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New Mexico Register

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

Volume XXIX - Issue 18 - September 25, 2018

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The New Mexico Register

Published by the Commission of Public Records,
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205

Camino Carlos Rey, Santa Fe, NM 87507.

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New Mexico Register

Volume XXIX, Issue 18

September 25, 2018

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Notices of Rulemaking and Proposed Rules

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

NOTICE OF PUBLIC HEARING

The Human Service Department (HSD) will hold a public hearing to allow public comment on the General Provisions and SNAP regulations to be published September 25, 2018. The hearing will be held on October 26, 2018, from 9:30 a.m. to 10:30 a.m., at the HSD Administrative Services Division (ASD) conference room, 1474 Rodeo Road, Santa Fe, NM 87505. The conference room is at the ASD Rodeo Building, first floor. The Department is holding a public hearing to adopt the proposed rules, pursuant to Section 14-4-5.2 NMSA.

HSD is promulgating proposed regulations to the General Provisions and Supplemental Nutrition Assistance Program (SNAP) to include:

- aligning the timeframe of verification in accordance with Code of Federal Regulations (CFR);
- removing the language which allows the request for extension of time to provide verification;
- clarify a reconsideration of a disability determination for General Assistance;
- addition of household and ISD caused delay language for extension of time beyond the 30th day;
- updating regulations regarding the status of a fleeing felon and probation/parole violator to be in compliance with CFR;
- updating application time limits to be in compliance with CFR;
- removing language which allows the request for extension of time to delay the denial of the SNAP application;
- updating language from ISS to ISD;
- updating incorrect policy references;
- updating Medicaid 45-day determination of eligibility to mirror correct language;
- added 90-day application

processing timeframes for Medicaid; and
- added reference to CFR for citizenship and identity for Medicaid.

The Department is proposing these rules pursuant to the statutory authority of the food stamp program as authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011-2036). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Administration of the Human Services Department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8 NMSA 1978 (Repl. 1983).

The Human Services Register Vol. 41 No. 15 outlining the regulations is available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. Individuals wishing to testify or to request a copy of the final regulations should contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling 505-827-7254.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the Assistant General Counsel/American Disabilities Act Coordinator, at 505-827-6201 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written comments which must be received by 5:00 p.m. on the date of the hearing, October 26, 2018. Please send comments to:

Human Services Department
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

You may also send comments electronically to: HSD-isdrules@state.nm.us.

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the following New Mexico Administrative Code (NMAC) rules: 8.200.400 - General Recipient Rules-General Medicaid Eligibility; 8.201.600 - Medicaid Extension-Benefit Determination; 8.215.600 - SSI Methodology-Benefit Description; 8.231.600 - Infants Of Mothers Who Are Medicaid Eligible-Benefit Description; 8.242.600 - Qualified Disabled Individuals Whose Income Exceeds QMB And SLIMB-Benefit Description; 8.243.400 - Working Disabled Individuals-Recipient Policies; 8.243.600 - Working Disabled Individuals-Benefit Description; 8.245.600 - Specified Low Income Medicare Beneficiaries-Benefit Description; 8.249.600 - Refugee Medical Assistance-Benefit Description; 8.250.600 - Qualified Individuals-Benefit Description; 8.252.600 - Breast And Cervical Cancer-Benefit Description; 8.280.400 - PACE-Recipient Policies; 8.280.600 - PACE-Benefit Description; 8.281.600 - Institutional Care-Benefit Description; 8.290.400 - Home And Community-Based Services Waiver-Recipient Policies; 8.290.600 - Home And Community-Based Services Waiver-Benefit Description; 8.292.600 - Parent Caretaker-Benefit Description; 8.293.600 - Pregnant Women-Benefit Description; 8.294.600 - Pregnancy-Related Services-Benefit

Description; 8.295.600 - Children Under 19-Benefit Description; 8.296.400 - Other Adults-Recipient Requirements; 8.296.600 - Other Adults-Benefit Description; 8.297.400 - Loss Of Parent Caretaker Medicaid Due To Spousal Support-Recipient Requirements; 8.297.600 - Loss Of Parent Caretaker Medicaid Due To Spousal Support-Benefit Description; 8.298.400 - Loss Of Parent Caretaker Medicaid Due To Earnings From Employment-Recipient Requirements; 8.298.600 - Loss Of Parent Caretaker Medicaid Due To Earnings From Employment-Benefit Description; 8.299.400 - Family Planning Services-Recipient Requirements; 8.299.600 - Family Planning Services-Benefit Description; 8.302.2 - Medicaid General Provider Policies-Billing for Medicaid Services; and 8.308.14 - Managed Care Programs-Co-Payments.

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: September 25, 2018
 Hearing Date: October 24, 2018
 Adoption Date: Proposed as January 1, 2019
 Technical Citations: Centennial Care 2.0 1115 Waiver, Federal Register/ Vol. 81, No. 230, 42 CFR 435.119(b) (2).

The Department is proposing to revise these rules to align with the Department's Centennial Care 1115 Demonstration Waiver renewal effective January 1, 2019, or as otherwise approved by the Centers for Medicare and Medicaid Services (CMS).

As part of the rule promulgation, the following NMAC rules are being repealed and replaced to comply with formatting requirements: 8.201.600, 8.215.600, 8.242.600, 8.243.400, 8.243.600, 8.245.600, 8.249.600, 8.250.600, 8.280.400, and 8.280.600 NMAC.

A. Proposed Revisions to Retroactive Medicaid Policy

8.200.400 NMAC Section 14

The Department proposes language describing the policy for retroactive Medicaid in one location. Policies for specific categories of eligibility will reference Section 14 regarding retroactive Medicaid. The Department proposes to revise the policy for retroactive Medicaid to limit Centennial Care managed care members to one month of retroactive Medicaid prior to the application month. This is a change from the three months of retroactive Medicaid allowed under current rule.

Under the proposed rule, the following Centennial Care managed care members are limited to one month of retroactive Medicaid: Other Adults, Parent/Caretaker, Supplemental Security Income (SSI), SSI extensions, Working Disabled Individuals (WDI), and Breast and Cervical Cancer (BCC). Medicaid fee-for-service (FFS) individuals in these categories who are not enrolled in managed care during the month of application are allowed up to three months of retroactive Medicaid prior to the application month.

Beginning July 1, 2019, individuals covered under the Other Adults category who have household income above 100% of the federal poverty level (FPL) will have a premium requirement. The proposed rule explains that individuals covered under the Other Adults category who have a premium requirement will not be eligible for retroactive Medicaid. Premium requirements cited in this register will be addressed separately in a different proposed register.

The following categories of Medicaid are allowed up to three months of retroactive Medicaid regardless of Centennial Care managed care enrollment: Children under Age 19 (including Newborn and the Children's Health Insurance Program (CHIP)), Pregnant Women,

Pregnancy-Related Services, Family Planning, Specified Low-Income Medicare Beneficiary (SLIMB), Medicare Savings Program Qualifying Individuals (QI1), Qualified Disabled Individuals, Refugee, Children, Youth and Families Department (CYFD) Medicaid categories, and Institutional Care Medicaid, excluding the Program of All-Inclusive Care for the Elderly (PACE).

The following categories will not be eligible for retroactive Medicaid, in accordance with current policy: Emergency Medical Services for Aliens (EMSA), Home and Community-Based Services Waivers, PACE, Qualified Medicare Beneficiary (QMB), and Transitional Medical Assistance (TMA). EMSA will continue to provide coverage for services that may have been provided prior to the application month, but is not considered retroactive Medicaid.

For newborns, the retroactive Medicaid policy that was at 8.231.600.12 NMAC remains the same but has been moved to 8.200.410.14 NMAC.

8.201.600 NMAC Section 13

The Department proposes to amend the SSI extension categories of Medicaid to delete the three-month retroactive language and refer to 8.200.410.14 NMAC.

8.215.600 NMAC Section 10

The Department proposes to amend the SSI categories of Medicaid to delete the three-month retroactive language and refer to 8.200.410.14 NMAC.

8.231.600 NMAC Section 12

The Department proposes to amend the newborn category section to refer to 8.200.410.14 NMAC.

8.242.600 NMAC Section 13

The Department proposes to amend the Qualified Disabled Working

Individuals category to delete the three-month retroactive language and refer to 8.200.410.14 NMAC.

8.243.600 NMAC

Section 13

The Department proposes to amend the WDI category to delete the three-month retroactive language and refer to 8.200.410.14 NMAC.

8.245.600 NMAC

Section 13

The Department proposes to amend the SLIMB category to delete the three-month retroactive language and refer to 8.200.410.14 NMAC.

8.249.600 NMAC

Section 13

The Department proposes to amend the Refugee category to delete the three-month retroactive language and refer to 8.200.410.14 NMAC.

8.250.600 NMAC

Section 13

The Department proposes to amend the QI1 category to delete the three-month retroactive language and refer to 8.200.410.14 NMAC.

8.252.600 NMAC

Section 13

The Department proposes to amend the BCC category to delete the three-month retroactive language and refer to 8.200.410.14 NMAC.

8.292.600 NMAC

Section 10

The Department proposes to amend the Parent Caretaker to delete the three-month retroactive language and refer to 8.200.410.14 NMAC.

8.293.600 NMAC

Section 10

The Department proposes to amend the Pregnant Women category to remove the retroactive language and refer to 8.200.410.14 NMAC.

8.294.600 NMAC

Section 10

The Department proposes to amend the Pregnancy-Related Services category to remove the retroactive

language and refer to 8.200.410.14 NMAC.

8.295.600 NMAC

Section 10

The Department proposes to amend the Children Under Age 19 to remove the retroactive language and refer to 8.200.410.14 NMAC.

8.296.600 NMAC

Section 10

The Department proposes to amend the Other Adults category to delete the three-month retroactive language and refer to 8.200.410.14 NMAC.

8.299.600 NMAC

Section 10

The Department proposes to amend the Family Planning category to delete the three-month retroactive language and refer to 8.200.410.14 NMAC.

B. Proposed Revisions to Medicaid Family Planning Policy

8.299.400 NMAC

Section 9

The Department proposes to amend rules for the Medicaid Family Planning category to state that an individual must be under the age of 51 and not have other health insurance to be eligible. Individuals who are under the age of 65 who have only Medicare and no other health insurance are also eligible for Medicaid Family Planning.

8.299.600 NMAC

Section 11

The Department proposes to amend rules for the Medicaid Family Planning category to remove the continuous eligibility language and refer to change reporting policy. The Code of Federal Regulations (CFR) and Medicaid State Plan do not permit continuous eligibility for Medicaid Family Planning, so this change is being proposed to comply with federal regulations.

C. Proposed Ongoing Nursing Facility Level of Care (NF LOC) for Certain Community Benefit Participants in Centennial Care

Individuals covered under the Centennial Care managed care program may receive the Community Benefit when they meet NF LOC. Community Benefit requirements are located in program policy at 8.308.12 NMAC. Through the Centennial Care 1115 Demonstration Waiver renewal effective January 1, 2019, an ongoing NF LOC is allowed for managed care Community Benefit participants who meet certain criteria. The Department proposes to update 8.290.600 NMAC to allow for an ongoing NF LOC for these individuals.

NF LOC determinations are made by the utilization review contractor or a member's selected or assigned managed care organization (MCO), as applicable to the Centennial Care Community Benefit program. LOC reviews are required to be completed at least annually except for certain Community Benefit members whose chronic condition is not expected to improve. These individuals may be eligible for an ongoing NF LOC. To qualify for an ongoing NF LOC, the Community Benefit member must have met a NF LOC for the previous three years. The ongoing NF LOC status must be reviewed and approved annually by the MCO's medical director and must be supported in documentation by the member's physician. The complete criteria for an ongoing NF LOC can be found in the New Mexico Medicaid NF LOC criteria and instructions document.

Meeting NF LOC is a requirement for Institutional Care (IC) and some Home and Community-Based Services (HCBS) categories. IC Medicaid clients are not eligible for an ongoing NF LOC because these individuals are not eligible for the Community Benefit. PACE clients are not eligible for an ongoing NF LOC because their services are provided under fee-for-service and not managed care, so the Community Benefit is not available to these individuals.

8.290.600 NMAC

Section 12

The Department proposes to amend language for the HCBS waiver categories to add language that LOC reviews are required at least annually, except for certain Community Benefit members whose chronic conditions are not expected to improve. These individuals may be eligible for an ongoing NF LOC. Outdated language was deleted and additional language was inserted to clarify that LOC determinations are made by the utilization review contractor or a member's selected or assigned MCO.

D. Proposed Elimination of Existing Co-Payments for CHIP and WDI

As part of the Centennial Care 1115 Demonstration Waiver, the Department proposes to sunset existing co-payments specific to CHIP and WDI clients.

8.243.400 NMAC

Section 18

The Department proposes to eliminate language referencing specific co-payments for WDI individuals effective January 1, 2019.

8.243.600 NMAC

Section 12

The Department proposes to eliminate references to co-payments in this Section.

8.295.600 NMAC

Section 9

The Department proposes to eliminate language referencing specific co-payments for CHIP individuals effective January 1, 2019. Language was also updated to clarify that eligibility extends through age 18.

E. Proposed Revisions to Other Adults Category

8.296.400 NMAC

Section 9

The Department proposed additional language to exclude individuals who are pregnant per 42 CFR 435.119(b) (2). New language was added to explain that individuals with

household income above 100% FPL will be subject to a premium and are enrolled into the Other Adults category prospectively starting July 1, 2019. Native Americans are exempt from premium requirements. Premium requirements cited in this register will be addressed separately in a different proposed register.

F. Other Proposed Revisions to Medicaid Eligibility Rules

8.200.400.10 NMAC

Section 10

The Department proposes to remove outdated language regarding waiver programs. The Emergency Medical Services for Aliens (EMSA) section was updated to replace the outdated term "alien" with "non-citizen" and to remove the statement that EMSA individuals do not receive the full Medicaid benefit package, since the service limitation is already cited in the next sentence in the rules.

8.290.400 NMAC

Section 7

The Department proposes to add definitions for Comprehensive Care Plan (CCP), Primary Freedom of Choice (PFOC), and Medically Fragile; and to update the definition of Waiver. Acronyms for the Disability Determination Unit (DDU) and HCBS were also added.

Section 9

The Department proposes to add language to clarify that the LOC requirements for Medically Fragile and Developmentally Disabled categories are an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) LOC. Language was added regarding the Community Benefit for elderly, blind, and disabled Medicaid categories who meet NF LOC.

Section 10

Outdated language was deleted regarding the Coordination of Long-Term Services (CoLTS) waiver, which has not existed for several years. Language was added to clarify that a disability or blindness determination

can be determined by the Social Security Administration (SSA). Section 10 was further amended to expand who is characterized as a Medically Fragile individual.

Language was also amended to clarify that the AIDS and AIDS-related condition waiver ceased covering new individuals effective January 1, 2014, since the waiver was sunset and not renewed. Individuals already on the AIDS and AIDS-related condition waiver are grandfathered in and remain covered as long as eligibility requirements are met. Language was added to clarify that the Brain Injury (BI) category also stopped covering new individuals effective January 1, 2014. Those already on the BI waiver were grandfathered in and remain covered as long as eligibility requirements are met.

Section 11

The Department proposes to delete language requiring the Individual Service Plan (ISP) to be in effect for 30 days for an application to be approved. New proposed language regarding approval of waiver applications is contained at 8.290.600 NMAC and included in this register.

Proposed language was also added regarding the requirement to meet all non-financial eligibility criteria, which includes any mandatory income or resources deemed to a minor child. This Section was also amended with respect to enumeration to reference 8.200.410.10 NMAC. The reference to citizenship was updated to be more precise. Outdated acronyms were updated.

This Section was also amended to increase the number of consecutive days in which a waiver recipient can be out of waiver services before eligibility is closed. The increase from 60 consecutive days to 90 consecutive days will allow for equity among all waiver recipients, specifically for recipients receiving services under New Mexico's 1115 Centennial Care Medicaid Demonstration Waiver.

Section 12

The Department proposes to update acronyms that are outdated. Language is also proposed to clarify that LOC reviews are also completed by the MCO.

8.290.600 NMAC

Section 10

The Department amended this Section to add acronyms for ISD and the DDU.

Section 11

The Department proposes to delete outdated language requiring the ISP to be in effect 30 days for an application to be approved. New language was also added to clarify when Medicaid and Waiver services eligibility begins.

Section 13

The Department proposes to add language to clarify that since eligibility for waiver programs is prospective, retroactive coverage is not available.

Section 14

This section was amended to correct a typo. Language is also proposed in this Section to allow for 90 consecutive days as opposed to the current 60 days for non-provision of waiver services before a waiver case is closed.

8.280.400 NMAC

Section 11

The Department proposes to add a new sentence to clarify that interviews are required for PACE individuals at initial application in accordance with Institutional Care rules found at 8.281.400 NMAC. Outdated language was also updated.

Section 13

This section was updated to delete outdated language and add the applicable change reporting reference.

8.280.600 NMAC

Section 10

This section was updated to remove outdated language and reference the HSD 100 application.

Section 12

This section was amended to delete outdated language and clarify that LOC determinations for PACE are made by the utilization review contractor.

Section 14

This section was amended to add that an exception to closure of PACE for services not being provided can be prior authorized by MAD. Outdated language was updated.

8.281.600 NMAC

Section 10

This section was updated to remove outdated language and reference the HSD 100 application.

Section 12

This section was amended to delete outdated language and clarify that LOC determinations are made by the utilization review contractor or a member's selected or assigned MCO.

8.293.600.10 and 8.294.600.10

NMAC

Section 10

The Department proposes amendments in both the Pregnant Women and Pregnancy-Related services categories to add language from 42 CFR 435.4 that allows for a 60-day postpartum period of Medicaid coverage. Current policy allows for a postpartum coverage period of two months following the birth month.

This change is being made to comply with the CFR language.

8.297.400 NMAC

Section 9

The Department proposes to amend language regarding Transitional Medical Assistance (TMA) due to Loss of Parent Caretaker Medicaid due to Spousal Support. TMA is the full Medicaid coverage of last resort. A parent or caretaker is evaluated for other full Medicaid coverage, including Other Adults Medicaid, before being placed on the TMA category of eligibility per Federal Register Vol. 81, No. 230. A parent or caretaker losing full Medicaid coverage during any month(s) of

his or her four-month TMA period is automatically placed on the TMA category. The Medicaid eligibility certification period of dependent children living in the home is extended to at least match the TMA period of parent(s) and guardian(s). This section was further amended to state that new TMA periods beginning on or after July 1, 2019, are subject to a premium for eligibility months during which an individual is on the TMA category 027. Native Americans are exempt from the premium requirement. Premium requirements cited in this register will be addressed separately in a different proposed register.

8.297.600 NMAC

Section 11

The Department proposes to amend language regarding TMA due to Loss of Parent Caretaker Medicaid due to Spousal Support. This section was amended to delete language stating that a new application must be submitted after the four-month TMA period expires. A redetermination of eligibility is conducted in accordance with 8.291.410.19 NMAC, which allows for an administrative renewal, pre-populated renewal form, and a 90-day reconsideration period.

8.298.400 NMAC

Section 9

The Department proposes to amend language regarding TMA due to Loss of Parent Caretaker Medicaid due to Earnings from Employment. TMA is the full Medicaid coverage of last resort. A parent or caretaker is evaluated for other full Medicaid coverage, including Other Adults Medicaid, before being placed on the TMA category of eligibility per Federal Register Vol. 81, No. 230. A parent or caretaker losing full Medicaid coverage during any month(s) of his or her 12-month TMA period is automatically placed on the TMA category. The Medicaid eligibility certification period of dependent children living in the home is extended to at least match the TMA period of parent(s) and guardian(s). This section was further amended to

state that new TMA periods beginning on or after July 1, 2019 are subject to a premium for eligibility months an individual is on the TMA category 028. Native Americans are exempt from the premium requirement. Premium requirements cited in this register will be addressed separately in a different proposed register.

8.298.600 NMAC

Section 11

The Department proposes to amend language regarding TMA due to Loss of Parent Caretaker Medicaid due to Earnings from Employment. This section was amended to delete language stating that a new application must be submitted after the 12-month TMA period expires. A redetermination of eligibility is conducted in accordance with 8.291.410.19 NMAC, which allows for an administrative renewal, pre-populated renewal form, and a 90-day reconsideration period.

8.302.2 NMAC

Section 10

The Department proposes to remove detailed language in this section regarding co-payment requirements. The Department clarifies that co-payment requirements are required under the Medicaid managed care program only, and proposes removing details from this section and instead citing to the managed care section of rule at 8.308.14 NMAC.

The Department also proposes to sunset existing co-payments for the CHIP and WDI programs effective January 1, 2019. Language regarding CHIP and WDI co-payments has been removed.

8.308.14 NMAC

New wording in the proposed rule at 8.308.14 NMAC specifies new co-payment requirements as part of the 1115 Demonstration Waiver renewal for Centennial Care. The proposed effective date of new co-payment requirements is March 1, 2019, contingent upon approval by CMS. This section of the rule specifies the amount of each co-

payment; to whom the co-payment applies; the categories of eligibility and services that are exempt from co-payments; the responsibilities of Medicaid providers for charging, collecting and reporting co-payments; the responsibilities of contracted MCOs for tracking co-payments; the rights and responsibilities of MCO members; and other specific information regarding the application of co-payments.

Section 9

The Department proposes new co-payment amounts for non-emergency care furnished in the hospital Emergency Department (ED) and non-preferred prescription drugs. Both co-payments amounts are proposed to be set at \$8.

The proposed rule defines the co-payment types and describes the conditions under which each type of co-payment may be charged to a member. This section further describes the members who are exempt from co-payments, including: Native American members who are active or previous users of the Indian Health Service (IHS), tribal 638 programs, or urban Indian health programs, and who are coded as Native American in the Department's eligibility and enrollment system; members who are enrolled in the 1915(c) Developmentally Disabled (DD) waiver program; members who are enrolled in an Institutional Care (IC) category of eligibility; members with verified household income of zero percent of the federal poverty level (FPL); members for whom the Department does not have income information because of a pass-through eligibility determination made by another agency; and members who are receiving hospice care.

The proposed rule further defines requirements of the MCOs regarding co-payments, including the requirement to track the accumulation of co-payments toward an aggregate limit of five percent of the member's household income, and to notify member households of both their

aggregate maximum amount and their co-payment accumulations on a quarterly basis.

The proposed rule also sets forth the responsibilities of MCO contracted providers in applying and administering co-payments; and the rights and responsibilities of MCO members who are charged co-payments.

This register and the proposed rules are available on the HSD website at: <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> and <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx>. If you do not have internet access, a copy of the proposed register and rules may be requested by contacting MAD at (505) 827-6252.

The Department proposes to implement these rules effective January 1, 2019, or as otherwise approved by CMS. A public hearing to receive testimony on these proposed rules will be held in the Rio Grande Conference room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico on October 24, 2018 from 9 a.m. to 12 p.m., Mountain Daylight Time (MDT).

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MDT on October 25, 2018. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <http://www.hsd.state.nm.us/2017-comment-period->

[open.aspx](#) along with the applicable register and rules. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-6252. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the 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.

**PUBLIC REGULATION
COMMISSION**

**NOTICE OF PROPOSED
RULEMAKING**

The New Mexico Public Regulation Commission (Commission) gives notice of proposed revisions to Part 5 of Title 18, Chapter 60 of the New Mexico Administrative Code (18.60.5 NMAC), regulated by the Commission pursuant to the laws pertaining to excavation damage to pipelines and underground utility lines and provided by the Pipeline Safety Act, Section 70-3-11 NMSA 1978.

Rulemaking Statutory Authority:

General rulemaking authority: New Mexico Constitution, Article XI, Sec. 2 and, Paragraph (10) of Subsection B of Section 8-8-4 and Section 8-8-15 NMSA 1978 of the Public Regulations Commission Act. Subject matter regulation authority: Section 62-14-10 NMSA 1978 of the excavation damage to pipelines and underground utility lines statute and Subsection A of Section 70-3-13 NMSA 1978 of the Pipeline Safety Act.

