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New Mexico Register

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

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The New Mexico Register

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New Mexico Register

Volume XXXVI, Issue 5

March 11, 2025

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Notices of Rulemaking and Proposed Rules

ENVIRONMENT DEPARTMENT

NEW MEXICO WATER QUALITY CONTROL COMMISSION NOTICE OF PUBLIC RULEMAKING HEARING

The Water Quality Control Commission (“WQCC”) will hold a public hearing for this matter to begin **on May 13, 2025**, following the WQCC’s regularly scheduled meeting, which starts at 9:00 am, and continuing thereafter as necessary. The hearing shall be conducted in-person at the New Mexico State Capitol, 490 Old Santa Fe Trail, Santa Fe, New Mexico, 87501, and virtually via a video conferencing platform. The hearing will last as long as required to hear all testimony, evidence, and public comment. Detailed information concerning the time, location, and the virtual meeting link can be found on the New Mexico Environment Department’s (“NMED”) 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 WQCC may make a decision on the proposed regulatory change at the conclusion of the hearing.

The purpose of the public hearing is to consider Triad National Security, LLC’s and the United States Department of Energy’s National Nuclear Security Administration, Los Alamos Field Office’s Petition for Rulemaking to Amend 20.6.4.126 NMAC and establish a new segment within the Sandia Canyon Assessment Unit to be defined in 20.6.4.141 NMAC. The proposed new segment would be assigned a coolwater Aquatic Life Use and segment-specific temperature criteria based on the findings of a Use Attainability Analysis conducted by Petitioners, which assessed attainability of the Aquatic Life Use designated in Subsection A of

20.6.4.126 NMAC. Petitioners sought this hearing pursuant to NMSA 1978, § 74-6-6 (1993), 20.1.6.200 NMAC, and 20.6.4.15 NMAC. The proposed regulations and supporting information 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 Petitioners 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 people 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 December 20, 2024, those wishing to present direct technical testimony must file a written notice of intent to present technical testimony with the WQCC Administrator **on or before April 14, 2025**.

Notices of intent to present technical testimony shall conform to 20.1.6.104 NMAC and reference the docket number, **WQCC 24-65(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 in person or virtually. The Hearing Officer will hold a public comment session each day of the hearing, with a **public comment session reserved at 1pm on May 13, 2025**. Non-technical written statements may be submitted in lieu of oral testimony at or before the hearing. Written comments regarding the proposed rule should reference docket number **WQCC 24-65(R)** and may be addressed to Pamela Jones, WQCC Administrator, at the above address, or submitted in the public comment portal at: <https://nmed.commentinput.com/comment/search> or via email to: pamela.jones@env.nm.gov.

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 14, 2025**.

The hearing will be conducted in accordance with the WQCC Rulemaking Procedures (20.1.6 NMAC); Use Attainability Analysis regulatory requirements (20.6.4.15 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), other applicable procedures and any additional

Procedural Order or Scheduling Order issued by the WQCC or Hearing Officer. These documents are available online at <https://www.env.nm.gov/opf/docketed-matters/> or by contacting the WQCC Administrator at pamela.jones@env.nm.gov.

If any person requires assistance, language interpretation, 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.

ENVIRONMENT DEPARTMENT

COMISIÓN DE CONTROL DE CALIDAD DEL AGUA DE NUEVO MÉXICO AVISO DE AUDIENCIA PÚBLICA PARA ELABORACIÓN DE NORMAS

La Comisión de Control de Calidad del Agua ("WQCC" por sus siglas en inglés) llevará a cabo una audiencia pública sobre este asunto que comenzará el **13 de mayo de 2025**, después de la reunión programada regularmente de la WQCC, que comienza a las 9:00 a. m., y continuará después según sea necesario. La audiencia se llevará a cabo en persona en el Capitolio del Estado de Nuevo México, 490 Old Santa Fe Trail, Santa Fe, Nuevo México, 87501, y virtualmente a través de una plataforma de videoconferencia. La audiencia durará el tiempo que sea necesario para escuchar todos los testimonios, pruebas y comentarios públicos. Puede encontrar información detallada sobre la hora, la ubicación y el enlace de la reunión virtual en el calendario de eventos del Departamento de Medio Ambiente de Nuevo México ("NMED" por sus siglas en inglés) en <https://www.env.nm.gov/events-calendar/>. Visite el sitio web de la WQCC antes de la audiencia para obtener actualizaciones en <https://www.env.nm.gov/opf/water-quality-control-commission/>. La WQCC puede tomar una decisión sobre el cambio regulatorio propuesto al finalizar la audiencia.

El propósito de la audiencia pública es considerar la Petición de Elaboración de Normas para enmendar el NMAC 20.6.4.126 y establecer un nuevo segmento dentro de la Unidad de Evaluación de Sandía Canyon, presentada por Triad National Security, LLC y la Administración Nacional de Seguridad Nuclear del Departamento de Energía de los Estados Unidos, Oficina local de Los Alamos, que se definirá en el NMAC 20.6.4.141. Al nuevo segmento

propuesto se le asignaría un Uso de Vida Acuática de Aguas Frías y criterios de temperatura específicos del segmento basados en los hallazgos de un Análisis de Alcance de Uso realizado por los Peticionarios, que evaluó el alcance del Uso de Vida Acuática designado en el NMAC 20.6.4.126(A). Los Peticionarios solicitaron esta audiencia de conformidad con la NMSA 1978, § 74-6-6 (1993), 20.1.6.200 NMAC y 20.6.4.15 NMAC. Las regulaciones propuestas y la información de apoyo se pueden consultar 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 de los Peticionarios a pedido. Las personas que deseen revisar una copia impresa de las enmiendas propuestas deben comunicarse con la administradora de la WQCC a la dirección que se proporciona a continuación.

A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar evidencia, datos, puntos de vista y argumentos relevantes, de manera oral o por escrito; para presentar pruebas instrumentales; y para interrogar a los testigos.

De conformidad con el 20.1.6.202 NMAC y la Orden Previa a la Audiencia emitida por el funcionario de audiencias el 20 de diciembre de 2024, quienes deseen presentar testimonio técnico directo deben presentar un aviso por escrito de la intención de presentar testimonio técnico ante la administradora de la WQCC a más tardar hasta el 14 de abril de 2025.

Los avisos de intención de presentar testimonio técnico deberán cumplir con 20.1.6.104 NMAC y hacer referencia al número de expediente, **WQCC 24-65(R)**.

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

- Identificar a la persona para la

- cual testificarán los testigos;
- Identificar a cada testigo técnico que la persona pretende presentar y establecer las calificaciones de ese testigo, incluida una descripción de su historial académico y laboral;
 - 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 que esa persona ofrezca en la audiencia, incluida cualquier declaración propuesta de motivos para la adopción de normas.

Los avisos de intención de presentar testimonio técnico deberán presentarse a:

Pamela Jones, administradora de 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

Quienes deseen hacerlo pueden ofrecer comentarios públicos no técnicos en la audiencia en persona o virtualmente. El funcionario de audiencias llevará a cabo una sesión de comentarios públicos todos los días de la audiencia, con una **sesión de comentarios públicos reservada a la 1:00 p. m. del 13 de mayo de 2025**.

Se pueden presentar declaraciones no técnicas por escrito en lugar de testimonio oral en la audiencia o antes de ella. Los comentarios por escrito sobre la norma propuesta deben hacer referencia al número de expediente **WQCC 24-65(R)** y pueden dirigirse a Pamela Jones, administradora de WQCC, a la dirección anterior, o enviarse en el portal de comentarios públicos en: <https://nmed.commentinput.com/comment/search> o por correo electrónico a: pamela.jones@env.nm.gov.

De conformidad con 20.1.6.203 del NMAC, cualquier persona puede presentar un registro de comparecencia como parte. El registro de comparecencia deberá presentarse ante la administradora de WQCC, en la dirección antes mencionada, a más tardar el 14 de abril de 2025.

La audiencia se llevará a cabo de conformidad con los Procedimientos de Elaboración de Normas de la WQCC (20.1.6 NMAC); Utilice los requisitos regulatorios del Análisis de Alcance (20.6.4.15 NMAC), la Ley de Calidad del Agua (Secciones 74-6-1 a -17 NMSA 1978 (1967 enmendada hasta 2019); la Ley de Normas Estatales (Sección 14-4-5.3 NMSA 1978), otros procedimientos aplicables y cualquier Orden de Procedimiento u Orden de Programación adicional emitida por la WQCC o el funcionario de audiencias. Estos documentos están disponibles en línea en <https://www.env.nm.gov/opf/docketed-matters/> o comunicándose con la administradora de la WQCC en pamela.jones@env.nm.gov.

Si alguna persona requiere asistencia, interpretación de idiomas 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 la Red de Retransmisión de Nuevo México, 1-800-659-1779 (voz); usuarios de TTY: 1-800-659-8331).

DECLARACIÓN 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, según lo exigen las leyes y reglamentaciones aplicables. El NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas relacionadas con los

requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, en su forma 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 cualquiera de los programas, políticas o procedimientos de no discriminación de NMED, puede comunicarse con: Kate Cardenas, coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502 o (505) 827-2855 o nd.coordinator@env.nm.gov. Si cree que ha sido objeto de discriminación con respecto a un programa o actividad del NMED, puede comunicarse con la coordinadora de no discriminación del NMED identificada anteriormente.

GAMING CONTROL BOARD

NOTICE OF PROPOSED RULEMAKING

The Gaming Control Board hereby gives notice that the Board, at a Regular Board Meeting open to the public, will consider public comments received and determine whether to adopt the described rules below.

The Regular Board Meeting will be held on Wednesday, April 16, 2025 beginning at 9:00 am at the Gaming Control Board, 4900 Alameda Blvd. NE, Albuquerque, NM 87113. Interested individuals may also attend via Zoom as follows:

<https://us06web.zoom.us/j/85909302122?pwd=UKa28nW0AZurFQDYsCfGVWbDmoxf.1>
Meeting ID: 859 0930 2122
Passcode: 8Bh6th

The public comment period for this rulemaking closed with the public

comment hearing which occurred on January 13, 2025.

Subsections D and E of 15.1.5.15 NMAC Compulsive Gambling Assistance Plan:

Purpose: Amend rule to make it more current and applicable.

Summary of Full Text: Changing mandate for board to establish minimum standards for a compulsive gambling assistance plan, because it has already been done, to requiring applicants for gaming operator licenses to comply with those requirements. Reference to 15.1.18.9 NMAC added as requested at the public comment hearing and recommended by the hearing officer. Also capitalizes “Department of Health”

15.1.5.23 NMAC - Application Fees:

Purpose: Amends rule to update requirements concerning applications and application fees.

Summary of Full Text: Updates application fee amounts that have not been changed since the inception of the agency and removes the requirement that the board must immediately issue an order denying an applicant for a gaming license at any time in the application process should they be deemed not qualified.

Subsection D of 15.1.6.7 NMAC - Definitions

Purpose: Repeal current Rule and replace with corrections of spelling/grammatical errors.

Summary: Changing “building’s” to “buildings” in definition of “premises”.

Subsection B of 15.1.18.9 NMAC - Minimum Standards for Compulsive Gambling Assistance

Purpose: Repeal and replace current rule to update it.

Summary: Capitalizes “Department of Health” and makes it the responsibility of the Gaming Control Board’s Responsible Gaming Coordinator to evaluate and made a recommendation to the Board as to a Compulsive Gambling Assistance Plan.

Authority: Section 60-2E-7 NMSA 1978 and Section 60-2E-8 NMSA 1978.

All written public comments are posted on the website throughout the written comment period at: <https://www.gcb.nm.gov/rulemaking/>.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 841-9700.

**HEALTH CARE
AUTHORITY
HEALTH IMPROVEMENT
DIVISION**

NOTICE OF PUBLIC HEARING

The New Mexico Health Care Authority Division of Health Improvement is finalizing repeal and replacement of the rule 8.370.14 Assisted Living Facilities for Adults. These regulations apply to any assisted living facility for adults as defined by Subsection D of 24-1-2 NMSA 1978, as amended, which is licensed or is required to be licensed, which is operated for the maintenance or care of two or more adults who need or desire assistance with one or more activities of daily living. The purpose of these regulations is to update and clarify the requirements to current standards of care and practice.

8.370.14 NMAC

This is a repeal and replacement of the NMAC requirements for Assisted Living Facilities for Adults.

A public hearing to receive testimony on this proposed rule will be held on

April 16th, 2025 at 11:00 am, in the Hozho conference room #109, 5300 Homestead Rd. NE, Albuquerque NM 87110

The public hearing will be a Hybrid, via Zoom as well as in person, pursuant to Section 14-4-5.6 NMSA 1978.

Join on your computer, mobile app, or room device

Please click the link below to join the webinar:

You are invited to a Zoom webinar!
When: Apr 16, 2025 11:00 AM Mountain Time (US and Canada)
Topic: My WebinarHearing - Repeal and Replacement of rule 8.370.14 Assisted Living Facilities for Adults

Join from PC, Mac, iPad, or Android:
<https://us02web.zoom.us/j/88249258779?pwd=bIXZpnL1y6bKI9cTsaHWDLZPJkyCS.1>
Passcode:278622

Phone one-tap:
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+16699006833,,88249258779#,,,,*278622# US (San Jose)

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+1 669 900 6833 US (San Jose)
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+1 301 715 8592 US (Washington DC)
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+1 360 209 5623 US
+1 386 347 5053 US
+1 507 473 4847 US
+1 564 217 2000 US
+1 646 931 3860 US
+1 689 278 1000 US
+1 929 436 2866 US (New York)
Webinar ID: 882 4925 8779
Passcode: 278622

International numbers available:

<https://us02web.zoom.us/j/kowhcHxO8>

All written comment may be dropped

off during the scheduled hearing time (see above) at the Division of Health Improvement offices, at the Hozho conference room #109, 5300 Homestead Rd. NE, Albuquerque NM 87110.

Individuals wishing to testify may contact the Division of Health Improvement (DHI), P.O. Box H, Santa Fe, NM 87504, or by calling (505) 476-9093.

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, 4/16/2025. Please send comments to: Division of Health Improvement P.O. Box H Santa Fe, NM 87504, Recorded comments may be left at (505) 476-9093. You may send comments via email to: dan.lanari@hca.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.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at Office-505-709-5468, Fax-505-827-6286 or through the New Mexico Relay system, toll free at #711. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

**TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS
PART 14 ASSISTED LIVING FACILITIES FOR ADULTS**

8.370.14.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.14.1 NMAC - Rp, 8.370.14.1 NMAC, xx/xx/2025]

8.370.14.2 SCOPE: This rule applies to all assisted living facilities, any facility which is operated for the maintenance or care of two or more adults who need or desire assistance with one or more activities of daily living. This rule does not apply to the residence of an individual who maintains or cares for a maximum of two relatives.
[8.370.14.2 NMAC - Rp, 8.370.14.2 NMAC, xx/xx/2025]

8.370.14.3 STATUTORY AUTHORITY: The requirements forth herein are promulgated by the secretary of the health care authority by authority of Subsection E of Section 9-8-6 NMSA 1978, and Sections 24-1-2, 24-1-3, 24-1-5 and 24-1-5.2 of the Public Health Act, NMSA 1978, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (authority) as a single, unified department to administer laws and exercise functions relating health care purchasing and regulation.
[8.370.14.3 NMAC - Rp, 8.370.14.3 NMAC, xx/xx/2025]

8.370.14.4 DURATION: Permanent.
[8.370.14.4 NMAC - Rp, 8.370.14.4 NMAC, xx/xx/2025]

8.370.14.5 EFFECTIVE DATE: xx, xx, 2025, unless a later date is cited at the end of a section.
[8.370.14.5 NMAC - Rp, 8.370.14.5 NMAC, xx/xx/2025]

8.370.14.6 OBJECTIVE:
A. Establish standards for licensing assisted living facilities in order to ensure that residents receive appropriate care and services, and regulate to ensure that the health, safety, and welfare of individuals residing and working in such facilities are protected.

B. Establish requirements for the construction, maintenance and operation of licensed assisted living facilities that will provide a safe, humane and homelike environment for adults who need assistance or supervision with activities of daily living but who do not need acute care, continuous nursing care, skilled nursing care or care in an intermediate care facility for the mentally retarded.

C. Regulate facilities in providing care for residents and utilizing available supportive services in the community to meet the needs of the residents.

D. Ensure facility compliance with these rules through established protocols to identify circumstances which could be harmful or dangerous to the health, safety, or welfare of the resident.
[8.370.14.6 NMAC - Rp, 8.370.14.6 NMAC, xx/xx/2025]

8.370.14.7 DEFINITIONS:

A. Definitions beginning with “A”:
(1) “Abuse”

means:
(a) knowingly, intentionally, or negligently and without justifiable cause inflicting physical pain, injury or mental anguish;

(b) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person; or

(c) sexual abuse, including criminal sexual contact, incest, and criminal sexual penetration.

(d) verbal abuse, including profane, threatening, derogatory, or demeaning language, spoken or conveyed with the intent to cause mental anguish; or

(e) the most current definition as found in 8.370.9 NMAC.

(2) “Activities of daily living” (ADLs) as per 42 CFR Section 441.505 2016 “means basic personal everyday activities

including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring”, and also includes general hygiene and mobility.

(3)

“**Administration of Medication**” or “**Medication Administration**” means a process whereby a prescribed drug or biological agent is given to a resident by a person licensed or certified by the board (board of nursing) to administer medications; as set forth in Paragraph (2) of Subsection A of 16.12.2.7 NMAC, and includes preparing, giving and evaluating the effectiveness of prescription and nonprescription drugs per the nursing interventions classification (NIC).

(4)

“**Adult**” means a person who has a chronological age of 18 years or older or is emancipated by court order.

(5) “**Adult**

day care” means a licensed facility where care, services, and supervision are provided to adults.

(6)

“**Administrator, director, or operator**” means the individual in charge of the day-to-day operation of an assisted living facility who has the responsibility to ensure facility compliance with this rule.

(7) “**Advance**

directives” means an individual instruction or a power of attorney for health care made, in either case, while the individual has capacity.

(8) “**Agent**”

means an individual designated in a power of attorney for health care to make a health-care decision for the individual granting the power; or the resident’s surrogate decision maker.

(9)

“**Ambulatory**” means able to walk without assistance.

(10) “**Ancillary**

Services” means the diagnostic or therapeutic services provided by an outside agency.

(11)

“**Assistance**” means act of helping, aiding, or supporting an individual by another.

(12)

“**Assistance with Self-Administration of Medication**”

means the assistance that is rendered by a non-licensed person to assist the resident who has the capability to self-administer medications by prompting, reminders, hand-over-hand assistance, handing the medication container to the resident, opening the medication container, or placing the medication in the resident’s hand.

(13) “**Assisted**

living facility” means a licensed facility operated for the maintenance or care of two or more adults who need or desire assistance with one or more activities of daily living. If a facility is referred to by another name but is providing the requirements and services of an assisted living, the facility shall be licensed in accordance with 8.370.14 NMAC.

(14) “**Assisted**

living facility with memory care unit” means an assisted living facility or part of an assisted living facility that provides added security, enhanced programming, and staffing appropriate for residents with a diagnosis of dementia or other related disorders causing memory impairments whose functional needs require a specialized program and a secured environment.

(15)

“**Authority or department**” means the New Mexico health care authority.

B. Definitions

beginning with “B”:

(1) “**Bathing**

unit” means a tub, shower or combination unit.

(2) “**Bed**

hold” means the facility’s policy for retaining a bed or room for a resident during the time that the resident is temporarily absent from the facility; the policy shall include time frames for the bed hold, acceptable conditions for the bed hold and any associated charges.

C. Definitions

beginning with “C”:

(1)

“**Capacity**” means the maximum number of residents that a facility has been licensed to accommodate.

(2)

“**Census**”

means the total number of individual residents residing in the facility each day, including relatives who are residents. The facility census shall never exceed the licensed capacity.

(3)

“**Certified**

medication aide” (CMA) means a person who is certified by the New Mexico board of nursing to administer medications under the supervision and at the direction of a registered nurse or a licensed practical nurse, pursuant to “the Nursing Practice Act,” Section 61-3-1 through 61-3-30 NMSA 1978.

(4)

“**Change**

of Ownership” means any transaction that results in a change of the person, entity or form of entity that controls capital assets of an assisted living facility.

(5)

“**Chemical restraint**” means a drug or medication used as a restriction to manage a resident’s behavior or restrict a resident’s freedom of movement, and not in the standard treatment or dosage for a resident’s condition.

(6)

“**Cognitive**

status” means an individual’s level of awareness with perception, reasoning, judgment, intuition, and memory to manage his or her own affairs and direct his or her own care.

(7)

“**Communicate**” means the ability to exchange information personally or through an interpreter or assistive technology.

(8)

“**Consent**” means an informed, written agreement, that identifies permission(s) or action(s) to be delegated to another on behalf of resident or to assist the resident, that is signed by the resident or surrogate decision maker or other legally appointed decision maker.

(10)

“**Consulting pharmacist**” means a pharmacist who is responsible to the administrator of the facility and the Board of Pharmacy for the development of the drug storage and distribution and record keeping requirements as set forth in 16.19.11 NMAC.

(11) **“Continuous nursing care”** means 24- hour nursing services which a resident requires based on the complexity of their medical needs.

(12) **“Convenience”** means any action taken by a facility to control resident behavior or manage residents with less effort by the facility and that is not in the resident’s best interest or wishes.

(13) **“Crisis prevention or intervention plan”** means documented actions to be taken to keep a resident and others safe that provides guidance and strategies to staff when a resident has a medical condition or challenging behavior that has the potential to escalate to a severity level that poses a great risk of harm to the resident or others. (e.g., diabetic, seizure disorder, aggression, or combativeness).

D. Definitions beginning with “D”:

(1) **“Decision making capacity”** means the ability of the resident to understand and comprehend the consequences of a proposed decision, including the benefits and risks of and alternatives to any such proposed decision and to reach an informed decision.

(2) **“Designee”** means an individual appointed to assume responsibility for specific assigned duties.

(3) **“Direct care staff”** means any person who is employed, contracted or volunteers at a facility that works directly with the residents in the oversight and delivery of care and supervision.

(4) **“Discipline”** means any action taken by the facility for the purpose of punishing or penalizing any resident.

E. Definitions beginning with “E”:

(1) **“Exploitation”** means an unjust or improper use of a person’s money or property for another person’s profit or advantage, financial or otherwise, as defined in the incident reporting intake, processing & training requirements, 8.370.9 NMAC.

Exploitation includes but is not limited to:

(a) manipulating the resident by whatever mechanism to give money or property to any facility staff or management member;

(b) misappropriation or misuse of monies belonging to a resident or the unauthorized sale, or transfer or use of a residents property;

(c) loans of any kind from a resident to family, operator or families of staff or operator;

(d) accepting monetary or other gifts from a resident or their family with a value in excess of \$25 and not to exceed a total value of \$300 in one year;

(e) All gifts received by facility operators, their families or staff of the facility must be documented and acknowledged by person giving the gift and the recipient;

(f) Exception: Testamentary gifts, such as wills, are not, per se, considered financial exploitation.

F. Definitions beginning with “F”:

(1) **“Facility”** means an assisted living facility.

(2) **“Facility license”** means the document issued by the licensing authority which authorizes the operation of a facility.

G. Definitions beginning with “G”:

“General supervision” means the availability of direct care staff in the facility, on a twenty-four hour basis, to respond to the needs of the residents and to perform periodic checks on the residents.

H. Definitions beginning with “H”:

“Health care professional” means a New Mexico licensed health care professional such as a physician, chiropractor, pharmacist, advance practice registered nurse, physician assistant, registered nurse, licensed practical nurse, physical therapist, speech therapist, occupational therapist,

psychologist, social worker, dietitian, or dentist.

I. Definitions beginning with “I”:

(1) **“Independent”** means the ability to perform activities of daily living without assistance.

(2) **“Individual service plan” or “ISP”** means a person-centered comprehensive plan that identifies the level of assistances and services that the resident will require with activities of daily living and with medications.

(3) **“Instrumental activities of daily living (IADLs)”** means activities related to living independently in the community, including but not limited to, meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone or other media, and traveling around and participating in the community” as defined in 42 CFR Section 441.505.

(4) **“Intramuscular injection” or “IM”** means the insertion of a needle into a muscle to administer medication.

(5) **“Intravenous” or “IV”** means the insertion of a needle into a vein to administer medication.

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

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

L. Definitions beginning with “L”:

(1) **“Licensee”** means the person who, or the organization that, has ownership, leasehold, or similar interest in a facility and in whose name a license for an assisted living facility has been issued, who is legally responsible for compliance with this rule.

(2) **“Licensing authority”** means the New Mexico health care authority, division of health improvement (DHI).

(3) **“Licensed or certified personnel”** means New Mexico licensed registered nurses (RNs), licensed practical nurses

(LPNs) and certified medication aides (CMAs), licensed or certified by the New Mexico board of nursing pursuant to “the nursing practice act”, 61-3-1 through 61-3-31 NMSA 1978.

(4) **“Licensed practical nurse (LPN)”** means a person who is licensed by the New Mexico board of nursing pursuant to the “nursing practice act,” 61-3-1 through 61-3-31 NMSA 1978.

(5) **“Life safety code (LSC)”** is another way to describe NFPA 101, which is a set of regulations developed by the National fire protection association (NFPA). It provides minimum requirements for the design, construction, operation and maintenance of buildings to protect occupants from fire and other hazards.

M. Definitions beginning with “M”:

(1) **“Medication administration record” (MAR)** means the document that is used to record the details of medication administration. The MAR shall include all of the information pursuant to Subsection G of 8.370.14.36 NMAC of this rule.

(2) **“Medication delivery”** means handing a medication container to a resident, opening the resident’s medication container, using an enabler, or placing the medication in the resident’s hand, and other such means of delivering medication to a resident in order to facilitate self-administration.

(3) **“Medication delivery method”** means the method by which a resident takes or receives medication (i.e., pills, eye drops, intramuscular injection, other).

(4) **“Medication error”** means the administration of any medication incorrectly (i.e., dosage, selection of drug, selection of resident, time or method of administration, omission of prescribed medication or the administration of a medication without a valid order).

(5) **“Medication route”** means the

method of medication entry into a resident’s body (e.g., oral, ocular, rectal, topical, nasal, injection and intravenous).

(6) **“Mini mental status exam (MMSE)”** means a 30-point questionnaire that is used extensively in clinical and research settings to measure cognitive impairment, published by psychological assessment resources based on its original 1975 conceptualization.

(7) **“Misappropriation”**: See **“exploitation”** means the deliberate misplacement of a resident’s property, or wrongful, temporary or permanent use of a resident’s belongings or money without the resident’s consent and is defined in the incident reporting intake, processing & training requirements, 8.370.9 NMAC.

(8) **“Mobile”** means able to walk with assistance, or the ability to move from place to place with the use of a device such as a walker, cane, crutches, prosthetic or a wheelchair and the capability of making independent bed-to-chair transfers.

N. Definitions beginning with “N”:

(1) **“Nebulizer”** means an atomizer equipped to produce a fine mist for deep inhalation into the lungs.

(2) **“Neglect”** means the failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness and is defined in the incident reporting intake, processing & training requirements, 8.370.9 NMAC.

(3) **“New facility”** means any building not previously or currently licensed as an assisted living facility.

(4) **“NFPA”** means the National fire protection association which sets codes and standards for fire and life safety. NFPA 11 and related standards, current edition as required by the authority.

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

P. Definitions beginning with “P”:

(1) **“Person centered care”** means doctors and other health care providers work collaboratively with residents and other health care providers to do what is best for the residents’ health and well-being. It offers health care providers the necessary supports like access to residents’ health data to understand their resident’s comprehensive needs. By providing doctors and other health care providers with this big-picture information, they are better equipped to develop individual service plans (ISP) that include empathy, dignity and respect with residents, their families, and other caregivers.

