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New Mexico Register

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

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The New Mexico Register

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New Mexico Register

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Notices of Rulemaking and Proposed Rules

**ENERGY, MINERALS
AND NATURAL
RESOURCES
DEPARTMENT
STATE PARKS DIVISION**

**NOTICE OF TERMINATION OF
PUBLIC HEARING**

The New Mexico Energy, Minerals and Natural Resources Department, State Parks Division is providing notice to vacate the public rule hearing noticed in Issue 4 of the New Mexico Register published February 27, 2024, scheduled for Monday, April 1, 2024, at 6:00 p.m., in accordance with Subsection C of Section 14-4-5 NMSA 1978. The proposed repeal and replace for 18.17.2 Boating Operation and Safety and 19.5.1 General Provisions and the amendment for 19.5.2 Park Visitor Provisions and 19.5.6 Park Fees will be heard at a hearing to be rescheduled at a later date.

**ENERGY, MINERALS
AND NATURAL
RESOURCES
DEPARTMENT
YOUTH CONSERVATION
CORPS COMMISSION**

**NOTICE OF PROPOSED
RULEMAKING**

The State of New Mexico, Youth Conservation Corps Commission (Commission) hereby gives notice that the Commission will conduct a public hearing on June 11, 2024, from 10AM to 11AM in Secretary’s Conference Room on the 3rd floor of the Wendell Chino Building 1220 South St. Francis Drive, Santa Fe, NM 87505. The purpose of the public hearing will be to obtain input on the repeal and replacement of its rule 11.2.171 NMAC, The Youth Conservation Corps (YCC) Program. The public may join and comment in person or online using this link: <https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting?rtc=1>; Meeting ID 297 872 607 804, passcode nYNJZy. Oral and written comments will be accepted at the public hearing; and the hearing will be recorded.

The purpose of this proposed rule repeal and replacement is to make changes that clarify the standards and requirements of the Youth Conservation Corps program as affected by Commission decisions and Attorney General opinions.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Sarah Wood at (505) 470-3710 as soon as possible. The Agency requires at least ten (10) days’ advance notice to provide requested special accommodations.

Public comment period: The Commission is currently accepting comments through 5:00pm, May 31, 2024. Interested individuals may submit written comments to Sarah Wood, via email at sarah.wood@emnrd.nm.gov ; fax (505) 476-3220; by postal mail to Youth Conservation Corps, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505; or by telephone at 505 470-3710. Individuals may also submit written or oral comments at one or both of the public hearings.

All comments will be posted to the Commission’s website at <http://www.emnrd.state.nm.us/YCC/yccactrules.html> within three business days.

Statutory Authority: The Youth Conservation Corps Act, Sections 9-5B-1 to 9-5B-11 NMSA 1978 (1992, as amended through 2019), specifically authorizes the Commission to “adopt rules that are necessary for the proper administration of the New Mexico Youth Conservation Corps Act.”

The proposed rule may be accessed on the Commission’s website (<https://www.emnrd.nm.gov/about-ycc/ycc-annual-reports/>); obtained via email from Sarah Wood, sarah.wood@emnrd.nm.gov , (505) 470-3710; or picked up at the YCC office, 3rd floor, 1220 South St. Francis Drive, Santa Fe, NM 87505.

The proposed rule makes the following substantive changes:

11.2.171.7:

B: Deleted the definition of “Native American” definition.

C: Defines “permanent capital improvement” to mean a durable upgrade, adaptation , or enhancement of a property enduring for more than one year that increases the property value.

E: Defines “state agency” to mean any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the purchasing division of the general services department and the state purchasing agent but does not include local public bodies.

11.2.171.8:

Adds “The Commission may reach out directly to state agencies, and state agencies may reach out directly to the Commission to create cooperative multi-year agreements for funding YCC projects. The Commission shall prioritize funding state agencies with missions that involve conservation work on public land and do not have funding for youth projects and the authority to hire seasonal employees designated as corps members.”

11.2.171.9:

D. Replaces the term “Native American” with the word “indigenous”.

11.2.171.14:

G. Reduces the in-kind

or cash match from 20% of funds requested to 10% of funds requested.

11.2.171.14:

E: Replaces the term “Native American” with the word “indigenous”.

11.2.171.15:

B.

(3): Permits projects on private land that primarily benefit the public and provide only an incidental benefit to private individuals.

11.2.171.16:

D.

(2): Allows project sponsors to increase starting wages to adjust to local labor markets.

(3): Removes the 10% limit on corps member wage increases based on promotions, performance or additional responsibilities.

(4): Added compassionate pay to the kinds of leave YCC will support.

(5): Allows the Commission to compensate for occasional overtime related to travel or other unavoidable circumstances.

11.2.171.17:

D.

(1)

(a)

Adds software, computers, and room & board at educational institutions as reimbursable expenses for the tuition voucher benefit.

**ENVIRONMENT
DEPARTMENT**

**NOTICE OF PUBLIC HEARING
FOR THE NEW MEXICO
ENVIRONMENT
DEPARTMENT’S PROPOSED
WATER REUSE REGULATIONS,
GROUND AND SURFACE WATER
PROTECTION – SUPPLEMENTAL
REQUIREMENTS FOR WATER
REUSE (20.6.8 NMAC)**

The Water Quality Control Commission (“WQCC”) will hold a public hearing beginning following the WQCC’s scheduled meeting beginning at 9:00 am **on May 13, 2024**, and continuing thereafter as necessary, via the WebEx video conferencing platform at <https://nmed-oit.webex.com/nmed-oit/j.php?MTID=me5f46b2f4f68d125f91be833cebefe78> and in-person in Room 317 at the New Mexico State Capitol, 411 S. Capitol Street, in Santa Fe, New Mexico. The hearing will last as long as required to hear all testimony, evidence, and public comment. Detailed information concerning the time and location can be found on the New Mexico Environment Department’s (“NMED’s”) Event calendar at <https://www.env.nm.gov/events-calendar/>. Please visit the WQCC website prior to the hearing for any updates at <https://www.env.nm.gov/opf/water-quality-control-commission/>.

The purpose of the public hearing is to consider NMED’s proposed water reuse regulations, *Ground and Surface Water Protection – Supplemental Requirements for Water Reuse* (20.6.8 NMAC), which include the restricted reuse of treated produced water (water derived from oil and gas activities) for purposes outside of and unrelated to the oil and gas industry. The proposed regulations may be reviewed online at <https://www.env.nm.gov/opf/water-quality-control-commission/>. Technical information that served as a basis for the proposed rule may be obtained from the Department upon request. Persons who wish to review a physical copy of the proposed amendments should contact the WQCC Administrator at the address provided below.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing; to introduce exhibits; and to examine witnesses.

Pursuant to 20.1.6.202 NMAC and the Pre-Hearing Order issued

by the hearing officer on February 13, 2024, those wishing to present technical testimony must file a written notice of intent to present technical testimony with the WQCC Administrator **on or before 5:00 p.m. Mountain Standard Time on April, 15 2024**, 28 days prior to the hearing. Notices of intent to present technical testimony should reference the name of the regulation, the date of the hearing, and the docket number, **WQCC 23-84(R)**.

The form and content of the notice of intent to present technical testimony shall:

- Identify the person for whom the witness(es) will testify;
- Identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their education and work background;
- Include a copy of the full written direct testimony of each technical witness in narrative form;
- Include the text of any recommended modifications to the proposed regulatory change; and
- List and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

Notices of intent to present technical testimony shall be filed with:
Pamela Jones, WQCC Administrator
New Mexico Environment
Department
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502
Telephone: (505) 660-4305
Email: pamela.jones@env.nm.gov

Those wishing to do so may offer non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony at or before the hearing. Written comments regarding the proposed rule may be addressed to Pamela Jones, WQCC Administrator, at the above address, and should

reference docket number **WQCC 23-84(R)**. Pursuant to 20.1.6.203 NMAC, any person may file an entry of appearance as a party. The entry of appearance shall be filed with the WQCC Administrator, at the above address, no later than April 23, 2024, 20 days before the date of the hearing.

The hearing will be conducted in accordance with the WQCC Rulemaking Procedures (20.1.6 NMAC); the Water Quality Act, Sections 74-6-1 to -17 NMSA 1978 (1967 as amended through 2019); the State Rules Act, Section 14-4-5.3 NMSA 1978; and other applicable procedures.

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Pamela Jones, WQCC Administrator, at the above address, at least 14 days prior to the hearing date. (TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

STATEMENT OF NON-DISCRIMINATION

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kate Cardenas, Non-Discrimination Coordinator, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469,

Santa Fe, NM 87502 or (505) 827-2855 or nd.coordinator@env.nm.gov. If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact NMED's Non-Discrimination Coordinator identified above.

AVISO DE AUDIENCIA PÚBLICA PARA LAS REGULACIONES PROPUESTAS PARA LA REUTILIZACIÓN DEL AGUA DEL DEPARTAMENTO DE MEDIO AMBIENTE DE NUEVO MÉXICO, PROTECCIÓN DE AGUAS SUBTERRÁNEAS Y SUPERFICIALES – REQUISITOS SUPLEMENTARIOS PARA LA REUTILIZACIÓN DEL AGUA (20.6.8 NMAC)

La Comisión de Control de Calidad del Agua ("WQCC" por sus siglas en inglés) celebrará una audiencia pública que comenzará después de la reunión programada de la WQCC a partir de las 9:00 a. m. del **13 de mayo de 2024**, y continuará según sea necesario, a través de la plataforma de videoconferencia WebEx en <https://nmed-oit.webex.com/nmed-oit/j.php?MTID=me5f46b2f4f68d125f91be833cebef78> y en persona en la Sala 317 del Capitolio del Estado de Nuevo México, 411 S. Capitol Street, en Santa Fe, Nuevo México. La audiencia durará el tiempo necesario para escuchar todos los testimonios, pruebas y comentarios públicos. Puede encontrar información detallada sobre la hora y la ubicación en el calendario de eventos del Departamento de Medio Ambiente de Nuevo México ("NMED") en <https://www.env.nm.gov/events-calendar/>. Visite el sitio web de WQCC antes de la audiencia para obtener actualizaciones en <https://www.env.nm.gov/opf/water-quality-control-commission/>. El propósito de la audiencia pública es considerar las regulaciones propuestas de reutilización de agua por el NMED, *Protección de las aguas subterráneas y superficiales – Requisitos suplementarios para la reutilización del agua* (20.6.8 NMAC), que incluyen la reutilización

restringida de agua producida tratada (agua derivada de actividades de petróleo y gas) para fines ajenos y no relacionados con la industria del petróleo y el gas. Las regulaciones propuestas se pueden revisar en línea en <https://www.env.nm.gov/opf/water-quality-control-commission/>. La información técnica que sirvió de base para la norma propuesta se puede obtener del Departamento previa solicitud. Las personas que deseen revisar una copia impresa de las enmiendas propuestas deben comunicarse con la administradora de la WQCC en la dirección que se proporciona a continuación. A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar pruebas, datos, opiniones y argumentos relevantes, de forma oral o por escrito; presentar exhibiciones; e interrogar a los testigos. De conformidad con 20.1.6.202 NMAC y la orden previa a la audiencia emitida por el funcionario de audiencias el 13 de febrero de 2024, aquellos que deseen presentar testimonio técnico deben presentar una notificación por escrito de la intención de presentar testimonio técnico ante la administradora de la WQCC **a más tardar a las 5:00 p.m., hora estándar de la montaña, del 15 de abril de 2024**, 28 días antes de la audiencia. Los avisos de intención de presentar testimonio técnico deben hacer referencia al nombre de la regulación, la fecha de la audiencia y el número de expediente, **WQCC 23-84(R)**.

La forma y contenido del aviso de intención de presentar testimonio técnico deberá:

- Identificar a la persona en cuyo nombre testificará el testigo o testigos;
- Identificar cada testigo técnico que la persona pretenda presentar e indicar las calificaciones de ese testigo, incluida una descripción de su historial laboral y académico;
- Incluir una copia del testimonio directo escrito completo de cada testigo técnico en forma narrativa;

- Incluir el texto de cualquier modificación recomendada al cambio regulatorio propuesto; y
- Enumerar y adjuntar todas las pruebas instrumentales que se prevé esa persona ofrecerá en la audiencia, incluida cualquier declaración propuesta de motivos para la adopción de normas.

Las notificaciones de intención de presentar testimonio técnico deberán presentarse ante:

Pamela Jones, administradora de la WQCC

Departamento de Medio Ambiente de Nuevo México

Harold Runnels Building

P.O. Box 5469

Santa Fe, NM 87502

Teléfono: (505) 660-4305

Correo electrónico: pamela.jones@env.nm.gov

Las personas que deseen hacerlo pueden ofrecer comentarios públicos no técnicos en la audiencia o presentar una declaración no técnica por escrito en lugar de un testimonio oral durante la audiencia o antes de la audiencia.

Los comentarios por escrito sobre la norma propuesta pueden dirigirse a Pamela Jones, administradora de la WQCC, a la dirección anterior, y deben hacer referencia al número de expediente **WQCC 23-84(R)**. De conformidad con 20.1.6.203 NMAC, cualquier persona puede presentar un Registro de Comparecencia como una parte. El Registro de Comparecencia deberá presentarse ante la administradora de la WQCC, en la dirección anterior, a más tardar el 23 de abril de 2024, 20 días antes de la fecha de la audiencia.

La audiencia se llevará a cabo de acuerdo con los Procedimientos de Reglamentación de la WQCC (20.1.6 NMAC); la Ley de Calidad del Agua, Secciones 74-6-1 a -17 NMSA 1978 (1967 en su forma enmendada hasta 2019); la Ley de Reglas Estatales, Sección 14-4-5.3 NMSA 1978; y otros procedimientos aplicables.

Si alguna persona requiere asistencia, un intérprete o un dispositivo auxiliar para participar en este proceso, comuníquese con Pamela Jones, administradora de la WQCC, a la

dirección anterior, al menos 14 días antes de la fecha de la audiencia. (Los usuarios de TDD o TTY pueden acceder al número a través de New Mexico Relay Network, 1-800-659-1779 (voz); usuarios de TTY: 1-800-659-8331).

AVISO DE NO DISCRIMINACIÓN

El NMED no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, tal y como exigen las leyes y reglamentos aplicables. El NMED es responsable de la coordinación de los esfuerzos de cumplimiento y de la recepción de las consultas relativas a los requisitos de no discriminación implementados por el 40 C.F.R. Partes 5 y 7, incluyendo el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; la Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972, y la Sección 13 de las Enmiendas de la Ley Federal de Control de la Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o sobre cualquiera de los programas, políticas o procedimientos de no discriminación de NMED, puede ponerse en contacto con Kate Cardenas, coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@env.nm.gov. Si usted cree que ha sido discriminado con respecto a un programa o actividad del NMED, puede ponerse en contacto con la coordinadora de no discriminación identificada anteriormente.

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Service Department through Income Support Division (ISD) is proposing repeal/replace/amend rules 8.100.180 NMAC

General Operating Policy-External Communications and 8.100.970 NMAC Oversight-Program Participation Hearings. Changes in the rule are to update language, incorporate standardized rule language, and correct citation format.

Language updates are to include change of the department's name from Human Services Department to New Mexico Health Care Authority. This name was established through the passage of SB16, "Create Health Care Authority Department", during the 2023 NM Legislative session and signed into law by NM Governor Michelle Lujan Grisham.

On June 5, 2023, USDA Food and Nutrition Services (FNS) conducted the New Mexico Recipient Integrity Review to ensure that NMAC is aligned with Code of Federal Regulations (CFR). During the review FNS found language in NMAC that did not coincide with CFR. The current process allowed the Department to dismiss a fair hearing due to a mass change, this is incorrect and therefore NMAC will be updated.

Specifically, the changes include:

8.100.180.15 NMAC

Repeal/replace to comply with federal regulations as well as NMAC rule requirements. Language updates to include The Human Services Department (HSD) as the Health Care Authority Department (HCA).

(specifically, Policy sub-section C. of 8.100.180.15 NMAC will be updated to remove the sentence which includes "A hearing is not available, and benefits are not continued, when automatic benefit adjustments are required by federal or state law unless the specific, express basis for the hearing request is incorrect benefit computation.")

8.100.970.9 NMAC

Repeal/replace to comply with federal regulations as well as NMAC rule requirements. Language updates to include The Human Services

Department (HSD) as the Health Care Authority Department (HCA).

(specifically, the policy section of 8.100.970.9 D. NMAC will be updated to remove paragraph 3 as an option for dismissal of a fair hearing.

The Department is promulgating these rules to be in compliance with the CFR. The rule will be amended, repealed/replaced under the statutory authority of the food stamp program as authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011-2036). Regulations issued pursuant to the act are contained 7 CFR 273.12(e) (5). State Authority for administering the food stamp and TANF programs are contained in Chapter 27 NMSA, 1978. Administration of HSD, including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983). These rules will be contained in 8.100.180.15 NMAC, 8.100.970.9 NMAC. This register and the proposed changes are available on the HSD website at <https://www.hsd.state.nm.us/lookingforinformation/income-support-division-registers-2/>.

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) 670-1791.

A public hearing to receive testimony on this proposed rule will be held Hybrid, pursuant to section 14-4-5.6 NMSA 1978, will be held on April 15, 2024 11:00 a.m-12:00 p.m.

Join on your computer, mobile app or room device

Click here to join the meeting
Meeting ID: 223 660 960 413

Passcode: UMzp3R

Download Teams | Join on the web

Or call in (audio only)

+1 505-312-4308,,943105746#

United States, Albuquerque

Phone Conference ID: 943 105 746#

Find a local number | Reset PIN

Learn More | Meeting options

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 the requested alternative formats and special accommodations.

All Written comment may be dropped off during the scheduled hearing time at the HSD Administrative Services Division (ASD) conference room, 1474 Rodeo Road, Santa Fe, NM 87505.

Individuals wishing to testify may contact the Income Support Division (ISD), P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling (505) 670-1791.

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, April 15, 2024. Please send comments to:

Human Services Department
P.O. Box 2348

Santa Fe, NM 87504-2348

Recorded comments may be left at (505) 670-1791. You may send comments electronically to: 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.

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical

Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule 8.310.10, *Health Care Professional Services, Health Home Services* to include substance use disorder (SUD) within recipient eligibility criteria.

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

Notice Date: March 12, 2024

Hearing Date: April 11, 2024

Adoption Date: Proposed as June 1, 2024

Technical Citations: New Mexico State Plan Amendment NM-21-0005

The Department is proposing to amend the rule as follows:

8.310.10 NMAC

Section 8 is amended to include the Departments current mission statement.

Section 12 is amended to reflect substance use disorder (SUD) as an allowable diagnosis for recipient eligibility.

VI. RULE

These proposed rule changes will be contained in 8.310.10 NMAC. This register and the proposed rule are available on the HSD website at: <https://www.hsd.state.nm.us/lookingforinformation/registers/> and <https://www.hsd.state.nm.us/2024-comment-period-open/>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at (505) 827-1337.

VII. EFFECTIVE DATE

The Department proposes to implement this amendment effective January 1, 2024.

VIII. PUBLIC HEARING

A public hearing to receive testimony

on this proposed rule will be held on April 11, 2024 at 9:00 a.m. The hearing will be held at the Administrative Services Division (ASD), 1474 Rodeo Rd, Santa Fe, NM 87505 and via conference call. **Conference phone number: 1-800-747-5150. Access Code: 2284263.**

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

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

IX. ADDRESS

Interested persons may address written comments to:

Human Services Department
Office of the Secretary
ATTN: Medical Assistance Division
Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: HSD-madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on April 11, 2024. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <https://www.hsd.state.nm.us/2024-comment-period-open/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING DOCKET NO. 23-00188-UT

The New Mexico Public Regulation Commission (the "Commission") gives notice of its initiation of a proposed rulemaking to promulgate a new rule at **17.9.589 NMAC**. The rule which may be adopted as the final rule in this proceeding may include all, part, or none of the language in the proposed rules issued by the commission. The commission may also consider alternative proposals for amending or replacing the current rules.

Concise statement of proposed rules:

The commission is considering promulgating a new rule at 17.9.589 NMAC intended to promote electric service reliability by requiring investor-owned electric public utilities to report a variety of reliability metrics to the commission on an annual basis with the goal of identifying, prioritizing, and meeting reliability needs.

Constitutional and statutory authority:

New Mexico Constitution, Article XI, Sec. 2; Section 62-6-25 NMSA 1978; Section 62-8-13 NMSA 1978; Subsection D of Section 62-9-1 NMSA 1978; Subsection E of Section 62-9-3 NMSA 1978; Subsection B of Section 62-16-4 NMSA 1978; and Subsection B of Section 62-16-6 NMSA 1978.

How a copy of the full text of the proposed rule can be obtained:

A copy of the full text of the proposed rules may be obtained from the Rulemaking Proceedings section of the Commission's website at <https://www.prc.nm.gov/rulemaking-proceedings/> under Case No. 23-00188-UT or by calling LaurieAnn Santillanes in the Office of General Counsel at (505) 670-4830.

How a person can comment on the

proposed rule, where comments will be received and when comments are due:

Written initial comments and written response comments shall be filed by the deadlines below in accordance with NMPRC rules of procedure 1.2.2 NMAC. For information as to how to file at the time of filing, please contact Melanie Sandoval, the commission's records bureau chief at (505) 470-8538 or melanie.sandoval@prc.nm.gov. Written initial comments shall be filed no later than **April 26th, 2024**, written response comments shall be filed no later than **May 10, 2024**. Comments shall refer to Docket No. 23-00188-UT. All written comments will be posted on the Commission's e-Docket website within three days of their receipt by the records bureau.

A public comment hearing on the Proposed Rule and any proposed alternatives, to be presided over by the Commission or its designee, shall be held beginning at 1:00 p.m. on **May 15, 2024**, via the Zoom video-conferencing platform. Any member of the public who wishes to make a comment at the hearing may contact Patrick Rodriguez via email at public.comment@prc.nm.gov or by phone at (505) 490-7910 no later than 12:00 p.m. (noon) on May 14, 2024, to sign up as a hearing participant. The Commission shall email a Zoom invitation to all hearing participants the day before the hearing. The Zoom invitation shall include a call-in number for those participants who are unable to access Zoom's video-conferencing platform. The public comment hearing will be held to receive oral comments. All commenters may be limited in time to speak, subject to the discretion of the Commission or its designee. The Commission or its designee may also determine that a spokesperson should be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony or other evidence shall

be taken at the hearing as this is a rulemaking proceeding. A court reporter shall prepare a transcript of the hearing for filing in this docket.

The record of this case will close on **May 22, 2024**. From that date through the completion of this proceeding, rulemaking participants will be forbidden from communicating with the commission or its representatives concerning substantive issues in this proceeding.

Any person with a disability requiring special assistance in order to participate in the hearing should contact the **Office of Director of Administrative Services of the Commission at (505) 827-8019** as soon as possible prior to the commencement of the hearing. Instructions on how to access the complete rulemaking record, reports and other items filed in the commission's e-docket system can be found at <https://www.prc.nm.gov/rulemaking-proceedings/>.

REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

NOTICE OF REGULAR BOARD MEETING AND RULE HEARING

The New Mexico Board of Pharmacy will convene on April 18th and 19th, 2024 at 9:00 a.m. and continue until finished in the Board of Pharmacy Conference Room located at 5500 San Antonio Dr., NE, Albuquerque, NM 87109 for the purpose of conducting a regular board meeting and rule hearing.

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

on our website and the *New Mexico Sunshine Portal*.

Individuals petitioning the board regarding requests/waivers must submit documentation for presentation; via fax (505) 222-9845, mail or email to the Board Administrator, at the general e-mail pharmacy.board@rld.nm.gov at least one week in advance of the scheduled meeting.

