides;
- (g) magazine advertisements (including trade association publications);
- (h) classified advertisements;
- (i) signs on vehicles;
- (j) promotional materials such as video tapes, flyers, brochures;
- (k) business stationery: when using business stationery as an advertising medium, the LID shall include name or signature, position, job description or title of the individual and shall include the state and license number;

- (l) business cards;
  - (m) television advertisement;
  - (n) internet advertisement;
  - (o) compact disc (CD) or digital video disk (DVD).
  - (3) The term shall not apply to the following:
    - (a) on-site signage used for identification, i.e., on facade, front door, or location of business;
    - (b) information identifying a charitable donation to any organization exempt from federal income tax;
    - (c) telephone directory listings for professional interior design organizations.
- ~~(4) Effective date of this rule is November 10, 1997.]~~

**C. Seal:**

(1) The official seal [of the board] shall be as follows: an embossed circular seal two inches in diameter consisting of two concentric circles; the annular space between the two circles shall contain the seal of the state of New Mexico.

(2) The [board] department authorizes a seal or stamp for use by licensed interior designers. The seal shall attest that the documents were prepared and reviewed by the licensed interior designer (LID). When an LID signs, stamps or seals a document containing the work of others, the LID represents that the entire document has been prepared by them under their responsible control, unless they include a written statement adjacent to their signature, stamp or seal identifying the portion of the document that was prepared by them or prepared under their responsible control. A LID who signs, stamps or seals a document which was not prepared by them but was prepared under their responsible control is subject to disciplinary proceedings as if they prepared it themselves.

(3) The seal/stamp will bear the LID's name and license number and the legend "Licensed Interior Designer State of New Mexico." All plans, specifications and reports issued by a LID shall have the LID's signature placed across the seal/stamp. [11/10/97; 16.42.1.12 NMAC - Rn, 16 NMAC 42.1.12, 10/26/2002; A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

## REGULATION AND LICENSING DEPARTMENT INTERIOR DESIGN BOARD

**This is an amendment to 16.42.2 Sections 1, 2, 3, and 6, effective July 18, 2023.**

### 16.42.2.1 ISSUING

**AGENCY:** Regulation and Licensing Department [~~-, New Mexico Interior Design Board~~]. [11/10/97; 16.42.2.1 NMAC - Rn, 16 NMAC 42.2.1, 10/26/2002; A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

**16.42.2.2 SCOPE:** The licensed interior designer shall be governed by the [~~professional~~] code of professional conduct [~~whenever~~] when providing interior design services in any context. This code shall apply to the conduct of all licensees and applicants. [11/10/97; 16.42.2.2 NMAC - Rn, 16 NMAC 42.2.2, 10/26/2002; A, 11/14/2009; A, 7/18/2023]

### 16.42.2.3 STATUTORY

**AUTHORITY:** [~~This rule is adopted~~] These rules are promulgated pursuant to the Interior Design Act, Section 61-24C-5 NMSA 1978. [11/10/97; 16.42.2.3 NMAC - Rn, 16 NMAC 42.2.3, 10/26/2002; A, 7/18/2023]

### 16.42.2.6 OBJECTIVE:

[~~This part constitutes~~] To establish [~~the~~] standards of conduct to be upheld by all applicants and licensees. [~~against which the required-~~

~~professional conduct of a licensed interior designer is measured.]~~ A violation of this part is sufficient reason for disciplinary action pursuant to the Interior Design Act. [11/10/97; 16.42.2.6 NMAC - Rn, 16 NMAC 42.2.6, 10/26/2002; A, 11/14/2009; A, 7/18/2023]

## REGULATION AND LICENSING DEPARTMENT INTERIOR DESIGN BOARD

**This is an amendment to 16.42.3 Sections 1, 3, 5, and 7 through 16, effective July 18, 2023.**

### 16.42.3.1 ISSUING

**AGENCY:** Regulation and Licensing Department [~~-, New Mexico Interior Design Board~~]. [11/10/97; 16.42.3.1 NMAC - Rn, 16 NMAC 42.3.1, 10/26/2002; A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

### 16.42.3.3 STATUTORY

**AUTHORITY:** [~~This rule is adopted~~] These rules are promulgated pursuant to the Interior Design Act, Sections 61-24C-8, 61-24C-9; Section 61-24C-10; and 61-24C-11, NMSA 1978. [11/10/97; 16.42.3.3 NMAC - Rn, 16 NMAC 42.3.3, 10/26/2002; A, 7/18/2023]

### 16.42.3.5 EFFECTIVE

**DATE:** July 8, 1998, unless a different date [~~if~~] is cited at the end of a section [~~or paragraph~~]. [11/10/97, 7/8/98; 16.42.3.5 NMAC - Rn, 16 NMAC 42.3.5, 10/26/2002; A, 7/18/2023]

### 16.42.3.7 DEFINITIONS:

[~~A.~~] "Accredited institution" means a school, college, university, or other institution of higher education that is accredited by a national or regional independent educational institution accrediting body or by a state department of education or similar state agency. ~~The accrediting body evaluates~~

institutions and recognizes institutions as meeting acceptable levels of quality and performance according to a prescribed standard. If the school, college, university, or other institution of higher education is not listed in the accredited institutions of postsecondary education, a directory published by the American council on education (ACE) for the council for higher education accreditation (CHEA), the applicant shall provide evidence of accreditation status from the appropriate accrediting body that is satisfactory to the board. The board may verify the accreditation status of a specific institution from the appropriate accrediting body.

~~B.]~~ "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

[~~C.~~] "Interior design program" means a program that meets one of the following criteria:

(1) is a program offered in an accredited institution that is clearly identified and labeled as an interior design program; such program must specify in institutional catalogues and brochures its intent to educate and train professional interior designers; must maintain a recognizable organizational entity within the institution, must have a curriculum with an integrated, organized sequence of study, and must have an identifiable faculty; or

(2) is an interior design program accredited by the council for interior design accreditation (CIDA); or

(3) is a design curriculum program.

~~D.~~ "Military service member" means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States including the national guard.

~~E.~~ "Recent veteran" means a person who has received an honorable discharge or separation from military service within two years

immediately preceding the date the person applied for an occupational or professional license pursuant Section 61-1-34, NMSA 1978.].

[16.42.3.7 NMAC - N, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

### 16.42.3.8 LICENSURE:

**A.** License required: Effective June 16, 1989, no person shall represent themselves as a licensed interior designer unless they are licensed pursuant to the Interior Design Act.

**B.** Applications and qualifications for licensure: Any person desiring licensure as an interior designer shall apply as indicated in 16.42.3.9 NMAC, licensure by examination, or 16.42.3.10 NMAC, licensure [by credentials] without examination. Electronic signatures will be acceptable for applications submitted pursuant to 14-16-1 through 14-16-19, NMSA 1978.

**C.** To be eligible for consideration as a design curriculum program, the applicant's post secondary course of study shall contain interior design or design related course hours earned at an accredited institution that include or cover the topics or subject matter described in Subsection F of 16.42.3.8 NMAC. The board will evaluate the applicant's transcript(s) and the course topic or subject matter shall be verified by official course descriptions from the institution's catalogues or brochures in force at the beginning of the term in which the course was taken or the hours earned or course descriptions from other official institutional source. The board may consider evidence other than official institutional sources if it is impossible to verify course descriptions from an official institutional source. The applicant shall be responsible for providing to the board the official course description. The applicant shall have the burden to prove to the board that courses claimed as eligible for design curriculum program hours are bona fide courses that include or cover the topic or subject matter described in Subsection F of

16.42.3.8 NMAC. The board will not investigate the course topic or subject matter or contact the institution or any person on behalf of the applicant. The applicant shall have the sole responsibility to provide sufficient evidence satisfactory to the board that the course includes or covers the allowable topic or subject matter. A particular course will be counted in only one topic or subject matter category, but more than one course may be included under a particular topic or subject matter category.

**D.** A graduate of a five, four, or two year program that is either clearly identified and labeled an interior design program as defined above or is accredited or approved by CIDA meets the educational requirements of Section 61-24C-8 (A), (B) or (D), NMSA 1978 respectively.

**E.** A design curriculum program shall be calculated as follows:

**(1)** A graduate of a five (5) year program must have completed at least 90 semester hours or 135 quarter hours of which must be in the area of interior design or design related courses.

**(2)** A graduate of a four (4) year program must have completed at least 60 semester hours or 90 quarter hours must be in the area of interior design or design related courses.

**(3)** An applicant of a three (3) year program must have completed at least 60 semester hours or 90 quarter hours in the area of interior design or design related courses.

**(4)** A graduate of a two (2) year program must have completed at least 40 semester hours or 60 quarter hours of interior design or design related course.

**F.** In order for the board to consider whether an applicant's post secondary course of study qualifies as a design curriculum program, the applicant shall complete supplemental application form(s) provided by the board and submit official course descriptions or other documentation satisfactory to the

board of the interior design or design related course. To qualify as an allowable interior design or design related course for the design curriculum program, the course must include or cover one of the topic or subject matter categories described below as verified by the institution's official course description:

**(1)** Basic and creative arts: An understanding of studio based achievements in two and three dimensional design fundamentals.

**(2)** Theory: An understanding of the elements of design and composition, color theory, human environment, proxemics, behavior, design theories and spatial composition.

**(3)** Interior design: An understanding of design process, programming, conceptualization, problem solving and evaluation, space planning, furniture layout and selection and design attributes of materials, lighting, furniture, textiles and color; an awareness of design for special concerns such as environment and ecology and competency in human factors such as anthropometrics and ergonomics; an understanding of special populations such as the disabled, elderly, children, low income and special purposes such as the historic preservation and adaptive reuse.

**(4)** Technical knowledge: An understanding of detailing furniture, cabinetry and interiors and materials such as surfaces and structural materials, soft goods and textiles and laws related to building codes and ordinances, life safety and fire; an understanding of structure and construction, building systems, HVAC, electrical plumbing, acoustics, energy conservation, passive solar energy.

**(5)** Communication skills: An understanding of presentation skills such as sketching, delineation, rendering, models and photography and presentation skills such as written and oral, graphic, signage, lettering, drafting and working drawings; an

awareness of computer systems such as computer aided design (CAD) and word processors.

~~(6) Profession: An understanding of the interior design profession and organizations, ethics and related professions, business practices, specifications, industry, product safety standards and estimating and business management or architecture and drawing or an understanding.~~

~~(7) History: An understanding of interiors, furniture and accessories and history of art or architecture.~~

~~(8) Electives: Includes any of the foregoing categories or an awareness of theories and methods of research related to experimental, survey, literature search and observation.~~

~~G. The experience requirement of Section 61-24C-8, NMSA 1978 shall be evaluated as follows: "Diversified interior design experience" shall mean that the applicant has been engaged in three (3) or more of the following activities of enhancing the function and quality of interior space:~~

~~(1) analysis of a client's needs, goals, and life safety requirements for the interior space of a structure;~~

~~(2) integration of findings with knowledge of interior design;~~

~~(3) formulation of preliminary design concepts that are appropriate, functional, and aesthetic;~~

~~(4) development and presentation of final design recommendations through presentation media;~~

~~(5) preparation of working drawings and specifications for non-load-bearing interior construction, materials, finishes, space planning, furnishing, fixtures, and equipment;~~

~~(6) collaboration with professional services of other licensed practitioners in the technical areas of mechanical, electrical, and load-bearing design required for regulatory approval;~~

~~(7) preparation and administration of bids and contract documents as the client's agent; and~~

~~(8) review and evaluation of design solutions during implementation and upon completion.~~

~~H. An applicant shall have worked at least one thousand six hundred hours (1,600) hours in a calendar year to obtain credit for a year's worth of diversified interior design experience.~~

~~I. Diversified interior design experience shall be demonstrated to the board by the applicant who shall furnish the following:~~

~~(1) an affidavit by the applicant attesting that the applicant has engaged in the practice of interior design for the number of years for which the applicant is claiming experience; and~~

~~(2) three (3) references, on forms provided by the board, certifying that the applicant has provided interior design services for the period of experience claimed by the applicant;~~

~~(3) if the applicant was self employed, (out of state applicants only) applicant must send documentation to prove a legitimate business for each year of experience needed with application; send copies of three (3) of the following:~~

~~(a) business license;~~

~~(b) resale tax certificate;~~

~~(c) voided business check;~~

~~(d) corporation papers;~~

~~(e) business advertisement.]~~

~~[11/10/97, 7/8/98; 16.42.3.8 NMAC - Rn, 16 NMAC 42.3.8, 10/26/2002; A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]~~

**16.42.3.9 LICENSURE BY EXAMINATION:** Any person desiring licensure by examination as an interior designer shall apply to the [board] department on a form

prescribed by the [board] department, pay the required application fee, and furnish evidence to the [board] department documenting that the applicant meets the requirement for licensure. The following are the requirements for licensure.

**A.** Completed application form, provided by the [board] department. All areas of the form must be filled out and the application must be signed. Application must be accompanied by application fee.

**[B.]** Official transcripts from all colleges or universities attended; must be received directly from the certifying institution. Courses indicated must satisfy the educational requirements for licensure. The official transcript must be certified with a school seal.

**C.** Three letters of reference must be submitted to the board office, certifying that the applicant has provided interior design services for the period of experience claimed by the applicant. Reference letters must be from employers or clients.

**D.** Candidate experience form must be completed and submitted to the board office.

**E.; B.** Verification of passing the national council for interior design qualification (NCIDQ) examination or other nationally recognized examination approved by the department, must be submitted to the [board office] department.

**C.** Active certification from the national council for interior design qualification or another nationally recognized certification must be submitted to the department. [11/10/97, 7/8/98; 16.42.3.9 NMAC - Rn, 16 NMAC 42.3.9, 10/26/2002, A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

**16.42.3.10 LICENSURE [BY CREDENTIALS] WITHOUT EXAMINATION:** [Any person desiring licensure by credentials as an interior designer shall apply to the board on a form prescribed by the board, pay the required application fee, and furnish evidence to the board

documenting that the applicant meets the requirement for licensure. The following are the requirements for licensure.] The department may, on a case-by-case basis, review and issue a license to any person applying for a license, who does not satisfy the licensing requirements in 16.42.3.9 NMAC if the applicant provides evidence to the department that:

**A.** [Completed application form, prescribed by the board. All areas of the form must be filled out and the application must be signed. Application must be accompanied by application fee.] The applicant has an active licensure in another state or country where qualifications are equal to or exceed those required by the Interior Designers Act and the applicant complies with all other requirements of the Interior Designers Act; or

**B.** [Verification of passing the NCIDQ examination must be submitted to the board office.] The applicant has apprenticed for at least eight years under a licensed interior designer who passed the national council for interior design qualification examination or another nationally recognized examination approved by the department.