**Proposed Rule Summary and
Explanation of Purpose:**

The purpose of the proposed rulemaking is to clarify that the rule applies to all underground facilities, with the exemption of those preempted by federal law; to implement or revise particular procedures, reporting requirements, and deadlines used to prevent damage to underground utilities; and to address procedures to be taken when damage occurs during pipeline excavation activities. Copies of the Order Issuing Notice of Proposed Rulemaking containing the full text of the proposed rule as an Exhibit thereto, as well as additional information and filing instructions, may be downloaded from the Proposed Rulemaking section of the Commission’s website at <http://www.Commission.state.nm.us> under Case No. 18-00262-PL or may be otherwise obtained by calling the Commission’s Records Management Bureau at (505) 827-6968.

Comments/Deadlines:

Written Initial Comments and written Response Comments must be filed with the Commission’s Records Management Bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the Commission Records Management Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501 by these deadlines: Written Initial Comments must be filed not later than October 31, 2018, and written Response Comments not later than November 15, 2018. Comments shall refer to Case No. 18-00262-PL. All written comments will be posted on the Commission’s website at <http://www.nmprc.state.nm.us> under Case No. 18-00262-PL and also will be available for public inspection at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501.

Rulemaking Public Hearing:

The rulemaking public hearing will be held on November 16, 2018 beginning at 2:00 p.m. at the offices of the Commission located in the 4th Floor Hearing Room of the old PERA Building, at 1120

Paseo de Peralta, in Santa Fe. The purpose of the rulemaking public hearing is to receive oral comments about the proposed rule revisions. Because commenters are afforded the opportunity to submit written comments and written responses to the Commission, any individual delivering oral comments shall be limited to five minutes to express their comments, subject to the Commission’s discretion. The Commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that share the same message or seek the same goals, in order to maximize the efficiency of the rulemaking public comment hearing. Because this case is a rulemaking proceeding, no testimony or other evidence will be taken at the hearing.

Because hearings are occasionally rescheduled, interested persons should contact the Commission to confirm the date, time, and place of the rulemaking public hearing. If you are an individual with a disability that requires assistance or an auxiliary aid (such as a sign language interpreter) to participate in any aspect of this process, please contact Ms. Kathleen Segura at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

The record of this case will close on November 21, 2018.

**REGULATION AND
LICENSING DEPARTMENT
PHARMACY, BOARD OF**

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

The New Mexico Board of Pharmacy will convene on October 25th & 26th, 2018 at 9:00 a.m. and continue until finished in the Board of Pharmacy Conference Room located at 5500 San Antonio Dr., NE, Albuquerque, NM 87109 for the purpose of conducting a regular board meeting.

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

Individuals petitioning the board regarding requests/waivers and/or interested persons wishing to comment on proposed language regarding rule hearings must submit documentation for presentation; via fax (505) 222-9845, mail or email to the Executive Director, Cheranne McCracken, Cheranne.McCracken@state.nm.us at least five days in advance to the scheduled meeting, if in attendance must also provide 12 copies of that documentation for distribution to board members and staff, as public comment is allowed during the rule hearing. (*Board staff is not required to make copies.*)

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

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Debra Wilhite at 505-222-9835 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Debra Wilhite, Administrative Secretary at 505-222-9835 or e-mail debra.wilhite@state.nm.us if a summary or other type of accessible format is needed.

The Board will address:

All Board Matters:

Rule Hearings:

10/25/18 @ 9:10 a.m. - 16.19.27.7 NMAC - DISHONORABLE CONDUCT: Amendment to protect the health and safety of patients in New Mexico, by prohibiting the solicitation of prescription business via pre-selected medications on prescription blanks; or via prescription request not initiated by the patient or practitioner. STATUTORY AUTHORITY: Paragraphs 1 and 12 of Subsection A of Section 61-11-6 NMSA 1978.

10/25/18 @ 9:10 a.m. - 16.19.4.9 NMAC - PHARMACIST: Amendment to protect the health and safety of patients in New Mexico, by prohibiting the solicitation of prescription business via pre-selected medications on prescription blanks; or via prescription request not initiated by the patient or practitioner. STATUTORY AUTHORITY: Paragraphs 1 and 12 of Subsection A of Section 61-11-6, 30-31-3, 30-31-11 NMSA 1978.

Disciplinary Hearings:

10/25/18 @9:45 a.m. - Order to Show Cause: John Bray-Morris CS208894
10/25/18 @10:00 a.m. - Disciplinary Hearing: Jordan Vermillion IN3967
10/26/18 @ 9:30 a.m. - Disciplinary Hearing: Walgreens PH4004; Weinstein RP7502; Garrett RP8211 - 2016-048 A, B, C

Executive Director's Report:

Published in NM Register September 25, 2018

RETIREE HEALTH CARE AUTHORITY

AMENDED NOTICE OF PROPOSED RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Retiree Health Care Authority (NMRHCA) is considering amending the part name of the existing rule 2.81.11 NMAC - ESTABLISHING SUBSIDY LEVELS ON THE BASIS OF

YEARS OF CREDITABLE SERVICE, amending sections 6, 7, 8 and 9 and adopting a proposed new section 10 to be included in 2.81.11 NMAC. The purpose of the amendment of existing sections of the rule is to amend the subsidy schedule to increase the years for maximum subsidy for some plans. The purpose of the proposed new section is to establish a minimum age requirement to receive subsidy for coverage. The part name will be changed to "ESTABLISHING SUBSIDY LEVELS ON THE BASIS OF AGE AND YEARS OF CREDITABLE SERVICE" in order to reflect the proposed rule. A summary of the full text of the proposed rule follows:

Section 8 of the existing rule 2.81.11 NMAC provides for the NMRHCA to pay a percentage of the subsidy to monthly premiums of eligible retirees, which percentage is dependent on the years of credited service of the retiree and is 100% at 20 years of credited service. The amendment changes the years at which 100% is paid to 25 and changes the percentages for fewer years of credited service for retirees who are not members of an enhanced retirement plan and become eligible for participation on or after January 1, 2020. Section 7 of the existing rule is amended to include a definition for "members of an enhanced retirement plan." The new section 10 requires that eligible retirees who are not members of an enhanced retirement plan and become eligible for participation on or after January 1, 2020 be 55 years of age to receive subsidies. Section 9 is amended to clarify that disabled retirees receive a 100% subsidy regardless of years of service or age. Section 6 is amended to clarify that the objective of the part includes that subsidies will have a minimum age requirement for those retiring on or after January 1, 2020.

The NMRHCA is authorized to promulgate rules to implement the Retiree Health Care Act, NMSA 1978, Sections 10-7C-1 to -16 (1990, as amended through 2009) ("Act") by NMSA 1978, Section 10-7C-7 (1998).

By resolution dated May 8, 2018, the NMRHCA resolved to undertake the rulemaking in conformity with the Act, the State Rules Act, NMSA 1978, Sections 14-4-1 to -11 (1967, as amended through 2017), the Default Procedural Rule for Rulemaking, 1.24.25 NMAC (4/10/2018) and the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013).

The NMRHCA is increasing the minimum years of service requirement to receive the maximum subsidy provided by the program to be consistent with requirements to receive a full pension benefit from both the Public Employee Retirement Association of New Mexico and the New Mexico Educational Retirement Board. In addition, the agency is establishing a minimum age requirement for folks not retiring from an enhanced retirement plan to promote and strengthen the solvency of the program. A study of NMRHCA's long-term solvency projections, NMRHCA 2017 Long-Term Solvency Model, is available at its website, www.nmrhca.org/financial-documents.aspx.

The full text of the proposed rule may be obtained by contacting Greg Archuleta, Director of Communication and Member Engagement, New Mexico Retiree Health Care Authority, 4308 Carlisle Blvd. NE, Suite 104, Albuquerque, New Mexico 87107; telephone 505-222-6403, to request a copy of the rule. The full text and this notice are also available on NMRHCA's website: <http://www.nmrhca.org/>.

A person may submit, by mail or electronic form, written comments on the proposed rule through the end of the public comment period, which ends Oct. 19, 2018. Written comments should be submitted to Greg Archuleta, Director of Communication and Member Engagement, New Mexico Retiree Health Care Authority, 4308 Carlisle Blvd. NE, Suite 104, Albuquerque, New Mexico 87107. Written

comments also will be accepted by email: gregoryr.archuleta@state.nm.us or by fax: (505) 884-8611. All written comments received by the agency will be posted on <http://www.nmrhca.org/> no more than 3 business days following receipt to allow for public review. Written comments will also be available for public inspection at New Mexico Retiree Health Care Authority, 4308 Carlisle Blvd. NE, Suite 104, Albuquerque, New Mexico 87107.

A public rule hearing on the proposed rule will be held before Greg Archuleta, Director of Communication and Member Engagement, NMRHCA, on Oct. 19, 2018 from 9:30-11:30 a.m. at the NMRHCA office's Alfredo R. Santistevan Board Room, located at 4308 Carlisle Blvd. NE, Suite 207 in Albuquerque, NM, 87107. Individuals may submit data, views or arguments orally or in writing to the proposed rule at the public rule hearing. Persons offering written comments at the hearing must have 2 copies for the hearing officer.

Any individual with a disability in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in an accessible form may contact Greg Archuleta at 505-222-6403 at least 10 days before the hearing.

SUPERINTENDENT OF INSURANCE

NOTICE OF PROPOSED RULEMAKING HEARING

NOTICE IS HEREBY GIVEN that New Mexico Health Connections (NMHC), a New Mexico domiciled insurer, has petitioned the New Mexico Office of Superintendent of Insurance ("OSI") requesting the promulgation of a new Accordingly, the OSI is initiating rulemaking proceedings in accordance with the statutory requirements and authority found in Section 12-8-7 NMSA 1978 and Sections 59A-2-8, 59A-2-9 and

59A-2-10 NMSA 1978.

In its petition, NMHC "requests the OSI take action to ameliorate the disastrous effect of the federal risk adjustment program by either: (1) requesting permission from the United States Department of Health and Human Services to run a state alternative risk adjustment program which would cap risk adjustment assessments at a prescribed percentage of an issuer's premium; or (2) promulgating a rule that would permit the OSI, in its discretion, to suspend or defer federal risk adjustment assessments in the event such assessments pose significant financial threats to issuers." NMHC states that such action would "limit the volatility of the program and allow issuers greater predictability in rate-setting, which should permit issuers to reduce premiums that have been priced high to guard against the risk of unpredictably large risk adjustment bills". Additionally, NMHC states that such action "can also incentivize new entry, as investors will have some assurance that the company's reserves will not be wiped out by one excessive risk adjustment charge".

The petition and the proposed rule may be found on the OSI website at <http://www.osi.state.nm.us> under the "Statutes & Rulemaking" tab and is incorporated by reference into this Notice of Proposed Rulemaking. The proposed rule designation is 13.10.31 NMAC. A copy of the petition and the proposed rule is available by electronic download from the OSI website or the New Mexico Sunshine portal, or by requesting a copy in person at the NM Office of Superintendent of Insurance, 1120 Paseo de Peralta, Santa Fe, NM 87501.

The Superintendent of the OSI ("Superintendent") will hold a public comment hearing on the proposed rule beginning at **10:00 a.m. on Monday, October 29, 2018** at the NM Office of Superintendent of Insurance, 4th Floor Hearing Room, Old PERA Building, 1120 Paseo de

Peralta, Santa Fe, New Mexico. The Superintendent or his designee shall act as the hearing officer for this rulemaking.

OSI staff, all health insurers, other persons transacting insurance business in New Mexico, and members of the public are encouraged to provide comments or file any written proposals or comments according to the criteria and schedule set forth as follows:

Oral comments will be accepted at the public hearing from any interested parties including, but not limited to NMHC and the staff of the OSI Life and Health Insurance Bureau. Written comments may be submitted for the record prior to the hearing and are due no later than **4:00 p.m. on Friday, October 19, 2018**. Written responses may be submitted for the record following the hearing and are due no later than 4:00 pm on **Friday, November 2, 2018**.

Written comments, proposals, or responsive comments may be submitted via email to mariano.romero@state.nm.us or may be filed by sending original copies to:

OSI Records and Docketing, NM Office of Superintendent of Insurance Attention: Mariano Romero, Room 331
1120 Paseo de Peralta, P.O. Box 1689, Santa Fe, NM 87504-1689 **Docket No.: 18-00050-RULE-LH**

Only signed statements, proposals or comments will be accepted. Scanned or facsimile signatures or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic or facsimile signature. All filings must be received between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except on state holidays. Any filings received after 4:00 p.m. will be filed to the docket the next business day.

Any person with a disability requiring special assistance in order to participate in the hearing should contact Melissa Martinez, Law Clerk, Office of General Counsel, at 505-476-0333 at least 48 hours prior to the commencement of the hearing.

The Superintendent will consider all oral comments, and will review all timely submitted written comments and responses. The record shall be closed at **4:00 p.m. on Friday, November 2, 2018**.

DONE AND ORDERED this 25th day of September, 2018.
/S/JOHN G. FRANCHINI

TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to adopt the following rules:

**Special Fuels Supplier Tax Act, Section 7-16A-19.1 NMSA 1978
3.12.99 NMAC - Special Fuel User Permits**

The proposals were placed on file in the Office of the Secretary on September 12, 2018. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about December 11, 2018.

A public hearing will be held on the proposals on Monday, October 29, 2018, at 10:00 a.m. in the in Secretary's Conference Room on the third floor of the Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Alicia Romero at alicia.romero@state.nm.us. The Taxation and Revenue Department will make every effort to accommodate all reasonable requests,

but cannot guarantee accommodation of a request that is not received at least ten calendar days prior to the scheduled hearing. Accessible copies of the proposals are available upon request; contact the Tax Policy Office at policy.office@state.nm.us. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 or by email to policy.office@state.nm.us on or before October 29, 2018 at 9:00 a.m.. All written comments received by the agency will be posted on www.tax.newmexico.gov no more than 3 business days following receipt to allow for public review.

**TITLE 3: TAXATION
CHAPTER 12: HIGHWAY USE TAXES AND FEES
PART 99: SPECIAL FUEL USER PERMITS**

3.12.99.1 ISSUING

AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P. O. Box 630, Santa Fe, NM 87504-0630.
[3.12.99.1 NMAC - N/E, 9/25/2018; A, xx/xx/xxxx]

3.12.99.2 SCOPE: This part applies to commercial motor carriers using special fuel and having a gross vehicle weight in excess of twenty-six thousand pounds operating in the state of New Mexico.
[3.12.99.2 NMAC - N/E, 9/25/2018; A, xx/xx/xxxx]

3.12.99.3 STATUTORY AUTHORITY: Sections 9-5-1, 9-11-6.2, 7-16A-2.1, 7-16A-19 and 7-16A-19.1 NMSA 1978.
[3.12.99.3 NMAC - N/E, 9/25/2018; A, xx/xx/xxxx]

3.12.99.4 DURATION: Permanent.
[3.12.99.4 NMAC - N/E, 9/25/2018; A, xx/xx/xxxx]

3.12.99.5 EFFECTIVE DATE: xx/xx/xxxx, unless a later date is cited at the end of a section. [3.12.99.5 NMAC - N/E, 9/25/2018; A, xx/xx/xxxx]

3.12.99.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the Special Fuel Use Permits provisions of Chapter 7, Article 16A of NMSA 1978. [3.12.99.6 NMAC - N/E, 9/25/2018; A, xx/xx/xxxx]

3.12.99.7 DEFINITIONS: As used in this rule:
A. "Department" has the same meaning as defined in Subsection F of 7-16A-2 NMSA 1978.
B. "International border commercial zone" has the same meaning as defined in Subsection D of 7-16A-19.1 NMSA 1978.
C. "Person" has the same meaning as defined in Subsection K of 7-16A-2 NMSA 1978.

D. "Special fuel user" has the same meaning as defined in Subsection R of 7-16A-2 NMSA 1978. [3.12.99.7 NMAC - N/E, 9/25/2018]

3.12.99.8 TEMPORARY SPECIAL FUEL USER PERMIT:

A. On a form provided by the department, a special fuel user whose vehicle is not registered with the department shall acquire from the department, before operating the vehicle on New Mexico highways, a temporary special fuel user permit valid for one calendar day only or for one entry into and one exit out of New Mexico.

B. A special fuel user whose vehicle is not registered with the department, that applies for a temporary special fuel user permit valid for one calendar day only, for one entry into and one exit out of New Mexico, shall pay five dollars (\$5.00) for each motor vehicle.

C. A special fuel user operating under a temporary special fuel user permit shall pay a special fuel user tax of five cents (\$.05) per mile for each mile traveled in New

Mexico. [3.12.99.8 NMAC - N/E, 9/25/2018; A, xx/xx/xxxx]

3.12.99.9 BORDER CROSSING SPECIAL FUEL USER PERMIT:

A. A special fuel user who operates a commercial motor carrier vehicle registered or titled in Mexico, who is engaged primarily in movement across the New Mexico-Mexico border and into or from an international border commercial zone and whose exclusive use of New Mexico highways is limited to an area within ten miles of the New Mexico-Mexico border, may apply for, on a form approved by the department, a quarterly, semi-annual or annual border crossing special fuel user permit.

B. The department shall issue the permit if it approves the application and upon payment of the fee for the border crossing special fuel user permit.

C. The fee for the border crossing special fuel user permit shall be:

(1) for a quarterly permit, one hundred twenty-five dollars (\$125);

(2) for a semi-annual permit, two hundred dollars (\$200); and

(3) for an annual permit, three hundred fifty dollars (\$350).

D. A special fuel user holding a valid border crossing special fuel user permit and operating within the specified 10 miles of the New Mexico - Mexico border, as provided above, shall be exempt from the five dollar (\$5.00) temporary special fuel user permit specified in Paragraph (1) of Subsection A and Subsection C of 7-16A-19 NMSA 1978 and exempt from the five cent (\$.05) per mile special fuel user tax pursuant to Subsections E and F of 7-16A-2.1 NMSA 1978.

E. A special fuel user holding a valid border crossing special fuel user permit and operating outside the specified 10 miles of the New Mexico-Mexico border, shall acquire a temporary special fuel user permit for a fee of five dollars (\$5.00) and shall pay the special fuel user tax

of five cent (\$.05) per mile for each mile traveled in New Mexico. [3.12.99.9 NMAC - N/E, 9/25/2018; A, xx/xx/xxxx]

3.12.99.10 VIOLATION OF THE SPECIAL FUELS SUPPLIER TAX ACT:

A. It is a violation of the special fuels supplier tax act for a person to act as a temporary special fuel user without possessing a valid temporary special fuel user permit issued by the department.

B. It is a violation of the special fuels supplier tax act for a person holding a valid border crossing special fuel user permit to travel in the motor carrier vehicle for which the permit was issued on New Mexico highways, outside of the area in which the permit authorizes travel, unless the person may otherwise under law engage in that travel.

C. In addition to any other penalty that may apply, a person who violates the terms of use of a border crossing special fuel user permit, is subject to a fine of three hundred dollars (\$300).

[3.12.99.10 NMAC - N/E, 9/25/2018; A, xx/xx/xxxx]

3.12.99.11 REVOCATION OF SPECIAL FUEL USER PERMITS:

A. After notice and a hearing, the department may revoke the border crossing special fuel user permit of a special fuel user found to have violated the special fuels supplier tax act.

B. The hearing shall be conducted pursuant to the tax administration act.

[3.12.99.11 NMAC - N/E, 9/25/2018; A, xx/xx/xxxx]

History of 3.12.99 NMAC:
[RESERVED]

End of Notices of Rulemaking and Proposed Rules

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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.

DEPARTMENT OF AGRICULTURE	DEPARTMENT OF AGRICULTURE	
<p>The board of regents of New Mexico state university, approved and adopted, at its 9/5/2018 meeting, to repeal its rule 19.15.110 NMAC - Biodiesel Fuel Specification, dispensers, and dispenser labeling requirements (filed 8/16/2010), effective 11/1/2018. ination(s) before the technician can obtain a new permit. [16.25.8.10 NMAC - A, 16.25.8.10 NMAC; A, 07-01-2018]</p> <p>The board of regents of New Mexico state university, approved and adopted, at its 9/5/2018 meeting, to repeal its rule 19.15.111 NMAC - E85 Fuel Specification, dispensers, and dispenser labeling requirements (filed 8/16/2010), effective 11/1/2018.</p> <p>The board of regents of New Mexico state university, approved and adopted, at its 9/5/2018 meeting, to repeal its rule 19.15.112 NMAC - Retail Natural Gas (CNG/LNG) Regulations (filed 5/14/2015), effective 11/1/2018.</p> <p>The board of regents of New Mexico state university, approved at its 9/5/2018 meeting, to repeal its rule 21.1.1 NMAC - NMDA Rule Making Procedures (filed 11/14/1995) and replace it with 21.1.1 NMAC - NMDA Rule Making Procedures, adopted 9/5/2018 and effective 11/1/2018.</p>	<p style="text-align: center;">TITLE 21 AGRICULTURE AND RANCHING CHAPTER 1 AGRICULTURE AND RANCHING GENERAL PROVISIONS PART 1 NMDA RULE MAKING PROCEDURES</p> <p>21.1.1.1 ISSUING AGENCY: New Mexico Department of Agriculture, New Mexico State University MSC 3189; PO Box 30005; Las Cruces, New Mexico 88003-8005; Telephone: (575) 646-3007 [21.1.1.1 NMAC, Rp, 21.1.1.1 NMAC, 11/01/2018]</p> <p>21.1.1.2 SCOPE: This rule establishes a rulemaking procedure, which will enable the New Mexico department of agriculture to secure the views and statements of all interested persons concerning rules and regulations at the department in a transparent, organized and fair manner. [21.1.1.2 NMAC, Rp, 21.1.1.2 NMAC, 11/01/2018]</p> <p>21.1.1.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under Sections 76-1-2 NMSA 1978 compilation and shall apply to all New Mexico department of agriculture rulemaking proceedings. [21.1.1.3 NMAC, Rp, 21.1.1.3 NMAC, 11/01/2018]</p> <p>21.1.1.4 DURATION: Permanent. [21.1.1.4 NMAC, Rp, 21.1.1.4 NMAC, 11/01/2018]</p>	<p>21.1.1.5 EFFECTIVE DATE: November 1, 2018, unless a later date is cited at the end of a section. [21.1.1.5 NMAC, Rp, 21.1.1.5 NMAC, 11/01/2018]</p> <p>21.1.1.6 OBJECTIVE: Standardize rule making procedures for the NMDA. [21.1.1.6 NMAC, Rp, 21.1.1.6 NMAC, 11/01/2018]</p> <p>21.1.1.7 DEFINITIONS: This rule adopts the definitions found in Section 14-4-2 NMSA 1978. A. “Department” means the New Mexico department of agriculture. B. “Director” means the director of the New Mexico department of agriculture. [21.1.1.7 NMAC, Rp, 21.1.1.7 NMAC, 11/01/2018]</p> <p>21.1.1.8 ORDER OF ADVANCE NOTICE OF RULEMAKING: For purposes of developing proposed rules and regulations, the department may request attendance at informal meetings or workshops. [21.1.1.8 NMAC, Rp, 21.1.1.13 NMAC, 11/01/2018]</p> <p>21.1.1.9 RULEMAKING PREREQUISITES: A. Prior to the adoption, amendment, or repeal of any rule, the department shall publish notice of its proposed action in the New Mexico register and at least 30 days prior to its proposed action, not including the publication or the day of proposed action, shall: (1) publish notice of its proposed action in newspapers or trade, industrial, or professional publications, as will reasonably give public notice to</p>

interested persons;
 (2) notify by mail or electronic mail any person or group filing a written request for such notification to the New Mexico department of agriculture, notification being by mail or electronic mail to the last address specified by the person or group; requests from such persons or groups shall be renewed annually.

