

New Mexico Register

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

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New Mexico Register

Volume XXXVI, Issue 10

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Notices of Rulemaking and Proposed Rules

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

NOTICE OF PUBLIC HEARING FOR PROPOSED RULEMAKING

The New Mexico Oil Conservation Commission (Commission) hereby gives notice that the Commission will hold a public hearing to consider proposed amendments to Commission rules at 19.15.2, 19.15.5, 19.15.8, 19.15.9, and 19.15.25 NMAC. Western Environmental Law Center, Citizens Concerned for the Future, Conservation Voters New Mexico Education Fund, Diné C.A.R.E., Earthworks, Naeva, New Mexico Interfaith Power and Light, San Juan Citizens Alliance, and Sierra Club propose the amendments. The public hearing will be held in-person, online, and by telephone commencing October 20, 2025 at 9:00 am and continuing each weekday thereafter as necessary.

Purpose of Proposed Amendments.

The purpose of the proposed amendments is to require financial assurance from oil and gas operators that better reflects the actual costs to plug and abandon oil and gas wells in the state to better protect the State of New Mexico against the risks of wells becoming orphaned; to require that wells placed in temporary abandonment will be returned to beneficial use within a reasonable period or will be plugged and abandoned; and to set forth requirements for transfer of wells to better protect the state against transfer of wells that could become orphaned.

Summary of Proposed

Amendments. The proposed amendments would add meeting the waste prevention requirements at Subsection A of 19.15.27.8 NMAC as a requirement for an

operator to be in compliance at Subsection A of 19.15.5.9 NMAC and to eliminate the allowance that a certain number of wells may be out of compliance with 19.15.25.8 NMAC to be considered in compliance for purposes of Subsection A of 19.15.5.9 NMAC; modify financial assurance requirements for wells at 19.15.8 NMAC to better reflect actual well plugging and abandonment costs and risks to the state and add a new category of marginal wells for financial assurance based on their risk; modify well transfer requirements at 19.15.9 NMAC to better protect against risks to the state against wells becoming orphaned; modify requirements at 19.15.25 NMAC for presumptively determining whether wells are being used for beneficial purposes and placing wells in approved temporary abandonment status, maintaining wells in that status, and renewing that status; and modify certain definitions at 19.15.2 NMAC to reflect the other proposed amendments.

Legal Authority. The proposed rule is authorized by the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, including Section 70-2-6 (authorizing Commission to exercise jurisdiction, authority, and control over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing Commission to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), Section 70-2-12 (enumerating powers of Commission and Oil Conservation Division (OCD)), and Section 70-2-14 (authorizing Commission to establish categories of financial assurance). The public hearing is governed by the Commission's rule on rulemaking proceedings at 19.15.3 NMAC.

Availability of Proposed

Amendments. The full text of the proposed amendments are available on OCD's website at <http://www.emnrd.nm.gov/OCD/rules.html> or may be obtained from Commission

Clerk Sheila Apodaca at occ.hearings@emnrd.nm.gov.

Written Comments. Any person may submit written comments on the proposed amendments no later than 5:00 pm on the final day of the evidentiary hearing unless extended by the Commission, by mail or delivery to Sheila Apodaca, Commission Clerk, Wendell Chino Building, 1220 S. St. Francis Dr., Santa Fe, NM 87505, or by email to the Commission Clerk at occ.hearings@emnrd.nm.gov.

Public Hearing. The public hearing will be held in-person, online, and by telephone commencing on October 20, 2025 at 9:00 am and continuing each weekday thereafter as necessary. The hearing will be held in Pecos Hall on the first floor in the Wendell Chino Building at the address above. To access the public hearing online via Microsoft Teams or by telephone:

Join the meeting now

Join a Microsoft Teams Meeting by ID | Microsoft Teams

The meeting is also accessible at the following web address:
<https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>

Meeting ID: 257 871 029 212 2
Passcode: QD2eM2vG

Dial in by phone

+1 505-312-4308,,95109307# United States, Albuquerque
(888) 506-1357,,95109307# United States (Toll-free)
Phone conference ID: 951 093 07#

For any questions about how to participate in the hearing, please contact the Commission Clerk at occ.hearings@emnrd.nm.gov or 505-699-8358, or visit the Hearings page on OCD's website at <http://www.emnrd.nm.gov/OCD/hearings.html>. Public comment will be accepted each day of the hearing beginning at 4:00 p.m.

on October 20, 2025, and at 9:00 am and 4:00 pm on each subsequent day of the hearing. A Spanish language translator will be available at 4:00 p.m. on October 20, 21, 27, and November 3, 2025. The translator will only be made available until the close of the evidentiary hearing. If the evidentiary hearing closes before any of these dates, public comments will no longer be taken and a translator will not be available.

Proposed Modifications, Technical Testimony, and Cross-Examination.

Any person intending to propose a modification to the proposed amendments, to present technical testimony at the hearing, or to cross-examine witnesses must file a Pre-hearing Statement conforming to the requirements of Subsection B of 19.15.3.11 NMAC, except that instead of filing a concise statement of each witness's testimony as required by Paragraph 2 of Subsection B of 19.15.3.11NMAC, the person shall file each witness's full testimony. Full direct testimony and exhibits shall be filed no later than 5:00 pm on July 25, 2025. Full rebuttal testimony and exhibits shall be filed no later than 5:00 pm on September 5, 2025. Filing may be accomplished by mail or delivery to Sheila Apodaca, Commission Clerk, Wendell Chino Building, 1220 S. St. Francis Dr., Santa Fe, NM 87505, or by email to the Commission Clerk at hearings@emnrd.nm.gov. Any person who presents technical testimony will be subject to cross-examination by the members of the Commission, the Commission's counsel, or another person who filed a Pre-hearing Statement.

Oral Comments. Any person who did not file a Pre-hearing Statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat testimony. Any person who presents sworn, non-technical testimony is subject to cross-examination by the

Commission, the Commission's counsel, or another person who has filed a Pre-hearing Statement.

Persons with Disabilities. If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, including a summary or other accessible form of document, please contact the Commission Clerk at hearings@emnrd.nm.gov or 505-699-8358 or through the New Mexico Relay Network at 1-800-659-1779, no later than 5:00 pm on October 1, 2025.

Technical Information. Technical information that may be provided through Pre-hearing Statements will be made publicly available on the OCD Imaging, Case File Search portal on OCD's website at <http://ocdimage.emnrd.nm.gov/imaging/CaseFileCriteria.aspx>, and may be accessed by searching for Case File No.24683.

GAMING CONTROL BOARD

NOTICE OF PROPOSED RULEMAKING

The Gaming Control Board hereby gives notice that the Board will conduct a public comment hearing on the described rules below.

The public comment hearing will be held on June 25, 2025, from 9:00 am to 1:00 pm at the Gaming Control Board, 4900 Alameda Blvd. NE, Albuquerque, NM 87113. The public may also participate via Zoom:

Join Zoom Meeting
<https://us06web.zoom.us/j/89650131839?pwd=t4Vt3k63aPSUfvL2PYlcoOH9phbZ8a.1>

Meeting ID: 896 5013 1839
Passcode: 5bF6k8

One tap mobile
• +1 720 707 2699 US (Denver)
• +1 253 205 0468 US

Meeting ID: 896 5013 1839
Passcode: 847923

Find your local number: <https://us06web.zoom.us/j/89650131839>

This public comment hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on the proposed rule changes detailed below. All comments will be recorded by a court reporter and/or audio recording.

15.4.1.7 NMAC - DEFINITIONS:

Purpose: Repeal definition of "Game of chance", amend to add definition for "Manufacturer central system", "point of sale system" and "Ticket in / Ticket out" (TITO).

Summary: Game of chance is defined in statute (§60-2F-4(N), NMSA 1978), eliminate redundancy and is easier to understand. Definitions for Manufacturer central system, point of sale system, and Ticket in/ Ticket out (TITO) are to support the amendment to Pull-Tab Equipment regarding transportation/shipping requirements.

15.4.1.17 NMAC - HOUSE RULES

Purpose: Amend the minimum requirements for house rules.

Summary: Adding an additional requirement to house rules for licensee who sell Pull-Tabs, regarding progressive pull-tab games.

15.4.6.10 NMAC - PULL-TAB EQUIPMENT

Purpose: To put into rule the requirements for transporting/shipping pull-tab equipment into, out of and around the state of New Mexico.

Summary: Making sure that the pull-tab equipment being used in New Mexico complies with the law and that it's movement between

distributors, manufacturers and licensees accurately represents what is in use.

Authority: Section 60-2F-3 NMSA 1978 and Section 60-2E-7 NMSA 1978.

Details for Obtaining a Copy of Rule and Submitting Oral or Written Comments:

Copies of the proposed rules are available on the Gaming Control Board's website at <https://www.gcb.nm.gov/rulemaking/> or can be obtained by emailing GCB-PIO@gcb.nm.gov. The proposed rules are also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing. Before the public hearing, written comments may be sent to GCB-PIO@gcb.nm.gov or by regular mail at Attn: Angela M. Armstrong - proposed rule, The Gaming Control Board, 4900 Alameda Blvd. NE, Albuquerque, NM 87113. The deadline to receive written comment is Wednesday, June 25, 2025. All written public comments will be 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 MEDICAL ASSISTANCE DIVISION

NOTICE OF RULEMAKING

The New Mexico Health Care Authority (HCA), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rules 8.281.600, *Medicaid Eligibility-Benefit Description and*

8.290.600, Medicaid Eligibility-Benefit Description.

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: May 20, 2025
Hearing Date: June 23, 2025
Adoption Date: November 1, 2025
Technical Citations: 42 CFR 435.201 and 435.217

Background

The HCA is revising our Institutional Care and Home-and Community-Based Waiver services level of care (LOC) sections to remove outdated language and add clarifying language.

The Health Care Authority is proposing to amend the rules as follows:

8.281.600 NMAC

Section 12 B is revised to add the term "designated third party assessor" who can make level of care (LOC) determinations. Language is also added that LOC determinations are completed annually, "for all institutional Medicaid programs." Other minor language changes were made throughout this rule for NMAC consistency.

8.290.600 NMAC

Section 12 B is revised to add the term "designated third party assessor" who can make level of care (LOC) determinations. Language is also added that LOC determinations are completed annually, "for home and community-based waiver programs." Outdated text is removed from this section.

Other minor language changes were made throughout this rule for NMAC consistency.

I. RULE

These proposed rule changes will be contained in 8.281.600 and 8.290.600 NMAC. This register and

the proposed rules 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 November 1, 2025.

III. PUBLIC HEARING

A public hearing to receive testimony on these proposed rules will be held on June 23, 2025, at 9:30 a.m., Mountain Time (MT). The hearing will be held at the Administrative Services Division (ASD), 1474 Rodeo Rd, Santa Fe, NM 87505 and via Microsoft Teams.

Join Teams Meeting

Join the meeting now
Meeting ID: 254 306 040 43
Passcode: cd2J2LU9

Dial in by phone

+1 505-312-4308,,762698817#
United States, Albuquerque
Find a local number
Phone conference ID: 762 698 817#

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 June 23, 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 CARE AUTHORITY MEDICAL ASSISTANCE DIVISION

NOTICE OF RULEMAKING

The New Mexico Health Care Authority (HCA), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule *8.200.400 NMAC-Medicaid Eligibility, General Recipient Rules, 8.249.400 NMAC-Refugee Medical Assistance (RMA) Program, 8.249.600-Refugee Medical Assistance (RMA) Program, Benefit Description*.

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: May 20, 2025
Hearing Date: June 20, 2025
Adoption Date: Proposed as August 1, 2025
Technical Citations: Office of Refugee Resettlement (ORR) Notice of Change of Eligibility, FR Doc. 2025-04839, 45 CFR 400.211

Background

The Federal Office of Refugee Resettlement (ORR) issued notice on March 21, 2025, of a change to reduce the eligibility period for Refugee Medical Assistance (RMA) from 12 months to 4 months to avoid a significant budget shortfall. This applies to participants who become eligible for benefits 45 days after the publication date. A methodology had been established by ORR to determine the time eligibility periods for RMA each year based on the appropriated funds available for the fiscal year as described in 45 CFR 400.211.

The Health Care Authority is proposing to amend the rules as follows:

8.200.400 NMAC

Section 10 has been updated to change the RMA coverage period from 12 months to a period established yearly by the Office of Refugee Resettlement (ORR) based on appropriated funds for the fiscal year.

8.249.400 NMAC

Section 6 has been updated to change the RMA coverage period from 12 months to a period established yearly by the Office of Refugee Resettlement (ORR) based on appropriated funds for the fiscal year.

Section 8 has been updated to include the Departments current mission statement.

8.49.600 NMAC

Section 8 has been updated to include the Departments current mission statement.

Section 9 has been updated to change the RMA coverage period from 12 months to a period established yearly

by the Office of Refugee Resettlement (ORR) based on appropriated funds for the fiscal year.

Section 11, 12, and 15 have been updated to remove the 12-month eligibility period.

I. RULE

These proposed rule changes will be contained in 8.200.400, 8.249.400, and 8.249.600 NMAC. This register and the proposed rules 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 these rules effective August 1, 2025.

III. PUBLIC HEARING

A public hearing to receive testimony on this proposed rule will be held on June 20, 2025, at 9:00 a.m. Mountain Time (MT). The hearing will be held at the Administrative Services Division (ASD), 1474 Rodeo Rd, Santa Fe, NM 87505 and via Microsoft Teams.

Join Teams Meeting

Join the meeting now

Meeting ID: 268 489 800 045

Passcode: sJ2LC2uG

Dial in by phone

+1 505-312-4308,,93976612# United States, Albuquerque

Find a local number

Phone conference ID: 939 766 12#

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 June 20, 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.

REGULATION AND LICENSING DEPARTMENT ATHLETIC TRAINERS PRACTICE BOARD

NOTICE OF PUBLIC RULE HEARING AND ATHLETIC TRAINERS PRACTICE BOARD MEETING

The New Mexico Athletic Trainers Practice Board and the Regulation and Licensing Department will hold a rule hearing on Wednesday, June 25, 2025, at 11:30 a.m., immediately followed by a meeting of the athletic

trainers practice board for adoption of the proposed rules listed below. The hearing and subsequent board meeting will take place at the Regulation and Licensing Department, located at 5500 San Antonio dr. SE., Albuquerque, New Mexico 87109.

The hearing and subsequent athletic trainers practice board meeting may also be accessed virtually via Microsoft Teams.

Meeting Link: https://teams.microsoft.com/l/meetup-join/19%3ameeting_NmFkN2U5ODEtNzc5My00M2JLTg4NDgtODNiY2Q0YzYwMDRh%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%2238faec28-2659-42de-b21f-5493e3af2911%22%7d

Join the meeting now

Meeting ID: 278 384 690 938 9
Passcode: FM2cz3Qo

Dial in by phone

+1 505-312-4308,,72778221# United States, Albuquerque
Find a local number
Phone conference ID: 727 782 21#

16.3.2 NMAC – SCOPE OF PRACTICE

16.3.4 NMAC – INITIAL LICENSING REQUIREMENTS

16.3.7 NMAC – ANNUAL RENEWAL OF LICENSES

16.3.8 NMAC – FEES

On Friday, May 23, 2025, copies of the proposed rules may be obtained through the New Mexico Athletic Trainers Practice Board website at <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/athletic-trainers/board-information/athletic-trainers-board-meetings/> or by contacting the Team Manager, Richard Espinoza at (505) 618-0321.

The New Mexico Athletic Trainers Practice Board and the Regulation

and Licensing Department will begin accepting written public comment regarding the proposed rule changes beginning Friday, May 23, 2025, 8:00 a.m. and ending Wednesday June 25, 2025, 11:30 a.m. Written public comment may be submitted either by email to athletic.trainers@rld.nm.gov or by postal mail to the following address:

Attn: New Mexico Athletic Trainers Practice Board
P.O. Box 25101
Santa Fe, NM 87504

Written comments received during the public comment period (May 23, 2025 – June 25, 2025) will be posted to the website page linked above. Public comments will also be accepted during the rule hearing and may be submitted in writing or presented orally by those attending in-person. The members of the New Mexico Athletic Trainers Practice Board will not enter substantive discussion of public comments during the rule hearing but will consider and deliberate any public comment during the regular board meeting immediately following the conclusion of the public rule hearing.

The agenda for the New Mexico Athletic Trainers Practice Board regular meeting, which will begin immediately after the public rule hearing, will be available no less than 72 hours prior to the meeting, and available on the website linked above or by contacting the board Team Manager Richard Espinoza.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or the regular board meeting, please contact the Team Manager Richard Espinoza at (505) 618-0321 at least 7 days prior to the rules hearing and regular board meeting. Public documents, including the proposed rules, meeting agenda and minutes, can be provided in various accessible formats.

For inclement weather: If the New Mexico state offices are placed on a two-hour delay to inclement weather, the rule hearing will be pushed back two hours from the noticed hearing time. If New Mexico state offices are closed due to inclement weather, the rule hearing will be rescheduled as soon as possible.

Statutory Authority:

The rule changes are authorized by the Athletic Trainer Practice Act (Act), Section 61-14D-1 through 61-14D-19 NMSA 1978, which provides explicit authority for the Athletic Trainer Practice Board to protect public health and safety and adopt rules for the administration of the Act. The rulemaking and public rule hearing is governed by the State Rules Act, Sections 14-4-1 through 14-4-11 NMSA 1978, and the Default Procedural Rule for Rulemaking promulgated by the New Mexico Department of Justice, Parts 1.24.25 through 1.24.25.16 NMAC

Purpose of Proposed Rules:

The proposed rule changes aim to implement changes to the provisions of The Telehealth Act, Section 24-25-5 NMSA 1978, made by Senate Bill 252 in the 2025 legislative session for all licensees practicing under supervision. The changes also update the rules to reflect the requirements for the online application and remove references to paper applications, introduce the standard for auditing continuing education requirements for license renewal, and change the current fee for returned checks from \$25.00 to \$35.00. More generally, the proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees and certificate holders, and to generally satisfy the Board's statutory obligation to promote, preserve and protect public health, safety and welfare.