**C.** [Verification of having a current license in another state or country must be submitted directly from the licensing state or country to our board office.] [11/10/97; 16.42.3.10 NMAC - Rn, 16 NMAC 42.3.10, 10/26/2002; A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

**16.42.3.11 [PROVISIONS FOR EMERGENCY LICENSURE:**

**A.** Interior designers currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster at no cost upon satisfying the following requirements:

**(1)** receipt by the interior design board of a completed application which has been

signed and which is accompanied by proof of identity, which may include a copy of a driver's license, passport or other photo identification issued by a governmental entity;

**(2)** requirements have been met as set forth in 16.42.3.8 NMAC, 16.42.3.9 NMAC, and 16.42.3.10 NMAC;

**(3)** applicant shall provide a sworn affidavit that provides the name, address, years of employment and supervisors name;

**(4)** sworn affidavit that the applicant was personally and/or professionally affected by the disaster;

**(5)** verification of employment will be accepted from co-worker when it is impossible to obtain it from the employer;

**(6)** nothing in this section shall constitute a waiver of qualifications of the requirements for licensure contained in 16.42.3 NMAC.

**B.** The board may waive the application fees only.

**C.** The board may waive the specific forms required under 16.42.3.8 NMAC only if the applicant is unable to obtain documentation from the federal-declared disaster areas.

**D.** Emergency provisional license shall expire one (1) year from date of issue. Application for permanent license shall be made on or before expiration of the temporary license following the date of issue of the emergency provisional license.

**E.** The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving the permanent license. [RESERVED] [16.42.3.11 NMAC - N/E, 12/12/2005; A, 08/15/2014; Repealed, 07/18/2023]

**16.42.3.12 [TERMINATION OF EMERGENCY LICENSE] EXPEDITED LICENSURE:**

**A.** [The emergency license shall terminate upon the

following circumstances:  
**(1)** the issuance of a permanent license under 16.42.3 NMAC; or

**(2)** proof that the emergency license holder has engaged in fraud deceit, misrepresentation in procuring or attempting to procure a license under this section.] The department shall issue in no later than 30 days a license by reciprocity to an applicant from another state who holds a current license in good standing, provided the requirements for licensure in the state where the applicant is licensed meet or exceed the requirements for licensure in the state of New Mexico.

**B.** [Termination of an emergency license shall not preclude application for permanent licensure.] An expedited license is a one year provisional license that confers the same rights, privileges, and responsibilities as regular licenses issued by the department, provided that the department may allow for the initial term of an expedited license to be greater than one year by rule or may extend an expedited license upon a showing of extenuating circumstances.

**C.** Before the end of the expedited license term and upon application, the department shall issue a regular license through the license renewal process. [16.42.3.12 NMAC - N/E, 12/12/2005; A, 7/18/2023]

**16.42.3.13 LICENSE RENEWAL:**

**A.** All licenses issued by the [board] department shall expire [October 1st of each year] four years after the date issued and shall be renewed by submitting a completed renewal application, accompanied by the required fees, on the application form prescribed by the [board] department.

**B.** Each licensed interior designer must have completed no less than [eight] 20 continuing education [board-approved] hours of educational instruction or training in interior design subjects or courses of study, within each renewal period,



as defined in 16.42.6.8 NMAC. The department may make exceptions from this continuing education requirement in cases that the licensee provides evidence of emergency or hardship.

[16.42.3.13 NMAC - N, 11/14/2009; A, 7/18/2023]

#### 16.42.3.14 EXPIRED

**LICENSE:** ~~[In the event a licensee fails to renew their license by the expiration date, the board may reinstate the license upon payment of a reinstatement fee of two hundred fifty dollars (\$250.00) per year of expiration, a late fee of one hundred dollars (\$100.00) per year of expiration proof of compliance with all other requirements. The board may require the former licensee to appear before the board prior to reinstating the license.]~~ The holder of a license that has expired through failure to renew may renew the license, upon approval of the department.

[16.42.3.14 NMAC - N, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

#### 16.42.3.15 INACTIVE

##### STATUS:

A. A license in good standing may be transferred to inactive status upon written request to the [board] department. Such request shall be made prior to the expiration of the license.

(1) The licensee shall submit their license to the [board] department along with a written request to be placed on inactive status. The licensee is deemed ~~[to be on]~~ inactive status at the time of the request and license are stamped and received at the [board-office] department. In the event the license is lost or otherwise unavailable for delivery, inactivation of the license will take place at the time the [board] department receives and marks them at the [board-office] department.

(2) After three years of inactive status a licensee is required to re-apply for licensure.

(3) No licensee will automatically be placed on inactive status by failure of the

licensee to renew their license or to pay the annual inactive status fee.

(4) No licensee shall be placed on inactive status if the licensee is under investigation or if disciplinary proceedings have been initiated.

(5) The voluntary inactivation of a license will not prevent the commission from taking disciplinary action against the licensee.

B. An annual inactive status fee must be submitted to the [board-office] department by October 1st of each year. Failure to pay the inactive fee will result in the license being deemed expired.

C. Any person who desires to reinstate his license must notify the [board] department of his desire to reinstate the inactive license. Upon receipt of such notice, the board office will send the inactive licensee an application for reinstatement.

D. The inactive licensee shall submit the application for reinstatement together with the applicable fee(s) and proof of no less than [eight] 20 continuing education hours for each four year period of inactive status, as defined in 16.42.6 NMAC.

[16.42.3.15 NMAC - N, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

#### 16.42.3.16 EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, CHILDREN, AND VETERANS:

~~[Application procedures to expedite licensure for military members, spouses and veterans. Applications for registration shall be completed on a form provided by the board office and shall include:]~~

A. Definitions:

(1) “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 license or registrant under the authority of the license.

(2) “Licensing fee” has the same meaning as defined in Paragraph (1) of Subsection E of

Section 61-1-34 NMSA 1978.

(3) “Licensing jurisdiction” has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

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

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

B. A candidate seeking licensure under Section 61-1-34 NMSA 1978 must submit to the department a complete applicant containing the following:

~~[A:]~~ (1) Completed and signed application [and fee] form.

~~[B:]~~ (2) [Satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States, and has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license the applicant applies for pursuant to Chapter 61, Article 24C, NMSA-1978.] Proof of a current license in good standing in another jurisdiction, including a branch of the United States armed forces;

(3) submission of the following documentation:

(a) for a military service member; a copy of military orders;

(b) for a spouse of military service member; copy of military service member’s military orders and a copy of marriage license;

(c) for a spouse of deceased military service members; a copy of decedent’s DD form 214 and a 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 income tax return or other governmental or judicial documentation establishing dependency; or

(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.

C. Electronic signatures [will be] are acceptable for application submitted pursuant to Section 14-16-1 through Sections 14-16-19 NMSA 1978.

D. Fees:  
(1) [The fee for application registration is \$200.00 as defined in 16.42.5 NMAC.] The initial licensing fee is waived for the first four years of licensure.

(2) The [fees for] renewal fee [of registration] is \$250.00 as defined in 16.42.5 NMAC.

E. Renewal requirements:  
(1) A licensee pursuant to this section shall not be renewed unless the licensee meets requirements for licensure and for the renewal of a license pursuant to [Chapter 61, Articles 2 through 34] Section 61-24C-10 NMSA 1978.

~~(2)~~ Meets all licensing requirements as defined in 16.42.3.10 NMAC.

~~(3)~~ (2) Original and renewal [registrations] licensing shall be valid for a period of four years. [not more than one year.]

~~(4)~~ (3) Prior to the expiration of the license; licensee shall apply for [registration] renewal and pay the renewal fee as set forth in 16.42.3.13 NMAC. [16.42.3.16 NMAC - N, 08/15/2014; A, 7/18/2023]

**REGULATION AND LICENSING DEPARTMENT INTERIOR DESIGN BOARD**

This is an amendment to 16.42.4 Sections 1, 2, 3, 6, 8, 9 and 10, effective July 18, 2023.

**16.42.4.1 ISSUING AGENCY:** Regulation and Licensing Department [~~], New Mexico Interior Design Board~~]. [11/10/1997; 16.42.4.1 NMAC - Rn, 16 NMAC 42.4.1, 10/26/2002; A, 11/14/2009; A, 8/15/2014; A, 7/18/2023]

**16.42.4.2 SCOPE:** The provisions in Part 4 of Chapter 42 apply to all [licensed holders] licensees, and applicants for licensure. [These provisions may also be of interest to anyone who may wish to file a complaint against a licensee of this board.]

[11/10/1997; 16.42.4.2 NMAC - Rn, 16 NMAC 42.4.2, 10/26/2002; A, 7/18/2023]

**16.42.4.3 STATUTORY AUTHORITY:** [~~This part is adopted~~] These rules are promulgated pursuant to the Interior Design Act, 61-24C-5; 61-24C-10; 61-24C-11 and 61-24C-12 NMSA 1978.

[11/10/1997; 16.42.4.3 NMAC - Rn, 16 NMAC 42.4.3, 10/26/2002; A, 7/18/2023]

**16.42.4.6 OBJECTIVE:** The objective of Part 4 is to establish the procedures for filing complaints against a licensee, the authority of the [board] department regarding ground for denial, suspension, or revocation of a license.

[11/10/1997; 16.42.4.6 NMAC - Rn, 16 NMAC 42.4.6, 10/26/2002; A, 7/18/2023]

**16.42.4.8 COMPLAINTS:** Disciplinary proceedings against a licensed interior designer may be initiated by a sworn complaint of any person [~~including members of the board~~]. Complaint forms shall be obtained from the [board's office]

department or department website and must be filed with the [board] department or online. [11/10/1997; 16.42.4.8 NMAC - Rn, 16 NMAC 42.4.8, 10/26/2002; A, 7/18/2023]

**16.42.4.9 DISCIPLINE:** [Disciplinary procedure is governed by 61-1-1 NMSA 1978, et. seq. ~~A.~~ Grounds for discipline: License denial will be issued when an applicant fails to meet the qualifications for licensure or fails to pay the fees or where the applicant's conduct meets the requirements of Subsection G of Section 61-24C-10 NMSA, 1978 or Subsection B of this section:

~~B.]~~ Unprofessional conduct is grounds for denial, suspension or revocation of a license under Subsection [G] F of Section 61-24C-10 NMSA 1978, unprofessional conduct shall [be deemed to] include, but is not limited to, violations of the code of professional conduct for interior design.

[11/10/1997; 16.42.4.9 NMAC - Rn, 16 NMAC 42.4.9, 10/26/2002; A, 11/14/2009; A, 7/18/2023]

**16.42.4.10 [CRIMINAL OFFENDERS EMPLOYMENT ACT] POTENTIALLY DISQUALIFYING CRIMINAL CONVICTIONS:** Convictions for any of the following offense, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license or certificate by the [board] department.

- A. Physical harm to others:
- (1) murder;
  - (2) manslaughter;
  - (3) assault;
  - (4) battery;
  - (5) abandonment of a child resulting in death or great bodily harm;
  - (6) abuse of a child;
  - (7) kidnapping;

(8) false imprisonment;

(9) sexual assault;

**B.** Property damage: (1) shooting at property; (2) criminal damage to property; (3) dangerous use of explosives; (4) graffiti; (5) arson;

**C.** Fraud: (1) misrepresentation fraudulent statements or alterations of documents; (2) improper sale, disposal, removal or concealing of encumbered property; (3) tax fraud; (4) conspiracy; (5) Medicaid, Medicare or insurance fraud; (6) money laundering;

**D.** Theft: (1) breaking and entering; (2) larceny; (3) robbery; (4) burglary; (5) shoplifting; (6) I.D. theft; (7) credit card or other financial information; (8) receiving or transferring stolen property;

**E.** Financial crimes: (1) embezzlement; (2) extortion; (3) receiving stolen property; (4) forgery; (5) receiving illegal kickbacks; (6) racketeering; (7) falsification of documents; (8) white collar crimes;

**F.** Drug offenses: (1) drug trafficking;

(2) possession;

(3) contributing to the delinquency of a minor;

**G.** Sex crimes: (1) distribution of pornography; (2) human trafficking; (3) criminal sexual penetration or contact; (4) failure to register with the sex offender and notification act;

**H.** Any crimes identified under Section 61-24C-10, NMSA 1978;

**I.** Miscellaneous: (1) felon in possession of a firearm; (2) bribery of an official; (3) accepting a bribe; (4) gambling and gaming crimes; (5) stalking; (6) terrify, intimidate, threaten, harass, annoy or offend another; (7) escape from incarceration; (8) DWI; (9) practicing a profession without a license or on a revoked or suspended license; (10) violation of the subdivision act, mortgage foreclosure act, mortgage loan company act or uniform money services act; (11) violation of the controlled substance act;

**J.** The [board] department shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Section 16.42.4.10 NMAC.

**K.** The [board] department shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in 16.42.4.10 NMAC.

**L.** Nothing in this rule prevents the [board] department

from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Interior Designers 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 16.42.4.10 NMAC.

**M.** In connection with an application for licensure, the [board] department shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

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

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

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in 16.42.4.10 NMAC

[16.42.4.10 NMAC - N, 3/12/2022; A, 7/18/2023]

## REGULATION AND LICENSING DEPARTMENT INTERIOR DESIGN BOARD

**This is an amendment to 16.42.5 Sections 1, 2, 3, and 8, effective July 18, 2023.**

### 16.42.5.1 ISSUING

**AGENCY:** Regulation and Licensing Department [~~New Mexico Interior Design Board~~].

[11/10/97; 16.42.5.1 NMAC - Rn, 16 NMAC 42.5.1, 10/26/2002; A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

**16.42.5.2 SCOPE:** [~~The provisions in Part 5 of Chapter 42 apply to all applicants for licensure, license holders for their annual renewal and anyone who requests a mailing list of interior designers, or copies of public records.~~] Applicant

and licensure fees required for application, licensing, renewals, penalties, and other fees required under the Interior Designers Act. [11/10/97; 16.42.5.2 NMAC - Rn, 16 NMAC 42.5.2, 10/26/2002; A, 7/18/2023]

**16.42.5.3 STATUTORY AUTHORITY:** [This rule is adopted] These rules are promulgated

pursuant to the Interior Design Act, [NMSA 1978, 61-24C-10;] 61-24C-14, and 61-24C-16 NMSA 1978. [11/10/97; 16.42.5.3 NMAC - Rn, 16 NMAC 42.5.3, 10/26/2002; A, 7/18/2023]

**16.42.5.8 FEES:** All fees are non-refundable.

**A.** [An applicant] Applicants for licensure [may request an application packet from the board. The application must be accompanied by one hundred dollars (\$100.00) non-refundable administrative application fee.] shall pay an initial licensure fee of two hundred (\$200.00).

~~[B.]~~ The initial certificate of licensure shall be two hundred dollars (\$200.00);

~~[C.]~~ **B.** The renewal fee shall be two hundred fifty dollars (\$250.00).

~~[D.]~~ **C.** The late fee shall be one hundred dollars (\$100.00).

~~[E.]~~ **D.** The fee for a duplicate or replacement license shall be twenty-five dollars (\$25.00).