B. The notice described in Subsection A of 21.1.1.9 NMAC above shall include:

(1) information on the public hearing and how a person may participate;

(2) information on how comments may be submitted to the department where the comments will be received, and when the comments are due;

(3) a summary describing the full text of the proposed rule;

(4) a short explanation describing the substance of the proposed action;

(5) information on how the proposed rule may be obtained and internet link that provides free access to the full text of the proposed rule;

(6) a reference to the statutory authority under which the rule is proposed; and

(7) a citation to technical information, if any, and how to obtain the technical information.

[21.1.1.9 NMAC, Rp, 21.1.1.8 NMAC, 11/01/2018]

21.1.1.10 RULEMAKING HEARINGS: Rulemaking hearings shall be conducted as follows.

A. The rules of civil procedure and the rules of evidence shall not apply.

B. Unless the circumstances otherwise justify the order of appearance will be as follows:

(1) comments of department staff;

(2) comments of each proponent;

(3) comments of each opponent; and

(4) comments of other interested persons. [21.1.1.10 NMAC, Rp, 21.1.1.9 NMAC, 11/01/2018]

21.1.1.11 PUBLIC

COMMENT: The department shall afford all interested persons reasonable opportunity to submit written data, views, or arguments in support of or opposition to a proposed rule. Any interested person seeking to modify a proposed rule in any way must submit a proposed modification in writing to the department.

A. Information or comment submitted may be in electronic or written format;

B. public comment period will be open for a period of at least 30 days after the date of notice in the NM register; and

C. the department will consider all comments respecting the proposed rule prior to a final decision. [21.1.1.11 NMAC, N, 11/01/2018]

21.1.1.12 HEARING

OFFICER: The director may appoint an agency representative or hearing officer to conduct the hearing and receive statements and supporting data. The agency representative or hearing officer will be authorized to make all rulings in the conduct of the proceedings and in the receipt of statements and supporting data.

[21.1.1.12 NMAC, Rp, 21.1.1.10 NMAC, 11/01/2018]

21.1.1.13 RECORD OF THE RULEMAKING HEARING:

A. A record shall be made at each proceeding, the cost of which shall be borne by the department. Transcript costs shall be paid by those persons requesting transcripts. The records shall contain:

(1) a copy of all publications in the NM register relating to the proposed rule;

(2) a copy of technical information that was relied upon in formulating the final rule;

(3) official transcript, audio recording or verbatim transcript of the hearing, and any memoranda summarizing

the hearing provided by the hearing officer or agency official presiding over the hearing;

(4) a copy of all comments and other material received by the agency during public comment period and at the public hearing;

(5) a copy of the full text of the initial proposed rule and the full text of the final adopted rule and the concise explanatory statement provided with the state records administrator ; and

(6) any corrections made by the state records administrator.

B. The record shall be closed at the conclusion of the proceeding unless the department or hearing examiner holds it open for no longer than 30 days for the purpose of receiving additional written supporting comment.

[21.1.1.13 NMAC, Rp, 21.1.1.11 NMAC, 11/01/2018]

21.1.1.14 ADOPTION OF

THE RULE: Adoption of any rule will be through the board of regents of New Mexico state university at a scheduled board meeting. The board shall be presented with a complete hearing record and recommended action of the director.

A. At the time a rule is adopted, the department shall provide a concise explanatory statement to the public containing:

(1) the date the agency adopted the rule;

(2) a reference to the specific statutory or other authority authorizing the rule; and

(3) any findings required by a provision of law for the adoption of the rule.

B. Within 15 days after the adoption of the rule the department shall file the adopted rule with the state records office, and shall provide to the public as defined in Section 14-4-2 NMSA 1978, the adopted rule. The effective date of the rule shall be the date of publication in the New Mexico register unless a later date is provided for in the rule.

[21.1.1.14 NMAC, Rp, 21.1.1.14 NMAC, 11/01/2018]

21.1.1.15 EMERGENCY RULE: The director may adopt an emergency rule if he finds that the time required to complete the rule making procedures would: cause imminent peril to the public health, safety or welfare; cause the unanticipated loss of funding for an agency program; or place the agency in violation of federal law. The agency shall provide to the public a record justifying the finding for the need of the emergency rule, prior to the publication of the emergency rule. The director’s finding and a brief statement of the reasons for its finding shall be incorporated in the public record, the public record will also state that the rule is temporary and will not exceed 180 days.
[21.1.1.15 NMAC, N, 11/01/2018]

21.1.1.16 FILING RULES: Each rule, amendment, or repeal thereof adopted by the department shall be filed with the state records center in accordance with the law.
[21.1.1.16 NMAC, Rp, 21.1.1.15 NMAC, 11/01/2018]

21.1.1.17 GENERAL RULES: [RESERVED]
[21.1.1.17 NMAC, Rp, 21.1.1.17 NMAC, 11/01/2018]

HISTORY OF 21.1.1 NMAC: Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: NMDA Rule No. 95-10, Rulemaking Procedures, filed 11/14/1995.

History of Repealed Material: 21.1.1 NMAC - NMDA Rule Making Procedures, filed 11/14/1995 and Renumbered 5/29/2009 was repealed and replaced by 21.1.1 NMAC - Rule Making Procedures, effective 11/01/2018.

DEPARTMENT OF AGRICULTURE

**TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 17 PEST, DISEASE, AND WEED CONTROL
PART 36 PECAN WEEVIL INTERIOR QUARANTINE**

21.17.36.1 ISSUING AGENCY: New Mexico state university, New Mexico department of agriculture, MSC, 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007.
[21.17.36.1 NMAC - N, 11/01/2018]

21.17.36.2 SCOPE: Part 36 of Chapter 17 applies to all person(s) transporting regulated articles from infested counties in New Mexico to New Mexico pecan weevil-free counties.
[21.17.36.2 NMAC - N, 11/01/2018]

21.17.36.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9 NMSA 1978 compilation and the Pecan Act, Chapter 76, Article 16, Sections 1 through 9, NMSA 1978 compilation.
[21.17.36.3 NMAC - N, 11/01/2018]

21.17.36.4 DURATION: March 1, 2023.
[21.17 36.4 NMAC - N, 11/01/2018]

21.17.36.5 EFFECTIVE DATE: November 1, 2018, unless a later date is listed at the end of a section.
[21.17.36.5 NMAC - N, 11/01/2018]

21.17.36.6 OBJECTIVE: The objective of Part 36 of Chapter 17 is to establish an interior quarantine to restrict the transportation of pecan weevil from quarantined areas to non-quarantined areas in New Mexico.
[21.17.36.6 NMAC - N, 11/01/2018]

21.17.36.7 DEFINITIONS:
A. “Board” means

the board of regents of New Mexico state university or any officer whom authority to act in their stead has been or hereafter may be delegated.

B. “Certificate” means a document issued or authorized by the director with specific declarations related to the treatment, handling, transportation, condition or other processes related to regulated articles.

C. “Compliance Agreement” means a document issued or authorized by the director that outlines/identifies specific requirements related to the transportation, treatment, handling or processes related to regulated articles.

D. “Department” means the New Mexico department of agriculture and authorized staff.

E. “Director” means director secretary of New Mexico department of agriculture.

F. “Infested” means reasonable expectation that regulated articles may harbor pecan weevil.

G. “Originating” means produced within or having spent sufficient time in a quarantined area to be believed to be at risk of being infested.

H. “Pecan weevil” means any live developmental stage or synonym of *curculio caryae* (horn) including adult, pupae, larvae, or egg.

I. “Regulated article” means pecan weevil, plant tissue, equipment, trailers, or any other item capable of or having a reasonable expectation of harboring pecan weevil. Including in-shell pecans; sacks used in harvesting, storage, transporting or storing of in-shell pecans; harvesting equipment; live trees or parts thereof with soil attached; hulls, husks, and fragments of hull.
[21.17.36.7 NMAC – N, 11/01/2018]

21.17.36.8 QUARANTINE AREAS: The following counties are quarantined areas: Eddy, Lea, and Chaves counties. The director may make changes to the quarantine status of a county by issuing an emergency quarantine, amendment of this rule, or the promulgation of a new quarantine

rule.
[21.17.36.8 NMAC - N, 11/01/2018]

21.17.36.9 RESTRICTIONS ON REGULATED ARTICLES: To prevent the spread of pecan weevil in New Mexico, the board hereby orders and declares regulated articles cannot be transported out of quarantined areas, except under the following conditions:

A. Transportation of in-shell pecans, hulls, husks, shell fragments, containers associated with the harvesting, transportation, or storage of in-shell pecans originating in quarantined counties to or through non-quarantined areas in New Mexico shall be allowed as follows:

(1)

Accompanied by a certificate of treatment, issued by an authorized representative of the department, for each shipment of regulated articles, certifying treatment under official supervision or agreement prior to transporting out of the quarantined area. Acceptable treatments are prescribed under Subsections A through C of 21.17.36.11 NMAC. The certificate must include contact information for pecan owner, shipment amount, date, treatment method, destination address and name.

(2)

Transported in enclosed trailers or other containers approved by the director and transported directly to a facility/ location approved by the director and that is capable of providing the treatment(s) as defined under Subsections A through C of 21.17.36.11 NMAC.

(3)

Transportation of regulated articles, using alternative methods, may be approved under a compliance agreement issued by the director.

B. Transportation of regulated articles not identified in Subsection A of 21.17.36.9 NMAC including equipment and supplies, originating in quarantined area, to or through non-quarantined areas in New Mexico will be allowed following inspection and issuance of a certificate

that identifies regulated articles as not being infested.
[21.17.36.9 NMAC - N, 11/01/2018]

21.17.36.10 DISPOSITION OF VIOLATIONS: Any regulated article transported in New Mexico that is in violation of this rule will be subject to immediate quarantine and treatment or otherwise disposed of as necessary to prevent the spread or establishment of pecan weevil in non-quarantined areas in New Mexico. All treatment or disposal will be at the expense of the owners or agents and under the direction of the department.
[21.17.36.10 NMAC - N, 11/01/2018]

21.17.36.11 TREATMENT OF REGULATED ARTICLES: Individuals or businesses must be approved by the director prior to receiving in-shell pecans or other regulated articles for treatment. Compliance agreements will be issued to those individuals or business demonstrating the capabilities to provide treatment using one of the following methods:

A. Storage in an approved cold storage chamber at or below zero degrees fahrenheit for a period of seven consecutive days (168 hours) after the entire lot reaches zero degrees fahrenheit; or

B. Immersion in hot water for a period of five minutes after-reaching a temperature of 140 degrees fahrenheit; or

C. Other treatment methods may be approved under a compliance agreement issued by the director.
[21.17.36.11 NMAC - N, 11/01/2018]

21.17.36.12 FEES: Certificates, special inspections or other requested services provided by the department will be subject to fees as authorized under Sections 1 through 9 of 21.1.2 NMAC.
[21.17.36.12 NMAC - N, 11/01/2018]

21.17.36.13 LIABILITY DISCLAIMER: The board and the department disclaims liability for any costs incident to inspection or compliance with the provisions of this

rule.
[21.17.36.13 NMAC - N, 11/01/2018]

21.17.36.14 ADDITIONAL LAWS AND REGULATIONS: All regulated articles are further subject to the provisions of any other law, regulation, or regulatory order of the state of New Mexico or the United States department of agriculture now in effect or which may hereafter be promulgated.
[21.17.36.14 NMAC - N, 11/01/2018]

HISTORY OF 21.17.36 NMAC: [RESERVED]

History of Repealed Material: 21.17.36 NMAC, Pecan Weevil Interior Quarantine, filed November 20, 2017 - Expired May 20, 2018.

DEPARTMENT OF AGRICULTURE

**TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 19 PEST, DISEASE, AND WEED CONTROL
PART 2 PECAN BUYERS LICENSURE**

21.19.2.1 ISSUING AGENCY: New Mexico State University, New Mexico Department of Agriculture, MSC 3189, Box 30005, Las Cruces New Mexico 88003-8005, Telephone No. (575) 646-3007.
[21.19.2.1 NMAC - N, 11/01/2018]

21.19.2.2 SCOPE: The rule shall apply to all persons buying in-shell pecans in New Mexico, except where stated in statute.
[21.19.2.2 NMAC - N, 11/01/2018]

21.19.2.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under Chapter 47, SB 217, 2018 legislature.
[21.19.2.3 NMAC - N, 11/01/2018]

21.19.2.4 DURATION: Permanent.
[21.19.2.4 NMAC - N, 11/01/2018]

21.19.2.5 EFFECTIVE DATE: November 1, 2018, unless a later date is cited at the end of a section.
[21.19.2.5 NMAC - N, 11/01/2018]

21.19.2.6 OBJECTIVE: The rule establishes licensing fees, licensing requirements, and licensing period for persons buying in-shell pecans.
[21.19.2.6 NMAC - N, 11/01/2018]

21.19.2.7 DEFINITIONS:
A. "Fixed Buying Location" means locations in which the purchase of in-shell pecans is conducted from a building or other structure.
B. "Mobile Buying Location" means location in which the purchase of in-shell pecans is conducted from a vehicle or a location not defined as a fixed buying location.
[21.19.2.7 NMAC - N, 11/01/2018]

21.19.2.8 LICENSE YEAR: The license year shall be a twelve month period from October 1 to September 30. Licenses, certificates or permits issued at any time during the license year, for a current licensing period, shall expire on September 30 following issuance. Licenses, certificates or permits shall be issued by New Mexico Department of Agriculture.
[21.19.2.8 NMAC - N, 11/01/2018]

21.19.2.9 LICENSE APPLICATION:
A. For fixed buying locations, a pecan buyer's license shall be required for each buying location. An application form for a fixed buying location shall include the following:
(1) name of the business submitting for a license;
(2) name of the owner of the businesses submitting for a license;
(3) valid mailing address, telephone number, and email of person authorized to request a license for each buying location;

(4) physical address or directions for each buying location to include sufficient information to be located for on-site inspections;

(5) physical address or directions where buying records are maintained to include sufficient information to be located for on-site inspections; and

(6) days and hours of operation to include seasonal deviations.

B. For mobile buying locations, a license will be required for each mobile unit engaged in the purchase of in-shell pecans at each permitted location. Additionally, a pecan buyer's location permit will be required for each location that a mobile unit will be parked and engaged in the purchase of in-shell nuts. An application form for mobile buying locations shall include the following:

(1) name of the business submitting for a license;

(2) name of the owner of the businesses submitting for a license;

(3) valid mailing address, telephone number, and email of person authorized to request a license for each buying location;

(4) mobile unit description including make, model, year, license plate, and color that will be parked and used for the purchase of in-shell pecans;

(5) physical address or directions where buying records are maintained to include sufficient information to be located for on-site inspections;

(6) physical address(es) or directions where each mobile unit will be parked for the purpose of purchasing in-shell pecans;

(7) a mobile license holder shall be required to register and obtain additional location permits, prior to engaging in the business of purchasing in-shell pecans, for locations not identified in a current and valid license application; and

(8) days and hours of operation to include seasonal deviations.

C. Incomplete or improperly completed applications will be identified by the department and shall be returned to the applicant for completion or correction.
[21.19.2.9 NMAC - N, 11/01/2018]

21.19.2.10 BUYERS' RECORD REQUIREMENTS: Shall include the following:

A. information obtained by each buyer of in-shell pecans from the seller shall include:
(1) location and date of the purchase;
(2) name, telephone number, and address of the seller;

(3) street address or physical location of the tree or the farm from where the in-shell pecans originated;

(4) personal identification number obtained from either a drivers' license, military identification card, or passport issued by the United States;

(5) license plate number, make and model of the seller's motor vehicle; and

(6) total weight of the in-shell purchased.

B. Ensure record of the purchase of in-shell pecans are available for inspection by the department or a peace officer within 48 hours of a transaction.

C. Retain records of purchase of in-shell pecans for a minimum of two years.
[21.19.2.10 NMAC - N, 11/01/2018]

21.19.2.11 FEES: Acceptable forms of payment shall be identified by the department. Licenses and location permits shall be displayed at each licensed or permitted location for public viewing.

A. For fixed locations, the annual pecan buyer's license fee shall be three hundred dollars (\$300) per physical location.

B. For mobile buying locations, the annual pecan buyer's license fee shall be two hundred

and seventy five dollars (\$275) per mobile unit engaged in the purchase of in-shell pecans. For each buying location that a vehicle operates from, the annual fee for a location permit shall be twenty five dollars (\$25).

C. Fees are not refundable after a pecan buyer's license or location permit has been issued by the department.
[21.19.2.11 NMAC - N, 11/01/2018]

21.19.2.12 LICENSE

TRANSFERS: Fees and licenses are not transferable between locations or businesses.
[21.19.2.12 NMAC - N, 11/01/2018]

History of 21.19.2 NMAC:
[RESERVED]

DEPARTMENT OF AGRICULTURE

This is an amendment to 19.15.108 NMAC, Sections 3, 7, 9, 12, 13, 14, and 15, effective 11/01/2018.

19.15.108.3 STATUTORY

AUTHORITY: Granted to the board of regents of New Mexico state university under the Petroleum Products Standards Act, Chapter 57, Article 19, Sections 25 through [37] 38, New Mexico Statutes Annotated 1978.
[7/1/1997; 3/1/1998; 19.15.108.3 NMAC - Rn, 19 NMAC 15.108.3, 01/31/2007; A, 11/01/2018]

19.15.108.7 DEFINITIONS:

A. **“Commercial weighing or measuring device”** means any device used or employed in establishing the quantity, weight, count, or size of [petroleum] products involving a monetary transaction or in computing any basic charge or payment for services rendered on the basis of weight or measure.

B. **“Department”** means the New Mexico department of agriculture.

C. **“Director”** means the director of the New Mexico department of agriculture.

D. **“Full service**

establishment” means any person, firm, or company which for the purpose of direct or indirect benefit installs, services, repairs, or reconditions commercial weighing or measuring devices. (bond required)

E. **“Limited service establishment”** means any person, firm, or company which installs, services, repairs, or reconditions commercial weighing or measuring devices solely under its ownership. (no bond required)

F. **“Service technician”** means any individual employed by a full or limited service establishment who installs, services, repairs, or reconditions commercial weighing or measuring devices.
[7/1/1997; 19.15.108.7 NMAC - Rn, 19 NMAC 15.108.7, 01/31/2007; A, 11/01/2018]

19.15.108.9 REGISTRATION:

A. Prior to installing, servicing, repairing or reconditioning any commercial weighing or measuring device in the state of New Mexico, a service establishment and each service technician employed by, or who is a part of, the service establishment shall be registered with the department. Application for registration shall be on a form supplied by the department with said form duly signed and witnessed. By applying for registration, the principal officer of the service establishment certifies that each service technician employed by the service establishment is fully competent to install, service, repair or recondition the class of devices for which registration is applied; has in their possession or available for use the required certified test standards and all necessary testing equipment, [~~certified test standards,~~] and required reference materials; and has full knowledge of all applicable laws, rules, and regulations. At the request of the department, an applicant shall submit appropriate evidence of qualifications.

B. This part shall not preclude or limit the right and privilege of any individual to install, service, repair, or recondition a

commercial device owned by him or his employer. However, without registration, such individual is not permitted to remove an official out-of-order tag or place a device into commercial service.

[7/1/97; 19.15.108.9 NMAC - Rn & A, 19 NMAC 15.108.9, 01/31/2007; A, 11/01/2018]

19.15.108.12 REGISTRATION

CERTIFICATE: Upon receipt and acceptance of a properly executed application, the required bond (full service only) and calibration certificate, a “registration certificate” shall be issued for a period [of] not to exceed one year [~~unless withdrawn or cancelled for due cause~~]. Registration certificates are non-transferable.
[7/1/1997; 19.15.108.12 NMAC - Rn, 19 NMAC 15.108.12, 01/31/2007; A, 11/01/2018]

19.15.108.13 AUTHORITY AND RESPONSIBILITIES OF A REGISTRANT:

A. A registered service technician or registered service establishment shall have the authority to:

- (1) remove official tested and approved, out-of-order, and not sealed - not legal for trade stickers or tags;
- (2) break seals on adjustment mechanisms;
- (3) place into commercial service a device that has been officially rejected;
- (4) place into commercial service a new or used device.

B. Prior to placing a device into commercial service, it shall be the responsibility of the registered service technician to:

- (1) install, service, repair or recondition a commercial device in such a manner that the device will comply with applicable requirements set forth in *National Institute of Standards and Technology (NIST) handbook 44*, as revised, and the Petroleum Products Standards Act and associated rules;
- (2) remove from a commercial device being

installed, serviced, repaired, or reconditioned all existing tested and approved, out-of-order or not sealed - not legal for trade stickers or tags;

(3) seal all adjustment mechanisms with an appropriate seal;

(4) affix to a commercial [devices] device installed, serviced, repaired, or reconditioned, a clearly visible tag or sticker containing the registered service establishment name or registration number and date on which installation, service, repair or recondition was performed.

[7/1/1997; 19.15.108.13 NMAC - Rn & A, 19 NMAC 15.108.13, 01/31/2007; A, 11/01/2018]

19.15.108.14 PLACE-IN-SERVICE REPORT:

A. Within five calendar days after a new or used device is installed, or a device that has been officially rejected has been repaired, the original of the properly executed place-in-service report shall be [mailed] sent to the department. The duplicate copy of the report shall be retained by the registered service establishment and the triplicate copy of the report shall be given to the owner or operator of the device.

~~B. [Within five calendar days after repairing a device that has been officially rejected, the bottom portion of the out-of-order form shall be completed by the registered service technician performing the repair and the form mailed to the department.~~

~~C.]~~ A place-in-service report for the types of devices specified below shall be accompanied by the registered service establishment's test report which shows that the device was tested and performing within applicable tolerances at the time the device was placed into service:

(1)

For [commercial] meters (liquid measuring devices) with a capacity of more than 20 gallons or 75 liters per minute, a test report shall be required which shows that a volumetric prover of sufficient capacity was used to

receive a test draft as specified in *NIST handbook 44* for the device under test.

(2) For devices other than those described above, test reports may be required by the director [may establish appropriate test standards and require test reports] if it is determined at his discretion [such standards and] that reports are in the best [interests] interest of all concerned.

[7/1/1997; 19.15.108.14 NMAC - Rn & A, 19 NMAC 15.108.14, 01/31/2007; A, 11/01/2018]

19.15.108.15 STANDARDS AND TESTING EQUIPMENT:

A. A service technician or service establishment must possess or have available sufficient certified test standards to test in accordance with *NIST handbook 44* requirements the class of devices for which registration is applied.

Prior to registration, and at least annually thereafter, all standards and testing equipment used by the registered service technician or registered service establishment shall be examined by the department or another approved laboratory and a calibration certificate issued for all standards and testing equipment found to be acceptable. A copy of the calibration certificate for all standards and testing equipment used by the registered service technician or registered service establishment shall accompany the registration application.

B. A registered service technician or registered service establishment shall not use in installing, servicing, repairing, or reconditioning a commercial device any standards or testing equipment that has not been certified.

[7/1/1997; 19.15.108.15 NMAC - Rn & A, 19 NMAC 15.108.15, 01/31/2007; A, 11/01/2018]

ENVIRONMENT DEPARTMENT

At its August 24, 2018 meeting, the Environmental Improvement Board repealed its rule 20.3.20 NMAC, Radiologic Technology Certification, filed 08/31/2005, and replaced it with a new rule entitled Medical Imaging and Radiation Therapy Licensure, 20.3.20 NMAC, adopted 8/29/2018 and effective on 9/25/2018.