Summary of Proposed Changes:

16.3.2 NMAC -Scope of Practice. Adding a new part to reflect the

changes made by Senate Bill 252, to the provisions of the Telehealth Act, Section 24-25-5 NMSA 1978 for all licensees practicing under supervision. 16.3.4 NMAC-initial Licensing Requirements Revising the language to reflect that the Board now use an online application system and does not require a paper application. 16.3.7 NMAC-Annual Renewal of Licenses. Adding the continuing education (CEU) required to obtain or maintain an active license, allowing the board to conduct a random audit and allowing the board to give disciplinary action if the license attests and does not have the CEU's need to renew their license. 16.3.8 NMAC-Fees Striking out \$25.00 dollars for return checks and adding \$35.00 dollar fee for return checks, or electronic checks.

REGULATION AND LICENSING DEPARTMENT NUTRITION AND DIETETICS, BOARD OF

NOTICE OF PUBLIC RULE HEARING AND BOARD MEETING

The New Mexico Nutrition and Dietetics Practice Board will hold a rule hearing on Friday, June 27, 2025, at 10:00 a.m., immediately followed by a meeting of the board to consider any public comment and adoption of the proposed rule listed below. Public participation is welcomed, and comments may be submitted in writing during the public comment period, or in person during the public rule hearing. The hearing and subsequent meeting will take place at the Regulation and Licensing Department, Sandia Conference Room, located at 5500 San Antonio Drive NE, Albuquerque, New Mexico 87109.

The meeting will also be held via Microsoft Teams for those desiring to attend virtually.

Join the meeting now

Or by Meeting ID:
<https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>
Meeting ID: 224 531 783 034 4
Passcode: ER7m8s7S

Dial in by phone

+1 505-312-4308,,495915127#
United States, Albuquerque
Find a local number
Phone conference ID: 495 915 127#

The purpose of the rule hearing is to consider the initiation of rulemaking for the following rules:

16.14.2 Fees
16.14.3 Requirements for Licensure
16.14.6 License Renewal
16.14.10 Code of Ethics
16.14.11 Disciplinary Proceedings

The agenda for the rule hearing and board meeting will be posted and available at least 72 hours before the meeting on the Board website at <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/nutrition-and-dietetics/board-information/nd-board-meetings>. Copies of the agenda may also be obtained by contacting Roxann Ortiz at 505-795-5576.

The Nutrition and Dietetics Practice Board will begin accepting written public comments regarding the proposed rule changes on May 27, 2025. If submitting written public comment prior to the rule hearing, the Nutrition and Dietetics Practice Board will accept written public comments received by 10:00 a.m. on June 27, 2025. Written comments may be submitted by email to nutritiondieteticsbd@rld.nm.gov or by postal mail to the following address:

New Mexico Regulation and
Licensing Department
Attn: Nutrition and Dietetics Practice
Board
P.O. Box 25101
Santa Fe, NM 87504

Public comment will also be accepted during the rule hearing and may be presented orally, or in writing.

Individuals who would like to participate and offer public comment ***must appear in person***. The members of the Nutrition and Dietetics Practice Board will not engage in substantive discussion of public comments during the rule hearing but will consider all public comments during the board meeting following the conclusion of the rule hearing.

For inclement weather: If New Mexico state offices are placed on a two-hour delay due to inclement weather, the rule hearing will be pushed back two hours from the noticed hearing time. If New Mexico state offices are closed due to inclement weather, the rule hearing will be rescheduled as soon as possible.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Roxann Ortiz at 505-795-5576.

Statutory Authority:

The proposed rule changes are authorized by the Nutrition and Dietetics Practice Act, Sections 61-7A-1 through 61-7A-15 NMSA 1978, which provides explicit authority for the board to promulgate rules to protect public health and safety and carry out the provisions of the Act. The rulemaking and public rule hearing is governed by the State Rules Act, Sections 14-4-1 through 14-4-11 NMSA 1978, and the Default Procedural Rule for Rulemaking promulgated by the New Mexico Department of Justice, Parts 1.24.25.1 through 1.24.25.16 NMAC.

Purpose of the Proposed Rules:

The proposed rule changes aim to implement changes to the provisions of The Telehealth Act, Section 24-25-5 NMSA 1978, made by Sente Bill 252 in the 2025 legislative session for all licensees practicing under supervision. The changes will also introduce fees for returned payments and establish disciplinary measures

for failure to comply with continuing education (CE) audit requirements. More broadly, the proposed revisions are intended to provide greater clarity regarding existing regulatory and statutory obligations. These changes are designed to support the Board's statutory mandate to promote, preserve, and protect the health, safety, and welfare of the public.

Summary of Proposed Changes:

16.14.2.7 NMAC: Fees: Adding fees for returned electronic and paper check payments

16.14.3.8 NMAC: Requirements for Dietitian License: Removing background check as it is not required in statute.

16.14.3.9 NMAC: Requirements for Nutritionist License: Removing background check as it is not required in statute.

16.14.3.10 NMAC: Requirements for Nutrition Associate License: Removing background check as it is not required in statute.

16.14.3.11 NMAC: Initial Licenses and License Period: Removing background check as it is not required in statute.

16.14.6.10 NMAC: Continuing Education Requirements: Adding language for auditing continuing education certificates and the licensee's responsibility for record keeping of continuing education.

16.14.11.11 NMAC: Disciplinary Guidelines: Adding language for discipline for those licensees that do not meet the required continuing education requirements.

NMAC Payments for Health Care Services (imposing late payment charge on payors who miss 30-day deadline to pay or deny a provider's medical bill, including permissible grounds to deny payment of a medical bill by reference to the WCA fee schedule, clarifying allowable reimbursements for health care provider dispensed prescriptions, raising permitted deposition charges for health care providers). The WCA has determined to terminate this previous rule making process and begin a new rule making process regarding 11.4.2 NMAC and 11.4.7 NMAC.

Therefore, pursuant to Subsection C of Section 14-4-5, NMSA 1978, the rulemaking noticed on September 10, 2024, is hereby terminated.

End of Notices of Rulemaking and Proposed Rules

WORKERS' COMPENSATION ADMINISTRATION

NOTICE OF TERMINATION OF RULEMAKING

The New Mexico Workers' Compensation Administration (WCA) is providing Notice to terminate the rulemaking regarding the amendments to 11.4.2 NMAC – Data Reporting and Safety Requirements (minor/technical changes only), and 11.4.7

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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.

HEALTH CARE AUTHORITY INCOME SUPPORT DIVISION

This is an amendment to 8.102.100 NMAC, Section 7 effective 6/1/2025.

8.102.100.7 DEFINITIONS:

A. Definitions

beginning with "A":

(1) Applicant:

means person applying for cash assistance on behalf of a benefit group.

(2)

Application: means a written or electronic request, on the appropriate ISD form, with the signature of the applicant or on the applicant's behalf by an authorized representative, for assistance.

(3)

Attendant: means an individual needed in the home for medical, housekeeping, or childcare reasons.

(4)

Authorized representative: means an adult, who is designated in writing by the applicant, who is sufficiently knowledgeable about the applicant/benefit group's circumstances to complete the application form correctly and can represent the benefit group.

B. Definitions

beginning with "B":

(1) Basic

needs: include food, clothing, shelter, utilities, personal requirements and the individual's share of household supplies.

(2) Beginning

month: means the first month for which a benefit group is certified after a lapse in certification of at least one calendar month; beginning month and initial month are used interchangeably. A benefit group is budgeted prospectively in a beginning month.

(3) Benefit

group: means a group of people, either mandatory or optional, to be included in determining the monthly benefit amount.

(4) Benefit

month: means the month for which cash assistance benefits have been issued. This term is synonymous with issuance month defined below.

(5) Budget

month: means the calendar month for which income and other circumstances of the benefit group shall be determined in order to calculate the cash assistance amount.

C. Definitions

beginning with "C":

(1) Capital

gains: means proceeds from the sale of capital goods or equipment.

(2) Cash

assistance: means cash payments funded by the temporary assistance for needy families (TANF) block grant pursuant to the federal act and by state funds; or state funded cash assistance in the general assistance program.

(3) Caretaker

relative: means an individual who assumes parental control over a child living in the home.

(4)

Categorical eligibility (CE): means a SNAP household that meets one of the following conditions is considered to be CE and have limited eligibility requirements.

(a)

Financial CE: Any SNAP household in which all members receive Title IV-A assistance (TANF), general assistance (GA), or supplemental security income (SSI) benefits is considered to be categorically eligible for SNAP benefits.

(b)

Broad-based CE: Any SNAP household, in good standing, in which

at least one member is receiving a non-cash TANF/MOE funded benefit or service and household income is below one hundred sixty five percent FPG.

(5)

Certification: means the authorization of eligibility of a benefit group for the issuance of cash assistance benefits.

(6)

Certification period: means the time period assigned to a benefit group that is approved to receive cash assistance benefits. The certification period shall conform to calendar months and include an interim report to be completed mid certification.

(7) Collateral

contact: means an individual or agency designated by the benefit group to provide information concerning eligibility.

(8) Compacts

of free association: is an individual who is compact of free association (COFA) migrant, also referred to as compact citizen. COFA is an agreement between the United States and the three Pacific Island sovereign states of federated states of Micronesia, the republic of the Marshall Islands, and the republic of Palau known as freely associated states.

[~~(8)~~] (9)

Conciliation process: means a 30-day process prior to imposing a sanction during which the department and the individual have the opportunity to address barriers to compliance or to correct whatever failure has generated the noncompliance determination.

[~~(9)~~] (10)

Conversion factor: means anticipated monthly income received on a weekly or bi-weekly basis shall be converted to a monthly amount.

D. Definitions**beginning with “D”:****(1) Date**

of application: means the date the application is received by the income support division offices during regular business hours, this includes applications that are dropped off, submitted in person and electronically. The date the application and forms received by ISD will be documented on the form. Applications that are dropped off or submitted electronically after regularly scheduled business hours, holidays and weekends will be considered received as of the next business day.

(2) Date

of admission: means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

(3) Date of

entry: means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

(4)

Department: means the human services department.

(5) Dependent

child: means a natural child, adopted child, stepchild or ward that is:

(a) 17

years of age or younger; or

(b)

18 years of age and is enrolled in high school; or

(c)

between 18 and 22 years of age and is receiving special education services regulated by the public education department.

(6) Director:

means the director of the income support division.

(7) Diversion

payment: means a lump sum payment, which will enable the applicant to keep a job or to accept a bona fide offer of employment.

(8)

Documentation: means a written statement entered in the paper or electronic case record regarding

the type of verification used and a summary of the information obtained to determine eligibility.

E. Definitions**beginning with “E”:****(1) Earned**

income: means cash or payment in-kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services.

(2) Education

works program (EWP): provides state-funded cash assistance to a benefit group where at least one individual is enrolled in a post-secondary institution. The applicant or recipient benefit group must be otherwise eligible for NMW cash assistance but chooses to participate in the education works cash assistance program.

(3)

Emancipated: means an individual under the age of 18 years who is legally recognized as no longer under parental control due to marriage or by a decision of a court.

(4)

Encumbrance: means debt owed on property.

(5) Equity

value: means the fair market value of property, less any encumbrances owed on the property.

(6) Expedited

services: means the process by which benefit groups reporting little or no income or resources will be provided an opportunity to participate in the SNAP program.

(7)

Expungement: means the permanent deletion of cash benefits from an EBT account that is stale.

F. Definitions**beginning with “F”:****(1) Fair**

hearing: means an administrative proceeding which a claimant or claimant’s representative may request if:

(a)

an application is not acted on within a

reasonable time after the filing of the application;

(b)

an application is denied in whole or in part; or

(c)

the cash assistance or services are modified, terminated, or not provided.

(2) Fair

market value (FMV): means the amount an item can be expected to sell for on the open market at the prevailing rate of return. For vehicles, the term FMV means the amount a dealer would buy a vehicle for wholesale or offer as a trade-in. It is not the amount the dealer would sell the vehicle for at retail.

(3) Federal

act: means the federal Social Security Act and rules promulgated pursuant to the Social Security Act.

(4) Federal

fiscal year: October 1 through September 30 of the calendar year.

(5) Federal

means-tested public benefit: means benefits from the SNAP program; the food assistance block grant programs in Puerto Rico, American Samoa and the commonwealth of the Northern Mariana islands, supplemental security income (SSI), and the TANF block grant program under Title IV of the Social Security Act; medicaid and SCHIP.

(6) Federal

poverty guidelines: means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services.

(7) Five-

year bar: means the federally imposed prohibition on receiving federal means-tested public benefits for certain qualified aliens who entered the United States (U.S.) on or after August 22, 1996, until they continuously lived in the U.S. for five years. The count for the five-year bar begins on the date the non-citizen attains qualified alien status.

(8) Food

Stamp Act: the Food Stamp Act of 1977 (P.L. 95-113), the Food and Nutrition Act of 2008 (P.L. 110-246), and subsequent amendments.

G. Definitions**beginning with "G":****(1) General****assistance (GA) benefit group:**

means a benefit group in which all members receive cash assistance financed by state or local funds.

(2)

Government entity: includes any federal, state, tribal or local unit of government as well as any non-government entity which receives public funds for the purpose of meeting the housing needs of its clientele.

(3) Gross

income: means the total amount of income that a benefit group is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the benefit group, but diverted by the provider. Gross income does not include specific income exclusions, such as but not limited to, the cost of producing self-employment income, and income excluded by federal law.

(4) Gross

income test (eighty-five percent test): for the benefit group to be eligible, the gross earned income of the benefit group must be less than eighty-five percent of the federal poverty guidelines as determined in 8.102.500.8 NMAC.

(5)**Guaranteed basic income:**

Guaranteed basic income provides an individual or household a one time or recurring cash payment or transfer funded from a public or private source intended to support the basic needs of individuals or households by reducing poverty, promoting economic mobility, or increasing the financial stability.

H. Definitions**beginning with "H":****(1) Hardship**

extension: means an extension of the TANF/NMW 60-month lifetime limit due to specific conditions enumerated at 8.102.410.17 NMAC.

(2) Head of

household: means the payee who

is the responsible case head for the benefit group. The payee may be the parent, guardian, sole adult member, specified relative, pregnant woman, a GA recipient, or caretaker relative.

I. Definitions**beginning with "I":****(1)**

Immigrant: means a non-citizen or an alien within the meaning found in Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2)**Immigration and naturalization**

service (INS): a division of the U.S. department of justice dealing with U.S. citizenship and immigration services.

(3)

Impairment: means a condition resulting from anatomical, physiological, or psychological abnormalities evidenced by medically acceptable clinical and laboratory diagnostic techniques. Impairment has to do only with the medical, psychiatric, or both processes. To evaluate both physical and mental impairment, medical evidence consisting of signs, symptoms and objective findings must be obtained.

(4) Incapacity

review unit: means a special unit in the department that determines the status of participants for the family violence option and limited work participation status. This is also known as the IRU.

(5) Individual**development account program:**

means an account created for eligible individuals which is established and maintained by an authorized financial institution to be used for individual development.

(6) Individual**development program:**

means a program that establishes and administers individual development accounts and reserve accounts in order to provide financial training required by the division for account owners.

(7) Ineligible

alien: means an individual who does not meet the eligible alien requirements.

(8) Initial

month: means the first month for which a benefit group is certified for participation in the cash assistance program. An initial month is also a month in which a benefit group is certified following a break in participation of one calendar month or longer.

(9) Inquiry:

means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application.

(10) Institution

of higher education: means certain college-level institutions, such as vocational schools, trade schools, and career colleges that award academic degrees or professional certifications.

(11) Institution

of post-secondary education: means an institution of post-secondary education, any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located, regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or a program of training to prepare students for gainful employment.

(12)

Irrevocable trust funds: means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

(13) Issuance

month: means the calendar month for which cash assistance is issued. In prospective budgeting, the budget and issuance months are the same.

J. Definitions

beginning with "J": [RESERVED]

K. Definitions

beginning with "K": [RESERVED]

L. Definitions

beginning with "L":

(1) Legal

guardian: means a legally created relationship between a child and appointed adult wherein the appointed

adult acquires legal decision-making authority for a child.

(2) **Limited**

work participation hours: means the reduced work requirement hours approved by the IRU or the NMW service provider, as appropriate, after a participant has been approved for a limited work participation status.

(3) **Limited**

work participation status: means a NMW participant has a verified condition or barrier as outlined at Subsection A of 8.102.420.11 NMAC that precludes the ability to meet the standard work requirement hours and has been approved for such status by the IRU or NMW service provider, as appropriate.

M. Definitions

beginning with “M”:

(1)

Maintenance of effort (MOE): means the amount of general funds the state agency must expend annually on the four purposes of temporary assistance for needy families (TANF) to meet a minimum expenditure requirement based on a state’s historical assistance to families with dependent children (AFDC) expenditures.

(2) **Medicaid:**

medical assistance under title XIX of the Social Security Act, as amended.

(3) **Minor**

unmarried parent: means an unmarried parent under the age of 18 years or is age 18 and enrolled in high school.

(4) **Month**

of approval: means the month the action to approve a benefit group for cash assistance is taken.

N. Definitions

beginning with “N”:

(1) **Net**

income tests: means for the benefit group to be eligible, the benefit group’s net earned income must be less than the standard of need applicable to the benefit group after allowable deductions have been made to the earned and unearned income.

(2) **Net**

monthly income: means gross non-exempt income minus the allowable deductions. It is the income figure

used to determine eligibility and cash assistance benefit amount.

(3) **Non-**

benefit group members: means persons residing with a benefit group who are specifically excluded by regulation from being included in the benefit group certification.

(4) **Non-cash**

TANF/MOE benefit or service: means non-cash TANF/MOE benefit or services include programs or services that do not provide cash to recipients, but are funded by the TANF program, either by the federal TANF block grant or the state MOE share. These services may include transportation, childcare, counseling programs, parenting programs, pamphlets or referrals to other TANF/MOE-funded services.

(5) **Non-**

citizen U.S. national: means a person who is not an U.S. citizen but was born in an outlying possession of the U.S. on or after the date the U.S. acquired the possession, or a person whose parents are non-citizen U.S. nationals. A person who resides on one of the following U.S. island territories is a non-citizen U.S. national: American Samoa, Swains island or the Northern Mariana islands.

(6) **Notice:**

means written correspondence that is generated by any method including handwritten, typed or electronic, delivered to the client or their authorized representative by hand, U.S. mail, professional delivery or by any electronic means. The term “written notice” and “notice” are used interchangeably.

(7) **Notice of**

adverse action (NOAA): means a written or electronic notice that includes a statement of the action the department has taken or intends to take, the reason for the action, the benefit group’s right to a fair hearing, who to contact for additional information, the availability of continued benefits, and liability of the benefit group for any over-issuance received if the hearing decision is adverse to the benefit group. This notice may be received prior to

an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. Recipients have 13 days from the mailing date or the date of electronic transmittal of the notice to request a fair hearing and to have benefits restored to their previous level.