Interested persons wishing to comment on proposed language regarding rule hearings may submit documentation for presentation prior to the hearing; via fax (505) 222-9845, mail or email to the Board Administrator, at the general e-mail pharmacy.board@rld.nm.gov in advance of the scheduled meeting. Public comment is also allowed during the rule hearing.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service, or if you are in need of a translator to attend or participate in the hearing or meeting, please contact Board Administrator at 505-222-9830 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Board Administrator at 505-222-9830 or e-mail pharmacy.board@rld.nm.gov if a summary or other type of accessible format is needed.

Short explanation of the Purpose of Proposed Rule Amendments: see below.

The full text of Proposed Rule Amendments for Rule Hearing for April 18th, 2024, at 9:10 a.m. is available for each rule via the hyperlinks below.

16.19.1 NMAC – GENERAL PROVISIONS – Sections 1, 3, and 9, administrative updates. Section 6, remove reference to surety bonds. Section 8, update meeting

location to include virtual, and remove requirement that majority of board request waiver for alternate meeting location. Remove obsolete reference to board-specified location for examinations. Section 11, update registry requirement for pharmacists and pharmacist interns, the online license look up satisfies the requirement. Remove obsolete registry language.

STATUTORY AUTHORITY: The board of pharmacy is authorized under Paragraph (1) of Subsection A of Section 61-11-6 NMSA 1978 to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act, 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978. Paragraph (3) of Subsection A of Section 61-11-6 directs the board to provide for the issuance and renewal of licenses for pharmacists. Paragraphs (12), (13) and (14) of Subsection A of Section 61-11-6 NMSA 1978 authorize the board to employ and define the duties of an executive officer, inspectors, and qualified employees. Subsection B of Section 61-11-5 NMSA 1978 directs the board to meet at least once every three months.

16.19.2 NMAC – EXAMINATIONS – Sections 1, 3, and 6, administrative updates. Section 7, define abbreviations. Section 8, incorporate defined abbreviations, and specify that passing score for licensure examinations is that set by National Association of Boards of Pharmacy (NABP). Section 9, a candidate may not take either the NAPLEX or MPJE more than four consecutive times without passing, and the time limit is three years from the first exam attempt (respectively). This is a decrease from five consecutive times, and the time limit is new. Section 10, remove agreement of licensure requirement. Section 13, require current photograph (decreased from two), and remove requirement that back of photograph be signed and dated. Section 14, remove obsolete examination and extraneous

language. Increase from one to two years the period of inactivity after which a pharmacist must take the jurisprudence examination and meet additional requirements.

STATUTORY AUTHORITY:

Section 61-11-9 NMSA 1978 establishes qualifications for licensure as a pharmacist by examination. Paragraph (2) of Subsection A of Section 61-11-6 NMSA 1978 requires that the board of pharmacy provide for at least two examinations a year of applicants for licensure as pharmacists.

16.19.3 - RECIPROCITY – Sections 1 and 8, administrative updates. Sections 9 and 10, language regarding ineligibility is moved to applicant ineligible (from eligibility) section, redundant subsection is removed, and the period of inactivity after which a pharmacist must take the jurisprudence examination (MPJE) and meet additional requirements is increased from one to two years. Section 11, replace specified passing score with language that applicant must pass the MPJE prior to license issuance. Subsection B, administrative update. Subsection C, a candidate may not take the MPJE more than four consecutive times without passing, and the time limit is three years from the first exam attempt (decrease from five times and time limit is new). Section 12, require current photograph (decreased from two) and remove requirement that back be signed and dated. Section 13, update evidence of qualifications, remove language regarding ineligibility for licensure if the board does not find the applicant to be competent and qualified to function as a pharmacist (the board requires education, experience, qualifications, and license examinations, rather than individualized competence assessments, per se). Language regarding good moral character is removed, and reference to 16.19.4.8 (gross immorality) replaces pharmacy, liquor, narcotic or drug laws. Section 14, pending indictment or

alleged violations is updated with reference to 16.19.4.8 replacing pharmacy, liquor, narcotic or drug laws. Section 15, temporary license is replaced with expedited license provisions, to allow up to one year to pass the MPJE and waive license fee for military service members. Requirement that the licensing agency in each state submit a statement of good standing is removed (the board receives a report from NABP for each reciprocity applicant which includes all pharmacist licenses, by state and standing). New Section 16, military service members and their spouses who relocate to New Mexico because of military service orders may be issued an expedited license without taking the MPJE for duration of such orders.

STATUTORY AUTHORITY:

Section 61-11-10 NMSA 1978 authorizes the board of pharmacy to issue a certificate of licensure as a pharmacist, with or without examination, by reciprocity.

16.19.4 NMAC - PHARMACIST:

Section 7, definitions - approved (continuing education, CE) provider is redesignated as accredited provider, with corresponding subsequent updates. Dangerous Drug definition is updated to include additional statements from statute, obsolete definition is removed, and additional administrative updates are made. Sections 9 and 10, administrative updates. Also in Section 10, remove open book test and reference to providing law programs in each pharmacy district (the law updates are now provided virtually, and all sessions are open to licensees). Section 11, administrative updates. Section 12, impaired pharmacist is changed to impaired licensee or registrant, and applies to applicants for licensure or registration. The procedures are updated, and reference to intervention and treatment paragraph is updated and clarified. Confidentiality and civil immunity citations are updated. Section 15, inactive status, the time period after

which a pharmacist license becomes inactive is increased from one to two years, with corresponding update to requirements when applying for active status. Section 16, administrative updates. Section 17, pharmacist clinician continuing education requirement changed from 20 live (hours) to 20 total of which 10 are live, and administrative updates are made.

STATUTORY AUTHORITY:

Paragraph (1) of Subsection A of Section 61-11-6 NMSA, 1978 authorizes the board of pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act, Sections 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978. Those provisions include the authority to:

- A.** deny or take disciplinary action with respect to any certificate of registration or license held or applied for under the Pharmacy Act, Section 61-11-20 NMSA 1978;
- B.** require and establish criteria for continuing education as a condition of renewal of a pharmacist license, Paragraph (4) of Subsection A of Section 61-11-6 NMSA 1978;
- C.** issue permits or licenses, as defined and limited by board regulation, to nursing homes, industrial and public health clinics and home care services, Paragraph (6) of Subsection A of Section 61-11-6 and 61-11-14 NMSA 1978;
- D.** provide for the issuance and renewal of licenses for pharmacists, Paragraph (3) of Subsection A of Section 61-11-6, and 61-11-13 NMSA 1978;
- E.** provide for the registration of pharmacist interns, their certification, annual renewal of certification, training, supervision, and discipline, Paragraph (5) of Subsection A of Section 61-11-6 NMSA 1978; and
- F.** adopt rules and regulations that establish patient counseling requirements, Paragraph (18) of Subsection A of 61-11-6 NMSA 1978. Under the Pharmacist Prescriptive Authority Act, Sections 61-11B-1 to 61-11B-3 NMSA 1978,

the board is required to establish regulations governing certification as a pharmacist clinician. The Impaired Pharmacists Act, Sections 61-11A-1 to 61-11A-8 NMSA 1978, requires the establishment by the board of a plan for treatment and rehabilitation of impaired pharmacists. Subsection B of Section 61-1-36 NMSA 1978 authorizes the board of pharmacy to promulgate rules relating to listing specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction. Subsection B of Section 28-2-3 NMSA 1978 prohibits the board of pharmacy from considering certain criminal records to be used, distributed or disseminated in connection with an application for a license. Section 28-2-4 NMSA 1978 authorizes the board of pharmacy the power to refuse to grant or renew, or suspend or revoke a license where the applicant or licensee has been convicted of a felony and the criminal conviction directly relates to the particular profession and other convictions specified.

16.19.6 NMAC – PHARMACIES – Section 30, repackaging and distribution, is amended to allow a contracted pharmacy to provide appropriately labeled and packaged medication to a correctional facility to provide to an inmate upon release to avoid interruption in prescribed treatment.

STATUTORY AUTHORITY: Paragraph (6) of Subsection A of Section 61-11-6 NMSA 1978 requires that the board of Pharmacy provide for the licensing of retail pharmacies and nonresident pharmacies and for the inspection of their facilities and activities.

16.19.11 – NURSING HOME DRUG CONTROL – Section 7, definition of licensed custodial care facility is updated.

STATUTORY AUTHORITY: Section 61-11-6.A(6) NMSA 1978 authorizes the Board of Pharmacy to

license nursing home drug facilities and all places where dangerous drugs are dispensed or administered and to provide for the inspection of their facilities and activities. Paragraph (9) of Subsection B of Section 61-11-14 NMSA 1978 directs the Board to issue drug custodial licenses for licensed nursing homes and to adopt regulations that define and limit those licenses.

16.19.12 - FEES – Section 9 is reworded to make it clearer that the waiver of registration fee is for change of duty location to New Mexico. Section 13, roster of board of pharmacy facility license fee is removed.

STATUTORY AUTHORITY: Section 30-31-11 NMSA 1978 authorizes the board of pharmacy (“board”) to charge reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances. Section 30-31B-6 NMSA 1978 authorizes the board to charge reasonable fees for the registration and control of the manufacture, possession, transfer and transportation of drug precursors. Sections 61-11-12, 61-11-13, and 61-11-14 NMSA 1978 authorize the board to charge, and limit the maximum charges for:

A. applications for registration and renewal of registration as a pharmacist, pharmacist intern, or pharmacy technician; and

B. applications for the registration of retail pharmacies, wholesale drug distributors, nonresident pharmacies, drug manufacturers, hospital pharmacies, drug rooms, nursing homes, industrial or public health clinics, the department of health clinics and health facilities, home care services, wholesalers, retailers and distributors of legend-bearing veterinary drugs, medicinal gas repackagers, medicinal gas sellers, outsourcing facilities, repackagers, and third party logistics providers. Section 61-1-34 NMSA 1978 authorizes the board to waive license fees for the

first three years for military service members, spouses, dependents, and veterans where the license is issued by reciprocity.

Disciplinary Hearing(s): Sarah Higgins, DVM, CS00227604 order to show cause, 2023-037 at 1:30 p.m. on Thursday April 18th. If additional scheduling occurs, the final hearing date and time for each case will be included in the agenda posted to the board’s website at least 72 hours before the meeting.

Executive Director’s Report:

Published in NM Register: March 12, 2024

Published in Albuquerque Journal: March 12, 2024

End of Notices of Rulemaking and Proposed Rules

Adopted Rules

Effective Date and Validity of Rule Filings

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

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.314.5 NMAC, Sections 7, 8, 10, 11, 14, 15, 17, 18, 20 and 21, effective 4/1/2024.

8.314.5.7 DEFINITIONS:

A. Activities of daily living (ADLs): Basic personal everyday activities that include bathing, dressing, transferring (e.g., from bed to chair), toileting, oral care, mobility and eating, and skills necessary to maintain the normal routines of the day such as housekeeping, shopping and preparing meals. The term also includes exercising, personal, social and community skills.

B. Adult: An individual who is 18 years of age or older.

C. Authorized representative: [An individual designated by the eligible recipient or their guardian, if applicable, to represent the eligible recipient and act on their behalf. The authorized representative must provide formal documentation authorizing them to access the identified case information for this specific purpose. An authorized representative may be, but need not be, the eligible recipient's guardian or attorney.] HSD must permit applicants and beneficiaries to designate an individual or organization to act responsibly on their behalf in assisting with the individual's application and renewal of eligibility and other ongoing communications. Such a designation must be in writing including the applicant's signature and must be permitted at the time of application and at other times. Legal documentation of authority

to act on behalf of an applicant or beneficiary under state law, such as a court order establishing legal guardianship or a power of attorney, shall serve in the place of written authorization by the applicant or beneficiary. Representatives may be authorized to; sign an application on the applicant's behalf; complete and submit a renewal form; receive copies of the applicant or beneficiary's notices and other communications from the agency; and act on behalf of the applicant or beneficiary in all other matters with the agency. The power to act as an authorized representative is valid until the applicant or beneficiary modifies the authorization or notifies the agency that the representative is no longer authorized to act on their behalf, or the authorized representative informs the agency that they are no longer acting in such capacity, or there is a change in the legal authority upon which the individual's or organization's authority was based. Such notice must be in writing and should include the applicant or authorized representative's signature as appropriate. The authorized representative is responsible for fulfilling all responsibilities encompassed within the scope of the authorized representation to the same extent as the individual they represent, and must agree to maintain, or be legally bound to maintain, the confidentiality of any information regarding the applicant or beneficiary provided by the agency. As a condition of serving as an authorized representative, a provider, staff member or volunteer of an organization must sign an agreement that they will adhere to the regulations relating to confidentiality (relating to the prohibition against reassignment of provider claims as appropriate for a health facility or an organization

acting on the facility's behalf), as well as other relevant state and federal laws concerning conflicts of interest and confidentiality of information (42 CFR 435.923).

D. Child: An individual under the age of 18. For purpose of early periodic screening, diagnosis and treatment (EPSDT) services eligibility, "child" is defined as an individual under the age of 21.

~~**E. Clinical Documentation:** Sufficient information and documentation that demonstrates the request for initial and ongoing developmental disabilities waiver (DDW) services is necessary and appropriate based on the service-specific DDW clinical criteria established by the department of health (DOH) developmental disabilities support division (DDSD) for adult recipients excluding class members of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al, (757 F. Supp. 1243 DNM 1990). Examples of clinical documentation include but are not limited to: the DDW therapy documentation form (TDF), intensive medical living supports (IMLS) and adult nursing services parameter tools, electronic comprehensive health assessment tool (e-Chat), all other assessments, clinical notes, progress notes, interdisciplinary team (IDT) meeting minutes, letters or reports from physicians or ancillary service providers that provide sufficient clinical information that demonstrates the need for requested services, etc. Any relevant supporting information and documentation is acceptable and will be considered by the outside reviewer.~~

~~**F. Clinical justification:** Information and documentation that justifies the need for services based on the eligible recipient's assessed need [and the~~

DDW clinical criteria]. Based on assessed need, the justification must: _____ (1) _____ meet the eligible recipient’s clinical, functional, physical, behavioral or rehabilitative needs;

_____ (2) _____ promote and afford support to the eligible recipient for their greater independence and to maintain current level of function or minimize risk of further decline; or

_____ (3) _____ contribute to and support the eligible recipient’s efforts to remain in the community; to contribute and be engaged in their community, and to reduce their risk of institutionalization; and

_____ (4) _____ address the eligible recipient’s physical health, behavioral, and social support needs (not including financial support) that arise as a result of their functional limitations or conditions, such as: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and

_____ (5) _____ relate to an outcome in the eligible recipient’s individual service plan (ISP).

G. DDW clinical criteria: A set of criteria established by the DOH/DDSD that is applied by an outside reviewer to each DDW service when a DDW service is requested for recipients excluding class members of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al. (757 F. Supp. 1243 DNM 1990).]

E. Developmental disabilities supports division (DDSD): Operating agency that oversees daily administration of New Mexico’s 1915c home and community-based waiver programs.

[H:] E. Electronic visit verification (EVV): A telephone and computer-based system that electronically verifies the occurrence of selected services, as required by the 21st Century CURES Act. The EVV system verifies the occurrence of authorized service visits electronically by documenting the precise time and location where service delivery

visit begins and ends. EVV is implemented according to federal requirements and timelines. The 21st Century CURES Act requires EVV for personal care services (PCS), defined as services that provide assistance with activities of daily living (ADLs) or instrumental activities for daily living (IADLs) effective January 1, 2020 and for home health services effective January 1, 2023.

[F:] G. Individual service plan (ISP): A person-centered plan for an eligible recipient that includes their needs, functional levels, intermediate and long-range outcomes for achieving their goals and specifies responsibilities for the eligible recipient’s support needs. The ISP enables and assists the recipient to identify and access a personalized mix of paid waiver and non-paid services and supports that assists them to achieve personally defined outcomes in the community.

[J.] Outside reviewer: An independent third-party assessor who has a contract with the DOH to conduct clinical reviews of all requested DDW services. The outside reviewer will make a written determination on whether the requested supports are clinically justified and will recommend whether the eligible recipient’s requested ISP and budget should be approved or denied. The decision of the outside reviewer to approve any requested service is binding on the state. However, the state may agree to overturn a decision to deny requested services.

[K:] H. Person centered planning (PCP): Person centered planning is a process that places a person at the center of planning their life and supports. It is an ongoing process that is the foundation for all aspects of the DDW program and DDW service provider’s work with individuals with I/DD. The process is designed to identify the strengths, capacities, preferences, needs, and desired outcomes of the recipient. The process may include other persons, freely chosen by the individual, who are able to serve as

important contributors to the process. It involves person centered thinking, person centered service planning and person-centered practice.

I. Supporting documentation: Sufficient information and documentation that demonstrates the request for initial and ongoing developmental disabilities waiver (DDW) services is necessary and appropriate based on the service specific DDW clinical criteria established by the developmental disabilities support division (DDSD) for adult recipients excluding former class members of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al. (757 F. Supp. 1243 DNM 1990). Examples of supporting documentation include but are not limited to: the DDW therapy documentation form (TDF), intensive medical living supports (IMLS) and adult nursing services parameter tools, electronic comprehensive health assessment tool (e-Chat), all other assessments, clinical notes, progress notes, interdisciplinary team (IDT) meeting minutes, letters or reports from physicians or ancillary service providers that provide sufficient clinical information that demonstrates the need for requested services, etc. Any relevant supporting information and documentation is acceptable and will be considered by the outside reviewer.

J. Third party assessor (TPA): The medical assistance division (MAD) contractor who determines level of care and medical eligibility for the developmental disabilities waiver and other 1915c waiver programs.

[E:] K. Waiver: Permission from the centers for medicaid and medicare services (CMS) to cover supports for a particular population or service not ordinarily allowed.

[M:] L. Young adult: An individual between the ages of 18 through 20 years of age who is allocated to the DDW and is receiving specific services as identified in the DOH/DDSD standards. An individual under age 21 is eligible for medical

services funded by their medicaid providers under EPSDT. Upon the individual's 21st birthday, they are considered to be an adult recipient of DDW services.
[8.314.5.7 NMAC - Rp. 8.314.5.7 NMAC, 12/1/2018; A, 4/1/2022; A, 4/1/2024]

8.314.5.8 SAFEGUARDS CONCERNING RESTRAINTS, RESTRICTIONS AND SECLUSION:

- A. Seclusion and isolation is prohibited during waiver services.
- B. Use of restraints or restrictions is only permitted during the course of delivery of waiver services under strict limitations and oversight.
 - (1) Certain specific interventions are considered ethically unacceptable for application and, as such, are unequivocally prohibited. Interventions that are prohibited include but are not limited to:
 - (a) contingent electrical aversion procedures;
 - (b) seclusion and isolation;
 - (c) use of time out (for an adult);
 - (d) use of mechanical or chemical restraints;
 - (e) use of manual application of any physical restraint, except in emergent situations involving imminent risk of harm to self or others (personal restraints);
 - (f) overcorrection;
 - (g) forced physical guidance;
 - (h) forced exercise;
 - (i) withholding food, water, or sleep;
 - (j) public or private humiliation including overreliance on prescribed protective gear or recommended assistive technology that is applied for programmatic convenience, calls

- undue attention to someone, and is therefore humiliating to the person supported; or
- (k) [privacy violations;] application of water mist, noxious taste, smell, or skin agents.
- (l) [restricting exit from home with locks on windows or doors;] privacy violations such as body checks and electronic surveillance, remote monitoring in private areas such as bathrooms or bedrooms; or
- (m) [application of water mist; and] restricting a person from exiting their home using locks on doors and windows.
- (n) application of noxious taste, smell, or skin agents; etc.;
- (2) Use of restrictive interventions must be documented in the individual's positive behavior support plan or behavioral crisis intervention plan or risk management plan and must be reviewed by the human rights committee prior to implementation.
- (3) Chemical restraint is defined as the administration of medication at a dose or frequency to intentionally and exclusively preclude behavior without identifying an underlying anxiety, fear or severe emotional distress or other symptoms of psychiatric/emotional disturbance to be eased, managed or treated. The administration may be regularly scheduled or on a pro re nata (PRN), or "as needed" basis. The use of chemical restraints is prohibited.
- (4) The administration of PRN psychotropic medication is allowed when prescribed in advance by the prescribing professional. A PRN psychotropic medication plan is a collaborative document that outlines the behavioral indications for using the medication. A human rights committee must approve use of PRN psychotropic medication prior to its implementation and the procedures that [DSP] direct support personnel (DSP) must use to gain approval for its implementation.

- (5) Mechanical restraints are defined as the use of a physical device to restrict the individual's capacity for desired or intended movement including movement or normal function of a portion of their body. The use of mechanical restraints is prohibited.
 - (6) Use of any emergency physical restraints must be written into a behavioral crisis intervention plan only and approved by a human rights committee prior to its use. Personal restraints (i.e. emergency physical restraints) are used as a last resort, only when other less intrusive alternatives have failed and under limited circumstances that include protecting an individual or others from imminent, serious physical harm, or to prevent or minimize any physical or emotional harm to the individual. Staff must be trained in both nonphysical and physical interventions.
 - (7) Any individual for whom the use of emergency physical restraints or PRN psychotropic medications is allowed is required to have a positive behavioral supports assessment, positive behavior support plan, and a behavioral crisis intervention plan or PRN psychotropic medication plan completed by a behavior support consultant in conjunction with the individual's agency nurse and interdisciplinary team.
 - (8) Ethical, medical or behavioral concerns, use of live or recorded video monitoring/observational systems, and resolution of plans contested on the individual team or provider agency level in local human rights committees are heard and resolved in a statewide and state coordinated [super] human rights committee.
[8.314.5.8 NMAC - N, 4/1/2022; A, 4/1/2024]
- 8.314.5.10 ELIGIBLE PROVIDERS:**
- A. Health care to eligible recipients is furnished by a variety of providers and provider groups. The reimbursement and billing for these services is

administered by MAD. Upon approval of a New Mexico MAD provider participation agreement (PPA) by MAD or its designee, licensed practitioners, facilities, and other providers of services that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/ MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including New Mexico administrative code (NMAC) rules, billing instructions, utilization review instructions, EVV requirements and instructions, service definitions and service standards and other pertinent materials. When enrolled, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to obtain answers to questions related to the material or not covered by the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD PPA and all applicable statutes, regulations, and executive orders. MAD or its selected claims processing contractor issues payments to a provider using electronic funds transfer (EFT) only.

B. All DDW eligible providers must be approved by DOH or its designee and have an approved MAD PPA and a DOH provider agreement.

C. MAD through its designee, DOH/DDSD, follows a subcontractor model for certain DDW services. The agency, following the DOH/DDSD model, must ensure that its subcontractors or employees meet all required qualifications. The agency must provide oversight of subcontractors and supervision of employees to ensure that all

required MAD and DOH/DDSD qualifications and service standards are met. In addition, the agency must provide oversight and supervision of subcontractors and employees to ensure that services are delivered in accordance with all requirements set forth by the DOH/DDSD DDW service definition, all requirements outlined in the DDW services standards, applicable NMAC rules, MAD supplements, and as applicable, their New Mexico licensing board's scope of practice and licensure. Pursuant to federal regulations, an agency may not employ or subcontract with the spouse of an eligible recipient or the parent of an eligible recipient under 18 years of age to provide direct care services to the eligible recipient.

D. Qualifications of case management provider agency: A case management provider agency, its case managers, whether subcontractors or employees must comply with 8.314.5.10 NMAC. In addition, case management provider agency must ensure that a case manager meets the following qualifications:

(1) one year of clinical experience, related to the target population; and

(2) one or more of the following:

(a) hold a current social worker license as defined by the New Mexico regulation and licensing department (RLD); or

(b) hold a current registered nurse (RN) license as defined by the New Mexico board of nursing; or

(c) hold a bachelor's or master's degree in social work, psychology, sociology, counseling, nursing, special education, or a closely related field or have a minimum of six years of direct experience related to the delivery of social services to people with disabilities; and or

(d) have a high school diploma or GED and a minimum of six years of direct experience related to the delivery of social services to people with disabilities.