(2) **“Physician extender”** means the term used to refer to physician assistants (working in conjunction with a physician) and nurse practitioners.

(3) **“Physical restraint”** means any manual, physical or mechanical device, any material or equipment attached to or adjacent to a resident’s body that the resident cannot easily remove and that restricts freedom of movement or is used for discipline or for the convenience of the facility.

(4) **“Plan of removal”** means the immediate action to be taken by the facility and documented in writing after being notified that an Immediate Jeopardy exists and must be corrected.

(5) **“Plan review”** means the evaluation of the building plans.

(6) **“Primary care practitioner” (PCP)** means a physician, nurse practitioner or physician’s assistant (licensed in the state of New Mexico) who oversees the health care of the resident.

(7) **“Private duty attendant”** means an individual that provides direct care under the definitions of the NM caregivers criminal history screening program, 8.370.5 NMAC. The individual is hired by the resident or family through a licensed agency, hired directly or works through a separate arrangement with the family.

(8) **“Pro re nata medication (PRN)”** means prescribed or over-the-counter medications, including comfort medications that are administered or taken only on an as needed basis when symptoms warrant or as directed by the primary care practitioner (PCP). PRN medications can only be given by an unlicensed staff person if the conditions of Paragraph (12) of Subsection A of 8.370.14.7 NMAC “assistance with self-administration of medication” and 8.370.14.36 NMAC Medications” apply.

(9) **“Policy”** means a statement of principle that guides and determines present and future decisions and actions.

(10) **“Procedure”** means the action(s) that shall be taken in order to implement a policy.

(11) **“Protocols”** are the specific means by which a procedure or treatment is to take place.

(12) **“Programmatic services”** means services provided to residents as defined by the facilities program narrative.

(13) **“Program narrative”** is a written statement identifying the primary population to be served and the services that will be provided to meet these needs.

Q. Definitions beginning with “Q”: **“Qualified service animal”** means any qualified service dog or qualified service miniature horse that has been or is being trained to provide assistance to an individual with a disability. **“Qualified service animal”** does not include a pet, an emotional support animal, a comfort animal, or a therapy animal;

R. Definitions beginning with “R”:

(1) **“Registered nurse” (RN)** means a person that has specialized training and is licensed by the New Mexico board of nursing pursuant to the “nursing practice act,” 61-3-1 through 61-3-31 NMSA 1978.

(2) **“Relative”** means husband, wife, significant other, mother, father, son, daughter, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, grandfather, grandmother, half-brother or half-sister.

(3) **“Resident”** means an individual receiving services and residing in the licensed facility; including the relatives of a licensee.

(4) **“Resident evaluation form”** means a written document of the information acquired during the assessment of a resident’s functional capacities and limitations. This form is to be utilized for pre-admission and ongoing evaluation of a resident.

(5) **“Resident preference”** means the resident’s choice or preferred choice among the available options.

(6) **“Restraints”** means use of a physical restraint or chemical restraints imposed, for the purposes of discipline or convenience, to physically restrict a resident’s freedom of movement, performance of physical activity, or normal access to their body.

(7) **“Room and board”** means the living/sleeping space, meals and snacks appropriate to meet the needs of the residents.

S. Definitions beginning with “S”:

(1) **“Sanctions”** means a measure imposed on a licensee for a violation(s) of applicable licensing requirements other than license revocation, suspension, or denial of renewal of license as provided for by health facility sanctions and civil monetary penalties, 8.370.4 NMAC.

(2) **“Self-administration of medication”** the process of an individual administering a pharmacological substance to oneself.

(3) **“Self-care”** means the performance of ADLs, activities or tasks by the residents themselves rather than performed by or assisted with the facility staff.

(4) **“Side effect”** means a result of a drug or other form of therapy in addition to or in extension of the desired therapeutic effect.

(5) **“Self-medication”** means administration of PCP prescribed medication by the resident to whom it was prescribed.

(6) **“Significant change in health status”** means the resident has experienced one or more of the following: a decline or improvement in physical ability; a decline or improvement in cognitive or functional ability; a new diagnosis or event that requires a change in medication, or treatment or that requires a revision to an individual service plan; or a change in medication or the medication route that would permanently alter the level of assistance with medication delivery.

(7) **“Supportive services”** means services provided through coordination with service agencies to assist residents in maintaining the individual’s quality of life.

(8) **“Surrogate decision maker”** means the resident’s agent, guardian or surrogate as defined in the “uniform health-care decisions act,” 24-7A-1 through 24-7A-186 NMSA 1978 or other legally appointed decision maker.

(9) **“Survey”** means a monitoring visit by the licensing authority to examine a facility’s premises and records and to interview the residents and staff.

(10) **“Stable”** means the resident’s condition is unchanged; signs or symptoms are within established ranges, frequencies or patterns. The resident’s condition does not require frequent monitoring by a licensed nurse to determine the resident’s status or the resident’s response to medication or treatment.

(11) **“Staff or employees”** means the individuals hired or subcontracted by the facility to implement the individual service plan for the residents.

(12)

“Subcutaneous injection” means the insertion of a needle under the skin but above the muscle layer to administer medication.

T. Definitions

beginning with “T”: “Therapeutic diet” means a diet other than a regular diet, ordered by a physician to manage a health condition.

U. Definitions

beginning with “U”: [RESERVED]

V. Definitions

beginning with “V”:

(1)

“Volunteers” means unpaid individuals who provide care or services for the residents.

(2)

“Variance” means a decision that is made at the discretion of the licensing authority to allow a facility to deviate from a portion(s) or to modify a provision of this rule for an unspecified period of time, provided that the health, safety, or welfare of the residents and staff are not in danger.

(3) “Visit

notes” means the documentation of services provided by outside agencies for ongoing care coordination of the resident.

W. Definitions

beginning with “W”: “Waive/waiver” means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety, or welfare of the residents and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.

X. Definitions

beginning with “X”: [RESERVED]

Y. Definitions

beginning with “Y”: [RESERVED]

Z. Definitions

Beginning with “Z”: [RESERVED] [8.370.14.7 NMAC - Rp, 8.370.14.7 NMAC, xx/xx/2025]

8.370.14.8 GENERAL LICENSING REQUIREMENTS:

A. Licensure is

required. No person or entity shall establish, maintain or operate an

assisted living facility without first obtaining a license.

B. Application for licensure. An initial or renewal application shall be made on the forms (paper or electronic) prescribed by and available from the licensing authority. The issuance of an application form is not a guarantee that the completed application will be accepted, or that the authority will issue a license. Information provided by the facility and used by the licensing authority for the licensing process shall be accurate and truthful. The licensing authority will not issue a new license if the applicant has had a health facility license revoked or renewal denied or has surrendered a license under threat of revocation or denial of renewal. The licensing authority may not issue a new license if the applicant has been cited repeatedly for violations of applicable rules found to be class A or class B deficiencies as defined in health facility sanctions and civil monetary penalties, 8.370.4 NMAC or has been non-compliant with plans of correction. The licensing authority will not issue a license until the applicant has supplied all of the information that is required by this rule. Any facility that fails to participate in good faith by falsifying information presented in the licensing process shall be denied licensure by the authority. The following information shall be submitted to the licensing authority for approval:

(1) a letter

of intent that includes the proposed physical address, the primary population of the facility and a summary of the proposed services; after the letter of intent has been received, an application packet including; the application form, fee schedule and the licensing rule will be issued to the applicant by the licensing authority;

(2) the

completed application and the appropriate non-refundable fee(s);

(3) a program

narrative identifying and detailing the geographic service area, the primary population including any special

needs requirements, along with a full description of the services that the applicant proposes to provide including:

(a)

a description of the characteristics of the proposed population of the facility;

(b)

a description of the services and care that will be provided to the residents;

(c)

a description of the anticipated professional services to be offered to the residents; and

(d)

a description of the facility’s relationship to other services and related programs in the service area and how the applicant will collaborate with them to achieve a system of care for the residents.

(4) policies

and procedures annotated to this rule;

(5) evidence

to establish that the applicant has sufficient financial assets to permit operation of the facility for a period of six months; the evidence shall include a credit report from one of the three recognized credit bureaus with a minimum credit score of 650 or above;

(6) copies of

organizational documents to include the following list of items:

(a)

the names of all persons or business entities that have at least five percent ownership interest in the facility, whether direct or indirect and whether in profits, land or building; this includes the owners of any business entity which owns all or part of the land or building;

(b)

the identities of all creditors that hold a security interest in the premises, whether land or building;

(c) in

cases in which the owner is organized as a partnership, the identity of each partner and a copy of the partnership agreement.

(7) a statement

from the administrator of the facility, acknowledging that the facility is responsible for any funds that are

handled for the residents by the facility or its staff, including personal allowance funds, together with an acknowledgement that the failure to make restitution within ten working days for lost or stolen funds will result in non-renewal of licensure, or other sanctions;

(8) building plans as required at 8.370.14.42 NMAC of this rule;

(9) fire authority approval as required at 8.370.14.61 NMAC of this rule;

(10) a letter of approval or exemption from the local health authority having jurisdiction for the food service and the kitchen facility;

(11) a copy of liquid waste disposal and treatment system permit from local health authority having jurisdiction;

(12) approval from local zoning authority;

(13) building approval (certificate of occupancy);

(14) copy of appropriate drug permit issued by the state board of pharmacy, if applicable; and

(15) any other information that the applicant wishes to provide or that the licensing authority may request.

C. Annual license:

An annual license is issued for one year for a facility that has met all the requirements of this rule.

D. Application for amended license: A licensee shall submit an application for an amended license and the required non-refundable fee to the licensing authority prior to a change with the facility. An amended license is required for a change of: location, administrator, facility name, capacity or any modification or addition to the building.

(1) An application for a change of the facility administrator or change of the administrator’s name shall be submitted to the licensing authority within 10 business days of the change.

(2) An application for increase in capacity

shall be accompanied by a building plan pursuant to 8.370.14.41 NMAC of this rule. A facility shall not increase census until the licensing authority has reviewed and approved the increase and has issued a new license that reflects the approved increase in capacity.

D. Application for license renewal: Each facility shall apply for a renewal of the annual license within 30 business days prior to the license expiration date by submitting the following items:

(1) an application and the required fee;

(2) an updated program narrative, if the facility has changed the program or the focus of services;

(3) the annual fire inspection report; and

(4) the licensing authority may not issue a new license if the applicant has been cited repeatedly for violations of this rule or has been noncompliant with plans of correction or payment of civil monetary penalties.

E. License: Any person or entity that establishes, maintains or operates an assisted living facility shall obtain a license as required in this rule before accepting residents for care or providing services.

(1) Each facility that provides care or treatment shall obtain a separate license. The license is non-transferable and is only valid for the facility to which it is originally issued and for the owner or operator to whom it is issued. It shall not be sold, reassigned or transferred.

(2) The maximum capacity specified on the license shall not be exceeded.

(3) If the facility is closed and the residents are removed from the facility, the license shall be returned to the licensing authority. Written notification shall be issued to all residents or the residents’ surrogate decision maker and the licensing authority at least 30 calendar days prior to the closure.

F. Change of Ownership: When a change

of ownership occurs, the new owner must submit an initial license application pursuant to the requirements in this section. The new owner must demonstrate compliance with these regulations at the time it takes responsibility of the facility. The licensing authority may, at its sole discretion, approve a change of ownership. In addition to the requirements in subsection B – Application for licensure, the new owner must submit the following at least 60 days prior to completion of the change of ownership:

(1) a letter of intent that explains the terms of the change of ownership and the date the ownership will change;

(2) documents evidencing the change of ownership such as proof of sale or donation, lease of any portion of the facility, or other relevant documents;

(3) building plans of the current structure with any modifications known to the current or new owner;

(4) a continuity of care transition plan that describes how the new owner will keep residents safe and meet the requirements of these regulations at the time it takes responsibility of the facility. The plan must state the actions that will occur, the party responsible for taking each action, and the expected date of completion for each action. The plan must include the following:

(a) a list of all residents at the time of notice to the licensing authority;

(b) a current and accurate review and update of all resident assessments;

(c) review and update of all individual service plans. All plans must be current and accurate;

(d) staffing ratios as required in section 8.370.14.19 and the number and positions of current staff that will be hired by the new owner;

(e) staff training as required in section 8.370.14.17;

(f) transfer of resident accounts;
 (g) identification of all waivers or variances held by the current owner, and submission of any necessary waivers or variances for the new owner because all waivers or variances held by the current owner are void upon the change of ownership.

(h) a waiver to have more than three residents under a temporary license, if applicable.

(5) record of notification of residents and families of the proposed change; and

(6) record of notification of the state long-term care ombudsman.

G. Temporary license:

(1) A temporary license may be issued to a new facility before residents are admitted provided that the facility has met all of the life safety code requirements as stated in this rule and policies and procedures for the facility have been reviewed and approved.

(2) Upon receipt of a temporary license, the facility may begin to admit up to three residents.

(3) After the facility has admitted up to three residents, the facility operator or owner shall request an initial health survey from the licensing authority.

(4) Following a determination of compliance with this rule by the licensing authority, an annual license will be issued. The renewal date of the annual license is based on the initial date of the first temporary license.

(5) The licensing authority has the right to determine compliance or noncompliance.

(6) A temporary license shall cover a period of time, not to exceed 120 calendar days.

(7) No more than two consecutive temporary licenses shall be issued. If a second temporary license is issued, an

additional non-refundable fee is required. If all requirements are not met within the 240 day time frame, the applicant shall repeat the application process.

H. Display of license:

The facility shall display the license in a conspicuous public place that is visible to residents, staff and visitors.

I. Unlicensed

facilities: Any person or entity that opens or maintains an assisted living facility without a license is subject to the imposition of civil monetary penalties by the licensing authority. Failure to comply with the licensure requirements of this rule within 10 days of notice by the licensing authority may result in the following penalties pursuant to health facility sanctions and civil monetary penalties, 8.370.4 NMAC.

(1) A civil monetary penalty not to exceed \$5,000 per day.

(2) A base civil monetary penalty, plus a per-day civil monetary penalty, plus the doubling of penalties as applicable, that continues until the facility is in compliance with the licensing requirements in this rule.

(3) A cease and desist order to discontinue operation of a facility that is operating without a license.

(4) Additional criminal penalties may apply and shall be imposed as necessary.

[8.370.14.8 NMAC - Rp, 8.370.14.8 NMAC, xx/xx/2025]

8.370.14.9 WAIVERS AND VARIANCES.

The licensing authority may vary or waive certain licensure requirements for facilities, provided that it would not adversely affect the health, safety or welfare of the residents or staff.

A. Requests for a variance or waiver may be made at any time, shall be made in writing to the licensing authority and shall specify the following:

(1) the section of the rule for which the variance or wavier is requested;

(2) the time period for which the waiver is requested;

(3) if the request is for a variance; the specific alternative action that the facility proposes;

(4) the reason(s) for the request and an explanation of why and how the health, safety and welfare of the residents or staff are not endangered by the requested variance or waiver; and

(5) justification that the goal or purpose of the rule would be satisfied with a waiver or variance.

B. The licensing authority may require additional information from the facility prior to acting on the request.

C. The licensing authority may impose conditions on the variance or waiver.

D. The licensing authority shall limit the duration of any waiver.

E. Variances and waivers are nontransferable and shall be kept on file and readily available at the facility.

F. Variances and waivers are granted at the discretion of the licensing authority.

[8.370.14.9 NMAC - Rp, 8.370.14.9 NMAC, xx/xx/2025]

8.370.14.10 AUTOMATIC EXPIRATION OF A LICENSE: A license shall automatically expire:

A. at midnight on the day indicated as the expiration date on the license;

B. when the operation of a facility is discontinued;

C. when a facility is sold or leased or the licensee changes; or

D. when there is a change of location for a facility.

[8.370.14.10 NMAC - Rp, 8.370.14.10 NMAC, xx/xx/2025]

8.370.14.11 SURVEY OR MONITORING VISITS:

A. The licensing authority shall perform unannounced

on-site survey or monitoring visits at all assisted living facilities to determine compliance with this rule.

B. The facility shall provide the licensing authority full access to all facility operations, buildings and information related to the operation of the facility. This includes interviews with facility staff. The facility shall develop and implement written policies and procedures that promote a culture of safety, open communication in the work environment, including prohibiting retaliation against an employee who cooperates with the survey process and interviews.

C. The most recent survey inspection reports and related correspondence shall be posted in a conspicuous public place in the facility.

D. Failure by the facility to provide the licensing authority access to the premises or information, including resident records and interviews with any party with relevant information, may result in the imposition of sanctions including but not limited to civil monetary penalties, license revocation or an order to cease and desist, in accordance with 8.370.4 NMAC, as deemed appropriate by the licensing authority. Impeding the survey or investigation includes the following:

(1) Failure of the facility to provide resident records, medical records, staff records, or other records necessary for the survey process. The facility must make available a printout of any record or part of a record upon request in a timeframe that does not impede the survey process.

(2) Failure of the facility to provide records. Undue delays in the production of records are unacceptable.

[8.370.14.11 NMAC - Rp, 8.370.14.11 NMAC, xx/xx/2025]

8.370.14.12 CORRECTIVE

ACTION: If violations of this rule are cited, the facility will be provided with an official statement of deficiencies within 10 business days following the survey.

A. Informal dispute review (IDR): The facility may request an informal review of survey deficiencies by providing a written request to the licensing authority within 10 calendar days of receipt of the written survey findings. With the request, the facility shall include information or evidence that justifies the disagreement with a cited deficiency.

(1) The licensing authority will review the submitted information and make a determination.

(2) If the deficiency is removed, a new statement of deficiencies will be issued to the facility.

(3) The facility shall provide a new plan of correction for all remaining deficiencies upon receipt of the new statement of deficiencies.

(4) A copy of the “IDR operating rules” is available upon request or by accessing the DHI website.

B. Plan of correction (POC): The facility shall submit a plan of correction within 10 calendar days of receipt of the statement of deficiencies and after receipt of a revised statement of deficiencies, when the findings are changed pursuant to an IDR.

(1) The licensing authority may either accept, direct or reject a plan of correction (POC).

(2) If the first POC is rejected by the licensing authority, the facility will be sent a second copy of the statement of deficiencies. The facility shall complete and return the second copy of the statement of deficiencies with an acceptable plan of correction within three business days. The process will repeat until an acceptable plan of correction is received by the authority.

(3) Failure to provide an acceptable plan of correction within a reasonable period of time, may lead to civil monetary penalties or other sanctions.

(4) The plan of correction shall:

(a) address how all violations identified in the official statement of deficiencies will be corrected;

(b) address how the facility will monitor the corrective action and ensure ongoing compliance; and

(c) specify the date that the corrective action will be completed.

(5) All cited violations shall be corrected within 30 calendar days from the date of the survey; unless the licensing authority approves an extended date.

(6) Failure to submit an acceptable plan of correction may result in sanctions, including but not limited to civil monetary penalties, suspension or non-renewal of the facility license. [8.370.14.12 NMAC - Rp, 8.370.14.12 NMAC, xx/xx/2025]

8.370.14.13 GROUNDS FOR REVOCATION, SUSPENSION OR DENIAL OF INITIAL OR RENEWAL OF LICENSE, OR THE IMPOSITION OF SANCTIONS OR CIVIL MONETARY PENALTIES:

A. When the licensing authority determines that it will deny an application for the renewal of a license or that it will revoke a license, it shall provide notification to the facility, the residents and the surrogate decision makers for the residents.

B. After notice to the facility and an opportunity for a hearing, the authority may deny an initial or renewal application, revoke or suspend the license of a facility or may impose an intermediate sanction and a civil monetary penalty as provided in accordance with the Health Care Code, Section 24a-1-5.2 NMSA 1978.

C. Grounds for implementing these penalties may be based on the following:

(1) failure to comply with any provision of this rule;

(2) failure to allow a survey by authorized representatives of the licensing authority;

(3) the hiring or retaining of any staff or permitting any private duty attendant or volunteer to work with residents that has a disqualifying conviction under the requirements of the caregiver’s criminal history screening program, 8.370.5 NMAC;

(4) the misrepresentation or falsification of any information on the application forms or other documents provided to the licensing authority;

(5) repeat violations of this rule;

(6) failure to maintain or provide services as required by this rule;

(7) exceeding licensed capacity;

(8) failure to provide an acceptable plan of correction within the time period established by the licensing authority;

(9) failure to correct deficiencies within the time period established by the licensing authority;

(10) failure to comply with the incident reporting requirements pursuant to incident reporting, intake processing and training requirements, 8.370.9 NMAC;

(11) failure to pay civil monetary penalties pursuant to health facility sanctions and civil monetary penalties, 8.370.4 NMAC; or [8.370.14.13 NMAC - Rp, 8.370.14.13 NMAC, xx/xx/2025]

8.370.14.14 HEARING PROCEDURES:

A. Hearing procedures for an adverse action taken against a facility by the authority will be conducted in accordance with adjudicatory hearings for licensed facilities, 8.370.2 NMAC.

B. The facility will receive a copy of the hearing procedures at the time that an adverse action is taken or may request a copy by contacting the licensing authority.

C. If immediate action is required to protect human health and safety, the licensing authority may suspend a license or impose an intermediate sanction pending a hearing, provided that the hearing is held within five working days of the suspension or the sanction, unless waived by the facility, in accordance with the Public Health Act, Subsection H of Section 24a-1-5 NMSA.

[8.370.14.14 NMAC - Rp, 8.370.14.14 NMAC, xx/xx/2025]

8.370.14.15 APPEALS:

A. A licensee that is subject to an adverse action may request an administrative appeal. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against the facility is in accordance with adjudicatory hearings for licensed facilities, 8.370.2 NMAC.

B. A copy of the adjudicatory hearing procedures will be forwarded to the facility when an adverse action is taken against the licensee by the licensing authority.

C. All notices, orders or decisions which the licensing authority issues to a facility prior to a transfer of ownership shall be in effect against both the former owner and the new owner, unless the transfer of penalties to the new owner is rescinded in writing by the authority. [8.370.14.15 NMAC - Rp, 8.370.14.152 NMAC, xx/xx/2025]

8.370.14.16 STAFF QUALIFICATIONS: A facility shall employ staff with the following qualifications.

A. Administrator, director, operator: an assisted living facility shall be supervised by a full-time on-site administrator. Multiple facilities that are located within a 40-mile radius may have one full-time administrator. The administrator shall:

- (1) be at least 21 years of age;
- (2) have a high school diploma or its equivalent;
- (3) comply

with the requirements of the New Mexico caregivers criminal history screening act, 8.370.5 NMAC;

(4) complete a state approved certification program for assisted living administrators, or a current license as a nursing home administrator (NHA).

(5) be able to communicate with the residents in the language spoken by the majority of the residents;

(6) not work while under the influence of alcohol or illegal drugs;

(7) have evidence of education and experience to prove the ability to administer, direct and operate an assisted living facility; the evidence of education and experience shall be directly related to the services that are provided at the facility;

(8) provide three letters of reference from persons unrelated to the applicant; and

(9) comply with the pre-employment requirements pursuant to the employee abuse registry, 8.370.8 NMAC and shall comply with the requirements of the caregivers criminal history screening requirements, 8.370.5 NMAC.

B. Direct care staff:

(1) shall be at least 16 years of age;

(2) shall have adequate education, relevant training, or experience to provide for the needs of the residents;

(3) shall comply with the pre-employment requirements pursuant to the employee abuse registry, 8.370.8 NMAC; and

(4) shall comply with the current requirements of reporting and investigating incidents pursuant to incident reporting, intake processing and training requirements, 8.370.9 NMAC;

(5) shall not work while under the influence of alcohol or mind altering drugs;

(6) if a facility provides transportation for residents,

the employees of the facility who drive vehicles and transport residents shall have copies of the following documents on file at the facility:

(a) a valid New Mexico driver's license with the appropriate classification for the vehicle that is used to transport residents;

(b) documentation of training in transportation safety for the elderly and disabled, including safe vehicle operation;

(c) proof of insurance; and

(d) documentation of a clean driving record;

(7) any person who provides direct care who is not employed by an agency that is covered by the requirements of the caregivers criminal history screening requirements, 8.370.5 NMAC, shall provide current (within the last 6 months) proof of the caregiver's criminal history screening to the facility; the facility shall maintain and have proof of such screening readily available; and

(8) employers shall comply with the requirements of the caregivers criminal history screening requirements, 8.370.5 NMAC. [8.370.14.16 NMAC - Rp, 8.370.14.16 NMAC, xx/xx/2025]

8.370.14.17 STAFF TRAINING:

A. Training and orientation for each new employee and volunteer that provides direct care shall include a minimum of 16 hours of supervised training prior to providing unsupervised care for residents.

B. Documentation of orientation and subsequent trainings shall be kept in the personnel file at the facility.

C. Training shall be provided at orientation and at least 12 hours annually, the orientation, training and proof of competency shall include:

- (1) fire safety and evacuation training;
- (2) first aid;
- (3) safe food handling practices (for persons involved in food preparation), to include:

(a) instructions in proper storage;

(b) preparation and serving of food;

(c) safety in food handling;

(d) appropriate personal hygiene; and

(e) infectious and communicable disease control;

(4) confidentiality of records and resident information;

(5) infection control;

(6) resident rights;

(7) reporting requirements for abuse, neglect or exploitation in accordance with 8.370.9 NMAC;

(8) smoking policy for staff, residents and visitors;

(9) methods to provide quality resident care;

(10) emergency procedures;

(11) medication assistance, including the certificate of training for staff that assist with medication delivery; and

(12) the proper way to implement a resident ISP for staff that assist with ISPs.

D. If a facility provides transportation to residents, employees of the facility who drive vehicles and transport residents shall have training in transportation safety for the elderly and disabled, including safe vehicle operation.

[8.370.14.17 NMAC - Rp, 8.370.14.17 NMAC, xx/xx/2025]

8.370.14.18 POLICIES: The facility shall have and implement written personnel policies for the following:

A. staff, private duty attendant and volunteer qualifications;

B. staff, private duty attendant and volunteer conduct;

C. staff, private duty attendant and volunteer training policies;

D. staff and private duty attendant and volunteer criminal history screening;

E. emergency procedures;

F. medication administration and assisting with self-administration of medication;

G. the retention and maintenance of current and past personnel records; and

H. facilities shall maintain records and files that reflect compliance with NM and federal employment rules.

[8.370.14.18 NMAC - Rp, 8.370.14.18 NMAC, xx/xx/2025]

8.370.14.19 STAFFING RATIOS:

The following staffing levels are the minimum requirements.

A. The facility shall employ the sufficient number of staff to provide the basic care, resident assistance and the required supervision based on the assessment of the residents' needs.

(1) During resident waking hours, facilities shall have at least one direct care staff person on duty and awake at all times for each 15 residents.

(2) During resident sleeping hours, facilities with 15 or fewer residents shall have at least one direct care staff person on duty, awake and responsible for the care and supervision of the residents.

(3) During resident sleeping hours, facilities with 16 to 30 residents shall have at least one direct care staff person on duty and awake at all times and at least one additional staff person available on the premises.

(4) During resident sleeping hours, facilities with 31 to 60 residents shall have at least two direct care staff persons on duty and awake at all times and at least one additional staff person immediately available on the premises.

(5) During resident sleeping hours, facilities with more than 61 residents shall have at least three direct care staff persons on duty and awake at all times and one additional staff person immediately available on the premises for each additional 30 residents or fraction thereof in the facility.