(8) **NMW**

compliance requirements: means the various work program activities a TANF/NMW participant is expected to attend and complete in order to avoid conciliation or sanction.

O. Definitions

beginning with “O”: **Over-issuance** means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

P. Definitions

beginning with “P”:

(1) **Parent:**

means natural parent, adoptive parent, or stepparent.

(2)

Participant: means a recipient of cash assistance or services or a member of a benefit group who has reached the age of majority.

(3) **Payment**

standard: means the amount of the cash assistance payment, after the countable net earned and unearned income of the benefit group has been subtracted from the benefit group’s standard of need, and prior to reduction by sanction, recoupment or both.

(4)

Permanent total disability: means an individual must have a physical or mental impairment, expected to last at least 12 months, that prevents gainful employment in any employment position within the individual’s current employment capacity.

(5) **Person:**

means an individual.

(6)

Prospective budgeting: means the computation of a benefit group’s eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

Q. Definitions beginning with “Q”: **Qualified alien status** means a person lawfully admitted into the United States under INA guidelines as defined in PROWRA of 1996.

R. Definitions beginning with “R”:

(1) Real property: means land, affixed improvements, and structures which include mobile homes. Grazing permits are also considered real property.

(2) Recertification: means a complete review of all conditions of eligibility which are subject to change and a redetermination of the amount of assistance payment for an additional period of time.

(3) Recipient: means a person receiving cash assistance benefits.

(4) Refugee: means a lawfully admitted individual granted conditional entry into the United States.

(5) Regular reporting: means a reporting requirement that requires a participating household to report a change within ten days of the date a change becomes known to the household.

(a) A financial change becomes known to the household when the household receives the first payment attributed to an income or resource change, or when the first payment is made for a change in an allowable expense.

(b) A non-financial change including but not limited to, a change in household composition or a change in address, becomes known to the household on the date the change takes place.

(6) Resource standard: means the financial standard with respect to resources and property, \$2,000 for non-liquid resources and \$1,500 for liquid resources.

(7) Retrospective budgeting: means the computation of a benefit group’s benefits for an issuance month based

on actual income and circumstances that existed in the previous month.

(8) Resource planning session: means a planning session to ascertain the applicant’s immediate needs and to assess the applicant’s financial and non-financial options.

S. Definitions beginning with “S”:

(1) School age: means any dependent child who turns six years prior to September first and is under 18 years of age.

(2) Secretary: means the secretary of the department.

(3) Self-employed: means an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income.

(4) Services: means child-care assistance; payment for employment-related transportation costs; job search assistance; employment counseling; employment; education and job training placement; one-time payment for necessary employment-related costs; case management; or other activities whose purpose is to assist transition into employment.

(5) Shelter for battered persons: means a public or private nonprofit residential facility that serves battered persons. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered persons.

(6) Simplified reporting: a change reporting requirement for households that receive TANF benefits.

(7) Single-parent benefit group: means any benefit group which does not include both parents of a child included in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

(8) Sponsor: means a person who executed an affidavit of support or similar agreement on behalf of an alien as

a condition of the alien’s entry or admission to the United States as a permanent resident.

(9) Sponsored alien: means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Sections 101(a)(15) and 101(a)(2) of the Immigration and Nationality Act.

(10) Stale: means EBT accounts which have not been accessed, no withdrawal activity, by the household in the last 90 days from the most recent date of withdrawal.

(11) Standard of need: means an amount which is based on the number of individuals included in the benefit group and allows for financial standard and basic needs.

(12) Standard work requirement hours: means the minimum number of hours in applicable core and non-core total work activities a participant must complete.

(13) State-funded alien eligible: means an alien who entered the United States on or after August 22, 1996, as one of the classes of aliens described in Subsection B of 8.102.410.10 NMAC, is eligible with respect to citizenship requirements for state-funded assistance under NMW and GA without regard to how long the alien has been residing in the United States.

(14) Supplemental nutrition assistance program (SNAP): The Food and Nutrition Act of 2008 changed the federal name of the food stamp program to the supplemental nutrition assistance program. SNAP is synonymous with the food stamp program.

(15) Supplemental security income (SSI): means monthly cash payments made under the authority of:

(a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;

(b) Section 1616(a) of the Social Security Act; or

(c)
Section 212(a) of P.L. 93-66.

T. Definitions
beginning with “T”:

(1)
Temporary total disability: means a physical or mental impairment, expected to last at least 30 days from date of determination, but less than one year from the date of application, that prevents gainful employment in any employment position within the individual’s current employment capacity.

(2) **Two-parent benefit group:** means a benefit group which is considered to exist when both parents of any child included in the benefit group live in the home with the child and are included in the benefit group.

(3) **Term limits:** means NMW assistance (cash benefits and supportive services) is not provided to or for an adult or a minor head of household for more than 60 months during the individual’s lifetime.

U. Definitions
beginning with “U”:

(1) **Unearned income:** means old age, survivors, and disability insurance payments (social security), railroad retirement benefits, veterans administration compensation or pension payments, military retirement and allotments, pensions, annuities and retirement benefits; lodge or fraternal benefits, any other public or private disability or retirement benefit or pension, shared shelter payments, individual Indian money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker’s compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

(2) **Universal Basic Income:** Universal basic income is a government-guaranteed program that provides a modest cash income at regular intervals (e.g., each month or year) to every individual or household to meet the basic needs.

V. Definitions
beginning with “V”:

(1) **Vehicle:** means a conveyance used for the transportation of individuals to or from employment, for the activities of daily living or for the transportation of goods; vehicle does not include any boat, trailer or mobile home used as the principal place of residence.

(2)
Verification: means the use of third-party information or documentation to establish the accuracy of statements on the application, interim report and recertification.

(3) **Vocational education:** means an organized education program that is directly related to the preparation of a person for employment in a current or emerging occupation requiring training other than a baccalaureate or advance degree. Vocational education must be provided by an educational or training organization, such as a vocational-technical school, community college, or post-secondary institution or proprietary school.

W. Definitions
beginning with “W”:

Wage subsidy program means a subsidized employment training opportunity through which a TANF cash assistance recipient is hired into full-time employment.

X. Definitions
beginning with “X”:

Y. Definitions
beginning with “Y”:

Z. Definitions
beginning with “Z”:

[8.102.100.7 NMAC - Rp,
8.102.100.7 NMAC 11/01/2023; A,
6/1/2025]

**HEALTH CARE
AUTHORITY
INCOME SUPPORT DIVISION**

This is an amendment to 8.102.410 NMAC, Sections 10 and 16 effective 6/1/2025.

**8.102.410.10 CITIZENSHIP
AND NON-CITIZEN STATUS:**

**A. Eligibility for
TANF funded cash assistance:**

(1)
Participation in the NMW cash assistance program is limited to a U.S. citizen, a naturalized citizen or a non-citizen U.S. national.

(2) A non-citizen, other than a non-citizen U.S. national, must be both a qualified and eligible non-citizen in order to participate in the NMW cash assistance program.

B. Definitions:

(1)
Continuously lived in the U.S.: means that a non-citizen has lived in the U.S. without a single absence of more than 30 days or has lived in the U.S. without a total of aggregated absences of more than 90 days.

(2) **Federal means-tested public benefit:** means benefits from the food stamp program; the food assistance block grant programs in Puerto Rico, American Samoa, and the commonwealth of the Northern Mariana Islands; supplemental security income (SSI); and the TANF block grant program under title IV of the Social Security Act; medicaid, and SCHIP.

(3) **Five-year bar:** means the federally imposed prohibition on receiving federal means-tested public benefits for certain qualified non-citizens who entered the United States on or after August 22, 1996, until they have continuously lived in the U.S. for five years. If a non-citizen enters the U.S. on or after August 22, 1996, but does not meet the definition of a qualified non-citizen, the five-year bar begins on the date the non-citizen attains qualified non-citizen status.

(4) **Immigrant:** means a non-citizen within the meaning found in title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(5) **Non-citizen U.S. national:** means a person who is not a U.S. citizen but was born in an outlying possession of the United States on or after the date the U.S. acquired the possession, or a person whose parents are non-citizen U.S. nationals. A person who

resides on one of the following U.S. island territories is a non-citizen U.S. national: American Samoa, Swains Island or the Northern Mariana Islands.

(6)

Permanently residing under color of law (PRUCOL): means a person whose presence in the US is known by the department of homeland security (DHS) and the DHS does not intend to deport the person. Persons classified as PRUCOL may or may not also be qualified non-citizens.

C. Qualified non-

citizen: A qualified non-citizen is any of the following types of non-citizens:

(1) who is

lawfully admitted for permanent residence under the Immigration and Nationality Act (an LPR);

(2) who is

granted asylum under Section 208 of the INA (an asylee);

(3) who is a

refugee admitted to the U.S. under Section 207 of the INA (a refugee);

(4) who is

paroled into the U.S. under Section 212(d)(5) of the INA for at least one year (a parolee);

(5) whose

deportation is being withheld under Section 241(b)(3) or 243(h) of the INA;

(6) who is

granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(7) who is a

Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;

(8) who is a

victim of a severe form of trafficking, regardless of immigration status, under the Trafficking Victims Protection Act of 2000.

(9) an

individual who lawfully resides in the United States in accordance with the compact of free association (COFA) migrant, who is also referred to as compact citizen.

D. Qualified non-

citizen due to battery or extreme cruelty: means a non-citizen regardless of status who has been

battered or subjected to extreme cruelty, as long as the following elements are met:

(1) there is a

substantial connection between such battery or cruelty and the need for the cash benefits; and

(2) the abused

non-citizen is not currently living with the abuser; and

(3) the INS

or executive office of immigration review (EOIR) has:

(a)

approved a self-petition seeking permanent residency, or

(b)

approved a petition for a family based immigrant visa; or

(c)

approved an application for cancellation of removal or suspension of deportation; or

(d)

found that a pending petition or application establishes “prima facie” (true and valid) case for approval; and

(4) the non-

citizen has been battered or subjected to extreme cruelty in the US by a spouse or parent, or by a member of the spouse or parent’s family residing in the same household as the abused non-citizen and the spouse or parent of the abused non-citizen consented to, or acquiesced in such battery or cruelty; or

(5) the non-

citizen has a child who has been battered or subjected to extreme cruelty in the US by the non-citizen’s spouse or parent, as long as the non-citizen does not actively participate in the battery or cruelty; or a non-citizen whose child is battered or subjected to extreme cruelty by a member of the non-citizen’s spouse or parent’s family residing in the same household and the non-citizen’s spouse or parent consented or acquiesced to such battery or cruelty; or

(6) the non-

citizen is a child who resides in the same household as a parent who has been battered or subjected to extreme cruelty in the US by the parent’s spouse or by a member of the spouse’s family residing the same

household and the non-citizen’s spouse consented or acquiesced to such battery or cruelty.

(7) U.S.

citizen: means, but may not be limited to:

(a)

a person born in the United States;

(b)

a person born in Puerto Rico, Guam, U.S. Virgin Islands or Northern Mariana Islands who has not renounced or otherwise lost their citizenship;

(c)

a person born outside the U.S. to at least one U.S. citizen parent; or

(d)

a person who is a naturalized citizen.

E. Non-citizens who

are eligible to participate: A non-citizen who meets the definition of a qualified non-citizen shall be eligible to participate in the NMW cash assistance program if the non-citizen:

(1) physically

entered the U.S. prior to August 22, 1996, and obtained qualified non-citizen status before August 22, 1996;

(2) physically

entered the U.S. prior to August 22, 1996, obtained qualified non-citizen status on or after August 22, 1996, and has continuously lived in the U.S. from the latest date of entry prior to August 22, 1996 until the date the participant or applicant obtained qualified non-citizen status;

(3) physically

entered the U.S. on or after August 22, 1996, meets the definition of a qualified non-citizen and has been in qualified non-citizen status for at least five years (five year bar);

(4) physically

entered the U.S. before August 22, 1996, and did not continuously live in the U.S. from the latest date of entry prior to August 22, 1996, until obtaining qualified non-citizen status, but has been in qualified non-citizen status for at least five years;

(5) is a

lawfully admitted permanent resident non-citizen under the INA, who has worked or can be credited with 40 qualifying quarters; or

(6) is a veteran of the military with an honorable discharge that is not based on non-citizen status who has fulfilled the minimum active duty requirements; or the non-citizen who is on active duty military service; or the person is the spouse, surviving spouse who has not remarried, or an unmarried dependent child of a veteran or active duty service member;

(7) an non-citizen is eligible for a period of five years from the date a non-citizen:

(a) is granted status as an asylee under Section 208 of the INA;

(b) is admitted as a refugee to the U.S. under Section 207 of the INA;

(c) has had their deportation withheld under Section 241(b)(3) or 243(h) of the INA;

(d) is admitted as an Amerasian immigrant under Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988; or

(e) is admitted as a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980; and

(8) ~~[a qualified non-citizen who entered the United States on or after August 22, 1996, to whom the five-year bar applies, may participate in the state-funded TANF program without regard to how long the non-citizen has been residing in the United States.]~~ an individual who lawfully resides in the United States in accordance with the compact of free association (COFA) migrant, who is also referred to as compact citizen.

(9) a qualified non-citizen who entered the United States on or after August 22, 1996, to whom the five-year bar applies, may participate in the state-funded TANF program without regard to how long the non-citizen has been residing in the United States.

F. Victim of severe form of trafficking: A victim of a severe form of trafficking, regardless

of immigration status, who has been certified by the U.S. department of health and human services (DHHS), office of refugee resettlement (ORR), is eligible to the same extent as a refugee.

(1) The date of entry for a victim of trafficking is the date of certification by ORR (which appears in the body of the eligibility letter from the ORR).

(2) A victim of a severe form of trafficking:

(a) must have and present a certification of eligibility letter from ORR for adults or letter for children (similar to but not necessarily a certification letter) as proof of status; and

(b) is not required to provide any immigration documents, but may have such documents and may present such documents.

(3) Determining eligibility for a victim of trafficking must include a call to the trafficking verification line at 1-866-401-5510.

(4) The caseworker must inform ORR of the benefits for which the victim of trafficking has applied.

G. Quarters of coverage:

(1) SSA reports quarters of coverage through the quarters of coverage history system (QCHS).

(2) The number of qualifying quarters is determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, and is based on the sum of: quarters the non-citizen worked; quarters credited from the work of a parent of the non-citizen before the non-citizen became 18 (including quarters worked before the non-citizen was born or adopted); and quarters credited from the work of a spouse of the non-citizen during their marriage if they are still married or the spouse is deceased.

(a) A spouse may not get credit for quarters of a spouse when the couple divorces

prior to a determination of eligibility.

(b) If eligibility of a non-citizen is based on the quarters of coverage of the spouse, and then the couple divorces, the non-citizen's eligibility continues until the next recertification. At that time, the caseworker shall determine the non-citizen's eligibility without crediting the non-citizen with the former spouse's quarters of coverage.

(3) Disputing quarters: If a participant or applicant disputes the SSA determination of quarters of coverage, the participant may not participate based on having 40 qualifying quarters until a determination is made that the participant or applicant can be credited with 40 qualifying quarters. The participant or applicant may participate as a state-funded benefit group member, if otherwise eligible.

(4) Federal means-tested benefit: After December 31, 1996, a quarter in which a non-citizen received any federal means-tested public benefit, as defined by the agency providing the benefit shall not be credited toward the 40-quarter total. A parent's or spouse's quarter is not creditable if the parent or spouse actually received any federal means-tested public benefit. If the non-citizen earns the 40th quarter of coverage prior to applying for a federal means- tested public benefit in that same quarter, the caseworker shall allow that quarter toward the 40 qualifying quarters total.

H. Verification of citizenship/eligible non-citizen status: U.S. citizenship is verified only when client statement of citizenship is inconsistent with statements made by the applicant or with other information on the application, previous applications, or other documented information known to HSD.

(1) Questionable U.S. citizenship: Any mandatory benefit group member whose U.S. citizenship is questionable is ineligible to participate until proof of U.S. citizenship is obtained. The member whose citizenship is questionable shall have all of their

resources and a pro rata share of income considered available to any remaining benefit group members.

(2) Eligible non-citizen status: Verification of eligible non-citizen status is mandatory at initial certification. Only those benefit group members identified as non-citizens with qualified and eligible non-citizen status are eligible to participate in the NMW program.

(3) Ineligible or questionable non-citizen status: Any household member identified as an ineligible non-citizen, or whose non-citizen status is questionable cannot participate in the NMW program.

I. Need for documentation:

(1) Benefit group members identified as non-citizens must present documentation, such as but not limited to, a letter, notice of eligibility, or identification card which clearly establishes that the non-citizen has been granted legal status.

(2) A caseworker shall allow a non-citizen a reasonable time to submit acceptable documentation of eligible non-citizen status. A reasonable time shall be 10 days after the date the caseworker requests an acceptable document, or until the 30th day after application, whichever is longer.

(3) If verification of a participant's eligible status is not provided by the deadline, the eligibility of the remaining benefit group members shall be determined. Verification of eligible non-citizen status provided at a later date shall be treated as a reported change in benefit group membership.

(4) During the application process, if an individual has been determined to be a qualified non-citizen and either the individual or HSD submits a request to a federal agency for documentation to verify eligible non-citizen status, HSD must certify the individual in the TANF benefit group as a state-funded participant until a determination is made that the individual is eligible for TANF funded cash assistance.

(5) Inability to obtain INS documentation: If a benefit group indicates an inability to provide documentation of non-citizen status for any mandatory member of the benefit group, that member shall be considered an ineligible non-citizen. The caseworker shall not continue efforts to contact INS when the non-citizen does not provide any documentation from INS.

J. Failure to cooperate: If a benefit group or a benefit group member indicates an unwillingness to provide documentation of non-citizen status for any member, that member shall be considered an ineligible non-citizen. The caseworker shall not continue efforts to get documentation.

K. Reporting undocumented (illegal) non-citizens:

(1) HSD shall inform the local DHS office only when an official determination is made that any mandatory member of a benefit group who is applying for and receiving benefits is present in the U.S. in violation of the INA. A determination that a non-citizen is in the US in violation of the INA is made when:

(a) the non-citizens unlawful presence is a finding of fact or conclusion of law that is made by HSD as part of a formal determination about the individuals eligibility; and

(b) HSD's finding is supported by a determination by DHS or the executive office of immigration review (EOIR) that the non-citizen is unlawfully residing in the U.S. such as a final order of deportation.