~~[F.]~~ **E.** The reinstatement fee shall be two hundred dollars (\$200.00).

~~[G.]~~ **F.** The fee for inactive status shall be fifty dollars (\$50.00) due annually by October 1st each year.

~~[H.]~~ **G.** The fee for printable labels of licensees shall be twenty-five dollars (\$25.00).

~~[I.]~~ **H.** The fee for electronic list of licensees shall be fifteen dollars (\$15.00).

~~[J.]~~ **I.** The fee for each CEU course application shall be seventy-five dollars (\$75.00).

~~[K.]~~ **J.** The fee for a verification of licensure shall be fifteen dollars (\$15.00).

[11/10/97; 16.42.5.8 NMAC - Rn & A, 16 NMAC 42.5.8, 10/26/2002; A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

**REGULATION AND LICENSING DEPARTMENT INTERIOR DESIGN BOARD**

**This is an amendment to 16.42.6 Sections 1, 3, and 8, effective July 18, 2023**

**16.42.6.1 ISSUING AGENCY:** Regulation and Licensing Department [~~New Mexico Board of Interior Design.~~]

[11/10/97; 16.42.6.1 NMAC - Rn, 16 NMAC 42.6.1, 10/26/2002; A, 08/15/2014; A, 7/18/2023]

**16.42.6.3 STATUTORY AUTHORITY:** [This rule is adopted] These rules are promulgated

pursuant to the Interior Design Act [NMSA 1978;] Section, 61-24C-10 NMSA 1978.

[11/10/97; 16.42.6.3 NMAC - Rn, 16 NMAC 42.6.3, 10/26/2002; A, 7/18/2023]

**16.42.6.8 CONTINUING EDUCATION:** Interior designers in New Mexico shall be required to develop their professional knowledge and competency in conformity with this rule by completion of continuing education approved by the [~~board~~ department.]

**A.** [~~Each~~ Prior to renewal, every interior designer [~~must annually~~ is required to complete [eight (8) CEUs] 20 hours of continuing education in interior design subjects or courses of study approved by the [~~New Mexico interior design board (NMIDB)]~~ department or interior design continuing education council (IDCEC).

**B.** Organization and administration: The [~~board~~ department] shall:

- (1) evaluate and approve either prospectively, or retrospectively, specific courses, programs of education, and training

as formal programs of learning which contribute directly to the professional competency of an interior designer, and shall determine the appropriate number of CEU hours to be granted for each course offering submitted;

~~[(2)]~~ determine in individual cases whether the professional knowledge and competency has been advanced by virtue of the completion of such programs; and review and validate course attendance documentation when the committee deems such a review is appropriate;

~~[(3)]~~ (2) audit the continuing education professional education records of licensees as deemed necessary; and

~~[(4)]~~ (3) approve courses that have received IDCEC approval.

**C.** Minimum requirements of approved courses: Formal programs of learning which build upon the basic knowledge of interior design shall meet the following criteria:

(1) enhance the quality of technical knowledge;

(2) enhance overall comprehensive professional education;

(3) provide knowledge in new technical areas; or

(4) provide practical applications on issues which impact the public health, safety and welfare.

**D.** Approved subject areas:

(1) Unless otherwise approved by the [~~board~~ department, subjects or courses of study accepted for the purposes of this rule shall be limited to the following:

- (a) Design:
  - (i) computer aided drafting and design (CAD);
  - (ii) space planning and programming;
  - (iii) product performance;
  - (iv) document and specs;

advancement in specialized field;  
 interior detailing; and  
 historic preservation.

(b) Health and safety planning:  
 life safety requirements;  
 barrier free requirements;  
 codes and ordinances; and  
 interior products and finishes.

(c) Mechanical, plumbing, and electrical systems:  
 principles and design;  
 new equipment and control systems;  
 and  
 energy conservation.

(d) Building systems:  
 acoustics;  
 basic building systems; and  
 lighting.

(e) Business:  
 contracts and agreements;  
 accounting;  
 business law; and  
 project management.

(f) Ethics.

(2) Additional methods for meeting CEU requirements:

(a) Unless otherwise approved by the [board] department and subject to the formalities and further requirements of this rule, alternative methods for earning CEUs shall be limited to the following:

(i) active service as either an officer or

(v) board member of an interior design-related professional association or organization;

(vi) ~~(ii)~~ (i) service as an instructor at a college or university level course of an interior design related course;

(vii) (iii) (ii) authoring or co-authoring a published professional interior design related paper, article, book or presentation.

(b) It is the responsibility of the licensee to provide sufficient documentation and proof of the specific service or activity to the [board] department to prove that the alternative method of obtaining CE credit meets the criteria in Subsection E of 6.42.6.8 NMAC; it is also the responsibility of the attendee to provide proof of attendance.

(c) Pre-approval of alternative methods of obtaining CE credit is not mandatory but, is highly recommended.

E. In order for a licensee to receive credit for programs of learning, as defined above, the following formalities and further requirements must be met:

(1) Higher education credit courses shall be credited for continuing education purposes at the rate of fifteen (15) hours for each semester or credit hour. A copy of a transcript documenting course completion must be submitted as proof of compliance.

(2) Higher education non-credit courses shall be credited for continuing education purposes equivalent to the actual number of classroom hours. A copy of transcript documenting course completion must be submitted as proof of compliance.

(3) Continuing professional education credit for teaching a higher education course shall be credited with twice the number of credits awarded for attending the course for the first presentation of the course or program, the same number of credits granted a participant for the second presentation of the course, and none thereafter. A letter from education institution must be submitted as proof of completion.

F. Criteria for approval of providers of continuing education:

(1) The [board] department sets forth the following criteria to be used in approving course providers:

(a) Proof of competence and expertise of the instructors is required.

(b) A provider shall not advertise course as [board] department approved unless [board] department approval has been obtained.

(2) General requirements for course approval shall include:

(a) Course meets topic area guidelines as set forth in Paragraph (1) of Subsection D of 16.42.6.8 NMAC.

(b) Length of course must be a minimum of one (1.0 CEU) instructional hours. Each instructional hour shall include at least fifty minutes of continuous actual instruction.

(c) For course approval, providers must complete the [board] department approved continuing education program review form which may be obtained from the [board-office] department or department website.

(d) Provider must submit course materials to the [board] department on the review form, form can be obtained from [board-office] department or department website.

(e) Previously approved courses shall be re-reviewed by the committee and the [board] department if any of the following circumstances occur:

(i) course instructor changed;

(ii) course content changed;

(iii) course received evaluation results from attendees, indicating that the course did not meet the approval criteria outlined in Paragraph (3) of Subsection B of 16.42.6.8 NMAC, Subparagraph (a) of Paragraph (1) of Subsection D of 16.42.6.8 NMAC and Subparagraph (b) of Paragraph (2) of Subsection D of 16.42.6.8 NMAC;

(iv) course documentation not submitted by the provider as required by Subparagraph (a) of Paragraph (4) of Subsection D of 16.42.6.8 NMAC;

(v) changes in the number of CEUs;

(vi) course documentation incomplete or irregularities exist;

(vii) course is advertised as [board] department approved when no such approval has been granted; and

(viii) if any of these conditions exist, a previously approved course shall not be considered approved by the [board] department. The provider is responsible for resubmitting previously approved courses for re-approval if required by the above criteria.

(f) Pay application fees.

(g) Proof of attendance certificate: At the completion of the course, the provider must furnish proof of attendance certificates to all who satisfactorily complete the course. A copy of the attendance certification shall be maintained by the instructor for a two-year period. Said certificate shall contain the following items of information:

(i) name of the provider;

(ii) name of the attendee and license number;

(iii) name of the instructor;

(iv) title of course and number of CEU credits;

(v) New Mexico interior design [board] approval number;

(vi) date and location of presentation;

(vii) length of course, excluding breaks (e.g. time); and

(viii) provider’s signature as verification of attendee satisfactory completion of the course.

(h) the attendee shall submit a copy of the proof of attendance with other documentation.

(3) Proof of attendance list:

(a) Within 30 calendar days after the completion of the course, the provider must furnish a proof of attendance list to the [board] department. The proof of attendance list shall include the following information:

(i) name of provider;

(ii) names of attendees;

(iii) signatures of attendees

(iv) title of course and [NM board of] the New Mexico interior design approval number;

(v) date and location of course,

(vi) number of CEU credits; and

(vii) course evaluation forms.

(b) The provider must also furnish each attendee with a current copy of the [board] department-provided course evaluation form which every attendee shall complete and sign in ink at the conclusion of the course. The provider shall collect the course evaluation forms and submit the original forms to the [board] department within 30 calendar days of course completion.

(c) The names and number of attendees on the proof of attendance list must match the names and number of the evaluation forms.

(d) A current copy of the [board] department-provided course evaluation form shall be obtained from the board office for duplication by the provider.

(e) The [board] department reserves the right to audit the presentation of any course it has approved. The audit may be done without prior notification to the provider; however,

the provider is not required to furnish materials and services associated with the course to the auditor without prior notice and compensation.

**G. Reporting of continuing education hours:** Licensed interior designers shall submit to the [board] department with their renewal application and fee, the required proof of attendance of [board] department approved or IDCEC approved CEUs completed during the applicable renewal period. The [board-office] department shall verify credit hours earned prior to renewing the license. [11/10/97; 16.42.6.8 NMAC - Rn, 16 NMAC 42.6.8, 10/26/2002; A, 08/15/2014; A, 7/18/2023]

**REGULATION  
AND LICENSING  
DEPARTMENT  
INTERIOR DESIGN BOARD**

**This is an amendment to 16.42.7 Sections 1, 3, 7, 8, and 10, effective July 18, 2023**

**16.42.7.1 ISSUING AGENCY:** Regulation and Licensing Department [~~New Mexico Interior Design Board~~]. [16.42.7.1 NMAC – N, 3/12/2022; A, 7/18/2023]

**16.42.7.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to Section 61-1-34 NMSA 1978 of the Uniform Licensing Act, [~~NMSA 1978, Section 61-1-1 to 34 (1957, as amended through 2013)~~] and the Interior Designers Act, Sections 61-24C-1 to 16 NMSA 1978. [16.42.7.3 NMAC – N, 3/12/2022; A, 7/18/2023]

**16.42.7.7 DEFINITIONS:**

**A. “License”** [means a license, registration, certificate of registration, certificate, permit or certification.] has the same meaning as defined in Subsection E of Section 61-1-2 NMSA 1978.

**B. “Licensing Fee”** [means a fee charged at the time-

an application for a professional or occupational license is submitted to the state agency, board or commission and any fee charged for the processing of the application for such license; "licensing fee" does not include a fee for an annual inspection or examination of a licensee or a fee charged for copies of documents, replacement license or other expenses related to a professional or occupational license.] has the same meaning as defined in Subsection E of Section 61-1-34 NMSA 1978.

**C. "Military service member"** [means a person who is: ~~(1) serving in the armed forces of the United States as an active duty member, or in an active reserve component of the armed forces of the United States, including the national guard, or a surviving spouse of a member who at the time of the member's death was serving on active duty; or~~ ~~(2) the spouse of a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard, or a surviving spouse of a member who at the time of the member's death was serving on active duty; or~~ ~~(3) the child of a person who is serving in the armed forces of the United States as an active duty member, or in an active reserve component of the armed forces of the United States, including the national guard; provided that child is also a dependent of that person for federal income tax purposes.] has the same meaning as defined in Subsection E of Section 61-1-34 NMSA 1978.~~

**D. "Substantially equivalent"** means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the Interior Designers Act.

**E. "Veteran"** [means a person who has received an honorable

discharge or separation from military service.] has the same meaning as defined in Subsection E of Section 61-1-34 NMSA 1978.

[16.42.7.7 NMAC – N, 3/12/2022; A, 7/18/2023]

**16.42.7.8 APPLICATION REQUIREMENTS:**

**A.** Applications for registration shall be completed on a form provided by the [board] department.

**B.** The applicant shall provide a complete application that includes the following information:

- (1) applicant's full name;
- (2) current mailing address;
- (3) current electronic mail address, if any;
- (4) date of birth; and
- (5) proof as described in Subsection C of [16.42.8] 16.42.7.8 NMAC.

**C.** The applicant shall provide the following satisfactory evidence as follows:

- (1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;
- (2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to licensing requirements for New Mexico; and
- (3) 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 a copy of marriage license;
  - (c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;
  - (d) for dependent children of military

service members; copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD 214 showing proof of honorable discharge.

**D.** The license or registration shall be issued by the [board] department as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background report if required for a license, and any required fees.

**E.** Military service members and veterans shall not pay and the [board] department shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

**F.** A license issued pursuant to this section shall be valid for the time period that is specified in the Interior Designers Act.

**G.** Electronic signatures will be acceptable for applications submitted pursuant to section 14-16-1 through section 14-16-19 NMSA 1978.

[16.42.7.8 NMAC – N, 3/12/2022; A, 7/18/2023]

**16.42.7.10 RENEWAL REQUIREMENTS:**

**A.** A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.42.3 NMAC pursuant to Interior Designers Act, Sections 61-24C-1 to 16 NMSA 1978.

**B.** As a courtesy, the [board] department, will send via electronic mail license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the [board/commission] department. Failure to receive the

renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.  
[16.42.7.10 NMAC – N, 3/12/2022; A, 7/18/2023]

## REGULATION AND LICENSING DEPARTMENT

This is an amendment to 16.48.1 NMAC, Section 14, effective 7/18/2023.

### 16.48.1.14 DISPLAY OF REGISTRATION OR LICENSE AND NOTIFICATION OF CHANGES:

**A.** A private investigation company, private investigations manager, private patrol company, private patrol operator and private patrol operations manager license shall at all times be posted in a conspicuous place in the New Mexico principal place of business of the licensee.

**B.** A copy of the registration or license of each registrant or licensee employed, or under contract for services, by a private investigation company or a private patrol company shall be maintained in the main New Mexico office of the company and in the branch office in which the registrant or licensee works.

**C.** A private investigator, private investigations employee, polygraph examiner, security guard level one, security guard level two or security guard level three registration [card] or license issued by the department shall at all times be in the possession of and located on the person of a registrant or licensee when working.

**D.** A private patrol company shall provide each security guard employed, or under contract for security guard services, an identification badge that includes the name of the company, the name of the security guard and a photo of the security guard. The required photo must have been taken within

the preceding month of the creation of the identification badge and must be updated at least every two years. A security guard shall wear the company identification badge and the registration card issued by the department on the outside of the guard's uniform so that the identification badge and card [is] are visible to others.

**E.** If the private patrol company is unable to provide each security guard employed, or under contract for security guard services, with an identification badge, the security guard may obtain an identification badge from the department at a cost established by the department.

**[E] F.** A licensee or a registrant shall notify the department immediately in writing of a change in the email, mailing or contact address of the licensee or registrant.