B. Upon request of the authority, the facility shall provide the staffing ratios per each 24 hour day for the past 30 days.
[8.370.14.19 NMAC - Rp, 8.370.14.19 NMAC, xx/xx/2025]

8.370.14.20 ADMISSIONS

AND DISCHARGE: The facility shall complete an admission agreement for each resident. The administrator of the facility or a designee responsible for admission decisions shall meet with the resident or the resident’s surrogate decision maker prior to admission. No resident shall be admitted who is below the age of eighteen (18) or for whom the facility is unable to provide appropriate care.

A. Admission agreement: The admission agreement shall include the following information:

- (1) the parties to the agreement;
- (2) the program narrative;
- (3) the facility’s rules;
- (4) the cost of services and the method of payment;
- (5) the refund provision in case of death, transfer, voluntary or involuntary discharge;
- (6) information to formulate advance directives;
- (7) a written description of the legal rights of the residents translated into another language, if necessary;
- (8) the facility’s staffing ratio;
- (9) written authorization for staff to assist with medications;
- (10) notification of rights and responsibilities pursuant

to the incident reporting intake, processing and training requirements, 8.370.9 NMAC;

(11) the facility’s bed hold policy; and

(12) the admission agreement may be terminated if an appropriate placement is found for the resident, under the following circumstances:

(a) there shall be a 15 day written notice of termination given to the resident or his or her surrogate decision maker, unless the resident requests the termination;

(b) the resident has failed to pay for a stay at the facility as defined in the admission agreement;

(c) the facility ceases to operate or is no longer able to provide services to the resident;

(d) the resident’s health has improved sufficiently and therefore no longer requires the services of the facility;

(e) termination without prior notice is permitted in emergency situations for the following reasons:

- (i) the transfer or discharge is necessary for the resident’s safety and welfare;
- (ii) the resident’s needs cannot safely be met in the facility; or
- (iii) the safety and health of other residents and staff in the facility are endangered;

(13) the facility shall provide a 30 day written notice to residents regarding any changes in the cost or the material services provided; a new or amended admission agreement must be executed whenever services, costs or other material terms are changed; and

(14) facilities representing their services as “specialized” must disclose evidence of staff specialty training to prospective residents.

B. Restrictions in admission: The facility shall not admit or retain individuals that require

24 hour continuous nursing care, refer to Subsection U of 8.370.14.7 NMAC definitions. This rule does not apply to hospice residents who have elected to receive the hospice benefit. Conditions or circumstances that usually require continuous nursing care may include but are not limited to the following:

- (1) ventilator dependency;
- (2) pressure sores and decubitus ulcers (stage III or IV);
- (3) intravenous therapy or injections;
- (4) any condition requiring either physical or chemical restraints;
- (5) nasogastric tubes;
- (6) tracheostomy care;
- (7) residents that present an imminent physical threat or danger to self or others;
- (8) residents whose psychological or physical condition has declined and placement in the current facility is no longer appropriate as determined by the PCP;
- (9) residents with a diagnosis that requires isolation techniques;
- (10) residents that require the use of a hooyer lift; and
- (11) ostomy (unless resident is able to provide self-care).

C. Exceptions to admission, readmission and retention: If a resident requires a greater degree of care than the facility would normally provide or is permitted to provide and the resident wishes to be re-admitted or remain in the facility and the facility wishes to re-admit or retain the resident. The facility shall comply with the following requirements.

- (1) Convene a team, comprised of:
 - (a) the facility administrator and a facility health care professional if desired;
 - (b) the resident or resident’s surrogate decision maker; and

(c) the hospice or home health clinician.
 (2) The team shall jointly determine if the resident should be admitted, readmitted or allowed to remain in the facility. Team approval shall be in writing, signed and dated by all team members and the approval shall be maintained in the resident’s record and shall:

(a) be based upon an individual service plan (ISP) which identifies the resident’s specific needs and addresses the manner that such needs will be met;

(b) ensure that if the facility is licensed for more than eight residents and does not have complete fire sprinkler coverage, the facility shall maintain an evacuation rating score of prompt as determined by the fire safety equivalency system (FSSES);

(c) evaluate and outline how meeting the specific needs of the resident will impact the staff and the other residents; and

(d) include an independent advocate such as a certified ombudsman if requested by the resident, the family or the facility.

(3) The team recommendation shall be maintained on site in the resident’s file.

(4) When a resident is discharged, the facility shall record where the resident was discharged to and what medications were released with the resident.

D. Coordination of care:

(1) Assisted living facilities shall have evidence of care coordination on an ISP for all services that are provided in the facility by an outside health care provider, such as hospice or home health providers.

(2) Residents shall be given a list of providers, including hospice and home health if applicable, and have the right to choose their provider. If applicable, the referring party shall disclose any ownership interest in a recommended or listed provider.

[8.370.14.20 NMAC - Rp, 8.370.14.20 NMAC, xx/xx/2025]

8.370.14.21 RESIDENT RECORDS:

A. Record contents:
 A record for each resident shall be maintained in accordance with the specific requirements of this section. Entries in each resident’s record shall be legible, dated and authenticated by the signature of the person making the entry. Resident records shall be readily available on site and organized utilizing a table of contents. Each resident record shall include:

(1) the admission agreement records, as set forth in 8.370.14.20 NMAC;

(2) the resident evaluation form, that is to be completed within 15 days prior to admission and updated at a minimum of every six months;

(3) the current ISP, that is to be completed within 10 calendar days of admission and updated at a minimum of every six months;

(4) the physical examination report; the physical examination report shall have been completed within the past six months, by a primary care physician, a nurse practitioner or a physician’s assistant and shall be on file in the resident’s record within 10 days of admission;

(5) personal and demographic information for the resident, to include:

(a) current names, addresses, relationship and phone numbers of family members, or surrogate decision makers updated as necessary;

(b) resident’s name;

(c) age;

(d) recent photograph;

(e) marital status;

(f) date of birth;

(g) sex;

(h) address prior to admission;

(i) religion (optional);

(j) personal physician;

(k) dentist;

(l) social history;

(m) surrogate decision maker or other emergency contact person;

(n) language spoken and understood;

(o) legal documentation relevant to commitment or guardianship status;

(p) current medications list; and

(q) required diet;

(6) unless included in the admission agreement, a separate written agreement between the facility and the resident relating to the resident’s funds, in accordance with the facility’s policy and procedures;

(7) entries by direct care staff, appropriate health care professionals and others authorized to care for the resident; entries shall be dated and signed by the person making the entry and shall include significant information related to the ISP;

(8) entries that provide a written account of all accidents, injuries, illnesses, medical and dental appointments, any problems or improvements observed in the resident, any condition that would indicate a need for alternative placement or medical attention and entries reflecting appropriate follow-up; the maintenance of such written documentation in the resident record may be by copy of an incident or accident report, if the original incident or accident report is maintained elsewhere by the facility;

(9) the medication administration record (MAR); the MAR is the document that details the resident’s medication; the MAR shall include all of the information pursuant to Subsection G of 8.370.14.35 NMAC of this rule;

(10) progress notes completed by any contract agency (e.g., hospice, home health); the progress notes shall include the date, time and type of health services provided;

(11) copies of all completed and signed transfer forms from the accepting facility when a resident is transferred to a hospital or another health care facility and when the resident is transferred back to the facility; and

(12) upon the death or transfer of a resident, documentation of the disposition of the resident's personal effects and money or valuables that are deposited with the assisted living facility.

B. Resident records maintenance:

(1) Current resident records shall be maintained on-site and stored in an organized, accessible and permanent manner.

(2) The facility shall establish a policy to maintain and ensure the confidentiality of resident records, including the authorized release of information from the resident records.

(3) Non-current resident records shall be maintained by the facility against loss, destruction and unauthorized use for a period of not less than five years from the date of discharge and readily available within 24 hours of request.

(4) There shall be a policy and procedure in place for record retention in the event of facility closure.

(5) Failure to follow facility policies is grounds for sanctions.

[8.370.14.21 NMAC - Rp, 8.370.14.21 NMAC, xx/xx/2025]

8.370.14.22 FACILITY REPORTS, RECORDS, RULES, POLICIES AND PROCEDURES:

A. Reports and records: Each facility shall keep the following reports, records, policies and procedures on file at the facility and make them available for review upon request by the licensing authority, residents, potential residents or their surrogate decision makers:

(1) fire inspection report;

(2) zoning approval;

(3) building official approval (certificate of occupancy);

(4) a copy of the approved building plans;

(5) a copy of the most recent survey conducted by the licensing authority, to include adverse actions or appeals and complaints;

(6) for facilities with food establishments/ kitchens that require a permit from the local health authority that has jurisdiction, a copy of the current inspection report in accordance with the applicable, municipal, or federal laws and regulations and pursuant to Subsection B of 7.6.2.8 NMAC, regarding kitchen and food management; if a facility is considered a licensed private home and not required to meet specific requirements by the local health authority, a copy of that determination must also be maintained;

(7) where necessary, a copy of the liquid waste disposal and treatment system permit from the local health authority that has jurisdiction;

(8) 30 days of menus as planned, including snacks and 30 days of menus as served, including snacks;

(9) record of monthly fire drills conducted at the facility and the fire safety evaluation system (FSES) rating, if applicable;

(10) written emergency plans, policies and procedures for medical emergencies, power failure, fire or natural disaster; plans shall include evacuation, persons to be notified, emergency equipment, evacuation routes, refuge areas and the responsibilities of personnel during emergencies; plans shall also include a list of transportation resources that are immediately available to transport the residents to another location in an emergency; the emergency preparedness plan shall address two types of emergencies:

(a) an emergency that affects just the facility; and

(b) a region/area wide emergency;

(11) a copy of this rule, requirements for assisted living facilities for adults, 8.370.14 NMAC;

(12) for facilities with two or more residents (that are not related to the owner), a valid custodial drug permit issued by the NM board of pharmacy, that supervise administration and self-administration of medications or safeguards with regard to medications for the residents; and

(13) vaccination records for pets in the facility.

B. Reports and records: Each facility shall keep the following reports, records, policies and procedures on file at the facility and make them available for review upon request by the licensing authority:

(1) a copy of the facility license;

(2) employee personnel records, including an application for employment, training records and personnel actions:

(a) caregiver criminal history screening documentation pursuant to 8.370.5 NMAC;

(b) employee abuse registry documentation pursuant to 8.370.8 NMAC; and

(3) a copy of all waivers or variances granted by the licensing authority.

C. Rules: Prior to admission to a facility a prospective resident or his or her representative shall be given a copy of the facility rules. Each facility shall have written rules pertaining to resident's rights and shall include the following:

(1) resident use of tobacco and alcohol;

(2) resident use of facility telephone or personal cell phone;

(3) resident use of television, radio, stereo and cd;

(4) the use and safekeeping of residents' personal property;

(5) meal availability and times;

(6) resident use of common areas;

(7) accommodation of resident's pets; and

(8) resident use of electric blankets and appliances.

D. Policies and procedures: All facilities shall have written policies and procedures covering the following areas:

- (1) actions to be taken in case of accidents or emergencies;
- (2) policy and procedure for updating and consolidating the resident's current physician or PCP orders, treatments and diet plans every six months or when a significant change occurs, such as a hospital admission;
- (3) policy for medication errors;
- (4) method of staying informed when residents are away from the facility (e.g., sign-out sheets or other record indicating where the resident will be, cell phone contact, etc.);
- (5) the handling of resident's funds, if the facility provides such services;
- (6) reporting of incidents, including abuse, neglect and misappropriation of property, injuries of unknown cause, environmental hazards and law enforcement interventions in accordance with 8.370.9 NMAC;
- (7) reporting and investigating internal complaints;
- (8) reporting and investigating complaints to the incident management bureau;
- (9) staff and resident fire and safety training;
- (10) smoking policy for staff, residents and visitors;
- (11) the facility's bed hold policy;
- (12) admission agreement;
- (13) admission records;

- (14) resident records including maintenance and record retention if the facility closes;
- (15) program narrative;
- (16) resident's rights with regard to making health care decisions and the formulation of advance directives;
- (17) personnel policies;
- (18) identifying and safeguarding resident possessions;
- (19) securing medical assistance if a resident's own physician is not available;
- (20) staff training appropriate to staff responsibilities;
- (21) staff training for employees who provide assistance to residents with boarding or alighting from motor vehicles and safe operation of motor vehicles to transport residents;
- (22) witnessed destruction of unused, outdated or recalled medication by the facility administrator with the consulting pharmacist present; and
- (23) mealtimes, daily snacks, menus, special diets, resident's personal preference for eating alone or in the dining room setting.
- (24) infection control; the policies shall identify the nationally or state recognized guidelines upon which the policies are based. The policies and procedures shall include at a minimum, all of the following criteria:
 - (a) ensure a safe and sanitary environment for residents and personnel,
 - (b) the method for tracking infection and initiating a response,
 - (c) the method for determining when to seek assistance from a medical professional or the local health department,
 - (d) isolation techniques, and

(e) appropriate handling of linen and clothing of residents with communicable infections. Any item containing blood, body fluid, or body waste from a resident with a contagious condition shall be presumed to be infectious waste and disposed of in accordance with the state's infectious waste disposal requirements, 20.9.8.13 NMAC (8/2/2007).
[8.370.14.22 NMAC - Rp, 8.370.14.22 NMAC, xx/xx/2025]

8.370.14.23 PETS: Pets are permitted in a licensed facility, in accordance with the facility's rules.

A. Prohibited areas: Animals are not permitted in food processing, preparation, storage, display and serving areas, or in equipment or utensil washing areas. Guide dogs for the blind and deaf and service animals for the handicapped shall be permitted in dining areas pursuant to Subsection K of 7.6.2.9 NMAC.

B. Vaccination: Pets shall be vaccinated in accordance with all state and local requirements and records of such vaccination shall be kept on file in the facility.
[8.370.14.23 NMAC - Rp, 8.370.14.23 NMAC, xx/xx/2025]

8.370.14.24 ASSISTANCE WITH DAILY LIVING: The facility shall supervise and assist the residents, as necessary, with health, hygiene and grooming needs, to include but not limited to the following:

- A. eating;
- B. dressing;
- C. oral hygiene;
- D. bathing;
- E. grooming;
- F. mobility; and
- G. toileting.

[8.370.14.24 NMAC - Rp, 8.370.14.24 NMAC, xx/xx/2025]

8.370.14.25 RESIDENT EVALUATION:

A. A resident evaluation shall be completed by an appropriate staff member within 15

days prior to admission to determine the level of assistance that is needed and if the level of services required by the resident can be met by the facility.

B. The initial resident evaluation shall establish a baseline in the resident’s functional status and thereafter assist with identifying resident changes. The resident evaluation shall be reviewed and updated at a minimum of every six months or when there is a significant change in the resident’s health status.

C. The resident’s evaluation shall be documented on a resident evaluation form and at a minimum include the following abilities, behaviors or status:

(1) activities of daily living including:

(a) toileting pattern, bowel, and bladder control;

(b) dressing, grooming, bathing, and personal hygiene;

(c) mobility, including ambulation, transfers, and assistive devices; and

(d) eating, dental status, oral care, and assistive devices and dentures, if applicable.

(2) cognitive abilities; reasoning and perception; the ability to articulate thoughts, memory function or impairment, etc.;

(3) communication and hearing; ability to communicate needs and understand instructions, etc.;

(4) vision;

(5) physical functioning and skeletal problems;

(6) incontinence of bowel/bladder;

(7) psychosocial well-being;

(8) mood and behavior;

(9) activity interests;

(10) diagnoses;

(11) health conditions;

(12) nutritional status;

(13) oral or dental status;

(14) skin conditions;

(15) medication use including prescriptions, over-the-counter medications, and supplements, and for each:

(a) the reason taken;

(b) any side effects, contraindications, allergic or adverse reactions, and actions to address these issues;

(c) the dosage;

(d) the frequency of use;

(e) the route administered or taken;

(f) any difficulties the resident faces in taking the medication;

(g) whether the resident self administers the medication;

(h) the resident’s preferences in how to take medication;

(i) interventions needed in management of medications to prevent diversion of medication by the resident or others who may have access to the medications; and

(j) provide instructions to the resident and resident’s legal or designated representatives on interventions to manage the resident’s medications and prevent diversion of medications.

(16) special treatments and procedures or special medical needs such as hospice; and

(17) safety needs/high risk behaviors; history of falls agitation, wandering, fire safety issues, etc.

(18) instrumental activities of daily living, including:

(a) ability to self manage medications;

(b) housework and laundry; and

(c) transportation.

(19) Risk indicators, including:

(a) risk for falls including history of falls;

(b) emergency evacuation ability;

(c) complex medication regimen;

(d) risk for dehydration, including history of urinary tract infections and current fluid intake pattern;

(e) risk for emotional or psychological distress due to personal losses;

(f) unsuccessful prior placements;

(g) elopement risk including history or previous elopements;

(h) smoking, including the ability to smoke without causing burns or injury to the resident or others or damage to property; and

(i) alcohol and drug use, including the resident’s alcohol use or drug use not prescribed by a physician.

D. The resident evaluation shall include a history and physical examination and an evaluation report by a physician or a physician extender within six months of admission. A resident shall have a medical evaluation by a physician or a physician extender at least annually.

E. The resident evaluation shall be reviewed and if needed revised by a licensed practical nurse, registered nurse or physician extender at the time the individual service plan is reviewed, at a minimum of every six months or when a significant change in health status occurs.

[8.370.14.25 NMAC - Rp, 8.370.14.25 NMAC, xx/xx/2025]

8.370.14.26 INDIVIDUAL SERVICE PLAN (ISP): An ISP shall be developed and implemented within 10 calendar days of admission for each resident residing in the facility.

A. The ISP shall address those areas of need as identified in the resident evaluation and through staff observation.

(1) The ISP shall detail the services that are provided by the facility as well as the services to be provided by other agencies.

(2) The resident evaluation and the ISP shall be reviewed and if needed revised by a licensed practical nurse, registered nurse or a physician extender.

(3) The ISP shall be reviewed and or revised at a minimum of every six months or when there is a significant change in the resident's health status.

B. The ISP shall include the following:

(1) a description of identified needs as noted in the resident evaluation;

(2) a written description of all services to be provided;

(3) who will provide the services;

(4) when or how often the services will be provided;

(5) how the services will be provided;

(6) where the services will be provided;

(7) expected goals and outcomes of the services;

(8) documentation of the facility's determination that it is able to meet the needs of the resident;

(9) the level of assistance that the resident will require with activities of daily living and with medications;

(10) a crisis prevention/intervention plan when indicated by diagnosis or behavior; and

(11) current orders for all medications, including those authorized for PRN usage. [8.370.14.26 NMAC - Rp, 8.370.14.26 NMAC, xx/xx/2025]

8.370.14.27 RESIDENT ACTIVITIES: Each facility shall provide or make available recreational and social activities appropriate to the residents' abilities that meet their psychosocial needs and are relevant

to their social history; including a balance of cognitive, reminiscence, physical and social activities. The facility shall post the activities and encourage residents to participate. [8.370.14.27 NMAC - Rp, 8.370.14.27 NMAC, xx/xx/2025]

8.370.14.28 PERSONAL POSSESSIONS:

A. Each resident shall be permitted to keep personal property in their possession at the facility, if it is not detrimental to the health and safety of anyone in the facility. These possessions may include, but are not limited to the following items:

(1) clothing; the facility shall ensure that each resident has his or her own clothing; residents shall be allowed and encouraged to select their daily clothing and change their clothing to suit their activities and the weather conditions;

(2) personal care items; each resident shall have his or her own personal care items such as, but not limited to, a comb, razor, hairbrush, toothbrush, toothpaste and like items.

B. The facility shall have policies and procedures for identifying and safeguarding resident possessions. [8.370.14.28 NMAC - Rp, 8.370.14.28 NMAC, xx/xx/2025]

8.370.14.29 TRANSPORTATION: The facility shall either provide transportation or assist the resident in using public transportation.

A. The facility's motor vehicle transportation assistance program shall include the following elements:

- (1) resident evaluation;
- (2) staff training in hazardous driving conditions;
- (3) safe passenger transport and assistance;
- (4) emergency procedures and use of equipment;

(5) supervised practice in the safe operation of motor vehicles, maintenance and safety record keeping; and

(6) copies of employee training certificates that give evidence of successful completion of any applicable course(s) shall be kept on site in the employee files.

B. To assist residents in using public transportation, the facility shall provide information on bus schedules, location of bus stops and telephone numbers of taxi cab companies. [8.370.14.29 NMAC - Rp, 8.370.14.29 NMAC, xx/xx/2025]

8.370.14.30 HANDLING OF RESIDENT FUNDS:

A. Each resident has the right to manage their personal funds in accordance with state or federal laws.

B. If the facility agrees, the resident may entrust his or her personal funds to the facility for safekeeping and management. In such cases, the facility shall:

(1) have written authorization from the resident or his or her surrogate decision maker;

(2) maintain a written record of all financial transactions and arrangements involving the resident's funds and make this written record available upon request, to the resident, his or her surrogate decision maker and the licensing authority;

(3) safeguard any and all funds received from the resident in an account separate from all other funds of, or held by, the facility;

(4) upon written or verbal request by the resident or his or her surrogate decision maker, return to the resident all or any part of the resident's funds given to the facility for safekeeping and management, including all accrued interest if applicable; and

(5) upon the resident's death, will transfer all personal funds held by the facility

to the resident’s estate in accordance with Section 45-3-709 NMSA 1978.

C. The facility shall not commingle the resident’s funds, valuables or property with that of the licensee. Resident’s funds, valuables or property shall be maintained separate, intact and free from any liability of the licensee, staff and management.

[8.370.14.30 NMAC - Rp, 8.370.14.30 NMAC, xx/xx/2025]

8.370.14.31 EMERGENCY PREPAREDNESS

REQUIREMENTS:

The assisted living facility must comply with all federal, state and local emergency preparedness requirements (42 CFR 483.73). The assisted living facility must establish and maintain an emergency preparedness program that meets the requirements of this section. The emergency preparedness program must include, but not be limited to the following elements:

A. Emergency

plan: The assisted living facility must develop and maintain an emergency preparedness plan that must be reviewed and updated at least annually. The plan must do all of the following:

(1) Be based on and include a documented, facility-based and community-based risk assessment, utilizing an all-hazards approach, including missing residents.

(2) Include strategies for addressing emergency events identified by the risk assessment.

(3) Address resident population, including, but not limited to, persons at-risk; the type of services the assisted living facility has the ability to provide in an emergency; and continuity of operations, including delegations of authority and succession plans.

(4) Include a process for cooperation and collaboration with local, tribal, regional, state, or federal emergency preparedness officials’ efforts to maintain an integrated response during a disaster or emergency situation.

B. Policies and procedures: The assisted living facility must develop and implement emergency preparedness policies and procedures, based on the emergency plan set forth in Subsection A of 8.370.14.31 NMAC, risk assessment at Paragraph (1) of Subsection A of 8.370.14.31 NMAC, and the communication plan at Subsection C of 8.370.14.31 NMAC. The policies and procedures must be reviewed and updated at least annually. At a minimum, the policies and procedures must address the following:

(1) The provision of subsistence needs for staff and residents, whether they evacuate or shelter in place, include, but are not limited to the following:

(a) food, water, medical, and pharmaceutical supplies;

(b) alternate sources of energy to maintain;

(i) temperatures to protect resident health and safety and for the safe and sanitary storage of provisions;

(ii) emergency lighting;

(iii) fire detection, extinguishing, and alarm systems; and

(iv) sewage and waste disposal.

(2) A system to track the location of on-duty staff and sheltered residents in the assisted living facility’s care during and after an emergency. If on-duty staff and sheltered residents are relocated during the emergency, the ALF facility must document the specific name and location of the receiving facility or other location.

(3) Safe evacuation from the ALF facility, which includes consideration of care and treatment needs of evacuees; staff responsibilities; transportation; identification of evacuation location(s); and primary and alternate means of communication with external sources of assistance.

(4) A means to shelter in place for residents, staff,

and volunteers who remain in the ALF facility.

(5) A system of medical documentation that preserves resident information, protects confidentiality of resident information, and secures and maintains the availability of records.

(6) The use of volunteers in an emergency or other emergency staffing strategies, including the process and role for integration of State or Federally designated health care professionals to address surge needs during an emergency.

(7) The development of arrangements with other assisted living facilities and other providers to receive residents in the event of limitations or cessation of operations to maintain the continuity of services to residents.

(8) The role of the assisted living facility in the provision of care and treatment at an alternative care site identified by emergency management officials.

C. Communication

plan: The assisted living facility must develop and maintain an emergency preparedness communication plan that complies with federal, state, and local laws and must be reviewed and updated at least annually. The communication plan must include all of the following:

(1) names and contact information for the following: (a) staff;

(b) entities providing services under arrangement;

(c) residents’ physicians;

(d) other assisted living facilities;

(e) volunteers;

(2) Contact information for the following: (a)

federal, state, tribal, regional, or local emergency preparedness staff;

(b) the state licensing and certification agency;

(c) the office of the state long-term care ombudsman;

(d) other sources of assistance;

(3) Primary and alternate means for communicating with the following:

(a) assisted living facility’s staff;

(b) federal, state, tribal, regional, or local emergency management agencies;

(4) A method for sharing information and medical documentation for residents under the assisted living facility’s care, as necessary, with other health care providers to maintain the continuity of care.

(5) A means, in the event of an evacuation, to release resident information as permitted under 45 CFR 164.510(b)(1)(ii).

(6) A means of providing information about the general condition and location of residents under the facility’s care as permitted under 45 CFR 164.510(b)(4).

(7) A means of providing information about the assisted living facility’s occupancy, needs, and its ability to provide assistance, to the authority having jurisdiction or the incident command center, or designee.

(8) A method for sharing information from the emergency plan that the facility has determined is appropriate with residents and their families or representatives.

D. Training and testing: The assisted living facility must develop and maintain an emergency preparedness training and testing program that is based on the emergency plan set forth in paragraph (a) of this section, risk assessment at paragraph (a)(1) of this section, policies and procedures at paragraph (b) of this section, and the communication plan at paragraph (c) of this section. The training and testing program must be reviewed and updated at least annually.

(1) **Training program:** The assisted living facility must do all of the following:

(a) Initial training in emergency preparedness policies and procedures to all new and existing staff, individuals providing services under arrangement, and volunteers, consistent with their expected roles.

(b) Provide emergency preparedness training at least annually.

(c) Maintain documentation of the training.

(d) Demonstrate staff knowledge of emergency procedures.

(2) **Testing:** The ALF facility must conduct exercises to test the emergency plan at least twice per year, including unannounced staff drills using the emergency procedures. The ALF facility must do the following:

(a) participate in an annual full-scale exercise that is community-based; or

(i) when a community-based exercise is not accessible, conduct an annual individual, facility-based functional exercise;

(ii) if the ALF facility experiences an actual natural or man-made emergency that requires activation of the emergency plan, the ALF facility is exempt from engaging its next required a full-scale community-based or individual, facility-based functional exercise following the onset of the emergency event;

(b) conduct an additional annual exercise that may include, but is not limited to the following:

(i) a second full-scale exercise that is community-based or an individual, facility-based functional exercise; or

(ii) a mock disaster drill; or

(iii) a tabletop exercise or workshop that is led by a facilitator includes a group discussion, using a narrated,

clinically-relevant emergency scenario, and a set of problem statements, directed messages, or prepared questions designed to challenge an emergency plan.

(c) analyze the assisted living facility’s response to and maintain documentation of all drills, tabletop exercises, and emergency events, and revise the assisted living facility’s emergency plan, as needed.

E. Emergency and standby power systems: If the assisted living facility has residents that depend on medical equipment that requires electricity to function, the facility must have in their emergency plan how they will address the power outage and the needs of the resident to keep them safe.

F. Integrated healthcare systems: If an assisted living facility is part of a healthcare system consisting of multiple separately certified healthcare facilities that elects to have a unified and integrated emergency preparedness program, the assisted living facility may choose to participate in the healthcare system’s coordinated emergency preparedness program. If elected, the unified and integrated emergency preparedness program must do all of the following:

(1) Demonstrate that each separately certified facility within the system actively participated in the development of the unified and integrated emergency preparedness program.