ENVIRONMENT DEPARTMENT

**TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 3 RADIATION PROTECTION
PART 20 MEDICAL IMAGING AND RADIATION THERAPY LICENSURE**

20.3.20.1 ISSUING

AGENCY: Environmental Improvement Board.
[20.3.20.1 NMAC - Rp, 20.3.20.1 NMAC, 09/25/2018]

20.3.20.2 SCOPE:

All individuals engaged in the practice of medical imaging and radiation therapy.
[20.3.20.2 NMAC - Rp, 20.3.20.2 NMAC, 09/25/2018]

20.3.20.3 STATUTORY

AUTHORITY: Medical Imaging and Radiation Therapy Health and Safety Act, Sections 61-14E-1 to 61-14E-12 NMSA 1978, Section 74-1-8 NMSA 1978, and the Uniform Licensing Act, Sections 61-1-1 to 61-1-34 NMSA 1978.
[20.3.20.3 NMAC - Rp, 20.3.30.3 NMAC, 09/25/2018]

20.3.20.4 DURATION:

Permanent.
[20.3.20.4 NMAC - Rp, 20.3.20.4 NMAC, 09/25/2018]

20.3.20.5 EFFECTIVE DATE: September 25, 2018, unless a later date is cited at the end of a section.
[20.3.20.5 NMAC - Rp, 20.3.20.5 NMAC, 09/25/2018]

20.3.20.6 OBJECTIVE: To maximize the protection practicable for the citizens of New Mexico from ionizing and non-ionizing radiation in the practice of medical imaging and radiation therapy by establishing requirements for appropriate education and training of individuals operating medical equipment emitting ionizing and non-ionizing radiation, establishing standards of education and training for the individuals who perform medical imaging and radiation therapy procedures, and providing for the appropriate examination and licensure of those individuals.
[20.3.20.6 NMAC - Rp 20.3.20.6 NMAC, 09/25/2018]

20.3.20.7 DEFINITIONS: As used in this part (20.3.20 NMAC).

- A.** "Act" means the Medical Imaging and Radiation Therapy Health and Safety Act, Sections 61-14E-1 to 61-14E-12 NMSA 1978.
- B.** "Advisory council" means the medical imaging and radiation therapy advisory council (MIRTAC).
- C.** "Applying ionizing radiation" means to use ionizing radiation for diagnostic or therapeutic purposes, including tasks having direct impact on the radiation burden of the patient, such as, but not limited to:
 - (1) positioning the patient, image receptor, and beam;
 - (2) selection of exposure factors or treatment parameters;
 - (3) preparation, calibration, and injection of pharmaceuticals and radiopharmaceuticals in accordance with a licensee's scope of practice; and
 - (4) actuating

- the production of radiation.
- D.** "Approved program" means a medical imaging or radiation therapy educational program that meets the requirements of 20.3.20.200 NMAC.
- E.** "Biennial licensure fee" means the licensure fee for an initial, renewal, and limited radiography license, excluding the temporary license, for a period up to 24 months, and is only applied once per continuing medical education biennium period regardless of the number of licenses granted to that registrant. This fee will be assessed each time a registrant submits an application packet to the department. Upon written request to the department, the registrant may reduce their NM biennium period to match their national continuing medical education biennium period.
- F.** "Board" means the environmental improvement board.
- G.** "Cardiac sonography" or "echocardiography" means an examination using ultrasound to generate an image of the heart or major blood vessels.
- H.** "Category A" means a continuing education activity approved for category A credit by an organization recognized by the American registry of radiologic technologists as a recognized continuing education evaluation mechanism.
- I.** "Certificate of licensure" means a document issued by the department that lists the type or types of license granted to an individual.
- J.** "Certificate of limited practice" or "limited practice of radiography license" means a limited license granted by the department to an individual other than a licensed practitioner or radiographer who performs restricted diagnostic radiography procedures under the direct supervision of a licensed practitioner or radiographer on designated anatomical sites or limited anatomical areas.
- K.** "Certified nurse practitioner" means a person licensed pursuant to Section 61-3-23.2 NMSA

- 1978.
- L.** "Chest and thorax" or "viscera of the thorax" means radiographic examinations of the ribs and lungs, including anteroposterior, posterior-anterior, lateral, and apical lordotic views, but does not include mammography.
- M.** "Clinical instruction" means hands-on educational experience in a health care setting such as a hospital, clinic, or physician's office, under the supervision requirements consistent with the standards of the program's accrediting agencies.
- N.** "Continuing education" (CE) or "continuing medical education" (CME) means a learning activity that is planned, organized, and administered to enhance the professional knowledge and skill of the licensee.
- O.** "Credential" or "certification" means the recognition awarded to an individual who meets the initial and ongoing requirements of a credentialing or certification organization.
- P.** "Credentialing organization" or "certification organization" means an organization accredited by the national commission for certifying agencies or the American national standards institute and recognized by the board that issues credentials through testing or evaluation and determines that an individual has met defined standards for training and competence in a medical imaging or radiation therapy modality and subspecialty.
- Q.** "Department" means the New Mexico environment department.
- R.** "Diagnostic medical sonographer" means a person, including a vascular technologist or echocardiographer, other than a licensed practitioner, who provides patient care services using ultrasound;
- S.** "Diagnostic medical sonography" or "sonogram" means the use of ultrasound and sonographic equipment to create medical images for interpretation by a licensed practitioner or other qualified health care practitioner

that provide diagnostic information about a patient's medical condition and includes obstetrical ultrasound. Obstetrical ultrasound means an ultrasound exam performed for the purpose of fetal biometry beyond the first trimester, fetal number, anatomic survey, or follow-up examination for a known or suspected anomaly or growth disturbance. It does not mean a procedure using ultrasound on a focused imaging target to assess specific and limited information about a patient's immediate medical condition or to provide real-time visual guidance for another procedure.

T. "Didactic instruction" means academic instruction.

U. "Duplicate certificate of licensure" means an additional original certificate of licensure issued by the department.

V. "Extremities" means the fingers, hand, wrist, radius/ulna, elbow, humerus, pectoral girdle (shoulder joint and clavicle), toes, foot, ankle, calcaneus, tibia/fibula, patella, knee, or distal femur, but does not include the skull, spine, hip, or pelvis.

W. "Facility" means a hospital, clinic, medical office, mobile lab, or other location where medical imaging or radiation therapy is provided.

X. "Focused imaging target" means a discrete anatomical target, to which ultrasound is applied to create an image for assessment of specific and limited information about a patient's immediate medical condition, or to provide visual guidance for another procedure. An ultrasound procedure on a focused imaging target does not supplant a diagnostic ultrasound examination.

Y. "General sonography" means an examination using ultrasound to create an image of the abdomen, chest, pelvis, pregnant uterus, small parts, or superficial structures.

Z. "Interventional" means to diagnose or treat patients using medical imaging devices. Interventional procedures may include, but are not limited to:

radiation therapy, organ biopsy, angiography, angioplasty, and catheter delivered stents. Interventional does not mean needle or catheter placement for vascular access or delivery of medicine or anesthesia, or the use of non-ionizing energy for non-imaging therapeutic or treatment purposes.

AA. "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, protons, and other nuclear particles; but not ultrasound, sound, or radio waves, nor visible, infrared or ultraviolet light.

AB. "License" means a grant of authority issued by the department for an individual to perform medical imaging or radiation therapy procedures.

AC. "License term" means a length of licensure as indicated on the certificate of licensure issued by the department.

AD. "Licensed practitioner" means an individual licensed to practice medicine, dentistry, podiatry, chiropractic or osteopathy in this state.

AE. "Licensee" means an individual who has met and continues to meet all requirements of the act and this part.

AF. "Licensure" means the grant of authority by the department for an individual to perform medical imaging or radiation therapy procedures.

AG. "Limited practice radiography technologist" means an individual who has been granted a limited practice in radiography license by the department to perform restricted diagnostic radiography procedures under the direct supervision of a licensed practitioner or radiographer.

AH. "Lower leg" means the knee and ankle and portions of the leg between the knee and ankle.

AI. "Magnetic resonance imaging" means an examination using magnetic fields and radio frequency signals to generate an image.

AJ. "Magnetic resonance technologist" means an individual other than a licensed

practitioner who performs magnetic resonance imaging procedures under the supervision of a licensed practitioner using magnetic fields and radio frequency signals.

AK. "Medical imaging" means the use of substances or equipment emitting ionizing or non-ionizing radiation on humans for diagnostic or interventional purposes.

AL. "Medical imaging professional" means an individual who has been granted a license by the department pursuant to the act in at least one medical imaging modality.

AM. "Modality" means the following medical imaging procedures or technologies:

- (1) diagnostic medical sonography and all of its subspecialties;
- (2) magnetic resonance imaging and all of its subspecialties;
- (3) nuclear medicine technology and all of its subspecialties;
- (4) radiation therapy and all of its subspecialties; and
- (5) radiography and all of its subspecialties.

AN. "Musculoskeletal sonography" or "musculoskeletal ultrasound" means an examination using ultrasound to generate an image of a superficial muscle, tendon, ligament, or joint.

AO. "Non-ionizing radiation" means the static and time-varying electric and magnetic fields and radio frequency, including microwave radiation and ultrasound.

AP. "Nuclear medicine technologist" means an individual, other than a licensed practitioner, who performs nuclear medicine procedures, venipuncture, and compounds, calibrates, dispenses, and administers pharmaceuticals, radiopharmaceuticals, and radionuclides under the supervision of a licensed practitioner.

AQ. "Personal identification" means an applicant's or licensee's full legal name, permanent and mailing address, social security number, date of birth, home

phone number, cellular telephone number, work telephone number, electronic mail address, department registration number, and other related information.

AR. “Phlebology” means ultrasound examination of superficial veins in the lower extremities for the identification and treatment of venous disease.

AS. “Physician assistant” means a person licensed and operating within their scope of practice pursuant to Section 61-6-7 or 61-10A-4 NMSA 1978.

AT. “Place of employment” means a location with its own physical address or separated by building structure regardless of ownership, company, nonprofit organization, or business name.

AU. “Podiatric” means radiographic examination of the toes, foot, ankle, calcaneus, distal tibia/ fibula, but does not include the knee joint.

AV. “Programmatic accreditation” means a specialized accreditation process that examines the medical imaging or radiation therapy program within an educational institution.

AW. “Radiation therapy” means the use of high-energy particles or waves to destroy or damage cells.

AX. “Radiation therapy technologist” or “radiation therapist” means an individual, other than a licensed practitioner, who utilizes ionizing radiation for the planning and delivery of therapeutic procedures to humans under the supervision of a licensed practitioner.

AY. “Radiographer” means an individual, other than a licensed practitioner, who applies radiation to humans for diagnostic purposes under the supervision of a licensed practitioner.

AZ. “Radiography” means the application of radiation to humans for diagnostic purposes, including adjustment or manipulation of x-ray systems and accessories, including image receptors, positioning of patients, processing of films and any other action that materially affects the radiation dose to patients.

BA. “Radiologic technologist” or “radiation therapy technologist” means a medical imaging or radiation therapy professional licensed by the department in one or more of the imaging modalities.

BB. “Radiologist” means a licensed practitioner certified by the American board of radiology, the British royal college of radiology, the American osteopathic board of radiology or the American chiropractic board of radiology.

BC. “Radiologist assistant” means an individual licensed as a radiographer who holds additional certification as a registered radiologist assistant by the American registry of radiologic technologists and who works under the supervision of a radiologist; provided that a radiologist assistant shall not interpret images, render diagnoses or prescribe medications or therapies.

BD. “Recognized continuing education evaluation mechanism (RCEEM)” means a recognition mechanism of the ARRT for evaluating the content, quality, and integrity of a continuing education activity.

BE. “Registration number” means a number that is generated by the department to be used as a unique identification number in place of that individual’s social security number. This number will remain the same number throughout the individual’s lifetime.

BF. “Remedial education” or “remedial training” means additional education or training required for an individual to re-qualify to take a state-administered examination for the limited practice of radiography.

BG. “Scope of practice” means nationally recognized practice standards as applicable to each medical imaging modality and subspecialty, unless this part is superseded by the act.

BH. “Small parts” means superficial structures or anatomy including, but not limited to: axilla, chest or abdominal wall, penis, scrotum or testicles, thyroid,

parathyroid, and other non-vascular structures of the neck or extremities.

BI. “Sonographer” or “echocardiographer” or “vascular technologist” means an individual other than a licensed practitioner who applies ultrasound to humans for diagnostic and interventional purposes under the supervision of a licensed practitioner.

BJ. “Sonography” or “ultrasound” means the use of high frequency sound waves (above 20,000 cycles per second) with specialized equipment to direct the sound waves into an area of the human body to generate an image.

BK. “Sonography subspecialty” means an area of specialization recognized by the board, including:

- (1) abdominal sonography;
- (2) breast sonography;
- (3) cardiac sonography;
- (4) musculoskeletal sonography;
- (5) obstetric/ gynecology sonography;
- (6) phlebology sonography; and
- (7) vascular sonography.

BL. “Student” means an individual enrolled in and attending a school or college of medicine, osteopathy, chiropractic, podiatry, dentistry, dental hygiene, an approved program in medical imaging or radiation therapy, or an approved limited radiography program.

BM. “Subspecialty” means an area of specialization approved by the board within a medical imaging or radiation therapy modality.

BN. “Supervision” means responsibility for and control of quality, radiation safety, and protection and technical aspects of the application of ionizing and non-ionizing radiation to human beings for diagnostic or therapeutic purposes.

- (1) “direct supervision” means the medical imaging or radiation therapy

procedure is provided under the direction and control of a person authorized to provide supervision and the person's physical presence must be present in the office suite or building and immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean that the supervisor must be present in the room when the procedure is performed.

(2) "indirect supervision" or "general supervision" means the medical imaging or radiation therapy procedure is provided under the direction and control of a person authorized to provide supervision, but the person's presence is not required during the performance of the procedure. The training of the non-physician personnel and the maintenance of the necessary equipment and supplies are the continuing responsibility of the person authorized to provide supervision.

(3) student supervision requirements must be consistent with the medical imaging and radiation therapy standards of the programmatic accreditation agencies.

BO. "Temporary license" means a grant of authority by the department for an individual to perform medical imaging or radiation therapy procedures pursuant to the term and requirements of section 20.3.20.321 NMAC.

BP. "Vascular sonography" means an examination using ultrasound to generate an image of the peripheral or neck blood vessels.

BQ. "Viscera of the thorax" means radiographic examination of the lungs and mediastinum.

[20.3.20.7 NMAC - Rp, 20.3.20.7 NMAC, 09/25/2018]

20.3.20.8
ABBREVIATIONS AND
ACRONYMS:

A. "ANSI" stands for American national standards institute.

B. "ARDMS" stands for the American registry for

diagnostic medical sonography.

C. "ARMRIT" stands for American registry of magnetic resonance imaging technologists.

D. "ARRT" stands for the American registry of radiologic technologists.

E. "BS" stands for breast sonography.

F. "CAAHEP" stands for the commission on accreditation of allied health education programs.

G. "CCT" stands for the cardiovascular credentialing international.

H. "CHEA" stands for the council of higher education accreditation.

I. "CNMT" stands for certified nuclear medicine technologist.

J. "CS" stands for cardiac sonography.

K. "CT" stands for computed tomography.

L. "DMS" stands for diagnostic medical sonography.

M. "FUS" stands for fusion imaging.

N. "JRCDCMS" stands for the joint review committee on diagnostic medical sonography.

O. "JRCERT" stands for the joint review committee on education in radiologic technology.

P. "JRCNMT" stands for the joint review committee on educational program in nuclear medicine technology.

Q. "LXE" stands for limited practice radiography to the extremities.

R. "LXP" stands for limited practice radiography to the podiatric.

S. "LXT" stands for limited practice radiography to the viscera of the thorax.

T. "LXV" stands for limited practice radiography to the axial/appendicular skeleton.

U. "MR" stands for magnetic resonance.

V. "MRT" stands for magnetic resonance technologist.

W. "MSK" stands for diagnostic musculoskeletal technologist.

X. "NCCA" stands for national commission for certifying agencies.

Y. "NMT" stands for nuclear medicine technologist.

Z. "NMTCB" stands for the nuclear medicine technologist certification board.

AA. "N" stands for nuclear medicine technology.

AB. "PBS" stands for phlebology sonography.

AC. "PET" stands for positron emission tomography.

AD. "PVL" stands for provisional license.

AE. "RCCS" stands for registered congenital cardiac sonographer.

AF. "RCS" stands for registered cardiac sonographer.

AG. "RDCS" stands for registered diagnostic cardiac sonographer.

AH. "RDMS" stands for registered diagnostic medical sonographer.

AI. "RMRT" stands for magnetic resonance imaging technologist.

AJ. "RMSK" stands for registered in musculoskeletal sonography.

AK. "RPhS" stands for registered phlebology sonographer.

AL. "R" stands for radiography.

AM. "RRT" stands for radiographic radiologic technologist.

AN. "RRA" stands for registered radiology assistant.

AO. "R.T." stands for registered technologist.

AP. "RTT" stands for radiation therapy technologist.

AQ. "RVS" stands for registered vascular specialist.

AR. "RVT" stands for registered vascular technologist.

AS. "S" stands for sonography.

AT. "TMP" stands for temporary.

AU. "T" stands for radiation therapy.

AV. "USDE" stands for United States department of education.

AW. “VS” stands for vascular sonography. [20.3.20.8 NMAC - Rp, 20.3.20.8 NMAC, 09/25/2018]

20.3.20.9

ADMINISTRATION AND ENFORCEMENT:

The administration and enforcement of the act and this part (20.3.20 NMAC) is vested in the department. [20.3.20.9 NMAC - N, 09/25/2018]

20.3.20.10 - 20.3.20.99

[RESERVED]

20.3.20.100 LICENSE REQUIRED:

A. Unlawful acts. It is unlawful for an individual, other than an individual licensed by the department, or who is exempt under the provisions of the act, to:

- (1) use ionizing or non-ionizing radiation for diagnostic, interventional, or therapeutic purposes on humans;
- (2) use any title, abbreviation, letters, figures, signs, or other devices to indicate the individual is a medical imaging or radiation therapy professional; or
- (3) engage in any of the medical imaging or radiation therapy modalities or subspecialties.

B. Statutory exceptions. Pursuant to the act, a medical imaging license is not required for:

- (1) a licensed practitioner;
- (2) a student under the supervision of a licensed practitioner or under the direct supervision of a licensed medical imaging or radiation therapy professional licensed in the modality and subspecialty in which the student is performing the procedure;
- (3) a health care practitioner licensed or certified by an independent board as defined by the act that has been approved by the board as provided in Subsection C of this section; or
- (4) a registered nurse or certified nurse-midwife

performing ultrasound procedures; provided that the registered nurse or certified nurse-midwife has documented demonstration of competency within the registered nurse’s scope of practice in compliance with board of nursing rules or certified nurse-midwife’s scope of practice in compliance with department of health rules. A registered nurse or certified nurse-midwife shall not perform diagnostic ultrasound examinations or ionizing procedures, including radiography, radiation therapy, nuclear medicine or a non-ionizing magnetic resonance procedure, unless licensed by the department as medical imaging professional or radiation therapist professional. A registered nurse or a certified nurse-midwife may perform ultrasound procedures limited to a focused imaging target. A focused imaging target includes, but is not limited to:

- (a) identification of an anatomical landmark or blood vessel;
- (b) assessment of presence or absence of fluid in a body cavity;
- (c) assessment of fetal presentation or heartbeat; or
- (d) assessment of foreign body position or location.

C. An independent board or state regulatory body may submit an application for approval of their medical imaging certification and examination program to the MIRTAC for review.

(1) The MIRTAC shall consider whether the medical imaging and certification examination program adequately ensures the appropriate education, training, and clinical experience while ensuring patient health and safety and shall make a written recommendation to the board.

(2) The board may approve or deny an application based on whether or not it finds adequate evidence that the certification and examination program ensures appropriate education,

training, and clinical experience while ensuring health and patient safety.

(3) The independent board or state regulatory body shall reapply to the board for re-approval if substantive changes to the certification and examination program are made subsequent to the board’s approval.

D. Temporary exemption. The department may temporarily exempt applicants from licensure requirements upon determining that:

(1) the experience or training of the applicant is such that no apparent danger to the public exists;

(2) the people in the area of the state to be served by the applicant would otherwise be denied adequate medical care because of the unavailability of a medical imaging or radiation therapy professional; and

(3) each application for temporary exemption shall be supported by:

- (a) an application for temporary exemption;
- (b) an application fee; and

(c) written evidence to support the applicant’s compliance with Paragraph (1) and (2) of this subsection.

E. Temporary exemption term. A temporary exemption approved by the board shall be for a limited period of time, not to exceed one year. A temporary exemption may be renewed if the circumstances have not changed and if deemed warranted by the department.

F. Temporary exemption application denial.

The board, with the advice of the MIRTAC, shall resolve appeals of a denial of an application for temporary exemption pursuant to 20.3.20.600 NMAC. When making a determination of existence of community hardship, the board will:

- (1) consult health agencies;
- (2) evaluate

availability of alternative medical imaging or radiation therapy services and licensed medical imaging or radiation therapy professionals;

(3) evaluate documentation from the applicant's employer or prospective employer to demonstrate that recruitment of qualified individuals, at competitive compensation, has been attempted and was unsuccessful. Such demonstration may take the form of:

- (a) documented advertising in publications pertaining to medical imaging professionals;
 - (b) registration of the position with the New Mexico department of workforce solutions or similar state agency; or
 - (c) documentation of current and past contracting with medical imaging or radiation therapy job placement companies.
- [20.3.20.100 NMAC - N, 09/25/2018]

20.3.20.101 SCOPE OF PRACTICE:

A. General provisions.

(1) A licensee's scope of practice is determined based upon the licensee's education, certification, and state and federal law.

(2) The following are the different scopes of practice for a licensee that will be recognized by the department:

- (a) Radiography - the current version of the American society of radiologic technologists radiography practice standards;
- (b) Radiation therapy - the current version of the American society of radiologic technologists radiation therapy practice standards;
- (c) Nuclear medicine technology - the current version of the American society of radiologic technologists nuclear medicine practice standards or society of nuclear medicine and molecular imaging scope of practice for nuclear medicine technologist;

(d) Magnetic resonance technology - the current version of the American society of radiologic technologists magnetic resonance practice standards;

(e) Radiologist assistant - the current version of the American society of radiologic technologists radiologist assistant practice standards;

(f) Sonography - the current version of the American society of radiologic technologists sonography practice standards or the society of diagnostic medical sonography scope of practice and clinical standards for the diagnostic medical sonographer; or

(g) Limited practice of radiography license or certificate of limited practice - the current version of the American society of radiologic technologists limited x-ray machine operator practice standards.

B. Radiologist assistant. A radiologist assistant shall practice under the indirect supervision of a radiologist and shall not interpret images, render diagnoses, or prescribe medications or therapies.

[20.3.20.101 NMAC - N, 09/25/2018]

20.3.20.102 - 20.3.20.199 [RESERVED]

20.3.20.200 APPROVED EDUCATIONAL PROGRAMS:

A. Approved program for a medical imaging or radiation therapy license: An approved program for medical imaging or radiation therapy includes:

- (1) an educational program in a medical imaging or radiation therapy modality that is programmatically accredited by an accreditation agency recognized by the USDE or the CHEA and also recognized by the board pursuant to 20.3.20.220 NMAC; or
- (2) an educational program in a medical imaging or radiation therapy modality that is in the process of preparing for programmatic accreditation by an accreditation agency recognized

by the USDE or CHEA and also recognized by the board pursuant to 20.3.20.220 NMAC. This programmatic accreditation by an accreditation agency must be attained within five years of the effective date of this section or within five years of the establishment of a new educational program.

B. Approved program for a limited practice in radiography license: A limited radiography program shall be reviewed by the MIRTAC and approved by the board before enrolling students into the educational program. Prior to approval of the educational program, the MIRTAC will consider if the program includes the necessary didactic and clinical education to prepare students for the state examination for a limited practice in radiography license prior to submitting its recommendations to the board. Before enrolling students or offering courses, including clinical instruction, a limited radiography program shall submit an application to the department with supporting documentation to show compliance with this section and alignment with national educational accreditation standards. No fee is required for the application and, if all requirements are met, the department shall issue a letter to the educational program confirming compliance with this section.