**[F] G.** Failure to notify the department within 30 days of changes required to be reported pursuant to this section or failure to carry or display a registration or license as required is grounds for suspension of a license or registration.  
[16.48.1.14 NMAC – Re-pr & A, 16.48.1.14 NMAC, 9/24/2008; A, 1/15/2019; A, 7/18/2023]

## REGULATION AND LICENSING DEPARTMENT

This is an amendment to 16.48.2 NMAC, Sections 7 through 22, 24, and 25, effective 7/18/2023.

**16.48.2.7 DEFINITIONS:**  
Please refer to 16.48.1.7 NMAC in addition to the definitions within this part.

**A. “Chemical agents”** means tear gas or any other certifiable non-lethal chemical agents used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.

**B. “Defensive impact tools”** means straight baton, expandable baton, side handle baton

or other defensive impact tools used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.

**C. “Electronic non-lethal devices”** means tasers or other certifiable devices used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.

**D. “One-year verifiable training”** means proof of experience that has been acquired within the five years preceding the filing of the application with the department which shall consist of not less than 1,000 hours of actual work performed in the respective area of licensure or registration sought after.

**E. “Restraint and control devices”** means handcuffs or similar certifiable devices used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.

**F. “Traffic crash reconstruction”** means the application of the laws of physics to physical evidence left as a result of a collision.

[16.48.2.7 NMAC - Re-pr & A, 16.48.2.7 NMAC, 9/24/2008; A, 1/15/2015; A, 1/15/2019; A, 7/18/2023]

### 16.48.2.8 ~~[BOND- AND]~~ GENERAL LIABILITY INSURANCE, ~~[REQUIREMENT]~~ BIOMETRIC CRIMINAL HISTORY REPORT AND GENERAL APPLICATION INFORMATION:

~~[A. — All private patrol companies and private investigation companies seeking to obtain or retain a license under the provisions of the Private Investigations Act shall file with the department and retain in full force and effect, a surety bond in the amount of ten thousand dollars (\$10,000) executed by a surety company authorized to do business in this state on a form prescribed by the department.~~

~~B. — The owner or the~~



chief executive officer of a private investigation company or private security company that provides personal protection or bodyguard services or the owner or the chief executive officer of a private patrol company shall maintain a general liability certificate of insurance in the amount of not less than one million dollars (\$1,000,000).

**C.** A surety bond in the amount of ten thousand dollars (\$10,000) or a general liability certificate of insurance executed and filed with the department pursuant to the Private Investigations Act shall remain in force until the surety company issuing the bond or the certificate has terminated future indemnity by notice to the department.

**D.** Any failure to furnish and maintain such bond in such form shall be grounds for denial or revocation of any license of a private investigator, private patrol operator, or private investigation company.

**E.** In the event a bond is offered which varies from the department form the department shall determine whether bond is in substantial conformance with the Private Investigations Act and department rules.

**F.** The duration of each bond shall, unless sooner terminated in accordance with law, be for the term of the license issued as set forth on the face thereof and 30 days thereafter.

**G.** Such bond shall also be filed and maintained for each period of renewal of license and the duration thereof shall be for the renewal period specified on the face of the license and 30 days thereafter.

**H.** Any claim filed or made against any private investigator, private patrol operator, or private investigation company shall be reported by him forthwith to his surety company.

**I.** Upon receipt of notice of any claim made against any private investigator, private patrol operator, or private investigation company the surety insurance

company bonding such private investigator, private patrol operator, or private investigation company shall forthwith report the same to the department.

**J.** All complaints filed, judgments rendered or injunctions issued, whether temporary or final, against any private investigator, private patrol operator, private investigation company or their surety insurance company shall be reported to department, within 10 days after receipt of the same by such private investigator, private patrol operator, private investigation company, surety company, or their agents, attorneys, or employees, together with the name of the court where filed and the name and address of the attorney for claimant, or the claimant if he has no attorney.

**K.** A private investigator or private patrol operator or private investigation company or licensee or registrant shall furnish the department with any information requested by the department pursuant to a claim or complaint or suit filed alleging a violation of any rule or statute governing private investigators, private patrol operators, private investigation companies, licensees or registrants when requested to do so by the department. Failure to comply with this request may result in disciplinary action. No payment may be made by a surety insurance company pursuant to a claim or complaint filed with the department unless the department directs such payment to be made.

**L.** The failure to furnish such notice of claims or suits or such information shall be deemed sufficient to revoke or suspend any license of a private investigator, private patrol operator or private investigation company or to deem any bond for such private investigator, private patrol operator or private investigation company insufficient.

**M.** The department may determine that any claim made or suit filed against any private investigator, private patrol operator or private investigation company has reduced the amount of the bond of

such investigator, patrol operator or private investigation company in full force and effect to such extent as the department shall, in its discretion, determine. Any judgment obtained against any private investigator or private patrol operator or private investigation company or their surety insurance company shall be deemed to reduce the amount of their bond insurance in full force and effect by the amount of the judgment. In the event the amount of the bond in full force and effect shall be so reduced, such private investigator or private patrol operator or private investigation company shall, within 10 days, file a new or supplemental bond insurance sufficient to meet the requirements of law as to the amount of bond insurance in full force and effect.

**N.** If any claim is made or suit filed against any private investigator or private patrol operator or private investigation company for his actions, or the actions of any of his employees, and any portion of such act or acts as a private investigator or private patrol operator or private investigation company took place or occurred during the period for which a bond was in force, such surety shall be deemed liable for the whole of such claim to the extent of the total amount of the bond, provided that if more than one bond was in effect during the performance of all or any part of such acts, the liability shall be pro-rated among such sureties.]

**A. General liability insurance:**

**(1)** A private investigation company or a private patrol company seeking to obtain or retain a license under the provisions of the Private Investigations Act shall maintain a general liability certificate of insurance in the amount of not less than one million dollars (\$1,000,000);

**(2)** Any failure to furnish and maintain licensee's general liability certificate of insurance shall be grounds for denial or revocation of a license issued under the provisions of the Private Investigations Act;

(3) In the event a general liability certificate of insurance is offered which varies from the department requirements the department shall determine whether the insurance is in substantial conformance with the Private Investigations Act and department rules;

(4) The duration of each general liability certificate of insurance shall, unless sooner terminated in accordance with law, be for the term of the license issued as set forth on the face thereof and 30 days thereafter; and

(5) Such general liability certificate of insurance shall also be filed and maintained for each period of renewal of license and the duration thereof shall be for the renewal period specified on the face of the license and 30 days thereafter.

**B. Biometric criminal history report:**

(1) Pursuant to Section 61-27B-34, NMSA 1978, applicants must submit to a biometric federal criminal history background check.

(2) Unless otherwise posted on the regulation and licensing department website, applicants must register [at www.aps.gemalto.com/nm/index prior to going to an electronic fingerprint location] with the New Mexico department of public safety's fingerprinting vendor, pay the fingerprint processing fee, and provide fingerprints in accordance with the vendor's established process.

(3) [ORI Lookup is NM920250Z.

(4) Applicants may complete their fingerprinting at any 3M cogent fingerprint location in the state of NM (map of locations are on cogent web site);

(5) Appointments are not required.

(6) The fee is \$44.00, which can be paid at the time of registration by credit card or at the fingerprinting site by cashier's check or money order.

(7) Background check results will be sent

directly to the regulation and licensing department electronically.

[~~(8)~~ Out-of-state applicants unable to complete the livescan in New Mexico, may register online and mail inked fingerprint cards and the required \$44 fee to: Thales, APS Department #165, 2964 Bradley Street, Pasadena, CA 91107.

[~~(9)~~ (4) Additional information is published on the regulation and licensing department website under the private investigations advisory board.

**C. General application information:**

(1) Information provided to the department for as part of the application or renewal process is subject to the Inspection of Public Records Act.

(2) All applicants, which includes each owner, director and officer of a business, for licensure must submit the following information:

(a) full name and if applicable, other names the applicant has used;

(b) mailing address;

(c) contact phone number;

(d) email address;

(e) date of birth;

(f) social security number;

(g) release of information form;

(h) name of jurisdiction, license number, and license status for other jurisdictions in which the applicant is or has been licensed;

(i) proof of military service member or veteran;

(j) fingerprint cards or other biometric data for federal criminal history report submission; and

(k) non-refundable license fee as set forth in 16.48.5 NMAC.

[16.48.2.8 NMAC - Re-pr & A, 16.48.2.8 NMAC, 9/24/2008; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

**16.48.2.9 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATOR LICENSE:**

[A. Applicants for licensure as a private investigator must meet the qualifications and requirements described in Section 61-27B-7 NMSA 1978, and must submit the following:

(1) a completed application, which includes applicant's:

(a) full name;

(b) current mailing address;

(c) current electronic mail address;

(d) date of birth;

(e) two 2X2 inch recent photographs or an upload of a recent electronic headshot photograph;

(f) Certificate in Support of Experience Qualification;

(g) signed Release of Information;

(h) fingerprints for federal background investigation, see application for specific instructions on submitting fingerprints; and

(i) employment record for the most recent five years;

(2) proof of successfully passing a jurisprudence examination to be administered by the department;

(3) proof of experience that has been acquired within the five years preceding the filing of the application with the department which shall consist of not less than 6,000 hours of actual work performed in:

(a) investigation for the purpose of obtaining information with reference

to a crime or wrongs done or threatened against the United States;

(b) investigation of persons;

(c) the location, disposition or recovery of lost or stolen property;

(d) the cause or responsibility for fire, losses, motor vehicle or other accidents or damage or injury to persons or property; or

(e) securing evidence to be used before a court, administrative tribunal, board or investigating committee or for a law enforcement officer;

(4) non-refundable license fee as set forth in Part 5; and

(5) criminal history background check as set forth in Subsection C of 16.48.2.9 NMAC.

**B.** Years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from employers on a form provided by the department and shall be subject to independent verification by the department as it deems warranted. In the event of inability of applicants to supply such written certifications from employers in whole or in part, applicants may offer other written certifications from others than employers covering the same subject matter for consideration by the department. The burden of proving necessary experience is on the applicant.

**C.** Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance of a private investigator license in New Mexico shall be required to be fingerprinted to establish positive identification for a federal criminal history background check pursuant to the instructions within the application provided by the department.

**D.** If applicant elects to be firearm certified, proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC and completing a psychological evaluation pursuant to Subsection C of 16.48.2.19 NMAC. ]

**A. Application requirements:** Applicants for licensure as a private investigator must meet the qualifications and requirements described in Section 61-27B-7 NMSA 1978, and must submit a completed application, which includes:

(1) general application information as listed in Subsection C of 16.48.2.8 NMAC;

(2) qualifying work experience;

(3) successfully pass a jurisprudence examination to be administered by the department;

(4) firearm certification, if applicable;

(5) fingerprint cards or other biometric data for federal criminal history report submission; and

(6) non-refundable license fee as set forth in 16.48.5 NMAC.

**B. Qualifying experience:** Years of qualifying work experience and the precise nature of that experience shall be substantiated by written certification from employers on a form provided by the department and shall be subject to independent verification by the department as it deems warranted. In the event of inability of applicants to supply such written certifications from employers in whole or in part, applicants may offer other written certifications from others covering the same subject matter for consideration by the department. The burden of proving necessary experience is on the applicant. Proof of experience must have been acquired within the five years preceding the filing of the application with the department which shall consist of not less than 6,000 hours of actual work performed in:

(1) investigation for the purpose of obtaining information with reference to a crime or wrongs done or threatened against the United States;

(2) investigation of persons;

(3) the location, disposition or recovery of

lost or stolen property;

(4) the cause or responsibility for fire, losses, motor vehicle or other accidents or damage or injury to persons or property; or

(5) securing evidence to be used before a court, administrative tribunal, board or investigating committee or for a law enforcement officer.

**C. Federal criminal history report:** Pursuant to Section 61-27B-34, NMSA 1978, applicants must submit to a biometric federal criminal history background check, as set forth in Subsection B of 16.48.2.8 NMAC.

**D. Firearm certification:** Pursuant to Section 61-27B-31 NMSA 1978, if applicant elects to be firearm certified, the applicant must provide the following:

(1) proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC, including a copy of applicant's firearms qualification score sheet and the registration number for the department approved instructor; and

(2) results of a psychological evaluation as set forth in 16.48.2.21 NMAC.

**E. Traffic crash reconstruction:** A private investigator licensed under the Private Investigations Act shall not offer or provide traffic crash reconstruction unless the private investigator has completed a traffic crash reconstruction course offered by the institute of police technology and management (IPTM), Northwestern university center for public safety, or equivalent training offered by another university or state law enforcement agency.

[16.48.2.9 NMAC - Re-pr & A, 16.48.2.9 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

**16.48.2.10 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATION COMPANY LICENSE:**

[A.]—An application for licensure as a private investigation company must be submitted by a person that provides the following:

- (1) completed application which includes the person’s:
  - (a) full name;
  - (b) current electronic mail address;
  - (c) date of birth;
  - (d) full business name as sole proprietorship, partnership, limited liability company, or corporation;
  - (e) current business mailing address and physical business address;
  - (f) signed Release of Information for each owner, officer, and director;
  - (g) full name of each business owner, officer, director, partner, or member of the business entity; and
  - (h) completed and signed Attachment A for each owner, officer, and director.
- (2) Proof of compliance with 16.48.2.8 NMAC;
- (3) proof of an owner or a licensed private investigations manager who is licensed as a private investigator and who certifies that they will manage the daily operations of the private investigation company;
- (4) proof of a physical location in New Mexico where records are maintained and made available for department inspection;
- (5) proof of a New Mexico registered agent if the applicant is a private investigation company located outside of New Mexico;
- (6) non-refundable license fee as set forth in Part 5;
- (7) criminal history background check as set forth in Subsection C of 16.48.2.10 NMAC; and
- (8) proof of New Mexico Residency for the

private investigations manager.

B.—The owner or the chief executive officer of a private investigation company that provides personal protection or bodyguard services shall provide proof of an active and current general liability certificate of insurance in the amount of no less than one million dollars.

C. Pursuant to Section 61-27B-34 of the act, all applicants, including all owners, officers, directors, partners, or members for initial issuance of a private investigation company license in New Mexico shall be required to be fingerprinted to establish positive identification for a federal criminal history background check. A legal business entity must submit a fingerprint packet for each owner, and officers or directors pursuant to the instructions within the application provided by the department.]

A. Application requirements: Applicants for licensure as a private investigations company must meet the qualifications and requirements described in Section 61-27B-8 NMSA 1978, and must submit a completed application, which includes:

- (1) general application information as listed in Subsection C of 16.48.2.8 NMAC;
- (2) business contact phone number;
- (3) business mailing address;
- (4) business email address;
- (5) business name and DBA if applicable;
- (6) identify the type of business (corporations, LLCs, and partnerships must register with the New Mexico secretary of state);
- (7) name and license number of an owner who is licensed as a private investigator, or a licensed private investigations manager, and certification that they will manage the daily operations of the private investigation company;
- (8) business address of a physical location in New Mexico where records are maintained

and made available for department inspection;

- (9) if the applicant is a company located outside of New Mexico, the name and address of a New Mexico registered agent;
- (10) general liability certificate of insurance;
- (11) fingerprint cards or other biometric data for federal criminal history report submission; and
- (12) non-refundable license fee as set forth in 16.48.5 NMAC.