(2) Be developed and maintained in a manner that takes into account each separately certified facility’s unique circumstances, resident populations, and services offered.

(3) Demonstrate that each separately certified facility is capable of actively using the unified and integrated emergency preparedness program and is in compliance with the program.

(4) Include a unified and integrated emergency plan that meets the requirements of Subsection A of 8.370.14.31 NMAC,

and Paragraphs (2), (3), and (4) of Subsection F of 8.370.14.31 NMAC. The unified and integrated emergency plan must also be based on and include:

(a)

A documented community-based risk assessment, utilizing an all-hazards approach.

(b) A

documented individual facility-based risk assessment for each separately certified facility within the health system, utilizing an all-hazards approach.

(5) Include

integrated policies and procedures that meet the requirements set forth in Subsection B of 8.370.14.31 NMAC, a coordinated communication plan and training and testing programs that meet the requirements of Subsection C and D of 8.370.14.31 NMAC, respectively.

[8.370.14.31 NMAC - N, xx/xx/2025]

8.370.14.32 HANDLING OF MEDICAL EMERGENCIES:

A. Upon admission, each resident or surrogate decision maker shall designate a primary care practitioner (PCP) to be called in case of a medical necessity. Each resident or representative shall also designate a concerned person to be called in case of an emergency. The facility shall establish a policy to secure medical assistance if the resident's own physician is not available. In the event of an illness or an injury to the resident, the PCP or a physician extender shall be notified by the facility.

B. The facility shall have a first aid kit that contains at a minimum, gauze, adhesive tape, antiseptic ointment and bandages for emergencies. The first aid kit shall be kept in a designated, easily accessible place within the facility.

C. An easily accessible and functional telephone shall be available in each facility for summoning help in case of an emergency. A pay telephone does not fulfill this requirement.

D. A list of emergency numbers including: fire department,

police department, ambulance services and poison control shall be posted near each public telephone in the facility.

[8.370.14.32 NMAC - Rp, 8.370.14.31 NMAC, xx/xx/2025]

8.370.14.33 REPORTING OF INCIDENTS:

A. The facility shall insure that all suspected cases or known incidents of resident abuse, neglect or exploitation are reported in accordance with 8.370.9 NMAC.

(1) The

facility shall also report any incident or unusual occurrence which has or could threaten the health, safety, or welfare of the residents and staff to the licensing authority complaint hotline within 24 hours or by the next business day, if it is a weekend or a holiday.

(2) The

facility shall not delay a report to the complaint hotline while an internal investigation is conducted.

B. The facility is responsible for conducting and documenting the investigation of all incidents within five business days and shall submit a copy of the investigation report to the licensing authority. A copy of the report and the documentation, including the date and time that it was submitted to the licensing authority, shall be maintained on file at the facility. The investigation shall include the following:

(1) a narrative description of the incident;

(2) the result of the facility's investigation shall be recorded on the state approved incident report form for the current year, pursuant to 8.370.9 NMAC; and

(3) plans for further actions in response to the incident.

[8.370.14.33 NMAC - Rp, 8.370.14.32 NMAC, xx/xx/2025]

8.370.14.34 RESIDENT RIGHTS: All licensed facilities shall understand, protect and respect the rights of all residents.

A. Prior to admission

to a facility, a resident and legal representative shall be given a written description of the legal rights of the resident, translated into another language, if necessary, to meet the resident's understanding.

B. If the resident has no legal representative and is incapable of understanding his or her legal rights, a written copy of the resident's legal rights shall be provided to the most significant responsible party in the following order:

- (1) the resident's spouse;
- (2) significant other;
- (3) any of the resident's adult children;
- (4) the resident's parents;
- (5) any relative the resident has lived with for six or more months before admission;
- (6) a person who has been caring for, or paying benefits on behalf of the resident;
- (7) a placing agency;
- (8) resident advocate; or
- (9) the ombudsman.

C. The resident rights shall be posted in a conspicuous public place in the facility and shall include the telephone numbers for the incident management hotline and for the state ombudsman program.

D. To protect resident rights, the facility shall:

- (1) treat all residents with courtesy, respect, dignity and compassion;
- (2) not discriminate in admission or services based on gender, sexual orientation, resident's age, race, religion, physical or mental disability, or nationality;
- (3) provide residents written information about all services provided by the facility and their costs and give advance written notice of any changes;
- (4) provide residents with a safe and sanitary living environment;

(5) provide humane care for all residents;

(6) provide the right to privacy, including privacy during medical examinations, consultations and treatment;

(7) protect the confidentiality of the resident's medical record;

(8) protect the right to personal privacy, including privacy in personal hygiene; privacy during visits with a spouse, family member or other visitor; and privacy in the resident's own room;

(9) protect the right to communicate privately and freely with any person, including private telephone conversations and private correspondence; and the right to receive visits from family, friends, lawyers, ombudsmen and community organizations;

(10) prohibit the use of any and all physical and chemical restraints;

(11) ensure that residents:

(a) are free from physical and emotional abuse neglect and misappropriation/or exploitation;

(b) are free from financial abuse and misappropriation by facility staff or management;

(c) are free to participate in religious, social, community and other activities and freely associate with persons in and out of the facility;

(d) are free to leave the facility and return without unreasonable restriction;

(e) are given a 15 calendar day, written notice before room transfers or discharge from the facility unless there is immediate danger to self or others in the facility;

(f) have an environment that fosters social interaction and avoids social isolation;

(g) or their surrogate decision makers, are informed of and consent to the services provided by the facility;

(h) have the right to voice grievances to the facility staff, public officials, the ombudsmen, any state agency, or any other person, without fear of reprisal or retaliation;

(i) have the right to have their complaints addressed within 14 calendar days or sooner;

(j) have the right to participate in the development of their care plan/ISP;

(k) have the right to choose a doctor, pharmacist and other health care provider(s);

(l) have the right to participate in medical treatment decisions and formulate advance directives such as living wills and powers of attorney;

(m) have the right to keep and use personal possessions without loss or damage;

(n) have the right to manage and control their personal finances;

(o) have the right to freely organize and participate in a resident association that may recommend changes in the facility's policies, services and management;

(p) shall not be required to work for the facility; and

(q) are protected from unjustified room transfers or discharge.

E. The resident's rights shall not be restricted unless this restriction is for the health and safety of the resident, agreed to by the resident or the resident's surrogate decision maker and outlined in the resident's individual service plan. [8.370.14.34 NMAC - Rp, 8.370.14.33 NMAC, xx/xx/2025]

8.370.14.35 CUSTODIAL DRUG PERMITS: A facility with two or more residents that is licensed pursuant to this rule and that assists with self-administration or safeguards medications for residents shall have a current custodial drug permit issued by the state board of pharmacy.

A. Procurement, labeling and storage: The facility shall provide assistance to the resident in obtaining the necessary medications, treatment and medical supplies as identified in the ISP. The facility shall procure, label and store medications for residents who require assistance with self-administration of medication in compliance with state and federal laws.

(1) All medications, including non-prescription drugs, shall be stored in a locked compartment or in a locked room, as approved by the board of pharmacy and the key shall be in the care of the administrator or designee.

(2) Internal medication shall be kept separate from external medications. Drugs to be taken by mouth shall be separated from all other delivery forms.

(3) A separate, locked refrigerator shall be provided by the facility for medications. The refrigerator temperature shall be kept in compliance with the state board of pharmacy requirements for medications.

(4) All medications, including non-prescription medications, shall be stored in separate compartments for each resident and all medications shall be labeled with the resident's name.

(5) A resident may be permitted to keep his or her own medication in a locked compartment in his or her room for self-administration, if the physician's order deems it appropriate.

(6) The facility shall not require the residents to purchase medications from any pharmacy.

(7) Medical gases (oxygen) and equipment used for the administration of inhalation therapy and for resuscitative purposes shall comply with the national fire protection association (NFPA) 99.

(8) A proof of use record shall be maintained separately for each schedule II through IV drug (controlled substances). The proof of use sheet shall document:

(a) the type and strength of the schedule II through IV drugs;

(b) the date and time staff assisted with self-administration;

(c) the resident's name;

(d) the prescriber's name;

(e) the dose;

(f) the signature of the person assisting with delivery of the medication; and

(g) the balance of medication remaining.

(9) Any remaining medication discontinued by a physician's order, or upon discharge or death of the resident shall be inventoried and moved to a separate locked storage container. Such discontinued medications shall be destroyed upon the next quarterly visit by the consulting pharmacist in accordance with 16.19.11.10 NMAC.

(10) The record of medication destruction shall be signed by the administrator or designee and the pharmacist and shall be kept on file at the facility.

B. Consulting pharmacist: The facility shall maintain records demonstrating that the consulting pharmacist provides the following oversight and guidance.

(1) Reviews the medication regimen as needed, but at least quarterly/every three months, to determine that all medications and records are accurate and current. All irregularities shall be reported to the administrator of the facility and these irregularities shall be resolved by the administrator within 72 hours.

(2) A system of records of receipt and disposition of all drugs in sufficient detail to enable an accurate reconciliation.

(3) Consultation shall be provided on all aspects of pharmacy services in the facility, including reference information regarding side effects and, when needed, physician consultation in cases involving the use of psychotropic medications.

(4) The consulting pharmacist will be responsible for assuring that the facility meets all requirements for storage, labeling, destruction and documentation of medications as required by the state board of pharmacy, 16.19.11.10 NMAC and 8.370.14 NMAC.

[8.370.14.35 NMAC - Rp, 8.370.14.34 NMAC, xx/xx/2025]

8.370.14.36 MEDICATIONS: Administration of medications or staff assistance with self-administration of medications shall be in accordance with state and federal laws. No medications, including over-the-counter medications, PRN (as needed) medications, or treatment shall be started, changed or discontinued by the facility without an order from the physician, physician assistant or nurse practitioner or licensed prescriber and without entry into the resident's record.

A. State board of nursing licensed or certified health care professionals are responsible for the administration of medications. Administration may only be performed by these individuals, this includes evaluating the effectiveness of prescription and nonprescription drugs.

B. Requirements for assisting with self-administration of medications.

(1) Assistance with self-administration of medication may be rendered by a non-licensed person to assist the resident who has the capability to self-administer medications, by prompting, reminders, hand-over-hand assistance, handing the medication container to the resident, opening the medication container, or placing the medication in the resident's hand.

(2) Written consent for assisting with medication self-administration shall be signed annually and when there is any change in either the resident's functional ability or the designation of a new surrogate decision maker.

(3) All staff that assist with self-administration of

medications shall have successfully completed an assistance with self-administration of medication training program or be licensed or certified by the state board of nursing.

(4) The individual is unable to complete the entire process of taking medication.

(5) The individual is unable to determine if he/she is receiving the expected response from the medication.

(6) The individual is able to communicate to staff verbally/vocally or through gestures or other non-verbal communication he/she is experiencing a problem, pain, or discomfort.

(7) The individual's condition is stable and unchanged and signs or symptoms are within established ranges, frequencies or patterns.

(8) The individual's condition does not require frequent assessment or monitoring by a licensed nurse to determine or evaluate his/her health status or his/her response to medication or treatment

C. PRN (pro re nada) medication:

(1) Physician or physician extender's orders for PRN medications shall clearly indicate the circumstances in which they are to be used, the number of doses that may be given in a 24-hour period and indicate under what circumstances the primary care practitioner (PCP) is to be notified.

(2) The utilization of PRN medications shall be reviewed routinely. Frequent or escalating use of PRN medications shall be reported to the PCP.

D. Only a licensed nurse (RN or LPN) shall administer any medications or conduct any invasive procedures provided by the following routes: intravenous (IV), subcutaneous (SQ), intramuscular (IM), vaginal or rectal. Only a licensed nurse shall administer non-premixed nebulizer treatments. Unless otherwise allowed by statute, the assisted living facility shall not permit a qualified medication

administration person to perform any of the following tasks:

- (1) Intravenous, intramuscular or subcutaneous injections.
- (2) Gastrostomy or jejunostomy tube feeding.
- (3) Chemical debridement.
- (4) Administration of medication for purposes of restraint.
- (5) Titration of oxygen.
- (6) Decision making regarding PRN or "as needed" medication administration.
- (7) Assessment of residents or use of judgment including, but not limited to, medication effect.
- (8) Pre-pouring of medication.

E. Limited administration of medication may be permitted for pouring or squirting a medication into the mouth of a resident with a syringe or for masking or deceiving administration of a medication including, but not limited to, concealing in food or liquid, when:

- (1) There is a physician or physician extender's orders directing the specific administration.
- (2) A team is convened comprised of facility administrator, the resident or their surrogate decision maker and the hospice or home health clinician, to jointly determine the method of limited administration of medication. Team approval shall be in writing, signed and dated by all team members and the approval shall be maintained in the resident's record.
- (3) The staff has received specific training on the limited administration of medication for that individual by the hospice provider or other licensed professional.
- (4) A current written consent that identifies the type of medication delivery and the assistance or administration the individual requires that is signed by

the individual/guardian/surrogate health decision maker.

F. The facility shall have medication reference material that contains information relating to drug interactions and side effects on the premises. Staff that assist in the self-administration of medications shall know interactions or possible side effects that might occur.

G. Medications prescribed for one resident shall not be used for another resident.

H. Medication administration record (MAR): For residents who are not independent and require assistance with self-administration, the facility shall have a MAR that documents the details of the residents' medication, including PRN and over-the-counter medication that is assisted with self-administration by qualified staff or administered to the resident by licensed or certified staff. The information in the MAR shall include:

- (1) the resident's name;
- (2) any known allergies to medication that the resident has;
- (3) the name of the resident's PCP or the prescriber of the medication;
- (4) the diagnosis or reason for the medication;
- (5) the name of the medication, including the drug product brand name and the generic name;
- (6) notation if the medication is a schedule II-IV drug;
- (7) the dosage of the medication;
- (8) the strength of the medication;
- (9) the frequency or how often the medication is to be taken or given;
- (10) the route of delivery for the medication (mouth, eye, ear, other);
- (11) the method of delivery for the medication (pills, drops, IM injection, other);

(12) the date that the medication was started or discontinued;

(13) any change in the medication order;

(14) pre-medication information (i.e., pulse, respiration, blood pressure, blood sugar) as required by the medication order;

(15) the date and time that the medication is self-administered, administered with assistance or is administered;

(16) the initials and signature of the person assisting with or administering the medication;

(17) the desired results obtained from or problems encountered with the medication (pain relieved, allergic reaction, etc.);

(18) any refused dose of medication;

(19) any missed dose of medication; and

(20) any medication error.

I. No medication shall be stopped or started without specific orders from the primary care physician.

J. If a resident refuses to take a prescribed medication, it shall be documented and the facility shall report it to the prescriber.

K. A suspected adverse reaction to a medication shall be documented on the MAR and reported immediately to the PCP and the resident's surrogate decision maker. If applicable, emergency medical treatment shall be arranged. Documentation of the event shall be kept in the resident's record.

L. Prescription medication, other than blister packs and unit dose containers, shall be kept in the original container with a pharmacy label that includes the following:

- (1) the resident's name;
- (2) the name of the medication;
- (3) the date that the prescription was issued;
- (4) the prescribed dosage and the instructions

for administration of the medication; and

(5) the name and title of the prescriber.

M. Any medication that is removed from the pharmacy container or blister pack shall be given immediately and documented by the staff that assisted with the medication delivery.

N. The facility shall report all medication errors to the physician, documentation of medication errors and the prescriber's response shall be kept in the resident's record.

O. The facility shall develop and follow a written policy for unused, outdated, or recalled medications kept in the facility in accordance with 16.19.11.10 NMAC. [8.370.14.36 NMAC - Rp, 8.370.14.35 NMAC, xx/xx/2025]

8.370.14.37 NUTRITION: The facility shall provide planned and nutritionally balanced meals from the basic food groups in accordance with the "recommended daily dietary allowance" of the American dietetic association, the food and nutrition board of the national research council, or the national academy of sciences. Meals shall meet the nutritional needs of the residents in accordance with the "2005 USDA dietary guidelines for Americans." Vending machines shall not be considered a source of snacks.

A. Dietary services policies and procedures: The facility will develop and implement written policies and procedures that are maintained on the premises and that govern the following requirements.

(1) **Meal service:** The facility shall: (a) serve at least three meals or their equivalent each day at regular times with no more than 16 hours between the evening meal and morning meal with snacks freely available;

(b) provide snacks of nourishing quality and post on the daily menu;

(c) develop menus enjoyed by the

residents and served at normal intervals appropriate to the residents' preferences;

(d) post the weekly menu, including snacks where residents and families are able to view it; posted menus shall be followed and any substitution shall be of equivalent nutritional value and recorded on the posted menu; identical menus shall not be used within a one week cycle;

(e) have special menus or meal items following guidelines from the resident's physician for residents who have medically prescribed special diets;

(f) serve all residents in a dining room except for residents with a temporary illness, or with documented specific personal preference to have meals in their room;

(g) allow sufficient time for meals to enable residents to eat at a leisurely pace and to socialize; and

(h) contact the resident's PCP within 48 hours if a resident consistently refuses to eat.

(2) **Staff in-service training:** The facility shall provide an in-service training program for staff that are involved in food preparation at orientation and at least annually and that includes:

(a) instruction in proper food storage;

(b) preparation and serving food;

(c) safety in food handling;

(d) appropriate personal hygiene; and

(e) infectious and communicable disease control.

B. Dietary records: The facility shall maintain the following documentation onsite:

(1) a systematic record of all menus and revisions, including snacks, for a minimum of thirty (30) calendar days;

(2) a systematic record of therapeutic diets as prescribed by a PCP;

(3) a copy of the most recent licensing inspection and for facilities with 10 or more residents, a copy of the New Mexico environment department inspection with notations made by the facility of action taken to comply with recommendations or citations; and

(4) a daily log of the recorded temperatures for all facility refrigerators, freezers and steam tables maintained and available for inspection for 30 calendar days.

C. Clean and sanitary conditions: All practices shall be in accordance with the standards of the state environment department, pursuant to 7.6.2 NMAC.

(1) **Kitchen sanitation:**

(a) Equipment and work areas shall be clean and in good repair. Surfaces with which food or beverages come into contact shall be of smooth, impervious material free of open seams, not readily corrodible and easily accessible for cleaning.

(b) Utensils shall be stored in a clean, dry place protected from contamination.

(c) The walls, ceiling and floors of all rooms that food or drink is stored, prepared or served shall be kept clean and in good repair.

(2) **Washing and sanitizing kitchenware:**

(a) All reusable tableware and kitchenware shall be cleaned in accordance with procedures that include separate steps for prewashing, washing, rinsing and sanitizing.

(b) Proper dishwashing procedures and techniques shall be utilized and understood by the dishwashing staff.

(c) Periodic monitoring of the operation of the detergent dispenser, washing, rinsing and sanitizing temperatures shall be performed and documented.

(d) When a dishwashing machine is utilized, the cleanliness of the machine, its jets and its thermostatic controls shall be monitored and

documented by the facility. A monthly log of the recorded temperature of the dishwasher shall be maintained in the facility and available for inspection.

(3) Sinks for hand washing shall include hot and cold running water, hand-washing soap and disposable towels.

(4) All garbage and kitchen refuse that is not disposed of through a garbage disposal unit shall be kept in watertight containers with close-fitting covers and disposed of daily in a safe and sanitary manner.

(5) Cooks and food handlers shall wear clean outer garments and hair nets or caps and shall keep their hands clean at all times when engaged in handling food, drink, utensils or equipment in accordance with the local health authority. Disposable gloves shall be used in accordance with the local health authority.

D. Food management:

The facility shall store, prepare, distribute and serve food under sanitary conditions and in accordance with the regulations governing food establishments of local health authority having jurisdiction.

(1) The facility shall ensure that a minimum of a three calendar day supply of perishables and a five calendar day supply of non-perishables or canned foods is available for the residents.

(2) The facility refrigerator and freezer shall have an accurate thermometer which reads within or not more than plus or minus three degrees fahrenheit of the required temperature, located in the warmest section of the refrigerator and freezer and shall be accessible and easily read.

(a) The temperature of the refrigerator shall be 35 - 41 degrees fahrenheit.

(b) Freezer temperatures shall be maintained at zero degrees fahrenheit or below.

(3) Refrigerators and freezers shall be kept clean and sanitary at all times.

Food stored in refrigerators and freezers shall be covered, dated and labeled. Unused leftover food shall be discarded after three calendar days.

(4) Steam tables, hot food tables, slow cookers, crock pots and other hot food holding devices shall not be used in heating or reheating food. Hot food temperatures shall be checked periodically to insure that a minimum of 140 degrees fahrenheit is maintained.

(5) Medication, biological specimens, poisons, detergents and cleaning supplies shall not be kept in the same storage areas used for storage of foods. Medications shall not be stored in the refrigerator with food; an alternate refrigerator for medication shall be used.

(6) Canned or preserved foods shall be procured from sources that process the food under regulated quality and sanitation controls. This does not preclude the use of local fresh produce. The facility shall not use home-canned foods.

(7) Dry or staple food items shall be stored at least six inches off the floor in a ventilated room that is not subject to sewage, waste water back-flow or contamination by condensation, leakage, rodents or vermin.

(8) The facility shall ensure the following:

(a) all perishable food is refrigerated and the temperature is maintained no higher than 41 degrees fahrenheit;

(b) the temperature for all hot foods is maintained at 140 degrees fahrenheit; and

(c) all displayed or transported food is protected from environmental contamination and maintained at proper temperatures in clean containers, cabinets or serving carts.

E. Milk:

(1) Raw milk shall not be used.

(2) Condensed, evaporated, or dried

milk products that are nationally recognized may be employed as "additives" in cooked food preparation but shall not be substituted or served to residents in place of milk.

F. Collateral

requirements: Compliance with this rule does not relieve a facility from the responsibility of meeting more stringent municipal regulations, ordinances or other requirements of state or federal laws governing food service establishments. Local health authority having jurisdiction means municipal, county, state or federal agency(s) that have laws and regulations governing food establishments, liquid waste disposal, treatment facilities and private wells. [8.370.14.37 NMAC - Rp, 8.370.14.36 NMAC, xx/xx/2025]

8.370.14.38 LAUNDRY SERVICES:

A. General

requirements: The facility shall provide laundry services for the residents, either on the premises or through a commercial laundry and linen service.

(1) On-site laundry facilities shall be located in areas separate from the resident units and shall be provided with necessary washing and drying equipment.

(2) Soiled laundry shall be kept separate from clean laundry, unless the laundry facility is provided for resident use only.

(3) Staff shall handle, store, process and transport linens with care to prevent the spread of infectious and communicable disease.

(4) Soiled laundry shall not be stored in the kitchen or dining areas. The building design and layout shall ensure the separation of laundry room from kitchen and dining areas. An exterior route to the laundry room is not an acceptable alternative, unless it is completely enclosed.

(5) In new construction or newly licensed facilities with more than 15 residents,

washers shall be in separate rooms from dryers. The rooms with washers shall have negative air pressure from the other facility rooms.

(6) All linens shall be changed as needed and at least weekly or when a new resident is to occupy the bed.

(7) The mattress pad, blankets and bedspread shall be laundered as needed and at least once per month or when a new resident is to occupy the bed.

(8) Bath linens consisting of hand towel, bath towel and washcloth shall be changed as needed and at least weekly.

(9) There shall be a clean, dry, well ventilated storage area provided for clean linen.

(10) Facility laundry supplies and cleaning supplies shall not be kept in the same storage areas used for the storage of foods and clean storage and shall be kept in a secured room or cabinet.

B. Residents may do their own laundry, if it is their preference and they are capable of doing so, or if it is part of their skill-building for independent living and is documented as part of their ISP. [8.370.14.38 NMAC - Rp, 8.370.14.37 NMAC, xx/xx/2025]

8.370.14.39 HOUSEKEEPING SERVICES: The facility shall maintain the interior and exterior of the facility in a safe, clean, orderly and attractive manner. The facility shall be free from offensive odors, safety hazards, insects and rodents and accumulations of dirt, rubbish and dust.

A. All common living areas and all bathrooms shall be cleaned as often as necessary to maintain a clean and sanitary environment.

B. Combustibles such as cleaning rags or flammable substances shall be stored in closed metal containers in approved areas that provide adequate ventilation. Combustibles shall be stored away from the food preparation areas and away from the resident rooms.

C. Poisonous or flammable substances shall not be stored in residential areas, food preparation areas or food storage areas. If hazardous chemicals are stored on the property, material safety data sheets shall be maintained and stored in the same area as the chemicals, pursuant to state environment department requirements, 11.5.2.9 NMAC. [8.370.14.39 NMAC - Rp, 8.370.14.38 NMAC, xx/xx/2025]

8.370.14.40 SITE REQUIREMENTS: The facility shall be located and maintained free from environmental and other factors that are detrimental to the residents and staff's health, safety or welfare. The facility site shall be designed and maintained to encourage outdoor activities by the residents. [8.370.14.40 NMAC - Rp, 8.370.14.39 NMAC, xx/xx/2025]

8.370.14.41 CAPACITY OF BUILDING(S): No facility shall house more residents than the maximum bed capacity for which it is licensed.

A. Each individual building containing resident activities, services or sleeping rooms on the premises shall be separately licensed.

B. Buildings on the grounds of the licensed facility and all rooms within the licensed buildings that are used by the residents of the facility shall be subject to inspection for health and safety standards.

C. All facilities shall comply with the state building code and fire codes, pursuant to 14.7 NMAC.

(1) Facilities with 16 residents or fewer are classified as "group R."

(2) Facilities with more than 16 residents are classified as "group I-1."

(3) Facilities with more than five residents who are not capable of self-preservation are classified as "group I-2."

D. Facilities shall provide separate sleeping quarters for male and female residents unless

they are married or the arrangement is consensual.

[8.370.14.41 NMAC - Rp, 8.370.14.40 NMAC, xx/xx/2025]

8.370.14.42 BUILDING CONSTRUCTION: All building construction shall be based upon the facility occupancy in accordance with the state building code and fire codes, pursuant to 14.7 NMAC.

A. New facilities: All new facilities, relocated into existing building(s) or remodeled facilities shall conform to the current edition of the state building code, accessibility code, mechanical code, plumbing code, fire code and the electrical code.

(1) With regard to building height, allowable area or construction type, the state building code shall prevail.

(2) Minimum construction requirements shall comply with all applicable state building codes.

(3) A facility may share a building with another health care facility licensed by the authority or other suitable facility with prior approval from the licensing authority.

(4) Where there are conflicts between the requirements in the codes and the provisions of this rule, the most restrictive condition shall apply.

B. Access for persons with disabilities: Facilities with four or more residents shall provide accessibility to residents with disabilities in accordance with the state building code and the American Disabilities Act. Areas of specific concern are as follows:

(1) the main entry into the facility and all required exits shall provide access to persons with disabilities;

(2) the building shall allow access to persons with disabilities to all common areas;

(3) at least one bedroom, for every eight residents, shall have a door clearance of 36 inches for access by persons with disabilities;

(4) at least one toilet and bathing facility, for every eight residents, shall have a minimum door clearance of 36 inches for access by persons with disabilities; this toilet and bathing room shall provide a minimum 60 inch diameter clear space to accommodate the turning radius of a wheelchair;

(5) when ramps are used, each ramp shall have a minimum slope of 12 inches horizontal run for each one inch of vertical rise; ramps exceeding a six inch rise shall be provided with handrails on both sides of the ramp;

(6) landings at doorways shall have a level area, at a minimum of five feet by five feet, to provide clear space for wheelchair maneuvering;

(7) parking spaces shall provide access aisles with a minimum width of 60 inches and 96 inches for van parking; a minimum of one van-accessible parking space with a minimum width of 96 inches shall be provided;

(8) an accessible route for persons with disabilities from the parking area to the main entrance(s) shall be provided; and

(9) changes in elevation of one half inch or greater shall be sloped to a minimum of 12 inches horizontal run for each one inch of vertical rise.