[20.3.20.200 NMAC - N, 09/25/2018]

20.3.20.201 - 20.3.20.219 [RESERVED]

20.3.20.220 RECOGNIZED PROGRAMMATIC ACCREDITATION ORGANIZATIONS:

A. Programmatic accreditation. To be recognized by the board, an educational program accreditation agency must:

- (1) be recognized by the USDE or CHEA; and
- (2) provide programmatic accreditation for the medical imaging or radiation therapy modality offered by the educational

program.
B. Recognized programmatic accreditation organizations. Medical imaging or radiation therapy programmatic accreditation agencies recognized by the board include:
 (1) CAAHEP;
 (2) JRCERT;
 and
 (3) JRCNMT.
 [20.3.20.220 NMAC - N, 09/25/2018]

20.3.20.221 - 20.3.20.299
[RESERVED]

20.3.20.300 RECOGNIZED CREDENTIALING ORGANIZATIONS: The board recognizes the following medical imaging and radiation therapy credentialing organizations in each modality defined by the act including:
A. diagnostic medical sonography:
 (1) ARDMS;
 (2) ARRT; or
 (3) CCI.
B. magnetic resonance imaging:
 (1) ARMRLT;
 or
 (2) ARRT.
C. nuclear medicine:
 (1) ARRT; or
 (2) NMTCB.
D. radiation therapy:
 ARRT.
E. radiography:
 ARRT.
 [20.3.20.300 NMAC - N, 09/25/2018]

20.3.20.301 RECOGNIZED CREDENTIALS AND CERTIFICATIONS: The board recognizes the following medical imaging and radiation therapy credentials and certifications for each type of license issued by the department:
A. fusion imaging-restricted to PET/CT medical imaging procedures only:
 (1) (CNMT) (NMTCB) and (CT)(NMTCB);
 (2) R.T. (ARRT)(N) and (ARRT)(CT);
 (3) R.T. (ARRT)(N) and (NMTCB)(CT); or

(4) R.T. (ARRT)(R) and (NMTCB)(PET).
B. cardiac sonography:
 (1) (CCI) (RCS);
 (2) (CCI) (RCCS); or
 (3) (ARDMS) (RDCS).
C. general sonography:
 (1) RDMS (ARDMS)(AB);
 (2) RDMS (ARDMS)(BR);
 (3) RDMS (ARDMS)(OB);
 (4) R.T. (ARRT)(S); or
 (5) R.T. (ARRT)(BS).
D. limited radiography: none.
E. magnetic resonance imaging:
 (1) (ARMRLT) (RMRLT); or
 (2) R.T. (ARRT)(MR).
F. musculoskeletal sonography: (ARDMS)(RMSK).
G. nuclear medicine:
 (1) certified nuclear medicine technologist (NMTCB); or
 (2) nuclear medicine technology R.T. (ARRT) (N).
H. phlebology sonography: RPhS (CCI).
I. radiation therapy:
 R.T. (ARRT)(T).
J. radiography: R.T. (ARRT)(R).
K. radiology assistant:
 (ARRT)(RRA).
L. vascular sonography:
 (1) R.T. (ARRT)(VS);
 (2) RVS (CCI); or
 (3) RVT(ARDMS).
 [20.3.20.301 NMAC - N, 09/25/2018]

20.3.20.302 - 20.3.20.309
[RESERVED]

20.3.20.310 LIMITED PRACTICE OF RADIOGRAPHY LICENSE:

A. Limited practice in radiography. An individual seeking a license for the limited practice of radiography shall submit an application and applicable fee to the department, successfully complete an approved limited radiography program pursuant to Subsection B of 20.3.20.200 NMAC, and take and pass the state examination pursuant to Subsections D and E below. Individuals that are enrolled in an approved limited practice radiography program shall perform their required clinical radiography procedures under the direct supervision of a licensed physician or licensed radiographer. A licensee with a limited practice of radiography license shall perform restricted diagnostic radiography under direct supervision of a licensed practitioner limited to the following specific procedures:
 (1) the viscera of the thorax;
 (2) extremities;
 (3) radiation to humans for diagnostic purposes in the practice of dentistry;
 (4) axial/appendicular skeleton; or
 (5) the foot, ankle, or lower leg.

B. Restrictions. A licensee with a limited practice of radiography license may not:
 (1) perform procedures outside the areas of specialization authorized by or under the individual's license; or
 (2) perform procedures outside their scope of practice including, but not limited to procedures involving the use of contrast media, fluoroscopic equipment, mammography, computed tomography, mobile or bedside radiography, diagnostic medical sonography, magnetic resonance imaging, nuclear medicine, or radiation therapy.

C. Emergency provision. A person having a valid limited practice of radiography license

may perform diagnostic radiography procedures outside the normal scope of a limited practice of radiography license if the person is employed in an area having a federal designation as a medically underserved area and the person with the limited practice of radiography license is confronted with an emergency situation, where, by order of a licensed practitioner, a certified nurse practitioner or a registered physician assistant, the additional diagnostic radiography procedure is deemed medically necessary for the immediate safety or health of the patient.

D. Administration of state examinations. The department will not offer state examinations for medical imaging and radiation therapy professionals except for a limited practice of radiography licensee pursuant to Subsection E of this section. The department may administer and grade the limited practice of radiography examinations, though at its option, the department may contract for such preparation, administration, and grading services.

E. State examination for limited practice of radiography. An individual seeking a license for the limited practice of radiography must pass a state examination for limited practice of radiography. To apply for the state examination, the individual must:

- (1) submit an examination application with supporting documentation to the department that the individual has:
 - (a) completed school through the 12th grade or has passed a high school equivalency examination; and
 - (b) successfully completed an approved limited radiography program in one or more of the body areas of specialization.
- (2) submit the required examination fee to the department; and
- (3) successfully complete a written or computerized examination administered by the department with a minimum score of seventy-five

percent on both the core section and in each attempted body area section of the examination. At its option, the department may contract for such preparation, administration, and grading services for the limited practice of radiography examinations.

F. Failure of state examination for limited practice of radiography:

(1) If an applicant fails to achieve seventy-five percent on either the core section or a body area specialization section of the examination, it will be considered an examination failure and the applicant must retake the failed section or sections.

(2) The applicant must re-apply and pay the examination fee for each examination attempt.

(3) All sections of the examination taken on the same day are considered one examination attempt.

(4) An individual who attempts and fails the state-administered examination three times will be required to demonstrate to the department the successful completion of remedial education or training following the third attempt that is consistent with the ARRT standards before being eligible to retake the failed section or sections again.

[20.3.20.310 NMAC - N, 09/25/2018]

20.3.20.311 - 20.3.20.319

[RESERVED]

20.3.20.320 LICENSES:

A. Licensure Requirements. An applicant for a medical imaging or radiation therapy license shall submit the required application to the department; the applicable application fee located in 20.3.20.501 NMAC, and shall be currently certified and registered by a medical imaging or radiation therapy credentialing organization recognized by the board. An applicant for the medical imaging and radiation therapy licenses specified in the following shall have until June 30, 2019 to meet the requirements of this section:

- (1) 20.3.20.320 NMAC;
- (2) Paragraph A of 20.3.20.100 NMAC; and
- (3) Subparagraphs (1), (2), (8), (10), (11), (16) and (17) of Paragraph F of 20.3.20.320 NMAC.

B. Registration number. The department shall assign a department registration number to each licensee regardless of the number of modalities and subspecialties licensed. The department registration number shall be listed on each certificate of licensure issued by the department.

C. Term for licenses issued prior to the 15th of the month. The license term for all licenses issued prior to the 15th of the month, except a temporary license, will:

- (1) be for 24 months;
- (2) begin on the date the license is issued; and
- (3) end on the last day of the month the license was issued.

D. Term for licenses issued after the 15th of the month. The license term for all licenses issued after the 15th of the month, except a temporary license, will:

- (1) be for 24 months;
- (2) begin on the date the license is issued; and
- (3) end on the last day of the month following the month the license was issued.

E. Request for coordination of license and credential expiration dates. At the written request of the licensee, the expiration date of their license or licenses may be reduced to match their current credentialing organization's expiration date. Such reduction in term shall not reduce the applicant or licensee's license fee.

F. Types of license. Upon demonstration of compliance with all applicable requirements of the act and this part, the department may grant one or more of the following types of licenses to be recognized by

the department:

(1) (DMS) which includes sonography subspecialties of RDMS (ARDMS) (AB)(BR)(OB) and R.T. (ARRT)(S) (BS);

- (2) (MSK);
- (3) (FUS);
- (4) (LXV);
- (5) (LXE);
- (6) (LXP);
- (7) (LXT);
- (8) (MRT);
- (9) (NMT);
- (10) (PBS);
- (11) (PVL);
- (12) (RTT);
- (13) (RRT);
- (14) (RRA);
- (15) (TMP);
- (16)

(VS), which includes sonography subspecialties of (ARDMS)(RVT) and R.T. ARRT (VS); and

(17) (CS) which includes RDMS (ARDMS), RCS (CCI), and RCCS (CCI).

G. Certificate of licensure. Each certificate of licensure issued by the department shall identify all current licenses granted to the licensee. [20.3.20.320 NMAC - N, 09/25/2018]

20.3.20.321 TEMPORARY LICENSES:

A. Temporary license. The purpose of a temporary license is to allow an individual who has completed an approved program pursuant to 20.3.20.200 NMAC to practice medical imaging or radiation therapy prior to sitting for their national examination with one of the medical imaging and radiation therapy credentialing organizations outlined in 20.3.20.300 NMAC. The department may grant a temporary license to practice medical imaging or radiation therapy to an individual who:

- (1) provides documentation to the department that the individual has completed an approved program pursuant to 20.3.20.200 NMAC;
- (2) submits an application for a temporary license to

the department within one year of the individual's program completion date from an approved program;

(3) submits the applicable fees for a temporary license pursuant to Paragraph G of 20.3.20.501 NMAC to the department within one year of the program completion date from an approved program;

(4) provides the name and contact information of each employer where medical imaging or radiation therapy is performed by the individual; and

(5) meets all other applicable licensure requirements of the act and this part.

B. Notification. The individual will be required to notify the department of any changes to his or her employment by providing the department with the contact information for each new employer where medical imaging or radiation therapy is performed by the individual within thirty days after the change occurs.

C. Examination and notice.

(1) The department will recognize the credentialing organization's determination of what is considered a pass or fail for an individual's examination score.

(2) The individual shall notify the department of the date the individual plans to take the examination at least 30 days prior to the examination date.

(3) If the credentialing organization determines that an individual has failed his or her examination, the individual's active temporary license issued by the department will expire 90 days after the examination date. The individual will be required to notify the department of a failed examination within 30 days of receiving his or her examination results.

D. Temporary license term. A temporary license:

- (1) expires on the last day of the 12th month from the date of issuance or upon the applicant's failure to pass the

examination as outlined in Subsection B of this section; and

(2) may be granted only once and cannot be renewed or extended; however, a duplicate temporary certificate of licensure may be issued by the department for display at another place of employment upon submission of a duplicate certificate of licensure application and fee.

[20.3.20.321 NMAC - N, 09/25/2018]

20.3.20.322 PROVISIONAL LICENSES:

A. Provisional license. The department may grant a provisional license to practice medical imaging to an individual who:

- (1) is currently licensed by the department;
- (2) submits an application to the department; and
- (3) follows training pathways established by one of the following recognized national certification organizations:

- (a) ARRT;
- (b) ARDMS;
- (c) ARMRT;
- (d) CCI; or
- (e) NMTCB.

B. License Term. A provisional license:

- (1) expires two years from the date of issuance; and
- (2) may be renewed one time.

C. Term for licenses issued prior to the 15th of the month. The license term for all licenses issued prior to the 15th of the month, except a temporary license, will:

- (1) be for 24 months;
- (2) begin on the date the license is issued; and
- (3) end on the last day of the month the license was issued.

D. Term for licenses issued after the 15th of the month.

The license term for all licenses issued after the 15th of the month, except a temporary license, will:

- (1) be for 24 months;
- (2) begin on the date the license is issued; and
- (3) end on the last day of the month following the month the license was issued.

E. Applicability to licensee enrolled in an approved program. This section does not apply to a licensee who is currently enrolled in an approved program leading to qualification for another modality and subspecialty license.

[20.3.20.322 NMAC - N, 09/25/2018]

20.3.20.323 - 20.3.20.329
[RESERVED]

20.3.20.330 CONTINUING EDUCATION:

A. Continuing education.

(1) During the license term, a limited practice of radiography licensee must complete 24 hours or credits of category A or A+ continuing education approved by a RCEEM recognized by the ARRT. Documentation of completion of the required continuing education must be submitted to the department with each renewal application.

(2) During the license term, a medical imaging, a radiation therapy, or a radiologist assistant licensee, other than a limited practice of radiography licensee, must comply with all continuing education, continuing competency, and registration requirements of the credentialing organization for which they hold a credential or certification. The department may require a licensee to certify meeting the credentialing organization's requirements. Failure to meet the credentialing organization's requirements may be grounds for suspension or revocation of a license. This does not apply to individuals with an active temporary license that has been issued by the department.

(3) The department may require a licensee to submit documentation from the credentialing organization if online verification is not available at the time the licensee's renewal request is being reviewed.

B. Audit. The department may audit a licensee's continuing education and continuing compliance with requirements of the act and this part. A licensee must submit the audit information requested by the department within 30 days of receipt of the notification of audit. No application or fees are required when submitting information requested by the department for an audit.

[20.3.20.330 NMAC - Rp, 20.3.20.500 NMAC, 09/25/2018]

20.3.20.331 - 20.3.20.339
[RESERVED]

20.3.20.340 DUTIES OF LICENSEE:

A. Continuing to comply with requirements. A licensee must:

- (1) continue to comply with all licensure requirements of the act and this part throughout the license term;
- (2) maintain credential or certification and registration in their licensed imaging modality and subspecialty, if applicable, throughout the licensure period or notify the department in writing within 30 days that a credential or certification is no longer being maintained;
- (3) notify the department in writing within 30 days of any pending or final actions by a credentialing organization, state agency, or federal agency against the licensee; and
- (4) notify the department in writing within 30 days of lapse, probation, suspension, or revocation of any professional license.

B. Expired, suspended, or revoked license. An individual whose license has expired, or has been suspended or revoked by the department, shall not perform

medical imaging or radiation therapy procedures.

C. Duty to cooperate with department. An applicant or licensee has a duty to cooperate with the department during an investigation or inspection authorized under the act, this part, or other state or federal law.

D. Reporting violations. A licensee has a duty to report a violation of the act, this part, or other state or federal law to the department or other appropriate agency.

E. Supervision of students or licensees.

(1) A limited practice of radiography licensee shall only provide supervision of a limited practice of radiography student or licensee.

(2) A medical imaging or radiation therapy licensee may provide supervision to a medical imaging or radiation therapy student or licensee in the same modality and specialization as the licensee. A radiographer may provide supervision to a limited practice of radiography student or licensee.

[20.3.20.340 NMAC - N, 09/25/2018]

20.3.20.341 CERTIFICATE OF LICENSURE:

A. Display of certificate of licensure. Original certificates of licensure shall be publicly displayed by the licensee at each place of employment.

B. Photocopying or reproduction prohibited. Photocopying or other reproduction of a certificate of licensure is prohibited.

C. Duplicate certificate of licensure or replacement of certificate of licensure. To obtain a duplicate certificate of licensure or replacement of certificate of licensure, the licensee must submit a duplicate certificate of licensure application and required fee to the department.

D. Legal Name Change. To obtain a replacement certificate of licensure due to a legal name change, the licensee must submit documentation of the

legal name change, a name change application, and required fee to the department.
[20.3.20.341 NMAC - N, 09/25/2018]

20.3.20.342 - 20.3.20.399
[RESERVED]

20.3.20.400 RENEWAL, REINSTATEMENT, AND REAPPLICATION:

A. License renewal and reinstatement. A licensee is solely responsible for ensuring they maintain a current license. Failure to receive notification by the department prior to the expiration date of the license is not an excuse for failure to file a timely renewal application.

(1) Prior to the expiration date listed on the licensee's current certificate of licensure, a licensee must submit the biennial licensure fee and completed renewal application, including any requested supporting documents to the department.

(2) The department will not process an incomplete renewal application.

(3) The department will process completed applications in the order received.

(4) The department shall not renew a license until it is satisfied the license renewal applicant meets all requirements of the act and this part.

(5) All required items must be received by the department prior to the expiration date on the licensee's current certificate of licensure or else the renewal application shall be considered incomplete. The licensee's failure to submit a complete license renewal application will result in a reinstatement fee. An earlier postmark date shall not excuse the reinstatement fee.

(a) If a reinstatement fee is assessed and all other requirements for renewal are met, the department will issue an invoice to the licensee that will accompany the renewed certificate of licensure.

(b) If an applicant or licensee fails to pay

the reinstatement fee within 30 days of the invoice date, the department may take action to suspend the license until the department has received the reinstatement fee.

B. Reapplication. Reapplication is required if a license has been expired for more than one year. An applicant for reapplication must meet all of the requirements contained in 20.3.20.320 NMAC.
[20.3.20.400 NMAC - Rp, 20.3.20.501 NMAC, 09/25/2018]

20.3.20.401 - 20.3.20.499
[RESERVED]

20.3.20.500 DEPARTMENT FORMS, CONFIDENTIALITY, AND RELEASE OF PERSONAL IDENTIFICATION:

A. Department forms required.

(1) An individual seeking licensure or any other services listed in this part shall submit a completed application form and applicable fee to the department.

(2) The department shall create and make available all necessary application forms.

(3) The department's forms may request such personal identification as is required to perform the department's duties under the act and this part including, but not limited to: name, mailing address, telephone numbers, email address, certifications, licenses, date of birth, and social security number.

(4) No application shall be complete unless it is on the form prescribed by the department and includes, in legible format:

(a) all required personal identification;

(b) copies of all supporting documents specified on the form;

(c) full payment of required fees by a method specified on the form; and

(d) date and signature of the applicant.

B. Confidentiality of personal identification. Personal

identification collected by the department shall not be disclosed except:

(1) in the performance of the department's duties under the act or this part;

(2) as provided in this part or as required by state or federal law; or

(3) in response to a valid subpoena or court order.

C. Release of licensee personal identification.

Unless otherwise provided by law, the department shall only release a licensee's name, mailing address, department registration number, and verification of license and subspecialty. The department may release information related to an application denial or license revocation or suspension to a credentialing organization. In accordance with federal law, the department shall release any required information related to revocation or suspension of a licensee to the national practitioner data bank.
[20.3.20.500 NMAC - N, 09/25/2018]

20.3.20.501 FEES:

A. Application fee. In addition to any other fees, an application fee of \$10.00 must be submitted with each type of application available from the department, unless otherwise provided in this part.

B. Initial license fee. An initial license fee of \$100.00 must be submitted with each initial license application, regardless of the number of modality and subspecialty licenses requested on the same application.

C. Examination fee. An examination fee of \$150.00 must be submitted with each examination application as required in 20.3.20.310 NMAC.

D. Biennial licensure fee. A biennial fee of \$100.00 may be submitted to the department prior to the expiration date of the individual's current license issued by the department. The department will renew an individual's license upon submittal of the fee and the license will be valid for 24 months after the

expiration date of their current license issued by the department.

E. License reinstatement fee. In addition to any other required fees, a license reinstatement fee of \$25.00 must be submitted with a license reinstatement application or if a licensee fails to submit a complete renewal application before the expiration of a license.

F. Duplicate certificate of licensure or replacement of certificate of licensure fee. A fee of \$5.00 will be required for each duplicate certificate of licensure or replacement of certificate of licensure requested in the application and a fee of \$5.00 for each additional duplicate certificate of license or replacement of certificate of licensure ordered from all other application forms that provide the option to request additional original duplicate certificates of licensure or replacement of certificate of licensure.

G. Temporary license fee. A temporary license fee of \$50.00 must be submitted with each temporary license application.

H. Provisional license fee. A provisional license fee of \$25.00 must be submitted with a provisional license application.

I. License verification fee. A license verification fee of \$10.00 for each verification must be submitted with each license verification form.

J. Legal name change fee. A legal name change fee of \$15.00 must be submitted with each legal name change application.

K. Refunds. Fees submitted to the department are non-refundable and non-transferrable. However, if the department determines that fees have been received in excess of the amount legally due, the department will refund the excess amount portion of the received fee upon receipt of a written request from the individual who paid the excess fee amount, or that individual's legal representative.

L. Nonsufficient funds fee. If the department is unable to process the fees submitted by

the applicant, then the name of that licensee will be removed from the list of all New Mexico active radiologic technologists, which appears on the New Mexico environment department's radiation control bureau website, and the department will assess a \$25.00 nonsufficient fund fee. That licensee must submit payment to the department in the form of a cashiers' check or money order. [20.3.20.501 NMAC - Rp, 20.3.20.600 NMAC, 09/25/2018]

20.3.20.502 - 20.3.20.599 [RESERVED]

20.3.20.600 DENIAL, REVOCATION, OR SUSPENSION OF LICENSE:

A. Denial of application. The department may not issue a license to an applicant who has failed to meet the requirements of the act or this part.

B. Suspension, revocation, application of uniform licensing act. The board, with advice from the advisory council, may deny, revoke, or suspend a license granted or applied for under the act and this part, pursuant to the procedures established in the Uniform Licensing Act Section 61-1-1 through 61-1-34 NMSA 1978, upon grounds that the medical imaging or radiation therapy licensee or applicant:

- (1) is guilty of fraud or deceit in procuring or attempting to procure any type of license or service from the department;
- (2) has been convicted of a felony subsequent to licensure;
- (3) is unfit or incompetent;
- (4) is habitually intemperate or is addicted to the use of habit-forming drugs;
- (5) is mentally incompetent;
- (6) has aided and abetted an individual who is not a licensee in engaging in the activities of a licensee;
- (7) has failed to maintain a credential or

certification in the modality and subspecialty for which a license was granted;

(8) has engaged in any practice beyond the licensee's scope of practice in violation of state or federal law or facility policy;

(9) is guilty of unprofessional conduct or unethical conduct as defined in Subsection C of this section;

(10) has interpreted a diagnostic imaging exam for a patient, a patient's family, or the public;

(11) has willfully or repeatedly violated any provisions of the act or this part;

(12) has failed to notify the department in writing within 30 days of any final disciplinary action by a licensing board or credentialing organization, including but not limited to sanction, probation, suspension, or revocation; or

(13) is not in compliance with the terms of the New Mexico Parental Responsibility Act, Section 40-5A-1 to 40-5A-13 NMSA 1978; in taking action under this provision, the board shall follow the procedures in 20.1.7 NMAC named "Parental Responsibility Act Compliance."