B. Employee termination: If the contract or employment of a private investigations employee terminates, the private investigations company must notify the department within 30 days from the date of the private investigations employee.

[B] C. General liability insurance: A private investigation company shall provide proof of a current general liability certificate of insurance in the amount of no less than one million dollars as set forth in Subsection A of 16.48.2.8 NMAC.

[C.] D. Federal criminal history report: Pursuant to Section 61-27B-34, NMSA 1978, all owners, officers, and directors of a private investigation company must submit to a biometric federal criminal background check, as set forth in Subsection B of 16.48.2.8 NMAC. [16.48.2.10 NMAC - Re-pr & A, 16.48.2.10 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

**16.48.2.11 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATION MANAGER LICENSE:**

[Applicants for licensure as a private investigations manager must submit the following:

- A. proof of a current license in good standing as a private investigator;
- B. proof of successfully passing a jurisprudence examination to be administered by the department;

\_\_\_\_\_ **C.** \_\_\_\_\_ proof of employment with the private investigation company that the applicant is being licensed to manage;

\_\_\_\_\_ **D.** \_\_\_\_\_ a completed application which includes the applicant's:

- \_\_\_\_\_ (1) \_\_\_\_\_ full name;
- \_\_\_\_\_ (2) \_\_\_\_\_ current mailing address;
- \_\_\_\_\_ (3) \_\_\_\_\_ current electronic mail address;
- \_\_\_\_\_ (4) \_\_\_\_\_ employer business name, phone contact information, and physical address;
- \_\_\_\_\_ (5) \_\_\_\_\_ employer company license number;
- \_\_\_\_\_ (6) \_\_\_\_\_ two, 2X2 inch recent photographs or an upload of a recent electronic headshot photograph;
- \_\_\_\_\_ (7) \_\_\_\_\_ signed

Release of Information;

\_\_\_\_\_ (8) \_\_\_\_\_ completed certificate of employment or contract, completed by the company owner; and

\_\_\_\_\_ (9) \_\_\_\_\_ proof of New Mexico residency.

\_\_\_\_\_ **E.** \_\_\_\_\_ non-refundable license fee as set forth in Part 5;

\_\_\_\_\_ **F.** \_\_\_\_\_ pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance of a private investigations manager license in New Mexico shall be required to be fingerprinted to establish positive identification for a federal criminal history background check pursuant to the instructions within the application provided by the department;

\_\_\_\_\_ **G.** \_\_\_\_\_ if applicant elects to be firearm certified, proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC and completing a psychological evaluation pursuant to Subsection C of 16.48.2.19 NMAC, or a letter stating they will not be carrying a firearm if they elect not to do so.]

\_\_\_\_\_ **A. Application requirements:** Applicants for licensure as a private investigations manager must meet the qualifications and requirements described in Section 61-27B-9 NMSA 1978, and must submit a completed application, which includes:

\_\_\_\_\_ (1) \_\_\_\_\_ general application information as listed in Subsection C of 16.48.2.8 NMAC;

\_\_\_\_\_ (2) \_\_\_\_\_ employer business name and DBA if applicable;

\_\_\_\_\_ (3) \_\_\_\_\_ employer private investigations company license number;

\_\_\_\_\_ (4) \_\_\_\_\_ release of information; and

\_\_\_\_\_ (5) \_\_\_\_\_ license number of the applicant's New Mexico private investigator license in good standing;

\_\_\_\_\_ (6) \_\_\_\_\_ successfully pass a jurisprudence examination to be administered by the department;

\_\_\_\_\_ (7) \_\_\_\_\_ a certificate of employment or contract for services with the private investigation company that the applicant is being licensed to manage; and

\_\_\_\_\_ (8) \_\_\_\_\_ non-refundable license fee as set forth in 16.48.5 NMAC.

\_\_\_\_\_ **B. Certificate of employment:** Under the Private Investigations Act a private investigations manager must be employed by, or provide services on a contract basis, to a private investigation company and be responsible for managing the daily operations of the private investigations company. A certificate of employment or contract must be completed and signed by an owner, director or officer of the New Mexico licensed private investigation company the applicant is or will be employed or contracted to manage.

[16.48.2.11 NMAC Re-pr & A, 16.48.2.11 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

**16.48.2.12 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATIONS AND PRIVATE PATROL EMPLOYEE REGISTRATION:**

[**A.** \_\_\_\_\_ On or after July 1, 2007, every individual who seeks employment or is currently employed as a private investigations employee

or who provides services on a contract basis to a private investigation company shall file an application for registration as a private investigations employee with the department.

\_\_\_\_\_ **B.** \_\_\_\_\_ Applicants for registration as a private investigations employee must submit the following:

\_\_\_\_\_ (1) \_\_\_\_\_ completed application, which includes the applicant's:

\_\_\_\_\_ (a) \_\_\_\_\_ full name;

\_\_\_\_\_ (b) \_\_\_\_\_ current mailing address;

\_\_\_\_\_ (c) \_\_\_\_\_ current electronic mail address;

\_\_\_\_\_ (d) \_\_\_\_\_ date of birth;

\_\_\_\_\_ (e) \_\_\_\_\_ employer business name, phone contact information, and physical address;

\_\_\_\_\_ (f) \_\_\_\_\_ employer company license number;

\_\_\_\_\_ (g) \_\_\_\_\_ two, 2X2 inch recent photographs or an upload of a recent electronic headshot photograph; and

\_\_\_\_\_ (h) \_\_\_\_\_ signed Release of Information

\_\_\_\_\_ (2) \_\_\_\_\_ non-refundable registration fee as set forth in Part 5;

\_\_\_\_\_ (3) \_\_\_\_\_ proof of successfully passing a jurisprudence examination to be administered by the board;

\_\_\_\_\_ (4) \_\_\_\_\_ proof of employment or contract with a private investigation company to provide investigation services for, a private investigation company, under the direct control and supervision of a private investigator; and

\_\_\_\_\_ (5) \_\_\_\_\_ criminal history background check as set forth in Subsection C of 16.48.2.12 NMAC.

\_\_\_\_\_ **C.** \_\_\_\_\_ Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance of a private investigations employee registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check pursuant to the instructions within the application provided by the department.

\_\_\_\_\_ **D.** \_\_\_\_\_ If applicant elects to be firearm certified, proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC and completing a psychological evaluation pursuant to Subsection C of 16.48.2.19 NMAC, or a letter stating they will not be carrying a firearm if they elect not to do so.]

\_\_\_\_\_ **A. Application requirements:** Applicants for licensure as a private investigations employee or private patrol employee must meet the qualifications and requirements described in Section 61-27B-14 NMSA 1978, and submit a completed application, which includes:

- \_\_\_\_\_ (1) \_\_\_\_\_ general application information as listed in Subsection C of 16.48.2.8 NMAC;
- \_\_\_\_\_ (2) \_\_\_\_\_ employer business name and DBA if applicable;
- \_\_\_\_\_ (3) \_\_\_\_\_ employer company license number;
- \_\_\_\_\_ (4) \_\_\_\_\_ successfully pass a jurisprudence examination to be administered by the department;
- \_\_\_\_\_ (5) \_\_\_\_\_ certificate of employment or contract for services with a private investigation or private patrol company;
- \_\_\_\_\_ (6) \_\_\_\_\_ firearm certification, if applicable;
- \_\_\_\_\_ (7) \_\_\_\_\_ biometric criminal history background check; and
- \_\_\_\_\_ (8) \_\_\_\_\_ non-refundable registration fee as set forth in 16.48.5 NMAC;

\_\_\_\_\_ **B. Certificate of employment:**

\_\_\_\_\_ (1) \_\_\_\_\_ A private investigations employee must be employed by, or provide investigative services on a contract basis, a private investigation company and must be under the direct control and supervision of a New Mexico licensed private investigator in good standing. A certificate of employment or contract must be completed and signed by an owner, director or officer of the New Mexico licensed private investigation company the applicant is

or will be employed or contracted to provide investigative services.

\_\_\_\_\_ (2) \_\_\_\_\_ A private patrol employee must be employed by, or provide private patrol services on a contract basis, a private patrol company and must be under the direct control and supervision of a New Mexico licensed private patrol operations manager or a level three security guard in good standing. A certificate of employment or contract must be completed and signed by an owner, director or officer of the New Mexico licensed private patrol company that applicant is or will be employed or contract to provide private patrol services.

\_\_\_\_\_ (3) \_\_\_\_\_ If the contract or employment of a private investigations employee or private patrol employee terminates for any reason, the registration of the individual terminates. The private investigations employee or private patrol employee shall turn over the employee's registration to the employer upon ceasing employment.

\_\_\_\_\_ **C. Firearm certification:** Pursuant to Section 61-27B-31 NMSA 1978, if applicant elects to be firearm certified, the applicant must provide the following:

- \_\_\_\_\_ (1) \_\_\_\_\_ proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC, including a copy of applicant's firearms qualification score sheet and the registration number for the department approved instructor; and
- \_\_\_\_\_ (2) \_\_\_\_\_ results of a psychological evaluation as set forth in Section 16.48.2.21 NMAC.

\_\_\_\_\_ **D. Federal criminal history report:** Pursuant to Section 61-27B-34, NMSA 1978, applicants must submit to a biometric federal criminal history background check, as set forth in Subsection H of 16.48.2.8 NMAC.

[16.48.2.12 NMAC Re-pr & A, 16.48.2.12 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

**16.48.2.13 QUALIFICATIONS AND EXPERIENCE**

**REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL OPERATOR LICENSE:**

\_\_\_\_\_ **A.** \_\_\_\_\_ Applicants for licensure as a private patrol operator must submit the following:

- \_\_\_\_\_ (1) \_\_\_\_\_ completed application, which includes the applicant's:
    - \_\_\_\_\_ (a) \_\_\_\_\_ full name;
    - \_\_\_\_\_ (b) \_\_\_\_\_ mailing address;
    - \_\_\_\_\_ (c) \_\_\_\_\_ electronic mail address;
    - \_\_\_\_\_ (d) \_\_\_\_\_ date of birth;
    - \_\_\_\_\_ (e) \_\_\_\_\_ employment record for the most recent five years;
    - \_\_\_\_\_ (f) \_\_\_\_\_ signed release of information; and
    - \_\_\_\_\_ (g) \_\_\_\_\_ certificate in support of experience qualification to be completed by former or present employer.
  - \_\_\_\_\_ (2) \_\_\_\_\_ proof of successfully passing a jurisprudence examination to be administered by the department;
  - \_\_\_\_\_ (3) \_\_\_\_\_ proof of experience of actual work performed as a security guard consisting of not less than 4,000 hours of actual work performed as a guard, watchman, or patrolman or an equivalent position, one year of which shall have been in a supervisory capacity; the experience shall have been acquired within five years preceding the filing of the application with the department; years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from the applicant's employers and shall be subject to independent verification by the department as it determines is warranted; the burden of proving necessary experience is on the applicant;
  - \_\_\_\_\_ (4) \_\_\_\_\_ non-refundable application fee as set forth in Part 5; and
  - \_\_\_\_\_ (5) \_\_\_\_\_ criminal history background check as set forth in Subsection C of 16.48.2.13 NMAC.
- \_\_\_\_\_ **B.** \_\_\_\_\_ Pursuant to Section

61-27B-34 of the act, NMSA 1978, all applicants for initial issuance of a private patrol operator license in New Mexico shall be required to be fingerprinted to establish positive identification for a federal criminal history background check pursuant to the instruction within the application provided by the department.

**C.** If applicant elects to be firearm certified, proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC and completing a psychological evaluation pursuant to Subsection C of 16.48.2.19 NMAC, or a letter stating they will not be carrying a firearm if they elect not to do so.]

**A. Application requirements:** Applicants for licensure as a private patrol operator must meet the qualifications and requirements described in Section 61-27B-10 NMSA 1978, and submit a completed application, which includes:

- (1) general application information as listed in Subsection C of 16.48.2.8 NMAC;
- (2) qualifying work experience;
- (3) successfully pass a jurisprudence examination to be administered by the department;
- (4) firearm certification, if applicable
- (5) biometric criminal history background check; and
- (6) non-refundable license fee as set forth in Section 16.48.5 NMAC.

**B. Qualifying work experience:** Pursuant to Section 61-27B-10 NMSA 1978, an applicant must submit proof of at least three years' experience of actual work performed as a security guard or an equivalent position. Proof of qualifying experience of actual work performed includes the following:

- (1) not less than 4,000 hours of actual work performed as a guard, watchman, or patrolman or an equivalent position, one year of which shall have been in a

supervisory capacity;  
 (2) experience shall have been acquired within five years preceding the filing of the application with the department;  
 (3) years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from the applicant's employer(s) and is subject to independent verification by the department as it determines is warranted; and  
 (4) the burden of proving necessary experience is on the applicant.

**C. Firearm certification:** Pursuant to Section 61-27B-31, if applicant elects to be firearm certified, the applicant must provide the following:

- (1) proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC, including a copy of applicant's firearms qualification score sheet and the registration number for the department approved instructor; and
- (2) results of a psychological evaluation as set forth in Section 16.48.2.21 NMAC.

**D. Federal criminal history report:** Pursuant to Section 61-27B-34, NMSA 1978, applicants must submit to a biometric federal criminal history background check, as set forth in Subsection H of 16.48.2.8 NMAC.  
 [16.48.2.13 NMAC - Re-pr & A, 16.48.2.13 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

**16.48.2.14 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL COMPANY LICENSE:**

**A.** An application for licensure as a private patrol company must be submitted by an individual that provides the following:

- (1) completed application which includes the person's:
  - (a) full name;

- (b) current electronic mail address;
- (c) date of birth;
- (d) full business name as sole proprietorship, partnership, limited liability company, or corporation;
- (e) current business mailing address and physical business address;
- (f) signed release of information for each owner, officer, and director;
- (g) full name of each business owner, officer, director, partner, or member of the business entity;
- (h) completed and signed Attachment A for each owner, officer, and director;
- (i) uniform description and photographs of uniforms; and
- (j) proof of New Mexico residency for the private patrol operations manager.
  - (2) proof of an owner licensed as a private patrol operator or registered as a level three security guard or proof of an individual licensed as a private patrol operations manager who certifies they will manage the daily operations of the private patrol company;
  - (3) proof of a physical location in New Mexico where records are maintained and made available for department inspection;
  - (4) proof of a New Mexico registered agent if the applicant is a private patrol company located outside of New Mexico; and
  - (5) criminal history background check as set forth in Subsection C of 16.48.2.14 NMAC.