(2) An non-citizen who resides in the US in violation of the INA shall be considered an ineligible benefit group member until there is a finding or conclusion of law through a formal determination process by the INS or EOIR.

(3) Illegal non-citizen status is considered reported when the caseworker enters relevant information about the non-citizen on the benefit group's computer file.

(4) A systematic alien verification for entitlements (SAVE) response showing no service record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is not lawfully present.

L. Income and resources of ineligible non-citizens: All the resources and a prorated share of income of an ineligible non-citizen, or of a non-citizen whose status is unverified, shall be considered in determining eligibility and the cash assistance benefit amount for the remaining eligible benefit group members.

[8.102.410.10 NMAC - Rp 8.102.410.10 NMAC, 7/1/2024; A, 6/1/2025]

8.102.410.16 [PROGRAM-DISQUALIFICATIONS:

~~A. Dual state benefits: An individual who has been convicted of fraud for receiving TANF, food stamps, medicaid, or SSI in more than one state at the same time shall not be eligible for inclusion in the cash assistance benefit group for a period of 10 years following such conviction. The conviction must have occurred on or after August 22, 1996.~~

~~B. Fugitive and probation and parole violators: An individual who is a fugitive felon or who has been determined to be in violation of conditions of probation or parole shall not be eligible for inclusion in the cash assistance benefit group.] [RESERVED]~~

[8.102.410.16 NMAC - Rp 8.102.410.16 NMAC, 7/1/2024; Repealed 6/1/2025]

HEALTH CARE AUTHORITY INCOME SUPPORT DIVISION

This is an amendment to 8.139.100 NMAC, Section 7 effective 6/1/2025.

8.139.100.7 DEFINITIONS:

A. Definitions beginning with "A":

(1) Adequate

notice: means a written notice sent by mail or electronically that includes a statement of the action HCA has taken or intends to take, reason for the action, household right to a fair hearing, name of the individual to contact for additional information, the availability of continued benefits liability of the household for any over-issuances received if hearing decision is adverse to the household. An adequate notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. In all cases, participants have 13 days from the mailing or electronic distribution date of the notice to request that benefits be restored to their previous level pending the outcome of an administrative hearing.

(2) Adjusted

net income: means the household's gross monthly income less the standard deduction, earned income deduction, dependent care deduction and the shelter deduction. (Medical expenses are allowed for certain eligible members as a deduction from their gross income.)

(3)

Application: means a request, on the appropriate ISD form, submitted in a written or electronic format with the signature of the applicant or on the applicant's behalf by an authorized representative, for assistance.

(4)

Attendant: means an individual needed in the home for medical, housekeeping, or child care reasons.

(5)

Authorized representative: means an individual designated by a household or responsible member to act on its behalf in applying for SNAP benefits, obtaining SNAP benefits, or using SNAP benefits to purchase food for the household. This can include a public or private, nonprofit organization or institution providing assistance, such as a treatment or rehabilitation center or shelter which acts on behalf of the resident applicant.

B. Definitions**beginning with "B":****(1) Benefit**

month: means the month for which SNAP benefits have been issued. This term is synonymous with issuance month defined below.

(2) Beginning

month: means the first month for which a household is certified after a lapse in certification of at least one calendar month. Beginning month and initial month are used interchangeably. A household is budgeted prospectively in a beginning month.

(3) Boarder:

means an individual to whom a household furnishes lodging and meals for reasonable compensation. Such a person is not considered a member of the household for determining the SNAP benefit amount.

(4) Boarding

house: means a commercial establishment, which offers meals and lodging for compensation with the intention of making a profit. The number of boarders residing in a boarding house is not used to establish if a boarding house is a commercial enterprise.

(5) Budget

month: means the calendar month for which income and other circumstances of the household are determined in order to calculate the SNAP benefit amount. During the beginning month of application, prospective budgeting shall be used and therefore, the budget month and the issuance month are the same.

C. Definitions**beginning with "C":****(1) Capital**

gains: means proceeds from the sale of capital goods or equipment.

(2)

Categorical eligibility (CE): means a SNAP household that meets one of the following conditions:

(a)

Financial CE: Any SNAP household in which all members receive Title IV-A assistance (TANF), general assistance (GA), or supplemental security income (SSI) benefits is

considered to be categorically eligible for SNAP benefits.

(b)

Broad-based CE: Any SNAP household, in good standing, in which at least one member is receiving a non-cash TANF/MOE funded benefit or service and household income is below one hundred sixty-five percent FPG.

(3) Cash

assistance (CA) households: (also referred to as financial assistance) means households composed entirely of persons who receive CA payments. Cash assistance (CA) means any of the following programs authorized by the Social Security Act of 1935, as amended: old age assistance; temporary assistance to needy families (TANF); aid to the blind; aid to the permanently and totally disabled; and aid to the aged, blind or disabled. It also means general assistance (GA), cash payments financed by state or local funds made to adults with no children who have been determined disabled, or to children who live with an adult who is not related. CA households composed entirely of TANF, GA or SSI recipients are categorically eligible for SNAP.

(4)

Certification: means the authorization of eligibility of a household and issuance of SNAP benefits.

(5)

Certification period: means the period assigned for which a household is eligible to receive SNAP benefits. The certification period shall conform to calendar months and includes the requirement for the completion of an interim report form in accordance with Subsection B of 8.139.120.9 NMAC.

(6) Collateral

contact: means an individual or agency designated by the household to provide information concerning eligibility.

(7)

Communal diner: means an individual 60 years of age or older who is not a resident of an institution or a boarding house, who is living

alone or with a spouse, and elects to use SNAP benefits to purchase meals prepared for the elderly at a communal dining facility which has been authorized by USDA/FNS to accept SNAP benefits.

(8)

Communal dining facility: means a public or nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for SSI recipients, and their spouses; a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate state or local agency to offer meals at concession prices to elderly persons or SSI recipients and their spouses. Such establishments include a facility such as a senior citizen's center, an apartment building occupied primarily by elderly persons, or any public or private nonprofit school (tax exempt) which prepares and serves meals for elderly persons.

(9) **Compacts**

of free association: is an individual who is compact of free association (COFA) migrant, also referred to as compact citizen. COFA is an agreement between the United States and the three Pacific Island sovereign states of federated states of Micronesia, the republic of the Marshall Islands, and the republic of Palau known as freely associated states.

(9) (10)

Conversion factor: means the calculation used to convert income that is received on a weekly or biweekly basis to an anticipated monthly amount.

D. Definitions

beginning with "D":

(1) **Date**

of application: means the date an application is received by the income support division offices during regular business hours. Applications that are dropped off or submitted electronically after regular business

hours will be considered received as of the next business day.

(2) **Date**

of admission: means the date established by the United States citizenship and immigration services as the date a non-citizen (or sponsored non-citizen) was admitted for permanent residence.

(3) **Date of**

entry: means the date established by the United States citizenship and immigration services as the date a non-citizen (or sponsored non-citizen) was admitted for permanent residence.

(4) **Disability:**

means the inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment.

(5) **Disabled**

member: see elderly or disabled member.

(6)

Documentation: means a written statement entered in the paper or electronic case record regarding the type of verification used and a summary of the information obtained to determine eligibility.

(7) **Drug**

addiction or alcoholic treatment and rehabilitation program: means any drug addiction treatment or alcoholic treatment and rehabilitation program conducted by a private, nonprofit organization or institution, or a publicly operated community mental health center under part B of title XIX of the Public Health Service Act (42 U.S.C. 3004 et seq.)

E. Definitions

beginning with "E":

(1) **Elderly or**

disabled member:

(a)

Elderly: means an individual 60 years or older.

(b)

Disabled: means a person who meets any of the following standards:

(i)

receives supplemental security income (SSI) under title XVI of the Social Security Act or disability or blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act;

(ii)

receives federally or state administered supplemental benefits under Section 1616a of the Social Security Act, provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act;

(iii)

receives federally or state administered supplemental benefits under Section 211(a) of Pub. L. 93-66, supplemental security income benefits for essential persons;

(iv)

receives disability retirement benefits from a government agency (e.g. civil service, ERA, and PERA) because of a disability considered permanent under Section 221(i) of the Social Security Act;

(v)

is a veteran with a service-connected or non-service connected disability rated by the veterans administration (VA) as total or paid as total by the VA under title 38 of the United States Code;

(vi)

is a veteran considered by the VA to be in need of regular aid and attendance or permanently homebound under title 38 of the United States code;

(vii)

is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently homebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States code;

(viii)

is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for service-connected death or pension benefits for a non-service-connected death under title 38 of the United States code and has a disability considered permanent under Section 221(i) of the Social Security Act ("entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated, or have been approved for such payments, but are not yet receiving them); or

(ix) receives an annuity payment under Section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive medicare by the railroad retirement board, or Section 2(a)(i)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under title XVI of the Social Security Act;

(x) is a recipient of interim assistance benefits pending the receipt of supplemental security income, a recipient of disability related medical assistance under title XIX of the Social Security Act, or a recipient of disability-based state general assistance benefits provided that the eligibility to receive any of these benefits is based upon disability or blindness criteria established by the state agency which are at least as stringent as those used under title XVI of the Social Security Act (as set forth at 20 CFR part 416, subpart I, Determining Disability and Blindness as defined in Title XVI).

(2) **Eligible**

foods: means:

(a) any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot-food products prepared for immediate consumption;

(b) seeds and plants to grow foods for the personal consumption of eligible households;

(c) meals prepared and delivered by an authorized meal delivery service to households eligible to use SNAP benefits to purchase delivered meals, or meals served by an authorized communal dining facility for the elderly, for SSI households, or both, to households eligible to use SNAP benefits for communal dining;

(d) meals prepared and served by a drug addict or alcoholic treatment and rehabilitation center to eligible households;

(e) meals prepared and served by a

group living arrangement facility to residents who are blind or disabled as found in the definition of “elderly or disabled member” contained in this section;

(f) meals prepared and served by a shelter for battered women and children to its eligible residents; and

(g) in the case of homeless SNAP households, meals prepared and served by an authorized public or private nonprofit establishment (e.g. soup kitchen, temporary shelter) approved by HCA that feeds homeless persons.

(3) **Encumbrance:** means debt owed on property.

(4) **Equity value:** means the fair market value of property, less any encumbrances owed on the property.

(5) **Excluded household members:** means individuals residing within a household who are excluded when determining household size, the SNAP benefit amount or the appropriate maximum food stamp allotment (MFSA). These include ineligible non-citizens, individuals disqualified for failure to provide an SSN or to comply with the work requirements, and those disqualified for intentional program violation. The resources and income (counted in whole or in part) of these individuals shall be considered available to the remaining household members.

(6) **Expedited services:** means the process by which households reporting little or no income or resources shall be provided an opportunity to participate in the FSP, no later than the seventh calendar day following the date the application was filed.

(7) **Expungement:** means the permanent deletion of SNAP benefits from an EBT account that is stale.

F. Definitions beginning with “F”:

(1) **Fair hearing:** an administrative procedure during which a claimant or the

claimant’s representative may present a grievance to show why they believe an action or proposed action by HCA is incorrect or inaccurate.

(2) **Fair market value (FMV):** means the amount an item can be expected to sell for on the open market.

(3) **FNS:** means the food and nutrition service of the United States department of agriculture (USDA).

(4) **Food Stamp Act:** the Food and Nutrition Act of 2008, and subsequent amendments.

(5) **Fraud:** intentionally making a misrepresentation of, or failing to disclose, a material fact: with the knowledge that such a fact is material (necessary to determine initial/ongoing eligibility or benefit entitlement); and with the knowledge that the information is false; and with the intent that the information be acted upon (deceive/cheat); with reasonable reliance on the person who hears the information to accept it as the truth.

(6) **Full time employment:** means working 30 hours or more per week, or earning income equivalent to the federal minimum wage multiplied by 30 hours.

G. Definitions beginning with “G”:

(1) **General assistance (GA) households:** means a household in which all members receive cash assistance financed by state or local funds.

(2) **Gross income:** means the total amount of income that a household is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the household, but diverted by the provider. Gross income does not include specific income exclusions, such as, but not limited to, the cost of producing self-employment income, and income excluded by federal law.

(3) **Group living arrangements:** means a residential setting that serves no more than sixteen residents that is certified by DOH under regulations issued under Section 1616(e) of the Social Security Act, or under standards determined by the secretary to be comparable to standards implemented by appropriate state agencies under Section 1616(e) of the Social Security Act. To be eligible for SNAP benefits, a resident shall be living in a public or private non-profit group living arrangement and must be blind or disabled as defined in the definition of “elderly or disabled member” set forth at Items (i) through (x) of Subparagraph (b) of Paragraph (25) of Subsection A of 8.139.100.7 NMAC.

(4) **Guaranteed basic income:** Guaranteed basic income provides an individual or household a one time or recurring cash payment or transfer funded from a public or private source intended to support the basic needs of individuals or households by reducing poverty, promoting economic mobility, or increasing the financial stability.

H. Definitions beginning with “H”:

(1) **Head of household:** the household is the basic assistance unit for the SNAP program. The household has the right to select the head of household in accordance with CFR 273.1 (d).

(2) **Homeless individual:** means an individual who lacks a fixed and regular nighttime residence, or an individual whose primary nighttime residence is:

(a) a supervised shelter providing temporary accommodations (such as a welfare hotel or congregate shelter);

(b) a halfway house or similar institution providing temporary residence for individuals intended to be institutionalized;

(c) a temporary accommodation for no more than 90 days in the residence of another individual, beginning on the date the individual moves into the temporary residence; or

(d) a place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (e.g. a hallway, a bus station, a lobby or similar places).

(3) **Homeless meal provider:** means a public or private nonprofit establishment, (e.g., soup kitchen, temporary shelter), approved by an appropriate state agency, that feeds homeless persons.

I. Definitions beginning with “I”:

(1) **Immigrant:** means a lawfully admitted non-citizen who entered the U.S. with the expressed intention of establishing permanent residence as defined in the federal act.

(2) **Ineligible non-citizen:** means an individual who does not meet the eligible non-citizen requirements or who is not admitted for permanent residence.

(3) **Income:** means all monies received by the household from any source, excluding only the items specified by law or regulation. Income is also defined as any monetary gain or benefit to the household.

(4) **Income and eligibility verification system:** means a system of information acquisition and exchange for purposes of income and eligibility verification which meets the requirements of Section 1137 of the Social Security Act, referred to as IEVS.

(5) **Initial month:** means the first month for which a first-time household is certified for participation in SNAP. An initial month is also a month in which a household is certified following a break in participation of one calendar month or longer. For migrant or seasonal farm worker households, an initial month shall only be considered if there has been an interruption in certification of at least one calendar month.

(6) **Inquiry:** means a request for information about eligibility requirements for a cash, medical, or food assistance program that is not an application (although

the inquiry may be followed by an application).

(7) **Institution of higher education:** means certain college-level institutions, such as vocational schools, trade schools, and career colleges that award academic degrees or professional certifications.

(8) **Institution of post-secondary education:** means any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or provides a program of training to prepare students for gainful employment.

(9) **Irrevocable trust:** means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

(10) **Issuance month:** means the calendar month for which SNAP is issued. In prospective budgeting, the budget and issuance months are the same. In retrospective budgeting, the issuance month follows the budget month.

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

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

L. Definitions beginning with “L”: **Low-income household** means a household whose annual income does not exceed one hundred and twenty-five percent of the office of management and budget poverty guideline.

M. Definitions beginning with “M”:

(1) **Maintenance of effort (MOE):** means the amount of general funds the state agency must expend annually on the four purposes of temporary assistance for needy families (TANF) to meet a minimum

expenditure requirement based on a state's historical assistance to families with dependent children (AFDC) expenditures.

(2) **Maximum**

food stamp allotment (MFSA):

means the cost of the diet required to feed a family of four persons consisting of a man and a woman 20 through 50, a child six through eight, and a child nine through 11 years of age. The cost of such a diet shall be the basis for uniform SNAP benefit amounts for all households, regardless of their actual composition. In order to develop maximum SNAP benefit amounts, the USDA makes adjustments for household size taking into account the economies of scale and other adjustments as required by law. The MFSA is used to determine if a boarder is paying reasonable compensation for services. The maximum SNAP allotment (MFSA) was previously named the thrifty food plan (TFP).

(3)

Meal delivery service: means a political subdivision, a private nonprofit organization, or a private establishment with which a state or local agency has contracted for the preparation and delivery of meals at concession prices to elderly persons, and their spouses, and to the physically or mentally handicapped, and to persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

(4) **Medicaid:**

medical assistance under title XIX of the Social Security Act, as amended.

(5) **Migrant/**

migrant household: means an individual who travels away from home on a regular basis with a group of laborers to seek employment in an agriculturally related activity. A migrant household is a group that travels for this purpose.

(6) **Mixed**

households: means those households in which some but not all of the members receive cash assistance benefits.

N. Definitions

beginning with "N":

(1) **Net**

monthly income: means gross nonexempt income minus the allowable deductions. It is the income figure used to determine eligibility and SNAP benefit amount.

(2) **Non-**

cash assistance (NCA) households:

means any household, which does not meet the definition of a cash assistance household, including households composed of both cash assistance and NCA members (mixed household). Same applies to non-financial households (NFA).

(3) **Non-cash**

TANF/MOE benefit or service:

means non-cash TANF/MOE benefit or services include programs or services that do not provide cash to recipients, but are funded by the TANF program, either by the federal TANF block grant or the state MOE share. These services may include transportation, childcare, counseling programs, parenting programs, pamphlets or referrals to other TANF/MOE-funded services.

(4)

Non-financial assistance (NFA)

households: means any household, which does not meet the definition of a financial assistance household, including households composed of both cash assistance and NFA members (mixed household). NFA has the same meaning as non-cash households (NCA).

(5) **Non**

household members: means persons residing with a household who are specifically excluded by regulation from being included in the household certification, and whose income and resources are excluded. No household members include roomers, boarders, attendants, and ineligible students. Included in this classification are institutionalized household members such as children attending school away from home and members who are hospitalized or in a nursing home.

(6) **Notice:**

means written correspondence that is generated by any method including handwritten, typed or electronic, delivered to the client or an authorized representative by hand,

U.S. mail, professional delivery or by any electronic means. The term "written notice" and "notice" are used interchangeably.