C. Construction

drawings: Prior to commencement of all new construction, remodeling, relocations, additions or renovations to existing buildings; the facility shall submit preliminary plans and final construction drawings with specifications to the licensing authority for review and approval.

(1) Building plans and specifications shall be submitted and approved by the authority when:

(a) construction for a new facility is proposed;

(b) a building that has not previously licensed as a facility is proposed as a location for a facility;

(c) any renovation that increases the number of beds is proposed;

(d) any addition to an existing structure is proposed; or

(e) any renovation to the existing structure is proposed, regardless of the size of the facility.

(2) The codes that are in effect at the time of the submittal of building plans shall be the codes used through the end of the project.

(3) Drawings and specifications shall be prepared for the architectural, structural, mechanical and electrical branches of work for each construction project and shall include the following:

(a) **the site plan(s)** showing property lines, finish grade, location of existing and proposed structures, roadways, walks, utilities and parking areas;

(b) **the floor plan(s)** showing scale drawings of typical and special rooms, indicating all fixed and movable equipment and major items of furniture;

(c) **the separate life safety plans** showing the fire and smoke compartment(s), all means of egress and exit markings, exits and travel distances, dimensions of compartments and calculation and tabulation of exit units, all fire and smoke walls shall be graphically coded;

(d) the exterior elevation of each facade;

(e) the typical sections throughout the building;

(f) the schedule of finishes;

(g) the schedule of doors and windows;

(h) the roof plans; and

(i) the building code analysis.

(4) **For facilities with more than 15 residents:** architectural drawings

shall be stamped, signed and dated by a licensed architect registered in New Mexico. In addition to items listed in section (3) above, the drawings shall include the following:

(a) the building code analysis; and

(b) when an elevator is required, the details and dimensions of the elevator.

(5) **Structural drawings:** shall include the following:

(a) a certification that all structural design and work are in compliance with all applicable local codes;

(b) the plans of foundations, floors, roofs and intermediate levels that show a complete design with sizes, sections and the relative location of the various members; and

(c) the schedules of beams, girders and columns.

(6) **Mechanical drawings:** shall include the following:

(a) a certification that all mechanical work and equipment are in compliance with all applicable local codes and laws and that all materials are listed by recognized testing laboratories;

(b) the water supply, sewage and heating, ventilation and air conditioning piping systems;

(c) the heating, ventilating, HVAC piping and air conditioning systems with all related piping and auxiliaries, if any, to provide a satisfactory installation;

(d) the water supply, sewage and drainage with all lines, risers, catch-basins, manholes and cleanouts clearly indicated as to location, size, capacities and location and dimensions of septic tank and disposal field;

(e) the sprinkler head layout; and

(f) the graphic coding (with a legend) to show supply, return and exhaust systems.

(7) **Electrical drawings:** shall include the following:

(a) a certification that all electrical work and equipment are in compliance with all applicable local codes and laws and that all materials are currently listed by recognized testing laboratories;

(b) all electrical wiring, outlets, riser diagrams, switches, special electrical connections, electrical service entrance with service switches, service feeders and characteristics of the light and power current and transformers when located within the building;

(c) a fixture legend; and

(d) a graphic coding (with a legend) to show all items on emergency power.

(8) Include additional information as needed and requested by the licensing authority.

(9) Final working drawings and specifications shall be accurately dimensioned and include all necessary explanatory notes, schedules, legends and have all rooms labeled. The working drawings and specifications shall be complete and adequate for contract purposes.

(10) One set of final plans shall be submitted to the licensing authority for review and approval prior to the commencing of construction. All construction shall be executed in accordance with the approved final plans and specifications.

(11) Review and approval of building plans by the licensing authority does not eliminate responsibility of the applicant to comply with all applicable laws, rules and ordinances.

(12) The final approval of building plans and specifications shall be acknowledged in writing by the licensing authority.

(13) The approved building plans shall be kept at the facility and readily available at all times.

D. Fire resistance: Required building construction and fire resistance shall be in accordance with the state building code and the fire code. Facilities with nine or more residents shall be protected throughout by an approved automatic fire protection (sprinkler) system.

E. Prohibition of mobile homes: For facilities with four or more residents, trailers and mobile homes shall not be used.

F. Construction: Construction shall commence within 180 calendar days of the date of receipt of approval (unless a written extension is requested by the facility and approved by authority). This approval shall in no way permit or authorize any omission or deviation from the requirements of any restrictions, laws, ordinances, codes or standards of any regulatory agency. [8.370.14.42 NMAC - Rp, 8.370.14.41 NMAC, xx/xx/2025]

8.370.14.43 MAINTENANCE OF BUILDING AND GROUNDS:

The building(s) shall be maintained in good repair at all times. Such maintenance shall include, but is not limited to, the following areas:

A. Storage areas/grounds: Storage areas and grounds shall be maintained in a safe, sanitary and presentable condition at all times. Storage areas and grounds shall be kept free from accumulation of refuse, weeds, discarded furniture, old newspapers or other items that create a fire hazard.

B. Floors: Floors shall be maintained stable, firm and free of tripping hazards. [8.370.14.43 NMAC - Rp, 8.370.14.42 NMAC, xx/xx/2025]

8.370.14.44 HAZARDOUS AREAS:

Hazardous areas include: Fuel fired equipment rooms (not a typical residential kitchen), bulk laundries or laundry rooms with more than 100 sq. ft., storage rooms more than 50 sq. ft. but less than 100 sq. ft. not storing combustibles, storage rooms with more than 100 sq. ft. storing combustibles, chemical storage rooms with more than 50 sq.

ft., garages and maintenance shops/rooms.

A. Hazardous areas on the same floor as, and in or abutting, a primary means of escape or a sleeping room shall be protected by either:

(1) an enclosure of at least one hour fire rating with self-closing or automatic closing on smoke detection fire doors having a three-quarter of an hour rating; or

(2) an automatic fire protection (sprinkler) and separation of hazardous area with self-closing doors or doors with automatic-closing on smoke detection; or

(3) other hazardous areas shall be enclosed with walls with at least a 20 minute fire rating and doors equivalent to one and three-quarter inches solid bonded wood core, operated by self-closures or automatic closing on smoke detection.

B. Boiler, furnace or fuel fired water heater rooms: For facilities with four or more residents: all boiler, furnace or fuel fired water heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one hour. Doors to these rooms shall be one and three-quarter inches solid core. [8.370.14.44 NMAC - Rp, 8.370.14.43 NMAC, xx/xx/2025]

8.370.14.45 HEATING, AIR-CONDITIONING AND VENTILATION:

A. Heating, air-conditioning, piping, boilers and ventilation equipment shall be furnished, installed and maintained to meet all requirements of current state and local mechanical, electrical and construction codes. All facilities shall have documentation that fuel-fire heating systems have been checked, tested and maintained annually by qualified personnel.

B. The heating method used by the facility shall provide a minimum temperature of 70 degrees fahrenheit, measured at three feet above the floor, in all rooms used by the residents.

C. No open-face gas or electric heater nor unprotected single shell gas or electric heating device shall be used for heating the facility. Portable heating units shall not be used for heating the facility. All heating appliances shall be permanently anchored and kept away from flammables such as curtains, bedcovering, trash containers, or clothing. No heating appliance shall be located where the unit or wiring is a tripping hazard or presents danger from electrical shock.

D. Fireplaces and open flame heating shall not be utilized in sleeping rooms.

E. Gas fired water heaters shall not be located in sleeping rooms, bathrooms, or rooms opening into sleeping rooms.

F. The facility shall be adequately ventilated at all times to provide fresh air and the control of unpleasant odors by either mechanical or natural means.

G. All openings to the outside air used for ventilation shall be screened for the control of insects and rodents. Screen doors shall be equipped with self-closing devices.

H. The facility shall have a system for maintaining the residents' comfort during periods of hot weather. Fans shall not be located where the unit or wiring is a tripping hazard. Fans shall be provided with protective shields when there is a potential for contact by any individual.

[8.370.14.45 NMAC - Rp,
8.370.14.44 NMAC, xx/xx/2025]

8.370.14.46 WATER: Pursuant to the current New Mexico drinking water requirements:

A. The water supply system shall be constructed, protected, operated and maintained in conformance with applicable local, state and federal laws, ordinances and regulations.

B. Where a facility is supplied by its own water system, the system shall meet the sampling and construction requirement of a non-community water system as defined by the current New Mexico drinking water requirements.

C. All water that is not piped into the facility directly from a public water supply system shall be from an approved source, disinfected, transported, handled, stored and dispensed in a sanitary manner. Such water shall be prevented from entering potable water systems by appropriate cross connection and backflow prevention devices.

D. Hot and cold running water, under pressure shall be provided in all areas where food is prepared and where equipment and utensils are washed, sinks, lavatories, washrooms and laundries.

E. The hot water temperature that is accessible to residents shall be maintained at a minimum of 95 degrees fahrenheit and a maximum of 120 degrees fahrenheit. Hot water in excess of 120 degrees fahrenheit is permitted in kitchen and laundry areas, provided that residents are supervised in order to prevent injury.

[8.370.14.46 NMAC - Rp,
8.370.14.45 NMAC, xx/xx/2025]

8.370.14.47 SEWAGE AND WASTE DISPOSAL:

A. All sewage and liquid wastes shall be disposed of into a municipal sewage system where such facilities are available.

B. Where a municipal sewage system is not available, the system that is used shall be inspected and approved by the state environmental authority, pursuant to 20.7.3 NMAC, prior to licensure.

C. Where municipal or community garbage collection and disposal service are not available, the method of collection, storage and disposal of garbage used by the facility shall be environmentally safe and sound and not create an objectionable environment and be in accordance with state environmental authority, pursuant to 20.9.2 NMAC. [8.370.14.47 NMAC - Rp,
8.370.14.46 NMAC, xx/xx/2025]

8.370.14.48 LIGHTING AND LIGHTING FIXTURES:

A. All areas of the facility, including storerooms,

stairways, hallways, and interior and exterior entrances shall be lighted to make the area clearly visible.

B. Exits, exit-access ways and other areas used at night by residents and staff shall be illuminated by night lights or other continuous lighting.

C. Lighting fixtures shall be selected and located to accommodate the needs and activities of the residents, with the comfort and convenience of the residents in mind.

D. Lamps and lighting fixtures shall be shaded to prevent glare to the eyes of residents and staff, and protected from accidental breakage or shattering.

E. Facilities with four or more residents shall have emergency lighting to light exit passageways and the exterior area near the exits that activates automatically upon disruption of electrical service.

F. Facilities with three or fewer residents shall have a flashlight that is immediately available for use in lieu of electrically interconnected emergency lighting. [8.370.14.48 NMAC - Rp,
8.370.14.47 NMAC, xx/xx/2025]

8.370.14.49 ELECTRICAL SYSTEM:

A. All fuse and breaker boxes shall be labeled to indicate the area of the facility to which each fuse or circuit breaker provides service.

B. All staff personnel of the facility shall know the location of the electrical disconnect switch and how to operate it in case of emergency.

C. Electrical cords and appliances shall be U/L approved.

(1) Electrical cords shall be replaced as soon as they show wear.

(2) Extension cords shall not be used. The use of a multi-socket united laboratories approved (U/L APPROVED) surge protector with integrated circuit breaker no greater than six feet in length is permitted for the intended purpose and not as an extension cord. [8.370.14.49 NMAC - Rp,
8.370.14.48 NMAC, xx/xx/2025]

8.370.14.50 DOORS:

A. No door in any means of egress shall be locked against egress when the building is occupied.

(1) Exit doors may be provided with a night latch, dead bolt, or security chain, provided these devices are operable from the inside, by any occupant, without the use of a key, tool, or any special knowledge and are mounted at a height not to exceed 48 inches above the finished floor.

(2) If locks are not readily operable by all occupants within the building, the locks must:

(a) unlock upon activation of the fire detection or sprinkler system; and

(b) unlock upon loss of power in the facility. Prior to installing such locking devices, the facility shall have written approval from the building, fire and licensing authorities having jurisdiction.

B. All exit doors shall have a minimum width of 36 inches.

(1) Facilities with a capacity of 10 or more residents shall have exit doors leading to the outside of the facility that open outward.

(2) Facilities with a capacity of 50 or more residents must provide panic hardware at the exit doors.

(3) No door or path of travel to a means of egress shall be less than 28 inches wide.

C. All resident sleeping room doors must be at least one and three-quarters inches solid core construction.

D. Bathroom doors may be 24 inches wide. Facilities with four or more residents shall have at least one bathroom for every eight residents with a door clearance of 36 inches for access by persons with disabilities.

E. Locks on doors to toilet rooms and bathrooms shall be capable of release from the outside.

F. All doors shall readily open from the inside.

G. Doors shall be provided for all resident sleeping rooms, all restrooms and all bathrooms.

[8.370.14.50 NMAC - Rp, 8.370.14.49 NMAC, xx/xx/2025]

8.370.14.51 EXITS:

A. The facility shall have at least two approved exits, that do not involve windows and which are remote from each other.

B. Facilities with 10 or more residents shall have each exit clearly marked with lighted signs having letters at least six inches high and at least three-quarters of an inch wide. Exit signs shall be visible at all times.

C. Facilities with three or fewer residents shall have a flashlight that is immediately available for use in lieu of electrically interconnected emergency lighting.

D. Exits shall be clear of obstructions at all times.

E. Exits, exit paths, or means of egress shall not pass through hazardous areas, garages, storerooms, closets, utility rooms, laundry rooms, bedrooms, or spaces subject to locking.

F. For facilities with four or more residents, sliding doors are not acceptable as a required exit. EXCEPTION: Assisted living facilities with three or fewer residents may have sliding doors as required exits.

G. When the yard gate(s) is part of the exit access and is locked, the gate shall be connected to the fire protection system and release upon activation of the fire/smoke system or shall have the ability to be unlocked at the gate site.

[8.370.14.51 NMAC - Rp, 8.370.14.50 NMAC, xx/xx/2025]

8.370.14.52 SEPARATION OF SLEEPING ROOMS:

A. All sleeping rooms shall be separated from escape route corridors by walls and doors that are smoke resistant. There shall be no passages, louvers, or transfer grills penetrating the wall to other spaces in the building.

B. All sleeping rooms shall be provided latches suitable for keeping the doors closed.

C. Every sleeping room shall have access to a primary means of escape that provides a path to the exterior, without exposure to unprotected vertical openings. Where sleeping rooms are above or below the level of exit discharge, the primary means of escape shall be:

(1) an enclosed interior stair; or

(2) an exterior stair; or

(3) a horizontal exit; or

(4) an existing approved fire escape stair.

D. Every sleeping room shall provide a secondary means of escape which may be any one of the following:

(1) a door leading directly to the outside, at or to grade level;

(2) a door, stairway, passage or hall remote from the primary escape and to the exterior; or

(3) an outside window or door, operable without tools from the inside with a minimum clear opening measured 20 inches wide, measured 24 inches high; the distance of the bottom of the opening from the floor is a maximum of 44 inches; this means of escape is acceptable if the bottom of the window is no more than 20 feet above grade or is accessible by fire department rescue apparatus, approved by the authority having jurisdiction, or it opens onto an exterior balcony; and

(4) bars, grills, grates or similar devices that are installed on emergency escape or rescue windows or doors shall be equipped with release mechanisms which are operable from the inside without the use of a key or special knowledge or effort.

E. Stairways and other vertical openings between floors shall be enclosed with construction to provide a smoke and fire resistance rating of not less than 20 minutes.

Open stairways between floors shall not be permitted.
[8.370.14.52 NMAC - Rp,
8.370.14.51 NMAC, xx/xx/2025]

8.370.14.53 CORRIDORS:

A. Corridors in an existing building shall have a minimum width of 36 inches. Corridors in newly constructed facilities shall have a minimum width of 44 inches.

B. Corridors shall have a clear ceiling height of not less than seven feet measured to the lowest projection from the ceiling.

C. Corridors shall be maintained clear and free of obstructions at all times.

D. The floors of corridors and hallways shall be waterproof, greaseproof, smooth, slip-resistant and durable.
[8.370.14.53 NMAC - Rp,
8.370.14.52 NMAC, xx/xx/2025]

8.370.14.54 MINIMUM ROOM DIMENSIONS:

A. All habitable rooms in a facility shall have a ceiling height of not less than seven feet six inches. Kitchens, halls, bathrooms and toilet compartments shall have a ceiling height of not less than seven feet.

B. Any room with sloped ceiling where any portion of the room is less than seven feet in height is subject to review and approval or disapproval by the licensing authority.
[8.370.14.54 NMAC - Rp,
8.370.14.53 NMAC, xx/xx/2025]

8.370.14.55 RESIDENT ROOMS:

A. The facility's bed capacity shall not exceed the capacity approved by the licensing authority.

B. Each resident room shall have an outside room with a window. The area of the outdoor window shall be at least one tenth of the floor area of the room.

C. Resident rooms shall not be less than seven feet wide in any horizontal dimension.

D. There must be no through traffic in resident rooms.

Resident rooms must connect directly to other internal common areas of the facility.

E. The window shades, drapes, curtains, or blinds in the resident rooms shall be in good repair and of flame-retardant materials.

F. Resident rooms may be private or semi-private. Semi-private rooms may not house more than two residents.

(1) Private rooms shall have a minimum of 100 square feet of floor area. The closet and locker area shall not be counted as part of the available floor space.

(2) Semi-private rooms shall have a minimum of 80 square feet of floor area for each bed and shall be furnished in such a manner that the room is not crowded and passage out of the room is not obstructed. A separate closet for each resident shall be provided. The closet and locker area shall not be counted as part of the available floor space. The beds shall be spaced at least three feet apart.

G. If a resident chooses not to bring their own furnishings to the facility; each resident room shall be provided with, as a minimum, the following furnishings per resident:

(1) a bed that shall be at least 36 inches wide, of sturdy construction and in good repair;

(2) each bed shall be provided with a clean, comfortable mattress of at least four inches in thickness, which is waterproof, or protected with a waterproof covering and a mattress pad;

(3) each bed shall be provided with a clean, comfortable pillow;

(4) each bed shall be provided with a pillow case, two clean sheets, blankets and a bedspread appropriate for the weather and the climate;

(5) an individual closet or closet area with a clothes rack for hanging clothes and shelves or drawers that are accessible to the resident;

(6) a dresser with drawers;
(7) a bedside table or desk;
(8) a chair;
(9) a reading lamp; and
(10) a mirror.

[8.370.14.55 NMAC - Rp,
8.370.14.54 NMAC, xx/xx/2025]

8.370.14.56 TOILET AND BATHING FACILITIES: Toilet and bathing facilities shall be located appropriately to meet the needs of residents.

A. A minimum of one toilet, one sink and one bathing unit shall be provided for every eight residents or fraction thereof.

(1) The facility shall provide at least one bathing unit to allow for residents bathing preference.

(2) Facilities with four or more residents shall provide a handicap accessible bathroom for every 30 residents that allows for a bathing preference.

B. Facilities with four or more residents must comply with accessibility requirements for the disabled.

C. Toilet, sink and bathing facilities shall be readily available to the residents. No passage through a resident room by another resident to reach a toilet, bathing unit or sink facility shall be permitted.

D. The combination type tub and shower shall be permitted.

E. A facility with four or more residents that has live-in staff shall provide a separate toilet, sink and bathing facility for staff.

F. Toilets, tubs and showers shall be provided with grab bars.

G. Tubs and showers shall have a slip resistant surface.

H. The floors of bathrooms and bathing facilities shall have smooth, waterproof and slip-resistant surfaces.

I. Toilet paper and soap shall be provided in each toilet room.

J. The use of a common towel shall be prohibited.

K. Bathrooms and lavatories shall be cleaned as often as necessary to maintain a clean and sanitary condition.

[8.370.14.56 NMAC - Rp,

8.370.14.55 NMAC, xx/xx/2025]

8.370.14.57 LIVING OR MULTIPURPOSE ROOM: The facility shall provide a minimum of 40 square feet per resident for common living, dining and social spaces.

A. The facility shall have a living or multipurpose room for the use of the residents. Such rooms shall be provided with reading lamps, tables and chairs or couches. These furnishings shall be well constructed, comfortable and in good repair.

B. The living room or multipurpose rooms shall be provided with supplies to meet the varied interests and needs of the residents.

C. Each activity room shall have a window area of at least one tenth of the floor area with a minimum of at least ten square feet. [8.370.14.57 NMAC - Rp, 8.370.14.56 NMAC, xx/xx/2025]

8.370.14.58 MEETING ROOM: The facility shall have adequate meeting rooms and office space for use by staff and the interdisciplinary care team. Other rooms may serve as meeting rooms, provided resident confidentiality is maintained.

[8.370.14.58 NMAC - Rp,

8.370.14.57 NMAC, xx/xx/2025]

8.370.14.59 DINING AREA:

A. A dining area shall be provided for meals. Each dining area shall be designed and have furnishings to meet the individual needs of the residents.

(1) Facilities with 60 or fewer residents shall have tables and chairs in the dining area to accommodate the total number of residents in one sitting.

(2) Facilities with more than 60 residents shall

provide seating for at least 60 residents at one time, but may serve meals in shifts to accommodate the total capacity of the facility.

(a)

No more than three shifts are permitted for each meal.

(b)

Facilities with more than 60 residents and serving meals in shifts must have other social areas for residents to congregate during the meal service.

(c)

All seating arrangements during meals shall allow clear access to the exits.

B. The living or multi-purpose room may be used as a dining area if the dining area portion does not exceed fifty percent of the available floor space and still allows a comfortable arrangement of the necessary furnishings for a living area.

[8.370.14.59 NMAC - Rp,

8.370.14.58 NMAC, xx/xx/2025]

8.370.14.60 WINDOWS:

A. Each sleeping room shall be provided with an exterior window.

(1) The

window shall be operable, screened and have a clear operable area of 5.7 square feet minimum; measured 20 inches wide minimum and measured 24 inches high minimum.

(2) The top of

the window sill shall not be more than 44 inches above the finished floor.

B. Screens shall be provided on all operable windows. Screens must fit properly and shall not be damaged.

C. The proposed use of bars, grilles, grates or similar devices shall be reviewed and approved by the licensing authority prior to installation.

D. Sleeping rooms, living rooms, activity room areas and dining room areas shall have a window area of at least one tenth of the floor area with a minimum of 10 square feet.

[8.370.14.60 NMAC - Rp,

8.370.14.59 NMAC, xx/xx/2025]

8.370.14.61 FIRE CLEARANCE AND INSPECTIONS:

A. Written documentation of a facility's compliance with applicable fire prevention codes shall be obtained from the state fire marshal's office or the fire prevention authority with jurisdiction and shall be submitted to the licensing authority prior to the issuance of an initial license.

B. The facility shall request an annual fire inspection from the local fire prevention authorities. If the policy of the local fire department does not provide an annual inspection of the facility, the facility will document the date the request was made and to whom and then contact licensing authorities. If the local fire prevention authorities do make annual inspections, a copy of the latest inspection must be kept on file in the facility.

[8.370.14.61 NMAC - Rp,

8.370.14.60 NMAC, xx/xx/2025]

8.370.14.62 FIRE ALARMS, SMOKE DETECTORS AND OTHER EQUIPMENT:

A. Fire alarm system: Facilities with four or more residents shall have a manual fire alarm system. The manual fire alarm shall be inspected and approved in writing by the fire authority with jurisdiction.

B. Smoke and heat detection: Approved smoke detectors shall be installed on each floor that when activated provides an alarm which is audible in all sleeping areas. Areas of assembly, such as the dining and living room(s) must also be provided with smoke detectors.

(1) Detectors shall be powered by the house electrical service and have battery backup.

(2) Construction of new facilities or facilities remodeling or replacing existing smoke detectors shall provide detectors in common living areas and in each sleeping room.

(3) Smoke detectors shall be installed in corridors at no more than 30 foot spacing.

(4) Heat detectors shall be installed in all kitchens and also powered by the house electrical service. [8.370.14.62 NMAC - Rp, 8.370.14.61 NMAC, xx/xx/2025]

8.370.14.63 AUTOMATIC FIRE PROTECTION (SPRINKLER) SYSTEM: Facilities with nine or more residents shall have an automatic fire protection (sprinkler) system. The system shall be in accordance with NFPA 13 or NFPA 13D or its subsequent replacement as applicable. [8.370.14.63 NMAC - Rp, 8.370.14.62 NMAC, xx/xx/2025]

8.370.14.64 FIRE EXTINGUISHERS: Fire extinguisher(s) must be located in the facility, as approved by the state fire marshal or the fire prevention authority with jurisdiction.

A. Facilities must as a minimum have two 2A10BC fire extinguishers:

- (1) one extinguisher located in the kitchen or food preparation area;
- (2) one extinguisher centrally located in the facility;
- (3) all fire extinguishers shall be inspected yearly and recharged as needed; all fire extinguishers must be tagged noting the date of the inspection;
- (4) the maximum distance between fire extinguishers shall be 50 feet.

B. Fire extinguishers, alarm systems, automatic detection equipment and other firefighting equipment shall be properly maintained and inspected as recommended by the manufacturer, state fire marshal, or the local fire authority. [8.370.14.64 NMAC - Rp, 8.370.14.63 NMAC, xx/xx/2025]

8.370.14.65 FIRE SAFETY EQUIVALENCY SYSTEM RATING: In facilities without a sprinkler system; the fire safety equivalency system shall be

conducted at least annually. The facility shall maintain an evacuation rating score of prompt when a fire safety equivalency system is required. [8.370.14.65 NMAC - Rp, 8.370.14.64 NMAC, xx/xx/2025]

8.370.14.66 FIRE DRILLS: All facilities shall conduct monthly fire drills which are to be documented.

A. There shall be at least one documented fire drill per month and at a minimum, one documented fire drill each eight hours (day, evening, night) per quarter that employs the use of the fire alarm system or the detector system in the facility.

B. A record of the monthly fire drills shall be maintained on file in the facility and readily available. Fire drill records shall show:

- (1) the date of the drill;
- (2) the time of the drill;
- (3) the number of staff participating in the drill;
- (4) any problem noted during the drill; and
- (5) the evacuation time in total minutes.

C. If applicable, the local fire department may be requested to supervise and participate in fire drills. [8.370.14.66 NMAC - Rp, 8.370.14.65 NMAC, xx/xx/2025]

8.370.14.67 STAFF AND RESIDENT FIRE AND SAFETY TRAINING:

A. All staff of the facility shall know the location and the proper use of fire extinguishers and the other procedures to be followed in case of fire or other emergencies. The facility should request the local fire prevention authority to give periodic instructions in the use of fire prevention and techniques of evacuation.

B. Facility staff shall be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed

electrical cords, blocked exits or exit-ways and any other condition which could cause burns, falls, or other personal injury to the residents or staff.

C. Each new resident admitted to the facility shall be given an orientation tour of the facility to include the location of the exits, fire extinguishers and telephones and shall be instructed in the actions to be taken in case of fire or other emergencies.

D. Fire drill procedures: The facility must conduct at least one fire drill each month.

(1) Fire drills shall be held at different times of the day, evening and night.

(2) The fire alarm system or detector system in the facility shall be used in the fire drills. During the night, the fire drill alarm may be silenced.

(3) During the fire drills, emphasis shall be placed upon orderly evacuation under proper discipline rather than upon speed.

(4) A record of the conducted fire drills shall be maintained on file in the facility. The record shall show the date and time of the drill, the number of personnel participating in the drill, any problem(s) noted during the drill and the evacuation time in total minutes.