**B.** Proof of compliance with 16.48.2.8 NMAC.

**C.** Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance of a private patrol company license in New Mexico shall be required to be fingerprinted to establish positive identification for a federal criminal history background check. A legal business entity must submit a

fingerprint packet for each owner, and officers or directors pursuant to the instructions within the application provided by the department.]

**A. Application**

**requirements:** Applicants for licensure as a private patrol company must meet the qualifications and requirements described in Section 61-27B-11 NMSA 1978, and submit a completed application, which includes:

- (1) general application information as listed in Subsection C of 16.48.2.8 NMAC;
- (2) business contact phone number;
- (3) business mailing address;
- (4) business email address;
- (5) business name and DBA if applicable;
- (6) identify the type of business (corporations, LLCs, and partnerships must register with the New Mexico secretary of state);
- (7) name and license number of an owner who is licensed as a private patrol officer, or a licensed private patrol operations manager, and certification that they will manage the daily operations of the private patrol company;
- (8) business address of a physical location in New Mexico where records are maintained and made available for department inspection;
- (9) if the applicant is a company located outside of New Mexico, the name and address of a New Mexico registered agent;
- (10) copy of general liability certificate of insurance;
- (11) completed and signed release of information form for each owner, director and officer
- (12) biometric criminal history background check for each owner, director and officer;
- (13) uniform description and photographs of uniforms; and
- (14) non-

refundable license fee as set forth in 16.48.5 NMAC.

**B. Employee**

**termination:** If the contract or employment of a private patrol employee terminates, the private patrol company must notify the department within thirty days from the date of termination of employment of the private patrol employee.

**[B:] C. General liability**

**insurance:** A private patrol company shall file with the department a copy of a general liability certificate of insurance in the amount of one million dollars (\$10,000).

**[C:] D. Federal criminal**

**history report:** Pursuant to Section 61-27B-34, NMSA 1978, all owners, director and officers of a private investigation company must submit to a biometric federal criminal background check, as set forth in Subsection H of 16.48.2.8 NMAC. [16.48.2.14 NMAC Re-pr & A, 16.48.2.14 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

**16.48.2.15 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL OPERATIONS MANAGER LICENSE:**

[Applicants for licensure as a private patrol operations manager must submit the following:

- A.** proof of a current license in good standing as a private patrol operator or a registration as a level three security guard;
- B.** proof of successfully passing a jurisprudence examination to be administered by the department;
- C.** proof of employment with the private patrol company that the applicant is being licensed to manage;
- D.** completed application which includes the following:
  - (1) full name;
  - (2) date of birth;
  - (3) mailing address;

- (4) electronic mail address;
- (5) two, 2X2-inch recent photographs or an upload of a recent electronic headshot photograph;
- (6) private patrol company business name and physical address;
- (7) private patrol company license number;
- (8) certificate of employment signed by the employer;
- (9) signed release of information; and
- (10) proof of New Mexico residency.

**E.** non-refundable

application fee as set forth in Part 5; and

**F.** pursuant to Section

61-27B-34 of the act, NMSA 1978, all applicants for initial issuance of a private patrol operations manager license in New Mexico shall be required to be fingerprinted to establish positive identification for a federal criminal history background check pursuant to the instructions within the application provided by the department.]

**A. Application**

**requirements:** Applicants for licensure as a private patrol operations manager must meet the qualifications and requirements described in Section 61-27B-12 NMSA 1978, and submit a completed application, which includes:

- (1) general application information as listed in Subsection C of 16.48.2.8 NMAC;
- (2) employer business name and DBA if applicable;
- (3) employer private patrol company license number;
- (4) license number of the applicant's New Mexico private patrol operator license or level three security guard registration in good standing;
- (5) successfully pass a jurisprudence examination to be administered by the department;
- (6) a certificate



of employment or contract with the private patrol company that the applicant is being licensed to manage; and

(7) non-refundable license fee as set forth in Section 16.48.5 NMAC.

**B. Certificate of employment:** Under the Private Investigations Act a private patrol operations manager must be employed by, or provide services on a contract basis, to a private patrol company and be responsible for managing the daily operations of the private patrol company. A certificate of employment or contract must be completed and signed by an owner, director or officer of the New Mexico licensed private patrol company the applicant is or will be employed or contracted to manage.

[16.48.2.15 NMAC - Re-pr & A, 16.48.2.15 NMAC, 9/24/2008; A, 5/1/2010; A, 10/26/2021; A, 7/18/2023]

**16.48.2.16 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A POLYGRAPH EXAMINER LICENSE:**

[**A.**— Applicants for licensure as a polygraph examiner must submit the following:

(1) completed application which includes the following, applicant's:

(a) full name;

(b) date of birth;

(c) mailing address;

(d) electronic mail address;

(e) two, 2X2 inch recent photographs or an upload of a recent electronic headshot photograph;

(f) list of states in which you are or have been licensed in another jurisdiction;

(g) signed release of information; and

(h) proof of successfully passing a

jurisprudence exam administered by the department.

(2) proof of graduation from an accredited polygraph examiners course approved by the department;

(3) proof of:

(a) completing a probationary operational competency period and passing an examination of ability approved by the department to practice polygraphy; or

(b) holding, for a minimum of two years immediately preceding the date of application, a current active license to practice polygraphy in another jurisdiction whose standards are equal to or greater than those in New Mexico; the applicant must have no pending disciplinary actions and no formal disciplinary actions issued against the license in the last five years;

(4) non-refundable application fee as set forth in Part 5; and

(5) criminal history background check as set forth in Subsection C of 16.48.2.16 NMAC.

**B.** Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance of a polygraph examiner license in New Mexico shall be required to be fingerprinted to establish positive identification for a federal criminal history background check pursuant to the instructions within the application provided by the department.

**C.** Probationary operational competency period:

(1) During the probationary period, consisting of six months, the polygraph examinations administered by the provisional licensee shall be reviewed for operational competency by a licensed polygraph examiner appointed by the superintendent to serve as a sponsor for the provisional licensee. During the probationary period, the provisional licensee must conduct a minimum of 30 polygraph examinations, a minimum of five of which must be examinations, two of the "specific" examinations, and three

of the "screening type" examinations must be performed in the presence of his or her sponsor, or recorded in their entirety for review by the sponsor or the superintendent. In the case of an applicant who conducts only "specific" examinations, a minimum of five "specific" examinations must be conducted in the presence of his or her sponsor, or recorded in their entirety for review by the sponsor appointed by the superintendent.

(2) The sponsor appointed shall submit a progress report regarding the progress of the provisional licensee every 60 days on forms provided by the department.

(3) If an unsatisfactory report is submitted, the sponsor or the superintendent shall review the polygraph examinations administered by the provisional licensee for operational competency. Upon such review, the superintendent at his or her discretion may revoke the provisional license or take such action as it deems necessary to assure operational competency. Any revocations under this subsection shall be subject to the Uniform Licensing Act, Section 61-1-1 et. seq., NMSA 1978.

(4) Under successful completion of a written examination, a provisional license may be issued.

(5) The superintendent may at any time review the polygraph examinations administered by the provisional licensee for operational competency for any reason.]

**A. Application requirements:** Applicants for licensure as a polygraph examiner must meet the qualifications and requirements described in Section 61-27B-13 NMSA 1978, and submit a completed application, which includes:

(1) general application information as listed in Subsection C of 16.48.2.8 NMAC;

(2) pass a jurisprudence examination to be administered by the department;

(3) copy of

certificate of completion or diploma from an accredited polygraph examiners course approved by the department;

(4) name and license number of probationary sponsor or documentation of probationary completion, if applicable;

(5) biometric criminal history background check; and

(6) non-refundable application fee as set forth in Section 16.48.5 NMAC.

**B. Probationary status:** Applicants who have not been licensed for a minimum of two years immediately prior to the date of application must complete a probationary operational competency period consisting of at least six months, under the supervision of a New Mexico Licensed Polygraph Examiner. Upon successful completion of a written examination, a provisional license may be issued. During the probationary period:

(1) the polygraph examinations administered by the provisional licensee shall be reviewed for operational competency by a licensed polygraph examiner approved by the department to serve as a sponsor for the provisional licensee;

(2) the provisional licensee must conduct a minimum of 30 polygraph examinations, a minimum of five of which must be examinations, two of the "specific" examinations, and three of the "screening type" examinations must be performed in the presence of the sponsor, or recorded in their entirety for review by the sponsor. In the case of an applicant who conducts only "specific" examinations, a minimum of five "specific" examinations must be conducted in the presence of the sponsor, or recorded in their entirety for review by the sponsor.

(3) The sponsor must submit a progress report regarding the progress of the provisional licensee every 60 days on forms provided by the department.

(4) If an unsatisfactory report is submitted, the sponsor shall review the polygraph examinations administered by the provisional licensee for operational competency. Upon recommendation of the sponsor, the department may revoke the provisional license or take such action as it deems necessary to assure operational competency.

**C. Non-probationary status:** Applicants who have a current active license to practice polygraphy in another jurisdiction whose standards are equal to or greater than those in New Mexico for a minimum of two years immediately preceding the date of application, and no pending or formal disciplinary actions issued against the license in the last five years, are not required to complete the probationary period.

**D. Federal criminal history report:** Pursuant to Section 61-27B-34, NMSA 1978, all owners, director and officers of a private investigation company must submit to a biometric federal criminal background check, as set forth in Subsection H of 16.48.2.8 NMAC. [16.48.2.16 NMAC - Re-pr & A, 16.48.2.16 NMAC, 9/24/2008; A, 08/30/09; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

**16.48.2.17 LEVEL ONE SECURITY GUARD APPLICANT QUALIFICATIONS AND EXPERIENCE REQUIREMENTS:**

[A.—Every individual seeking employment or employed as a level one security guard shall file an application for registration with the department.

B.—Applicants for registration as a level one security guard shall submit the following:

- (1) a completed application that includes the applicant's:
  - (a) full name;
  - (b) date of birth;
  - (c) mailing address;
  - (d) electronic mail address;

(c) two, 2X2 inch recent photographs or an upload of a recent electronic headshot photograph;

(f) signed release of information; and

(g) proof of successfully passing a jurisprudence exam administered by the department.

(2) non-refundable registration fee as defined in 16.48.5 NMAC;

(3) proof of completing a department approved training program as defined in Subsection D of 16.48.2.17 NMAC prior to being placed on a guard post for the first time as a level one security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act (21-23-1 NMSA 1978);

(b) an in-house training program provided by a licensed private patrol company using a curriculum provided by the department and taught by an instructor who has been approved by the superintendent; or

(c) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been approved by the superintendent.

**C. BACKGROUND CHECK:** Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance of a level one security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a federal criminal history background check pursuant to the instructions within the application provided by the department.

**D. TRAINING REQUIREMENTS:** An eight hour curriculum is the minimum training required and must be completed within twelve months prior to

application for security guard level one registration. The training shall be taught by a department approved instructor that has been approved by the superintendent. Training and examination shall be conducted pursuant to the curriculum provided by the department. Training shall be taught by an in-person instructor. Curriculum may be reviewed by the department at the direction of the superintendent. This rule adopts and hereby incorporates by reference the Level One Training Curriculum first edition 2020 approved by the advisory board on February 26, 2021, and with the same effective date of this rule.]

**A. Application**

**requirements:** Applicants for licensure as a level one security guard must meet the qualifications and requirements described in Section 61-27B-16 NMSA 1978, and submit a completed application, which includes:

- (1) general application information as listed in Subsection C of 16.48.2.8 NMAC;
- (2) successfully pass a jurisprudence examination to be administered by the department;
- (3) certificate of completing a department approved level one training program;
- (4) biometric criminal history background check;
- (5) non-refundable registration fee as defined in 16.48.5 NMAC;

**B. Level one training**

**certificate:** Training and examination must be conducted pursuant to the curriculum provided by the department and must be taught by an in-person department approved instructor. An eight-hour curriculum is the minimum training required and must be completed within twelve months prior to application for security guard level one registration. This rule adopts and hereby incorporates by reference the Level One Training Curriculum first edition 2020 approved by the advisory board on February 26, 2021, and with the same effective date of this rule.

**C. Federal criminal**

**history report:** Pursuant to Section 61-27B-34, NMSA 1978, all owners, director and officers of a private investigation company must submit to a biometric federal criminal background check, as set forth in Subsection H of 16.48.2.8 NMAC. [16.48.2.17 NMAC - Re-pr & A, 16.48.2.17 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2015; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

**16.48.2.18 LEVEL TWO SECURITY GUARD APPLICANT QUALIFICATIONS AND EXPERIENCE REQUIREMENTS:**

**A.** Every individual seeking employment or employed as a level two security guard shall file an application for registration with the department. To carry a specific endorsement weapon, not including a firearm, will require successful completion of the specific weapon curriculum as defined in Subsection E of 16.48.2.18 NMAC.

**B.** Applicants for registration as a level two security guard shall submit the following:

- (1) completed application that includes the applicant's:
  - (a) full name;
  - (b) date of birth;
  - (c) mailing address;
  - (d) electronic mail address;
  - (e) two, 2X2 inch recent photographs or an upload of a recent electronic headshot photograph; and
  - (f) signed release of information.
- (2) non-refundable registration fee as defined in 16.48.5 NMAC;
- (3) proof of a current registration in good standing as a level one security guard or proof of completing department approved level one security guard training;
- (4) achievement of a passing score of not less than ninety percent on the board

approved jurisprudence examination, provided by the board, covering the Private Investigations Act and the rules;

(5) proof of completing a department approved weapon training program as defined in Subsection D of 16.48.2.18 NMAC for level two security guard training prior to being placed on a guard post for the first time as a level two security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act 21-23-1 NMSA 1978;

(b) an in-house training program provided by a licensed private patrol company using a curriculum provided by the department and taught by an instructor who has been approved by the superintendent;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been approved by the superintendent.

**C. BACKGROUND**

~~CHECK:~~ Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance of a level two security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a federal criminal history background check pursuant to the instructions within the application provided by the department.

**D. TRAINING**

**REQUIREMENTS:** A 20 hour curriculum is the minimum training required and must be completed within twelve months prior to application for security guard level two registration. The training shall be taught by a department approved instructor that has been approved by the superintendent. Training

and examination shall be conducted pursuant to the curriculum provided by the department. Training shall be taught by an in-person instructor. Curriculum may be reviewed by the department at the direction of the superintendent. This rule adopts and hereby incorporates by reference the Level Two Training Curriculum first edition 2020 approved by the advisory board on February 26, 2021, and with the same effective date of this rule.

~~E. **ADDITIONAL ENDORSEMENTS:** An applicant for weapon endorsement must successfully complete training for the specific weapon endorsement. The following endorsement for level two applicants for electronic non-lethal device training shall be done in accordance with manufacturer requirements for any device carried or utilized by the registrant.]~~

A. **Application requirements:** Applicants for licensure as a level two security guard must meet the qualifications and requirements described in Section 61-27B-17 NMSA 1978, and submit a completed application, which includes:

- (1) general application information as listed in Subsection C of 16.48.2.8 NMAC;
- (2) license number of current registration in good standing as a level one security guard or proof of completing department approved level one security guard training;
- (3) successfully pass a jurisprudence examination to be administered by the department;
- (4) certificate of completing a department approved level two training program;
- (5) certificate of completing a department approved weapon training program;
- (6) biometric criminal history background check; and
- (7) non-refundable registration fee as defined in 16.48.5 NMAC.