C. Unprofessional or unethical conduct. With respect to the grounds for denial, revocation, or suspension under Section 61-14E-11 NMSA 1978, the terms "unprofessional conduct" or "unethical conduct" shall refer to, but shall not be limited to any licensee, applicant, medical imaging professional, or radiation therapist who:

- (1) is engaged in the practice of medical imaging or radiation therapy while in an intoxicated condition or under the influence of a narcotic or other drug that impairs consciousness, judgment, or behavior;
- (2) is engaged in unethical conduct while practicing

medical imaging or radiation therapy;

(3) has engaged in the willful falsification of records, or destruction or theft of property or records relating to the practice of medical imaging or radiation therapy;

(4) fails to exercise due regard for the safety of life or health of the patient;

(5) has unauthorized access to or disclosure of information relating to a patient's records;

(6) discriminates against any individual because of race, religion, creed, color, national origin, sex, or sex while practicing medical imaging or radiation therapy;

(7) has been convicted of a felony subsequent to licensure by the department;

(8) impersonates a current or former licensee or engages in the activities of medical imaging or radiation therapy under an assumed name;

(9) is applying ionizing or non-ionizing radiation to a human being without a specific prescription or direction of a licensed practitioner or other health care practitioner authorized to order a medical imaging or radiation therapy;

(10) is incompetent or negligent in activities related to medical imaging, radiation therapy, or limited practice of radiography;

(11) is continuing to practice without obtaining a license or renewal as required by the act or this part;

(12) is using the prefix "Dr.," unless entitled to do so pursuant to a degree granted, the word "doctor," or any suffix or affix to indicate or imply that the individual is a licensed practitioner when not so licensed;

(13) is providing false, misleading, or deceptive information on any application or supporting documents submitted to the department;

(14) is failing to conform to nationally recognized

practice standards as applicable to each modality or subspecialty;

(15) fails to disclose in writing to the department any felony conviction or non-compliance with the New Mexico Parental Responsibility Act, Section 40-5A-1 to 40-5A-13 NMSA 1978, within 30 days of the conviction or judgment; or

(16) fails to disclose in writing to the department any sanction, probation, suspension, or revocation by a state agency or credentialing organization within 30 days of such occurrence.

D. Opportunity for licensee or applicant to have a hearing. Any licensee or applicant whose license or license application is denied, revoked, or suspended under this part shall be afforded notice and an opportunity to be heard pursuant to the procedures established in the Uniform Licensing Act, Sections 61-1-1 to -34 NMSA 1978, the Medical Imaging and Radiation Therapy Health and Safety Act, Section 61-14E-11 NMSA 1978, and the adjudicatory procedures for the environmental improvement board in 20.1.2 NMAC.

E. Application of uniform licensing act. The department shall comply with the provisions of the Uniform Licensing Act, Section 61-1-1 to 61-1-34 NMSA 1978, and any rules or regulations promulgated thereunder.
[20.3.20.600 NMAC - Rp,
20.3.20.400 NMAC, 09/25/2018]

20.3.20.601 - 20.3.20.699
[RESERVED]

20.3.20.700 SEVERABILITY: If any provision or application of this part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.
[20.3.20.700 NMAC - Rp,
20.3.20.700 NMAC, 09/25/2018]

20.3.20.701 AMENDMENT AND SUPERSESION OF PRIOR REGULATIONS: This part shall be construed as amending and superseding the regulations on

the practice of medical imaging or radiation therapy, EIB/MRHSA 1, filed January 11, 1988, as amended. All references to the regulations on the practice of medical imaging or radiation therapy in any other rule shall be construed as a reference to this part.

[20.3.20.701 NMAC - Rp,
20.3.20.701 NMAC, 09/25/2018]

20.3.20.702 SAVING CLAUSE: Supersession of the regulations on the practice of medical imaging or radiation therapy shall not affect any administrative or judicial enforcement action pending on the effective date of this part nor the validity of any license granted or certificate of licensure issued pursuant to the regulations on the practice of medical imaging or radiation therapy.
[20.3.20.702 NMAC - Rp,
20.3.20.702 NMAC, 09/25/2018]

20.3.20.703 CONSTRUCTION: This part shall be liberally construed to effectuate the purpose of the act.
[20.3.20.703 NMAC - Rp,
20.3.20.703 NMAC, 09/25/2018]

20.3.20.704 COMPLIANCE WITH OTHER REGULATIONS: Compliance with this part does not relieve an individual from the obligation to comply with other applicable state and federal regulations.
[20.3.20.704 NMAC - Rp,
20.3.20.704 NMAC, 09/25/2018]

HISTORY OF 20.3.20 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives. EIB/MRHSA 1, Regulations on the Practice of Radiologic Technology, 11/11/1988.

History of repealed material: 20 NMAC 3.2, Radiologic Technology Certification, (filed 12/15/95), repealed 08/31/2005.
20.3.20 NMAC, Radiologic Technology Certification, effective 08/31/2005, repealed 09/25/2018.

Other History:

EIB/MRHSA 1, Regulations on the Practice of Radiologic Technology (filed 11/11/1988) was renumbered, reformatted and amended as 20 NMAC 3.2, Radiologic Technology Certification, effective 01/14/96. 20 NMAC 3.2, Radiologic Technology Certification, (filed 12/15/95) was replaced by 20.3.20, Radiologic Technology Certification, effective 08/31/2005. 20.3.20 NMAC Radiologic Technology Certification, effective 08/31/2005, was replaced by 20.3.20, Medical Imaging and Radiation Therapy Licensure, effective 09/25/2018.

**HUMAN SERVICES
DEPARTMENT - INCOME
SUPPORT DIVISION**

This is an emergency amendment to Section 8 of 8.102.500 NMAC, effective 10/01/2018.

8.102.500.8 GENERAL REQUIREMENTS:

A. Need

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

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

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

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

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

B. Gross income

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

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

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

	(a)	
one person	[\$854]	<u>\$860</u>
	(b)	
two persons	[\$1,151]	<u>\$1,166</u>
	(c)	
three persons	[\$1,447]	<u>\$1,472</u>
	(d)	
four persons	[\$1,743]	<u>\$1,778</u>
	(e)	
five persons	[\$2,039]	<u>\$2,084</u>
	(f)	
six persons	[\$2,335]	<u>\$2,390</u>
	(g)	
seven persons	[\$2,631]	<u>\$2,696</u>
	(h)	
eight persons	[\$2,927]	<u>\$3,002</u>
	(i)	

add ~~[\$296]~~ \$306 for each additional person.

C. Eligibility for

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

	(1)	one person
		[\$1,005] <u>\$1,012</u>
	(2)	two
persons		[\$1,354] <u>\$1,372</u>
	(3)	three
persons		[\$1,702] <u>\$1,732</u>
	(4)	four
persons		[\$2,050] <u>\$2,092</u>
	(5)	five
persons		[\$2,399] <u>\$2,452</u>
	(6)	six persons
		[\$2,747] <u>\$2,812</u>
	(7)	seven
persons		[\$3,095] <u>\$3,172</u>
	(8)	eight

persons ~~[\$3,444]~~ \$3,532
(9) add ~~[\$349]~~ \$360 for each additional person.

D. Standard of need:

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

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

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

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

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

add \$91 for each additional person.

E. Special needs:

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

(a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b) The clothing allowance shall be

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

(c)

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

(2) Layette:

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

(3) Special

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

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

Based on the availability of state and federal funds, the department may limit the eligibility of a benefit group due to the fact that a legal guardian is not included in the benefit group. [8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 11/15/2007; A, 01/01/2008; A/E, 10/01/2008; A, 08/01/2009; A, 08/14/2009; A/E, 10/01/2009; A, 10/30/2009; A, 01/01/2011; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A/E, 10/01/2013; A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017; A, 2/01/2018; A/E, 10/01/2018]

HUMAN SERVICES DEPARTMENT - INCOME SUPPORT DIVISION

This is an emergency amendment to Section 8 of 8.106.500, effective 10/01/2018.

8.106.500.8 GA - GENERAL REQUIREMENTS:

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

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

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

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

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

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

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

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

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

	(a)
one person	[\$854] <u>\$860</u>
	(b)
two persons	[\$1,151] <u>\$1,166</u>
	(c)

three persons	[\$1,447] <u>\$1,472</u>
	(d)
four persons	[\$1,743] <u>\$1,778</u>
	(e)
five persons	[\$2,039] <u>\$2,084</u>
	(f)
six persons	[\$2,335] <u>\$2,390</u>
	(g)
seven persons	[\$2,631] <u>\$2,696</u>
	(h)
eight persons	[\$2,927] <u>\$3,002</u>
	(i)

add [~~\$296~~] \$306 for each additional person.

E. Standard of need:

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

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

(3) Notice:

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

F. Net income test:

The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group. After the countable net income is determined it is rounded down prior to the comparison of the household's income to the standard of need to determine the households monthly benefit amount.

G. Special clothing allowance for school-age dependent children:

A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal

funds and a specific allocation of the available funds for this allowance.

(1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

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

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

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

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

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

[8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008; A, 06/16/2008; A/E, 10/01/2008; A, 07/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 12/01/2009; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A, 07/01/2013; A/E, 10/01/2013; A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017; A, 2/01/2018; A/E, 10/01/2018]

RACING COMMISSION

Explanatory Paragraph: This is an amendment to 15.2.1 NMAC, Sections 7 and 9, effective September

26, 2018. In 15.2.1.7 NMAC, Subsections A through C, Subsections E through M and Subsections O through Z were not published as there were no changes. In 15.2.1.9 NMAC, Subsection A and B, Paragraphs (1), (2) and Paragraphs (4) through (22) of Subsection C were not published as there were no changes.

15.2.1.7 DEFINITIONS:

D. Definitions beginning with the letter "d":

(1) "Day" is a 24-hour period ending at midnight.

(a) Dark day - a day during a live or a simulcast race meeting when no pari-mutuel wagering is conducted.

(b) Race day - a day during a race meeting when pari-mutuel wagering is conducted on live racing.

(c) Simulcast race day - a day during a race meeting when pari-mutuel wagering is conducted on simulcast racing.

(2) "Dead heat" is the finish of a race in which the noses of two or more horses reach the finish line at the same time.

(3) "Declaration" is the act of withdrawing an entered horse from a race prior to the closing of entries.

(4) ["Draw" is the process of assigning postpositions and the process of selecting contestants in a manner to ensure compliance with the conditions of the rules of racing.] "Designated race" shall mean any stakes race or associated trial as designated by the stewards.

(5) "Draw" is the process of assigning postpositions and the process of selecting contestants in a manner to ensure compliance with the conditions of the rules of racing.

N. Definitions beginning with the letter "n":

(1) "Net pool"

is the amount of gross ticket sales less refundable wagers and statutory commissions.

(2) "New Mexico bred" [~~is a foal conceived in the state of New Mexico, foaled in the state of New Mexico, weaned in the state of New Mexico whose dam was not outside the state of New Mexico during pregnancy.~~] is a horse registered by the New Mexico horse breeders' association.

(3) "New Mexico bred race" is a race in which the contestants are registered as New Mexico bred horses.

(4) "No contest" is a race cancelled for any reason by the stewards.

(5) "Nomination" is the naming of a horse to a certain race or series of races.

(6) "Nominator" is the person or entity in whose name a horse is nominated for a race or series of races.

[15.2.1.7 NMAC - Rp, 15 NMAC 2.1.7, 03/15/2001; A, 02/14/2002; A, 08/30/2007; A, 12/01/2010; A, 01/01/2013; A, 05/01/2013; 08/15/2014; A, 07/01/2017; A, 03/14/2018; A, 09/26/2018]

15.2.1.9 DUE PROCESS AND DISCIPLINARY ACTION:

C. Proceedings by the commission:

(3) Subpoenas and depositions.

(a) A member of the commission, the agency director, the stewards, the presiding officer of a commission proceeding or other person authorized to perform duties under the act may require by subpoena the attendance of witnesses and the reproduction of books, records, papers, correspondence and other documents.

(b) A member of the commission, the

agency director, a presiding officer of a commission proceeding or other person authorized by the commission may administer an oath or affirmation to a witness appearing before the commission or a person authorized by the commission.

(c)

Each party is responsible for proper service of any subpoenas it requests and for the payment of witness fees and expenses as provided by this jurisdiction's civil procedures statute.

(d)

On written request by a party, the presiding officer or the agency director may issue a subpoena addressed to a sheriff or any constable to require the attendance of witnesses and the production of books, records, papers or other objects as may be necessary to compel the production of books, records, papers or other objects shall be addressed to the appropriate person, shall be verified and shall specify the books, records, papers or other objects desired and the relevant and material facts to be proved by them.

(e)

The Administrative Procedures Act, Civil Statutes, Article 8, Section 12-8-15 NMSA 1978 governs the taking and the use of depositions. Rule 1-036 of the New Mexico Rules of Civil Procedure governs admissions of fact and genuineness of documents.

[15.2.1.9 NMAC - Rp, 15 NMAC 2.1.9, 03/15/2001; A, 03/31/2003; A, 05/30/2003; A, 06/15/2004; A, 06/30/2009; A, 09/15/2009; A, 12/1/2010; A, 05/01/2013; A, 01/01/2014; A, 03/16/2015; A, 05/01/2015; A, 09/16/2015; A, 03/15/2016; A/E, 06/28/2016; A, 09/16/2016; A, 12/16/2016; A, 07/01/2017; A, 03/14/2018; A, 09/26/2018]

RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.2 NMAC, Section

8, effective September 26, 2018. In 15.2.2.8 NMAC, Subsections A through V and Subsection X were not published as there were no changes.

15.2.2.8 ASSOCIATIONS:

W. Stakes and escrow requirements:

(1) The

association shall provide the commission with a copy of written race conditions for stakes races prior to distribution and a copy of the job description of the nomination secretary assigned to the stakes races program. [The job description shall be acknowledged and signed by the nomination secretary and filed with the commission.]

(2) The

original race conditions nomination blank for stakes races shall be considered a binding contract between the association or sponsor and the nominator. [The approved nomination blank must be signed by the nominator and filed with the association.] The nomination blank must contain all conditions under which fees are due and payable; the race will be conducted, providing for trials or divisions, if any; supplemental purses are added; monies will be retained by the association for advertisement, administration and commissions; terms or conditions which refunds, if any, will be made; and all other conditions pertaining thereto.

(3)

Unless otherwise approved by the commission, prior to the closing of nominations, the association shall file with the commission a copy of escrow provisions made by the association or sponsor with the horsemen's bookkeeper or other person(s) authorized to receive payments on behalf of the nominators utilizing a federally insured financial institution to maintain the escrow account for all payments made to the stakes race. Any added or supplemental purse monies advertised or otherwise stated in the written race conditions shall be deposited in the escrow account

no later than the deadline date for the first eligibility payment for that stakes race, unless otherwise approved by the commission.

(4) If the

deadline for a nomination payment falls on a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

[~~(5)~~ For all

~~nomination races the association shall furnish the commission and the owners of horses previously made eligible by compliance with the conditions of such race, with a list of all horses nominated, distinguishing those horses which remain eligible. The list shall be distributed within 45 days, but not later than 14 days prior to the next payment after the due date of each nomination and sustaining payment and shall include the name of the race; the name of each horse; or the name of the sire and dam; name(s) of the owner(s) of each horse; and itemization of payments and gross purse to date, including any added monies, applicable interest, supplementary payments, and advertised deductions for advertising, administration and commissions retained by the association and the next scheduled payment date and amount.~~

~~(6) Between~~

~~14 and 21 days prior to a payment due date for all nomination races, the association shall furnish the commission and the owners of horses previously made eligible by compliance with the conditions of such race, with a courtesy notice of the next scheduled payment due date and amount of the payment. The nominator is responsible for making timely payments.]~~

~~(7)~~ (5) Within

30 days after each eligibility or payment date, and the date horses pass the entry box, the association shall provide a copy of the escrow report to the commission. The escrow report shall include the financial institution representative; the names and nominators; the total number of entries; the names of horses remaining eligible; an itemization of the amount of payments and added

money received including totals; the amount of interest accrued to date; the name(s) of the person(s) currently authorized to make withdrawals; the amount and date of each withdrawal, if any; each deduction from monies received (e.g. uncollected checks, advertising, administrative and commissions costs); and the stated reason for each withdrawal or deduction. Notice of not less than two persons, whose signatures are required for a withdrawal, shall be filed with the commission.

~~(8)~~ (6) In all cases the association shall be responsible for the payment of purse monies for any stakes race conducted at its licensed facility.

[15.2.2.8 NMAC - Rp, 15 NMAC 2.2.8, 03/15/2001; A, 08/30/2001; A, 11/14/2002; A, 08/30/2007; A, 01/01/2013; A, 06/01/2016; A, 12/16/2016; A, 09/26/2018]

RACING COMMISSION

Explanatory Paragraph: This is an amendment to 15.2.3 NMAC, Section 8, effective September 26, 2018.

In 15.2.3.8 NMAC, Subsections A through C, Paragraphs (1) and (2) of Subsection D and Subsections E through P were not published as there were no changes.

15.2.3.8 FLAT RACING OFFICIALS GENERAL PROVISIONS:

D. Horsemen's bookkeeper:

(3) Monies and funds on account:

(a)
All monies and funds on account with the horsemen's bookkeeper shall be maintained: separate and apart from monies and funds of the association; in a trust account [~~designed~~ designated] as "horsemen's trust account"; in an account insured by the federal deposit and insurance corporation or the federal savings and

loan insurance corporation.

(b)

The horsemen's bookkeeper shall be bonded in accordance with commission stipulations.

(c)

The amount of purse money earned is credited in the currency of the jurisdiction in which the race was run. There shall be no appeal for any exchange rate loss at the time of transfer of funds from another jurisdiction.

(4) Payment

of purses:

(a)

The horsemen's bookkeeper shall receive, maintain and disburse the purses of each race and all stakes, entrance money, jockey fees, purchase money in claiming races, along with all applicable taxes and other monies that properly come into their possession in accordance with the provision of commission rules.

(b)

The horsemen's bookkeeper may accept monies due belonging to other organizations or recognized meetings, provided prompt return is made to the organization to which the money is due.

(c)

The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered, in violation of these rules, to the horse earning such purse money.

~~(e)~~ (d)

The horsemen's bookkeeper shall disburse the purse of each race and all stakes, entrance money, jockey fees and purchase money in claiming races, along with all applicable taxes, upon request, within 48 hours of the completion of the race with respect to all horses not tested and when no timely appeal has been filed, and where a horse has been tested within 48 hours of receipt of notification that all tests with respect to such races have cleared the drug testing laboratory(ies) as reported by the stewards or the commission, except that minimum jockey mount fees

may be disbursed prior to notification that the tests have cleared the testing laboratory(ies).

~~(d)~~ (e)

Absent a prior request, the horsemen's bookkeeper shall disburse monies to the persons entitled to receive same within 15 days after the last race day of the race meeting, including purses for official races, provided that all tests with respect to such races have cleared the drug testing laboratory(ies) as reported by the stewards, and provided further that no protest or appeal has been filed with the stewards or the commission.

~~(e)~~ (f)

In the event a protest or appeal has been filed with the stewards or the commission, the horsemen's bookkeeper shall disburse the purse within 48 hours of receipt of dismissal or a final non-appealable order disposing of such protest or appeal.

[15.2.3.8 NMAC - Rp, 15 NMAC 2.3.8, 04/13/2001; A, 11/15/2001; A, 08/30/2007; A, 06/15/2009; A, 06/30/2009; A, 12/01/2010; A, 05/01/2015; A/E, 06/28/2016; A, 09/15/16; A, 12/16/2016; A, 07/01/2017; A, 09/26/2018]

RACING COMMISSION

15.2.5 NMAC

Explanatory paragraph: This is an amendment to 15.2.5 NMAC, Section 8, effective September 26, 2018.

In 15.2.5.8 NMAC, Subsection A, Paragraph (1), Paragraphs (3) through (10) in Subsection B, and Subsections C through I were not published as there are no changes.

15.2.5.8 ENTRIES AND NOMINATIONS:

B. Procedure:

(2) An entry

shall be in the name of the horse's owner and made by the [owner,] trainer or an assistant trainer. Any

horse which is in a race or on the also-eligible list may not be sold or transferred until that obligation is completed, except with permission of the stewards.

 [15.2.5.8 NMAC - Rp, 15 NMAC 2.5.8, 03/15/2001; A, 05/15/2001; A, 11/15/2001; A, 12/14/2001; A, 03/31/2003; A, 05/30/2003; A, 06/13/2003; A, 09/29/2006; A, 10/31/2006; A, 01/01/2013; A, 06/01/2016; A, 12/16/2016; A, 09/26/2018]

RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.6 NMAC, Sections 8, 9 and 10, effective September 26, 2018. In 15.2.6.8 NMAC Subsection A, Paragraphs (1) through (9) in Subsection B, and Subsections D through E were not published as there were no changes. In 15.2.6.9 NMAC, Subsections A through C, Paragraphs (1) through (4), Paragraphs (6) through (12) of Subsection C, Subsections D through I, Paragraphs (1) through (7) of Subsection J, Subsections K through N were not published as there were no changes. In 15.2.6.10 NMAC Subsection A, Paragraph (2) through (6) of Subsection B, Subsections C through E were not published as there were no changes.

15.2.6.8 VETERINARY PRACTICES:

B. Treatment restrictions:

(10) Veterinarians may possess and dispense compounded medications on association grounds under the following conditions:
(a) The medication is prepared and prescribed in a manner that meets the criteria for compounding established by the federal "Animal Medicinal Drug Use Clarification Act of 1994" (21 CFR

530) and any current food and drug administration compliance policy guides.

(b) The medication is prepared and prescribed in a manner that meets the criteria established in 16.19.30 NMAC by the New Mexico board of pharmacy.

(c) The medication is labeled in accordance with Subsection H of 15.2.6.9 NMAC.

 [15.2.6.8 NMAC - Rp, 15 NMAC 2.6.8, 04/13/2001; A, 07/15/2002; A, 02/15/2012; A, 07/31/2012, A, 05/16/2014; A, 12/16/16; A; 09/26/2018]

15.2.6.9 MEDICATIONS AND PROHIBITED

SUBSTANCES: The classification guidelines contained within the "uniform classification guidelines for foreign substances and recommended penalties and model rule", [July 29, 2017, version 13.3] January 18, 2018, version 13.4 and "association of racing commissioners international inc. controlled therapeutic medication schedule for horses", version 4.0, revised April 20, 2017 by the association of racing commissioners international, are incorporated by reference. Any threshold herein incorporated by reference by inclusion in one of the documents above shall not supersede any threshold or restriction adopted by the commission as specified by this section.

C. Medication restrictions:

(5) The restrictions set forth in Paragraph (3) above do not apply to the following substances:

(a) Topical applications, such as antiseptics, ointments, salves, leg rubs and leg paints which may contain antibiotics (excluding procaine, penicillin and chloramphenicol) but which shall not contain ethanol,

benzocaine, dimethylsulfoxide, lidocaine, steroids or other medications.

(b) Vitamins and electrolytes, provided the vitamins and electrolytes are administered orally and do not contain any medications.

(c) Mentholated products designed to be used and administered topically to the nostril areas.

(d) Products containing eucalyptus oil and peppermint oil, such as Wind-Aid, provided the products are administered orally and do not contain any medications.

J. Out of competition testing:

(8) All horses selected for testing must be presented to the commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, at the time designated, unless the trainer or owner provides verification of an extenuating circumstance that makes it impossible. Penalties for violations of this subsection include:

(a) any horse not presented for testing upon notification absent extenuating circumstances will be placed immediately on the steward's list for a minimum of 60 days and shall be subject to all the requirements set forth in Paragraph (8) of Subsection C of 15.2.6.9 NMAC; and

(b) the licensed trainer of a horse not presented for testing upon notification and absent extenuating circumstances is a [maximum] minimum license suspension of [180 days] one year.

(9) Any licensee who does not comply with the rule or the commission veterinarian for a sample may be subject to disciplinary action.

(10) Cooperation with the commission veterinarian, or any licensed

veterinarian or licensed veterinary technician authorized by the commission, includes:

(a) assisting in the immediate location and identification of the horse selected for out of competition testing; and

(b) assisting the veterinarian in properly procuring the samples.

(11) Out of competition samples will be sent to the official laboratory of the commission, or another laboratory as designated by the commission, with reports made in accordance with the provisions of the medication rules and the penalty provisions therefore.