(3) comply with all training requirements as specified by DOH/DDSD; and

(4) have received written notification from DOH that they do not have a disqualifying conviction after submitting to the caregiver criminal history screening (CCHS);

(5) does not provide any direct waiver services through the same 1915 (c) HCBS waiver program; and

(6) any exception to the above must be approved by DOH/DDSD.

E. Qualifications of respite provider agency: A respite provider agency must comply and ensure that all direct support personnel, whether subcontractors or employees, comply with 8.314.5.10 NMAC. In addition, respite provider agencies and direct support personnel must:

(1) comply with all training requirements as specified by DOH;

(2) have and maintain documentation of current cardiopulmonary resuscitation (CPR) and first aid certification;

(3) have written notification from DOH that they do not have a disqualifying conviction after submitting to the CCHS; and

(4) comply with all EVV requirements as defined by the 21st Century CURES Act and implemented by MAD including but not limited to documenting service provision using the approved EVV system.

F. Qualifications of adult nursing provider agencies: Adult nursing provider agencies must ensure all subcontractors or employees, including nurses, comply with DOH DDW service definitions, DDW service standards, applicable NMAC rules, MAD billing instructions, utilization review instructions, and supplements, and applicable federal and state laws, rules and statutes. Direct nursing services shall be provided by a New Mexico licensed RN or licensed practical

nurse (LPN), have a minimum of one year experience as a licensed nurse, and must comply with all aspects of the New Mexico Nursing Practice Act, including supervision and delegation requirements of specific nursing function and 8.314.5.10 NMAC.

G. Qualifications of therapy provider agency: A therapy provider agency must comply and ensure that each of its therapists including physical therapists (PT), occupational therapists (OT), and speech therapists (SLP), physical therapy assistants (PTA), and certified occupational therapy assistants (COTA), whether a subcontractor or employee complies with 8.314.5.10 NMAC.

H. Qualifications for living supports provider agency: Living supports consist of family living, supported living, and intensive medical living supports. A living supports provider agency must comply with the accreditation policy and all requirements set forth by the DOH, DDW service definitions, all requirements outlined in the DDW service standards and the applicable NMAC rules. A living supports provider agency must ensure that all direct support personnel, whether subcontractor or employees, meet all qualifications set forth by DOH, DDW service standards, and applicable NMAC rules.

(1) A living supports provider agency and direct support personnel must:

(a) comply with all training requirements as specified by DOH;

(b) have and maintain documentation of current CPR and first aid certification; and

(c) have written notification from DOH that they do not have a disqualifying conviction after submitting to the CCHS.

(2) A family living provider agency must ensure that all direct support personnel, whether a subcontractor or employee, meet all qualifications set forth by

DOH and the DDW service standards and the applicable NMAC rules.

Legal guardians who are also natural or adoptive family members who meet the DOH/DDSD requirements and are approved to provide family living services may be paid for providing services.

A family living provider agency must employ or subcontract with at least one registered or licensed dietician or licensed nutritionist. A family living provider agency must also be an adult nursing services provider and must employ or subcontract with at least one licensed RN; employ or subcontract with at least one additional nurse for on call services and comply with the New Mexico Nurse Practice Act, including supervision and delegation requirements of specific nursing functions. The number of nurses (RNs and LPNs) must be sufficient to meet the routine and on call health care needs of the individuals. Both the direct support personnel employed by or subcontracting with the provider agency and the physical home setting must be approved through a home study completed prior to the initiation of services, revised with any change in family composition, move to a new home, or other significant event and periodically thereafter as required of the provider agency.

(3) A supported living provider agency must ensure that all direct support personnel meet all qualifications set forth by DOH and the applicable NMAC rules and the DDW service standards. A supported living provider agency must employ or subcontract with at least one registered or licensed dietician or licensed nutritionist. The number of RD/LDs employed or under contract must be sufficient to meet the routine nutritional needs of the individuals. They must employ or subcontract with at least one licensed RN, employ or subcontract with at least one additional nurse for on call and services, and comply with the New Mexico Nurse Practice Act, including supervision and delegation requirements of specific nursing

functions. The number of nurses (RNs and LPNs) must be sufficient to meet the routine and on call health care needs of the individuals.

(4) An intensive medical living supports provider agency must employ or subcontract with at least one registered or licensed dietician or licensed nutritionist. The number of RD/LDs employed or under contract must be sufficient to meet the routine nutritional needs of the individuals. They must employ or subcontract with at least one New Mexico licensed RN who must have a minimum of one year of nursing experience employ or subcontract with at least one additional nurse for on call services and comply with the New Mexico Nursing Practice Act including supervision and delegation requirements of specific nursing functions. The number of nurses (RNs and LPNs) must be sufficient to meet the routine and on call health care needs of the individuals.

I. Qualifications of a customized community supports provider agency: A customized community supports provider agency must comply with and ensure that all direct support personnel, whether subcontractor or employees, comply with 8.314.5.10 NMAC. A customized community supports provider agency and direct support personnel must:

(1) comply with all training requirements as specified by DOH;

(2) have and maintain documentation of current CPR and first aid certification; and

(3) have written notification from DOH that they do not have a disqualifying conviction after submitting to the CCHS.

J. Qualifications of a community integrated employment provider agency: A community integrated employment provider agency must comply with and ensure that all direct support personnel, whether subcontractor or employees, comply with 8.314.5.10 NMAC. A community integrated employment

provider agency and direct support personnel must:

- (1) comply with all training requirements as specified by DOH;
- (2) have and maintain documentation of current CPR and first aid certification; and
- (3) have written notification from DOH that they do not have a disqualifying conviction after submitting to the CCHS.

K. Qualifications of a behavioral support consultation provider agency: A behavioral support consultation provider agency must comply with and ensure that all behavioral support consultants, whether subcontractors or employees, comply with 8.314.5.10 NMAC.

(1) A provider of behavioral support consultation services must be currently licensed in one of the following professions and maintain that licensure with the appropriate RLD board or licensing authority:

- (a) a licensed clinical mental health counselor (LMHC), or
- (b) a licensed psychologist; or
- (c) a licensed psychologist associate, (masters or Ph.D. level); or
- (d) a licensed independent social worker (LISW) or a licensed clinical social worker (LCSW); or
- (e) a licensed master social worker (LMSW); or
- (f) a licensed professional clinical mental health counselor (LPCC); or
- (g) a licensed marriage and family therapist (LMFT); or
- (h) a licensed professional art therapist (LPAT); or
- (i) Other related licenses and qualifications may be considered with DOH’s prior written approval.

(2) Providers of behavioral support consultation services must have a minimum of one year of experience working with individuals with intellectual or developmental disabilities.

(3) Behavioral support consultation providers must participate in training in accordance with the DOH/DDSD training policy.

L. Qualifications of a nutritional counseling provider agency: A nutritional counseling provider agency must comply with and ensure that all nutritional counseling providers, whether subcontractors or employees comply with 8.314.5.10 NMAC. In addition, a nutritional counseling provider must be registered as a dietitian or a licensed nutritionist by the commission on dietetic registration of the American dietetic association and be licensed by RLD as a nutrition counselor.

M. Qualifications of an environmental modification provider agency: An environmental modification contractor and their subcontractors and employees must be bonded, licensed by RLD, and authorized by DOH to complete the specified project. An environmental modification provider agency must comply with 8.314.5.10 NMAC. All services shall be provided in accordance with applicable federal, state and local building codes.

N. Qualifications of a crisis supports provider agency: A crisis supports provider agency must comply with and must ensure that direct support personnel, whether subcontractors or employees, comply with 8.314.5.10 NMAC. In addition, a crisis supports provider agency and direct support personnel must:

- (1) comply with all training requirements as specified by DOH;
- (2) have and maintain documentation of current CPR and first aid certification; and
- (3) have written notification from DOH that they do not have a disqualifying conviction after submitting to the CCHS.

O. Qualifications for a non-medical transportation provider agency: A non-medical transportation provider agency must comply with 8.314.5.10 NMAC. In addition, a non-medical transportation provider must have a business license and drivers must have a valid driver’s license and not have a disqualifying conviction after submitting to the CCHS. Must have written notification from DOH that they do not have a disqualifying conviction after submitting to the CCHS.

P. Qualifications of an assistive technology provider agency: An assistive technology purchasing agent provider and agency must comply with 8.314.5.10 NMAC, demonstrate fiscal solvency when functioning as a payee for this service. Assistive technology providers may also be the direct vendors of approved technology.

Q. Qualifications of an independent living transition service provider agency: An independent living transition service provider agency must comply with 8.314.5.10 NMAC, demonstrate fiscal solvency and function as a payee for this service.

R. Qualifications of a remote personal support technology provider agency: Remote personal support technology provider agencies must comply with 8.314.5.10 NMAC. This includes having a current business license and must demonstrate fiscal solvency and function as a payee of services. In addition, remote personal support technology provider agencies must comply with all laws, rules, and regulations of the federal communications commission (FCC) for telecommunications.

S. Qualifications of a preliminary risk screening and consultation (PRSC) related to inappropriate sexual behavior provider agency: A PRSC provider agency must comply with 8.314.5.10 NMAC and all training requirements as specified by DOH. Additionally, the PRSC provider agency must subcontract with or employ the evaluator, who at a minimum must be:

(1) an RLD independently licensed behavioral health practitioner, such as an LPCC, LCSW, LMFT, LISW, or a psychologist; or

(2) a practitioner who holds a master’s or doctoral degree in a behavior health related field from an accredited college or university.

T. Qualifications of a socialization and sexuality education provider agency: A socialization and sexuality education provider agency must comply with 8.314.5.10 NMAC. A provider agency must be approved by the DOH, bureau of behavioral support (BBS) as a socialization and sexuality education provider and must meet training requirements as specified by DOH. In addition, a socialization and sexuality education provider agency must employ or contract with a provider who has one of the following qualifications for rendering the service:

(1) a master’s degree or higher in psychology;

(2) a master’s degree or higher in counseling;

(3) a master’s degree or higher in special education;

(4) a master’s degree or higher in social work;

(5) a master’s degree or higher in a related field;

(6) a RN or LPN;

(7) a bachelor’s degree in special education or a related field such as psychology or social work;

(8) a certification in special education;

(9) a New Mexico level three recreational therapy instructional support provider license; or

(10) a certified therapeutic recreation therapist (CTRS) obtained through the national council for therapeutic recreation.

U. Qualifications of a customized in-home supports provider agency: A customized in-home supports provider agency must comply with and ensure that

direct support personnel, whether subcontractors or employees, comply with 8.314.5.10 NMAC. Legal guardians who are also natural or adoptive family members, relatives, or natural family members that meet the DOH/DDSD requirements and are approved to provide customized in-home supports may be paid for providing services. A customized in-home supports provider agency and direct support personnel must:

(1) comply with all training requirements as specified by DOH;

(2) have and maintain documentation of current CPR and first aid certification; and

(3) have written notification from DOH that they do not have a disqualifying conviction after submitting to the CCHS.

(4) comply with all EVV requirements as defined by the 21st Century CURES Act and implemented by MAD including but not limited to documenting service provision using the approved EVV system.

V. Qualifications of a supplemental dental care provider agency:

A supplemental dental care provider agency must comply with 8.314.5.10 NMAC. A supplemental dental care provider must contract with a New Mexico licensed dentist and dental hygienist who are licensed by RLD. The supplemental dental care provider will ensure that a RLD licensed dentist provides the oral examination; ensure that a RLD licensed dental hygienist provides all routine dental cleaning services; demonstrate fiscal solvency; and function as a payee for the service. [8.314.5.10 NMAC - Rp, 8.314.5.10 NMAC, 12/1/2018; A, 4/1/2022; A, 4/1/2024]

8.314.5.11 PROVIDER RESPONSIBILITIES:

A. A provider who furnishes services to an eligible recipient must comply with all federal and state laws, regulations, rules, and executive orders relevant to the provision of services as specified

in the MAD provider participation agreement and the DOH provider agreement. A provider also must meet and adhere to all applicable NMAC rules and instructions as specified in the MAD provider rules manual and its appendices, DDW service standards, DDW service definitions, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and the centers for medicare and medicaid services (CMS) correct coding initiatives, including not improperly unbundling or upcoding services.

B. A provider must verify that an individual is eligible for a specific health care program administered by the HSD and its authorized agents and must verify the eligible recipient’s enrollment status at the time services are furnished. A provider must determine if an eligible recipient has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to an eligible recipient.

C. Provider agencies must mitigate any conflict of interest issues by adhering to at least the following:

(1) Any individual who operates or is an employee or subcontractor of a DDW provider shall not serve as guardian for a person served by that agency, except when related by affinity or consanguinity Paragraph (1) of Subsection A of Section 45-5-31 NMSA 1978. Affinity which stems solely from the caregiver relationship is not sufficient to satisfy this requirement.

(2) DDW provider agencies may not employ or sub-contract with a direct support person who is an immediate family member to support the person in services, except when the person is in family living, respite, or customized in home supports (CIHS).

(3) DDW provider agencies may not employ or subcontract with the spouse of the participant to support the person in any DDW funded services.

D. Case management agencies are required to mitigate real or perceived conflict of interest issues by adhering to, at minimum the following requirements. Case managers who are contracted under the DDW are identified as agents who are responsible for the development of the ISP.

(1) Case management agency owners and individually employed or contracted case managers may not:

(a) be related by blood or affinity to the person supported, or to any paid caregiver of the individual supported. Following formal authorization from DDS, a case manager may provide family living services or respite to their own family member;

(b) have material financial interest in any entity that is paid to provide DDW or mi via services. A material financial interest is defined as anyone who has, directly or indirectly, any actual or potential ownership, investment, or compensation arrangement;

(c) be empowered to make financial or health related decisions for individuals on their caseload;

(d) be related by blood or affinity to any DDW service provider for individuals on their caseload. Providers are identified as providers of living care arrangements, community inclusion services, mi via consultants, mi via vendors, BSC's and therapist.

(2) A case management provider agency may not:

(a) be a provider agency for any other DDW service;

(b) provide guardianship services to an individual receiving case management services from that same agency;

(3) A case manager or director of a case management provider agency may not:

(a) serve on the board of directors of any DDW provider agency;

(b) provide training to staff of DDW provider agencies unless meeting criteria as outlined in the DDW service standards.

(4) Case management provider agencies must disclose to both DDS and the people supported by their agency any familial relationships between employees or subcontract case managers and providers of other DDW services.

(5) Case management provider agency staff and subcontractors must maintain independence and avoid all activity which could be perceived as a potential conflict of interest. [8.314.5.11 NMAC - Rp, 8.314.5.11 NMAC, 12/1/2018; A, 4/1/2022; A, 4/1/2024]

8.314.5.14 DDW COVERED WAIVER SERVICES FOR IDENTIFIED POPULATION UNDER 18 YEARS OF AGE:

The DDW program is limited to the number of federally authorized unduplicated eligible recipient (UDR) positions and program funding. All DDW covered services in an ISP must be authorized. DDW services must be provided in accordance with all requirements set forth by DDW service definitions, all requirements outlined in the DDW service standards, and the applicable NMAC rules, supplements and guidance. The DDW covers the following services for a specified and limited number of waiver eligible recipients as a cost effective alternative to institutionalization in an intermediate care facilities for individuals with intellectual disabilities (ICF-IID).

A. Eligible recipients age birth to 18: Services funded within this age category must be coordinated with and shall not duplicate other services such as the medicaid school-based services program, the MAD early periodic screening diagnosis and treatment (EPSDT) program, services offered through the New Mexico public education department (PED), or the early childhood education and care department (ECECD) family infant toddler (FIT) program.

B. Service options available include:

- (1)** environmental modifications;
- (2)** assistive technology;
- (3)** remote personal support technology;
- (4)** preliminary risk screening and consultation;
- (5)** socialization and sexuality education;
- (6)** behavioral support consultation;
- (7)** customized community support;
- (8)** respite;
- (9)** non-medical transportation;
- (10)** case management; [and]
- (11)** nutritional counseling; and
- (12)** crisis

supports.
[8.314.5.14 NMAC - Rp, 8.314.5.14 NMAC, 12/1/2018; A, 4/1/2022; A, 4/1/2024]

8.314.5.15 DDW COVERED WAIVER SERVICES: The DDW program is limited to the number of federally authorized unduplicated eligible recipient (UDR) positions and program funding. All DDW covered services in an ISP must be authorized by DOH. DDW services must be provided in accordance with all requirements set forth by DOH DDW service definition, all requirements outlined in the DDW service standards, and the applicable NMAC rules, supplements and guidance and must be based on assessed need. Services for individuals under the age of 21 must be coordinated with and shall not duplicate other services such as the medicaid school-based services program, the MAD early periodic screening diagnosis and treatment (EPSDT) program, or the early childhood education and care department (ECECD) family infant toddler (FIT) program. Services offered through the New Mexico public education department (PED), the Individuals

with Disabilities Education Act (IDEA), the New Mexico division of vocational rehabilitation (DVR), the Rehabilitation Act, the Workforce Innovation and Opportunities Act (WIOA), the New Mexico department of workforce solutions (DWS) must be utilized prior to accessing funding from the DDW. DDW covers the following services for a specified and limited number of waiver eligible recipients as a cost effective alternative to institutionalization in an ICF-IID.

~~[A. — There are seven proposed budget levels (PBL) which the IDT use for person-centered planning. They encompass descriptions and characteristics of seven levels of typical support needs designed to meet the needs of most individuals. Each PBL has a corresponding suggested budget dollar amount based on the type of living care arrangement, typical service options, intensity of staffing needs, and support needs in each level. The case manager guides the IDT in the person-centered planning process. The IDT makes a determination of which proposed budget level the person falls based on history, current assessments, and support needs, using both the PBL and suggested dollar amount as a tool or guide in the person-centered planning process and in budget development. The OR approves services based on clinical justification. Approvals may be over or under the suggested amount. The OR does not verify or approve the IDT's determination of a PBL, nor does a PBL limit the request for services or require that the budget be developed within a set amount.]~~

A. Information and documentation that justifies the need for services based on the eligible recipient's assessed need may be required and requested. Justification for services must:

- (1) outline the eligible recipient's clinical, functional, physical, behavioral or habilitative needs;
- (2) promote and afford support to the eligible recipient for their greater

independence and to maintain current level of function or minimize risk of further decline; or contribute to and support the eligible recipient's efforts to remain in the community;

(3) to contribute and be engaged in their community, and to reduce their risk of institutionalization;

(4) address the eligible recipient's physical health, behavioral, and social support needs, not including financial support, that arise as a result of their functional limitations or conditions, such as: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and

(5) relate to an outcome in the eligible recipient's individual service plan (ISP).

B. Exception authorization process, formerly known as the H authorization process is the process that allows individuals on the DDW, who have extenuating circumstances, including extremely complex clinical needs to receive services beyond what is authorized in their current ISP/budget level or to allow individual exceptions to DDW service standards. Exception authorization process includes:

(1) an eligible recipient who is included in the class established in the matter of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al, (757 F. Supp. 1243 DNM 1990) is to receive a permanent NM DDW exception authorization approval. A former Jackson class member may receive service types and amounts consistent with those approved in their ISP.

(2) Exception authorization packet includes: the completed individual supports needs review form with all attachments indicated on the form as relevant to the nature/type of exception authorization process request submitted.

C. When determining what services the eligible recipient needs, the IDT should consider

the individual's ~~[proposed budget level and]~~ service options with the understanding that the focus must always be on the individual's DDW support needs that can be clinically justified. Services available:

(1) Case management services: Case management services assist an eligible recipient to access MAD covered services. A case manager also links the eligible recipient to needed medical, social, educational and other services, regardless of funding source. DDW services are intended to enhance, not replace existing natural supports and other available community resources. Services will emphasize and promote the use of natural and community supports to address the eligible recipient's assessed needs in addition to paid supports. Case managers facilitate and assist in assessment activities, as appropriate. Case management services are person-centered and intended to advocate for and support an eligible recipient in pursuing their desired life outcomes while gaining independence, and access to services and supports. Case management is a set of interrelated activities that are implemented in a collaborative manner involving the active participation of the eligible recipient, their authorized representative, and the entire IDT. The case manager is an advocate for the eligible recipient they serve, is responsible for developing the ISP and for ongoing monitoring of the provision of services included in the ISP. Case management services include but are not limited to activities such as:

- (a)** assessing needs;
- (b)** assisting in the submission process of the application for assistance and yearly recertification to the local income support division (ISD) office;
- (c)** directing the person-centered planning process;
- (d)** advocating on behalf of the eligible recipient;

(e) coordinating waiver and state plan service delivery and collaborating with managed care organization care coordinators;

(f) assuring services are delivered as described in the ISP;

(g) maintaining a complete current central eligible recipient record (e.g. ISP, ISP budget, level of care documentation, assessments);

(h) health care coordination;

(i) assuring cost containment by preventing the expense of DDW services from exceeding a maximum cost established by DOH and by exploring other options to address expressed needs.

(j) Case managers must:

(i) evaluate and monitor direct service through face-to-face visits with the eligible recipient to ensure the health and welfare of the eligible recipient, and to monitor the implementation of the ISP;

(ii) support informed choice;

(iii) support participant self-advocacy;

(iv) allow participants to lead their own meetings, program and plan development;

(v) increase an individual’s experiences with other paid, unpaid, publicly-funded and community support options;

(vi) increase self-determination;

(vii) demonstrate that the approved budget is not replacing other natural or non-disability specific resources available; and

(viii) document efforts demonstrating choice of non-waiver and non-disability specific options in the ISP, IDT meeting minutes or companion documents when an individual has only DDW funded supports.

(2) **Respite services:** Respite services are a flexible family support service for an eligible recipient. The primary purpose of respite services is to provide support to the eligible recipient and give the primary, unpaid caregiver relief and time away from their duties. Respite services include assistance with routine activities of daily living (e.g., bathing, toileting, preparing or assisting with meal preparation and eating), enhancing self-help skills and providing opportunities for play and other recreational activities; community and social awareness; providing opportunities for community and neighborhood integration and involvement; and providing opportunities for the eligible recipient to make their own choices with regard to daily activities. Respite services will be scheduled as determined by the primary caregiver. An eligible recipient receiving living supports or customized in-home supports (when an eligible recipient is not living with a family member), may not access respite services. Respite services may be provided in the eligible recipient’s own home, in a provider’s home, or in a community setting of the eligible recipient family’s choice. Amounts and units of respite available per ISP year to eligible recipients must comply with limits outlined in the DDSD issued service standards. Respite services must be provided in accordance with 8.314.5.10 NMAC.

(3) **Adult nursing services:** Adult nursing services (ANS) are provided by a licensed RN or LPN under the direct supervision of the RN to an eligible adult recipient. Adult nursing services are intended to support the highest practicable level of health, functioning and independence for an eligible recipient. This includes the direct nursing services and activities related to the assessment, planning, training and nursing oversight of unrelated direct support staff when assisting with a variety of health related needs in specific settings. Nursing services may be delivered in person and via remote or telehealth

services. Nursing services include an array of supports including efforts to support aspiration risk management (ARM). Amounts and units of adult nursing services available per ISP year to eligible recipients must comply with limits outlined in the DDSD issued service standards. Nursing services may be delivered in person and via remote or telehealth services. Individuals and their health care decision makers will be informed of telehealth service and technology as part of the ISP process.

(a) ANS is available to individuals ages 21 and over who reside in family living; those who receive customized in home supports and those who do not receive any living supports. It is available to any eligible recipient who has health related needs that require at least one of the following: nursing training, delegation or oversight of direct support staff during participation in customized community supports (individual or small group) or community integrated employment even if a living supports or [ECS] customized community supports (CCS) group are also provided.