(7) **Notice of**

adverse action (NOAA): means a notice informing the household that an action is being taken by the HCA that adversely affects eligibility or the amount of benefits a household receives, including withholding, suspending, reducing or terminating benefits. The NOAA shall be issued to the household before taking the adverse action. Benefits will not be reduced until 13 days from the date on the adverse action. If the 13th day falls on a weekend or holiday, the next working day is counted as the last day of the 13-day adverse action period.

O. Definitions

beginning with "O": Over-issuance means the amount by which SNAP benefits issued to a household exceed the amount the household was eligible to receive.

P. Definitions

beginning with "P":

(1) **Period**

of intended use: means the month in which the benefits are issued if issued before the 20th of the month. For benefits issued after the 20th of the month, the period of intended use is the rest of the month and the following month.

(2) **Principal**

wage earner: means the household member with the greatest amount of earned income in the two months preceding a determination that a program rule has been violated. This applies only if the employment involves 20 hours or more a week or pays wages equivalent to the federal minimum wage multiplied by 20 hours. In making this evaluation, the entire household membership shall be considered, even those who are excluded or disqualified but whose income must be counted for eligibility and benefit amount determination. For purposes of determining noncompliance with the SNAP work requirements, including employment and training components, voluntary quit, and work-fare, the

head of household is the principal wage earner unless the household has selected an adult parent of children (of any age) or an adult with parental control over children (under age 18) as the designated head of household as agreed upon by all adult members of the household. A person of any age shall not be considered the principal wage earner if the person is living with a parent or person fulfilling the role of parent or the parent or parent-substitute is:

- (a) registered for employment;
- (b) exempt because of Title IV compliance;
- (c) in receipt of UCB or is registered as part of the UCB process; or
- (d) employed or self-employed a minimum of 30 hours a week or receiving income at the federal minimum hourly rate multiplied by 30 hours.

(3)
Prospective budgeting: means the computation of a household's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

Q. Definitions beginning with "Q": **Quality control (QC)** means the federal mandate, as part of the performance reporting system whereby each state agency is required to review a sample of active cases for eligibility and benefit issuance, and to review a sample of negative cases for correct application of policy. The objectives are to determine a state's compliance with the Food Stamp Act and CFR regulations, and to establish the basis for a state's error rate, corrective action to avoid future errors, and liability for errors in excess of national standards, or eligibility for enhanced federal funding if the error rate is below national standards.

R. Definitions beginning with "R":

(1) **Real property:** means land, buildings, and whatever is built on or affixed to the land.

(2) **Recipient:** means a person receiving SNAP benefits. Recipient is the same as participant.

(3) **Refugee:** means a lawfully admitted individual granted conditional entry into the U.S.

(4) **Reasonable compensation:** means a boarder payment amount that equals or exceeds the MFSA for the number of boarders.

(5) **Retail food store:** means: (a) an establishment or recognized authority of an establishment, or a house-to-house trade route, whose eligible food sales volume, as determined by visual inspection, sales records, purchase records, or other inventory or accounting record keeping methods that are customary or reasonable in the retail food industry, is more than fifty percent staple food items for home preparation and consumption;

(b) public or private communal dining facilities and meal delivery services; private nonprofit drug addict or alcoholic treatment and rehabilitation programs; publicly operated community mental health centers which conduct residential programs for drug addicts or alcoholics;

(c) public or private nonprofit group living arrangements, or public or private nonprofit shelters for battered women and children, or public or private nonprofit establishments, approved by HCA, or a local agency, that feed homeless persons;

(d) any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food; a farmer's market.

(6) **Retrospective budgeting:** means the computation of a household's benefits for an issuance month based on actual income and circumstances that existed in the previous month, the 'budget' month.

S. Definitions beginning with "S":

(1) **Self-employed:** means an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income. Self-employed individuals are not eligible to draw UCB by virtue of their job efforts.

(2) **Shelter for battered persons:** means a public or private nonprofit residential facility that serves battered persons. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered persons.

(3) **Simplified reporting:** is the reporting requirement for households that receive SNAP benefits.

(4) **Sponsor:** means a person who executed an affidavit(s) of support or similar agreement on behalf of a non-citizen as a condition of the non-citizen's entry or admission to the United States as a permanent resident.

(5) **Sponsored non-citizen:** means a non-citizen lawfully admitted for permanent residence in the United States as an immigrant, as defined in Subsection 101(a)(15) and Subsection 101(a)(2) of the Immigration and Nationality Act.

(6) **Spouse:** means either of two individuals who: (a)

would be defined as married to each other under applicable state law; or

(b) are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

(7) **Stale:** means EBT accounts which have not been accessed or had any withdrawal activity by the household for 90 days from the most recent date of withdrawal.

(8) **Standard utility allowance (SUA):** means an average utility amount used year round that includes the actual expense of heating and cooling fuel, electricity

(apart from heating or cooling), the basic service fee for one telephone, water, sewerage, and garbage and trash collection. This amount is adjusted annually to reflect changes in expenses. A cooling expense is a verifiable utility expense relating to the operation of air conditioning.

(9) State

wage information collection

agency: means for New Mexico the department of workforce solutions, employment security division (ESD) which administers the state employment compensation law and provides a quarterly report of employment related income and eligibility data.

(10) Striker:

means anyone involved in a strike or concerted work stoppage by employees (including stoppage due to the expiration of a collective bargaining agreement) and any concerted slow down or other concerted interruption of operations by employees.

(11) Student:

means an individual attending at least half time, as defined by the institution any kindergarten, preschool, grade school, high school, vocational school, technical school, training program, college, or university.

(12)

Supplemental nutrition assistance

program (SNAP): The Food and Nutrition Act of 2008 changed the federal name of the food stamp program to the supplemental nutrition assistance program. SNAP is synonymous with the food stamp program.

(13)

Supplemental nutrition assistance program trafficking: means:

(a)

The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via electronic benefit transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;

(b)

The exchange of firearms, ammunition, explosives, or controlled substances, as defined in Section 802 of title 21, United States Code, for SNAP benefits;

(c)

Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;

(d)

Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or

(e)

Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

(14)

Supplemental security income

(SSI): means monthly cash payments made under the authority of:

(a)

Title XVI of the Social Security Act, as amended, to the aged, blind and disabled; or

(b)

Section 1616(a) of the Social Security Act; or

(c)

Section 212(a) of P.L. 93-66.

(15) SSI

household: means a household in which all members are applicants or recipients of SSI. An SSI household may also apply for SNAP through a social security office. The application must be forwarded to the appropriate SNAP (ISD) office for processing. SSI households are categorically eligible.

(16)

Supplementary unemployment

benefits (SUB): part of the guaranteed annual wage provisions in the auto industry whereby the

company supplements state UCB to insure that laid off workers receive a guaranteed amount of income during the layoff period.

T. Definitions

beginning with “T”:

(1) Thrifty

food plan (TFP): see maximum SNAP allotment.

(2)

Transitional food stamps: an extension of SNAP benefits up to five months to certain households whose cash assistance benefits have been terminated.

(3)

Transitional housing: means housing for which the purpose is to facilitate the movement of homeless individuals and families to permanent housing within 24 months, or such longer period as is determined necessary. All types of housing meant to be transitional should be considered as such for the purpose of determining exclusion. The definition does not exclude specific types of housing and does not require the presence of cooking facilities in a dwelling.

U. Definitions

beginning with “U”:

(1) Unclear

information: Unclear information is information that is not verified, or information that is verified but ISD needs additional information to act on the change.

(2) Universal

basic income: Universal basic income is a government-guaranteed program that provides a modest cash income at regular intervals (e.g., each month or year) to every individual or household to meet the basic needs.

V. Definitions

beginning with “V”:

(1) Vehicles:

means a mode of transportation for the conveyance of passengers to or from employment, daily living, or for the transportation of goods. Boats, trailers and mobile homes shall not be considered vehicles, for purposes of SNAP.

(2)

Verification: means the use of third-party information or documentation to establish the accuracy of statements on the application.

W. Definitions

beginning with “W”:

[RESERVED]**X. Definitions**beginning with “X”: **[RESERVED]****Y. Definitions**beginning with “Y”: **[RESERVED]****Z. Definitions**beginning with “Z”: **[RESERVED]**

[8.139.100.7 NMAC - Rp,
8.130.100.7 NMAC 7/16/2024; A,
6/1/2025]

**HEALTH CARE
AUTHORITY
INCOME SUPPORT DIVISION**

**This is an amendment to 8.139.410
NMAC Section 9 effective 6/1/2025.**

**8.139.410.9 CITIZENSHIP
AND IMMIGRATION STATUS
FOR ELIGIBILITY:** Participation
in SNAP is limited to individuals
who live in the United States and
who are U.S. citizens or are otherwise
eligible per the criteria below. The
department will determine eligibility
for non-citizens in accordance with
7 CFR 273.2 and 7 CFR 273.4. No
individual is eligible to participate
in SNAP unless that individual is
otherwise eligible and is:

A. A U.S. citizen;**B.** A U.S. non-citizen
national;**C.** An individual who
is:

(1) a member
of Hmong or Laotian tribe during the
Vietnam era, when the tribe militarily
assisted the U.S.; (including a spouse,
surviving spouse, or child of tribe
member) who are lawfully present in
the U.S.;

(2) an
American Indian born in Canada
who possesses at least fifty percent of
blood of the American Indian race to
whom the provisions of section 289
of the Immigration and Nationality
Act apply; or a member of an Indian
tribe as defined at section 4(e) of 25
U.S.C. 450b(e) which is recognized
as eligible for the special programs
and services provided by the U.S.
to Indians because of their status as
Indians; or

(3) a victim of

human trafficking and their derivative
beneficiaries, in accordance with 7
CFR 273.4(a)(5); or

D. A qualified

immigrant meeting the criteria in
Subsection D, Paragraph (2) below:

(1) A qualified

immigrant is a:

(a)

lawful permanent resident;

(b)

refugee;

(c)

asylee;

(d)

person granted withholding of
deportation or removal;

(e)

conditional entrants, (in effect prior to
April 1, 1980);

(f)

person paroled into the U.S. for at
least one year;

(g)

Cuban/Haitian entrants;

(h)

battered spouses and children with a
pending or approved self-petition for
an immigrant visa and whose need for
benefits has a substantial connection
to the battery or cruelty (including
qualified parents, spouses, and
children of same), or battered spouses
and children with an application for
cancellation of removal or suspension
of deportation, and whose need for
benefits has a substantial connection
to the battery or cruelty (including
qualified parents, spouses, and
children of same).

(2) Qualified

immigrants are eligible only if they:

(a)

were 65 or older and were lawfully
residing in the U.S. on August 22,
1996, or

(b)

are under age 18, or

(c)

have been in “qualified” immigrant
status for at least five years, or

(d)

are lawful permanent residents who
have worked or can be credited with
40 qualifying quarters of employment,
or

(e)

were granted refugee or asylum
status or withholding of deportation/
removal; or

(f)

are a Cuban/Haitian entrant, or
Amerasian immigrant, or

(g)

are receiving blindness or disability-
related assistance or

(h)

are a veteran, active duty military; or
the spouse, or the surviving spouse
who has not married, or the child.

(i)

are in Iraqi or Afghan special
immigrant status.

~~[E.——Verification of
immigrant status is determined in
accordance with 7 CFR 273.2(f) and
reasonable opportunity is provided
pursuant to 7 CFR 273.2(f)(1)(e):~~

~~F.——Reporting
undocumented aliens:~~

~~(1)~~

~~HSD-
shall inform the local DHS office
only when an official determination
is made that any individual who is
applying for or receives benefits is
present in the U.S. in violation of the
INA. An official determination that
an undocumented immigrant is in the
U.S. in violation of the INA is only
made when:~~

~~(a)~~

~~the undocumented alien’s unlawful
presence is a finding of fact or
conclusion of law that is made by
HSD as part of a formal determination
about the individual’s eligibility; and~~

~~(b)~~

~~HSD’s finding is supported by
a determination by DHS or the
executive office of immigration
review (EOIR) that the non-citizen is
unlawfully residing in the US, such as
a final order of deportation.~~

~~(2)~~

~~A
systematic alien verification for
entitlements (SAVE) response
showing no service record on an
individual or an immigration status
making the individual ineligible for
a benefit is not a finding of fact or
conclusion of law that the individual
is not lawfully present.~~

~~(3)~~

~~Undocumented immigrant status is~~

considered reported when ISD enters the information about the non-citizen into the household's computer file.

(4) When a household indicates inability or unwillingness to provide documentation of immigrant status for any household member, HSD must classify that member as an ineligible immigrant. When a person indicates inability or unwillingness to provide documentation of immigrant status, HSD must classify that person as an ineligible immigrant. In such cases HSD must not continue efforts to obtain that documentation.]

E. Lawfully present and exempt from five-year bar: Effective December 27, 2020, per section 208 of the Consolidated Appropriations Act, 2021 individuals who are considered compact of free association migrants (COFA) are also referred to as compact citizens. COFA is an agreement between the United States and the three Pacific Island sovereign states of federated states of Micronesia, the republic of the Marshall Islands, and the republic of Palau known as freely associated states.

F. Verification of immigrant status is determined in accordance with 7 CFR 273.2(f) and reasonable opportunity is provided pursuant to 7 CFR 273.2(f)(1)(c).

G. Reporting undocumented aliens:

(1) HSD shall inform the local DHS office only when an official determination is made that any individual who is applying for or receives benefits is present in the U.S. in violation of the INA. An official determination that an undocumented immigrant is in the U.S. in violation of the INA is only made when:

(a) the undocumented alien's unlawful presence is a finding of fact or conclusion of law that is made by HSD as part of a formal determination about the individual's eligibility; and

(b) HSD's finding is supported by a determination by DHS or the executive office of immigration

review (EOIR) that the non-citizen is unlawfully residing in the US, such as a final order of deportation.

(2) A systematic alien verification for entitlements (SAVE) response showing no service record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is not lawfully present.

(3) Undocumented immigrant status is considered reported when ISD enters the information about the non-citizen into the household's computer file.

(4) When a household indicates inability or unwillingness to provide documentation of immigrant status for any household member, HSD must classify that member as an ineligible immigrant. When a person indicates inability or unwillingness to provide documentation of immigrant status, HSD must classify that person as an ineligible immigrant. In such cases HSD must not continue efforts to obtain that documentation. [8.139.410.9 NMAC - Rp, 8.139.410.9 NMAC, 11/1/2023; A, 6/1/2025]

HEALTH CARE AUTHORITY MEDICAL ASSISTANCE DIVISION

This is an emergency amendment to 8.200.400 NMAC, Section 10, effective 5/1/2025.

8.200.400.10 BASIS FOR DEFINING GROUP - MEDICAID CATEGORIES:

A. Except where noted, the HCA income support division (ISD) determines eligibility in the categories listed below:

- (1) other adult (Category 100);
- (2) parent caretaker (Category 200);
- (3) pregnant women (Category 300);

(4) pregnancy-related services (Category 301);

(5) loss of parent caretaker due to earnings from employment or due to spousal support (Categories 027 and 028);

(6) newborn (Category 031);

(7) children under age 19 (Categories 400, 401, 402, 403, 420, and 421);

(8) children, youth, and families department medicaid (Categories 017, 037, 046, 04, 066, and 086); and

(9) family planning (Category 029).

B. Medicare savings program (MSP): MSP assists an eligible recipient with the cost of medicare.

(1) Medicare is the federal government program that provides health care coverage for individuals 65 or older; or under 65 who have a disability. Individuals under 65 who have a disability are subject to a waiting period of 24 months from the approval date of social security disability insurance (SSDI) benefits before they receive medicare coverage. Coverage under medicare is provided in four parts.

(a) Part A hospital coverage is usually free to beneficiaries when medicare taxes are paid while working.

(b) Part B medical coverage requires monthly premiums, co-insurance and deductibles to be paid by the beneficiary.

(c) Part C advantage plan allows a beneficiary to choose to receive all medicare health care services through a managed care organization.

(d) Part D provides prescription drug coverage.

(2) The following MSP programs can assist an eligible recipient with the cost of medicare.

(a) **Qualified medicare beneficiaries (QMB) - Categories 041 and 044:** QMB covers low income medicare

beneficiaries who have or are conditionally eligible for medicare Part A. QMB benefits are limited to the following:

- (i) cost for the monthly medicare Part B premium;
- (ii) cost of medicare deductibles and coinsurance; and
- (iii) cost for the monthly medicare Part A premium (for those enrolling conditionally).

(b) **Specified low-income medicare beneficiaries (SLIMB) - Category 045:** SLIMB medicaid covers low-income medicare beneficiaries who have medicare Part A. SLIMB is limited to the payment of the medicare Part B premium.

(c) **Qualified individuals 1 (QI1s) - Category 042:** QI1 medicaid covers low-income medicare beneficiaries who have medicare Part A. QI1 is limited to the payment of the medicare part B premium.

(d) **Qualified disabled working individuals (QDI) - Category 050:** QDI medicaid covers low income individuals who lose entitlement to free medicare Part A hospital coverage due to gainful employment. QDI is limited to the payment of the monthly Part A hospital premium.

(e) **Medicare Part D prescription drug coverage - low income subsidy (LIS) - Category 048:** LIS provides individuals enrolled in medicare Part D with a subsidy that helps pay for the cost of Part D prescription premiums, deductibles and co-payments. An eligible recipient receiving medicaid through QMB, SLMB or QI1 is automatically deemed eligible for LIS and need not apply. Other low-income medicare beneficiaries must meet an income and resource test and submit an application to determine if they qualify for LIS.

C. Supplemental security income (SSI) related medicaid:

(1) **SSI - Categories 001, 003 and 004:** Medicaid for individuals who are eligible for SSI. Eligibility for SSI is determined by the social security administration (SSA). This program provides cash assistance and medicaid for an eligible recipient who is:

- (a) aged (Category 001);
- (b) blind (Category 003); or
- (c) disabled (Category 004).

(2) **SSI medicaid extension - Categories 001, 003 and 004:** MAD provides coverage for certain groups of applicants or eligible recipients who have received supplemental security income (SSI) benefits and who have lost the SSI benefits for specified reasons listed below and pursuant to 8.201.400 NMAC:

- (a) the pickle amendment and 503 lead;
- (b) early widow(er);
- (c) disabled widow(er) and a disabled surviving divorced spouse;
- (d) child insurance benefits, including disabled adult children (DAC);
- (e) nonpayment SSI status (E01);
- (f) revolving SSI payment status “ping-pongs”; and
- (g) certain individuals who become ineligible for SSI cash benefits and, therefore, may receive up to two months of extended medicaid benefits while they apply for another MAD category of eligibility.