(5) The local fire department may be requested to supervise and participate in the fire drills. [8.370.14.67 NMAC - Rp, 8.370.14.66 NMAC, xx/xx/2025]

8.370.14.68 SMOKING:

A. Smoking by residents and staff shall take place only in supervised areas designated by the facility and approved by the state fire marshal or local fire prevention authorities. Smoking shall not be allowed in a kitchen or food preparation area.

B. All designated smoking areas shall be provided with suitable ashtrays that are not made of combustible material.

C. Residents shall not be permitted to smoke in bed.

D. Smoking shall not be permitted where oxygen is in use, is present or is stored.
[8.370.14.68 NMAC - Rp,
8.370.14.67 NMAC, xx/xx/2025]

8.370.14.69 HOSPICE: An assisted living facility that provides or coordinates hospice care and services shall meet the requirements in this section, in addition to the rules applicable to all assisted living facilities, 8.370.14 NMAC.

A. Definitions: in addition to the requirements for all assisted living facilities pursuant to “definitions,” 8.370.14.7 NMAC, the following definitions shall also apply.

(1) “Hospice agency” means an organization, company, for-profit or non-profit corporation or any other entity which provides a coordinated program of palliative and supportive services for physical, psychological, social and the option of spiritual care of terminally ill people and their families. The services are provided by a medically directed interdisciplinary team in the person’s home and the agency is required to be licensed pursuant to 8.370.19 NMAC.

(2) “Hospice care” means a focus on palliative, rather than curative care. The goal of the plan of care is to help the resident live as comfortably as possible, with emphasis on eliminating or decreasing pain and other uncomfortable symptoms.

(3) “Licensed assisted living provider” means a facility that provides 24 hour assisted living and is licensed by the health care authority.

(4) “Hospice services” means a program of palliative and supportive services which provides physical, psychological, social and spiritual care for terminally ill residents and their family members.

(5) “Care coordination requirements” means a written document that outlines the care and services to be provided by the hospice agency for assisted living residents that require hospice services.

(6) “Palliative care” means a form of medical care or treatment that is intended to reduce the severity of disease symptoms, rather than to reverse progression of the disease itself or provide a cure.

(7) “Terminally ill” means a diagnosis by a physician for a resident with a prognosis of six (6) months or less to live.

(8) “Visit notes” means the documentation of the services provided for hospice residents and includes ongoing care coordination.

B. Employee training and support: A facility that provides hospice services shall provide the following education and training for employees who assist with providing these services:

(1) provide a minimum of six hours per year of palliative/hospice care training, which includes one hour specific to the hospice resident’s ISP, in addition to the basic staff education requirements pursuant to 8.370.14.17 NMAC; and

(2) offer an ongoing employee psychological support program for end of life care issues.

C. Individual service plan (ISP) requirements:

(1) Each resident who receives hospice services shall be provided the necessary palliative care to meet the individual resident’s needs as outlined in the ISP and shall include one hour of training specific to the resident for all direct care staff.

(2) The assisted living facility, in coordination with the hospice provider, shall create an ISP that identifies how the resident’s needs are met and includes the following:

(a) the requirements set forth in the “individual service plan,” 8.370.14.26 NMAC, and “Exceptions to admission, readmission and retention,” Subsection C of 8.370.14.20 NMAC;

(b) what services are to be provided;

(c) who will provide the services;

(d) how the services will be provided;

(e) a delineation of the role(s) of the hospice provider and the assisted living facility in the ISP process;

(f) documentation (visit notes) of the care and services that are provided with the signature of the person who provided the care and services; and

(g) a list of the current medications or biologicals that the resident receives and who is authorized to administer them.

(3) Medications shall be self-administered, self-administered with assistance by an individual that has completed a state approved program in medication assistance or administered by the following individuals:

(a) a physician;

(b) a physician extender (PA or NP);

(c) a licensed nurse (RN or LPN);

(d) the resident if their PCP has approved it;

(e) family or family designee; and

(f) any other individual in accordance with applicable state and local laws.

D. Care coordination.

(1) The assisted living facility shall be knowledgeable with regard to the hospice requirements pursuant to 8.370.19 NMAC and ensure that the hospice agency is well informed with regard to the assisted living provisions pursuant to Subsection C of 8.370.14.20 NMAC.

(2) The assisted living facility shall hold a team meeting prior to accepting or retaining a hospice resident in accordance with “exceptions to admission, readmission and retention,” Subsection C of 8.370.14.20 NMAC.

(3) Upon admission of a resident into hospice care, the assisted living facility shall designate a section of the resident’s record for hospice documentation.

(a) The facility shall provide individual records for each resident.

(b) The hospice agency shall leave documentation at the facility in the designated section of the resident’s record.

(4) The assisted living facility shall provide the resident and family or surrogate decision maker with information on palliative care and shall support the resident’s freedom of choice with regard to decisions.

(5) Hospice services shall be available 24 hours a day, seven days a week for hospice residents, families and facility staff and may include continuous nursing care for hospice residents as needed. These services shall be delivered in accordance with the resident’s individual service plan (ISP) and pursuant to 8.370.14 26 NMAC.

(6) The assisted living facility shall ensure the coordination of services with the hospice agency.

(a) The resident’s individual service plan (ISP) shall be updated with significant changes in the resident’s condition and care needs.

(b) The assisted living facility shall receive information and communication from the hospice staff at each visit.

(i) The information shall include the resident status and any changes in the ISP (i.e., medication changes, etc.).

(ii) The information shall be in the form of a verbal report to the assisted living facility staff and also in the form of written documentation.

(c) The assisted living facility or the family/resident shall reserve the right to schedule care conferences as the needs of the resident and family

dictate. The care conferences shall include all care team members.

(d) Concerns that arise with regard to the delivery of services from either the assisted living facility or the hospice agency shall first be addressed with the facility administrator and the hospice agency administrator.

(i) The process may be informal or formal depending on the nature of the issue.

(ii) If an issue cannot be resolved or if there is an immediate danger to the resident the appropriate authority shall be notified.

E. Additional provisions: An assisted living facility that provides or coordinates hospice care and services shall make additional provisions for the following requirements:

(1) **individual services and care:** each resident receiving hospice services shall be provided the necessary palliative procedures to meet individual needs as defined in the ISP;

(2) **private visiting space:** physical space for private family visits;

(b) accommodations for family members to remain with the resident throughout the night; and

(c) accommodations for family privacy after a resident’s death.

F. Medicare and medicaid restrictions: Assisted living facilities shall not accept a resident considered “hospice general inpatient” which would be billable to medicare or medicaid because the facility will not qualify for payment by medicare or medicaid. [8.370.14.69 NMAC - Rp, 8.370.14.68 NMAC, xx/xx/2025]

8.370.14.70 MEMORY CARE UNITS: An assisted living facility that provides a secure environment to serve residents with dementia shall comply with the provisions of

subsection A-J below in addition to the rules applicable to all assisted living facilities, 8.370.14 NMAC.

A. Additional definitions: The following definitions, in addition to those in 8.370.14.7 NMAC, shall apply.

(1) **“Alzheimer’s”** means a brain disorder that destroys brain cells, causing problems with memory, thinking and behavior that are severe enough to affect work, lifelong hobbies or social life. Alzheimer’s gets progressively worse and is fatal.

(2) **“Care coordination agreement requirement”** means a written document that outlines the care and services that are provided by other outside agencies for assisted living residents that require additional care and services.

(3) **“Dementia”** means loss of memory and other mental abilities severe enough to interfere with daily life. It is caused by changes in the brain.

(4) **“Memory care unit”** means an assisted living facility or part of or an assisted living facility that provides added security, enhanced programming and staffing appropriate for residents with a diagnosis of dementia, Alzheimer’s disease or other related disorders causing memory or cognitive impairments and for residents whose functional needs require a specialized program.

(5) **“Secured environment”** means locked (secured/monitored) doors/fences that restrict access to the public way for residents who require a secure unit.

B. Care coordination requirement: An assisted living facility that accepts residents with memory issues shall determine which additional services and care requirements are relevant to the resident and disease process.

(1) The medical diagnosis and ISP shall be utilized in the determination of the need for additional services.

(2) The assisted living facility shall ensure

the coordination of services and shall have evidence of an agreement of care coordination for all services provided in the facility by an outside health care provider.

C. Employee

training: In addition to the training requirements for all assisted living facilities, pursuant to 8.370.14.17 NMAC, all employees assisting in providing care for memory unit residents shall have a minimum of 12 hours of training per year related to dementia, Alzheimer’s disease, or other pertinent information.

D. Individual

service plan (ISP): An assisted living facility that admits memory care unit residents shall create an ISP in coordination with the resident’s primary care practitioner, in compliance with the requirements outlined in “individual service plan,” 8.370.14.26 NMAC, pursuant to a team meeting as described in “exceptions to admission, readmission and retention,” Subsection C of 8.370.14.20 NMAC, and which ensures the following criteria:

(1)

identification of the resident’s needs specific to the memory care unit and the services that are provided; each memory unit resident shall receive the services necessary to meet the individual resident’s needs;

(2)

medications shall be self-administered, self-administered with assistance by an individual that has completed a state approved program in medication assistance or administered by the following individuals:

(a) a

physician;

(b) a

physician extender (PA or NP);

(c) a

licensed nurse (RN or LPN);

(d)

the resident if their PCP has approved it;

(e)

family or family designee; and

(f)

any other individual in accordance with applicable state and local laws.

E. Assessments and re-evaluations:

(1) An

assessment shall be completed by a registered nurse or a physician extender within 15 days prior to admission. When emergency placement is warranted the 15 day assessment shall be waived and the assessment shall be completed within five days after admission.

(a)

The resident shall have a medical evaluation and documentation by a physician, physician’s assistant or a nurse practitioner within six months of admission.

(b)

The pre-admission assessment shall include written findings, an evaluation of less restrictive alternatives and the basis for the admission to the secured environment. The written documentation shall include a diagnosis from the resident’s PCP of Alzheimer’s disease or other dementia and the need for the resident to reside in a memory care unit.

(c)

Only those residents who require a secured environment placement or whose needs can be met by the facility, as determined by the assessment prior to admission or on review of the individual service plan (ISP), shall be admitted.

(2) A re-

evaluation must be completed every six months and when there is a significant change in the medical or physical condition of the resident that warrants intervention or different care needs, or when the resident becomes a danger to self or others, to determine whether the resident’s stay in the assisted living facility memory care unit is still appropriate.

F. Documentation in the resident’s record:

In addition to the required documentation pursuant to 8.370.14.21 NMAC, the following information shall be documented in the resident’s record:

(1) the

physician’s diagnosis for admission to a secure environment or a memory care unit;

(2) the pre-

admission assessment; and

(3) the re-

evaluation(s).

G. Secured environment:

(1) Memory

care unit residents may require a secure environment for their safety. A secured environment is any locked (secured/monitored) area in which doors and fences restrict access to the public way. These include but are not limited to:

(a)

alarm systems;

(b)

gates connected to the fire alarm; and

(c)

tab alarms for residents at risk for elopement.

(2) In addition

to the interior common areas required by this rule, the facility shall provide a safe and secure outdoor area for the year round use by the residents. Fencing or other enclosures shall prevent elopement and protect the safety and security of the residents.

(3) Locked

areas shall have an access code or key which facility employees shall have available on their person or on the locking unit itself at all times.

H. Resident rights:

In addition to the requirements pursuant to 8.370.14.32 NMAC, the following shall apply:

(1) the

resident’s rights may be limited as required by their condition and as identified in the ISP;

(2) the

resident who believes that he or she has been inappropriately admitted to the secured environment may request the facility in contact the resident’s legal guardian, or an advocate such as the ombudsman or the primary care practitioner; upon request, the facility shall assist the resident in making such contact.

I. Disclosure to

residents: A facility that operates a secured environment shall disclose to the resident and the resident’s legal representative, if applicable and prior to the resident’s admission to the

facility, that the facility operates a secured environment.

(1) The disclosure shall include information about the types of resident diagnosis or behaviors that the facility provides services for and for which the staff are trained to provide care for.

(2) The disclosure shall include information about the care, services and the type of secured environment that the facility and trained staff provide.

J. Staffing: The facility shall provide the sufficient number of trained staff members to meet the additional needs of the residents in the secured environment. There must be at least one trained staff member awake and in attendance in the secured environment at all times.

[8.370.14.70 NMAC - Rp,
8.370.14.69 NMAC, xx/xx/2025]

8.370.14.71 INCORPORATED AND RELATED RULES AND CODES:

The facilities that are subject to this rule are also subject to other rules, codes and standards that may, from time to time, be amended. This includes the following:

A. Health facility licensure fees and procedures, New Mexico Health care authority, 8.370.3 NMAC.

B. Health facility sanctions and civil monetary penalties, New Mexico Health care authority, 8.370.3 NMAC.

C. Adjudicatory hearings for licensed facilities, New Mexico health care authority, 8.370.2 NMAC.

D. Caregiver's criminal history screening requirements, 8.370.5 NMAC.

E. Employee abuse registry 8.370.8 NMAC.

F. Incident reporting, intake processing and training requirements 8.370.9 NMAC.

[8.370.14.71 NMAC - Rp,
8.370.14.70 NMAC, xx/xx/2025]

History of 8.370.14 NMAC:
[RESERVED]

History of Repealed Material:
8.370.14 NMAC, Assisted Living Facilities For Adults filed xx/xx/xxxx
Repealed effective xx/xx/2025.

Other: 8.370.14 NMAC, Assisted Living Facilities For Adults filed xx/xx/xxxx Replaced by 8.370.14 NMAC, Assisted Living Facilities effective xx/xx/2025.

HEALTH CARE AUTHORITY MEDICAL ASSISTANCE DIVISION

NOTICE OF RULEMAKING

The New Mexico Health Care Authority (HCA), through the Medical Assistance Division (MAD), issued emergency rule amendments for the New Mexico Administrative Code (NMAC) rule 8.310.2 NMAC, Health Care Professional Services, General Benefit Description on December 23, 2024. The Department issued this emergency rule to address the high rates of maternal mortality and ensure the health and welfare of vulnerable women of New Mexico. The Department is re-promulgating these sections of the rules in full within six months of issuance of the emergency rules in accordance with the New Mexico State Rules Act.

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

Notice Date: March 11, 2025
Hearing Date: April 11, 2025
Adoption Date: Proposed as July 1, 2025

Technical Citations: New Mexico State Plan Amendment NM-24-0004

Background

The Centers for Medicare and Medicaid Services (CMS) and approved New Mexico's State Plan amendment to incorporate Doula Services. This rule is amended to establish these services.

The Health Care Authority is proposing to amend the rule as follows:

8.310.2.8

This section has been updated with HCA's current mission statement.

8.310.2.12.D

HCA amended NMAC 8.310.2.12.D for the purpose of adding a new section of the Reproductive Health services to include Doula services coverage and Doula provider certification requirements language.

I. RULE

These proposed rule changes will be contained in 8.310.2 NMAC. This register and the proposed rule are available on the HCA website at: <https://www.hca.nm.gov/lookingforinformation/registers/> and <https://www.hca.nm.gov/comment-period-open-2025/>. 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.

II. EFFECTIVE DATE

The Health Care Authority proposes implementing this rule effective July 1, 2025.

III. PUBLIC HEARING

A public hearing to receive testimony on this proposed rule will be held on April 11, 2025, at 9:30 am, Mountain Time. The hearing will be held at the Administrative Services Division (ASD), 1474 Rodeo Rd, Santa Fe, NM 87505 and via Zoom.

Join Zoom Meeting

<https://us02web.zoom.us/j/83014958967?pwd=P78B1fLcFrNuDuWfLAIKbBwGh6Y96a.1> or by phone at 833 548 0282 US Toll-free.

Meeting ID: 830 1495 8967

Passcode: 497460

If you are a person with a disability and you require this information in an alternative format or require special accommodation to participate in the public hearing, please contact the MAD in Santa Fe at (505) 827-

1337. The HCA requests at least ten (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.

IV. ADDRESS

Interested persons may address written comments to:

New Mexico Health Care Authority
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: HCA-madrules@hca.nm.gov. Written mail, electronic mail and recorded comments must be received **no later than 5 p.m. MT on April 11, 2025**. 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 HCA website at <https://www.hca.nm.gov/lookingforinformation/registers/> and <https://www.hca.nm.gov/comment-period-open-2025/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

HEALTH, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed repeal and replacement of rule 7.29.5 NMAC, "Certification of Community Health Workers." The hearing will be held on Friday, April 25, 2025 at 9:00 a.m. via the

Microsoft Teams Internet-based video conferencing system, and via telephone. Members of the public who wish to submit public comment regarding the proposed repeal and replacement of the rule will be able to do so via video conference and via telephone during the course of the hearing, and by submitting written comment.

The Department proposes to repeal and replace the entirety of rule 7.29.5 NMAC, to incorporate various new and modified provisions, including but not limited to provisions concerning:

- Definitions (section 7);
- The Board of Certification of Community Health Workers, including standards for Board membership, meetings, and duties and responsibilities of the Board (section 8);
- The NM Registry of Community Health Workers (section 9);
- Certification and recertification requirements for Community Health Workers, including but not limited to the application process and application requirements, certification levels, requirements for reinstatement after lapse, suspension, or revocation; grounds for disapproval; fees; and prohibitions against unauthorized training and unauthorized practice (section 10);
- Criminal history screening requirements (section 11);
- Requirements for Department endorsement of persons who wish to conduct CHW trainings (section 12);
- Requirements for Department approval of CHW continuing education programs (section 13);
- Standards for the CHW Certification Review Committee, including but not limited to grounds for denial, suspension, revocation, or other adverse action against a certificate, and standards concerning Committee review of criminal history screening results (section 14);

- Hearing process for appeals of decisions, including but not limited to standards concerning the right to appeal, notice of hearing, admissible evidence, burden of proof, legal representation, hearing officer duties, and the decision of the Department (section 15);
- Standards for reinstatement of a suspended or revoked certificate (section 15); and
- Standards concerning inspection of records (section 16).

The purpose of the proposed repeal and replacement of 7.29.5 NMAC is to implement the Community Health Workers Act, sections 24-30-1 through -7, which requires the Department of Health to adopt and promulgate rules concerning the Community Health Workers Program.

The legal authority authorizing the proposed repeal and replacement of the rule by the Department is at the Department of Health Act, Subsection E of Section 9-7-6 NMSA 1978, which authorizes the secretary of the department of health to "...make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions,"; and the Community Health Workers Act, Sections 24-30-3, which authorizes the department to adopt rules to establish and administer a voluntary program for the certification of community health workers.

A free copy of the full text of the proposed repeal and replacement can be obtained online from the New Mexico Department of Health's website at <http://nmhealth.org/about/asd/cmo/rules/> or by contacting the Department using the contact information below.

The public hearing will be conducted to receive public comment on the proposed repeal and replacement. Any interested member of the public may attend the hearing and may submit data, views, or arguments on the proposed rule either orally or in writing during the hearing.

To access the hearing via the Internet: please go to <https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>, then enter the following meeting i.d. code and passcode where indicated on the screen: meeting i.d. code 268 152 498 095 and passcode 9tT269Eb and then click the “Join a meeting” button.

To access the hearing by telephone: please call 1-505-312-4308 and enter phone conference i.d. 222372442#.

All comments will be recorded.

Written public comment regarding the proposed rule can be submitted either by e-mail to Stephanie Lopez at stephanie.lopez@doh.nm.gov, or U.S. postal mail to the following address:

Stephanie Lopez
NMDOH OGC
P.O. Box 26110
1190 St. Francis Dr., Suite N-4095
Santa Fe, NM 87502-6110

Written comments must be received by the close of the public rule hearing on April 25, 2025. All written comments will be published on the agency website at <https://www.nmhealth.org/about/asd/cmo/rules/> within 3 days of receipt, and will be available at the New Mexico Department of Health for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Stephanie Lopez by telephone at (505) 690-3689. The Department requests at least ten (10) days’ advance notice to provide special accommodation.

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING DOCKET NO. 24-00157-UT

The New Mexico Public Regulation Commission (“Commission”)

gives notice of its initiation of a formal rulemaking to promulgate amendments to the “Energy Efficiency” rule at Title 17, Chapter 7, Part 2 of the New Mexico Administrative Code. A rule which may be adopted as the final rule by the Commission may include all, part, or none of the language in the proposed rule.

Summary and concise statement of proposed rule: The objective of the proposed rule is to implement the Efficient Use of Energy Act’s requirements for public utilities to acquire cost-effective energy efficiency and load management resources, measures, and programs, and to establish criteria to evaluate and implement cost-effective energy efficiency and load management resources, measures, and programs that reduce energy demand and energy consumption.

Legal authority: Sections 62-3-1, 62-8-6, and 62-17-1 to -11 NMSA 1978.

How a copy of the full text of the proposed rule may be obtained: A copy of the full text of the proposed rule and instructions on how to access the complete rulemaking record, reports, and other items filed in the commission’s e-docket system may be obtained from the Rulemaking Proceedings section of the Commission’s website at <https://www.prc.nm.gov/rulemaking-proceedings/> under Docket No. 24-00157-UT or by calling LaurieAnn Santillanes in the Office of General Counsel at (505) 670-4830.

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

Written initial comments may be filed no later than **May 16, 2025**, written response comments may be filed no later than **May 30, 2025**. Filed comments shall refer to Docket No. 24-00157-UT. Comments may be electronically filed by sending them in PDF format to prc.records@prc.nm.gov. All written comments will be

posted on the Commission’s e-Docket website within three days of their receipt by the Commission’s Records Management Bureau.

The record of this case closes on **June 20, 2025**. From that date through the completion of this proceeding, rulemaking participants shall be forbidden from communicating with the Commission or its representatives concerning substantive issues in this proceeding.

When and where a public rule hearing will be held and how a person may participate in the hearing: A public hearing on the proposed rule and any proposed alternatives, to be presided over by the Commission or its designee, shall be held beginning at **10:00 a.m. on May 22, 2025**, at the Commission’s offices located at 142 W. Palace, Santa Fe, New Mexico, 87505, and via the Zoom video-conferencing platform.

Any interested person 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 as soon as possible before the start of the hearing to sign up as a commenter to sign up as a commenter. The Commission shall email a Zoom invitation to all commenters. The Zoom invitation shall include a call-in number for those commenters who are unable to access Zoom’s video-conferencing platform. The public comment hearing shall 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 hearing. No testimony or other evidence shall be taken at the hearing as this is a rulemaking proceeding. The subject of public comments shall be relevant to matters within the Commission’s

jurisdiction. A court reporter shall prepare a transcript of the hearing for filing in this docket.

Any person with a disability requiring special assistance 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.

Technical information that served as a basis for the proposed rule and how the information can be obtained:
N/A.

STATE PERSONNEL OFFICE

NOTICE OF PROPOSED RULEMAKING

Public Notice: The New Mexico State Personnel Board will hold a public hearing on Friday, April 18, 2025, at 9:00 a.m. The meeting will be held in person in the Willie Ortiz Auditorium, 2600 Cerrillos Road, Santa Fe, NM 87505.

Purpose of Rule Hearing: The purpose of the public hearing is to receive public input on the proposed amendments to 1.7.1 NMAC – General Provisions; the proposed amendments to 1.7.7 NMAC – Absence and Leave; the proposed amendments to 1.7.8 NMAC – Drug and Alcohol Abuse; and the proposed repeal and replacement of 1.7.10 NMAC – Furlough, Reduction in Force, Reemployment, Separation Without Prejudice.

Statutory Authority: Personnel Act, Sections 10-9-10 and 10-9-12 NMSA 1978.

Purpose of the Proposed Amendments: The purpose of these changes is to ensure uniform application of the rules, to clarify roles and obligations of the State Personnel Office Director, and to conform to state and federal law.

Summary of Proposed Changes to 1.7.1 NMAC General Provisions:

The section being substantively amended is: *Section 1.7.1.11*, clarifying that three (3) calendar days are added to response times when service of notice is by certified mail or courier.

Summary of Proposed Changes to 1.7.7 NMAC Absences and Leave:

The sections being substantively amended are: *Section 1.7.7.8*, removing provision that allowed employees to carry forward more than 240 hours of annual leave after December 2020, but not beyond July 9, 2021; *Section 1.7.7.10*, eliminating the ability of employees to appeal denial of sick leave or alleged violations of the Public Employee Caregiver Leave Act to the SPO Director; *Section 1.7.7.12*, removing the requirement that disputes over the administration of the Family Medical Leave Act be forwarded to the SPO Director for resolution.

Summary of Proposed Changes to 1.7.8 NMAC Drug and Alcohol Abuse:

The sections being amended are: *Section 1.7.8.8*, *1.7.8.9*, *1.7.8.10*, *1.7.8.13*, *1.7.8.15*, *1.7.8.18*, correcting internal citations.

Summary of Proposed Changes to 1.7.10 NMAC Furlough, Reduction in Force, Reemployment, Separation Without Prejudice:

Because of the state-required formatting changes (1.24.11.9 NMAC), this rule will be repealed and replaced. The section being substantively amended is: *Section 1.7.10.13*, clarifying that three (3) calendar days are added to response times when service of notice is by certified mail or courier.

How to Comment on the Proposed Rules:

Public comment addressing the proposed rule changes can be made in person using the Public Comment sign-in sheet, by mail to Denise Forlizzi, State Personnel Office, 2600 Cerrillos Rd., Santa Fe, New Mexico 87505 or by emailing your comment to DeniseM.Forlizzi@spo.nm.gov

by 5:00 p.m. Thursday, April 17, 2025. Email comments must include the subject line, “Rule Changes to 1.7.X NMAC”, the commenter’s name and contact information.

Copies of Proposed Rules: Copies of the proposed rules are available for download on the State Personnel Office’s website at www.spo.state.nm.us. A copy of the proposed rules may also be requested by contacting Denise Forlizzi by phone at (505)365-3691 or by email DeniseM.Forlizzi@spo.nm.gov.

Special Needs: Individuals 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 Denise Forlizzi at (505)365-3691 as soon as possible to allow adequate time to provide the requested accommodation(s).

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.

SUPERINTENDENT OF INSURANCE, OFFICE OF

The New Mexico Superintendent of Insurance repealed its rule 13.18.2 NMAC, Credit Life and Credit Health Insurance, filed 12/31/2007, and replaced it with a new rule entitled Credit Life and Credit Health Insurance, 13.18.2 NMAC, adopted 02/26/2025 and effective 3/11/2025.

SUPERINTENDENT OF INSURANCE, OFFICE OF

TITLE 13 INSURANCE
CHAPTER 18 CREDIT
INSURANCE
PART 2 CREDIT
LIFE AND CREDIT HEALTH
INSURANCE

13.18.2.1 ISSUING AGENCY: Office of Superintendent of Insurance
 [13.18.2.1 NMAC – Rp, 13.18.2.1 NMAC, 3/11/2025]

13.18.2.2 SCOPE: This rule applies to all life insurance and accident and health insurance sold in connection with loans or other credit transactions, except such insurance sold in connection with a loan or other credit transaction of more than 10 years’ duration, and except for such insurance the issuance of which is an isolated transaction on the part of the insurer not related to an agreement or plan for insuring debtors of the creditor.
 [13.18.2.2 NMAC – Rp, 13.18.2.2 NMAC, 3/11/2025]

13.18.2.3 STATUTORY AUTHORITY: Sections 59A-2-9, and 59A-25-1 to 59A-25-14 NMSA 1978.

[13.18.2.3 NMAC – Rp, 13.18.2.3 NMAC, 3/11/2025]

13.18.2.4 DURATION: Permanent.
 [13.18.2.4 NMAC - Rp, 13.18.2.4 NMAC, 3/11/2025]

13.18.2.5 EFFECTIVE DATE: March 11, 2025, unless a later date is cited at the end of a section.
 [13.18.2.5 NMAC - Rp, 13.18.2.5 NMAC, 3/11/2025]

13.18.2.6 OBJECTIVE: The purpose of this rule is to implement the Law for Regulation of Credit Life Insurance and Credit Health Insurance, Sections 59A-25-1 to 59A-25-14 NMSA 1978.
 [13.18.2.6 NMAC - Rp, 13.18.2.6 NMAC, 3/11/2025]

13.18.2.7 DEFINITIONS:
A. “Account” means the aggregate credit life insurance or credit accident and health coverage for a single plan of insurance for a single class of business written through a single creditor, or written through more than one creditor under common control or ownership, by the insurer, whether coverage is written on a group or individual basis.