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 04/13/2001; A, 08/30/2001; A, 07/15/2002; A, 08/15/2002; A, 09/29/2006; A, 10/31/2006; A, 08/30/2007; A, 01/31/2008; A, 03/01/2009; A, 06/15/2009; A, 06/30/2009; A, 09/15/2009; A, 12/15/2009; A, 03/16/2010; A, 07/05/2010; A, 09/01/2010; A, 12/01/2010; A, 11/01/2011; A, 02/15/2012; A, 04/30/2012; A, 07/31/2012; A, 12/14/2012; A, 05/01/2013; A/E, 05/02/2013; A, 09/30/2013; A, 04/01/2014; A, 05/16/2014; A, 08/15/2014; A, 09/15/2014; A, 03/16/2015; A, 09/16/15; A, 03/15/2016; A, 06/15/2016; A/E, 06/28/2016; A, 09/15/2016; A, 12/16/2016; A, 07/01/2017; A, 10/31/17; A, 03/14/2018; A; 09/26/2018]

15.2.6.10 TESTING:

**B. Sample collection:
(1)**

[Sample collection shall be done in accordance with the association of racing commissioner's international drug testing and quality assurance program external chain of custody guidelines, or other guidelines and instructions provided by the official veterinarian.] Sample collection shall be done in accordance to guidelines and instruction provided by the New Mexico racing commission official

veterinarian or the New Mexico racing commission agency director.

[15.2.6.10 NMAC - Rp, 15 NMAC 2.6.10, 04/13/2001; A, 03/30/2007; A, 09/01/2010; A, 07/31/2012; A, 05/01/2013; A, 05/16/2014; A, 06/15/2016; A, 07/01/2017; A, 03/14/2018; A; 09/26/2018]

RACING COMMISSION

16.47.1 NMAC

Explanatory paragraph: This is an amendment to 16.47.1 NMAC, Sections 12 and 17, effective September 26, 2018. In 16.47.1.12 NMAC, Subsections A through F were not published as there were no changes. In 16.47.17 NMAC Subsections A, B, and Paragraphs (1) through (6) of Subsection C were not published as there were no changes.

16.47.1.12 JOCKEYS:

**G. Jockey
Suspensions and Designated Races:**

(1) Prior to the commencement of a race meeting, a listing of designated races by the stewards shall be submitted to the executive director. A copy of such races shall be posted in the jockeys' room and any other such place deemed appropriate by the stewards. The stewards may elevate a race to designated race status after the commencement of the race meet and shall submit it to the executive director and update the listing as above.

(2) A jockey suspended for 10 days or less for a riding violation, unless otherwise specified in the ruling, may continue to exercise horses during the training hours and may fulfill riding engagements in designated races, as designated by the stewards at the beginning of the race meet.

(3) The official ruling where designated races

are permitted shall state: "The term of this suspension shall not prohibit participation in designated race days."

(4) A jockey who is serving a suspension of 10 race days or less may ride in designated races during the suspension under the following conditions:

(a) The race has been specified as a designated race by the stewards officiating at the race meet; and
(b) the jockey is named no later than the time set for the close of entries for the designated race.

(5) When a jockey rides in a designated race (s)
(a)

The jockey agrees that if they participate in only one designated race in New Mexico, the day will be recognized as a suspension day; or
(b)

the jockey agrees that if they participate in more than one designated race in New Mexico, the day will still not be recognized as a suspension day and they will serve an additional race day of suspension in place of the race day on which the jockey rides in a designated race, to be served on the next race day; or
(c)

the jockey agrees that if they participate in one or more designated races in any other jurisdiction while under suspension in New Mexico, the day will still not be recognized as a suspension day and the jockey will serve an additional race day of suspension in place of the race day on which the jockey rides in a designated race, to be served on the next race day.

(6) A jockey may ride all races for the day they are riding a designated race, however, the jockey is to continue to take the next available day until his suspension is completed.

[16.47.1.12 NMAC - Rp, 16 NMAC 47.1.12, 03/15/2001; A, 08/31/2004; A, 10/31/2006; A, 06/15/2009; A, 12/14/2012; A, 12/16/2016; A, 09/26/2018]

16.47.1.17 HUMAN DRUG TESTING:

C. Restricted

activities: It shall be an offense to exercise the privileges granted by a license from this commission if the licensee:

(7) presently has drugs (controlled substances) or alcohol in his/her body. With regard to alcohol, the results of a test showing a reading of more than ~~[:05-percent]~~ five hundredths percent of alcohol in the blood, urine, saliva or other bodily fluids of licensees in non-safety sensitive positions shall be the criterion for a finding of alcohol present in the body. With regard to other controlled substances, presence of the drug in any quantity measured by the testing instrument establishes the presence of the drug for purposes of this paragraph. Licensees in safety sensitive positions, jockeys, starters, assistant starters, exercise riders, pony persons, ambulance personnel, and outriders are in violation of this rule if they have any measurable level of alcohol.

[16.47.1.17 NMAC - Rp, 16 NMAC 47.1.16, 03/15/2001; Rp, 16.47.1.16 NMAC, 07/01/2017; A, 09/26/2018]

REGULATION AND LICENSING DEPARTMENT - PHARMACY, BOARD OF

This is an amendment to 16.19.29 NMAC, Sections 6 through 10, and 12, effective 09-25-2018.

16.19.29.6 OBJECTIVE: The objective of Part 29 of Chapter 19 is to promote the public health and welfare by detecting and preventing substance abuse and misuse, and encouraging appropriate treatment of pain and other conditions for which controlled substances are prescribed. The purpose of the program is to improve access to controlled substances prescription information for legitimate medical needs by allowing a practitioner or a pharmacist to obtain a patient's

pharmaceutical history related to controlled substances. The program's objectives will include education of the public and health care professionals regarding the nature and extent of the problem of drug abuse, and appropriate prescribing and use of controlled substances. ~~[and the medical treatment options for abusers of controlled substances and pain management.]~~

[16.19.29.6 NMAC - N, 07-15-04; A, 03-22-15; A, 09-25-18]

16.19.29.7 DEFINITIONS:

A. "Audit trail information" means any query based information resulting from an authorized prescription monitoring program user's request for a prescription monitoring program report, which could include the user's name, date and time of the query or other related information.

~~[A:]~~ **B. "Board"** means the New Mexico board of pharmacy, herein referred to as the board.

~~[B:]~~ **C. "Controlled substance"** has the meaning given such term in Section 30-31-2 NMSA 1978.

~~[C:]~~ **D. "Delegate"** means an individual authorized as an agent of a practitioner or pharmacist for the purpose of obtaining data from the PMP for review by the practitioner or pharmacist. The delegate must report directly to said practitioner or pharmacist and the practitioner or pharmacist shall be accountable for the delegate's actions:

(1) a pharmacist's delegate must be a certified pharmacy technician or a registered intern;

(2) a pharmacy technician or pharmacist intern may access information to the extent the information relates specifically to a current patient to whom the pharmacist is dispensing or considering dispensing any controlled substance, or for the purposes of a pharmacist providing pharmaceutical care as defined in law.

~~[D:]~~ **E. "Dispenser"** means the person who delivers a schedule II - V controlled substance as defined

in Subsection F of this section to the ultimate user, but does not include the following:

(1) a licensed hospital pharmacy that distributes such substances for the purpose of inpatient hospital care;

(2) a practitioner, or other authorized person who administers such a substance; or

(3) a practitioner who dispenses to the patient no more than 12 dosage units or 72 hours' worth (whichever is less) of such a substance or;

(4) a wholesale distributor of a schedule II - V controlled substance;

(5) clinics, urgent care or emergency departments dispensing to the patient no more than 12 dosage units or 72 hours' worth (whichever is less) of such a substance or;

(6) a veterinarians or veterinary clinics dispensing to non-human patients.

~~[E:]~~ **F. "Patient"** means the ultimate user of a drug for whom a prescription is issued and for whom a drug is dispensed.

~~[F:]~~ **G. "Person"** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity.

~~[G:]~~ **H. "PMP director"** means the individual authorized by the board to administer the prescription monitoring program (PMP).

~~[H:]~~ **I. "PMP report"** means a compilation of data generated from the PMP concerning a patient, a dispenser, a practitioner, or a schedules II - V controlled substance.

~~[I:]~~ **J. "Practitioner"** means a person maintaining licensure pursuant to state law that allows him or her to prescribe controlled substance medications in accordance with that licensure.

~~[J:]~~ **K. "Prescription monitoring program"** (PMP) means a program as described in 16.19.29.6 NMAC which includes a centralized

system to collect, monitor, and analyze electronically, for schedules II - V controlled substances, prescribing and dispensing data submitted by dispensers of which the data is to be used to support efforts in education, research, enforcement and abuse prevention.

~~(K);~~ L. **“Schedule II - V controlled substance”** means a substance listed in schedules II, III, IV, and V as set forth in the Controlled Substance Act, Sections 30-31-5 through 30-31-10 NMSA 1978 or the federal Controlled Substances Regulation (21 U.S.C. 812).

~~(L);~~ M. **“State”** means the state of New Mexico. [16.19.29.7 NMAC - N, 07-15-04; A, 06-11-11; A, 08-31-12; A, 10-24-14; A, 03-22-15; A, 11-27-16; A, 09-25-18]

16.19.29.8 MANDATORY REPORTING OF PRESCRIPTION INFORMATION TO THE PMP:

A. The board shall monitor the dispensing of all schedule II - V controlled substances by all dispensers licensed to dispense such substances to patients in this state.

B. Each dispenser shall submit to the board by electronic means information regarding each prescription dispensed for a drug included under Subsection A of this section. Information to be submitted for each prescription as well as the standards for how this information shall be formatted, not contrary to law, is defined in the PMP data reporting manual available on the state PMP website at <http://nmpmp.org> shall include at a minimum:

- (1) dispenser NPI number;
- (2) dispenser NCPDP number;
- (3) dispenser DEA number;
- (4) patient name;
- (5) patient address;
- (6) patient date of birth;
- (7) patient

- gender;
- (8) reporting status (new, revised, void);
- (9) prescription number;
- (10) date prescription written;
- (11) refills authorized;
- (12) date prescription filled;
- (13) refill number;
- (14) product ID (NDC) + product ID qualifier;
- (15) quantity dispensed;
- (16) days' supply;
- (17) drug dosage units;
- (18) transmission form of Rx origin;
- (19) payment type;
- (20) prescriber NPI number; (except veterinarians)
- (21) prescriber DEA number.

C. ~~[Each dispenser shall submit the information in accordance with transmission methods and frequency established by the board; but shall report at least within one business day of the prescription being filled. The PMP director shall have the authority to approve submission schedules that exceed one business day.]~~ Dispenser reporting:

- (1) each dispenser shall submit the information required under Subsection B of this section in accordance with transmission methods and frequency established by the board; but shall report within one business day of the prescription being filled.
- (2) if a dispenser pharmacy did not dispense any schedule II - V controlled substances during an operating business day, the dispenser shall submit a “zero report” within one business day. Information to be submitted with each zero report as well as the standards for how this information shall be formatted, not

contrary to law, is defined in the PMP data reporting manual available on the state PMP website at <http://nmpmp.org> shall include at a minimum:

- (a) dispenser DEA number;
- (b) reporting start date; and
- (c) reporting end date.

(3) the PMP director shall have the authority to approve submission schedules that exceed one business day.

D. Corrections to information submitted to the PMP must be addressed including:

- (1) file upload or “outstanding uncorrected errors” as defined in the PMP data reporting manual;
- (2) prescriptions that were not dispensed to the patient must be voided from the PMP;
- (3) incorrect information in prescriptions records submitted to the PMP must be

[corrected as soon as possible after the dispenser has been notified.] submitted to the PMP database within five business days once the dispenser has been notified or becomes aware of the incorrect information.

[16.19.29.8 NMAC - N, 07-15-04; A, 06-11-11; A, 08-31-12; A, 03-22-15; A, 03-23-16; A, 09-25-18]

16.19.29.9 DISCLOSURE OF PRESCRIPTION INFORMATION:

A. Prescription information submitted to the board shall not be subject to the Inspection of the Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978 and shall be confidential except as provided in Subsections C through G of 16.19.29.9 NMAC.

B. The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained in the PMP is not disclosed to persons except as provided in Subsection C through G of 16.19.29.9 NMAC.

C. ~~[After receiving-~~

a complaint, the board inspectors shall review the relevant prescription information. If there is reasonable cause to believe a violation of law or breach of professional standards may have occurred, the board shall notify the appropriate law enforcement or professional licensing, certification or regulatory agency or entity, and provide prescription information required for an investigation. Board inspectors may review prescription information after receiving complaints, and in the course of their enforcement of board administered statutes and regulations.

D. The board shall be authorized to provide PMP information to the following persons:

(1) persons authorized to prescribe or dispense controlled substances, for the purpose of providing medical or pharmaceutical care for their patients;

(2) [a delegate designated by a practitioner; or pharmacist; who must also maintain an active account, can designate one or more (up to four) delegates for the purpose of requesting and receiving PMP reports for the practitioner or pharmacist; the practitioner or pharmacist shall be responsible for notifying the PMP within 10 days of a delegate's authorization ending.] a consultant pharmacist for the purpose of providing pharmaceutical care for a facility's patients; and in ensuring that facility records appropriately account for controlled substance receipt, administration and disposition;

(3) [state licensing boards, including the medical board, board of nursing, board of veterinary medicine, board of dental health care, board of examiners in optometry, osteopathic examiners board, acupuncture & oriental medicine board, and podiatry board, as the PMP information relates to their licensees;] a delegate designated by a practitioner; or pharmacist; who must also maintain an active account, can designate one or more (up to four) delegates for the purpose of requesting and receiving PMP reports for the practitioner or pharmacist; the practitioner or pharmacist shall

be responsible for terminating the delegate's access to the PMP within five business days of a delegate's authorization ending;

(4)

[professional licensing authorities of other states if their licensees practice in this state or prescriptions provided by their licensees are dispensed in this state;] state practitioner licensing boards whose licensees have prescriptive authority for controlled substances, including the medical board, board of nursing, board of veterinarian medicine, board of dental health care, board of examiners in optometry, board of osteopathic medicine, board of acupuncture and oriental medicine, and board of podiatry, as the PMP information relates to their licensees;

(5) practitioner

licensing authorities of other states if their licensees practice in this state or prescriptions provided by their licensees are dispensed in this state;

(6) local,

state and federal law enforcement or prosecutorial officials engaged in an ongoing investigation of an individual in the enforcement of the laws governing licit drugs;

(7) the state

human services department regarding medicaid program recipients;

(8) a state

metropolitan, magistrate and district, or federal court as required by a grand jury subpoena or criminal court order;

(9) state drug

court personnel as authorized by the PMP director;

(10)

personnel of the board for purposes of administration and enforcement of this rule or of 16.19.20 NMAC;

(11)

the prescription monitoring program of another state or group of states with whom the state has established an interoperability agreement;

(12)

a living individual who request's his or her own PMP report in accordance with procedures established under the Pharmacy Act, Subsection D of Section 61-11-2 NMSA 1978 and Subsection H of 16.19.6.23 NMAC, or an agent authorized by the living

individual along with a valid HIPAA release form or court issued subpoena, or;

(13)

a parent to have access to the prescription records about his or her minor child, as his or her minor child's personal representative when such access is not inconsistent with state or other laws;

(14)

licensed healthcare professionals (nurses, pharmacists and practitioners) from Medicare, health insurers, workers compensation program/ insurers and pharmacy benefit managers for persons enrolled in or covered by their programs, as part of patient care for those persons.

E. The board shall use de-identified data obtained from the PMP database to identify and report to state and local public health authorities the geographic areas of the state where anomalous prescribing dispensing or use of controlled substances is occurring.

F. The board shall share PMP database data with the department of health for the purpose of tracking inappropriate prescribing and misuse of controlled substances, including drug overdose.

G. The board shall provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients and persons who have received prescriptions from dispensers.

H. PMP information gained from other states' prescription monitoring programs shall not be subject to civil subpoena, nor shall such information be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records be deemed admissible as evidence in any civil proceeding for any reason.

[16.19.29.9 NMAC - N, 07-15-04; A, 06-11-11; A, 08-31-12; A, 03-22-15; A, 11-27-16; A, 09-25-18]

16.19.29.10 [RESERVED]
DISCLOSURE OF AUDIT TRAIL INFORMATION:

A. Audit trail information maintained by the board shall not be subject to the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978, and shall be confidential except as provided in Subsection C and D of 16.19.29.10 NMAC.

B. The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained in the PMP is not disclosed to persons except as provided in Subsection C and D of 16.19.29.10 NMAC.

C. Board inspectors may review audit trail information after receiving complaints, and in the course of their enforcement of board administered statutes and regulations.

D. The board shall be authorized to provide audit trail information to the following persons:

(1) state practitioner licensing boards whose licensees have prescriptive authority for controlled substances, including the medical board, board of nursing, board of veterinary medicine, board of dental health care, board of optometry, board of osteopathic medicine, board of acupuncture and oriental medicine, and board of podiatry, as the audit trail information relates to their licensees for the purposes of reviewing compliance with PMP utilization;

(2) practitioner licensing authorities of other states if their licensees practice in this state or prescriptions provided by their licensees are dispensed in this state as the audit trail information relates to their licensees for the purposes of reviewing compliance with PMP utilization requirements;

(3) personnel of the board for purposes of administration and enforcement of this rule or of 16.19.20 NMAC;

(4) the board shall share PMP database data with the department of health for the purpose of tracking inappropriate prescribing and misuse of controlled substances, including drug overdose.

E. Audit trail

information shall not be subject to civil subpoena, nor shall such information be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records be deemed admissible as evidence in any civil proceeding for any reason.
[16.19.29.10 NMAC - N, 07-15-04; A, 06-11-11; Repealed, 03-22-15; A, 09-25-18]

16.19.29.12 REGISTRATION FOR ACCESS TO PRESCRIPTION INFORMATION:

A. Persons authorized for access to PMP information as listed in [~~Paragraphs (1) through (9) and (13)~~] Paragraphs (1) through (10) and (14) of Subsection D of 16.19.29.9 NMAC must apply for access as described at the PMP website located at <http://nmpmp.org> or as otherwise indicated. Persons granted access must maintain individual accounts and shall not share access information with other persons.

B. All persons authorized for access to PMP information and applying for such access to the PMP shall successfully complete a web based training program as determined by the PMP director.

C. Persons reporting prescription information to the PMP, but not authorized for access to PMP information must also apply for access as described at the PMP website located at <http://nmpmp.org> or as otherwise indicated.

D. The PMP director shall have the authority to set account access and registration renewal requirements necessary for accounts to be considered active and shall also have authority to cancel inactive accounts.

[16.19.29.12 NMAC - N, 07-15-04; 16.19.29.12 NMAC - N, 06-11-11; A, 08-31-12; A, 03-22-15; A, 11-27-16; A, 09-25-18]

SUPERINTENDENT OF INSURANCE

**TITLE 13 INSURANCE
CHAPTER 10 HEALTH INSURANCE
PART 29 DEFINITIONS**

13.10.29.1 ISSUING AGENCY: Office of Superintendent of Insurance (OSI), Life and Health (L&H).
[13.10.29.1 NMAC - N, 10/01/2018]

13.10.29.2 SCOPE: This rule applies to all health insurance carriers, including health maintenance organizations, individual health plans, group and blanket health plans, provider service networks and nonprofit healthcare plans that offer or administer health benefits plans, including health benefits plans and managed health care plans subject to the insurance laws and regulations of this state.
[13.10.29.2 NMAC - N, 10/01/2018]

13.10.29.3 STATUTORY AUTHORITY: Sections 59A-2-8, 59A-2-9, 59A-7-3, 59A-18-2, 59A-18-13.2, 59A-18-13.3, 59A-18-16.2, 59A-22-1 et seq., 59A-23-2, 59A-23-3, and 59A-46-1 et seq. NMSA 1978.
[13.10.29.3 NMAC - N, 10/01/2018]

13.10.29.4 DURATION: Permanent.
[13.10.29.4 NMAC - N, 10/01/2018]

13.10.29.5 EFFECTIVE DATE: October 1, 2018, unless a later date is cited at the end of a section.
[13.10.29.5 NMAC - N, 10/01/2018]

13.10.29.6 OBJECTIVE: The purpose of this rule is to standardize the definitions utilized for rules applicable to health insurance carriers as defined by the scope of this rule in 13.10.29.2 NMAC.
[13.10.29.6 NMAC - N, 10/01/2018]

13.10.29.7 DEFINITIONS:
A. Terms beginning with the letter "A":

(1) "Accrued

liability” means liabilities established on the date an injury is sustained or an illness commences.

(2)

“Ambulance service” means any transportation service designated and used or intended to be used for the transportation of sick or injured persons.

(3)

“Ambulatory surgical center” means a facility where health care providers perform surgeries, including diagnostic and preventive surgeries that do not require hospital admission.

(4)

“Appointment waiting time” means the time from the initial request for health care services by a covered person or the covered person’s treating provider to the earliest date offered for the appointment for services inclusive of the time for obtaining authorization from the health insurance carrier or completing any other condition or requirement of the carrier or its participating providers.

(5)

“Authorized representative of a covered person” means an individual selected and authorized in writing by a covered person to represent the covered person’s interests in matters related to the provision of services under a health benefits plan. Health care professionals and health insurance agents and brokers may serve as authorized representatives of covered persons.

(6)

“Authorized representative of a health insurance carrier” means an individual or organization that is selected by the insurance company to represent its interests in an aspect of the regulatory or hearing process.

B. Terms beginning with the letter “B”:

(1)

“Behavioral health services” means assessment, diagnosis, treatment or counseling in the context of a professional relationship to assist an individual or group alleviate behavioral symptoms, conditions or disorders, including mental health diagnoses and substance use

disorders, as well as other services to address developmental disability or developmental delay.

(2)

“Blanket health insurance” is a form of health insurance covering special groups of not fewer than ten persons that meets the criteria outlined in Section 59A-23-2 NMSA 1978.

(3)

“Business day” means a consecutive 24-hour period, excluding weekends or state holidays.

C. Terms beginning with the letter “C”:

(1)

“Certificate” means any certificate issued under an individual or group accident and health insurance policy that has been delivered or issued for delivery in this state, regardless of the state in which the policyholder is domiciled.

(2)

“Certification of service” means a determination by a health insurance carrier that a health care service requested by a health care professional or covered person has been reviewed and, based upon the information available, is a covered benefit and meets the carrier’s requirements for medical necessity, appropriateness, health care setting, level of care and effectiveness, and the requested health care service is therefore approved. The certification of service can take place following the health carrier’s utilization review process.

(3)

“Certified nurse-midwife” means any person who is licensed by the board of nursing as a registered nurse and who is licensed by the New Mexico department of health as a certified nurse-midwife.

(4)

“Certified nurse practitioner” means a registered nurse whose qualifications are endorsed by the board of nursing for expanded practice as a certified nurse practitioner and whose name and pertinent information are entered on the list of certified nurse practitioners maintained by the board of nursing.

(5)

means a request from a provider for payment for health care services rendered.

(6)

“Clinical peer” means a physician or other health care professional who holds a similar non-restricted license in a state or territory of the United States and in the same or similar specialty as typically manages the medical condition, procedure, or treatment under review.

(7)

“Clinical review criteria” means the written screening procedures, decision abstracts, clinical protocols and practice guidelines used by a health insurance carrier to determine the medical necessity and appropriateness of health care services.

(8)

“Co-insurance” is a cost-sharing method that requires a covered person to pay a stated percentage of medical or pharmaceutical expenses after the deductible amount, if any, is paid; co-insurance rates may differ for different types of services under the same health benefits plan.

(9)

“Copayment” is a cost-sharing method that requires a covered person to pay a fixed dollar amount when a medical or pharmaceutical service is received, with the health insurance carrier paying the allowed balance; there may be different copayment amounts for different types of services under the same health benefits plan.

(10)

“Continuous quality improvement” means ongoing and systematic efforts to measure, evaluate, and improve a health insurance carrier’s processes and procedures in order to continually improve the quality of health care services provided to covered persons.

(11)

“Cost-sharing” means a copayment, co-insurance, deductible, or any other form of financial obligation of a covered person other than premium or share of premium, or any combination of any of these financial obligations as defined by the terms of the health benefits plan.

(12)

“Covered benefits” means those health care services to which a covered person

is entitled under the terms of a health benefits plan.