(b) ANS is available to individuals ages 18-20 who reside in family living and who are at aspiration risk and desire to have aspiration risk management services. It is also available to individuals who have health related needs that require nursing training, delegation or the oversight of non-related direct support staff during substitute care; customized community supports (individual or small group); community integrated employment or customized in home supports.

(c) There are two categories of adult nursing services:

(i) assessment and consultation services which includes a comprehensive health assessment (including assessment for medication delivery needs and aspiration risk) and consultation regarding available or mandatory services which requires only budgeting; and

ongoing services, which requires clinical justification and are tied to the eligible recipient's specific health needs revealed in the comprehensive health assessment and prior authorization process.

(4) Therapy

services: Therapy services are to be delivered consistent with the participatory approach philosophy and two models of therapy services (collaborative-consultative and direct treatment). These models support and emphasize increased participation, independence and community inclusion in combination with health and safety. DDW therapy services are intended to improve, maintain or minimize the decline in functional ability and skills. Therapy services are designed to support achievement of ISP outcomes and prioritized areas of need identified through therapeutic assessment. PT, OT and SLP are skilled therapies that are recommended by an eligible recipient's IDT members and a clinical assessment that demonstrates the need for therapy services. Therapy services may be delivered in an integrated setting, clinical setting, or through telehealth as appropriate and will support the use of assistive or remote personal support technology as needed. Upon recommendation for therapy assessment by the IDT members all three therapy disciplines: PT, OT, and SLP will be available to all DDW recipients if the therapy assessment indicates that services are needed. Individuals and their health care decision makers will be informed of telehealth service and technology as part of the ISP process. Therapy services for an eligible adult recipient require a prior authorization except for their initial assessment. A RLD licensed practitioner, as specified by applicable state laws and standards, provides the skilled therapy services. Amounts and units of therapy services available per ISP year to eligible recipients must comply with limits outlined in the DDSD issued service standards. Therapy services for eligible adult recipients must comply with 8.314.5.10 NMAC.

(ii)

All medically necessary therapy services for children under 21 years of age, are covered under the state plan through the early periodic screening, diagnostic and treatment (EPSDT) and must comply with 8.320.2 NMAC. To the extent that any listed services are covered under the state plan, the services under the waiver are additional services not otherwise covered under the state plan, and consistent with DDW objectives to support the recipient to remain in the community and prevent institutionalization. The exception is aspiration risk management supports for persons between age 18 and 21.

(a)

Physical therapy (PT): PT is a skilled, RLD licensed therapy service involving the diagnosis and management of movement dysfunction and the enhancement of physical and functional abilities. Physical therapy addresses the restoration, maintenance, and promotion of optimal physical function, wellness and quality of life related to movement and health. Physical therapy prevents the onset, symptoms and progression of impairments, functional limitations, and disability that may result from diseases, disorders, conditions or injuries. PT supports access, mobility and independence in all environments. A RLD licensed physical therapy assistant (PTA) may perform physical therapy procedures and related tasks pursuant to a plan of care/therapy intervention plan written by the supervising physical therapist. Therapy services for eligible recipients must comply with 8.314.5.10 NMAC.

(b)

Occupational therapy (OT): OT is a skilled, RLD licensed therapy service involving the use of everyday life activities (occupations) for the purpose of evaluation, treatment, and management of functional limitations. Therapy services for eligible recipients must comply with 8.314.5.10 NMAC. Occupational therapy addresses physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety

of contexts to support engagement, performance and access to work and life activities that affect health, well-being and quality of life. A RLD certified occupational therapy assistant (COTA) may perform occupational therapy procedures and related tasks pursuant to a therapy intervention plan written by the supervising OT as allowed by RLD licensure.

(c)

Speech-language pathology

(SLP): SLP service, also known as speech therapy, is a skilled therapy service, provided by a speech-language pathologist that involves the non-medical application of principles, methods and procedures for the diagnosis, counseling, and instruction related to the development of and disorders of communication including speech, fluency, voice, verbal and written language, auditory comprehension, cognition, swallowing dysfunction and sensory-motor competencies. Therapy services for eligible recipients must comply with 8.314.5.10 NMAC. Speech-language pathology services are also used when an eligible recipient requires the use of assistive technology or an augmentative communication device. For example, SLP services are intended to improve, maintain or minimize the loss of communication skills; treat a specific condition clinically related to an intellectual developmental disability of the eligible recipient; or improve or maintain the eligible recipient's ability to safely eat food, drink liquids or manage oral secretions while minimizing the risk of aspiration or other potential injuries or illness related to swallowing disorders.

(5) Living

supports: Living supports are residential habilitation services, available up to 24 hours a day, that are individually tailored to assist an eligible recipient 18 year and older who is assessed to need daily support or supervision with the acquisition, retention, or improvement of skills related to living in the community to prevent institutionalization. Living supports include residential-type

instruction intended to increase and promote independence and to support an eligible recipient to live as independently as possible in the community in a setting of their own choice. Living support services assist and encourage an eligible recipient to grow and develop, to gain autonomy, self-direct and pursue their own interests and goals. Living supports includes support to individuals to access: healthcare, dietary, nursing, therapy and behavior supports through telehealth and in person appointments; generic and natural supports, standard utilities including internet services, assistive and remote technology, transportation, employment, and opportunities to establish or maintain meaningful relationships throughout the community. Living supports providers are also required to coordinate and collaborate with nursing, behavior support consultants, dietitians, therapists and therapy assistants to implement plans including aspiration risk management plans. Living supports providers are also required to coordinate and collaborate with behavior support consultants to implement positive behavior support plans. Living support providers take positive steps to protect and promote the dignity, privacy, legal rights, autonomy and individuality of each eligible recipient who receives services. Services promote inclusion in the community and an eligible recipient is afforded the opportunity to be involved in the community and actively participate using the same resources and doing the same activities as other community members. Living supports providers are responsible for providing an appropriate level of services and supports up to 24 hours per day, seven days per week. Room and board costs are reimbursed through the eligible recipient's social security insurance (SSI) or other personal accounts and cannot be paid through the DDW. Living support services for eligible recipients must comply with 8.314.5.10 NMAC. Living supports consists of family living, supported living, and intensive medical living as follows.

(a)

Family living (FL): Family living is intended for an eligible recipient who is assessed to need residential habilitation to ensure health and safety while providing the opportunity to live in a typical family setting. Family living is a residential habilitation service that is intended to increase and promote independence and to provide the skills necessary to prepare an eligible recipient to live on their own in a non-residential setting. Family living services are designed to address assessed needs and identified individual eligible recipient outcomes. Family living is direct support and assistance that is provided to no more than two eligible recipients with intellectual or developmental disabilities at a time furnished by a natural or host family member, or companion who meets the requirements and is approved to provide family living services in the eligible recipient's home or the home of the family living direct support personnel. The eligible recipient lives with the paid direct support personnel in the same residence as the paid DSP. The FL provider agency is responsible for providing nutritional services from a registered dietician or licensed nutritionist. All FL providers must be adult nursing services (ANS) providers and deliver budgeted nursing services including nursing assessment and on call. The provider agency is responsible for up to 750 hours of substitute coverage for the primary direct support personnel to receive sick leave and time off as needed. An exception may be granted by DOH if three eligible recipients are in the residence, but only two of the three are on the DDW and the arrangement is approved by DOH based on the home study documenting the ability of the family living provider to serve more than two eligible recipients in the residence; or there is documentation that identifies the eligible recipients as siblings or there is documentation of the longevity of a relationship (e.g., copies of birth certificates or social history summary). Documentation shall

include a statement of justification from a social worker, psychologist, and any other pertinent professionals working with the eligible recipients. Family living services cannot be provided in conjunction with any other living supports service, respite, or additional nutritional counseling accessed through the person's budget. Family living provider must arrange transportation for all medical appointments, household functions and activities, and to-and-from day services and other meaningful community options. The family living services provider agency shall complete all DOH requirements for approval of each direct support personnel, including completion of an approved home study and training prior to placement. After the initial home study, an updated home study shall be completed annually. The home study must also be updated each time there is a change in family composition or when the family moves to a new home or other significant event. The content and procedures used by the provider agency to conduct home studies shall be approved by DOH and must include assessment of environmental safety.

(b)

Supported living (SL): Supported living is intended for an eligible recipient who is assessed to need residential-type habilitation support to ensure health and safety. Supported living is a living habilitation support service that is intended to increase and promote independence and to provide the skills necessary to prepare an eligible recipient to live on their own in a non-residential setting. Supported living services are designed to address assessed needs and identified individual eligible recipient outcomes. The service is provided to two to four eligible recipients in a community residence. Prior authorization is required from DOH for an eligible recipient to receive this service when living alone. The SL provider agency is responsible for providing nutritional services from a registered dietician or licensed nutritionist based on the

person's needs. All SL providers must provide needed nursing services including on call based on the person's needs. The SL provider must arrange transportation to all medical appointments, household functions and activities, and to-and-from day services and other meaningful community options. Supported living services cannot be provided in conjunction with any other living supports service, respite, or additional nutritional counseling assessed through the person's budget. Amounts and units of supported living services available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards. Levels of service category are differentiated by medical or behavioral need.

(i)

Non-ambulatory stipend requires documentation verifying that the recipient is non-ambulatory.

(ii)

Extraordinary behavior or medical support services require documentation that demonstrate extraordinary behavioral or medical support needs; need for enhanced or additional staffing is required for health and safety assurances; or medical needs cannot be met in a lower service category.

(iii)

The person's physical or medical condition may be characterized by one of the following: life threatening condition characterized by frequent periods of acute exacerbation that requires regular or frequent medical supervision or physician treatment or consultation.

(c)

Intensive medical living supports:

An intensive medical living supports agency provides residential-type supports for an eligible recipient in a supported living environment who requires daily direct skilled nursing, in conjunction with community living supports that promote health and assist the eligible recipient to acquire, retain or improve skills necessary to live in the community and prevent institutionalization, consistent with their ISP. An

eligible recipient must meet criteria for intensive medical living supports according to DDW service definitions and DDW standards for this service and they require nursing care, ongoing assessment, clinical oversight and health management that must be provided directly by a MAD recognized RN or LPN, see 8.314.5.10 NMAC.

(i)

These medical needs include: skilled nursing interventions; delivery of treatment; monitoring for change of condition; and adjustment of interventions and revision of services and plans based on assessed clinical needs.

(ii)

In addition to providing support to an eligible recipient with chronic health conditions, intensive medical living supports are available to an eligible recipient who meets a high level of medical acuity and require short-term transitional support due to recent illness or hospitalization.

This service will afford the core living support provider the time to update health status information and health care plans, train staff on new or exacerbated conditions and assure that the home environment is appropriate to meet the needs of the eligible recipient. Short-term stay in this model may also be utilized by an eligible recipient who meets the criteria that is living in a family setting when the family needs a substantial break from providing direct service. Both types of short-term placements require prior approval from DOH. In order to accommodate referrals for short-term stays, each approved intensive medical living supports provider must maintain at least one bed available for such short-term placements. If the short-term stay bed is occupied, additional requests for short-term stay will be referred to other providers of this service.

(iii)

The intensive medical living supports provider will be responsible for providing the appropriate level of supports, 24 hours per day seven days a week, including necessary

levels of skilled nursing based on assessed need of the eligible recipient. Daily nursing visits are required; however, a RN or a LPN under a RN's supervision is not required to be present in the home during periods of time when skilled nursing services are not required or when an eligible recipient is out in the community. An on-call RN or LPN, under the supervision of a RN must be available to staff during periods when a RN or a LPN under a RN's supervision is not present. Intensive medical living supports require supervision by a RN, and must comply with 8.314.5.10 NMAC.

(iv)

Direct support personnel will provide services that include training and assistance with ADLs such as bathing, dressing, grooming, oral care, eating, transferring, mobility and toileting. These services also include training and assistance with instrumental activities of daily living (IADL) including housework, meal preparation, medication assistance, medication administration, shopping, and money management.

(v)

The intensive medical living supports provider will be responsible for providing access to customized community support and employment as outlined in the eligible recipient's ISP. This includes any skilled nursing needed by the eligible recipient to participate in customized community support and development and employment services. The intensive medical living provider must arrange transportation for all medical appointments, household functions and activities, and to-and-from day services and other meaningful community options.

(vi)

Approval for supported living intensive medical supports requires a IMLS parameter tool with a score of 20 or above.

[(+)] (vii)

Intensive medical living supports providers must comply with 8.314.5.10 NMAC.

(6)

Customized community supports

(CCS): CCS consists of individualized services and supports that enable an eligible recipient to acquire, maintain, and improve opportunities for independence, community integration and employment. Customized community supports services are designed around the preferences and choices of each eligible recipient and offer skill training and supports to include: adaptive skill development; adult educational supports; citizenship skills; communication; social skills, socially appropriate behaviors; self-advocacy, informed choice; community integration and relationship building. This service provides the necessary support to develop social networks with community organizations to increase the eligible recipient’s opportunity to expand valued social relationships and build connections within communities. This service helps to promote self-determination, increases independence and enhances the eligible recipient’s ability to interact with and contribute to their community. Customized community supports are intended to be provided in the community to the fullest extent possible. Customized community supports must not duplicate services available through the New Mexico public education department or the Individuals with Disabilities Education Act (IDEA). Amounts and units of CCS available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards.

(a)
Based on assessed needs, customized community supports services may include personal support, nursing oversight, medication assistance or administration, and integration of strategies in the therapy and healthcare plans into the eligible recipient’s daily activities.

(b)
The customized community supports provider may provide fiscal management for the payment of adult education opportunities as determined necessary for the eligible recipient.

(c)
Customized community supports services may be provided regularly or intermittently based on the needs of the eligible recipient and are provided during the day, evenings and weekends. Customized community supports are not limited to specific hours or days of the week and should be provided in alignment with the persons desired outcomes.

(d)
Customized community supports may be provided in a variety of settings to include the community, classroom, remotely and at site-based locations, depending on the ISP and the particular type of service chosen within CCS. Services provided in any location are required to provide opportunities that lead to participation and inclusion in the community or support the eligible recipient to increase their growth and development.

(e)
Pre-vocational and vocational services are not covered under customized community supports.

(f)
Customized community supports services must be provided in accordance with 8.314.5.10 NMAC.

(7)
Community integrated employment (CIE): Community integrated employment is intended to provide supports that result in jobs in the community which increase economic independence, self-reliance, social connections, and the ability to grow within a career. CIE consists of intensive, ongoing services that support individuals to achieve competitive integrated employment or business ownership who, because of their disabilities, might otherwise not be able to succeed without supports to perform in a competitive work setting or own a business.

Community integrated employment results in employment alongside non-disabled coworkers within the general workforce or in business ownership. This service may also include small group employment including mobile work crews or enclaves. An eligible recipient

is supported to explore and seek opportunity for career advancement through growth in wages, hours, experience or movement from group to individual employment. Each of these activities is reflected in individual career plans. Community integrated employment services must not duplicate services offered through the New Mexico public education department (PED), the Individuals with Disabilities Education Act (IDEA), the New Mexico division of vocational rehabilitation (DVR), the Rehabilitation Act, New Mexico department of workforce solutions (DWS), or the Workforce Innovation and Opportunities Act (WIOA). Compensation shall comply with state and federal laws including the Fair Labor Standards Act. DDW funds (e.g., the provider agency’s reimbursement) may not be used to pay the eligible recipient for work. CIE services shall be provided based on the interests of the person and desired outcomes listed in the ISP. Employment services are to be available 365 days a year, 24 hours a day. Community integrated employment services must comply with 8.314.5.10 NMAC. Community integrated employment consists of job development, self-employment, short term job coaching, job maintenance, [~~job aid;~~] intensive community integrated employment and group community integrated employment models. Requests from eligible recipients for CIE Intensive services must include a letter of justification and the eligibility recipient’s work hours or proposed schedule.

(a)
Job development services through the DDW can only be accessed when services are not otherwise available to the beneficiary under either special education and related services as defined in the Individuals with Disabilities Education Act (IDEA) or vocational rehabilitation services available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730). Job development may include but is not limited to, activities to assist an individual to plan for,

accommodate, explore and obtain CIE. Requests to utilize the DDW for job development must have prior written approval by DDS.

(b)

Short term job coaching services through the DDW can only be accessed when services are not otherwise available to the beneficiary under either special education and related services as defined in the Individuals with Disabilities Education Act (IDEA) or vocational rehabilitation services available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730). Short term job coaching services may include but are not limited to, activities to assist an individual to learn, accommodate and perform work duties, and maintain employment. Requests to utilize the DDW for short term job coaching must have prior written approval by DDS.

(c)

Job maintenance is intended to be used as the long-term supports once all available funding and services through vocational rehabilitation or the educational systems has been utilized. Job maintenance is provided on a one-to-one ratio. Job maintenance services may include, but are not limited to, activities to assist the individual to accommodate, maintain employment and career advancement.

(d)

Self-employment: Services through the DDW can only be accessed when services are not otherwise available to the beneficiary under either special education and related services as defined in the Individuals with Disabilities Education Act (IDEA) or vocational rehabilitation services available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730). Self-employment services are intended to be used as the long-term supports once all available funding and services through vocational rehabilitation or the educational systems have been utilized. Self-employment

does not preclude employment in the other models. Self-employment may include but is not limited to development of a business plan, conducting market analysis, and establishing and supporting the infrastructure for a successful business.

[~~(e)~~]

~~Job aid: One to one personal care services in an individual, community integrated employment setting for people who require assistance with activities of daily living (ADLs) during work hours to maintain successful employment as job supports are reduced.~~

[~~(f)~~] (e)

Intensive community integrated employment (ICIE): Services for people who are working in an individual, community integrated employment setting and require more than 40 hours of staff supports per month to maintain their employment. ICIE is the same scope of services as outlined in 8.314.5.10 NMAC.

[~~(g)~~] (f)

Group community integrated employment: Group community integrated employment is when more than one eligible recipient works in an integrated setting with staff supports on site. Regular and daily contact with non-disabled coworkers or the public occurs. Group community integrated employment services may include but are not limited to activities to assist the individual to accommodate, maintain and advance from group to individual employment.

(8)

Behavioral support consultation

services: The behavior support consultation supports the person's successful achievement of vision-driven desired outcomes. Behavior support consultation services identify behaviors that impact quality of life and provide specific prevention and intervention strategies to manage and lessen the risks these behaviors present. This service is provided by an authorized behavior support consultant and includes a positive behavior supports assessment and positive behavior support plan development; interdisciplinary

team (IDT) training and technical assistance; and monitoring of an individual's behavioral support services. Services may be provided in person for training, evaluation or monitoring and remotely via telehealth as needed. Amounts and units of behavioral support consultation services available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards. Requests from eligible recipients for behavioral support services with units over limits as outlined in the DDS service standards will require submission of positive behavioral support assessment, positive behavioral support plan, behavioral crisis intervention plan, and PRN psychotropic medication plan as applicable. Annual assessments require an in-person interview or observation except when conducted during declared state or national emergencies or pandemics. Behavioral support services include:

(a)

Assessment of the person and their environment, including barriers to independent functioning;

(b)

Design and testing of strategies to address concerns and build on strengths and skills for independence;

(c)

Writing and training in the implementation of plans in a way that the person and [direct support personnel (DSP)] DSP can understand and implement them.

(d)

Behavioral support consultation services must comply with 8.314.5.10 NMAC.

(9)

Nutritional counseling services:

Nutritional counseling services include the assessment, evaluation, collaboration, planning, teaching, consultation and implementation and monitoring of a nutritional plan and menu services that supports the eligible recipient to attain or maintain the highest practicable level of health. It may be provided by a registered/licensed dietician (RD/LD) or licensed nutritionist (LN). This

service may be delivered in person or via telehealth. The RD/LD/LN is an active member of the IDT and addresses overall nutritional needs, diet, tube feeding, weight loss or gain, wounds and a variety complex medical or behavioral conditions that have or may impact the persons overall health. These nutritional counseling services are in addition to those nutritional or dietary services allowed in the eligible recipient's medicaid state plan benefit, or other funding source. This service does not include oral-motor skill development services, such as those services provided by a speech pathologist. Nutritional counseling cannot be billed as a separate service during the hours of living supports. Nutritional counseling services must comply with 8.314.5.10 NMAC.

(10)

Environmental modification

services: Environmental modifications services include the purchasing and installing of equipment or making physical adaptations to an eligible recipient's residence that are necessary to ensure the health, welfare and safety of the eligible recipient or enhance their access to the home environment and increase their ability to act independently.

(a)

Adaptations, installations and modifications include:

- (i) heating and cooling adaptations;
- (ii) fire safety adaptations;
- (iii) turnaround space adaptations;
- (iv) specialized accessibility, safety adaptations or additions;
- (v) installation of specialized electric and plumbing systems to accommodate medical equipment and supplies;
- (vi) installation of trapeze and mobility tracks for home ceilings;
- (vii) installation of ramps;
- (viii) widening of doorways or hallways;

(ix)

modification of bathroom facilities (roll-in showers, sink, bathtub and toilet modification, water faucet controls, floor urinals and bidet adaptations and plumbing);

(x)

purchase or installation of air filtering devices;

(xi)

purchase or installation of lifts or elevators;

(xii)

purchase and installation of glass substitute for windows and doors;

(xiii)

purchase and installation of modified switches, outlets or environmental controls for home devices; and

(xiv)

purchase and installation of alarm and alert systems or signaling devices.

(b)

Excluded are those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the eligible recipient. Adaptations that add to the total square footage of the home are excluded from this benefit except when necessary to complete an adaptation (e.g., in order to improve entrance/egress to an eligible recipient's residence or to configure a bathroom to accommodate a wheelchair).

(c)

Environmental modification services must be provided in accordance with applicable federal, state and local building codes.

(d)

Amounts and units of environmental modification services available per ISP year to eligible recipients must comply with limits outlined in the DDSD issued service standards.

Requests from eligible recipients for environmental modification services must include a brief description of work to be done, itemized cost for equipment, materials, with a description and cost of labor and the DDSD verification of benefit availability form.

(e)

Environmental modification services must comply with 8.314.5.10 NMAC.

(11) Crisis

supports: Crisis supports are services that provide intensive supports by appropriately trained staff to an eligible recipient experiencing a behavioral or medical crisis either within the eligible recipient's present residence or in an alternate residential setting. Crisis supports must be prior authorized by the DDSD bureau of behavioral supports (BBS). Crisis support must comply with 8.314.5.10 NMAC.

(a)

Crisis supports in the eligible recipient's residence: These services provide crisis response staff to assist in supporting and stabilizing the eligible recipient while also training and mentoring staff or family members, who normally support the eligible recipient, in order to remediate the crisis and minimize or prevent recurrence.

(b)

Crisis supports in an alternate residential setting: These services arrange an alternative residential setting and provide crisis response staff to support the eligible recipient in that setting, to stabilize and prepare the eligible recipient to return home or to move into another permanent location. In addition, staff will arrange to train and mentor staff or family members who will support the eligible recipient long-term once the crisis has stabilized, in order to minimize or prevent recurrence of the crisis.

(c)

Crisis response staff will deliver such support in a way that maintains the eligible recipient's normal routine to the maximum extent possible. This includes support during attendance at employment or customized community supports services, which may be billed on the same dates and times of service as crisis supports.

(d)

This service requires prior written approval and referral from the bureau of behavioral support (BBS). Crisis supports are designed to be a short-term response (two to 90 calendar days).

(e)

The timeline may exceed 90 calendar days under extraordinary circumstances, with approval from the BBS in which case duration and intensity of the crisis intervention will be assessed weekly by BBS staff.