B. **Level two training certificate:** Training and examination

must be conducted pursuant to the curriculum provided by the department and must be taught by an in-person department approved instructor. A 24 curriculum is the minimum training required and must be completed within 12 months prior to application for security guard level two registration.

C. **Level two weapons training certificate:** An applicant must successfully complete training for the specific weapon to be armed with while on duty. Electronic non-lethal device training shall be done in accordance with manufacturer requirements for any device carried or utilized by the registrant.

D. **Federal criminal history report:** Pursuant to Section 61-27B-34, NMSA 1978, all owners, director and officers of a private investigation company must submit to a biometric federal criminal background check, as set forth in Subsection H of 16.48.2.8 NMAC. [16.48.2.18 NMAC - Re-pr & A, 16.48.2.18 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2015; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

**16.48.2.19 LEVEL THREE SECURITY GUARD APPLICANT QUALIFICATIONS AND EXPERIENCE REQUIREMENTS:**

- [A. — Every individual seeking employment or employed as a level three security guard or level three armored vehicle security guard shall file an application for registration with the department.
- B. — Applicants for registration as a level three security guard shall submit the following:
  - (1) completed application that includes the applicant's:
    - (a) full name;
    - (b) date of birth;
    - (c) mailing address;
    - (d) electronic mail address;
    - (e) two, 2X2-inch recent photographs or an upload of a recent electronic

- headshot photograph; and
- (f) signed Release of Information;
- (2) non-refundable registration fee as defined in 16.48.5 NMAC;
- (3) copy of a current registration in good standing as a level two security guard or proof of completing department approved level one and level two security guard training;
- (4) achievement of a passing score of not less than ninety percent on the board approved jurisprudence examination, provided by the board, covering the Private Investigations Act and the rules;
- (5) proof of completing a department approved firearm training program as defined in Subsection C of 16.48.2.19 NMAC prior to being placed on a guard post for the first time as a level three security guard; that training must be provided by:
  - (a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act;
  - (b) an in-house training program provided by a licensed private patrol company using a curriculum provided by the department and taught by an instructor who has been approved by the superintendent;
  - (c) the New Mexico law enforcement academy; or
  - (d) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been approved by the superintendent;
  - (9) proof of being firearm-certified by an instructor recognized and certified by the New Mexico law enforcement academy or the national rifle association (NRA) law enforcement activities division;
  - (10) proof

of level two weapon endorsement or proof of completing department approved weapon training as defined in Subsection E of 16.48.2.18 NMAC; and

\_\_\_\_\_ (H) \_\_\_\_\_ successful completion of a psychological evaluation as prescribed by the department to determine suitability for carrying firearms.

**C. PSYCHOLOGICAL EVALUATION**

\_\_\_\_\_ (I) \_\_\_\_\_  
Requirements: Prior to certification as a level three security guard in the state of New Mexico, upon initial licensure only, it shall be necessary for each applicant to be examined by a licensed psychologist regarding the individual's mental suitability to carry a firearm within the individual's scope of duty as a licensed level three security guard. Any psychologist licensed and in good standing in the state of New Mexico or other United States jurisdiction, is able to administer the exam:

\_\_\_\_\_ (a) \_\_\_\_\_  
All psychological evaluations shall be on a form provided by the department and must state if the applicant is recommended or not recommended to carry a firearm. If an applicant is not recommended to carry a firearm, the psychologist shall specify the reason(s) the applicant is not recommended to carry a firearm.

\_\_\_\_\_ (b) \_\_\_\_\_  
Evaluations cannot be more than one year old for certification purposes.

\_\_\_\_\_ (c) \_\_\_\_\_  
The original evaluation form shall be signed and transmitted directly to the department within thirty days by the psychologist that performed the psychological evaluation

\_\_\_\_\_ (d) \_\_\_\_\_  
The applicant knowingly providing false information or knowingly failing to disclose information shall be grounds for denial of licensure.

\_\_\_\_\_ (e) \_\_\_\_\_  
Any examinee who fails the psychological evaluation shall not complete another psychological evaluation for at least ninety days from the date indicated on the

original evaluation form signed and transmitted directly to the department by the psychologist that performed the psychological evaluation. If an examinee fails the evaluation, the department will make an electronic annotation in the candidate's file to ensure compliance with this rule.

\_\_\_\_\_ (2) \_\_\_\_\_ Evaluation standards: The psychological evaluation shall consist of at least one of the following psychological assessment to include the Minnesota multi-phasic inventory-2 restructured form, the Minnesota Multi-Phasic Inventory 2, or the Personality Assessment Inventory, as well as two additional measures of emotional functioning (Beck Depression Inventory-II, Beck Anxiety Inventory, PTSD Checklist-C).

**D. FIREARM TRAINING:** A minimum 16 hour curriculum, to include the laws pertaining to firearms and deadly physical force, is the minimum training required and must be completed within twelve months prior to application for security guard level three registration. The training shall be taught by a department approved instructor that has been approved by the superintendent. Training and examination shall be conducted pursuant to the curriculum provided by the department. Training shall be taught by an in-person instructor. Curriculum may be reviewed by the department at the direction of the superintendent. This rule adopts and hereby incorporates by reference the Level Three Training Curriculum first edition 2020 approved by the advisory board on February 26, 2021, and with the same effective date of this rule.

**E. BACKGROUND CHECK:** Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance of a level three security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a federal criminal history background check pursuant to the instructions within the application provided by the department.]

**A. Application requirements:** Applicants for

licensure as a level three security guard must meet the qualifications and requirements described in Section 61-27B-18 NMSA 1978, and submit a completed application, which includes:

\_\_\_\_\_ (1) \_\_\_\_\_ general application information as listed in Subsection C of 16.48.2.8 NMAC;

\_\_\_\_\_ (2) \_\_\_\_\_ license number of current registration in good standing as a level two security guard or certificate of completing department approved level one and level two security guard training;

\_\_\_\_\_ (3) \_\_\_\_\_ successfully pass a jurisprudence examination to be administered by the department;

\_\_\_\_\_ (4) \_\_\_\_\_ certificate of completing a department approved level three training program;

\_\_\_\_\_ (5) \_\_\_\_\_ certificate of completing a department approved weapon training program;

\_\_\_\_\_ (6) \_\_\_\_\_ psychological examination;

\_\_\_\_\_ (7) \_\_\_\_\_ biometric criminal history background check; and

\_\_\_\_\_ (8) \_\_\_\_\_ non-refundable registration fee as defined in 16.48.5 NMAC.

**B. Level three training certification:** Training and examination must be conducted pursuant to the curriculum provided by the department and must be taught by an in-person department approved instructor. A 16-hour curriculum is the minimum training required, to include the laws pertaining to firearms and deadly physical force and must be completed within twelve months prior to application for security guard level three registration.

**C. Level three weapons training certificate:** An applicant for weapon endorsement must successfully complete training, as defined in Subsection E of 16.48.2.18 NMAC, for the specific weapon endorsement. The following endorsement for level two applicants for electronic non-lethal device training shall be done in accordance with manufacturer requirements for any device carried or utilized by the registrant.

**D. Firearm**

**certification:** Pursuant to Section 61-27B-31 NMSA 1978, if applicant elects to be firearm certified, the applicant must provide the following:

(1) proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC, including a copy of applicant's firearms qualification score sheet and the registration number for the department approved instructor; and

(2) results of a psychological evaluation as set forth in 16.48.2.21 NMAC.

**E. Psychological**

**evaluation:** Prior to certification as a level three security guard, each applicant must be evaluated by a licensed psychologist regarding the individual's mental suitability to carry a firearm within the individual's scope of duty as a licensed level three security guard. Any psychologist licensed and in good standing in the state of New Mexico or other United States jurisdiction, may administer the evaluation.

(1) All psychological evaluations shall be on a form provided by the department and must state if the applicant is recommended or not recommended to carry a firearm. If an applicant is not recommended to carry a firearm, the psychologist shall specify the reason(s) the applicant is not recommended to carry a firearm.

(2) Evaluations cannot be more than one year old for certification purposes.

(3) The original evaluation form must be signed and transmitted directly to the department within thirty days by the psychologist that performed the psychological evaluation

(4) An applicant knowingly providing false information or knowingly failing to disclose information shall be grounds for denial of licensure.

(5) Any applicant who fails the psychological evaluation shall not complete another psychological evaluation for at least ninety days from the date indicated

on the original evaluation form signed and transmitted directly to the department by the psychologist that performed the psychological evaluation. If an applicant fails the evaluation, the department will make an electronic annotation in the candidate's file to ensure compliance with this rule.

(6) The psychological evaluation shall consist of at least one of the following psychological assessments to include the Minnesota multi-phasic inventory-2 restructured form, the Minnesota Multi-Phasic Inventory 2, or the Personality Assessment Inventory, as well as two additional measures of emotional functioning (Beck Depression Inventory-II, Beck Anxiety Inventory, PTSD Checklist-C).

**F. Federal criminal**

**history report:** Pursuant to Section 61-27B-34 NMSA 1978, all applicants for licensure as a security guard level three must submit to a biometric federal criminal background check, as set forth in Subsection H of 16.48.2.8.

[16.48.2.19 NMAC - Re-pr & A, 16.48.2.19 NMAC, 9/24/2008; A, 11/28/2009; A, 5/1/2010; A, 1/15/2015; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

**16.48.2.20 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR SECURITY GUARD**

**INSTRUCTOR [APPROVAL]**

**REGISTRATION:** [Every individual seeking to be an approved instructor shall complete an application for approval on a form provided by the department. The department shall review applications, approve instructors, and maintain a list of current instructor authorized to teach the department's approved curriculum.

**A.** Proof of professional certification and requirements specific to each level of instruction:

(1) Level One Instructor: an individual shall submit proof of instructor certification related

to the level one training curriculum, issued by a law enforcement academy (LEA), a recognized federal government entity, United States military branch, or the federal law enforcement training center (FLETC). The certification submitted must have been issued within four years preceding the date the application is submitted;

(2) Level Two Instructor: an individual must submit proof of approval as a level one instructor and, shall submit proof of specific weapon instructor certification related to the level two training curriculum, issued by the weapon manufacturer. The certification must have been issued within four years preceding the date the application is submitted;

(3) Level Three Instructor: an individual shall submit proof of a firearms instructor certification issued by a law enforcement academy (LEA), a recognized federal government entity, United States military branch, the federal law enforcement training center (FLETC), or the national rifle association law enforcement activities division. The certification must have been issued within four years preceding the date the application is submitted.

**B.** Every four years from the approval date or as requested by the department, the instructors must resubmit certification that takes place within four years preceding the renewal request in order to remain approved.

**C.** Anyone approved as an instructor must complete a minimum of four hours of continuing education specific to instructor development and case law specific to security every four years from the approval date. Continuing education may be provided by the department and subject to periodic review. Continuing education for instructors shall not count toward continuing education credit required for renewal of an individual licensure or certification pursuant to 16.48.6.8 NMAC.]

An individual seeking to be a

registered instructor shall complete an application on a form provided by the department. The department shall review applications, register instructors, and maintain a list of current instructors authorized to teach the department's approved curriculum.

A. Proof of professional certification and requirements specific to each level of instruction.

(1)

Level One Instructor: instructor certification related to the level one training curriculum topics, issued by a law enforcement academy (LEA), an accredited higher education institution, United States military branch, or the federal law enforcement training center (FLETC). The certification submitted must have been issued within four years preceding the date the application is submitted;

(2) Level

Two Instructor: approval as a level one instructor and, specific weapon instructor certification related to the level two training curriculum, issued by the respective weapon manufacturer. Weapon certification must have been issued within four years preceding the date the application is submitted;

(3)

Level Three Instructor: firearms instructor certification issued by a law enforcement academy (LEA), a recognized federal government entity, United States military branch, the federal law enforcement training center (FLETC), or the national rifle association law enforcement activities division. Firearms certification must have been issued within four years preceding the date the application is submitted.

B. Every four years from the registration date or as requested by the department, the instructors must resubmit certification that takes place within four years preceding the renewal request in order to remain registered.

C. A registered instructor must complete a minimum of four hours of continuing education

specific to instructor development and case law specific to security every four years from the date of registration. Continuing education may be provided by the department and subject to periodic review. Continuing education for instructors shall not count toward continuing education credit required for renewal of an individual licensure or certification pursuant to 16.48.6.8 NMAC.

[16.48.2.20 NMAC - N, 1/15/2019; A, 10/26/2021; A, 2/8/2022; A, 7/18/2023]

**16.48.2.21 [RESERVED]  
PSYCHOLOGICAL  
EVALUATION:**

A. Requirements:

If an applicant elects to be firearm certified, it shall be necessary for each applicant to be examined by a licensed psychologist regarding the individual's mental suitability to carry a firearm within the individual's scope of duty as a licensed level three security guard. Any psychologist licensed and in good standing in the state of New Mexico or other United States jurisdiction, is able to administer the exam.

(1) All

psychological evaluations shall be on a form provided by the department and must state if the applicant is recommended or not recommended to carry a firearm. If an applicant is not recommended to carry a firearm, the psychologist shall specify the reason(s) the applicant is not recommended to carry a firearm.

(2)

Evaluations cannot be more than one year old for certification purposes.

(3) The

original evaluation form shall be signed and transmitted directly to the department within 30 days by the psychologist that performed the psychological evaluation

(4) The

applicant knowingly providing false information or knowingly failing to disclose information shall be grounds for denial of licensure.

(5) Any

examinee who fails the psychological

evaluation shall not complete another psychological evaluation for at least ninety days from the date indicated on the original evaluation form signed and transmitted directly to the department by the psychologist that performed the psychological evaluation. If an examinee fails the evaluation, the department will make an electronic annotation in the candidate's file to ensure compliance with this rule.

(6) The

department may request a subsequent psychological evaluation of an individual licensed pursuant to the Private Investigations Act to re-evaluate the suitability of the individual in the interest of maintaining public safety.

B. Evaluation

**standards:** The psychological evaluation shall consist of at least one of the following psychological assessment to include the Minnesota multi-phasic inventory-2 restructured form, the Minnesota multi-phasic inventory 2, or the personality assessment inventory, as well as two additional measures of emotional functioning (Beck Depression Inventory-II, Beck Anxiety Inventory, PTSD Checklist-C).

[16.48.2.21 NMAC – N, 7/18/2023]

**16.48.2.22 CESSATION OF LICENSE BUSINESS:** [A registrant or licensee subject to the Private Investigations Act who ceases to do business as a registrant or licensee before the registration or license expiration date shall submit written notice of cancellation of his license to the department within 30 days of cessation of such business.]