(3) **Working disabled individuals (WDI) and medicare wait period - Category 074:** There are two eligibility types:

- (a) a disabled individual who is employed; or
- (b) a disabled individual who has lost SSI medicaid due to receipt of SSDI and the individual does not yet qualify for medicare.

D. Long term care medicaid:

(1) medicaid for individuals who meet a nursing facility (NF) level of care (LOC), intermediate care facilities for the intellectually disabled (ICF-ID) LOC, or acute care in a hospital. SSI income methodology is used to determine eligibility. An eligible recipient must meet the SSA definition of aged (Category 081); blind (Category 083); or disabled (Category 084).

(2) **Institutional care (IC) medicaid - Categories 081, 083 and 084:** IC covers certain inpatient, comprehensive and institutional and nursing facility benefits.

(3) **Program of all-inclusive care for the elderly (PACE) - Categories 081, 083 and 084:** PACE uses an interdisciplinary team of health professionals to provide dual medicaid/medicare enrollees with coordinated care in a community setting. The PACE program is a unique three-way partnership between the federal government, the state, and the PACE organization. The PACE program is limited to specific geographic service area(s). Eligibility may be subject to a wait list for the following:

- (a) the aged (Category 081);
- (b) the blind (Category 083); or
- (c) the disabled (Category 084).

(4) **Home and community-based 1915 (c) waiver services (HCBS) - Categories 090, 091, 092, 093, 094, 095 and 096:** A 1915(c) waiver allows for the provision of long term care services in home and community based settings. These programs serve a variety of targeted populations, such as people with mental illnesses, intellectual disabilities, or physical disabilities. Eligibility may be subject to a wait list.

(a) **There are two HCBS delivery models:**

(i) traditional agency delivery where HCBS are delivered and managed by a MAD enrolled agency; or

(ii) mi via self-directed where an eligible recipient, or their representative, has decision-making authority over certain services and takes direct responsibility to manage the eligible mi via recipient's services with the assistance of a system of available supports; self-direction of services allows an eligible mi via recipient to have the responsibility for managing all aspects of service delivery in a person-centered planning process.

(b)

HCBS waiver programs include:

(i) elderly (Category 091), blind (Category 093) and disabled (Category 094);

(ii) medically fragile (Category 095);

(iii) developmental disabilities (Category 096); and

(iv) self-directed model for Categories 090, 091, 093, 094, 095, 096 and 092).

E. Emergency medical services for non-citizens (EMSNC): EMSNC medicaid covers certain non-citizens who either are undocumented or who do not meet the qualifying non-citizen criteria specified in 8.200.410 NMAC. Non-citizens must meet all eligibility criteria for one of the medicaid categories noted in 8.285.400 NMAC, except for citizenship or qualified non-citizen status. Medicaid eligibility for and coverage of services under EMSNC are limited to the payment of emergency services from a medicaid provider.

F. Refugee medical assistance (RMA) - Categories 049 and 059: RMA offers health coverage to certain low-income refugees [~~during the first twelve months~~] for a period established yearly by the office of refugee resettlement (ORR) based on available appropriated funds for the fiscal year from their date of entry to

the United States (U.S.) when they do not qualify for other medicaid categories of eligibility. An RMA eligible refugee recipient has access to a benefit package that parallels the full coverage medicaid benefit package. RMA is funded through a grant under Title IV of the Immigration and Nationality Act (INA). An RMA applicant who exceeds the RMA income standards may "spend-down" below the RMA income standards for Category 059 by subtracting incurred medical expenses after arrival into the U.S.

G. Breast and cervical cancer (BCC) - Category 052: BCC medicaid provides coverage to an eligible uninsured woman, under the age of 65 who has been screened and diagnosed by the department of health (DOH) as having breast or cervical cancer to include pre-cancerous conditions. The screening criteria are set forth in the centers for disease control and prevention's national breast and cervical cancer early detection program (NBCCEDP). Eligibility is determined using DOH notification and without a separate medicaid application or determination of eligibility.

[8.200.400.10 NMAC - Rp, 8.200.400.10 NMAC, 1/1/2019; A, 1/1/2022; A, 1/1/2023; A/E, 10/1/2024; A, 2/1/2025; A/E, 5/1/2025]

HEALTH CARE AUTHORITY MEDICAL ASSISTANCE DIVISION

This is an emergency amendment to 8.249.400 NMAC, Sections 6, 8, 10, 23, and 24, effective 5/1/2025.

8.249.400.6 OBJECTIVE: The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Generally, applicable eligibility rules are detailed in the medical assistance division (MAD) eligibility policy manual 8.200 NMAC, *Medicaid Eligibility - General Recipients*

Policies. Processes for establishing and maintaining medicaid eligibility are detailed in the income support division (ISD) general provisions policy manual 8.100 NMAC, *General Provisions for Public Assistance Programs*. Refugee medical assistance (RMA): The RMA offers health coverage for a refugee [~~within the first twelve months~~] for a period established yearly by the office of refugee resettlement (ORR) based on appropriated funds for the fiscal year from their date of entry to the United States (U.S.) when they do not qualify for other medicaid eligibility categories. An RMA eligible refugee has access to a benefit package that parallels the full medicaid services. This program is not funded by medicaid; funds are provided through a grant under Title IV of the Immigration and Nationality Act. The purpose of this grant is to provide for the effective resettlement of a refugee and to assist him or her to achieve economic self-sufficiency as quickly as possible.

[8.249.400.6 NMAC - Rp, 8.249.400.6 NMAC, 1/1/2014; A, 1/1/2023; A/E, 5/1/2025]

8.249.400.8 MISSION: [~~To transform lives. Working with our partners, we design and deliver innovative, high-quality health and human services that improve the security and promote independence for New Mexicans in their communities.~~] We ensure that New Mexicans attain their highest level of health by providing whole-person, cost-effective, accessible, and high-quality health care and safety-net services.

[8.249.400.8 NMAC - N, 1/1/2014; A, 1/1/2022; A/E, 5/1/2025]

8.249.400.10 BASIS FOR DEFINING GROUP: At the time of application, an applicant or an eligible recipient and [HSD] HCA shall identify everyone who is to be considered for inclusion in the assistance unit and budget group. Each member of the assistance unit and budget group, including each unborn child, is counted as one in the household size.

[8.249.400.10 NMAC - Rp,
8.249.400.10 NMAC, 1/1/2014; A/E,
5/1/2025]

8.249.400.23 BUDGET

GROUP: The budget group includes all members of the assistance unit. Additional budget group members include individuals who live in the household with the assistance unit and have a financial obligation of support.

A. Except for an supplemental security income (SSI) recipient, the following individuals have a financial obligation of support for medicaid eligibility:

(1) spouses: married individuals as defined under applicable New Mexico state law (New Mexico recognizes common law and same sex marriages established in other states); and

(2) parents for children: there is a presumption that a child born to a married woman is the child of the spouse, or if the individual established parentage by some other legally recognized process.

B. The following individuals do not have a financial obligation of support for medicaid eligibility:

(1) an SSI recipient to the assistance unit;
(2) a father of the unborn child who is not married to the pregnant woman;

(3) a stepparent to a stepchild;

(4) a grandparent to a grandchild;

(5) a legal guardian or a conservator of a child;

(6) a non-citizen sponsor to the assistance unit; and

(7) a sibling to a sibling.

C. Budget group earned income disregards and [child-care] childcare deductions vary based on the age group of the child. Refer to 8.232.500 NMAC.

[8.249.400.23 NMAC - N, 1/1/2014; A, 1/1/2022; A/E, 5/1/2025]

8.249.400.24 LIVING IN THE HOME:

A. To be included in the assistance unit and budget group, an individual must be living, or considered to be living, in the budget group's home.

B. A child considered to be living in the home: A child is considered to be part of the budget group as evidenced by the child's customary physical presence in the home. If a child is living with more than one household, the following applies:

(1) when the child is actually spending more time with one household than the other, the child would be determined to be living with the household with whom the child spends the most time; or

(2) when the child is actually spending equal amounts of time with each household, the child shall be considered to be living with the household who first applies for medicaid enrollment.

C. Extended living in the home: An individual may be physically absent from the home for longer or shorter periods of time and be a member of the assistance unit and budget group.

(1) Extended living in the home includes:

(a) when an individual is attending college or boarding school; or

(b) when an individual is receiving treatment in a Title XIX medicaid facility, including institutionalized when meeting a nursing facility (NF) level of care (LOC) and intermediate care facilities for individuals with an intellectual disability (ICF-IID) LOC.

(2) When an individual has been a member of the assistance unit, eligibility for another medicaid eligibility category, such as [long-term] long-term care medicaid, should be evaluated; until a determination of eligibility for another category can be made, the individual is considered to be living with the budget group.

D. Temporary absence such as extended living

in the home: An individual may be physically absent from the home and be a member of the assistance unit and budget group. These other temporary absences include:

(1) an individual not living in the home due to an emergency, who is expected to return to the household within 60 calendar days, continues to be a member of the household;

(2) a child removed from the home of a parent or a specified relative by a child protective services agency (tribal, bureau of Indian affairs, or children, youth and families department), until an adjudicatory custody hearing takes place; if the adjudicatory hearing results in custody being granted to some other entity, the child will be removed from the assistance unit; or

(3) a child residing in a detention center:

(a) continues to be a member of the household if they reside fewer than 60 calendar days, regardless of adjudication as an inmate of a public institution; or

(b) is not eligible for medicaid enrollment if they reside 60 calendar days or more as an adjudicated inmate of a public institution pursuant to 8.200.410 NMAC.

[8.249.400.13 NMAC - N, 1/1/2014; A/E, 5/1/2025]

HEALTH CARE AUTHORITY MEDICAL ASSISTANCE DIVISION

This is an emergency amendment to 8.249.600 NMAC, Sections 8, 9, 11, 12, 14, and 15, effective 5/1/2025.

8.249.600.8 [RESERVED] We ensure that New Mexicans attain their highest level of health by providing whole-person, cost-effective, accessible, and high-quality health care and safety-net services.

[8.249.600.8 NMAC - Rp,
8.249.600.8 NMAC, 1/1/2019; A/E,
5/1/2025]

8.249.600.9 BENEFIT

DESCRIPTION: Refugee medical assistance (RMA) offers health coverage for refugees ~~[within the first twelve months]~~ for a period established yearly by the office of refugee resettlement (ORR) based on available appropriated funds for the fiscal year from their date of entry to the United States, when they do not qualify for medicaid. RMA eligible refugees have access to a benefit package that parallels the full coverage medicaid benefit package. This program is not funded by medicaid. RMA is funded through a grant under Title IV of the Immigration and Nationality Act. The purpose of this grant is to provide for the effective resettlement of refugees and to assist them to achieve economic self-sufficiency as quickly as possible. Refer to 8.100.100 NMAC.

[8.249.600.9 NMAC - Rp, 8.249.600.9 NMAC, 1/1/2019; A, 1/1/2023; A/E, 5/1/2025]

8.249.600.11 INITIAL BENEFITS:

A. Approval or denial of application: After the eligibility determination is made, the income support ~~[specialist (ISS)]~~ division caseworker sends notice to the applicant or applicant group. The denial notice contains information on the reason for the denial and explanation of appeal rights to the applicant(s).

B. Date of eligibility: Eligibility starts with the first day of the month of application after all eligibility requirements are met. The ~~[twelve-month]~~ eligibility period begins with the month the refugee enters the United States, as documented by the immigration and naturalization service (INS) (form I-94). ~~[For cases involving children born in the United States, the child's eligibility period expires when the refugee parent who arrived last in the United States has been in this country for twelve months.]~~

[8.249.600.11 NMAC - Rp, 8.249.600.11 NMAC, 1/1/2019; A, 1/1/2023; A/E, 5/1/2025]

8.249.600.12 ONGOING

BENEFITS: No periodic review is required, since coverage is limited to ~~[a maximum of twelve months]~~ an eligibility period from the date of entry into the United States. [8.249.600.12 NMAC - Rp, 8.249.600.12 NMAC, 1/1/2019; A, 1/1/2023; A/E, 5/1/2025]

8.249.600.14 CASE

CLOSURES: Cases are closed when refugee medical assistance recipients no longer meet eligibility standards or after the ~~[twelve-month]~~ eligibility period expires, whichever comes first. [8.249.600.14 NMAC - Rp, 8.249.600.14 NMAC, 1/1/2019; A, 1/1/2023; A/E, 5/1/2025]

8.249.600.15 CHANGES AND REDETERMINATIONS OF ELIGIBILITY:

A. A re-determination of eligibility is not required.

B. Changes in income are not reportable. Reported income changes are not acted upon.

~~[C. A refugee who received medicaid for eleven or fewer months during the RMA period is eligible for RMA for any remaining months in the twelve-month RMA period. Eligibility for RMA is determined without a new eligibility determination or application.]~~

~~[D.]~~ **C.** Residence changes must be reported within 10 days after the change for individuals placed in a public institution or those individuals moving out of New Mexico. Refer to 8.200.450 NMAC.

[8.249.600.15 NMAC - Rp, 8.249.600.15 NMAC, 1/1/2019; A, 1/1/2023; A/E, 5/1/2025]

STATE PERSONNEL OFFICE

On April 18, 2025, The State Personnel Board repealed 1.7.10 NMAC, Furlough, Reduction in Force, Reemployment, Separation Without Prejudice, in accordance with 1.24.11.9. NMAC. and replaced it with 1.7.10 NMAC Furlough, Reduction in Force, Reemployment,

Separation Without Prejudice effective 5/20/2025.

STATE PERSONNEL OFFICE

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 7 STATE PERSONNEL ADMINISTRATION PART 10 FURLOUGH, REDUCTION IN FORCE, REEMPLOYMENT, SEPARATION WITHOUT PREJUDICE

1.7.10.1 ISSUING

AGENCY: State Personnel Board. [1.7.10.1 NMAC - Rp, 1.7.10.1, 5/20/2025]

1.7.10.2 SCOPE: All state agencies in the classified service. [1.7.10.2 NMAC - Rp, 1.7.10.2, 5/20/2025]

1.7.10.3 STATUTORY

AUTHORITY: Subsection A of Section 10-9-10 NMSA 1978; Section 10-9-19 NMSA 1978; Sections 28-15-1 to 28-15-3 NMSA 1978 and 38 U.S.C. Section 2021; Section 52-1-25.1 NMSA 1978. [1.7.10.3 NMAC - Rp, 1.7.10.3, 5/20/2025]

1.7.10.4 DURATION: Permanent.

[1.7.10.4 NMAC - Rp, 1.7.10.4, 5/20/2025]

1.7.10.5 EFFECTIVE

DATE: May 20, 2025, unless a later date is cited at the end of a section. [1.7.10.5 NMAC - Rp, 1.7.10.5, 5/20/2025]

1.7.10.6 OBJECTIVE:

The objective of Part 10 of Chapter 7 is: to provide a system for employee furlough, and separation upon reduction in force; to provide for reemployment after military service; to provide for injured employees' return to work, and potential separation.

[1.7.10.6 NMAC - Rp, 1.7.10.6, 5/20/2025]

1.7.10.7 DEFINITIONS:

A. “Furlough” means a temporary placement of an employee in a reduced work hour schedule, which can either be partial or full-time, for lack of work or funds.

B. “Agency hire date” means the date on which an employee’s current continuous employment with the agency or its legal predecessor began or, when an agency or organizational unit of an agency is merged with another agency, the date on which the employee began continuous employment with the original hiring agency.

[1.7.10.7 NMAC - Rp, 1.7.10.7, 5/20/2025]

1.7.10.8 FURLOUGH:

A. In the event of the need for a furlough, an agency shall submit a plan identifying organizational units to be affected by the furlough to the board for approval to affect the furlough. The state personnel office (SPO) director may approve such plans if an emergency exists and there is insufficient time for the board to consider such plans.

B. The furlough plan shall affect all employees within the organizational unit impacted to the same extent.

C. No furlough shall exceed 12 months in duration.

D. Employees shall be given at least 14 calendar days written notice of furlough, unless the time limit is waived by the SPO director. Notice shall be served in accordance with the provisions of 1.7.1.10 NMAC.

E. Employees shall be returned from furlough when the reasons for the furlough cease to exist. Wherever possible, all affected employees shall be returned at the same time, to the same extent. [1.7.10.8 NMAC - Rp, 1.7.10.8, 5/20/2025]

1.7.10.9 REDUCTION IN FORCE:

A. An agency may lay off employees only for deletion of positions, shortage of work or funds, or other reasons that do not reflect discredit on the services of the employees.

B. An agency shall identify organizational units for purposes of a layoff and submit a written plan to the board. Such organizational units may be recognized on the basis of geographic area, function, funding source, or other factors. The agency must define the classifications affected within the organizational unit.

C. Upon board approval of a layoff plan, the agency affecting the layoff shall initiate a right of first refusal within the agency. All employees affected by the layoff shall be provided the following rights:

(1) employees to be affected by the reduction in force (RIF) shall be provided the right of first refusal to any position to be filled within the agency for which they meet the established requirements, at the same or lower midpoint than the midpoint of the position the employee currently holds, unless there is an actual layoff candidate exercising RIF rights for that position;

(2) affected employees shall compete only with other employees in the same agency affected by the reduction in force;

(3) the agency’s list of eligible candidates for the open positions shall be comprised of those affected employees meeting the established requirements of the position;

(4) employees shall have eleven calendar days from the date of an offer to accept the position unless otherwise agreed; employees who do not accept an offer shall not lose the right of first refusal status to other positions; and

(5) the right of first refusal under Subsection C of 1.7.10.9. NMAC shall extend until the first effective date of layoff as defined in the plan.

D. The order of layoff due to reduction in force shall be

by service date which is determined based upon the agency hire date. In the event of a tie, the SPO director shall determine an appropriate mechanism for breaking the tie.

E. No employee in career status shall be laid off while there are term, probationary, emergency or temporary status employees in the same classification in the same organizational unit.