(12) **Non-**

medical transportation: Non-medical transportation services assists the eligible recipient in accessing other waiver supports and non-waiver activities identified in their ISP. Non-medical transportation enables the eligible recipient to gain physical access to non-medical community services and resources promoting the eligible recipient opportunity and responsibility in carrying out their ISP activities. This service is to be considered only when transportation is not available through the medicaid state plan or when other arrangements cannot be made. Non-medical transportation includes mileage reimbursement and funding to purchase a pass for public transportation for the eligible recipient. Reimbursement is allowable for eligible ride share programs identified through ISP. Amounts and units of non-medical transportation available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards. Non-medical transportation provider services must comply with 8.314.5.10 NMAC.

(13)

Supplemental dental care:

Supplemental DDW dental care services are provided for an eligible recipient that requires routine oral health care more frequently than the coverage provided under other MAP benefit plans. Supplemental dental care provides one oral examination and one cleaning once every ISP year to an eligible recipient for the purpose of preserving or maintaining oral health. The supplemental dental care service must comply with 8.314.5.10 NMAC.

(14) **Assistive**

technology: Assistive technology (AT) purchasing agent service is intended to support the access of

low tech devices that increase the eligible recipient's physical and communicative participation in functional activities at home and in the community. Items purchased through the assistive technology service assist the eligible recipient to meet outcomes outlined in their ISP, increase functional participation in employment, community activities, activities of daily living, personal interactions, or leisure activities, or increase the eligible recipient's safety during participation of the functional or leisure activity. Amounts and units of assistive technology available to eligible recipients per ISP year must comply with limits outlined in the DDS issued service standards.

(a)

The assistive technology service allows an eligible recipient to purchase or obtain needed items to develop low-tech augmentative communication, environmental access, mobility systems and other functional assistive technology, not covered through the eligible recipient's medicaid state plan benefits.

(b)

Assistive technology may be accessed through an approved waiver provider acting as a purchasing agent for technology vendors whose products meet definition and needs or directly through an approved technology provider who is the direct vendor of the service and approved DDW Provider.

(c)

Assistive technology must comply with 8.314.5.10 NMAC.

(15)

Independent living transition services: Independent living transition services are one-time set-up expenses for an eligible recipient who transitions from a 24 hour living supports setting into a home or apartment of their own with intermittent support that allows them to live more independently in the community. The service covers expenses associated with security deposits that are required to obtain a lease on an apartment or home, set-up fees or deposits for utilities

(telephone, internet, electricity, heating, etc.), and furnishings to establish safe and healthy living arrangements, such as a bed, chair, dining table and chairs, eating utensils and food preparation items, and a cell phone. The service also covers services necessary for the eligible recipient's health and safety such as initial or one-time fees associated with the cost of paying for pest control, allergen control or cleaning services prior to occupancy. Requests from eligible recipients for independent living transition services must include DDS verification of eligibility form. Amounts and units of independent living transition services available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards. Independent living transition services must comply with 8.314.5.10 NMAC.

(16) **Remote****personal support technology:**

Remote personal support technology is an electronic device or monitoring system that supports individuals to be independent in the community or in their place of residence with limited assistance or supervision of paid staff. This service provides up to 24-hour alert, monitoring or remote personal emergency response capability, remote prompting or in-home reminders, or environmental controls for independence through the use of technologies. The service is intended to promote independence and quality of life, to offer opportunity to live safely and as independently as possible in one's home, and to ensure the health and safety of the individual in services. Remote personal support technology is available to individuals who may want to live independently in their own homes, may have a demonstrated need for timely response due to health or safety concerns, or may be afforded increased independence from staff supervision in residential services. The use of technology should ease life activities for individuals and their families. Remote personal support technology includes development of individualized response plans with the

installation of the electronic device or sensors, monthly maintenance, rental or subscription fees. This service is not intended to provide for paid, in-person on-site response. On-site response must be planned through response plans that are developed using natural or other paid supports for on-site response. Remote personal support technology may be accessed through an approved waiver provider acting as a purchasing agent for technology vendors whose products meet definition and needs or directly through an approved technology provider who is the direct vendor of the service and approved DDW provider. Amounts and units of remote support technology available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards.

(17)

Preliminary risk screening and consultation related to inappropriate sexual behavior (PRSC): PRSC is designed to assess continued risk of sexually inappropriate or offending behavior in persons who exhibit or have a history of exhibiting risk factors for these types of behaviors. This service is part of a variety of behavior support services (including BSC and socialization & sexuality education) that promotes community safety and reduces the impact of interfering behaviors that compromise the person’s quality of life. PRSC is provided by a licensed mental health professional who has been trained and approved as a risk evaluator by the BBS. Amounts and units of PRSC available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards.

(a)

The key functions of PRSC are to:

- (i) provide a structured screening of the eligible recipient’s behaviors that may be sexually inappropriate;
- (ii) develop and document recommendations of the eligible recipient in the form of a report or consultation notes;

(iii) develop and periodically review risk management plans for the eligible recipient, when recommended; and

(iv)

provide consultation regarding the management and reduction of the eligible recipient’s sexually inappropriate behavioral incidents that may pose a health and safety risk to the eligible recipient or others.

(b)

Preliminary risk screening and consultation related to inappropriate sexual behavioral services must comply with 8.314.5.10 NMAC.

(18)

Socialization and sexuality education (SSE) service:

Socialization and sexuality education in the form of the friends & relationships course (FRC) is a comprehensive lifelong adult education program that teaches students knowledge and skills to increase social networks with healthy, meaningful relationships and to increase personal safety including decreasing interpersonal and intimate violence in relationships, sexual victimization, exploitation and abuse. This enhances their ability to develop close friendships and romantic relationships. The FRC involves the person’s network of support (natural supports, paid supports, teachers, nurses, family members, guardians, friends, advocates, or other professionals) teaching them to support the social and sexual lives of persons with IDD, through participation in classes, and by using trained and paid self-advocates as role models and peer mentors in classes. Amounts and units of SSE available per ISP year to eligible recipients must comply with limits outlined in the DDS issued service standards.

(19)

Socialization and sexuality education services must comply with 8.314.5.10 NMAC.

Customized in-home supports:

Customized in-home support services is not a residential habilitation service and is intended for an eligible recipient that does not require the level of support provided under living

supports services. Customized in-home supports provide an eligible recipient the opportunity to design and manage the supports needed to live in their own home or family home. Customized in-home supports include a combination of instruction and personal support activities provided intermittently to assist the eligible recipient with ADLs, meal preparation, household services, and money management. The services and supports are individually designed to instruct or enhance home living skills, community skills and to address health and safety of the eligible recipient, as needed. This service provides assistance with the acquisition, improvement or retention of skills that provides the necessary support to achieve personal outcomes that enhance the eligible recipient’s ability to live independently in the community. Services are delivered by a direct support professional in the individuals own home or family home in the community. Services may be provided as part of on-site response plan with use of remote personal support technology. This service is intended to provide intermittent support and cannot be provided 24 hours a day/seven days a week. Requests for customized in-home living supports for over 11 hours a day must be approved the DDS. Customized in-home support services must comply with 8.314.5.10 NMAC. [8.314.5.15 NMAC - Rp, 8.314.5.15 NMAC, 12/1/2018; A, 4/1/2022; A, 3/1/2024]

8.314.5.17 INDIVIDUALIZED SERVICE PLAN (ISP):

A. CMS requires a person-centered service plan for every individual receiving HCBS. The ISP must be developed annually through an ongoing person-centered planning process. The ISP development must:

- (1) Involve those whom the participant wishes to attend and participate in developing the service plan and are provided adequate notice;
- (2) Use assessed needs to identify services and supports;

(3) Include individually identified goals and preferences related to relationships, community participation, employment, income and savings, healthcare and wellness, education and others;

(4) Identify roles and responsibilities of IDT members responsible for implementing the plan;

(5) Include the timing of the plan and how and when it is updated, including response to changing circumstances and needs; and

(6) Outline how the individual is informed of available services funded by the DDW as well as other natural and community resources.

B. The IDT must review the eligible recipient’s person-centered plan every 12 months or more often if indicated.

C. The IDT is responsible for compiling clinical documentation to justify the requested services and budget to the OR for adult recipients excluding class members of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al, (757 F. Supp. 1243 DNM 1990).

D. The person-centered service plan must consist of the following:

(1) identifies risks and includes a plan to reduce any risks;

(2) incorporates other health concerns (e.g. mental health, chemical health, chronic medical conditions, etc.);

(3) is written in plain language;

(4) records the alternative HCBS that were considered by the person;

(5) includes natural supports and services;

(6) includes strategies for solving conflict or disagreement within the process, including any conflict of interest guidelines for planning participants;

(7) identifies who is responsible for monitoring implementation of the plan;

(8) includes the person’s strengths;

(9) describes goals or skills that are related to the person’s preferences;

(10) includes a global statement about the person’s self-determined goals and aspirations;

(11) details what is important to the person; and

(12) includes a method for the individual to request updates to the plan, as needed.

E. Upon completion of the ISP by the IDT, the case manager shall develop a budget to be evaluated in accordance with the ~~[outside-reviewer (OR) process]~~ TPA process; see Subsection D of 8.314.5.18 NMAC.

~~[F. — Upon completion of the ISP by the IDT, the case manager shall develop a budget to be evaluated in accordance with the medicaid third-party assessor (TPA) review process for class members of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al, (757 F. Supp. 1243 DNM 1990).~~

~~[G] E.~~ All services must be provided as specified in the ISP.

[H] G. The case manager must conduct a pre ISP meeting annually with the recipient to evaluate and plan for upcoming ISP term. The CM is required to meet with the DD Waiver participant and guardian prior to the ISP meeting. The CM reviews current assessment information, prepares for the meeting, creates a plan with the person to facilitate or co-facilitate the meeting if desired, discusses the budget, reviews the current secondary freedom of choice forms, and facilitates greater informed participation in ISP development by the person.

[8.314.5.17 NMAC - Rp, 8.314.5.17 NMAC, 12/1/2018; A, 4/1/2022; A, 4/1/2024]

8.314.5.18 PRIOR AUTHORIZATION AND UTILIZATION REVIEW: All MAD services, including services covered under the DDW, are subject to utilization review for medical necessity and program compliance.

Reviews may be performed before services are furnished, after services are furnished and before payment is made, or after payment is made; see 8.310.2 NMAC. Once enrolled, providers receive instructions and documentation forms necessary for prior authorization and claims processing.

A. MAD prior authorization: To be eligible for DDW services, a MAD eligible recipient must require the level of care (LOC) of services provided in an ICF-IID. LOC determinations are made by MAD or its designee. The eligible recipient’s person centered ISP must specify the type, amount and duration of services and meet clinical criteria. Certain procedures and services specified in the ISP may require prior authorization from MAD or its designee. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

B. DOH prior authorization: Certain services are subject to utilization review by DOH.

C. Eligibility determination: Prior authorization of services does not guarantee that individuals are eligible for MAD services. Providers must verify that individuals are eligible for MAD services, including DDW services or other health insurance prior to the time services are furnished. An eligible recipient may not be institutionalized, hospitalized, or receive personal care option (PCO) services or other HCBS waiver services at the time DDW services are provided, except for certain case management services that are required to coordinate discharge plans or transition of services to DDW services.

D. [Outside review process:] Third party assessor review process: All services for DDW recipients ~~[excluding class members of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al, (757 F. Supp. 1243 DNM 1990)]~~ will be reviewed by ~~[an OR]~~ the TPA contracted by ~~[DOH]~~ MAD. The

[OR] TPA will adhere to deadlines set forth in its contract with the [DOH] MAD. The [OR] will apply the DDW clinical criteria to TPA will make a clinical determination on whether the requested services and service amounts are needed, and will recommend whether the requested annual budget and ISP should be approved. If the [OR] TPA approves in whole or part the requested ISP and budget, the [OR] TPA will [send] enter the approved portion of the budget [to the medicaid TPA for entry] into the medicaid management information system and issue a prior authorization to the case manager. If there is a denial in part or whole, the [OR] TPA decision must be in writing, identify a list of all documents and input considered by the [OR] TPA team during its review, and state the reasons for any denial of requested services. The eligible recipient, case manager, and guardian (if applicable) will be provided with this written determination and notice of an opportunity to request a fair hearing as well as an agency review conference.

(1) The eligible recipient, case manager, and guardian (if applicable) may submit to the [OR]-TPA additional information relating to support needs.

(2) The decision of the [OR] TPA approving services requested by the DDW participant is binding on the State. However, the state may agree to overturn a decision to deny services requested by the DDW participant at a requested agency conference.

E. Reconsideration: Providers who disagree with the denial of a prior authorization request or other review decisions may request a reconsideration. See 8.350.2 NMAC, Reconsideration of Utilization Review Decisions. [8.314.5.18 NMAC - Rp, 8.314.5.18 NMAC, 12/1/2018; A, 4/1/2022; A, 4/1/2024]

8.314.5.20 RIGHT TO A HSD ADMINISTRATIVE HEARING: An eligible recipient may request a HSD administrative hearing to appeal

a decision of MAD or its third party assessor contractor, [or the OR,] that is an adverse action against the recipient. Prior to the fair hearing an eligible recipient may be offered an agency review conference. An agency review conference (AC) means an optional conference offered by [the DOH] HSD to provide an opportunity to informally resolve a dispute over the denial, suspension, reduction, termination or modification of DDW benefits or services. An AC will be attended by the recipient and their authorized representative if applicable, representatives of the [outside review, DOH] TPA, HSD and any other necessary parties. The recipient may also bring whomever they wish to assist during the AC. The AC is optional and shall in no way delay or replace the fair hearing process or affect the deadline for a fair hearing request.

A. An authorized representative means any individual designated by the eligible recipient or their guardian, if applicable, to represent the recipient and act on their behalf. The authorized representative must provide formal documentation authorizing them to access the identified case information for this specific purpose. An authorized representative may be, but need not be, the recipient’s guardian or attorney.

B. The [DOH] HSD will issue written notification describing the outcome of the AC and any agreements within seven business days of the AC to the recipient, recipient’s guardian if applicable, and case manager.

C. Unless the fair hearing request is withdrawn by the recipient or recipient’s guardian or lawyer, any requested fair hearing will proceed. At the fair hearing the claimant may raise any relevant issue and present any relevant information that they choose. See 8.352.2 NMAC for a description of a claimant’s HSD administrative hearing rights and responsibilities.

D. In addition to the requirements set forth in 8.352.2 NMAC, HSD [and DOH] shall take

such actions as are necessary to assure the presence at the hearing of all necessary witnesses within DOH’s control, including, when relevant to a denial of services or when requested by the claimant, a representative of the [OR] TPA with knowledge of the claimant’s case and the reason(s) for the denial, in whole or in part, of any requested services.

E. Denials of services through the exception authorization process or other actions during this process adverse to the participant can also be appealed through a fair hearing.

F. All HSD administrative hearings are conducted in accordance with state and federal law.

G. No ex parte communications with an HSD administrative law judge are permitted by any DDW participant or counsel regarding any pending case. The MAD director shall not have ex parte communications regarding any pending cases with any DDW participant or counsel involved in that case. The MAD director’s decision shall be limited to an on the record review.

[8.314.5.20 NMAC - Rp, 8.314.5.20 NMAC, 12/1/2018; A, 4/1/2022; A, 4/1/2024]

8.314.5.21 CONTINUATION OF BENEFITS PURSUANT TO A TIMELY APPEAL AND A HSD ADMINISTRATIVE HEARING PROCEEDING:

A continuation of an existing DDW benefit or benefits is automatically provided to an eligible recipient claimant pending the resolution of the [outside review process] agency review conference and any subsequent fair hearing. The continuation of a benefit is only available to a claimant that is currently receiving the appealed benefits. The continuation of the benefits will be the same as the claimant’s current allocation, budget or LOC unless a revision is agreed to in writing by the eligible recipient (or authorized representative) and [DOH] HSD.

[8.314.5.21 NMAC - Rp, 8.314.5.21 NMAC, 12/1/2018; A, 4/1/2024]

MEDICAL BOARD

This is an amendment to 16.10.2 NMAC, Sections 7, 8, 9 and 10 effective 3/12/2024.

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 and Section 61-1-3.5 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; A, 3/12/2024]

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 as defined in Section 61-6-13 NMSA.

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 A, 3/12/2024]

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; and

(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 A, 3/12/2024]

16.10.2.10 EXPEDITED LICENSURE:

A. Prerequisites
for expedited 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 that has been verified as including all required documentation 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.]~~

C. Expedited licensure process: Upon receipt of a completed application, required fees, and verification of licensure in all states or territories where the applicant actively holds a license to practice medicine, the board shall issue an expedited license to a qualified applicant within thirty (30) days from the date the completed application was received unless the board may have other cause to deny the application pursuant to Section 61-6-15 NMSA 1978.

D. Expedited license expiration: Expedited licenses shall be valid for no more than 12 months from the date of issuance.

[G] E. Procedure for incomplete application. If an incomplete application for an expedited license 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 A, 3/12/2024]

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 19 PUBLIC SCHOOL ACCOUNTABILITY PART 4 ACCREDITATION PROCEDURES

6.19.4.1 ISSUING AGENCY: Public Education Department, hereinafter the department. [6.19.4.1 NMAC - N, 7/1/2024]

6.19.4.2 SCOPE: This rule applies to all school districts, charter schools, the educational programs of state institutions, bureau of Indian education (BIE) schools, and private schools. [6.19.4.2 NMAC - N, 7/1/2024]

6.19.4.3 STATUTORY AUTHORITY: Sections 9-24-8, 12-6-1, et seq., 22-1-11, 22-2-1, 22-2-2.1, 22-2-2, 22-2-8.1, 22-2-14, 22-4-3, 22-5-4.13, 22-5-13, 22-8-6, 22-8-11, 22-8-13, 22-8-13.1, 22-8B-5, 22-8B-12.2, 22-8-19, 22-13-1, 22-13-14, 22-23A-7, and 24-5-4 NMSA 1978, and

Section 1111(c)(4)(E) of the federal Every Student Succeeds Act. [6.19.4.3 NMAC - N, 7/1/2024]

6.19.4.4 DURATION: Permanent. [6.19.4.4 NMAC - N, 7/1/2024]

6.19.4.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section. [6.19.4.5 NMAC - N, 7/1/2024]

6.19.4.6 OBJECTIVE: This rule establishes procedures for accreditation of all school districts and public schools, and for the accreditation of the education programs of all state institutions except the New Mexico military institute. This rule also establishes procedures for the accreditation of private schools choosing to seek state accreditation and BIE schools choosing to seek state accreditation and establishes requirements for reporting to the department by private schools not choosing to seek state accreditation and BIE schools not choosing to seek state accreditation. This rule includes procedures for department approval of accrediting entities. For all schools within its scope, this rule outlines the consequences of failure to submit required reports to the department and the consequences of disapproval accreditation status. [6.19.4.6 NMAC - N, 7/1/2024]

6.19.4.7 DEFINITIONS:

A. “Accreditation status” means either approval or disapproval by the secretary of the adequacy and functionality of an educational program. Public schools other than locally chartered charter schools shall be designated with the annual accreditation status of their LEA unless otherwise determined by the secretary.

B. “Accrediting entity” means an organization capable of evaluating the quality of an educational program pursuant to this rule.

C. “Attendance improvement plan” means a tiered,

data-informed system for public schools and school districts to identify students who are chronically or excessively absent and to aid public schools in developing whole-school prevention strategies and targeted interventions, as defined in Section 22-12A-2 NMSA 1978.

D. “Bureau of Indian education school” or “BIE school” means a school that is funded by the bureau of Indian education, located in New Mexico, provides instruction for first through twelfth grades, and is not sectarian or denominational, and includes schools that are tribally controlled.

E. “Days” means, unless otherwise specified in a provision in this rule or applicable statute, business days when the period referenced is 10 days or less, and calendar days when the period referenced is 11 days or more. In computing the number of days, exclude the day of the event that triggers the period, and include the last day of the period. If the last day is a day when the department is closed, the period continues to run until the end of the next business day that the department is not closed. Whenever a person or entity shall act under this rule within a prescribed period after service of a notice or paper upon the person or entity, and the notice or paper is served by mail or courier service, three calendar days are added to the prescribed period.

F. “Educational program” means a program that provides for the education of school-age persons in state institutions, public, nonpublic, or BIE schools.

G. “Evidence-based practices” means activities, strategies, and interventions informed and supported by rigorous research that demonstrate consistent, positive impacts on student outcomes, and may include practices that are supported by strong, moderate, promising, or rationale-demonstrating evidence.

H. “Historically defined Indian-impacted” means a school district or a charter school that:

(1) serves at least 175 American Indian or Alaska Native students and is located wholly or partially on tribal land;

(2) identified at least ten percent of its overall student population as American Indian or Alaska Native and is located wholly or partially on tribal land; or

(3) identifies at least forty-five percent of its overall student population as American Indian or Alaska Native.

I. “Local education Agency” or “LEA” means a school district or state-chartered charter school.

J. “Nonpublic school or private school” means a school, other than a home school, that offers programs of instruction and is not under the control, supervision, or management of a local school board or a charter school governing body.

K. “School index score” means the total score a school earns on all required measures as defined by the department according to the state’s system for annual meaningful differentiation detailed in the state’s ESSA plan.

L. “Secretary” means the secretary of the department.

M. “State accreditation” means approval by the secretary of an educational program’s adequacy of student outcomes and activities, organizational effectiveness, staff preparation, and other educational matters, as determined by the department. State accreditation of a nonpublic or BIE school means recognition by the department that the school meets standards set by an accrediting entity recognized by the department and has submitted required reports to the department.

N. “State institution” means any state agency except the New Mexico military institute that is responsible for educating resident school-age persons, including the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf. [6.19.4.7 NMAC - N, 7/1/2024]

6.19.4.8 PUBLIC SCHOOL

ANNUAL ACCREDITATION

REVIEW: Public school districts, public schools, and educational programs of state institutions shall report information to the department pursuant to Subsection I of Section 22-2-2 NMSA 1978. The quality and content of required reports and of the educational programs represented by the reports will be evaluated by the department for approval or disapproval accreditation status. Pursuant to Subsection F of Section 22-2-2 NMSA 1978, the secretary’s accreditation decision is based upon evidence of the adequacy of student outcomes and activities, organizational effectiveness, staff preparation, and other educational matters such as factors contributing to school index scores. Local school districts, charter schools, and educational programs of state institutions shall follow department guidance in submitting satisfactory reports.

A. Annual accreditation review requirements. Local school districts, charter schools, and state institutions shall provide reports to the department, either via the statewide data reporting system or by another method prescribed by the department, of the following requirements:

(1) **Board training.** Local school districts and charter schools shall submit a report of the training completed in the current fiscal year by each member of the school board as required by Sections 22-5-13 NMSA 1978 or by each member of the charter school governing body as required by Section 22-8B-5.1 NMSA 1978, with the number of hours of training in each area as required by Paragraph (3) of Subsection A of 6.29.1.9 NMAC and Sections 8 and 9 of 6.80.5 NMAC.

(2) **Financial audit.** Local school districts, charter schools, and state institutions shall submit a report of the previous fiscal year’s financial audit. The report shall include the date the audit was submitted as established in Paragraph (1) of Subsection A of 2.2.2.9 NMAC.

(3) Program plans, budget, and actual expenditures. Local school districts and charter schools shall:

(a) update and submit by a department-assigned due date district-level plans, and, as applicable, all school-level plans pursuant to Section 22-8-6 NMSA 1978 and 6.29.1 NMAC;

(b) update and submit an operating budget that is complete by the department-assigned due date. The budget shall prioritize resources toward proven programs and methods that are linked to improved student achievement and demonstrate parental involvement in the budgeting process, pursuant to Sections 22-8-10 and 22-8-11, NMSA 1978;

(c) budget into the department-directed funding codes at least as much funding for special education, gifted education, and at-risk programs as revenue generated by the corresponding program units, pursuant to Paragraph (2) of Subsection B of Section 22-8-11 NMSA 1978;

(d) ensure that each program generating program units in an operating budget shall meet the requirements of law and the department’s rules and procedures, pursuant to Paragraph (2) of Subsection B of Section 22-8-11 NMSA 1978; and

(d) report actual expenditures for each school, pursuant to Subsection F of Section 22-2C-11 NMSA 1978.