A registrant or licensee subject to the Private Investigations Act who ceases to do business as a registrant or licensee before the registration or license expiration date shall submit written notice of cancellation of the registration or license to the department within 30 days of cessation of such business.

[16.48.2.22 NMAC - Rn, 16.48.2.21 NMAC, 1/15/2019; A, 7/18/2023]

**16.48.2.24 [RESERVED] LIMITED EXEMPTION TO LICENSURE:** An investigator licensed in another state may conduct business in New Mexico only under the circumstances indicated below:

A. the investigation must be initiated in the investigator's home state;

B. the investigator may spend no more than 30 days per case while conducting an investigation in another state; and

C. the investigator is prohibited from soliciting business while in New Mexico and from establishing a business or setting up residence while conducting an investigation in New Mexico.

[16.48.2.24 NMAC - Rn, 16.48.2.23 NMAC, 1/15/2019; A, 7/18/2023]

**16.48.2.25 RECIPROCITY:**

~~A. An investigator licensed in another state may conduct business in New Mexico only under the circumstances indicated below:~~

~~(1) the investigation must be initiated in the investigator's home state;~~

~~(2) the investigator may spend no more than 30 days per case while conducting an investigation in another state;~~

~~(3) the investigator is prohibited from soliciting business while in another state and from establishing a business or setting up residence while conducting an investigation in that state.~~

~~B. A. An applicant for licensure or registration by reciprocity may not engage in the practice of private investigations, private patrol operator, polygraph examiners or security guard in New Mexico until approval for licensure by reciprocity has been given and the department has issued an initial license.~~

~~C. B. Acceptance of a reciprocity applicant for licensure or registration is subject to department approval. All applicants for licensure or registration by reciprocity shall:~~

~~(1) be duly and currently licensed or registered, for at least one year, in at least one other state;~~

(2) have no history of disciplinary action within the last [five] year against any professional license or registration;

(3) provide proof of having met education and experience requirements in the state of licensure similar to or better than those required in New Mexico.

[16.48.2.25 NMAC - Rn, 16.48.2.24, 1/15/2019; A, 2/8/2022; A, 7/18/2023]

**REGULATION AND LICENSING DEPARTMENT**

**This is an amendment to 16.48.5 NMAC, Section 8, effective 07/18/2023.**

**16.48.5.8 FEE SCHEDULE:**

A. All fees payable to the department are non-refundable.

B. Application fees:

- (1) private investigator \$100
- (2) private investigation company \$100.00]
- (3) (2) private investigations manager \$100
- (4) private investigations employee \$25.00]
- (5) (3) private patrol operator \$100
- (6) private patrol company \$100.00]
- (7) (4) private patrol operations manager \$100
- (8) (5) polygraph examiner \$100
- (6) instructor \$100

- C. Initial registration (three year term) and renewal fees:
- (1) security guard level one \$[75] 50
- (2) security guard level two \$[75] 50

(3) security guard level three \$[150] 75

(4) private investigations employee \$[75] 100

(5) private patrol employees \$100

(6) instructor \$100

D. Initial license (three year term) and renewal fees:

(1) private investigator \$[45] 300

(2) private investigations manager \$[300.00] 200

(3) private patrol operator \$[450.00] 300

(4) private patrol operations manager \$[300.00] 200

(5) polygraph examiner \$[600.00] 300

(6) [late fee on renewals] \$100.00] private investigations company \$300

(7) private patrol company \$300

E. Other fees applying to private investigators, private patrol operators and polygraph examiners:

(1) [special event permit] change in license \$[100.00] 200

(2) [private patrol branch office certificate] late fee on license or registration renewals \$100

(3) [change in license] special event permit \$[200.00] 100

(4) private patrol company special event license \$50

(5) polygraph examination \$100

(6) security guard card \$10



**F. Background fees** shall be the amount established by the department of public safety for the processing of criminal history background checks.  
[16.48.5.8 NMAC - Re-pr & A, 16.48.5.8 NMAC, 9/24/2008; A, 5/1/2010; A, 5/12/2016; A, 5/25/2021; A, 2/8/2022; A, 7/18/2023]

## REGULATION AND LICENSING DEPARTMENT

**This is an amendment to 16.48.9 NMAC, Sections 7 and 12, effective 7/18/2023.**

**16.48.9.7 DEFINITIONS:**  
As used in this section, the following words and phrases have the following meanings:

- A. "Applicant"**  
has the same meaning as defined in Subsection B of Section 61-1-2 NMSA 1978.
- B. "Complaint"**  
means a written complaint on a form provided by the department and filed with the department against a licensee or registrant.
- C. "Complainant"**  
means the party who files a complaint against a licensee or registrant.
- D. "Disqualifying criminal conviction"** has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.
- E. "Hearing"**  
means a formal evidentiary hearing conducted pursuant to the Uniform Licensing Act, whereby the respondent is afforded due process and the opportunity to be heard by the department, or its designated hearing officer, before the department takes action which might result in disciplinary action against the respondent's application for license or registration, or respondent's license or registration issued pursuant to the Private Investigations Act.
- F. "Hearing officer"**  
means the person designated by the department at its discretion, to conduct hearings under the Uniform Licensing Act.

**G. "Notice of contemplated action" or "NCA"** means the administrative pleading required by the Uniform Licensing Act whereby initiating a formal disciplinary proceeding and notifying a respondent of the department's intent to take action based upon the violations of practice charged in the subject complaint, and providing the respondent the opportunity to request a hearing before the department.

**H. "Pre-NCA settlement agreement"** means an agreement reached between the department and the respondent as an option in lieu of the department proceeding with referring the matter for issuance of a notice of contemplated action.

**I. "Respondent"**  
means an applicant, licensee, or registrant that is the subject of complaint filed with the department.

**J. "[Revoke a license] Revocation"** has the same meaning as defined in Subsection [D] I of Section 61-1-2 NMSA 1978.

**K. "Subject matter expert"** means a member of the private investigations profession or an advisory board member who has been designated to review complaints at the request of the superintendent.

**L. "[Suspend a license] Suspension"** has the same meaning as defined in Subsection [E] K of Section 61-1-2 NMSA 1978.

**M. "Violation"**  
means a violation of the Private Investigations Act or the rules duly adopted by the department pursuant to the Private Investigations Act.  
[16.48.9.7 NMAC – N, 12/28/2021; A, 7/18/2023]

### **16.48.9.12 DEPARTMENT ACTION ON A COMPLAINT:**

**A.** If the department determines after investigation, that there is not sufficient evidence or cause to issue a notice of contemplated action, or other disciplinary action, the case shall be closed and the department's assigned compliance staff shall send a letter of the decision to both the complainant and respondent. The letter will state

the department's decision and that the decision is final unless new evidence is presented.

**B.** If the department determines that there is sufficient evidence or cause to issue a notice of contemplated action, the department may send a referral to the office of the attorney general by forwarding a complete copy of the investigation file, including exhibits, for assignment of an administrator prosecutor.

**C.** The department may take any other action with regard to a complaint which is within its authority, including referring the complaint to the attorney general for injunctive proceedings; or referring the complaint to the attorney general or a district attorney for criminal prosecution of persons alleged to be engaging in business regulated by the Private Investigations Act who fraudulently makes a representation as being a licensee or registrant, represents employment by a licensee, or violates a mandatory requirement set forth in statute or rule subject to criminal penalties.

**D.** At the discretion of the superintendent, the complaint may be referred to a subject matter expert or to the advisory board for review.

**(1)** Any appointed subject matter expert or advisory board member who believes that they are not capable of judging a particular complaint fairly on the basis of the member's own circumstances shall not participate in the decision to consider the facts and circumstances of the complaint or to issue a notice of contemplated action and must not participate in the final recommendation to the superintendent.

**(2)** Where the appearance of impropriety or any violation of the government conduct act may occur, an advisory board member shall recuse from any consideration of the complaint, the hearing, deliberation or recommendation to the decision of the department.

**E.** Before the issuance of a notice of contemplated action, the superintendent may authorize

department staff to confer with the respondent for the purpose of seeking a pre-NCA settlement agreement. Any proposed pre-NCA settlement agreement must be approved by the superintendent and must be negotiated with the consent of the respondent, and shall include a knowing and intentional waiver by the respondent of the right to a hearing under the Uniform Licensing Act. The respondent’s attorney should sign the pre-NCA settlement agreement or the respondent must acknowledge that the respondent has been advised to seek the advice of an attorney and has waived the right to do so.

**F.** After issuance of a notice of contemplated action, the administrative prosecutor may negotiate a settlement agreement with the respondent. Any proposed settlement agreement must be approved by the superintendent and must be negotiated with the consent of the respondent, and shall include a knowing and intentional waiver by the respondent of the right to a hearing under the Uniform Licensing Act. The respondent’s attorney should sign the settlement agreement or the respondent must acknowledge that the respondent has been advised to seek the advice of an attorney and has waived the right to do so.

**G.** All disciplinary hearings shall be conducted in accordance with the Uniform Licensing Act. The superintendent will appoint a hearing officer to conduct the hearing.

**(1)** The hearing officer will be fully authorized to make all necessary procedural and evidentiary decisions on behalf of the department, including, but not limited to, matters related to discovery, continuances, time extensions, amendment, pre-hearing conferences, and proposed findings of fact and conclusions of law.

**(2)** The hearing officer may make such orders the hearing officer determines may be necessary to including but not limited to discovery schedules, pleading schedules, and briefing schedules.

**(3)** No party will engage in ex-parte communications with the hearing officer or any member of the advisory board or department staff in any matter in which a notice of contemplated action has been issued.

**(4)** Respondents who have been found culpable and sanctioned by the department may be ~~[responsible for the payments of all administrative and investigative costs, and the costs of conducting the hearing]~~ assessed a fine for each violation, not to exceed \$1,000 unless a greater amount is provided by law, pursuant to Subsection L of Section 61-1-3 NMSA 1978.

**H.** Pursuant to the Private Investigations Act and the Uniform Licensing Act, the department, in its sole and sound discretion, may impose any of the following penalties against a respondent upon a finding of a violation of the Private Investigations Act, the rules promulgated under the Private Investigations Act, or the Code of Ethics and Creed of Conduct adopted by the department, including for those acts of “unprofessional conduct” defined in 16.48.1.8 NMAC:

- (1)** denial of application for licensure;
- (2)** refusal to renew licensure;
- (3)** written reprimand;
- (4)** written censure;
- (5)** imposition of probationary conditions on a license for a specified time period;
- (6)** the requirement that the licensee or applicant complete a program of remedial education;
- (7)** corrective action as specified by the superintendent;
- (8)** suspension of a license;
- (9)** revocation of a license; and
- (10)** in addition to or in lieu of any of the foregoing, ~~[payment of a fine for each violation~~

~~found]~~ the department may assess a fine for unlicensed activity, not to exceed ~~[\$1000]~~ \$10,000 for [a] each violation of the Private Investigations Act ~~[or against a]~~ by a person to have engaged in practice regulated by the department without appropriate license or registration ~~[in an amount not to exceed \$2000, unless a greater amount is provided by law].~~

**I.** A respondent whose license has been revoked may reapply for licensure one year from the effective date of the revocation.

**(1)** The department shall have discretion to approve or to reject any application for reinstatement of the license following the one year period of revocation.

**(2)** If the department determines that rejection of the application for reinstatement of the license will be considered, it shall do so only in accordance with the notice and hearing provisions of the Uniform Licensing Act.

**(3)** No application for reinstatement shall be granted unless all fines and costs assessments related to the license revocation proceeding shall have been paid in full. [16.48.9.12 NMAC – N, 12/28/2021; A, 7/18/2023]

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## End of Adopted Rules

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**Other Material Related to Administrative Law**


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**REGULATION  
AND LICENSING  
DEPARTMENT  
BOARDS AND COMMISSIONS  
DIVISION**

**NOTICE OF MINOR,  
NONSUBSTANTIVE  
CORRECTION**

The Regulation and Licensing Department, Boards and Commissions Division gives Notice of a Minor, Nonsubstantive Correction to 16.48.2 NMAC, 16.42.3 NMAC, 16.42.4 NMAC and 16.42.5 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

16.48.2 NMAC

Section 18: Changed numbering for Subsections C through E to Subsections B through D.

Section 14: In Subsection A, there were two paragraphs numbered (11). The second paragraph (11) was renumbered to (12) and the subsequent paragraphs were renumbered to (13) and (14), accordingly.

Section 18: In Subsection A, there were two paragraphs numbered (3). The second paragraph (3) was renumbered to (4) and the subsequent paragraphs were renumbered to (5)(6) and (7), accordingly.

Section 25: In Subsection B, paragraph (2) the amended text should read: "...last [five] year..." and not "...last five years..." and so the sentence was corrected.

16.42.3 NMAC ; 16.42.4 NMAC ;  
and 16.42.5 NMAC

In the amendment sentence for each of the above amendments for each respective part, removed errata mention of Section 5 as an amended section.

A copy of this Notification will be filed with the official version of each of the above rules.

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**End of Other Material  
Related to Administrative  
Law**

# 2023 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXXIV, Issues 1-24

<b>Issue</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
<b>Issue 1</b>	<b>January 5</b>	<b>January 18</b>
<b>Issue 2</b>	<b>January 19</b>	<b>January 31</b>
<b>Issue 3</b>	<b>February 2</b>	<b>February 14</b>
<b>Issue 4</b>	<b>February 16</b>	<b>February 28</b>
<b>Issue 5</b>	<b>March 2</b>	<b>March 14</b>
<b>Issue 6</b>	<b>March 16</b>	<b>March 28</b>
<b>Issue 7</b>	<b>March 30</b>	<b>April 11</b>
<b>Issue 8</b>	<b>April 13</b>	<b>April 25</b>
<b>Issue 9</b>	<b>May 4</b>	<b>May 16</b>
<b>Issue 10</b>	<b>May 18</b>	<b>May 31</b>
<b>Issue 11</b>	<b>June 1</b>	<b>June 13</b>
<b>Issue 12</b>	<b>June 15</b>	<b>June 27</b>
<b>Issue 13</b>	<b>July 7</b>	<b>July 18</b>
<b>Issue 14</b>	<b>July 20</b>	<b>July 31</b>
<b>Issue 15</b>	<b>August 3</b>	<b>August 15</b>
<b>Issue 16</b>	<b>August 17</b>	<b>August 29</b>
<b>Issue 17</b>	<b>August 31</b>	<b>September 12</b>
<b>Issue 18</b>	<b>September 14</b>	<b>September 26</b>
<b>Issue 19</b>	<b>September 28</b>	<b>October 10</b>
<b>Issue 20</b>	<b>October 12</b>	<b>October 24</b>
<b>Issue 21</b>	<b>October 26</b>	<b>November 7</b>
<b>Issue 22</b>	<b>November 9</b>	<b>November 21</b>
<b>Issue 23</b>	<b>November 22</b>	<b>December 5</b>
<b>Issue 24</b>	<b>December 7</b>	<b>December 19</b>

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