B. “Average number of life years” means the average of the number of group certificates or individual policies in force each month during the experience period (without regard to multiple coverage) times the number of years in the experience period.

C. “Case” means either a single account case or a multiple account case as follows.

(1) Single account case means an account that is at least twenty-five percent credible or, at the option of the insurer, any

higher percentage as determined by the credibility table. An insurer exercising this option must notify the superintendent, in writing, of the credibility factor it will use to define a single account case. Once the superintendent is so notified, the credibility factor will remain in effect for the insurer until a different election has been filed in writing by the insurer and approved by the superintendent.

(2) Multiple account case means a combination of all the insurer’s accounts of the same plan of insurance and class of business which combination has experience in this state, excluding all single account cases defined in (1) above, or with the approval of the superintendent, multiple account case also means two or more accounts of the insurer having like underwriting characteristics which are combined by the insurer for premium rating purposes, excluding all single account cases defined in (1) above and other multiple account cases defined above.

D. “Claims incurred” means the liability resulting from the happening of the contingency insured against, whether paid, reported, not reported or resisted on accounting dates, valued by the date of accounts and or amounts, excluding claims expenses, sufficient to discharge the company from all liability.

E. “Class of business” means one of the following determined by the source of the business:

(1) credit unions;

(2) commercial banks and savings and loan association;

(3) finance companies;

(4) motor vehicle dealers;

(5) other sales
finance;
(6) production
credit associations;
(7) bank
agricultural loans; or
(8) all others.

F. “Credibility factor” means the degree to which the past experience of a case can be expected to occur in the future. The credibility factor is based either on the average number of life years or the incurred claim count during the experience period as shown in the credibility table below. The insurer shall notify the superintendent, in writing, which of these two methods it will use in measuring credibility. Once the superintendent is so notified, the method will remain in effect for the insurer until a change has been filed and approved by the superintendent.

G. “Credit accident health insurance” has the same meaning as defined in Subsection B of Section 59A-25-3 NMSA 1978.

H. “Credit life insurance” has the same meaning as defined in Subsection A of Section 59A-25-3 NMSA 1978.

I. “Credit transaction” has the meaning as defined in Subsection D of Section 59A-25-3 NMSA 1978.

J. “Creditor” has the same meaning as defined in Subsection C of Section 59A-25-3 NMSA 1978.

K. “Debtor” has the same meaning as defined in Subsection E of Section 59A-25-3 NMSA 1978.

L. “Earned premium” means premium earned during the experience period at the presumptive rate.

M. “Experience” means the earned premium and incurred claims for a single or multiple account case. Experience will be the most recent experience in this state for a plan of insurance of a class of business, and may include the experience of the case while with a prior insurer to the extent necessary to achieve credibility.

N. “Experience period” means the period of time for which experience is reported, but not for a period longer than three years.

O. “Incurred claims” means the total claims incurred during the experience period.

P. “Incurred claim count” means the number of claims incurred for the case during the experience period. This means the total number of claims reported during the experience period (whether paid or in the process of payment) plus any incurred but not reported at the end of the experience period less the number of claims incurred but not reported at the beginning of the experience period. If a debtor has been issued more than one certificate for the same plan of insurance, only one claim is counted. If a debtor receives disability benefits, only the initial claim payment for that period of disability is counted.

Q. “Indebtedness” has the same meaning as defined in Subsection F of Section 59A-25-3 NMSA 1978.

R. “OSI” means the office of superintendent of insurance.

S. “Open-end credit” means consumer credit extended by a creditor under a plan in which:

(1) the creditor reasonably contemplates repeated transactions;

(2) the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and

(3) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

T. “Plan of insurance” means a plan of credit life insurance or a plan of credit accident and health insurance for which rates are prescribed in 13.18.2.18 NMAC or 13.18.2.26 NMAC.

U. “Premiums earned” means the total gross premiums which become due the insurance company, adjusted only to reflect premiums refunded or

adjusted on account of termination of coverage, appropriately adjusted for charges in unearned premiums. Unearned premiums, for the purpose of determining premiums earned shall be calculated as described in 13.18.2.35 NMAC for the purpose of determining refunds.

V. “Superintendent” means the superintendent of insurance or designee.
[13.18.2.7 NMAC - Rp, 13.18.2.7 NMAC, 3/11/2025]

13.18.2.8 TERMINATION UPON DISCHARGE OF

INDEBTEDNESS: Each individual policy or group certificate of credit life insurance or credit accident and health insurance delivered or issued for delivery in this state shall, in addition to the other requirements of law, contain a statement indicating that upon discharge of the indebtedness the insurance shall be terminated, but without prejudice to any claim originating prior to such termination, and that in all cases of termination prior to scheduled maturity, a refund of any unearned premium paid by or charged to the debtor for insurance shall be made in accordance with the appropriate formula set forth in 13.18.2.35 NMAC. Such refund shall be paid or credited to the debtor or paid to the second beneficiary if the debtor is not living. No such refund is required if the total amount of the refund is three dollars (\$3.00) or less.

[13.18.2.8 NMAC - Rp, 13.18.2.8 NMAC, 3/11/2025]

13.18.2.9 CONTINUATION OF ACCIDENT AND HEALTH

INSURANCE BENEFITS: If an accident and health insurance claim is in progress at the time of discharge of indebtedness, such claim shall continue during the originally scheduled term of insurance, as if there has been no such discharge of indebtedness.

[13.18.2.9 NMAC - Rp, 13.18.2.9 NMAC, 3/11/2025]

13.18.2.10 REFUND OF PREMIUMS:

A. Upon the termination of such continuing claim within the original scheduled term of insurance a refund shall be made of any then unearned premium. If, however, during the pendency of an accident and health insurance claim the insurer elects to prepay and discharge the full remaining balance thereon immediately in one payment, the accident and health premium paid or then due and payable to the insurer is earned and no refund is required.

B. In the case of termination of credit life insurance in which death benefits are not payable due to the exclusions in the policy, the insurer will refund the unearned premium in accordance with 13.18.2.35 NMAC. In the case of termination of credit life insurance by payment of death benefits, the life insurance premiums paid or then due and payable to the insurer are deemed earned and no refund thereof is required; however, in such instances the accident and health premium is not deemed earned and shall be refunded to the second beneficiary in accordance with 13.18.2.35 NMAC. [13.18.2.10 NMAC - Rp, 13.18.2.10 NMAC, 3/11/2025]

13.18.2.11 PAYMENTS OF BENEFITS TO THE INSURED:

A. Excess benefit checks or drafts made in accordance with Subsection B of Section 59A-25-7 NMSA 1978 shall be delivered only by the insurer or, at the option of the insurer, by the creditor. In any case, the insurer shall be responsible for the delivery of such excess benefit checks or drafts. Electronic funds transfers may be used.

B. The creditor agent or group policyholder shall not require that any benefit be applied to the reduction of any indebtedness other than the indebtedness in connection with which the insurance was written.

C. Notice of payments under credit life insurance shall be provided to the insureds' estate. The insured shall be provided notice of initiation of benefits under a credit accident and health insurance policy

along with a statement that such benefits will continue while the insured is disabled under the terms of the insurance policy. The insurer shall be responsible for such notice; however, such duty may be delegated to the creditor provided the insurer maintains the responsibility for seeing that these notice requirements are met.

D. Benefit checks or drafts payable to a beneficiary or an insured may not be offset by any insurer against amounts due from a creditor or an agent to the insurer or anyone acting on behalf of the insurer unless the benefit check or draft is endorsed by the beneficiary or the insured to whom it was made payable. [13.18.2.11 NMAC - Rp, 13.18.2.11 NMAC, 3/11/2025]

13.18.2.12 POLICY PROVISIONS:

A. The policy or certificate shall not contain provisions which would encourage misrepresentation or are unjust, unfair, inequitable, misleading, deceptive, or contrary to the law of this state.

B. Provisions in individual policies or group certificates pertaining to underwriting rules, conditions of eligibility or issue, or maximum amounts or terms of insurance may be used only to determine initial eligibility and may not, except as provided herein, be used as the basis for the termination or reduction of coverage or the denial of claims.

C. The policy may state that if coverage is issued in excess of a maximum amount or term limitation, the insurer has the right, within 90 days of effective date of coverage, to reduce the excess coverage and refund the charge for excess insurance, or terminate the coverage and refund the full charge for insurance, provided such adjustment is accomplished and the appropriate refund is made prior to the incurred date of any claim under such coverage.

D. The policy may state that if a debtor exceeds the

eligibility age defined in Subsection B of 13.18.2.22 NMAC for credit life and Subsection D of 13.18.2.27 NMAC for credit accident and health, and has not incorrectly stated his or her age in writing, and the coverage is issued in error, the insurer has the right, within ninety days of the effective date of coverage, to terminate the coverage and refund the full charge for insurance, provided such termination is accomplished and the appropriate refund is made prior to the incurred date of any claim under such coverage.

E. Coverage issued in connection with open-end transactions may contain provisions limiting the maximum amount of insurance which may become effective thereunder, and may contain provisions for automatic termination of coverage upon the attainment of a specified age of 72.

F. Nothing herein is intended to preclude an insurer, during the contestable period, from contesting coverage on the basis of a material misstatement by a debtor, subject to the requirement that the misstatement must be contained in a written statement signed by the debtor, and a copy of the statement must be furnished to the debtor or to his or her beneficiary.

[13.18.2.12 NMAC - Rp, 13.18.2.12 NMAC, 3/11/2025]

13.18.2.13 INSURANCE FOR PERIODS BEYOND PAYMENT PERIOD OF THE POLICY:

A. If a group certificate of insurance is issued to a debtor under any plan charging the debtor an identifiable amount for insurance for a period of time greater than that of the shortest premium payment period of the group policy issued to the creditor, the following rules shall apply.

B. The certificate shall in addition to all other requirements of this rule and the laws of this state, clearly and prominently set forth that:

(1) the creditor alone is liable for such excess charges as are unearned;

(2) the insurance company is not liable for

such excess unearned charges not received;

(3) the liability of the insurance company for the benefit is on a month to month basis, or otherwise as set out in the group policy of insurance;

(4) the coverage may be terminated by the insurance company or the creditor upon thirty days written notice to the debtor;

(5) the insurer is not liable for claims beyond such interval; and

(6) the certificate shall be so phrased as not to violate the public policy of the state of New Mexico not to indicate to the ordinary debtor that the insurance coverage had been provided commensurate to the identifiable charge appearing upon the certificate for the full term of the indebtedness nor that the insurer would be obligated to the debtor for any such excess unearned charges.

[13.18.2.13 NMAC - Rp, 13.18.2.13 NMAC, 3/11//2025]

13.18.2.14 GROUP POLICY TERMINATION PROVISIONS:

The following provisions apply to termination of coverage under a group policy.

A. If a debtor is covered by a group credit insurance policy providing for the payment of a single premium to the insurer, the master policy and certificate shall provide that in the event of termination of the group policy for any reason, insurance coverage with respect to any debtor then insured under such policy shall be continued for the entire period for which the single premium has been paid, subject to the provisions of the policy relative to early termination of a debtor's insurance.

B. If a debtor is covered by a group credit insurance policy providing for payment of premium to the insurer on a monthly outstanding balance basis, then the policy and certificate shall provide that, in the event of termination of such group policy for any reason, the

insured debtor shall be given written notice that coverage will continue for 30 days from the date of such notice, except where replacement of the coverage by the same or another insurer in the same or greater amount takes place without interruption of coverage and a new certificate reflecting such replacement coverage is delivered to such debtor. The notice of termination required by this paragraph shall be given by the insurer or, at the option of the insurer, by the creditor.

[13.18.2.14 NMAC - Rp, 13.18.2.14 NMAC, 3/11/2025]

13.18.2.15 INSURED FINANCE CHARGES, ETC: If the creditor adds identifiable insurance charge or premiums for credit insurance to the indebtedness, and any direct or indirect finance, carrying credit or service charge is made to the debtor on such insurance charge or premiums, the charge to the debtor shall be of the same mode and in an amount not to exceed the insurer's charge.

[13.18.2.15 NMAC - Rp, 13.18.2.15 NMAC, 3/11/2025]

13.18.2.16 OPEN END TRANSACTIONS: The following rules shall apply to open-end transaction forms.

A. The policy and certificate must be identified when used for open-end transactions by either a form number followed by the suffix (25-OE) or a check-off block and may be used for coverage of any other types of indebtedness if previously approved by the superintendent.

B. The premiums paid by the creditor and any insurance charges paid by the debtor for such insurance must be at the same mode.

C. If the insurer imposes conditions of insurability for an increase in coverage, then the policy must state such conditions. The conditions must be consistent with 13.18.2.25 NMAC and 13.18.2.28 NMAC of this rule.

D. If the disability benefit for an open-end indebtedness

is based upon a minimum payment, then the method of determining the minimum payment must be stated in the policy.

[13.18.2.16 NMAC - Rp, 13.18.2.16 NMAC, 3/11//2025]

13.18.2.17 FILING OF FORMS AND RATES:

A. Every insurance company, when submitting a schedule of rates for consideration by the superintendent of insurance, shall identify the rates to be used with the policy form submitted for approval. In the alternative, specific reference in the case of each submission shall be made to the particular schedule of rates, or portions thereof, which are applicable to the specific policy form. The face and face page of every form or schedule submitted to the superintendent of insurance for his consideration under Article 25, New Mexico Insurance Code, shall have added to its identifying number the additional identification (25). Such additional identification shall appear on issued copies of such forms.

B. Tests for reasonableness of premiums.

(1) The benefits of credit life insurance, individual or group, shall be considered to be reasonable in relation to the premium charged if it can reasonably be anticipated that a loss ratio of claims incurred to premiums earned of not less than fifty-five percent will be developed.

(2) The benefits of credit accident and health insurance, individual or group, shall be considered to be reasonable in relation to the premiums charged if it can reasonably be anticipated that a loss ratio of claims incurred to premiums earned of not less than fifty-five percent will be developed.

C. Any individual policy, application, group policy, group certificate, or notice or proposed insurance shall be in full compliance with the law and this rule.

D. Any insurer contracting with creditor policyholders, agents, general agents, sub-agents, or any other

representative(s) who in the aggregate are paid based upon the production of credit life or credit accident and health insurance premiums, individual or group, if the compensation is based upon production of such insurance where the aggregate of all such compensation exceeds forty-five percent of the aggregate premiums within a calendar year shall be presumed by the superintendent to be in automatic violation of the required minimum loss ratios stated in this rule without the need of any other proof.

E. Each violation of the minimum loss ratios required by now Paragraph (1) of Subsection B of 13.18.2.17 NMAC for credit life insurance or Paragraph (2) of Subsection B of 13.18.2.17 NMAC for credit accident and health insurance that occurs due to compensation exceeding the amount set out in Subsection D of 13.18.2.17 NMAC is subject to the penalties of Section 59A-1-18 NMSA 1978.

F. The prima facie rates will be revised periodically as necessary in a bulletin issued by the superintendent.
[13.18.2.17 NMAC - Rp, 13.18.2.17 NMAC, 3/11/2025]

13.18.2.18 PRESUMPTIVELY ACCEPTABLE CREDIT LIFE INSURANCE PREMIUMS (PRIMA FACIE RATES): The superintendent of insurance may presume (subject, however, to a rebuttal of the presumption) that the benefits of a credit life insurance policy are reasonable in relation to the premium charged if the premium rate for death benefits as filed does not exceed an amount equal, or actuarially equivalent, to the following rates:

A. Coverage on a single life provided on the outstanding indebtedness basis will be determined by the superintendent as necessary via bulletin, by an amount per month per \$1,000.00 of outstanding balance indebtedness.

B. Coverage on a single life on the single premium basis will be determined by the superintendent as necessary via bulletin, by:

(1) an amount per year of coverage per \$100.00 of initial insured indebtedness for all credit transactions when the insured indebtedness is payable in substantially equal monthly installments during the term of coverage; and

(2) an amount per year of coverage per \$100.00 of level life insurance where the amount of insured indebtedness remains level during the term of coverage and is repayable in a single sum at the end of the term.

C. Coverage on joint lives on the outstanding indebtedness basis will be determined by the superintendent as necessary via bulletin, by an amount per month per \$1,000.00 of outstanding balance indebtedness.

D. Coverage for joint lives on the single premium basis will be determined by the superintendent as necessary via bulletin, by:

(1) an amount per year of coverage per \$100.00 of initial insured indebtedness for all credit transactions when the insured indebtedness is repayable in substantially equal monthly installments during the term of coverage; and

(2) an amount per year of coverage per \$100.00 of level life insurance where the amount of insured indebtedness remains level during the term of coverage and is repayable in a single sum at the end of the term.

[13.18.2.18 NMAC - Rp, 13.18.2.18 NMAC, 3/11/2025]

13.18.2.19 USE OF JOINT CREDIT LIFE INSURANCE:

Joint lives as used in Subsections C and D of 13.18.2.18 NMAC above means only spouses or business partners, and such person must be jointly and severally liable for repayment of the single indebtedness and be joint signers of the instrument of indebtedness. Endorsers and guarantors are not eligible for credit insurance coverage. Joint life coverage shall not be written covering more than two lives. Jointly indebted

persons shall not both be covered separately at single life rates.
[13.18.2.19 NMAC - Rp, 13.18.2.19 NMAC, 3/11/2025]

13.18.2.20 COMPOSITE SINGLE JOINT OUTSTANDING BALANCE RATE (PRIMA FACIE):

A. Joint life rates may not be charged for single life coverage, except that a composite single joint outstanding balance life rate may be used for open-end accounts where more than fifty percent of a creditor's open-end accounts are held jointly. Such rate shall be completed as follows and will be determined by the superintendent as necessary via bulletin, by: COB = an amount of (PSA) - an amount of (PJA), where:

(1) COB = composite outstanding balance life rate per \$1,000 per month;

(2) PSA = percentage of open-end accounts held by a single person expressed as a decimal fraction (for the first year, use all accounts; for subsequent years, use insured accounts);

(3) PJA = percentage of revolving accounts held jointly expressed as a decimal fraction (for the first year, use all accounts; for subsequent years, use insured accounts).

B. Composite rates shall be recomputed when the percentage of insured account jointly held drops by more than ten percentage points below the percentage used to compute the composite rate. Composite rates shall be discontinued when the percentage of insured accounts jointly held drops below fifty percent. Recomputation or discontinuance shall be effective within six months of the end of the policy year in which the changes requiring such action occurred.
[13.18.2.20 NMAC - Rp, 13.18.2.20, 3/11/2025]

13.18.2.21 ACTUARIAL EQUIVALENT PREMIUM FOR UNEQUAL MONTHLY INSTALLMENTS: Premiums

and premium rates for insurance concerning obligations payable in other than substantially equal monthly installments during the period of coverage, or for coverage which declines on other than a straight line basis, shall be determined in a manner which produces a rate not exceeding the actuarial equivalent of the foregoing rates.

[13.18.2.21 NMAC - Rp, 13.18.2.21 NMAC, 3/11/2025]

13.18.2.22 INSURABILITY REQUIREMENTS PERMITTED:

The presumptively reasonable premiums for credit life insurance shall apply only to plans containing provisions consistent with the following.

A. That the credit life insurance contract may require submission of the debtor's written and signed evidence of the debtor's insurability or that the debtor be in gainful employment at the time the insurance becomes effective, or both, on a form filed with and approved by the superintendent of insurance, and that such contract contains no conditions for validity of insurance more restrictive than contestability based on material misrepresentation and no exclusions other than for suicide, flight in nonscheduled aircraft, and war or military hazard.

B. The insurer must require and be responsible in its contract with the group policyholder and the creditor that proof be retained for three years following the offer by the creditor, group policyholder or the insurer and made available for examination by the superintendent that credit life insurance coverage is provided or offered to all debtors not older than the applicable age limit without age discrimination. The applicable age limit for credit life using presumptively acceptable credit life premiums shall not be less than the attained age of 70 years if such limit applies to the age when the insurance is issued, or not less than the attained age of 72 if such limit applies to the age on the scheduled maturity date of debt. Coverage issued in connection with open-end

transactions may contain a provision for automatic termination of coverage upon attainment of a specified age, which shall not be less than 72.

The use of any other age limits will require that premiums be filed under the deviation procedures in this rule. [13.18.2.22 NMAC - Rp, 13.18.2.22 NMAC, 3/11/2025]

13.18.2.23 PREMIUM RATE ADJUSTMENTS FOR AGE BRACKETS:

If the premiums are determined according to the age of the insured debtor or by age brackets, appropriate adjustments in the rate and premium may be made according to age if such adjustments are actuarially consistent with the foregoing rates when applied regardless of actual age at issue and if such adjustments produce an aggregate premium not greater than that produced by the foregoing rates, and such rates and actuarially consistent computations are filed with and approved by the superintendent of insurance.

[13.18.2.23 NMAC - Rp, 13.18.2.23 NMAC, 3/11/2025]

13.18.2.24 PREMIUM RATES FOR OTHER LAWFUL BENEFITS:

If a contract of insurance includes other lawful benefit or benefits for which standards of reasonableness of benefits in relation to premiums are not elsewhere in this rule determined or described, any premium charged therefor shall be shown to the satisfaction of the superintendent of insurance to be based upon credible data and shall meet the basic test of reasonableness described in Subsection B of 13.18.2.17 NMAC of this rule.

[13.18.2.24 NMAC - Rp, 13.18.2.24 NMAC, 3/11/2025]

13.18.2.25 INSURABILITY REQUIREMENTS PERMITTED FOR INCREASED OPEN-ENDED CREDIT LIFE INSURANCE:

If a debtor has credit life insurance under an open-end outstanding balance policy, the policy may provide that an increase in the amount of insurance

because of an increase in the amount of indebtedness will be subject to conditions of insurability. Any policy provision regarding evidence of insurability for an increase will comply with the following.

A. No charge for or cost of any such additional coverage will be incurred by any debtor, except by voluntary acceptance of the coverage and submission of such lawful statement as is required by the insurer. Voluntary acceptance will not be deemed to have occurred except by a specific positive written response by the debtor to a notice of availability of the coverage; it may not be automatic subject to an act of rejection or notification by the debtor.

B. The effective date of any such increase in coverage may be either of the following:

(1) the date on which the indebtedness is increased. In this event, however, if specific positive written response is not received within 75 days of such increase, or if such response is not satisfactory to the insurer, then the additional insurance shall not be effective, and any premium which has been paid therefore shall be refunded or credited to the account of the debtor not more than 90 days after the increase in indebtedness; any claim which occurs when positive response has not been received, but before the date by which such response must be received, will be paid if the debtor was eligible for the insurance under the terms of the policy; if the premium has been paid, but not refunded or credited to the account of the debtor not more than 90 days after the increase in indebtedness, the insurance shall be effective regardless of the eligibility of the debtor; or

(2) the date on which specific positive written response satisfactory to the insurer is received by the insurer;

(3) nothing herein shall preclude a policy provision prohibiting any increases in the amount of insurance while the insured is disabled.

[13.18.2.25 NMAC - Rp, 13.18.2.25 NMAC, 3/11/2025]

13.18.2.26 PRESUMPTIVELY ACCEPTABLE RELATION OF CREDIT ACCIDENT AND HEALTH BENEFITS TO PREMIUMS (PRIMA FACIE):

A. The superintendent may presume (subject, however, to a rebuttal of the presumption) that the benefits of an accident and health insurance form are reasonable in relation to the premium charged if the premium rate schedule for such accident and health benefits, as filed, does not exceed an amount equal to, or actuarially consistent with the following rate structure where rates will be determined by the superintendent as necessary via bulletin, by:

- (1) Original number of equal monthly installments;
- (2) Benefits payable after the 14th day of disability indicating:
 - (a) Retroactive; and
 - (b) Non-retroactive;
- (3) Benefits payable after the 30th day of disability indicating:
 - (a) Retroactive; and
 - (b) Non-retroactive.

B. A monthly premium will be determined by the superintendent as necessary via bulletin, by an amount per \$100 of outstanding balance may be presumed reasonable for a disability benefit which consists of a lump sum payment of the amount of indebtedness covered at the beginning of disability, such payment to be made after disability has continued for 90 consecutive days. A daily benefit does not apply to this coverage.

C. Except for credit accident and health insurance sold in connection with open-end loans, the rates for premiums payable on other than a single premium basis shall be actuarially consistent with the rates set forth in Subsection A of 13.18.2.26 NMAC above. Such premium rates

will be deemed actuarially consistent with the foregoing single premium rates if such rates produce a total premium for any duration and amount of insurance equal to the corresponding single premium for the same duration and amount of insurance. Rates computed according to the following formula are presumed to satisfy this requirement: $Op = 20SPn/n+1$, where:

- (1) $SPn =$ single premium rate per \$100 of initial indebtedness repayable in "n" installments;
- (2) $Op =$ monthly outstanding balance premium rate per \$1,000;
- (3) $n =$ original repayment period, in months.

D. In credit accident and health insurance sold in connection with open-end transactions or monthly closed-end transactions, the superintendent may presume (subject, however, to a rebuttal of the presumption) that the benefits are reasonable in relation to the premium charged if the premium rate schedule for such accident and health insurance transactions does not exceed an amount equal to, or actuarially consistent with, the following rates that will be determined by the superintendent as necessary via bulletin, by:

- (1) benefits payable after the 14th day of disability:
 - (a) retroactive to first day: an amount per month per \$100 of outstanding balance insured indebtedness;
 - (b) non-retroactive: an amount per month per \$100 of outstanding balance insured indebtedness;
- (2) benefits payable after the 30th day of disability:
 - (a) retroactive to first day: an amount per month per \$100 of outstanding balance insured indebtedness;
 - (b) non-retroactive: an amount per month per \$100 of outstanding balance insured indebtedness.

E. The premium in Paragraphs (1) and (2) of Subsection D of 13.18.2.26 NMAC above are based upon the assumption that benefits will be paid as long as there is an outstanding balance and the insured is disabled. If there is a provision that benefit payment may cease during the disability of the insured before the indebtedness outstanding on the date of disability, including interest on such indebtedness, is retired, then these premiums will be adjusted to reflect, in the opinion of the superintendent of insurance, the effect of such provision.

F. If a contract of insurance includes other lawful benefit or benefits for which standards of reasonableness of benefits in relation to premium are not elsewhere in this rule determined or described, any premium charged therefor shall be shown to the satisfaction of the superintendent to be based upon credible data and shall meet the basic tests of reasonableness described in Paragraphs (1) and (2) of Subsection B of 13.18.2.17 NMAC. [13.18.2.26 NMAC - Rp, 13.18.2.26 NMAC, 3/11/2025]

13.18.2.27 STANDARD OF BENEFITS FOR CREDIT ACCIDENT AND HEALTH INSURANCE:

The standards and principles for the application of the rates set forth for credit accident and health insurance are as follows.

A. The initial amount of insured indebtedness to which the rate is applied shall not exceed the aggregate of the insured portion of the periodic scheduled unpaid installments of the indebtedness.

B. Except for open-end accounts, the indebtedness must be payable in substantially equal monthly or other periodic installments during the period of coverage.