(4) **School enrollment.** Via the statewide data system, local school districts and charter schools shall submit data for each school pursuant to Section 22-8-13 NMSA 1978.

(5) **School accountability data.** Local school districts and charter schools shall submit to the department student assessment data required by Section 22-2C-11 NMSA 1978 and longitudinal accountability data required by Subsection K of Section 22-1-11 NMSA 1978.

(6) Attendance improvement. Local school districts and charter schools shall submit reports of attendance improvement and absence prevention strategies for each school, including attendance improvement plans submitted to the department no later than 45 days after the beginning of the school year pursuant to Section 22-12A-7 NMSA 1978 of the attendance for success act.

(7) School safety plans. Local school districts and charter schools shall submit school safety plans by the department-determined due date and on a three-year cycle as required in 6.12.6.8 NMAC.

(8) Postsecondary plans. Local school districts, charter schools, and state institutions shall submit to the department a report of all students in grades eight through 12 at each school who have on file a new or updated, complete, and signed individualized next step plan, pursuant to Section 22-13-1.1 NMSA 1978 or an updated individual education plan (IEP) or gifted individual education plan (GIEP) with transition plan that meets next step plan requirements.

(9) Class loads, caseloads, and subjects of instruction. Local school districts, charter schools, and state institutions shall report class loads, caseloads, and instructional subject areas for each school. Charter schools may cite in their report a current, nondiscretionary waiver of department requirements for class load, teaching load, staffing patterns, and subject areas pursuant to Section 22-8B-5 NMSA 1978.

(a) Class loads. The report of the number of students in general education classrooms shall include: the class load for each elementary school teacher and, where applicable, indication of the support of educational assistants; for each school, the average class load for classrooms in grades one, two, and three; for each school the average class load for classrooms in grades four, five, and six; the daily teaching load for teachers in grades seven through 12, indicating those teaching required English courses; and any conditions supporting a request for waiver of class load requirements, pursuant to Subsection G of Section 22-10A-20 NMSA 1978 and Subsection H of 6.29.1.9 NMAC.

(b) Caseloads. The report shall include the student caseloads of school staff providing instruction or services required of students' individualized education programs (IEPs) and gifted individualized education programs (GIEPs), categorized by level of service pursuant to Subsection I of 6.29.1.9 NMAC.

(c) Counselors. The report shall include the staff-to-student ratios, caseloads, and licensure types for school counselors at each school.

(d) Subject areas. The report shall include the instructional subject areas provided at each school, addressing department-approved content and performance standards. A school or school district failing to meet these minimum requirements shall not receive approved accreditation status. Reports for grades nine through 12 shall include all credit-earning courses that are required or may contribute to student graduation requirements as provided for in Section 22-13-1.1 NMSA 1978, including those that are advanced placement, international baccalaureate, honors, or dual credit courses, and credits earned in the process of completing an industry-recognized credential, certificate, or degree. An assurance that final examinations are administered as part of all credit-earning courses in grades nine through 12 shall accompany the report of instructional subject areas. Reports for kindergarten through grade eight shall include all required instructional areas of Section 22-13-1 NMSA 1978:

Grades	Subjects
K-3	daily instruction in mathematics, reading, and language arts skills, including phonemic awareness, phonics, and comprehension
1-3	art music a language other than English science mathematics reading and language arts, including structured literacy instruction social studies physical education health education

(Table Continued Next Page)

4-8	reading and language arts skills, with an emphasis on writing and editing for at least one year and an emphasis on grammar and writing for at least one year mathematics reading and language arts, including structured literacy instruction language other than English communication skills science art music social studies New Mexico history United States history geography physical education health education electives that contribute to academic growth and skill development and that provide career and technical education.
8	algebra 1 shall be offered in general education classroom settings, online, or by agreement with high schools
6-8	media literacy may be offered as an elective

(10) Tribal consultation, tribal education status reports, student needs assessments.

(a) Local school districts with tribal lands in their boundaries shall include in the report the districtwide tribal education status report provided to tribes and evidence of tribal consultation pursuant to Section 22-23A-7 NMSA 1978 and 6.35.2.13 NMAC;

(b) Historically defined Indian-impacted local school districts and charter schools shall include in the report the most recent student needs assessment, systemic framework, accountability tool, annual evaluation of the systemic framework, any requests to amend the systemic framework or accountability tool, and the public statement as required by Sections 11 and 12 of 6.35.2 NMAC.

(c) Local school districts contemplating opening or closing a school on tribal land for any reason shall include in the report evidence of consultation with tribal leaders and members and families of students who will be eligible to attend the public school pursuant to Section 22-5-4.13 NMSA 1978.

(d) Charter schools contemplating opening or closing a school on tribal land for any reason shall include in the report evidence of negotiation with the tribal government and consultation with leaders, and members and families of students who will be eligible to attend the public school pursuant to Section 22-8B-12.2 NMSA 1978.

(e) A school district or charter school that is required under federal law to consult with tribal entities as a condition of receiving impact aid funds shall include in its report the detailed narrative of its consultations with tribal entities and the results of those consultations as reported in the education plan pursuant to Section 22-8-6 NMSA 1978.

B. Citation of any current waivers of educational program requirements shall accompany reports.
 [6.19.4.8 NMAC - N, 7/1/2024]

6.19.4.9 ACCREDITATION OF NONPUBLIC AND BIE SCHOOLS:

A. Nonpublic schools choosing to seek state accreditation and BIE schools choosing to seek state accreditation shall obtain and maintain accreditation from one of

the accrediting entities approved by the department. The school's accreditation status conferred by the approved accrediting entity shall satisfy the requirement of Paragraph (1) of Subsection B of this section unless the entity's approval is later suspended, limited, or terminated by the department or unless the school's accreditation status is suspended, limited, or terminated by its own accrediting entity.

B. Annual report to ensure the health and safety of New Mexico children. All nonpublic and BIE schools shall submit an annual report, whether choosing to seek state accreditation or not choosing to seek state accreditation. On a date set by the department and in a method prescribed by the department, nonpublic and BIE schools shall update and submit the following information to the department:

(1) the current accreditation status and schedule for reaccreditation by a department-approved accrediting entity if applicable;

(2) a report of immunization status records pursuant to Section 24-5-4 NMSA 1978;

(3) a report of the completion of required emergency drills, pursuant to Section 22-13-14 NMSA 1978;

(4) a report of attendance pursuant to Subsection I of Section 22-2-2 NMSA 1978; and

(5) the school's current attendance policy enforcing Sections 22-12A-1 through 22-12A-14 NMSA 1978, the Attendance for Success Act, pursuant to Section 22-12A-6 NMSA 1978.

C. For nonpublic schools choosing to seek state accreditation and BIE schools choosing to seek state accreditation, approval accreditation status shall be based on review of the completeness and sufficiency of the annual report described in Subsection B of this section.

D. The department may observe the operation of a nonpublic school choosing to seek state accreditation or BIE school choosing to seek state accreditation.

E. Any accrediting entity seeking approval by the department shall contact the department by written inquiry and provide information requested by the department demonstrating the accrediting entity's:

(1) capacity to evaluate a school under set, rigorous standards;

(2) reliance on accreditation standards for evidence-based educational practices that facilitate student academic achievement;

(3) success outside the state of New Mexico, if any, as an accrediting agency;

(4) policy and procedures for sharing educational research data and results, academic standards, and school-specific accreditation reports with the department;

(5) use of peer evaluation and periodic site visits to assess whether a nonpublic school meets that entity's standards and continues to meet those standards;

(6) collection of documentation to verify that a nonpublic school meets and continues to meet that entity's standards; and

(7) authority to suspend, limit, or terminate its

accreditation of a school. [6.19.4.9 NMAC - N, 7/1/2024]

6.19.4.10 ANNUAL ACCREDITATION CYCLE:

Before the end of each fiscal year, school districts, charter schools, state institutions, and those nonpublic schools choosing to seek state accreditation and BIE schools choosing to seek state accreditation shall submit all required reports for accreditation.

A. The secretary shall determine the accreditation status of school districts, public schools, educational programs of state institutions, and any nonpublic schools or BIE schools seeking accreditation.

B. A school district's or school's accreditation status will remain in effect until the next determination has been made by the secretary.

[6.19.4.10 NMAC - N, 7/1/2024]

6.19.4.11 ADMINISTRATIVE APPEAL HEARING

PROCEDURES: A school district, charter school, nonpublic school, or BIE school may request a hearing with regard to the determination of its accreditation status within 30 days of its issuance.

A. A hearing shall be held within 30 days of the date the secretary receives the request to convene the hearing.

B. The local school board, charter school governing body, or governing body of a nonpublic or BIE school subject to disapproval accreditation status may submit to the secretary along with the request for hearing a written statement explaining why the school should receive approval accreditation status.

(1) The written statement shall address only the cause or causes for disapproval specified in the notice and the reasons for opposing the decision, which, for public schools, shall address the factors outlined in Section 8 of this rule, and for nonpublic or BIE schools, shall address the factors outlined in Section 9 of this rule.

(2) The written statement shall be submitted to the department's office of general counsel.

C. Only matters relevant to the contents of notice of disapproval accreditation status and the statement from the local school board, charter school governing body, or governing body of a nonpublic or BIE school required by this section may be raised at the hearing.

D. The secretary or hearing officer may have the department's legal counsel and other department staff present at the hearing and may seek their advice at any time.

E. The rules of evidence and rules of civil procedure shall not apply to the hearing.

F. The hearing shall be presided over by the secretary, or a hearing officer designated by the secretary, and shall be open to the public. A hearing officer shall, within 30 days after the hearing, or sooner if requested by the secretary, submit a recommended decision to the secretary.

G. The secretary or hearing officer shall open the hearing by presenting a summary of the reasons for the disapproval accreditation status.

H. The local school board, charter school governing body, or governing body of a nonpublic or BIE school shall then commence a presentation to show why the secretary should not issue disapproval accreditation status.

I. The local school board, charter school governing body, or governing body of a nonpublic or BIE school may present witnesses and introduce documentary evidence to rebut the secretary's rationale for issuing disapproval accreditation status. The local school board's, charter school governing body's, or nonpublic or BIE school governing body's presentation and witnesses may be subject to objection or cross-examination. The department may also present witnesses and introduce documentary evidence related to the disapproval accreditation status. The department's presentation and

witnesses may also be subject to objection or cross-examination.

J. The secretary or hearing officer may question department staff or the local school board, charter school governing body, or governing body of a nonpublic or BIE school subject to the accreditation decision regarding the causes for the disapproval and the reasons stated by the recipient for opposing the decision. The local school board, charter school governing body, or governing body of a nonpublic or BIE school may also question the department’s witnesses regarding the causes for the decision and the reasons stated by the recipient for opposing the disapproval.

K. The secretary or hearing officer may question witnesses and rule on admission of testimony or documentary evidence, including exercising discretion to exclude incompetent, irrelevant, immaterial, or unduly repetitious evidence.

L. The secretary shall retain, modify, or withdraw the disapproval accreditation status within 10 days after the date of submission of the hearing officer’s recommended decision.

(1) The secretary’s decision shall be in writing and delivered to the local school board, charter school governing body, or governing body of a nonpublic or BIE school subject to the accreditation decision.

(2) The secretary’s written decision shall provide reasons for the decision.

(3) The decision may be delivered by physical or electronic mail to the address or email address of the recipient of disapproval accreditation status.

M. The local school board, charter school governing body, or governing body of a nonpublic or BIE school subject to the accreditation decision may waive the timelines provided in this rule by submitting such waiver to the secretary in writing and signed by a person with authority to make the submission.

N. An administrative record shall be made, including a record of the proceedings, which may be an audio recording. Payment may be required for receipt of the administrative record.

O. The matter may be settled by the parties at any time prior to the conclusion of the hearing. Any such agreement shall address the timelines provided in this rule and shall be included in the administrative record.

[6.19.4.11 NMAC - N, 7/1/2024]

6.19.4.12 CONSEQUENCES OF PUBLIC SCHOOL DISAPPROVAL ACCREDITATION STATUS:

A. A local school district or public school that has received disapproval accreditation status shall not operate a school-based early childhood education program, pursuant to Subsection B of Section 22-8-19.1 NMSA 1978.

B. In addition to conferring disapproval accreditation status upon a local school district, a local school district’s school or educational program of a state institution, the department may:

(1) require a locally developed plan to correct the organizational or programmatic deficiencies contributing to disapproval;

(2) direct the organizational and educational program planning of the local school district or a local school district’s school;

(3) suspend from authority and responsibility the school board, superintendent, or school principal pursuant to Section 22-2-14 NMSA 1978;

(4) bring action in the district court for an order of consolidation of school districts, pursuant to Section 22-4-3 NMSA 1978;

(5) close the local school district’s school; or

(6) execute other remedies in the public school code that may be appropriate.

C. In addition to conferring disapproval accreditation status upon a state-chartered or locally chartered school, the department may:

(1) suspend the principal from authority or responsibility pursuant to Section 22-2-14 NMSA 1978;

(2) notify a charter school’s authorizer for purposes of the suspension, revocation, or non-renewal of the charter of a state-chartered or locally chartered school by the authorizer, as provided for in Paragraph (5) of Subsection K of Section 22-8B-12 NMSA 1978; or

(3) execute other remedies in the public school code that may be appropriate. [6.19.4.12 NMAC - N, 7/1/2024]

HISTORY OF 6.19.4 NMAC: [RESERVED]

PUBLIC REGULATION COMMISSION

The New Mexico Public Regulation Commission, approved, on 2/22/2024, the repeal of its rule 17.11.10 NMAC - State Rural Universal Service Fund (filed 1/28/2021) and its replacement with 17.11.10 NMAC - State Rural Universal Service Fund, effective 3/12/2024.

PUBLIC REGULATION COMMISSION

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES CHAPTER 11 TELECOMMUNICATIONS PART 10 STATE RURAL UNIVERSAL SERVICE FUND

17.11.10.1 ISSUING

AGENCY: New Mexico Public Regulation Commission. [17.11.10.1 NMAC - Rp, 17.11.10.1 NMAC, 3/12/2024]

17.11.10.2 SCOPE: This rule applies to all entities that

provide intrastate retail public telecommunication services and comparable retail alternative services in New Mexico.

[17.11.10.2 NMAC - Rp, 17.11.10.2 NMAC, 3/12/2024]

17.11.10.3 STATUTORY

AUTHORITY: Sections 62-19-9 and 63-9H-6, NMSA 1978.

[17.11.10.3 NMAC - Rp, 17.11.10.3 NMAC, 3/12/2024]

17.11.10.4 DURATION:

Permanent.

[17.11.10.4 NMAC - Rp, 17.11.10.4 NMAC, 3/12/2024]

17.11.10.5 EFFECTIVE

DATE: March 12, 2024, unless a later date is cited at the end of a section.

[17.11.10.5 NMAC - Rp, 17.11.10.5 NMAC, 3/12/2024]

17.11.10.6 OBJECTIVE:

The purpose of this rule is to provide procedures for administering and implementing the New Mexico state rural universal service fund to maintain and support universal service provided by telecommunications carriers that have been designated as eligible telecommunications carriers. [17.11.10.6 NMAC - Rp, 17.11.10.6 NMAC, 3/12/2024]

17.11.10.7 DEFINITIONS:

In addition to the definitions contained in Section 63-9H-3, NMSA 1978, as used in this rule:

A. Definitions

beginning with “A”:

(1) Access

line means a dial tone line, or its functional equivalent, that provides local exchange service from a carrier’s switching equipment to a point of termination at the customer’s network interface, and is not limited to wireline or any other technology; for the purposes of this rule, an access line does not include official lines, unbundled network elements/platforms, retail resale, wholesale resale, special access lines and private lines.

(2)

Administrator means the person designated by the commission to administer the fund.

(3) Area

underserved by broadband means a broadband program proposed project area where fifty percent or more of households and businesses, in the aggregate, have access to broadband service offering speeds of at least 25/3 Mbps but lower than 100/20 Mbps (download/upload). A household has access to broadband service if the household can subscribe within 10 business days of a request.

(4) Area

unserved by broadband means a broadband program proposed project area where seventy-five percent or more of the households lack access to broadband service offering speeds of at least 25/3 Mbps (download/upload). A household has access to broadband service if the household can subscribe to that service within 10 business days of a request.

B. Definitions

beginning with “B”:

(1) Basic

local exchange rate means an incumbent local exchange carrier’s tariffed, monthly, flat single-line rate charged to its retail customers for the provision of local exchange service; for the purposes of this rule, the “residential” and “business” basic local exchange rates shall include any commission-mandated subscriber line charges or extended area service charges.

(2)

Broadband internet access service means a mass-market retail service by wire, wireless or other technology that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints including any capabilities that are incidental to and enable the operation of the communications service, or a functionally equivalent service, but excluding dial-up internet access service. For purposes of this rule, broadband internet access service means a service transmission speed of 25.0 Mbps download/3.0 Mbps upload.

(3)

Broadband office means the office of broadband access and expansion.

C. Definitions

beginning with “C”:

(1)

Carrier means an entity that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico.

(2)

Commercial mobile radio service (CMRS) means a designation by the federal communications commission for any carrier or licensee whose wireless network is connected to the public switched telephone network or is operated for profit.

(3)

Commission means the New Mexico public regulation commission.

(4)

Communication connection means a voice-enabled telephone access line, wireless voice connection, unique voice over internet protocol service connection, or other uniquely identifiable functional equivalent as determined by the commission.

(5)

Contributing company means any carrier that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico.

(6) Council

means the connect New Mexico council, as defined in Section 63-9K-3 NMSA 1978.

D. Definitions

beginning with “D”: [RESERVED]

E. Definitions

beginning with “E”:

(1) Eligible

telecommunications carrier (ETC) means a carrier with New Mexico operations that has been designated as eligible to receive disbursements from the fund or from the federal universal service fund, or both, for a designated service area determined by the commission.

(2) Exempt

customer means an end-user of telecommunications service that is the state of New Mexico, a county, a municipality or other governmental

entity; a public school district; a public institution of higher education; an Indian nation, tribe, or pueblo; a Native American customer who resides on tribal or pueblo land; a private telecommunications network; or a person eligible to receive reduced rates under a low-income telephone assistance plan created by the federal government or the state of New Mexico.

F. Definitions beginning with “F”:

(1) **FCC** means the federal communications commission.

(2) **Fund** means the state of New Mexico universal service fund established pursuant to Section 63-9H-6, NMSA 1978 and this rule.

G. Definitions beginning with “G”: [RESERVED]

H. Definitions beginning with “H”: [RESERVED]

I. Definitions beginning with “I”:

(1) **Imputed benchmark revenue** means the difference between the affordability benchmark rates established by the commission pursuant to this rule and the carrier’s basic local exchange residential and business rates as of July 1, 2014, multiplied by the number of basic local exchange residential and business access lines served by the carrier as of December 31 of the year that precedes the year during which the revenue requirement is being determined pursuant to Subparagraph E of 17.11.10.19 NMAC; imputed benchmark revenue shall not be less than zero.

(2) **Interexchange carrier (IXC)** means an entity that provides intrastate toll services in New Mexico.

(3) **Intrastate retail public telecommunications services** means services including, but not limited to, all types of local exchange service; non-basic, vertical or discretionary services, also known as advanced features, or premium services, such as, but not limited to, call waiting, call forwarding, and caller identification (ID); listing

services; directory assistance services; cellular telephone and paging services; commercial mobile radio services; personal communications services (PCS); both optional and non-optional operator services; wide area telecommunications services (WATS) and WATS-like services; toll-free services; 900 services and other informational services; message telephone services (MTS) or toll; CENTREX, centron and centron-like services; video conferencing and teleconferencing services; the resale of intrastate retail public telecommunications services; payphone services; services that provide telecommunications through a New Mexico telephone number using voice over internet protocol (VOIP) or comparable technologies; any services regulated by the commission; and such other services as the commission may by order designate from time to time as equivalent or similar to the services listed above, without regard to the technology used to deliver such services.

(4) **Intrastate retail public telecommunications services revenue** means the revenue collected from the sale of intrastate telecommunications services to end users; for voice over internet protocol (VOIP) and similar services, the portion of total retail revenues attributable to intrastate retail telecommunications shall be equal to the proportion of calls originating and terminating in New Mexico to all calls originating in New Mexico.

(5) **Intrastate switched access charge** means a charge levied by a carrier for the availability and use of its facilities for origination and termination of intrastate interexchange calls as contained in tariffs approved by the commission.

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”: **Local exchange carrier (LEC)** means an entity certificated to provide local exchange service in New Mexico.

M. Definitions beginning with “M”: [RESERVED]

N. Definitions beginning with “N”: **New Mexico operations** means intrastate retail public telecommunications services and comparable retail alternative services provided in New Mexico.

O. Definitions beginning with “O”: [RESERVED]

P. Definitions beginning with “P”: [RESERVED]

Q. Definitions beginning with “Q”: [RESERVED]

R. Definitions beginning with “R”: **Rural area means:**

- (1) any unincorporated area or;
- (2) any city, town or incorporated area with a population of 20,000 or less as reflected in the most recent decennial United States census together with any applicable Tribal census.

S. Definitions beginning with “S”:

(1) **Service area** means a geographic area established by the commission in accordance with Section 214(e)(5) of the federal act (47 U.S.C. Section 214(e)(5)).

(2) **State rural universal service fund (SRUSF)** means the state of New Mexico universal service fund established pursuant to Section 63-9H-6, NMSA 1978 and this rule.

(3) **Statewide broadband plan** means a plan for the development and expansion of broadband infrastructure and services throughout the state as developed by the New Mexico office of broadband access and expansion.

T. Definitions beginning with “T”: [RESERVED]

U. Definitions beginning with “U”: **Universal service** means basic local exchange service and comparable retail alternative services at affordable rates, service pursuant to a low-income telephone assistance plan, and broadband internet access service to

unserved and underserved areas of New Mexico as determined by the commission.

V. Definitions
beginning with “V”: [RESERVED]

W. Definitions
beginning with “W”:
[RESERVED]

X. Definitions
beginning with “X”: [RESERVED]

Y. Definitions
beginning with “Y”: [RESERVED]

Z. Definitions
beginning with “Z”: [RESERVED]
[17.11.10.7 NMAC - Rp, 17.11.10.7 NMAC, 3/12/2024]

17.11.10.8 REDUCTION OF INTRASTATE SWITCHED ACCESS CHARGES:

The commission may, upon motion of a carrier or the administrator, or upon the commission’s own motion, authorize further intrastate switched access charge reductions for a carrier to correspond to any changes in that carrier’s tariffed interstate switched access service charge rates, elements or structure subsequent to January 1, 2006.