F. Employees in career status shall be given at least 14 calendar days written notice of layoff. Notice shall be served according to the provisions of 1.7.1.10 NMAC. [1.7.10.9 NMAC - Rp, 1.7.10.9, 5/20/2025]

1.7.10.10 RETURN FROM REDUCTION IN FORCE:

A. Former employees who were in career status at the time of separation by a reduction in force shall have reemployment rights within the classified service, for a six-month period, under the following provisions:

(1) Former employees shall be returned to work in order of highest service date as determined by Subsection D of 1.7.10.9 NMAC to any position to be filled within the agency from which the employee was laid off. The position must contain the same or lower midpoint as that held at the time of the former employee’s separation, provided the former employee has made application for said position and meets the established requirements;

(2) Reemployment to positions and agencies, other than the agency from which the former employee was laid off, shall extend when any position is to be filled. The position must contain the same or lower midpoint as that held at the time of the former employee’s separation, provided the former employee has made application for said position and meets the established requirements. If, when an agency intends to fill a position, there is more than one eligible former employee with rights to return to work under this rule, the agency shall select the former

employee who is best qualified in the agency's opinion;

(3) Offers of employment shall be made in writing and shall be delivered by a method that provides proof of service or attempted service;

(4) A former employee who is offered and accepts employment after layoff shall occupy the position within 14 calendar days of accepting the offer of employment or forfeit the right to employment; and

(5) Any former employee who refuses an offer of employment or fails to respond to an offer of employment within 14 calendar days shall be removed from the employment list for the position offered.

B. Former employees returned to work according to the provisions of Subsection A of 1.7.10.10 NMAC shall have that period of time they were laid off counted as time in the classified service, shall hold the status of the position in accordance with 1.7.2.9 NMAC, 1.7.2.10 NMAC or 1.7.2.11 NMAC and do not have to serve a new probationary period if reemployed into career status. [1.7.10.10 NMAC - Rp, 1.7.10.10, 5/20/2025]

1.7.10.11 REEMPLOYMENT AFTER MILITARY SERVICE:

Any employee who separates from the classified service to enter the United States armed forces, national guard, or an organized reserve unit may be reemployed in accordance with the provisions of 38 U.S.C. Section 2021 and Sections 28-15-1 to 28-15-3 NMSA 1978.

[1.7.10.11 NMAC - Rp, 1.7.10.11, 5/20/2025]

1.7.10.12 EARLY RETURN-TO-WORK/MODIFIED DUTY ASSIGNMENTS:

A. Agencies shall implement a policy to enable employees who have been unable to work because of a compensable injury or illness under the workers' compensation act to return to work

in a modified duty assignment for up to six months and may be extended for a period of up to six additional months if substantial progress in the recovery of an injured or ill employee has been demonstrated and it has been anticipated the injured or ill employee will be able to return to full duty within the time frame of the considered extension.

B. The agency shall make a good faith effort to identify and offer modified duty/return to work opportunities to injured or ill employees in accordance with the provisions of Section 52-1-25.1 and Section 52-3-49.1 NMSA 1978. At the agency's discretion the employee may be assigned to his or her current classification with modified duties or to a temporary assignment comprised of a combination of duties from a variety of positions.

C. Employees on modified duty assignment to a temporary position shall maintain their salary and status for the duration of such temporary assignment. [1.7.10.12 NMAC - Rp, 1.7.10.12, 5/20/2025]

1.7.10.13 SEPARATION WITHOUT PREJUDICE:

A. Employees who have suffered an injury or illness which is compensable under the workers' compensation act and are physically or mentally unable to perform the essential functions of their pre-injury/pre-illness position, with or without reasonable accommodation, shall be separated from the service without prejudice provided:

(1) the employee has been afforded modified duty in accordance with 1.7.10.12 NMAC;

(2) the employee has reached maximum medical improvement prior to the completion of up to 12 months of modified duty; or, the employee has not reached maximum medical improvement upon the expiration of up to 12 months of modified duty;

(3) all efforts to accommodate the medical

restrictions of the employee have been made and documented; and

(4) the employing agency has made reasonable efforts to find other suitable vacant positions within the agency at the same or lower midpoint than the midpoint of the pre-injury/pre-illness position for which:

(a) the employee meets the established requirements and can perform the essential functions of the job, either with or without reasonable accommodation, or

(b) the agency certifies that the employee holds qualifications and abilities necessary for successful job performance and can perform the essential functions of the job, either with or without reasonable accommodation.

B. Employees who have suffered an illness or injury that is not compensable under the workers' compensation act and are unable to perform the essential functions of their pre-injury/pre-illness position, with or without reasonable accommodation, as a result of the physical or mental disability created by the non job-related injury or illness shall be separated from the service without prejudice provided:

(1) all efforts to reasonably accommodate the medical restrictions of the employee have been made and documented; and

(2) the employing agency has made reasonable efforts to find other suitable vacant positions within the agency at the same or lower midpoint than the midpoint of the pre-injury/pre-illness position for which:

(a) the employee meets the established requirements and can perform the essential functions of the job, either with or without reasonable accommodation; or

(b) the agency certifies that the employee holds qualifications and abilities necessary for successful job performance and can perform the essential functions of the job,

either with or without reasonable accommodation.

C. Agencies may provide modified duty to employees for a period of up to 4 months during the separation process if required to meet the provisions of this rule.

D. Notice of contemplated separation without prejudice:

(1) to initiate the separation without prejudice of an employee who has completed the probationary period, the agency shall serve a notice of contemplated separation without prejudice on the employee which: describes the circumstances which form the basis for the contemplated separation without prejudice; gives a general explanation of the evidence the agency has; advises the employee of his or her right to inspect and obtain copies of any documentary evidence relied upon; specifies what the contemplated action is; and states that the employee has 11 calendar days from service of the notice to respond in writing to the notice or to request an opportunity for an oral response;

(2) when the notice of contemplated separation without prejudice is served by certified mail or courier, the employee receiving service shall have 3 additional calendar days in which to file a response;

(3) at the time the notice of contemplated separation without prejudice is served on the employee, the agency shall notify the SPO director and the risk management division of the general services department of the proposed separation without prejudice and submit a copy of the separation notice along with documentation to support efforts to provide modified duty and to support efforts to find other suitable vacant positions.

E. Response to notice of contemplated separation without prejudice:

(1) a representative of the employee's choosing may respond in writing to the notice of contemplated separation without prejudice on behalf of the employee;

(2) if there is a request for an oral response to the notice of contemplated separation without prejudice, the agency shall meet with the employee within 11 calendar days of a request for an oral response, unless the employee and the agency agree in writing to an extension of time; a representative of the employee's choosing may represent the employee;

(3) the purpose of the oral response is not to provide an evidentiary hearing but is an opportunity for the employee to present his or her side of the story; it is an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to support the proposed involuntary separation without prejudice.

F. Notice of final separation without prejudice:

(1) if the employee does not respond to the notice of contemplated separation without prejudice the agency shall issue a notice of final separation within 11 calendar days following the response period;

(2) if the employee has filed a written response or has been provided an opportunity for oral response, the agency shall issue a notice of final separation without prejudice no later than 11 calendar days from the date of receipt of the response;

(3) the notice of final separation without prejudice shall:

(a) specify the action to be taken;

(b) describe the circumstances which form the basis for the separation without prejudice, which may not include allegations not included in the notice of contemplated separation without prejudice;

(c) give a general explanation of the evidence the agency has;

(d) specify when the final separation without prejudice will be effective, which must be at least 24 hours from

the time of service of the notice of final separation without prejudice;

(e) inform the employee that the final separation without prejudice may be appealed to the board with a written statement of the grounds for the appeal delivered to the state personnel office in Santa Fe, New Mexico, and received by the SPO director within 30 calendar days of the effective date of the separation without prejudice; and

(f) the adjudication process is outlined in 1.7.12 NMAC.

[1.7.10.13 NMAC - Rp, 1.7.10.13, 5/20/2025]

1.7.10.14 REEMPLOYMENT OF JOB-RELATED INJURED OR ILL FORMER EMPLOYEES:

A. A former employee who has separated from the service due to job-related injury or illness and who has received or is due to receive benefits under the Workers' Compensation Act shall have reemployment rights in accordance with the provisions of Section 52-1-50.1 NMSA 1978 and Section 52-3-49 NMSA 1978, under the following provisions:

(1) Reemployment rights under 1.7.10.14 NMAC are extended only by the agency employing the former employee at the time of the job-related injury or illness and are provided only for positions which contain the same or lower midpoint as that held at the time of separation.

(2) To initiate reemployment rights under this rule, the former employee must notify the agency in writing, with a copy to the office, of their desire to be reemployed. The notification shall include the positions and locations which the former employee is willing to accept, and an appropriate application for employment.

(3) The agency must receive certification in writing from the treating health care provider that the former employee is fit to carry out the essential functions of the position with or without reasonable

accommodation without significant risk of re-injury or relapse to illness.

(4) When the agency is to fill a vacant position which is a position and location indicated by the former employee, the agency shall offer the job to the former employee provided:

(a) the employee meets the established requirements and can perform the essential functions of the job, either with or without reasonable accommodation, or

(b) the agency certifies that the employee holds qualifications and abilities necessary for successful job performance and can perform the essential functions of the job, either with or without reasonable accommodation.

(5) Former employees reemployed in accordance with the provisions of Subsection A of 1.7.10.14 NMAC will hold the status of the position in accordance with 1.7.2.9 NMAC, 1.7.2.10 NMAC or 1.7.2.11 NMAC and do not have to serve a probationary period if they were in career status at the time of separation.

B. The risk management division of the general services department and the office shall be notified immediately of any injured or ill former employee who applies for a position and subsequently declines a job offer. [1.7.10.14 NMAC - Rp, 1.7.10.14, 5/20/2025]

HISTORY OF 1.7.10 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as: SPB Rule 14, Separation and Demotions, filed 08-31-87; SPB-16, Furlough and Reduction in Force, filed 04-04-90; SPB 14, Furlough, RIF, Reemployment, filed 12-15-92; SPB 14, Furlough, Reduction in Force, Reemployment, filed 03-18-94.

History of Repealed Material:

1.7.10, Furlough, Reduction in Force, Reemployment, filed 06-13-97.

Other History:

1 NMAC 7.13, Furlough, Reduction in Force, Reemployment, filed 01-12-96 replaced SPB 14, filed 03-18-94; 1 NMAC 7.13, Furlough, Reduction in Force, Reemployment, filed 05-02-96;

1 NMAC 7.13, Furlough, Reduction in Force, Reemployment, filed 05-02-96 replaced by 1.7.10, Furlough, Reduction in Force, Reemployment, filed 06-13-97;

1.7.10, Furlough, Reduction in Force, Reemployment, filed 06-13-97 replaced by 1.7.10 NMAC, Furlough, Reduction in Force, Reemployment, effective 07/07/2001.

1.7.10, Furlough, Reduction in Force, Reemployment, filed 06-25-2001 replaced by 1.7.10 NMAC, Furlough, Reduction in Force, Reemployment, effective 5/20/2025.

STATE PERSONNEL OFFICE

This is an amendment to 1.7.1 NMAC, Section 11, effective 5/20/2025.

1.7.1.11 COMPUTATION OF TIME:

A. In computing any period of time prescribed or allowed by these rules, the day from which period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation unless it is a Saturday, Sunday or a day on which a legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday. If the period is less than 11 days, a Saturday, Sunday or legal holiday is excluded from the computation.

B. Whenever an employee is permitted or required by these rules to respond or do some other act within a prescribed period after service of notice by certified mail or courier, three calendar days

shall be added to the prescribed period.

[1.7.1.11 NMAC - Rp, 1 NMAC 7.1.11, 1/1/2020; A, 1/14/2025; A, 5/20/2025]

STATE PERSONNEL OFFICE

This is an amendment to 1.7.7 NMAC, Sections 8, 10, 12 and 14, effective 5/20/2025.

1.7.7.8 ANNUAL LEAVE:

A. Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave, or suspension without pay shall accrue annual leave at the rate of:

(1) 3.08 hours per pay period if less than three years of cumulative employment,

(2) 3.69 hours per pay period if three years or more but less than seven years of cumulative employment,

(3) 4.61 hours per pay period if seven years or more but less than eleven years of cumulative employment,

(4) 5.54 hours per pay period if eleven years or more but less than fifteen years of cumulative employment; or

(5) 6.15 hours per pay period if fifteen years or more of cumulative employment.

B. For purposes of Subsection A of 1.7.7.8 NMAC, any employment in the classified or exempt service and judicial or legislative branches of New Mexico state government shall be counted in determining years of cumulative employment in the classified service.

C. For purposes of Subsection A of 1.7.7.8 NMAC, employment in programs transferred into the classified service by legislation or executive order shall count as cumulative employment.

D. Employees employed on a part-time basis and employees on furlough who work at least eight hours in a pay period shall

accrue annual leave on a prorated basis.

E. A maximum of 240 hours of annual leave shall be carried forward after the last pay period beginning in December. ~~[However, there shall be no limit to the number of annual leave hours that shall be carried forward after the last pay period of December 2020. Any annual leave hours above 240 that are carried forward past December 2020 and are not used prior to the pay period ending July 9, 2021, shall not be carried forward beyond that pay period.]~~

F. Annual leave shall not be used before it is accrued and must be authorized before it is taken in accordance with agency policy.

G. Employees separating from the classified service, except by a reduction in force, shall be paid for accrued annual leave, as of the date of separation, up to a maximum of 240 hours at the current hourly rate of their base salary. This payout shall not exceed 240 hours ~~[; notwithstanding any annual leave accrual beyond 240 hours that may occur pursuant to Subsection E of 1.7.7.8 NMAC].~~

H. Employees separating from the classified service as the result of a reduction in force shall be paid for all accrued annual leave, as of the date of separation, at their current hourly rate ~~[; excluding any annual leave accrual beyond 240 hours that may occur pursuant to Subsection E of 1.7.7.8 NMAC].~~

I. The estate of an employee who dies while in the classified service shall be paid for the employee's total accrued annual leave ~~[; excluding any annual leave accrual beyond 240 hours that may occur pursuant to Subsection E of 1.7.7.8 NMAC].~~
[1.7.7.8 NMAC - Rp, 1 NMAC 7.7.8, 7/7/2001; A, 11/14/2002; A, 1/1/2021; A, 8/1/2021; A, 5/20/2025]

1.7.7.10 SICK LEAVE:

A. Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave, or

suspension without pay, shall accrue sick leave at the rate of 4.00 hours per pay period.

B. Employees employed on a part-time basis and employees on furlough who work at least eight hours in a pay period shall accrue sick leave on a prorated basis.

C. Sick leave may not be used before it is accrued and must be authorized or denied according to agency policy.

D. An employee may use sick leave for personal medical treatment or illness or for medical treatment or illness of a family member, or of a person residing in the employee's household. Employees affected by pregnancy, childbirth, and related medical conditions must be treated the same as persons affected by other medical conditions.

E. There is no limit to the amount of sick leave that may be accrued.

F. No payment shall be made for accrued sick leave at the time of separation from the classified service except as provided by law.

G. Former employees who were laid off and are returned to work in accordance with the provisions of 1.7.10.10 NMAC, shall have restored the sick leave they had accrued as of the date of layoff.

H. Payment for Accumulated Sick Leave:

(1) In accordance with the provisions of Section 10-7-10 NMSA 1978, employees who have accumulated 600 hours of unused sick leave are entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to fifty percent of their hourly rate of base pay for up to 120 hours of sick leave. Payment for unused sick leave may be made only once per fiscal year on either the payday immediately following the first full pay period in January or the first full pay period in July.

(2) Immediately prior to retirement from the classified service, employees who have accumulated 600 hours of unused sick leave are entitled to be paid for unused sick leave in excess

of 600 hours at a rate equal to fifty percent of their hourly rate of base pay for up to 400 hours of sick leave.

I. An agency shall not discharge or threaten to discharge, demote, suspend or retaliate or discriminate against an employee because that employee requests or uses sick leave for medical treatment or illness of a family member in accordance with the agency's sick leave policy, files an appeal alleging violation of the Public Employee Caregiver Leave Act, Section 10-16H-1, NMSA 1978, et seq., cooperates in an investigation or prosecution of an alleged violation of that act or opposes any policy or practice established pursuant to that act.

~~**J.** Denials of an employee's request for sick leave related to medical treatment or illness of a family member, or alleged violations of the Public Employee Caregiver Leave Act by an agency directly impacting an employee, may be appealed to the director through the agency's chain-of-command. Appeals to the director must be in writing and include the agency's analysis of the reasons for the appeal. The director's decision is final and binding.]~~
[1.7.7.10 NMAC - Rp, 1 NMAC 7.7.10, 7/7/2001; A, 11/14/2002; A, 1/1/2020; A, 8/1/2021; A, 5/20/2025]

1.7.7.12 FAMILY AND MEDICAL LEAVE:

A. In addition to other leave provided for in 1.7.7 NMAC eligible employees are entitled to leave in accordance with the Family and Medical Leave Act (FMLA) of 1993 [29 U.S.C. Section 2601 et seq.], as amended. Employees who have been in the classified service for at least 12 months (which need not be consecutive) and who have worked, as defined by Section 7 of the Fair Labor Standards Act [29 U.S.C. Section 201 et seq.], at least 1250 hours during the 12-month period immediately preceding the start of FMLA leave are eligible employees. In addition, employment in the exempt service, legislative or judicial branch, shall count as classified employment for purposes of this rule.

B. An eligible employee is entitled to a total of 12 weeks of unpaid FMLA leave in a 12-month period for the birth and care of a newborn child of the employee within one year of the birth; the placement with the employee of a child for adoption or foster care and the care of the newly placed child within one year of placement; the care of the employee's child, parent, spouse, or domestic partner who has a serious health condition; and the employee's own serious health condition that makes the employee unable to perform the essential functions of their job; or any other qualifying exigency arising out of the fact that the spouse, domestic partner, son, daughter or parent of the employee is on covered active duty or has been notified of an impending call or order to covered active duty status, as defined in the FMLA regulations [29 CFR 825.102], including issues resulting from short-notice deployment, military events and related activities, childcare and school activities for the military member's child, financial and legal arrangements to address the military member's absence while on covered active duty, counseling, spending time with the military member while on short-term leave, post-deployment activities, care of the military member's parent who is incapable of self-care, and other activities in accordance with the FMLA regulations [29 CFR 825.126]. The 12-month period is calculated forward from the date an employee's first FMLA leave begins.

C. An eligible employee who is the spouse, domestic partner, son, daughter, parent, or next of kin of a covered servicemember with a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of unpaid FMLA leave in a single 12-month period to care for the servicemember. This military caregiver leave is available during a single 12-month period during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave. The 12-month

period is calculated forward from the date an employee's first FMLA leave begins. [29 CFR 825.127]

D. An employee may elect, or an agency may require the employee, to substitute any of the employee's accrued annual leave, accrued sick leave, personal leave day, accrued compensatory time, or donated leave for any part of unpaid FMLA leave.