C. The credit accident and health insurance contract may require written and signed evidence of insurability and, where offered, shall be offered to all eligible debtors and shall contain:

(1) no provision for validity of insurance more restrictive than contestability based on material misrepresentation; an insurer may not rely on material misrepresentation as a defense against the payment of a claim unless the insurer required the insured to sign a written statement in which the alleged misrepresentation was made;

(2) no provision which excludes or restricts liability in the event of disability caused in a specific manner or under specific condition, except that it may contain provisions excluding or restricting coverage in the event of:

(a) elective abortion;

(b) normal pregnancy, except complications of pregnancy;

(c) intentionally self-inflicted injuries;

(d) flight in nonscheduled aircraft;

(e) loss resulting from war or military service;

(3) provision for a daily benefit equal in amount to one-thirtieth (or other applicable fraction) of the scheduled monthly (or other specified mode of installment) payment or indebtedness;

(4) for the purpose of total disability insurance, a definition of total disability which provides coverage during the first 12 months of such disability even though the insured is able to perform an occupation other than the one he held at the time such disability occurred; during the first 12 months of each disability, the definition of total disability must relate such disability to the occupation of the debtor at the time the disability commenced; after disability continues for more than 12 months, the definition of total disability may relate such continuing disability to the inability to perform any occupation for which the debtor is reasonably fitted by education, training or experience.

D. The credit accident and health insurance must be offered to all debtors regardless of age, or

to all debtors not older than the applicable age limit. The applicable age limit shall not be less than the attained age of 66 years if such limit applies to the age when the insurance is issued, or not less than attained age 67 if such limit applies to the age on the scheduled maturity date of the debt. Coverage issued in connection with open-end transactions may contain a provision for the automatic termination of coverage upon the attainment of a specified age, which shall not be less than 67. The use of any other age limits will require that premiums be filed under the deviation procedures in this rule.

E. There shall be no provisions excluding or denying a claim for disability under credit accident and health insurance resulting from pre-existing conditions except for those conditions for which the insured debtor received medical diagnosis or treatment within six months immediately preceding the effective date of the debtor's coverage and which caused a period of loss within six months following the effective date of coverage; provided, however, that any subsequent period of disability resulting from such condition that commences or recommences more than six months after the effective date of the coverage shall be covered under the provisions of the policy. The effective date for each part of the insurance attributable to a different advance or charge to the account is the date on which the advance or charge is posted to the account of the debtor.

[13.18.2.27 NMAC - Rp, 13.18.2.27 NMAC, 3/11/2025]

13.18.2.28 INCREASES IN OUTSTANDING BALANCE OPEN-END COVERAGE:

A. If a debtor has credit accident and health insurance under an open-end outstanding balance policy, the policy may provide that an increase in the insurance benefits because of an increase in the indebtedness will be subject to conditions of insurability. Any policy provision regarding evidence of insurability

for an increase will comply with the following.

(1) No charge for or cost of any such additional coverage will be incurred by a debtor except by voluntary acceptance of the coverage and submission of such lawful statement as is required by the insurer. Voluntary acceptance will not be deemed to have occurred except by a specific positive written response by the debtor to a notice of availability of the coverage; it may not be made automatic subject to an act of a rejection or notification by the debtor.

(2) The effective date of any such increase in coverage may be either of the following:

(a) the date on which the indebtedness is increased: In this event, however, if specific positive response is not received within 75 days of such increase, or if such response is not satisfactory to the insurer, then the additional insurance shall not be effective, and any premium which has been paid therefore shall be refunded or credited to the account of the debtor not more than 90 days after the increase in indebtedness; any claim which occurs when specific positive written response has not been received, but before the date by which such response must be received, will be paid if the debtor was eligible for the insurance under the terms of the policy; if the premium has been paid but not refunded or credited to the account of the debtor within 90 days after the increase in indebtedness the insurance shall be effective regardless of the eligibility of the debtor; or

(b) the date on which specific positive written response satisfactory to the insurer is received by the insurer.

B. Nothing herein shall preclude a policy provision prohibiting any increases in the amount of insurance while the debtor is disabled.

[13.18.2.28 NMAC - Rp, 13.18.2.28 NMAC, 3/11/2025]

13.18.2.29 DEVIATION PROCEDURES:

- A.** Notwithstanding the determination of presumptively acceptable maximum rates which are reasonable in relation to the benefits of a policy providing the coverage to which the rates are applicable:
- (1)** an insurer who has experienced excessive loss ratios for a case consisting of a single account or combination of accounts, as account is defined herein, will be permitted, at its own request, to adjust the premium rate or premium rate schedule for such case in accordance with the deviation procedures set out in the following; and
 - (2)** an insurer who fails, on upward deviated accounts, or downward deviated accounts that modify the age limits downward as allowed in this rule to develop the minimum loss ratios as defined in Subsection B of 13.18.2.17 NMAC, for a case consisting of a single account or combination of accounts, as accounts is defined in this rule, will be required by the superintendent to adjust the premium rate or premium rate schedule for such case in accordance with the deviation procedures in this rule.
- B.** A request for a deviated rate must be made in writing and shall include all of the information which is required under this rule.
- C.** It must be accompanied by a list of the creditors whose experience is the basis for such request, and must be attested to by an officer of the insurer. The use of any deviation approved by the superintendent is limited to those creditors whose names appear on such list. No rate deviation may be used unless and until approved by the superintendent in writing. Any request for deviated presumptive rates shall be submitted to the superintendent in the manner prescribed on Form CI-DRF.
 [13.18.2.29 NMAC - Rp, 13.18.2.29 NMAC, 3/11/2025]

13.18.2.30 DEVIATION CREDIBILITY TABLE:

| CREDIT LIFE | AVERAGE NUMBER OF LIFE YEARS | | INCURRED CLAIM COUNT | CREDIBILITY FACTOR |
|-------------|------------------------------------------------------------------|--------|----------------------|--------------------|
| | CREDIT ACCIDENT AND HEALTH PLANS RETROACTIVE AND NON-RETROACTIVE | | | |
| | 14 DAY | 30 Day | | |
| 1 | 1 | 1 | 1 | .00 |
| 1,800 | 141 | 209 | 9 | .25 |
| 2,400 | 188 | 279 | 12 | .30 |
| 3,000 | 234 | 349 | 15 | .35 |
| 3,600 | 281 | 419 | 18 | .40 |
| 4,600 | 359 | 535 | 23 | .45 |
| 5,600 | 438 | 651 | 28 | .50 |
| 6,600 | 516 | 767 | 33 | .55 |
| 7,600 | 394 | 884 | 38 | .60 |
| 9,600 | 750 | 1,116 | 48 | .65 |
| 11,600 | 906 | 1,349 | 58 | .70 |
| 14,600 | 1,141 | 1,698 | 73 | .75 |
| 17,600 | 1,375 | 2,047 | 88 | .80 |
| 20,600 | 1,609 | 2,395 | 105 | .85 |
| 25,600 | 2,000 | 2,977 | 123 | .90 |
| 30,600 | 2,391 | 3,558 | 153 | .95 |
| 40,000 | 3,125 | 4,651 | 200 | 1.00 |

- A.** For credit life insurance, the currently charged premium rates will be considered the case rates if the single premium (or its equivalent) case rate per \$100 of initial amount of insured indebtedness repayable in 12 equal monthly installments as determined by the method described herein is within 5 percent of the corresponding premium under the currently charged premium rates for the case.
- B.** For credit accident and health insurance, the currently charged premium rates will be considered the

case rate if the case rate as determined by the method described herein is within five percent of the currently charged premium rates for the case.

C. The effective date for any rate deviation shall be no earlier than 90 days or later than 180 days after the date of approval in writing by the superintendent.

D. An upward or downward deviated single account case rate remains with the case, regardless of any change of insurers, and shall continue for a period equal to the experience period on which it was based, not to exceed three years.

E. For cases which are not of credible size, or have no experience, no deviation shall be made in the presumptive rates under these deviation procedures; except that nothing herein shall be construed as preventing any insurer from filing its rate schedules as otherwise provided in Article 25 of the New Mexico Insurance Code.

F. For purpose of this rule, if the coverage for a single creditor which qualifies as a case has been in force with the insurer for less than the experience period;

(1) the claim experience of the creditor while covered by any prior insurer shall be included to the extent necessary in determining the appropriate case ratios; and

(2) the experience considered in the determination of multiple state case rates shall be New Mexico experience unless the insurer makes the one-time election to use nationwide experience; the election to use only nationwide experience must be accompanied by a certification that the insurer uses the same nationwide basis in determining the case ratios in each state in which the case has experience; a grouping of states may be used subject to the same requirements of consistency and certification.

G. When submitting form CI-DRF as required herein, the insurer shall also file a schedule of new case rates, as determined by form CI-DRF.

H. Any request for deviated presumptive rates shall be submitted to the superintendent in the manner presented by the forms in 13.18.2.31 NMAC.

[13.18.2.30 NMAC - Rp, 13.18.2.30 NMAC, 3/11/2025]

13.18.2.31 FORM CI-DRF: PART A - GENERAL INFORMATION:

Company Code _____

Company Name _____

Creditor Name _____

This deviation request form must be completed separately for each plan of credit life or credit disability insurance written by the creditor or group of creditors requesting the deviation. Experience of accounts may be combined only within the same plan of benefits and class of business. If experience of accounts is combined, attach a list of those included.

Based on the Experience Period commencing _____ and ending _____.
 (month/day/year) (month/day/year)

Class of Business:

- (1) Credit Unions
- (2) Commercial Banks and Savings and Loan Associations
- (3) Finance Companies
- (4) Motor Vehicle Dealers
- (5) Other Sales Finance
- (6) Production Credit Association Bank Agricultural Loans
- (7) All Others

Plan of Benefits: Credit Life, Death Benefits Only
 Credit Disability
 _____ days
 _____ RETRO _____ NON RETRO

[13.18.2.31 NMAC - Rp, 13.18.2.31 NMAC, 3/11/2025]

13.18.2.32 FORM CI-DRF: PART B - CASE EXPERIENCE:

19__ 19__ 19__ 19__

1. Actual Earned Premiums _____

a. Net Written Premiums* _____

| | | | | |
|-------------------------------------------------------------------------|-------|-------|-------|-------|
| b. Premium Reserve Beginning of Period | _____ | _____ | _____ | _____ |
| c. Premium Reserve End of Period | _____ | _____ | _____ | _____ |
| d. Earned Premiums (a+b-c) | _____ | _____ | _____ | _____ |
| 2. Earned Premiums at Presumptive Rates | _____ | _____ | _____ | _____ |
| 3. Incurred Claims | | | | |
| a. Claims Paid | | | | |
| b. Unreported Claims, Beginning of Period | _____ | _____ | _____ | _____ |
| c. Unreported Claims, End of Period | _____ | _____ | _____ | _____ |
| d. Claim Reserve, Beginning of Period | _____ | _____ | _____ | _____ |
| e. Claim Reserve, End of Period | _____ | _____ | _____ | _____ |
| f. Incurred Claims, (a+b+c-d-e) | _____ | _____ | _____ | _____ |
| 4. Actual Loss Ratio for Case at Presumptive Rates: 3(f) [divided by] 2 | _____ | _____ | _____ | _____ |
| 5. Average Number of Life Years | _____ | _____ | _____ | _____ |
| 6. Incurred Claim Count** | _____ | _____ | _____ | _____ |

*Net written premiums are to be determined as Gross Premium written (before deductions for dividends and experience rating credits) less refunds on terminations.

**Entries on 5. and 6. should be based on the Credibility Table elected by the insurer.

[13.18.2.32 NMAC - Rp, 13.18.2.32 NMAC, 3/11/2025]

13.18.2.33 FORM CI-DRF: PART C - DETERMINATION OF DEVIATED PRESUMPTIVE CASE RATE:

A. Single account cases: If the account is one-hundred percent credible or if it is within the definition of single account case as filed by the insurer, the deviated presumptive case rate for the account will be determined by the appropriate formula set forth in Subsection C of 13.18.2.33 NMAC below.

B. Multiple account cases: If the account is in a multiple account case, the deviated presumptive case rate for the account will be the case rate for that multiple account case determined by the appropriate formula set forth in Subsection C of 13.18.2.33 NMAC below.

C. Calculation of deviated presumptive case rates.

(1) Symbols and definitions:

- (a) NCR = new case rate;
- (b) PFR = presumptive rate;
- (c) ALR = actual loss ratio for case at presumptive rate basis;
- (d) ELR = expected loss ratio at presumptive rate basis;
- (e) Z = credibility factor for case;
- (f) CLR = credibility adjusted case loss ratio at presumptive basis = $Z(ALR) = (1-Z)$

(ELR).

(2) New case rate: credit life insurance:

- (a) if CLR is greater than ELR, $NCR = PFR [1 + 1.1 \cdot (CLR - ELR)]$;
- (b) if CLR is less than ELR, $NCR = PFR [1 - (ELR - CLR)]$.

(3) New case rate: credit disability insurance:

- (a) if CLR is greater than ELR, $NCR = PFR [1 + 1.2 \cdot (CLR - ELR)]$;
- (b) if CLR is less than ELR, $NCR = PFR [1 - (ELR - CLR)]$.

[13.18.2.33 NMAC - Rp, 13.18.2.33 NMAC, 3/11/2025]

13.18.2.34 STATISTICAL DATA: Insurers writing credit life insurance and/or credit accident and health insurance in New Mexico shall keep statistical data in such form and manner as necessary to enable the superintendent to determine if rates are reasonable in relation to the benefits afforded by the various policy contracts. Every company shall file with the superintendent and the national association of insurance commissioner (NAIC) support and service offices, on or before the first of April of each year, statistics on these kinds of insurance for the year ending December 31 immediately preceding. Such statistics shall be filed on forms designated as the credit insurance supplement - annual statement blank approved by the NAIC unless modified by the superintendent.

[13.18.2.34 NMAC - Rp, 13.18.2.34 NMAC, 3/11/2025]

13.18.2.35 PREMIUM REFUNDS:

A. With respect to the policies issued and certificates delivered after the effective date of these rules.

- (1) The refund of an unearned amount paid by or charged to a debtor for reducing term credit life

insurance, or for credit accident and health insurance, on which charges to the debtor are payable by other than a single sum, and for level term credit life insurance, must be not less than the pro rata gross unearned amount charged.

(2) The refund of an unearned amount paid by or charged to a debtor for uniformly reducing term credit life insurance on which the insurance charges to the debtor are paid in single sum must not be less than the single premium for the scheduled remaining insured amount and the remaining term of coverage using the premium rate schedule applicable at the time the original premium was determined.

(3) The refund of an unearned amount paid by or charged to a debtor for credit life insurance which is neither level nor uniformly reducing, on which the insurance charges to the debtor are paid in a single sum, must be based upon a formula approved by the superintendent of insurance.

(4) The refund of an unearned amount paid by or charged to a debtor for credit accident and health insurance on which the insurance charges to the debtor are paid in a single sum must be not less than the mean of the pro rata gross unearned amount charged and the amount of unearned premium computed by the Rule of 78.

B. Upon termination of insurance prior to maturity, and in accordance with the refund formulas presented in this rule, and in accordance with the insurer's established refund procedures, each insured debtor shall receive from the insurer any refund or unearned identifiable insurance charge either in cash, or by check, electronic funds transfer, or credit to and against the insured debtor's indebtedness (provided that such credit shall be applied only to the indebtedness to which the insurance charges are attributable). Insurers shall be responsible for the establishment of procedures by which refunds or credits are to be made, and shall furnish to the creditors schedules for

refunds or credits to be made in the event of termination of insurance. Insurers also shall furnish instructions to creditors with respect to the duties in the making of such refunds or credits.

C. Where insurance charges or premiums were paid by or charged to the debtor and such funds are paid to the insurer, the insurer is responsible for making the refund to the debtor (or to the debtor's estate). Where discharge of the insurer's responsibility for completion of such refunds is delegated by the insurer to the creditor, the actions of such creditor will be deemed by the superintendent of insurance to be acts of the insurer.

D. The requirement for filing refund formulas will be satisfied if the formulas are set forth in the individual policy or group policy filed with the superintendent and not disapproved. If the refund formula, or part of the refund formula is the sum of the digits formula, commonly known as the Rule of 78, it shall be sufficient to so refer to such formula by either description in the policy.

E. A premium refund or credit need not be made if the amount of the refund is three dollars (\$3.00) or less.

F. In calculating such refunds, partial months may be treated as though the insurance had terminated on the last day of the premium month in which the insurance is terminated.

G. The insurer shall provide a statement of refund directly to the insured debtor. The statement of refund form shall:

(1) disclose, separately, the amount of credit life premium and the amount of credit disability premium being refunded; and

(2) provide a statement which will inform the insured debtor as to how the refund of premiums was disposed of or applied. [13.18.2.35 NMAC - Rp, 13.18.2.35 NMAC, 3/11/2025]

13.18.2.36 RESPONSIBILITIES AND

OBLIGATIONS OF INSURANCE COMPANIES: Each insurer transacting credit insurance business in this state shall in compliance with the laws of this state and this rule promulgated thereunder, be responsible for:

A. the approval, production, reproduction, amendment, and modification of its policies, certificates of insurance, and other insurance forms, including rate schedules, and for the issuance, cancellation, or termination of such policies, certificates, or forms;

B. the election and appointment of its agents and representatives;

C. the proper charge, collection, remittance, and refund of credit insurance premiums;

D. the receipt of copies of all certificates of insurance and other insurance forms issued in its name by its agents and representatives or the receipt of electronic or other data therefore which can be substantiated by certificates of insurance or other insurance forms;

E. the computation and maintenance of policy and claim liabilities in accordance with 13.18.2.42 NMAC; and

F. the investigation of claims or written complaints filed against the insurer and the payment, adjustment, settlement, or denial of such claims;

G. none of the foregoing responsibilities of the insurer may be delegated, nor may the performance of such responsibilities be assigned to any creditor or to any agent or representative selected and appointed by the insurer, except as provided in these rules.

[13.18.2.36 NMAC - Rp, 13.18.2.36 NMAC, 3/11/2025]

13.18.2.37 RESPONSIBILITIES AND OBLIGATIONS THAT MAY BE DELEGATED TO THE GROUP POLICY CREDITOR OR AGENT:

The insurer, by its group policy, may authorize the group policy creditor to issue certificates of group insurance or may authorize a legally appointed

insurance agent of the insurer to issue certificates of insurance or policies of insurance, and respectively, to collect the insurance charge under the group policy, or premium therefore under an individual policy, provided that the master group insurance policy with the creditor or agent's agreement with the agent under which such authority is granted shall require that:

A. the creditor issue such group certificate, or the agent issue such certificate of insurance or insurance policy in the name of the insurer, and payment of the respective policy premium shall be by a check payable to the insurer or by a deposit to an account of the insurer under the sole control of the insurer;

B. a copy of each certificate or policy so issued, or electronic or other data therefore which can be substantiated by such certificate or policy, together with the premium therefore, shall be delivered to the insurer within 30 days after the close of the calendar month in which the certificate or policy is issued;

C. refunds of unearned premiums shall be made in accordance with 13.18.2.35 NMAC of this rule;

D. no insurer may authorize, and no insurance agent or group policyholder, within their respective capacities, may issue any policy or certificate of insurance or collect any premium or insurance charge therefore or make any refund of premium except only pursuant to and in accordance with either a master group insurance policy or an agents' agreement in compliance with this rule;

E. any changes in the amount of coverage, premium or term of coverage after issuance of the original group certificate, a certificate of insurance or the insurance policy issued on a single premium basis shall cause the insurer to issue a new certificate or individual policy, a copy of which must be provided to the insured(s), along with a statement of additional charges or any credits or refunds in premiums; this includes any coverage changes in 13.18.2.12 NMAC;

F. copies of all records pertaining to each risk shall be provided to the insurer or be maintained for examination by the superintendent though the next examination period.

[13.18.2.37 NMAC - Rp, 13.18.2.37 NMAC, 3/11/2025]

13.18.2.38 CREDITOR MUST BE FIRST BENEFICIARY:

No group policy may be issued to other than a creditor. No first beneficiary may be designated except a creditor. No creditor may be designated as owner of the individual policy nor have any rights thereunder other than that of first beneficiary as specifically authorized by law.

[13.18.2.38 NMAC - Rp, 13.18.2.38 NMAC, 3/11/2025]

13.18.2.39 AUTHORIZED REPRESENTATIVES OF THE INSURER:

The insurer may designate or engage one or more representatives for the purpose of investigating or settling claims and complaints, processing production reports, calculating reserves, printing of approved forms, and providing other administrative services authorized by law, provided:

A. such services are performed under the supervision and direction of the insurer, and the insurer shall remain responsible for their proper performance;

B. the work product of representatives of the insurer are the property of the insurer and shall be available for examination by the superintendent, together with the supporting data used in their preparation;

C. all claims shall be promptly reported to the insurance company, or its designated claim representative, and all claims shall be settled as soon as reasonably possible and in accordance with the terms of the insurance contract.

[13.18.2.39 NMAC - Rp, 13.18.2.39 NMAC, 3/11/2025]

13.18.2.40 REQUIREMENTS FOR HANDLING CLAIMS:

A. The insurance

company shall establish an adequate claims register and claim files, which may be reviewed and examined by the superintendent of insurance.

B. Adequate proofs of loss must be in the possession of the insurance company at the time its funds are disbursed in payment of claims, except as provided in Subsection D of 13.18.2.40 NMAC below. Such proofs of loss shall include data sufficient for the insurer to determine proper amounts of any excess benefits payable to a beneficiary other than the creditor.

C. All claims shall be paid either by draft drawn on the insurer, electronic funds transfer, or check of the insurer to the specific beneficiary to whom payment of the claim is due.

D. No plan or arrangement shall be used whereby any person, firm, or corporation other than the insurer or its designated claim representatives shall be authorized to settle or adjust claims. The creditor shall not be designated as a claim representative for the insurer in settling or adjusting claims; however, a group policyholder may, by arrangement with the group insurer, draw drafts or checks or use electronic funds transfer for payment of claims due only to the group policyholder or other beneficiary, subject to audit and review by the insurer. Nothing in this section may be construed to relieve the insurance company of the responsibility for the proper settlement, adjustment and payment of all claims to proper beneficiaries in accordance with the terms of the insurance contract.

[13.18.2.40 NMAC - Rp, 13.18.2.40 NMAC, 3/11/2025]

13.18.2.41 CLAIM RESERVES:

A. The insurer shall set up adequate liabilities for claims for credit life and credit accident and health insurance, in addition to the policy reserves already described. Such liabilities shall be based upon appropriate consideration for each of the following categories:

(1) the liability for claims which are known to be due and payable, but which have not yet been paid;

(2) the reserve for continuing disability benefits which have been reported and on which future payments will be due during the continuance of this disability;

(3) the liability for claims which have been insured but not yet reported, with benefits now due;

(4) the reserve for disability benefits which are incurred but not yet reported, and on which future payments will be due during the continuance of this disability.

B. The company may rely upon credible experience developed by its own claim experience, industry wide experience, or any other available source which produces an adequate liability for claims.

[13.18.2.41 NMAC – Rp, 13.18.2.41 NMAC, 3/11/2025]

13.18.2.42 APPROVAL AND RE-FILING OF FORMS: Pursuant to Section 59A-25-8 NMSA 1978, all forms to be used in connection with credit life and/or credit accident and health insurance shall be filed by the insurer with the superintendent of insurance. Any such forms which were approved by the superintendent prior to the effective date of this rule shall be made to conform with the requirements of this rule and re-filed with the superintendent for approval within 180 days after the effective date of this rule. If an insurer fails to re-file within the prescribed period of time, the superintendent shall initiate actions to propose a withdrawal of that insurer's forms under Subsection D of Section 59A-25-8 NMSA 1978 and may take any other appropriate actions under the penalty provisions of the New Mexico Insurance Code to respond to the insurer's failure to comply with the lawful rule of the superintendent.

[13.18.2.42 NMAC - Rp, 13.18.2.42 NMAC, 3/11/2025]

13.18.2.43 PREEXISTING CONDITIONS ON CREDIT LIFE INSURANCE ON OPEN-ENDED CREDIT: There shall be no provisions excluding or denying a claim for death from pre-existing conditions, except that on insurance written in connection with open-end outstanding balance accounts, a provision will be permitted that excludes or denies a claim resulting from a medical condition for which the debtor received medical diagnosis or treatment within six months immediately preceding the effective date of coverage and which caused or substantially contributed to the death of the insured debtor within six months following the effective date of coverage. The effective date of coverage for each part of the insurance attributable to a different advance or charge to the account is the date on which the advance or charge is posted to the account.
[13.18.2.43 NMAC - Rp, 13.18.2.43 NMAC, 3/11/2025]

13.18.2.44 ADJUSTMENT OF PRESUMPTIVELY ACCEPTABLE CREDIT LIFE INSURANCE PREMIUMS: If for the calendar year 2000 as filed in the statistical statement, or following any even calendar year thereafter, the combined loss ratios of all insurers writing credit life insurance, individual or group, does not equal or exceed ninety percent of the loss ratio stated in Paragraph (1) of Subsection B of 13.18.2.17 NMAC then the credit life insurance premiums referenced in Subsections A through D of 13.18.2.18 NMAC and Subsection A of 13.18.2.20 NMAC shall be reduced by ten percent with the results rounded to the higher whole cent and shall be effective at the beginning of the next calendar year as the prima facie rate.
[13.18.2.44 NMAC - Rp, 13.18.2.44 NMAC, 3/11/2025]

13.18.2.45 ADJUSTMENT OF PRESUMPTIVELY ACCEPTABLE CREDIT ACCIDENT AND HEALTH INSURANCE PREMIUMS: If for

the calendar year 2000 as filed in the statistical statement, or following any even calendar year thereafter, the combined loss ratios of all insurers writing credit accident and health insurance, individual or group, does not equal or exceed ninety percent of the loss ratio stated in Paragraph (2) of Subsection B of 13.18.2.17 NMAC then the credit accident and health insurance premiums as referenced in Subsections A and B of 13.18.2.26 NMAC, Subparagraphs (a) and (b) of Paragraph (1) Subsection D of 13.18.2.26 NMAC and Subparagraphs (a) and (b) of Paragraph (2) of Subsection D of 13.18.2.26 NMAC shall be reduced by ten percent with the results rounded to the higher whole cent and shall be effective at the beginning of the next calendar year as the prima facie rate.
[13.18.2.45 NMAC - Rp, 13.18.2.45 NMAC, 3/11/2025]

HISTORY OF 13.18.2 NMAC:

Pre-NMAC History: The material in this rule was previously filed with the commission of public records, state records center as: ID 67-1, Sections 26-1-1 through 26-1-15, New Mexico Official Administrative Rules and Regulations Code filed 12/1/1967. SCC-85-12, Insurance Department Regulation 25, Credit Life and Credit Health Insurance filed 11/4/1985. Rule No. SCC-87-1, Insurance Department Regulation 25, Credit Life and Credit Health Insurance filed 2/4/1987.

History of Repealed Material:

[RESERVED]

Other History:

Rule No. SCC-87-1, Insurance Department Regulation 25, Credit Life and Credit Health Insurance (filed 2/4/1987) was renumbered, reformatted and replaced by 13 NMAC 18.2, Credit Life and Credit Health Insurance, effective 7/1/1997. 13 NMAC 18.2, Credit Life and Credit Health Insurance (filed 5/27/1997) was renumbered, reformatted, amended and replaced by 13.18.2 NMAC, Credit Life and

Credit Health Insurance, effective 12/31/2007.
13.18.2 NMAC, Credit Life and Credit Health Insurance, filed 12/31/2007 was repealed and replaced by 13.18.2 NMAC, Credit Life and Credit Health Insurance, effective 03/11/2025.

End of Adopted Rules

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