[17.11.10.8 NMAC - Rp, 17.11.10.8 NMAC, 3/12/2024]

17.11.10.9 AFFORDABILITY BENCHMARK RATES:

A. Effective January 1, 2020, unless changed by the commission in a proceeding pursuant to Subsection B of 17.11.10.09 NMAC, the residential and business affordability benchmark rates to be utilized in determining the level of support available from the fund are as follows:

(1) the residential benchmark rate for basic local exchange service shall be \$18.00; except that the commission may on its own motion and at any time conduct a review of the residential benchmark rate and change it accordingly, as per Subsection B of 17.11.10.9 NMAC;

(2) the business benchmark rate for basic local exchange service shall be carrier-specific and shall be equal to the business basic exchange rate

of each local exchange carrier as of January 1, 2020;

(3) each local exchange carrier shall, on or before May 1 of each year, advise the commission and the administrator in writing of its residential and business basic local exchange rates to be in effect on July 1 of that year and how they were determined;

(4) increases in the residential basic local exchange rates of incumbent rural telecommunications carriers toward the residential benchmark rate established in this section shall be implemented by timely filing of tariff revisions with the commission and shall be effective after 10 days’ notice to the carrier’s customers and the commission;

B. The commission may conduct a proceeding to establish new affordability benchmark rates upon its own motion.
[17.11.10.9 NMAC - Rp, 17.11.10.9 NMAC, 3/12/2024]

17.11.10.10 SELECTION OF ADMINISTRATOR:

The commission will designate a third-party administrator who will be subject to the supervision and control of the commission for a four-year term. The administrator shall perform services under the terms of a written contract to be entered into between the commission and the administrator. The commission shall procure the services of a subsequent administrator before the expiration of the term of each such contract, or in the event of early termination of such contract, as soon as practicable before or after the early termination.

A. Criteria for selection: the commission will issue a request for proposals to select the administrator; the commission shall consider whether the bidder has demonstrated the competence needed to administer the fund and the rate of compensation proposed; the commission shall also consider at a minimum whether the bidder:

(1) is able to be neutral and impartial;

(2) is a member of a trade association that advocates positions before this commission or other state commissions in administrative proceedings related to telecommunications issues;

(3) is an affiliate of any contributing company;

(4) has a substantial financial interest in any entity or affiliate that provides telecommunications services or comparable retail alternative services; and

(5) has a board of directors that includes any member with direct financial interests in entities that contribute to or receive support from the fund in this state or any other state.

B. Termination of administrator’s contract: the commission may terminate the administrator’s contract with the commission before the expiration of the term of the contract upon such notice, and under such conditions, as are set forth in the contract.
[17.11.10.10 NMAC - Rp, 17.11.10.10 NMAC, 3/12/2024]

17.11.10.11 EXPENDITURE AUTHORIZATION:

The commission shall approve an annual budget for administration of the fund. The reasonable expenses incurred in the administration of the fund, in accordance with the terms of the contract between the commission and the administrator, shall be a cost of the fund and shall be recovered from contributions to the fund.
[17.11.10.11 NMAC - Rp, 17.11.10.11 NMAC, 3/12/2024]

17.11.10.12 RESPONSIBILITIES OF ADMINISTRATOR:

The administrator shall manage the day-to-day operation of the fund in accordance with this rule, applicable law, and the overall supervision and direction of the commission. The administrator shall:

A. Fairly, consistently, and efficiently administer fund collections and disbursements in accordance with commission rules and subject to commission oversight.

B. Establish an account or accounts in one or more independent financial institutions and ensuring that the monies deposited in the fund are insured to the maximum extent permitted by law and that they earn a return commensurate with that of state funds held on deposit in banks or other financial institutions.

C. Ensure that the fund complies with all necessary requirements for exemption from federal, state and local taxes.

D. Establish procedures, consistent with the commission’s procedural rules and law, and with the commission’s approval, for protecting the confidentiality of information submitted pursuant to this rule.

E. Report to the commission on fund activities at least once each year; the report shall include fund collections and disbursements, administrative expenditure information, budget projections and such other information as the commission may require.

F. Prepare an annual proposed budget for administration of the fund and submit it to the commission for review, revision, rejection or approval at such time in advance of the need for commission approval as the commission may direct, or absent such direction, at a reasonable time.

G. Propose to the commission uniform procedures, and develop forms, to identify exempt customers, in consultation with contributing companies.

H. Create and maintain the databases necessary to administer the program and account for the funds.

I. Develop appropriate forms for use in collecting information from contributing companies and ETCs.

J. Pay administrative expenses out of the fund in accordance with the budget approved by the commission.

K. Petition the commission to institute an enforcement or other action when

the administrator finds that it is otherwise unable to collect amounts properly due from a contributing company under these rules, or when it appears to the administrator that any contributing company or ETC carrier is otherwise out of compliance with these rules or applicable law.

L. Conduct, not less than once every year, such reviews as are necessary to ensure that each contributing company is making its required contributions to the fund and that support from the fund is used for the purpose of the fund.

M. Advise the commission of any anticipated material changes to, or fluctuations in, the collection of fund revenues in a timely manner and make recommendations to the commission on ways to address or correct such changes or fluctuations.

[17.11.10.12 NMAC - Rp, 17.11.10.12 NMAC, 3/12/2024]

17.11.10.13 DISPUTE

RESOLUTION: The commission may refer any disputed case between the administrator and a contributing company or between contributing companies to alternative dispute resolution if it finds that doing so would encourage the settlement of the dispute.

A. Mediation:

(1) if any of the parties or staff makes a request for mediation, the commission may, in its discretion, designate a mediator consistent with Subsection B of 17.1.2.20 NMAC;

(2) the mediator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties and staff; if the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator’s services; the mediator shall not be the hearing examiner who is assigned to the case; the mediator shall have no official, financial, or personal conflict

of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and staff at the time the mediator is assigned by the commission and unless all parties agree that the mediator may serve; the mediator shall not subsequent to serving as a mediator participate in the proceeding as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding;

(3) the mediator may be assigned by the commission at the same time as the commission assigns the case to a hearing examiner; the mediator shall not discuss the mediation conference with any commissioner or hearing examiner hearing the case;

(4) the mediator shall notify the parties and staff by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator; the notice may direct the parties and staff to send the mediator, but not other parties or staff, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff’s investigation of the complaint;

(5) if the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution; if the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file a formal complaint with the commission;

(6) nothing shall preclude the commission from using different mediation procedures.

B. Arbitration:

(1) a party may request arbitration of any dispute; the party’s request shall be in writing to the commission and shall include a concise statement of the grounds for the complaint, the remedy

sought, and an acknowledgment that the party has read 17.1.2.22 NMAC and agrees to be bound by its terms;

(2) the commission or its authorized representative shall forward the request for arbitration to the other party together with a copy of Subsection A of 17.1.2.16 NMAC and 1.2.18 NMAC and require that the other party submit a written response within 10 days of the date of the commission's letter forwarding the request;

(3) if the responding party agrees to arbitration of the dispute, he shall include in his response to the complainant's request a concise statement of his position with regard to the merits of the complaint and an acknowledgment that he has read 17.1.2.22 NMAC and agrees to be bound by its terms; if the responding party will not agree to arbitration, he shall so state in the response;

(4) if the responding party either fails to respond to a request for arbitration or does not agree to arbitration, the initiating party retains the right to proceed with a formal complaint;

(5) if both the initiating party and the responding party agree to arbitration, the commission shall designate an arbitrator; the arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties to the complaint; the designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve; the parties shall be required to indicate their consent in writing to the designated arbitrator within 10 days of the date of the commission's letter of designation; if the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear

the costs as their own pursuant to Sections 8-8-4 and 62-13-3 NMSA 1978;

(6) any employee of the commission designated to arbitrate the matter under these provisions shall not participate in a subsequent proceeding on the complaint as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding;

(7) the commission may assign docket numbers to arbitration proceedings for purposes of record management but the proceeding remains an informal proceeding;

(8) nothing shall preclude the commission from using different arbitration procedures.

C. Arbitration Procedures:

(1) once designated and approved by the parties, the arbitrator shall proceed to render a decision in the arbitration proceeding within 60 days of the date the responding party agreed to arbitration except for good cause; if the arbitrator at any time determines that it is unlikely that the dispute can be resolved without substantially affecting the interests of other ratepayers or the public, he may so inform the parties and staff and terminate the proceeding without prejudice to the initiating party's right to file a formal complaint;

(2) the arbitrator shall fix a time and place for an informal hearing and shall serve notice of the hearing on both parties and on staff at least 10 days in advance of the hearing; he may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths; the parties and staff may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute; the arbitrator shall decide the relevancy and materiality of the evidence offered, and conformity to

the New Mexico rules of evidence or to rules of evidence contained in the commission's rules, is not necessary; no stenographic or electronic record will be made of the testimony at hearing unless requested by a party, who shall bear the cost of the record, or by staff;

(3) discovery will be permitted but only with leave of the arbitrator who shall not allow discovery which unduly complicates, burdens, or impedes the expeditious and informal nature of the proceeding;

(4) whenever the arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall so advise the parties and staff, who may be present at the inspection or investigation; in the event that one or both of the parties or the staff are not present, the arbitrator shall make an oral or written report to the parties and staff and afford them an opportunity to comment;

(5) at the close of or soon after the hearing, the arbitrator will issue a brief written decision; findings of fact and conclusions of law are not necessary; the arbitrator's decision will be binding on the parties and can be implemented by the commission to the extent such implementation is necessary; however, the decision will not be a decision of the commission and shall have no precedential effect;

(6) unless agreed to by all the parties and staff, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process; nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing his conclusions and the bases for them;

(7) nothing in this rule shall be construed to mean that the commission has waived its review of any decision or that the commission consents to be bound by arbitration.

[17.11.10.13 NMAC - Rp,
17.11.10.13 NMAC, 3/12/2024]

17.11.10.14 VARIANCES AND WAIVERS: Any person may petition the commission for variance or waiver of any provision of this rule for good cause shown.

A. General requirements:

(1) a contributing company or ETC may petition for an exemption or a variance from any of the requirements of this rule;

(2) such petition may include a motion that the commission stay the affected portion of this rule for the transaction specified in the motion;

(3) petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by an officer of the contributing company or ETC or someone with authority to sign for the contributing company or ETC;

(4) the commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

B. Contents of the petition. A petition for an exemption or variance shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the contributing company or ETC and its customers, or on its competitive affiliates and their customers, if the exemption or variance is not granted;

(4) describe the result the request will have if granted;

(5) state how the exemption or variance will achieve the purposes of this rule and the Rural Telecommunications Act of New Mexico;

(6) state why the proposed alternative is in

the public interest and is a better alternative than that provided by this rule;

(7) state why the exemption or variance would have no anticompetitive effect; and

(8) state why the requested exemption or variance would not place an undue burden on the fund.

[17.11.10.14 NMAC - Rp,
17.11.10.14 NMAC, 3/12/2024]

17.11.10.15 GENERAL REPORTING REQUIREMENTS:

A. Reports require declaration: all reports filed with the commission or the administrator must be filed with a declaration from the chief financial officer of the entity or the person who prepared the reports on behalf of the entity that the information is correct and the filing is made subject to the penalty of perjury provided for in Section 30-25-1 NMSA 1978.

B. Time for reporting: where no date is specified for a report, or when a request is made by the administrator for information necessary for the administration of the fund, the administrator shall specify when the report must be filed.

C. Reporting forms: contributing companies and ETCs shall report information in the manner prescribed by the administrator. The administrator shall not require reporting that will be unduly burdensome.

D. Electronic filing: the administrator shall accept electronic reporting when practicable.

E. Confidentiality: the commission shall have access to all information reported to the administrator. Contributing companies may request that company-specific information required by the reporting requirements of this rule be treated as confidential by so indicating at the time the information is submitted. The commission shall make all decisions regarding disclosure of company-specific information and may request further information or justification from the contributing company to ensure

uniformity of confidential treatment of all information submitted by contributing companies. Nothing in this rule shall preclude commission issuance of an umbrella protective order identifying what reported data shall be, or shall not be, deemed confidential. The administrator shall keep confidential all company-specific information obtained from contributing companies for which confidential treatment is requested, shall not use such information except for purposes of administering the fund, and shall not disclose such information in company-specific form unless directed to do so by the commission.

F. The commission may require the administrator to modify any of its report formats to solicit additional information necessary for the administration of the state universal service program, including possible addition of a revenue report or to delete information that is not necessary.
[17.11.10.15 NMAC - Rp,
17.11.10.15 NMAC, 3/12/2024]

17.11.10.16 [RESERVED]
[17.11.10.16 NMAC - Rp,
17.11.10.16 NMAC, 3/12/2024]

17.11.10.17 REPORTS: ETCs shall comply with the reporting requirements established by the commission as set forth in 17.11.27 NMAC. In addition, carriers shall report the following information to the administrator in a form prescribed by the administrator, regarding facilities and activities during the preceding calendar year:

A. On or before May 1 of each year, contributing companies, including ETCs, shall report the number and type of New Mexico access lines and New Mexico communication connections subscribed to in total and the number of such access lines and communication connections that are exempt from paying the SRUSF surcharge.

B. On or before July 1 of each year, ETCs receiving support from the fund (except those receiving

only support pursuant to 17.11.11 or 17.11.10.31 NMAC) shall file with the commission a report, in a form approved by the commission, demonstrating that the ETC's payments from the fund were used for the purpose stated in Subsection A of 17.11.10.27 NMAC. If any ETC required to file information with the commission under Subsection B of 17.11.10.17 NMAC fails to comply on or before the applicable reporting deadline, the administrator shall withhold any disbursements otherwise due to the non-compliant ETC until the ETC has complied.

[17.11.10.17 NMAC - Rp,
17.11.10.17 NMAC, 3/12/2024]

17.11.10.18 CONTACT

PERSONS: All contributing companies and ETCs shall file with the administrator the name, address, phone number and e-mail address of a contact person and shall keep the information current.

[17.11.10.18 NMAC - Rp,
17.11.10.18 NMAC, 3/12/2024]

17.11.10.19 ANNUAL DETERMINATION OF FUND:

A. The administrator shall determine the amount of the fund for the next calendar year and submit its findings to the commission on or before November 10 of each year to enable commission approval on or before November 20 of each year in order to provide carriers with sufficient time to implement any change in the surcharge rate.

B. In the event the commission orders a change in fund support, pursuant to 17.11.10.14 or 17.11.10.25 NMAC of this rule or otherwise, that necessitates a fund amount greater than that which the commission has previously established, the commission may order an adjustment to the amount of the fund, subject to the annual fund cap set forth in Subsection C of 17.11.10.19 NMAC.

C. The amount of the fund shall be equal to the sum of each ETC's revenue requirement, calculated pursuant to this section, plus any other fund requirements

determined by the commission, including pursuant to 17.11.10.25, 17.11.10.31 or 17.11.11 NMAC, plus projected administrative expenses and a prudent fund balance; provided however, the total amount of the fund shall not exceed a cap of thirty million dollars (\$30,000,000.00) per year.

D. Only carriers holding state ETC status as of October 1 shall be included in the calculation of funding requirements for the subsequent calendar year.

E. Except where the commission has established an alternative or additional amount pursuant to 17.11.10.25 or 17.11.10.31 NMAC, the revenue requirement for 2018 and each year thereafter for each ETC that was eligible as of July 1, 2005 and is a local exchange carrier shall be equal to the carrier's 2014 SRUSF revenue requirement adjusted by the annual percentage change in the number of access lines served by the carrier as of December 31 of the prior calendar year compared to the number of access lines served by the carrier as of December 31, 2014, and then reduced by the carrier's imputed benchmark revenue. For 2021, the access lines used for the comparison to 2014 shall be as of December 31, 2019, adjusted annually thereafter. The SRUSF revenue requirement formula under this section may be stated arithmetically as follows: revenue requirement minus imputed benchmark revenue.

F. The revenue requirement for an ETC that became an ETC after July 1, 2005 or that became an ETC prior to July 1, 2005, but is not a local exchange carrier, shall be determined annually by the administrator in conjunction with the administrator's determination of fund size, and shall be in accordance with the support rate determined by the commission pursuant to 17.11.10.23 NMAC.

G. For an ETC that is not eligible for funding pursuant to rate rebalancing per Subsection K of Section 63-9H-6 NMSA 1978 that has been previously authorized for support pursuant to Subsection

M of Section 63-9H-6 NMSA 1978, that ETC may petition for ongoing funding pursuant to Subsection K of Section 63-9H-6 NMSA 1978, subject to the following:

(1) the commission shall award an applicant ongoing fund support at no less than the average access line amount of funding support for comparable carriers; provided that an eligible telecommunications carrier receiving fund support pursuant to the subsection shall not offer basic local exchange residential and business services at rate levels lower than the rates for such services charged by any of the comparable carriers used for the determination of the level of support;

(2) the commission shall act upon a request for ongoing fund support within one hundred twenty days of the filing of the request.

[17.11.10.19 NMAC - Rp,
17.11.10.19 NMAC, 3/12/2024]

17.11.10.20 DETERMINATION OF SRUSF SURCHARGE RATE AND CONTRIBUTION:

A. The administrator shall recommend the amount of the SRUSF surcharge rate for the next calendar year, on or before September 1 to enable commission approval on or before October 1, based upon monthly and annual reports filed by ETCs and contributing companies, broadband program grants awarded by the commission, and any other pertinent and reliable information available to the administrator or the commission, and applying the annual fund cap set forth in Subsection C of 17.11.10.19 NMAC.

B. The commission shall either set a percentage surcharge rate equal to the annual fund requirement determined by the commission divided by the sum of intrastate retail public telecommunications service revenue, or in the alternative, set a fixed charge applicable to each non-exempt communication connection equal to the annual fund requirement determined by the commission

divided by the number of non-exempt communication connections for all contributing carriers in New Mexico. The surcharge rate or fixed charge may be adjusted to account for any material deficit or surplus projected to exist at the start of the fund year, subject to the annual fund cap.

C. Each contributing company’s monthly contribution shall equal the state rural universal service fund surcharge rate multiplied by its intrastate retail telecommunications revenues or non-exempt communication connections, as determined by the commission, in New Mexico for the month.

D. If, for any month the administrator finds that the fund balance is insufficient to meet the total obligations of the fund, (including support pursuant to 17.11.10.19, 17.11.10.25, 17.11.10.31, and 17.11.11 NMAC) plus administrative expenses and maintenance of a prudent fund balance, the administrator shall prorate all payments to each ETC, with the exception of payments pursuant to 17.11.10.31 NMAC and 17.11.11 NMAC. In the event the administrator determines that such a prorated reduction in payments is reasonably likely to occur, the administrator shall immediately notify the commission and the commission will take prompt action to increase contribution requirements, subject to the annual fund cap set forth in Subsection C of 17.11.10.19 NMAC, or otherwise account for the shortfall and will provide for true-up payments for any underpayments occurring if prorated reduced payments are required before the contribution requirements can be increased. If the fund accumulates a surplus beyond what the administrator and the commission believes is prudent under the circumstances, the administrator may, with the commission’s approval, decrease contribution requirements so as to lower the fund balance to an appropriate level.

E. Each contributing company shall remit its monthly contribution to the administrator on a schedule to be determined by the administrator.

[17.11.10.20 NMAC - Rp,
17.11.10.20 NMAC, 3/12/2024]

17.11.10.21 RECOVERY OF CONTRIBUTIONS:

A. A contributing company shall recover the amount of its contributions to the fund from its end-user customers in a manner that is not, either by act or omission, deceptive or misleading. Such recovery shall be made in a fair, equitable and nondiscriminatory manner, and no over-recovery of contributions shall be permitted.

B. A contributing company required to provide service in accordance with commission approved tariffs shall not recover contributions from its end-user customers except as permitted under commission approved modifications to those tariffs.

C. The commission may, after notice and hearing, order modifications to a contributor’s method of recovering contributions from its end-user customers.

[17.11.10.21 NMAC - Rp,
17.11.10.21 NMAC, 3/12/2024]

17.11.10.22 FUND DISBURSEMENTS:

A. The administrator shall make a monthly disbursement to each ETC eligible to receive such a payment from collected revenues in the fund, on a schedule to be determined by the administrator.

B. The amount of each ETC’s monthly disbursement shall be one-twelfth of its revenue requirements computed in accordance with 17.11.10.19 NMAC, subject to proration as provided in Subsection E of 17.11.10.20 NMAC.

C. Only carriers holding ETC status as of October 1 shall be eligible to receive disbursements from the fund during the year that begins the following January 1.

D. The administrator shall not pay, and shall hold in escrow, any disbursements otherwise due to an ETC that is also a contributing company, if that company shall not be in compliance with its contribution requirements.

[17.11.10.22 NMAC - Rp,
17.11.10.22 NMAC, 3/12/2024]

17.11.10.23 DESIGNATION OF ETCS:

A. Any carrier operating in New Mexico and designated as a state ETC as of July 1, 2005 and which has not lost that designation is automatically designated as an ETC for the purposes of this rule. If at any subsequent time a carrier loses ETC designation status, it shall no longer be eligible to receive support from the fund.

B. Other carriers may file a petition for designation as an ETC in accordance with 17.11.10.24 NMAC.

C. On its own motion or in response to a petition, the commission may, after notice and hearing and for good cause shown, modify, suspend, or revoke an ETC designation.

D. The commission may, upon request, establish the ETC’s amount of amount of an ETC’s support from the fund, if any in accordance with the requirements of 17.11.10.25 NMAC.

[17.11.10.23 NMAC - Rp,
17.11.10.23 NMAC, 3/12/2024]

17.11.10.24 PETITIONS FOR ETC DESIGNATION AND AMOUNT OF SUPPORT:

A. Any entity seeking designation as a state or federal ETC must file a petition with the commission. In the case of a petition for ETC designation, for state or federal universal service fund the petition shall:

(1) include a description of the proposed service area for which it seeks designation that is consistent with the federal requirements relating to service areas set forth in 47 CFR 54.207;

(2) demonstrate that the entity meets the requirements in Section 214(e) of the federal act (47 U.S.C. Section 214(e)) to be designated as a federal ETC;

(3) for federal USF support, demonstrate how the applicant meets the requirements of 47 CFR 54.101 through 54.203;

(4) demonstrate that the proposed designation is in the public interest;

(5) demonstrate that the proposed ETC is financially and technically competent to provide the supported services for federal or state support;

(6) demonstrate the petitioner's ability to remain functional in emergency situations;

(7) demonstrate that the petitioner will satisfy applicable consumer protection and service quality standards;

(8) demonstrate that granting ETC status to the petitioner in the designated area is likely to result in more customer choice;

(9) address the impact of designation of the petitioner on the size of the state fund or federal USF;

(10) address the unique advantages and disadvantages of the petitioner's service offering;

(11) demonstrate the petitioner's willingness and ability to offer service throughout the designated service area within a reasonable time frame, or time frame required by state or federal law; and

(12) provide such other information as the commission or the administrator may find appropriate.

B. A petition by an ETC for an amount of support shall demonstrate that granting the proposed support is in the public interest and, where required, shall include the information required by 17.11.10.25 NMAC.

C. Consideration of the public interest will apply in all ETC designation proceedings. The commission is not required to designate additional ETCs in any service area, if not in the public interest.

D. The commission shall, after such notice and hearing as the commission shall prescribe, enter its written order approving or

denying a company's petition. An order approving a petition for ETC designation shall specify the service area for which designation is made and an order approving a petition for an amount of support shall state the amount and type of approved state or federal fund support.

E. The commission may approve a petition for designation as a federal ETC in conjunction with a petition for designation as a state ETC.

F. The commission shall require annual verification from each ETC that it continues to meet the requirements herein for designation as an ETC and for provision of support from the state fund or federal USF. [17.11.10.24 NMAC - Rp, 17.11.10.24 NMAC, 3/12/2024]

17.11.10.25 PETITION FOR SUPPORT BASED ON NEED:

A. An ETC serving in a rural area of the state may petition the commission for support from the fund when such payments are needed to ensure the widespread availability and affordability of universal service in the rural area(s) of the state served by the ETC.

B. In addition to establishing need as described in Subsection A of this section, a petition for support based on need shall identify the geographic area for which support is requested, and shall demonstrate with particularity how the proposed payments from the fund will be used in a manner consistent with the use of fund support requirements set forth in 17.11.10.27 NMAC.