E. If a paid holiday occurs within a week of FMLA leave, the holiday is counted towards the FMLA entitlement. However, if an employee is using FMLA in increments less than one week, the holiday does not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday.

F. Employees shall not accrue annual and sick leave while on unpaid FMLA leave.

G. Agencies shall post the required FMLA notices, maintain the required employee records, and implement agency policies in accordance with the FMLA. All medical records and correspondence relating to employees and/or their families shall be considered confidential in accordance with 1.7.1.12 NMAC.

~~**H.** Disputes over the administration of this rule shall be forwarded to the director for resolution.~~

[F] H. As a condition for restoring an employee whose own serious health condition required FMLA leave, an agency may require the employee to provide certification from their health care provider that the employee is able to resume work. The fitness-for-duty certification may only pertain to the specific health condition that required FMLA leave. [1.7.7.12 NMAC - Rp, 1 NMAC 7.7.12, 7/7/2001; A, 11/14/2002; A, 6/30/2006; A, 10/15/2008; A/E, 1/27/2009; A, 5/14/2009; A, 1/1/2020; A, 8/1/2021; A, 5/20/2025]

1.7.7.14 ADMINISTRATIVE LEAVE:

A. An agency may

authorize employees leave with pay for up to five consecutive work days when it is in the best interests of the agency to do so. Administrative leave in excess of five consecutive workdays must have the prior written approval of the ~~director~~ state personnel office (SPO) director except for administrative leave granted in accordance with the provisions of Paragraph (2) of Subsection B of ~~[1.7.8.19]~~ 1.7.8.18 NMAC or Paragraph (2) of Subsection D of ~~[1.7.8.19]~~ 1.7.8.18 NMAC or 1.7.11.12 NMAC.

B. Employees who are members of a state board or commission may be entitled to leave with pay to attend meetings or transact business of the board or commission.

C. Employees who are registered voters may absent themselves from work for two hours for the purpose of voting between the time of the opening and the time of the closing of the polls. The employer may specify the hours during the period in which the voter may be absent. This leave is not available to employees whose work day begins more than two hours subsequent to the time of opening the polls or ends more than three hours prior to the time of closing the polls. This leave is only available for those elections listed in Subsection A of Sections 1-12-42 and 1-1-19 NMSA 1978 and does not apply to absentee or early voting.

D. Employees shall be entitled to administrative leave when appearing during regularly scheduled work hours in obedience to a subpoena as a witness before a grand jury or court or before a federal or state agency. Fees received as a witness, excluding reimbursement for travel, shall be remitted to the employee's agency. Employees shall not be entitled to administrative leave to participate in judicial or administrative proceedings against an agency or the state of New Mexico in which the employee is a litigant in or party to the proceeding.

E. Employees shall be entitled to leave with pay for

serving on a grand or petit jury during regularly scheduled work hours. Fees received as a juror, excluding reimbursement for travel, shall be remitted to the employee's agency.

F. Employees with a child or children enrolled in a school shall be entitled to the following amounts of paid administrative leave for parent-teacher conferences, provided that the express purpose of the leave is to attend a parent-teacher conference during the employee's normal work day; provided that the leave is not being requested for parental participation or assistance in extra-curricular school activities; provided that the employee follows any procedures required by the office or agency to request paid administrative leave for the parent-teacher conference; and, provided that the employee provides reasonable notice to the agency in an effort to avoid disruption to operational needs:

(1) Employees with three or more children may be granted up to four hours of paid administrative leave during the spring semester, and up to four hours of paid administrative leave during the fall semester for parent-teacher conferences; and

(2) Employees with one child or two children may be granted up to two hours of paid administrative leave during the spring semester, and up to two hours of paid administrative leave during the fall semester for parent-teacher conferences.

(3) Two employees may request available leave to attend the same scheduled parent-teacher conference for their children.
[1.7.7.14 NMAC - Rp, 1 NMAC 7.7.14, 7/7/2001; A, 11/14/2002; A, 7/5/2005; A, 1/1/2020; A, 8/1/2021; A, 5/20/2025]

STATE PERSONNEL OFFICE

This is an amendment to 1.7.8 NMAC, Sections 8, 9, 10, 13, 15 and 18, effective 5/20/2025.

1.7.8.8 OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT OF 1991:

A. Employees in safety-sensitive positions within the meaning of the *Omnibus Transportation Employee Testing Act of 1991* ("Omnibus Act") (49 U.S.C. Subtitle VI Part B § 31306) are exempt from and are not covered by the provisions of 1.7.8.7 NMAC and 1.7.8.9 NMAC through [1.7.8.20] 1.7.8.19 NMAC.

B. Agencies with employees covered by the Omnibus Act shall develop and submit to the state personnel office (SPO) director a policy for implementing drug and alcohol tests.

C. The policy shall contain at the least the:

- (1) covered positions;
- (2) testing requirements for drugs and alcohol;
- (3) collection of specimen;
- (4) reporting and explanation of test results;
- (5) confidentiality;
- (6) training;
- (7) rehabilitation and sanctions;
- (8) record retention;
- (9) rehabilitative and sanction parameters of drug and alcohol abuse; and
- (10) reasonable suspicion.

D. Agencies shall advise the board annually of those positions covered by the Omnibus Act.
[1.7.8.8 NMAC - Rp, 1.7.8.8 NMAC, 1/14/2025; A, 5/20/2025]

1.7.8.9 SUBSTANCE ABUSE COORDINATOR:

A. Each agency shall appoint a substance abuse coordinator who shall be responsible for the agency's drug and alcohol abuse program.

B. The substance abuse coordinator shall provide drug and alcohol abuse awareness information

to employees including but not limited to the:

- (1) dangers of drug and alcohol abuse;
- (2) availability of counseling, rehabilitation, and employee assistance programs; and
- (3) sanctions that may be imposed upon employees as provided in [1.7.8.19] 1.7.1.18 NMAC.

C. The drug abuse coordinator shall ensure that the agency has contracted or made arrangements with a medical review officer to perform the duties required by 1.7.8 NMAC.
[1.7.8.9 NMAC – Rp & Rn., 1.7.8.10 NMAC, 1/14/2025; A, 5/20/2025]

1.7.8.10 AUTHORIZED DRUG AND ALCOHOL TESTING:

A. The SPO director shall maintain a list of positions designated by the agencies as being safety-sensitive.

B. All candidates for safety-sensitive positions are required to submit to drug testing after an offer of employment is made and prior to final selection.

C. Agencies that require employees in safety-sensitive positions to undergo regular physical examinations shall require such employees to undergo drug testing as part of those physical examinations.

D. Agencies shall require employees to undergo drug, alcohol testing or both if the agency has a reasonable suspicion that the employee has committed drug or alcohol abuse based on, but not limited to:

- (1) direct observation of the physical symptoms or manifestations of being under the influence of a drug or alcohol while on duty; such symptoms may include, but are not limited to liquor on breath, slurred speech, unsteady walk, or impaired coordination; or

- (2) direct observation of the use or possession of drugs or drug paraphernalia, or the use of alcohol while on duty.

E. An employee shall

submit to a reasonable suspicion drug or alcohol test provided the requesting supervisor has secured the next level supervisor's approval, unless the requesting supervisor is the agency head. The requesting supervisor shall prepare a contemporaneous memorandum outlining the details leading up to the reasonable suspicion drug or alcohol test. The memorandum shall be submitted to the substance abuse coordinator within 24 hours of the request for testing.

F At least ten percent of employees in safety-sensitive positions in each agency shall be required to undergo drug testing on a yearly basis.

(1) The SPO director shall identify the safety-sensitive positions on a random selection basis.

(2) At the discretion of the agency head or substance abuse coordinator, employees may be excused from random drug testing if:

(a) they have previously requested referral in accordance with the provisions of Subsection B of [~~1.7.8.19~~] 1.7.1.18 NMAC;

(b) the selection for random drug testing is made during the first 30 calendar days following the request for referral; or

(c) they are on an authorized absence for 30 calendar days or more.

(3) The agency head or substance abuse coordinator shall inform the SPO director of any employee excused from random drug testing within 10 working days of receipt of the notice of safety sensitive testing.

G. The SPO director may authorize an agency to conduct more than ten percent (10%) random drug testing on employees in safety sensitive positions upon receipt of an agency's written request that would include justification of how the additional testing is related to the conditions of employment and the use of equipment that could pose a risk to

public health or safety.

[1.7.8.10 NMAC – Rp & Rn., 1.7.8.11 NMAC, 1/14/2025; A, 5/20/2025]

1.7.8.13 ALCOHOL TESTS:

A. A test for alcohol shall be administered by a legally recognized and approved method.

B. A test by a legally recognized or approved method with results of blood alcohol content (BAC) level of .04 or more shall be deemed positive for alcohol.

C. For employees who have undergone alcohol rehabilitation, pursuant to Paragraph (1) of Subsection D of [~~1.7.8.19~~] 1.7.1.18 NMAC, a positive test result during the 30 to 180 calendar days following the first positive test shall subject an employee to disciplinary action. Such a test may be performed by urinalysis. [1.7.8.13 NMAC - Rp, 1.7.8.14 NMAC, 1/14/2025; A, 5/20/2025]

1.7.8.15 EXPLANATION OF POSITIVE TEST RESULTS:

A. Candidates for a safety sensitive position who test positive for drugs, alcohol or both may, within two workdays of being advised of the test results, submit a written request to the agency's substance abuse coordinator for a review of the test results by the medical review officer. The test results of all employees who test positive for drugs, alcohol or both shall be referred by the agency's substance abuse coordinator or designee to the medical review officer.

(1) If the candidate does not request a review of the test results within two workdays, the candidate waives review by the medical review officer and any retesting of the sample and consents to rejection for selection.

(2) The medical review officer shall examine any proffered or possible explanations concerning the validity of the confirmed positive test results. This action may include conducting a medical interview, review of the medical history, review of the chain of custody, and discussions with the

collection or laboratory personnel.

The medical review officer shall review all medical records made available by the individual when a positive test could have resulted from legally prescribed medications for medical or dental treatment. The medical review officer shall also review the results of any retest done according to the provisions of [~~1.7.8.17~~] 1.7.1.16 NMAC.

(a) Should any questions arise as to the accuracy or validity of a confirmed positive test result, only the medical review officer is authorized on behalf of the state to order a reanalysis of the original sample and such retests are authorized to be performed only at a laboratory that meets applicable provisions of any state licensure requirements and is certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing.

(b) Prior to making a final decision to verify a positive test result, the medical review officer shall give the candidate or employee an opportunity to discuss the test results. The discussion between the medical review officer and the candidate or employee may be in person or by telephone.

(c) The medical review officer shall advise the appropriate substance abuse coordinator of his or her medical conclusions from the review of the test results. If there are conflicting factual statements, the medical review officer shall not attempt to resolve that factual conflict, but shall report it along with his or her medical conclusions to the agency substance abuse coordinator. Similarly, the medical review officer shall not attempt to ascertain the factual correctness of any claim by the candidate or employee of involuntary ingestion of drugs or alcohol or both, but shall simply report such claims to the agency substance abuse coordinator with his or her medical opinion as to the possibility that such occurrence could have affected the test results.

B. Based upon the medical review officer's report and such other inquiries or facts as the agency may consider, the agency shall determine whether the explanations or challenges of the confirmed positive test results are satisfactory.

(1) If the explanations or challenges of the positive test results are unsatisfactory the agency:

(a) shall provide a written explanation to the candidate or employee as to why the explanation is unsatisfactory, along with the test results, within 11 calendar days of the agency's determination; and

(b) shall retain such records as confidential for one year.

(2) If the explanations or challenges of the positive test results are satisfactory the agency:

(a) shall notify the candidate or employee in writing within 11 calendar days of the agency's determination; and

(b) shall retain such records as confidential for one year.

[1.7.8.15 NMAC – Rp & Rn., 1.7.8.16 NMAC, 1/14/2025; A, 5/20/2025]

1.7.8.18 REHABILITATION AND SANCTIONS:

A. Candidates for employment:

(1) A candidate for employment in a safety-sensitive position shall be rejected for selection when he tests positive for drugs and does not seek review by the medical review officer or cannot satisfactorily explain the positive test results.

(2) An employee for transfer or promotion to a safety-sensitive position who tests positive for drugs and is unable to satisfactorily explain the positive test results shall be subject to disciplinary action including dismissal if the employee occupies a safety-sensitive position. If the employee is not in a safety-sensitive

position, the employee shall be treated in accordance with the provisions of Subsection D of [1.7.8.19] 1.7.1.18 NMAC.

B. Voluntary self-identification by employees:

(1) Any employee who requests referral to an EAP, counseling or a drug or alcohol rehabilitation program, prior to selection for drug and alcohol testing shall be referred by the substance abuse counselor. Any costs for counseling or rehabilitation shall be borne by the employee.

(2) The agency may grant administrative leave to an employee to participate in an employee assistance program, counseling, or a drug or alcohol rehabilitation program for up to 240 hours for the initial voluntary self-identification only.

(3) Employees in safety-sensitive positions, who have requested referral shall be assigned to non safety-sensitive duties until successful completion of the approved substance abuse program or treatment plan and release by the substance abuse program provider.

(4) Employees are subject to drug, alcohol testing or both at the discretion of the substance abuse coordinator at any time between 30 and 180 calendar days of requesting referral.

(a) Employees in safety-sensitive positions who test positive during this time period or fail to successfully complete such program are subject to disciplinary action including dismissal.

(b) Employees in non safety-sensitive positions who test positive during this time period or fail to successfully complete such program may be subject to disciplinary action including dismissal. The agency may allow the employee to use annual leave, sick leave, or leave without pay for additional counseling or rehabilitation by the agency after considering all factors relevant to the employee's condition and job performance history.

(5) For employees who have been required to undergo an alcohol rehabilitation program, any indication of alcohol at any level during the 30 to 180 calendar day period following the referral shall be considered a positive test result.

C. Safety-sensitive positions: Employees in safety-sensitive positions who have not requested referral to an employee assistance program, counseling, or a drug or alcohol rehabilitation program and test positive on a required drug, alcohol test or both shall be subject to disciplinary action including dismissal if they do not have a satisfactory explanation for the positive test results.

D. Non safety-sensitive positions:

(1) Employees in non safety-sensitive positions who test positive on a reasonable suspicion drug or alcohol test or both required by [Subsection D of 1.7.8.14] Subsection E of 1.7.1.10 NMAC and do not have a satisfactory explanation for the positive test results shall be referred to an employee assistance program, counseling, or a drug or alcohol rehabilitation program. Employees are subject to drug or alcohol testing at the discretion of the substance abuse coordinator at any time between 30 and 180 calendar days of the first positive test. Any such employee who tests positive for drugs, alcohol or both between 30 and 180 calendar days of the first positive test without a satisfactory explanation or who fails to enter and successfully complete a program shall be subject to disciplinary action including dismissal.

(2) The agency may grant an employee administrative leave to participate in an employee assistance program, counseling, or a drug or alcohol rehabilitation program for up to 240 hours for the initial reasonable suspicion referral only.

E. Refusal to cooperate in testing procedure: Any employee who refuses or fails without good cause to cooperate in the drug or alcohol testing or both

procedure by refusing or failing to complete the specified forms, by refusing or failing to submit a urine or breath specimen, or otherwise refuses or fails to cooperate shall be subject to disciplinary action including dismissal.

F. Possession of drugs or alcohol:

(1) Employees who illegally sell, purchase, or convey from one person or one place to another drugs or any substance in *Schedules I and II of the Controlled Substances Act, Sections 30-31-1 to 30-31-41 NMSA 1978 (Repl. Pamp. 1994)*, while on duty shall be subject to disciplinary action including dismissal and shall be reported to the local law enforcement agency.

(2) When employees, while on duty consume or have in their possession drugs, open containers of alcohol or any substance in *Schedules I and II of the Controlled Substances Act, Sections 30-31-1 to 30-31-41 NMSA 1978 (Repl. Pamp. 1994)* without a valid prescription or as otherwise authorized by law, they shall be subject to disciplinary action including dismissal and shall be reported to the local law enforcement agency.

[1.7.8.18 NMAC – Rp & Rn.,
1.7.8.19 NMAC, 1/14/2025; A,
5/20/2025]

End of Adopted Rules

Other Material Related to Administrative Law

**PUBLIC EDUCATION
DEPARTMENT****NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Public Education Department gives Notice of a Minor, Nonsubstantive Correction to 6.19.4 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule, as follows:

Section 8, Subsection A:
There are two subparagraphs (d) within paragraph (3). The second subparagraph (d) has been corrected to subparagraph (e).

Within subparagraphs (c) and (d), there is a statutory reference to "...Paragraph 2 of Subsection B of Section 22-8-11 NMSA 1978." In that statute, there are no paragraphs for subsection B. There are paragraphs for subsection A. As a matter of law, therefore, the statutory citation from "...Subsection B..." has been corrected to "...Subsection A..." in both subparagraphs.

A copy of this Notification will be filed with the official version of the above amendment.

**PUBLIC REGULATION
COMMISSION****NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Public Regulation Commission gives Notice of a Minor, Nonsubstantive Correction to 17.9.589 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule, as follows:

The headers for Sections 7 & 8 are not capitalized. This formatting error for both section headers have been corrected and both section names are capitalized, as follows:

**17.9.589.8 GENERAL
RELIABILITY METRICS
REPORTING REQUIREMENTS:****17.9.589.9 SPECIFIC
RELIABILITY METRICS
REPORTING REQUIREMENTS:**

A copy of this Notification will be filed with the official version of the above amendment.

**End of Other Material
Related to Administrative
Law**

2025 New Mexico Register

Submittal Deadlines and Publication Dates

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Issue 3	January 30	February 11
Issue 4	February 13	February 25
Issue 5	February 27	March 11
Issue 6	March 13	March 25
Issue 7	March 27	April 8
Issue 8	April 10	April 22
Issue 9	April 24	May 6
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Issue 20	October 9	October 21
Issue 21	October 23	November 4
Issue 22	November 6	November 18
Issue 23	November 20	December 9
Issue 24	December 11	December 23

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. The New Mexico Register is available free online at: <http://www.srca.nm.gov/new-mexico-register/>. For further information, call 505-476-7941