C. In support of the petition, the ETC must make available to the commission such information from the ETC that the commission deems necessary, including but not limited to information relating to the ETC's regulated revenues, expenses, and investments, to determine whether support is needed to ensure the widespread availability and affordability of universal service in the area identified in the petition.

D. The commission shall resolve each petition for support

based on need with or without a hearing no later than six months following the filing date of the petition, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months.

E. Companies reporting the use of funds granted by the commission under this section shall provide, on a semi-annual basis, the following:

(1) Specific details of projects for which fund support is used; itemized by the categories of capital expenditures (CapEx) and the related operations expenditures (OpEx).

(a) Project descriptions will explain the objectives or intended goal of the project. Such as increased capacity or efficiency, redundancy, expansion of network or services.

(b) Project prioritizations of buildout plans in technical terms that include locations, maps as applicable, milestones and benchmarks to measure performance and assure compliance. The description shall also provide project status, spending plans and metrics.

(c) Narratives of the projects that explain the current and ongoing status of completion or ready for service dates (RFS), and other pertinent facts (i.e., project delays, permit status, surveys, right of ways issues) for reporting purposes. The term ready for service ("RFS") means a description of projects where construction is complete and the project is operational.

(2) The period for the reporting of project details shall be semi-annual, at a minimum, to continue for the period that funds are awarded.

(3) Semi-annual financial reporting on a project specific or company-wide basis, depending if the award is specific to network improvements and projects, or for the financial stability of the ETC receiving the award.

[17.11.10.25 NMAC - Rp,
17.11.10.25 NMAC, 3/12/2024]

17.11.10.26 COMPLIANCE WITH CONTRIBUTION REQUIREMENTS:

A. If the administrator finds that a contributing company has not contributed the amount required by this rule, the administrator shall notify the contributing company in writing. The administrator shall request the company to pay the deficiency in its contribution.

B. The contributing company shall pay the requested amount within 21 days of the date of the notice or seek dispute resolution as provided in this rule.

C. If attempts by the administrator to collect the total requested amount from a contributing company or to resolve a dispute are unsuccessful, the administrator shall notify the commission in writing.

D. Upon request by the administrator, a complaint filed by an interested party, or on its own motion, the commission, after providing notice and an opportunity for a hearing in accordance with 17.1.2 NMAC, may issue an order requiring a contributing company to pay any arrearage in contributions that the commission finds to exist and may also impose interest, a fine or other appropriate administrative penalties or requirements or bonding to assure future compliance with contribution requirements. In the event that a contributing company fails or refuses to comply with a commission order issued pursuant to this provision, the commission may petition the appropriate district court for appropriate injunctive relief and for enforcement of the commission's order.

E. The commission may take the same types of action set forth in Subsection D of 17.11.10.26 NMAC in the event that it finds, after a proceeding of the type specified in Subsection D of 17.11.10.26 NMAC, that a contributing company or an ETC has, in any other way, violated any provision of this rule or of the rural telecommunications act of New

Mexico, Sections 63-9H-1 NMSA 1978 *et seq.*

[17.11.10.26 NMAC - Rp,
17.11.10.26 NMAC, 3/12/2024]

17.11.10.27 USE OF FUND SUPPORT:

A. An ETC shall use fund support in a manner consistent with the rural telecommunications act, Sections 63-9H-1 NMSA 1978 *et seq.*, Section 254 of the federal telecommunications act (47 U.S.C. 254), and commission rules and orders. Fund support must be used to maintain and support universal service; provided, however, that each ETC receiving support pursuant to 17.11.10.19 or 17.11.10.25 NMAC must expend no less than sixty percent of the support it receives to deploy and maintain broadband internet access services in rural areas of the state, Subsection F of Section 63-9H-6 NMSA 1978.

B. If the commission finds, in a proceeding on its own motion or on the motion of the administrator or an interested party, that an ETC has used fund support for purposes other than to preserve and advance universal service or that the ETC has failed to satisfy the sixty percent minimum expenditure requirement referenced in Subsection A of 17.11.10.27 NMAC, the commission may impose an appropriate administrative remedy, which may include, but need not be limited to, ordering the ETC to refund amounts paid to it from the fund and withholding future payments.

[17.11.10.27 NMAC - Rp,
17.11.10.27 NMAC, 3/12/2024]

17.11.10.28 ACCESS TO BOOKS, RECORDS AND PROPERTY:

A. The administrator or the commission shall have access to the books of account, records and property of all contributing companies and ETCs to the extent necessary to verify information reported or required to be reported pursuant to this rule. The administrator or commission may direct a contributing company or

ETC to send copies of records to the administrator or commission or may inspect records at the offices of the contributing company or ETC, at the administrator's or commission's discretion.

B. In the normal course of business, the administrator will give at least three days' notice of its plans to inspect records in the offices of a contributing company or ETC. The administrator may apply to the commission to procure a subpoena in order to inspect records without notice.

[17.11.10.28 NMAC - Rp,
17.11.10.28 NMAC, 3/12/2024]

17.11.10.29 REVIEW AND AUDIT OF ADMINISTRATOR AND FUND:

The administrator shall provide the commission with a financial statement of the fund and the administration of the fund on an annual basis by May 1. The commission shall engage a qualified independent auditor to audit each such financial statement and to submit a written opinion to the commission.

[17.11.10.29 NMAC - Rp,
17.11.10.29 NMAC, 3/12/2024]

17.11.10.30 ADVISORY BOARD:

A. The commission shall establish and appoint an advisory board composed of representatives from participating contributing companies and ETCs, the attorney general, the commission staff, and any representative(s) of one or more consumer groups or organizations that the commission may choose to appoint. The members shall include no more than one representative from each of the following types of telecommunications carriers and entities providing comparable intrastate retail services: incumbent rural telecommunications carriers; incumbent local exchange carriers other than incumbent rural telecommunications carriers; competitive local exchange carriers not ETC-designated; ETC-designated competitive local exchange carriers; commercial mobile radio service providers not-ETC-designated;

and ETC-designated commercial mobile radio service providers. Any other type of telecommunications carriers or providers of comparable intrastate retail service may petition the commission for representation by no more than one member of that type of carrier or service provider on the advisory board, which the commission may grant by order. The commission shall resolve any dispute among the carriers or service providers of each type as to who shall be the member of the advisory board. The members representing participating contributors shall each be appointed for a term of three years. Members of the board may be reappointed to subsequent terms with the approval of the commission. Expenses incurred by a member in connection with participation on the advisory board shall not be reimbursed from the fund.

B. The advisory board shall meet periodically with the administrator and shall provide advice and consultation to the administrator as provided under this rule. Where deemed necessary by the advisory board, it shall make recommendations to the commission or the administrator, or both, relating to potential matters related to administration of the fund. Should the members of the advisory board not agree on a recommendation to the commission or administrator on any particular matter, the advisory board may provide a majority recommendation as well as a minority recommendation as to the resolution of any such identified issue. In addition, any member of the advisory board may, with advance written notice to the other members of the advisory board, provide individual recommendations or other information to the commission and the administrator that it deems appropriate. The advisory board is intended to be a forum within which to build consensus on matters relating to the administration of the fund, while not deterring any interested party from communicating its concerns relating to the administration of the fund to the advisory board, or,

subject to advance written notice to the other members of the advisory board, directly to the commission.

C. The advisory board members shall elect a chair, vice-chair, and secretary to serve on the board for two years, subject to additional terms as elected from within the board. For the purpose of conducting business, a majority of the board members present at any meeting shall constitute a quorum. [17.11.10.30 NMAC - Rp, 17.11.10.30 NMAC, 3/12/2024]

17.11.10.31 BROADBAND PROGRAM:

A. It is the goal of the commission that New Mexico consumers have access to high-quality broadband service from both wireline and mobile broadband providers. Pursuant to Subsection N of Section 63-9H-6, NMSA 1978, ETCs may separately apply to the commission for grants to fund the construction and maintenance of facilities that are capable of providing broadband internet access service to areas unserved or underserved by broadband in the state. Applications must be primarily for coverage of the construction costs of new facilities, but such applications may include a request for maintenance costs of those facilities as well. Each grant that is awarded will provide up to seventy five percent of the budgeted project cost, with the ETC applying the remainder from its own funds. Projects receiving any source of third-party funding other than potential loan funds, FCC high-cost fund legacy support or connect America fund support (including mobility fund support) will not be eligible. Each applicant shall provide a detailed description in their application of the origin and type of funding provided for the carrier match, and a certification that those monies are not duplicative of other purposes or projects other than SRUSF broadband program projects. In evaluating applications, the commission shall seek to avoid duplication of service using the same technology. Awards of support under

this section shall be consistent with federal universal service support programs and be based on the best use of the fund for rural areas of the state. For purposes of administering the broadband program, the commission may find that a broadband program proposed project area is a rural area, notwithstanding the definition of rural area in Subsection U of 17.11.10.7 NMAC, if it determines that:

(1) the area otherwise has the characteristics of a rural area;

(2) the area is unserved or underserved by broadband; and

(3) the public interest requires that the area be classified as rural.

B. Funding of the broadband program. At least eight million dollars (\$8,000,000.00) of the fund shall be dedicated annually to the broadband program. The amount of funding allocated to the broadband program shall not be subject to proration under Subsection E of 17.11.10.20 NMAC. To the extent a year's broadband program funding is not exhausted by grants awarded during that year, the funds will rollover to the following year.

C. Applicants for broadband program grants may request that company-specific information contained within an application be treated as confidential. The commission shall make all decisions regarding disclosure of company-specific information and may request further information or justification from the contributing company to ensure uniformity of confidential treatment of all information submitted by contributing companies. Nothing in this rule shall preclude commission issuance of an umbrella protective order identifying what reported data shall be, or shall not be, deemed confidential. The commission staff or a third-party contractor, shall keep confidential all company-specific information obtained from applicants for broadband program grants for which confidential treatment is requested, shall not use such information

except for purposes of analyzing the applications, and shall not disclose such information in company-specific form unless directed to do so by the commission.

D. Minimum requirements for eligible projects. The commission will consider projects on a technology-neutral basis. Projects that apply technologies including, without limitation, wireline, mobile wireless, and fixed wireless technologies are all eligible for broadband fund grants. A project must meet the following requirements to be eligible for a grant award:

(1) support broadband internet access service at speeds of at least 25.0 Mbps download/3.0 Mbps upload to all households and businesses in the proposed project area;

(2) support voice grade telephony service to all households and businesses in the proposed project area. For this purpose, a voice over internet protocol (VOIP) based service is acceptable, as well as traditional voice telephony services and mobile voice services;

(3) support access to emergency 911 services; and

(4) offer a latency that is sufficiently low to support real-time, interactive applications.

E. Contents of grant applications. An application for support from the broadband program shall include, at a minimum:

(1) a proposal to build telecommunications network facilities to service an area where the applicant is designated as a state ETC;

(2) a detailed build plan setting forth a description of the facilities to be deployed, including all costs of constructing facilities; and

(3) a map showing where service and coverage will be provided. This requirement can be met by providing;

(a) for a wireline network, a map showing all homes, businesses, and other end user locations passed; or

(b) for a wireless network, a coverage map generated using a radio frequency propagation tool generally used in the wireless industry;

(4) an estimate of the number of road miles and square miles to be covered and population and population density of the area covered;

(5) the amount of support requested from the broadband program and the amount of the applicant's financial match, and a description of any type, amount, and purpose of subsidy or financial support the applicant is currently receiving or is scheduled to receive in the area designated in the application;

(6) a description of the technology to be deployed, including data throughput speeds and latency characteristics of the service to be delivered to customers;

(7) a demonstration that the area to be served is an area unserved by broadband or an area underserved by broadband as defined in 17.11.10.7 NMAC. If the area to be served contains served, unserved and underserved areas, the application and map shall identify which portions of the area are served, unserved and which are underserved. Each served, unserved, and underserved area shall be clearly identified through color coding on the map submitted with the application. Each served, unserved, and underserved area shall be clearly identified through individual color coding indicators on all city street grid maps submitted with the applications. Satellite views are not acceptable for the application's requirement for mapping;

(8) a demonstration of the estimated customer subscription rates and revenues from the services to be offered as a result of the proposed construction sufficient to justify support from the broadband program;

(9) a commitment to provide a minimum twenty-five percent match of funds;

(10) if the project is a wireless network deployment, a commitment to allow collocation on reasonable terms by other providers of commercial mobile wireless service or any public safety network and to abide by the FCC's collocation requirements for awardees under the federal universal service program;

(11) sample terms and conditions for the service and proposed prices;

(12) explain how the proposed deployment will contribute to the enhancement of digital equity and digital inclusion in the proposed service territory;

(13) explain how the awards of support are consistent with federal universal service support programs;

(14) a certification by an authorized representative affirming that all information set forth in the application is true and correct;

(15) any other requirements to ensure accountability as the commission may develop and approve in a proceeding to determine the form and contents of grant applications; and

(16) applications and mapping information must also be submitted contemporaneously with the New Mexico department of information technology broadband division.

F. The ETC must make the following commitments and include them in its application:

(1) the broadband service must be offered at reasonably comparable rates for comparable services in urban areas;

(2) the broadband service must be provided for at least seven years following project completion;

(3) the ETC must abide by commission reporting requirements sufficient to monitor the progress of the project deployment and to ensure that all grant funds are being used efficiently and for the purpose intended; and

(4) the ETC must commit to respond to commission inquiries regarding service-related complaints and commit to attempt to resolve service-related complaints in a reasonable manner.

G. Procedure for awarding support from the fund:

(1) On or before May 1 of each year, the commission shall open a non-adjudicative, administrative docket and establish a deadline for filing applications for broadband program support for the following calendar year. The telecom bureau, or a third-party contractor, shall review and summarize all timely applications. Only carriers holding ETC status as of October 1 shall be eligible to receive disbursements from the fund during the year that begins the following January 1.

(2) Interested persons may seek intervention in these proceedings, pursuant to 1.2.2.23 NMAC.

(3) On or before September 1, the telecom bureau shall make a presentation to the commission, with analysis of the applications for awards. The telecom bureau, or a third-party contractor, may communicate with applicants to request additional information or clarify information presented in the applications in order to prepare its presentation. Such presentations shall be considered by the commission but shall not bind the commission.

(4) At the September 1 presentation, the telecom bureau shall present a summary of projects. The telecom bureau shall provide the following information for each project on a single spreadsheet.

(a) cost per customer served or passed;

(b) type of technology;

(c) whether area is unserved or underserved (or, if area includes both, in what proportions);

(d) download and upload speed of service;

(e) monthly rates that the grantee intends to charge for the service; and

(f) telecom bureau comments on the project.

(5) On or before October 15, the commission, in coordination with the broadband office and the council, for prioritization and alignment with the statewide broadband plan, shall issue a decision approving or denying in whole or in part, each application. Among the factors that the commission will consider when selecting proposed projects for funding are the download and upload speeds that a project will provide and whether the project will serve an area unserved by broadband or an area underserved by broadband.

(6) On or before November 1, any interested person may file with the commission a request for reconsideration, in whole or in part, of any award of funds. Requests for reconsideration will not be valid after November 1.

(7) On or before December 1, the commission shall dispose of any motions for reconsideration.

H. Conditions for disbursement of awarded funds:

(1) The awardee commits to complete construction of its project within three years from the date of the commission's final order approving an award pursuant to 17.11.10.31 NMAC.

(2) For each awarded project, project reports shall be submitted to staff, consultant(s), and administrator(s) semiannually, during June and December and at the mid-point and completion of the project that provide information regarding the status of the project in a form accepted by staff. Semi-annual reports shall be submitted June 30, and December 31 of the calendar year. The midpoint disbursement report shall describe ETC progress on project milestones at the mid-point of the completion of the project pursuant to Paragraph (1) of Subsection E

of 17.11.10.25 NMAC, prior to the release of a mid-point disbursement. The mid-point and final reports may be filed concurrently with the submission of the semi-annual reports, but may not be combined into one report. Within 30 days after project completion, the awardee shall submit a final report in a form accepted by staff demonstrating that the project as completed meets the coverage requirements set forth in the application, including a certification from an officer or director that all program requirements have been met.

(3) Prior to the initial disbursement, the ETC must notify the commission in writing that it is prepared to commence the project with regard to project engineering, ordering or delivery of required equipment, labor requirements, and that all permits have been granted to begin construction. The administrator shall disburse one third of the award promptly following receipt of the ETC's written notice that it is prepared to commence the project, one third at the midpoint of the project, and the remaining third upon project completion. The second and third payments may be requested as a single disbursement upon completion and are contingent upon the submission of acceptable project status reports pursuant to Paragraph (2) of Subsection H of 17.11.10.31 NMAC. The commission may, within 30 days after submission of a report, order additional information to be provided, suspend payment by the administrator, or take other action as necessary after notice and hearing.

(4) Any applicant found to have willfully misrepresented information in an application, is found to have used support unlawfully, or fails to meet the commitments set forth in the application, may be subject to refund of award funds or other actions of the commission.

[17.11.10.31 NMAC - Rp,
17.11.10.31 NMAC, 3/12/2024]

HISTORY OF 17.11.10 NMAC:
Pre-NMAC History: None.

History of Repealed Material:

17 NMAC 13.10, State Rural Universal Service Fund (filed 11/15/2005) repealed effective 1/1/2015.
 17 11.10 NMAC, State Rural Universal Service Fund (filed 1/1/2015) repealed effective 1/29/2016.
 17 11.10 NMAC, State Rural Universal Service Fund (filed 1/1/2015) repealed effective 1/1/2017.
 17 11.10 NMAC, State Rural Universal Service Fund (filed 12/16/2016) repealed effective 1/1/2018.
 17 11.10 NMAC, State Rural Universal Service Fund (filed 12/14/2017) repealed effective 2/9/2021.
 17 11.10 NMAC, State Rural Universal Service Fund (filed 1/28/2021) repealed effective 3/12/2024.

Other History:

17 NMAC 13.10, State Rural Universal Service Fund (filed 12/15/1999) was replaced by 17.11.10 NMAC, State Rural Universal Service Fund, effective 1/1/2015.
 17.11.10 NMAC, State Rural Universal Service Fund (filed 1/1/2015) was replaced by 17.11.10 NMAC State Rural Universal Service Fund, effective 1/29/2016.
 17.11.10 NMAC State Rural Universal Service Fund (filed 1/19/2016) was replaced by 17.11.10 NMAC State Rural Universal Service Fund, effective 1/1/2017.
 17.11.10 NMAC State Rural Universal Service Fund (filed 12/16/2016) was replaced by 17.11.10 NMAC State Rural Universal Service Fund, effective 1/1/2018.
 17.11.10 NMAC State Rural Universal Service Fund (filed 12/14/2017) was replaced by 17.11.10 NMAC State Rural Universal Service Fund, effective 2/9/2021.
 17.11.10 NMAC State Rural Universal Service Fund (filed 1/28/2021) was replaced by 17.11.10 NMAC State Rural Universal Service Fund, effective 3/12/2024.

**REGULATION
 AND LICENSING
 DEPARTMENT
 REAL ESTATE APPRAISERS
 BOARD**

This is an amendment to 16.62.6 NMAC, Section 8 effective 3/12/2024.

16.62.6.8 EXAMINATION REQUIREMENTS: All candidates for licensure or certification must successfully complete the appraiser qualifications board endorsed uniform state certifications/licensing examination or its equivalent.

A. The examination will be approved by the appraisal qualifications board of the appraisal foundation and will cover standard appraisal concepts.

B. Prior to issuance of an examination ticket, all credible education hours, qualifying experience credit, and the experience log, must be verified and found to be completed in full and acceptable to the board.

C. An applicant for licensing or certification will be denied and the results of the examination will be invalidated if: the applicant uses or possesses anything that gives the applicant an advantage other than silent, cordless, non-programmable calculator, Hewlett Packard calculator 12C or its equivalent; the applicant gives or receives any kind of aid during the examination; or someone other than the applicant takes the test or attempts to take the test for the applicant.

D. All calculator memories must be cleared before the examination. Operating manuals will not be allowed at the testing site.

E. The board will administer an examination on the New Mexico Real Estate Appraisers Act and board rules and regulations known as the state board jurisprudence examination which will require a score of seventy percent or more for a passing grade. This jurisprudence examination shall be taken during initial application for no charge, [~~if this exam is failed then~~

~~the exam can be taken a second time for a fee of \$95. If the second exam is failed then the application will be deemed incomplete and then referred to the board, at their next meeting, for decision] the exam may be taken until a passing grade is achieved in order to proceed with the application process.~~

F. The applicant must take the examination prescribed by the board.

[1/14/00; 16.62.6.8 NMAC - Rn & A, 16 NMAC 62.61.8, 09/13/2004; A, 06/13/2008; A, 08/21/2010; A, 01/15/2017; A, 02/03/2019; A, 09/26/2023; A, 03/12/2024]

**REGULATION
 AND LICENSING
 DEPARTMENT
 REAL ESTATE APPRAISERS
 BOARD**

This is an amendment to 16.62.7 NMAC, Section 12 effective 03/12/2024.

16.62.7.12 REQUIRED CONTINUING EDUCATION:

A. Twenty-eight hours as defined in 16.62.8.7 NMAC of continuing education in courses approved by the board, which must include the appraisal qualification board (AQB) approved seven-hour national uniform standards of professional appraisal practice (USPAP) update course, are required in each two-year renewal period.

B. For continuing education cycle periods of 185 days to 365 days, 14 hours of continuing education is required. For continuing education cycle periods of less than 185 days, no hours of continuing education are required.

C. Effective with the first biennial renewal period and each subsequent renewal, a seven hour class in the national uniform standards of professional appraisal practice update course is required as part of the continuing education requirement. Successful completion includes passing an exam, if required, by the appraiser qualifications board (AQB).

~~[D.]~~ Successful completion jurisprudence examination will be required of every trainee, licensee and certificate holder as a condition of renewal in each biennial renewal.

~~[E.]~~ **D.** Educational offerings taken by an individual in order to fulfill the class hour requirement for a different classification than his/her current classification may be simultaneously counted towards the continuing education requirement of his/her current classification.

~~[F.]~~ **E.** Credit towards the continuing education hour requirements for each appraiser classification may be granted only where the length of the educational offering is at least two hours.
[10/1/97; 16.62.7.12 NMAC - Rn & A, 16 NMAC 62.7.12, 09/13/2004; A, 11/25/2006; A, 08/21/2010; A, 01/16/2011; A, 01/15/2017; A, 02/03/2019; A, 09/26/2023; A, 03/12/2024]

**REGULATION
AND LICENSING
DEPARTMENT
REAL ESTATE APPRAISERS
BOARD**

This is an amendment to 16.62.8 NMAC, Section 12 effective 03/12/2024.

16.62.8.12 CONTINUING EDUCATION REQUIREMENTS:

Twenty-eight hours of continuing education are required each biennial renewal period. Continuing education requirements for initial trainees, licenses and certificates issued for less than two full years are pro-rated as defined in 16.62.7.12 NMAC.

A. Individuals must successfully complete the seven hour national uniform standards of professional appraisal practice (USPAP) update course, or its equivalent as approved by the appraiser qualifications board (AQB). Successful completion includes passing an exam if required by the appraiser qualifications board (AQB).

B. Successful completion of the AQB approved seven hour national USPAP update course [and the jurisprudence examination] will be required of every trainee, licensee and certificate holder as a condition of renewal in each biennial renewal.

[3/14/00; 16.62.8.12 NMAC - Rn & A, 16 NMAC 62.8.12, 09/13/2004; A, 11/25/2006; A, 08/21/2010; A, 1/16/2011; A, 01/01/2015; A, 01/15/2017; A, 03/12/2024]

End of Adopted Rules

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Submittal Deadlines and Publication Dates

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Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 16
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Issue 3	February 1	February 13
Issue 4	February 15	February 27
Issue 5	February 29	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 7
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