(13)

“Covered person” or **“enrollee”** means a subscriber, policyholder or subscriber’s enrolled dependent or dependents, or other individual participating in a health benefits plan.

(14)

“Credentialing” means the process of obtaining, verifying and evaluating information about a provider when the provider applies to become a participating provider within a health insurance carrier’s network.

D. Terms beginning with the letter “D”:

(1) **“Day”**

or **“Days”** shall be interpreted as follows, unless otherwise specified:

(a)

one to five days means only working days and excludes weekends and state holidays; and

(b)

six or more days means calendar days, including weekends and state holidays.

(2)

“Deductible” means a fixed dollar amount that a covered person may be required to pay during a benefit period before the health insurance carrier begins payment for covered benefits; health benefits plans may have both individual and family deductibles and separate deductibles for specific services.

(3)

“Designated rating area” means a geographic unit designated by the superintendent and used by insurers to determine health benefits plan premiums.

E. Terms beginning with the letter “E”:

(1)

“Emergency care” means health care procedures, treatments or services delivered to a covered person after the sudden onset of what reasonably appears to be a medical or behavioral health condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could be expected by a reasonable layperson to result in jeopardy to a person’s physical or mental health or to the

health or safety of a fetus or pregnant person, serious impairment of bodily function, serious dysfunction of a bodily organ or part or disfigurement to a person;

(2)

“Enrollee” or **“covered person”** means a subscriber, policyholder or subscriber’s enrolled dependent or dependents, or other individual participating in a health benefits plan.

(3) **“Essential**

community provider (ECP)” means a provider as defined in 45 C.F.R. §156.235(c).

(4) **“Evidence**

of coverage (EOC)” means a specific document containing a clear, conspicuous, concise and legible written statement of the essential features and services covered by a health benefits plan given to the covered person by the health insurance carrier or group contract holder, which may include a separate summary of benefits as defined in Paragraph (6) of Subsection S of this rule. The evidence of coverage may serve as a covered person’s certificate as defined in Paragraph (1) of Subsection C of this rule.

(5)

“Exception” or **“exclusion”** means any provision in a health benefits plan whereby coverage for a specific hazard, condition, or situation is excluded entirely. It is a statement of a risk or risks not assumed by the health insurance carrier under the plan.

F. Terms beginning with the letter “F”:

(1) **“Facility”**

means an entity providing a health care service, including:

(a)

a general, specialized, psychiatric or rehabilitation hospital;

(b) an

ambulatory surgical center;

(c) a

cancer treatment center;

(d) a

birth center;

(e)

an inpatient, outpatient or residential drug and alcohol treatment center;

(f)

a laboratory, diagnostic or other outpatient medical evaluation or testing center;

(g) a

health care provider’s office or clinic;

(h) an

urgent care center; or

(i)

any other therapeutic health care setting.

(2) **“Federally**

qualified health center (FQHC)”

means an entity as defined in 42 C.F.R. §405.2401.

(3) **“FDA”**

means the United States food and drug administration.

G. Terms beginning with the letter “G”: **“Group health insurance”**

means a form of health insurance covering groups of persons, with or without their dependents, and issued upon the criteria outlined in Section 59A-23-3 NMSA 1978.

H. Terms beginning with the letter “H”:

(1) **“Health**

benefits plan” means a policy or agreement entered into, offered or issued by a health insurance carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services.

(2) **“Health**

care professional” means a physician or other health care practitioner, including a pharmacist or practitioner of the healing arts, who is licensed, certified or otherwise authorized by the state to provide health care services consistent with state law.

(3) **“Health**

care service” means a service, supply or procedure for the diagnosis, prevention, treatment, cure or relief of a health condition, illness, injury or disease, including, to the extent covered by the health benefits plan, a physical or behavioral health service.

(4) **“Health**

insurance carrier,” “health carrier,” “carrier” or **“health insurer”** means an entity subject to the insurance laws and regulations of this state, including a health insurance company, a health maintenance organization, a hospital and health services corporation, a

provider service network, a non-profit health care plan or any other entity that contracts or offers to contract, or enters into agreements to provide, deliver, arrange for, pay for or reimburse any costs of health care services, or that provides, offers health benefits plans or managed health care plans in this state.

(5) **“Health maintenance organization (HMO)”** is as defined in Subsection N of Section 59A-46-2 NMSA 1978.

(6) **“Hospital”** means a facility offering inpatient services, nursing and overnight care for three or more individuals on a 24-hour-per-day, seven-days-per-week basis for the diagnosis and treatment of physical, behavioral or rehabilitative health conditions.

I. Terms beginning with the letter “I”: “Initial determination” means a formal written disposition by a health insurance carrier affecting a covered person’s rights to benefits, including full or partial denial of a claim or request for coverage or its initial administrative decision pursuant to the Grievance Procedures set forth at 13.10.17 NMAC.

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

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

L. Terms beginning with the letter “L: “Limitation” means any provision that restricts coverage under a health benefits plan other than an exception, exclusion or reduction.

M. Terms beginning with the letter “M”:

(1) **“Managed care”** means a system or technique(s) generally used by third-party payors or their agents to affect access to and control payment for health care services. Managed care techniques most often include one or more of the following:

(a) prior, concurrent and retrospective review of the medical necessity and appropriateness of services or site of services;

(b)

contracts with selected health care providers;

(c) financial incentives or disincentives for covered persons to use specific providers, services, prescription drugs or service sites;

(d) controlled access to and coordination of health care services by a case manager; and

(e) payor efforts to identify treatment alternatives and modify benefit restrictions for high-cost patient care.

(2) **“Managed health care bureau (MHCB)”** means the managed health care bureau within the office of superintendent of insurance.

(3) **“Maternity benefits”** means covered benefits for prenatal, intrapartum, perinatal or postpartum care.

(4) **“Medical necessity”** or **“medically necessary”** means health care services determined by a provider, in consultation with the health insurance carrier, to be appropriate or necessary, according to:

(a) any applicable generally accepted principles and practices of good medical care;

(b) practice guidelines developed by the federal government, national or professional medical societies, boards and associations; or

(c) any applicable clinical protocols or practice guidelines developed by the health insurance carrier consistent with such federal, national and professional practice guidelines. These standards shall be applied to decisions related to the diagnosis or direct care and treatment of a physical or behavioral health condition, illness, injury or disease.

(5) **“Medical record”** means all information maintained by a provider relating to the past, present or future physical or behavioral health of a patient, and for other provision of health care services to a patient. This information

includes, but is not limited to the provider’s notes, reports and summaries, and x-rays, laboratory, and other diagnostic test results. A patient’s complete medical record includes information generated and maintained by the provider, as well as other information provided to the provider by the patient, by any other provider who has consulted with or treated the patient in connection with the provision of health care services to the patient. A medical record does not include the patient’s medical billing or health insurance records or forms or communications related thereto.

(6) **“Medicare”** means Title 18 of the Social Security Amendments of 1965, “Health Insurance for Aged and Disabled,” as then constituted or later amended.

(7) **“Medicare supplement policy”** means a group or individual policy of insurance or a subscriber contract other than a policy issued pursuant to a contract under Section 1876 of the Social Security Act (42 U.S.C. Section 1395 et seq.) or an issued policy under a demonstration project specified in 42 U.S.C. Section 1395ss(g) (1) that is advertised, marketed or designed primarily as a supplement to reimbursements under medicare for the hospital, medical or surgical expenses of persons eligible for medicare; “medicare supplement policy” does not include medicare advantage plans established under medicare part C, outpatient prescription drug plans established under medicare part D or any health care prepayment plan (HCPP) that provides benefits pursuant to an agreement under 42 U.S.C. Section 1833(a)(1)(A) of the Social Security Act.

N. Terms beginning with the letter “N”:

(1) **“Network”** means the group or groups of participating providers who provide health care services under a network plan.

(2) **“Network plan”** means a health benefits plan

that either requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers and facilities managed, owned or under contract with or employed by the health insurance carrier.

(3)

“Nonparticipating provider” means a provider who is not a participating provider as defined in Paragraph (1) of Subsection P of this rule. Also known as an out-of-network provider or non-contracted provider.

O. Terms beginning with the letter “O”: **“Obstetrician-gynecologist”** means a physician who is eligible to be or who is board certified by the American board of obstetricians and gynecologists or by the American college of osteopathic obstetricians and gynecologists.

P. Terms beginning with the letter “P”:

(1)

“Participating provider” means a provider who, under an express contract with a health insurance carrier or with its contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment directly or indirectly from the carrier, subject to any cost-sharing required by the health benefits plan. Also known as an in-network provider or contracted provider.

(2)

“Physician assistant (PA)” means a skilled person who is a graduate of a physician assistant or surgeon assistant program approved by a nationally recognized accreditation body or who is currently certified by the national commission on certification of physical assistants, and who is licensed to practice medicine, usually under the supervision of a licensed physician.

(3) **“Post-**

service claim” means a claim submitted to a health insurance carrier by or on behalf of a covered person after health care services have been provided to the covered person.

(4)

“Practitioner of the healing arts”

means a health care professional as defined in Paragraph (2) of Subsection B of Section 59A-22-32 NMSA 1978.

(5)

“Preventive care” means health care services provided for prevention and early detection of disease, illness, injury or other health condition.

(6) **“Primary**

care” means health care services for a range of common physical or behavioral health conditions provided by a physician or non-physician primary care practitioner.

(7) **“Primary**

care practitioner (PCP)” means a health care professional who, within the scope of the professional license, supervises, coordinates and provides initial and basic care to covered persons; who initiates the patient’s referral for specialist care and who maintains continuity of patient care. Primary care practitioners include general practitioners, family practice physicians, geriatricians, internists, pediatricians, obstetrician-gynecologists, physician assistants and nurse practitioners. Pursuant to 13.10.21.7 NMAC, other health care professionals may also serve as primary care practitioners.

(8)

“Prior authorization” or **“pre-certification”** means a pre-service determination made by a health insurance carrier regarding a covered person’s eligibility for health care services based on medical necessity, health benefits coverage and the appropriateness and site of services pursuant to the terms of the health benefits plan.

(9) **“Private**

health insurance cooperative” means a nonprofit corporation formed to arrange for health benefits coverage with health insurance carriers for its participating members, including large and small employers.

(10) **“Product”**

means a discrete package of health insurance benefits that is offered using a particular network type within a service area.

(11)

“Prospective enrollee” means:

(a)

in the case of an individual who is a member of a group, an individual eligible for enrollment in a health benefits plan through the group; or
(b)

in the case of an individual who is not a member of a group or whose group has not purchased or does not intend to purchase a health benefits plan, an individual who has expressed an interest in purchasing individual plan coverage.

(12)

“Prospective review” means utilization review conducted prior to the provision of health care services by the health insurance carrier.

(13)

“Provider” means a licensed health care professional, hospital or other facility authorized to furnish health care services.

(14) **“Provider**

group” means an incorporation or other legal association of providers who work together in proximity and share resources for as well liability that may result from the provision of patient care.

Q. Terms beginning with the letter “Q”: **“Quality assurance plan”** means the ongoing, internal quality assurance program of a health insurance carrier to monitor and evaluate the carrier’s health care services, including its system for credentialing health care professionals to become participating providers with a health benefits plan or otherwise provide services to the carrier’s covered persons.

R. Terms beginning with “R”:

(1)

“Reduction” means any provision that reduces the amount of a benefit; a risk of loss is assumed but payment upon the occurrence of the loss is limited to some amount or period less than otherwise would be payable and the reduction has not been used.

(2)

“Registered lay midwife” means any person who practices lay midwifery and is registered as a lay midwife by the New Mexico department of health.

(3)
“Retrospective review” means utilization review that is conducted following the provision of health care services.

S. Terms beginning with the letter “S”:

(1) **“Second opinion”** means an opportunity or requirement for a covered person to obtain a clinical evaluation to assess the medical necessity and appropriateness of the initial proposed health service, by a provider other than one who originally recommended or denied it

(2)
“Specialist” means a physician or non-physician health care professional who:

(a)
 focuses on a specific area of physical or behavioral health or a specific group of patients; and

(b)
 has successfully completed required training and is recognized by the state in which the health care professional practices to provide specialty care.

(3) **“Specialty care”** means advanced, medically necessary care and treatment by a specialist, preferably in coordination with a primary care practitioner or other health care professional, of specific physical or behavioral health conditions or health conditions that may manifest in a particular age group or other subpopulation.

(4)
“Stabilize” means to provide physical or behavioral health treatment of a condition as may be necessary to ensure, within a reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual to or from a facility or, with respect to an emergency birth with no complications resulting in a continuing emergency, to deliver the child and the placenta.

(5)
“Subscriber” means an individual whose employment or other status, except family dependency, is the basis for eligibility for enrollment in the

health benefits plan, or in the case of an individual contract, the person in whose name the contract is issued.

(6)
“Summary of benefits” means a summary of the benefits and exclusions required to be given prior to or at the time of enrollment to a prospective subscriber or covered person by the health insurance carrier.

(7)
“Superintendent” means the superintendent of insurance, the office of superintendent of insurance (OSI), or employees of OSI acting with the superintendent’s authorization.

T. Terms beginning with the letter “T”:

(1)
“Telemedicine” or **“Telehealth”** means the use by a health care professional of interactive, simultaneous audio and video or store-and-forward technology using information and telecommunications technologies to deliver health care services at a site other than the site where the patient is located, including the use of electronic media for consultation relating to the diagnosis or treatment of the patient in real time or through the use of store-and-forward technology.

(2) **“Tertiary care facility”** means a hospital unit that provides complete perinatal care and intensive care of intrapartum and perinatal high-risk patients with responsibilities for coordination of transport, communication, education and data analysis systems for the geographic area served.

(3) **“Third-party administrator (TPA)”** is as defined in Subsection B of Section 59A-12A-2 NMSA 1978.

(4) **“Tiered network”** means a network that supports a health benefits plan in which there are at least two quantitatively different cost-sharing levels for participating providers who or which furnish the same covered services.

(5)
“Traditional fee-for-service indemnity benefit” means a fee-for-service indemnity benefit as defined in

Subsection LL of 13.10.17.7 NMAC, as a fee-for-service indemnity benefit, not associated with any financial incentives that encourage covered persons to utilize preferred providers, to follow pre-authorization rules, to utilize prescription drug formularies or other cost-saving procedures to obtain prescription drugs, or to otherwise comply with a plan’s incentive program to lower cost and improve quality, regardless of whether the benefit is based on an indemnity form of reimbursement for services.

U. Terms beginning with the letter “U”:

(1) **“Urgent care situation”** means a situation in which a prudent layperson in that circumstance, possessing an average knowledge of medicine and health would believe that he or she does not have an emergency medical condition but needs care expeditiously because:

(a) the life or health of the covered person would otherwise be jeopardized;

(b) the covered person’s ability to regain maximum function would otherwise be jeopardized;

(c) in the opinion of a physician with knowledge of the covered person’s medical condition, delay would subject the covered person to severe pain that cannot be adequately managed without care or treatment; or

(d) the medical exigencies of the case require expedited care; and

(e) the covered person’s claim otherwise involves urgent care.

(2)
“Utilization review” means a system for reviewing the appropriate and efficient allocation of health care services given or proposed to be given to a patient or group of patients.

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

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

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

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

Z. Terms beginning with the letter "Z": [RESERVED]
[13.10.29.7 NMAC - N, 10/01/2018]

HISTORY OF 13.10.29 NMAC: [RESERVED]

TAXATION AND REVENUE DEPARTMENT

The New Mexico Taxation and Revenue Department approved and adopted, at its 7/25/2018 Hearing, to repeal its rule 3.12.12 NMAC - Weight Distance Tax Identification Permit (filed 5/28/2004) and replace it with 3.12.12 NMAC - Weight Distance Tax Identification Permit, adopted on 8/31/2018 and effective 9/25/2018.

TAXATION AND REVENUE DEPARTMENT

**TITLE 3: TAXATION
CHAPTER 12: HIGHWAY USE TAXES AND FEES
PART 12: WEIGHT DISTANCE TAX IDENTIFICATION PERMIT**

3.12.12.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.
[3.12.12.1 NMAC - Rp, 3.12.12.1 NMAC, 9/25/2018]

3.12.12.2 SCOPE: This part applies to all registrants, owners and operators of motor vehicles with a declared gross weight of 26,001 pounds or more if the motor vehicles are used or intended to be used on New Mexico highways, when the motor vehicle is registered with New Mexico.
[3.12.12.2 NMAC - Rp, 3.12.12.2 NMAC, 9/25/2018]

3.12.12.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.

[3.12.12.3 NMAC - Rp, 3.12.12.3 NMAC, 9/25/2018]

3.12.12.4 DURATION: Permanent.
[3.12.12.4 NMAC - Rp, 3.12.12.4 NMAC, 9/25/2018]

3.12.12.5 EFFECTIVE DATE: September 25, 2018, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.12.12.5 NMAC - Rp, 3.12.12.5 NMAC, 9/25/2018]

3.12.12.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Weight Distance Tax Act.
[3.12.12.6 NMAC - Rp, 3.12.12.6 NMAC, 9/25/2018]

3.12.12.7 DEFINITIONS: [RESERVED]
[3.12.12.7 NMAC - Rp, 3.12.12.7 NMAC, 9/25/2018]

3.12.12.8 WEIGHT DISTANCE TAX IDENTIFICATION PERMIT TO BE ISSUED:

A. Upon receipt of an approved application by a motor carrier, the department will issue weight distance tax identification permit(s) to the motor carrier for the number of vehicles they own that are subject to the weight distance tax. The motor carrier will be required to identify each permit they receive to a specific vehicle by indicating the unit and vehicle identification numbers on the face of the permit.

B. The weight distance tax identification permit is an administrative certificate that will be issued on non-reproducible paper to motor carriers who submit an approved application.

C. Weight distance tax identification permits issued by the department will only be valid for the calendar year for which they are issued.

[3.12.12.8 NMAC - Rp, 3.12.12.8 NMAC, 9/25/2018]

3.12.12.9 WEIGHT DISTANCE TAX IDENTIFICATION PERMIT - ADMINISTRATIVE FEE: Any person that applies for and receives a weight distance tax identification permit shall pay an administrative fee. The administrative fee shall be ten dollars (\$10.00) upon the effective date of this regulation. The administrative fee may be increased or decreased by the secretary after due consideration of the costs of issuing and administering weight distance tax identification permits and of enforcing permits use. Persons who have current weight distance tax identification permits will be notified if the secretary changes the fee at least 30 days prior to effective date of a change in the fee. The administrative fee will be deposited in the weight distance tax identification permit fund to pay the costs of issuing and administering weight distance tax identification permits and costs incurred by the department, the motor transportation division of the department of public safety and the department of transportation to enforce the use of such permits by motor carriers in accordance with the Weight Distance Tax Act. The administrative fee will be imposed for every permit, including annual renewals and replacements.
[3.12.12.9 NMAC - Rp, 3.12.12.9, 9/25/2018]

History of 3.12.12 NMAC: [RESERVED]

History of Repealed Material: 3.12.12.. NMAC, Weight Distance Tax Identification Permit 5/28/2004 - Repealed effective 9/25/2018.

NMAC History: 3.12.12.. NMAC, Weight Distance Tax Identification Permit 5/28/2004 was replaced by 3.12.12.. NMAC, Weight Distance Tax Identification Permit, effective 9/25/2018.

TAXATION AND REVENUE DEPARTMENT

**TITLE 3: TAXATION
CHAPTER 12: HIGHWAY USE TAXES AND FEES
PART 99: SPECIAL FUEL USER PERMITS**

3.12.99.1 ISSUING

AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P. O. Box 630, Santa Fe, NM 87504-0630.
[3.12.99.1 NMAC - N/E, 9/25/2018]

3.12.99.2 SCOPE: This part applies to commercial motor carriers using special fuel and having a gross vehicle weight in excess of twenty-six thousand pounds operating in the state of New Mexico.
[3.12.99.2 NMAC - N/E, 9/25/2018]

3.12.99.3 STATUTORY AUTHORITY: Sections 9-5-1, 9-11-6.2, 7-16A-2.1, 7-16A-19 and 7-16A-19.1 NMSA 1978.
[3.12.99.3 NMAC - N/E, 9/25/2018]

3.12.99.4 DURATION: Permanent.
[3.12.99.4 NMAC - N/E, 9/25/2018]

3.12.99.5 EFFECTIVE DATE: September 25, 2018, unless a later date is cited at the end of a section.
[3.12.99.5 NMAC - N/E, 9/25/2018]

3.12.99.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the Special Fuel Use Permits provisions of Chapter 7, Article 16A of NMSA 1978.
[3.12.99.6 NMAC - N/E, 9/25/2018]

3.12.99.7 DEFINITIONS: As used in this rule:

A. "Department" has the same meaning as defined in Subsection F of 7-16A-2 NMSA 1978.

B. "International border commercial zone" has the same meaning as defined in

Subsection D of 7-16A-19.1 NMSA 1978.

C. "Person" has the same meaning as defined in Subsection K of 7-16A-2 NMSA 1978.

D. "Special fuel user" has the same meaning as defined in Subsection R of 7-16A-2 NMSA 1978.
[3.12.99.7 NMAC - N/E, 9/25/2018]

3.12.99.8 TEMPORARY SPECIAL FUEL USER PERMIT:

A. On a form provided by the department, a special fuel user whose vehicle is not registered with the department shall acquire from the department, before operating the vehicle on New Mexico highways, a temporary special fuel user permit valid for one calendar day only or for one entry into and one exit out of New Mexico.

B. A special fuel user whose vehicle is not registered with the department, that applies for a temporary special fuel user permit valid for one calendar day only, for one entry into and one exit out of New Mexico, shall pay five dollars (\$5.00) for each motor vehicle.

C. A special fuel user operating under a temporary special fuel user permit shall pay a special fuel user tax of five cents (\$.05) per mile for each mile traveled in New Mexico.
[3.12.99.8 NMAC - N/E, 9/25/2018]

3.12.99.9 BORDER CROSSING SPECIAL FUEL USER PERMIT:

A. A special fuel user who operates a commercial motor carrier vehicle registered or titled in Mexico, who is engaged primarily in movement across the New Mexico-Mexico border and into or from an international border commercial zone and whose exclusive use of New Mexico highways is limited to an area within ten miles of the New Mexico-Mexico border, may apply for, on a form approved by the department, a quarterly, semi-annual or annual border crossing special fuel user permit.

B. The department shall issue the permit if it approves the application and upon payment of the fee for the border crossing special fuel user permit.

C. The fee for the border crossing special fuel user permit shall be:

(1) for a quarterly permit, one hundred twenty-five dollars (\$125);

(2) for a semi-annual permit, two hundred dollars (\$200); and

(3) for an annual permit, three hundred fifty dollars (\$350).

D. A special fuel user holding a valid border crossing special fuel user permit and operating within the specified 10 miles of the New Mexico - Mexico border, as provided above, shall be exempt from the five dollar (\$5.00) temporary special fuel user permit specified in Paragraph (1) of Subsection A and Subsection C of 7-16A-19 NMSA 1978 and exempt from the five cent (\$.05) per mile special fuel user tax pursuant to Subsections E and F of 7-16A-2.1 NMSA 1978.

E. A special fuel user holding a valid border crossing special fuel user permit and operating outside the specified 10 miles of the New Mexico-Mexico border, shall acquire a temporary special fuel user permit for a fee of five dollars (\$5.00) and shall pay the special fuel user tax of five cent (\$.05) per mile for each mile traveled in New Mexico.
[3.12.99.9 NMAC - N/E, 9/25/2018]

3.12.99.10 VIOLATION OF THE SPECIAL FUELS SUPPLIER TAX ACT:

A. It is a violation of the special fuels supplier tax act for a person to act as a temporary special fuel user without possessing a valid temporary special fuel user permit issued by the department.

B. It is a violation of the special fuels supplier tax act for a person holding a valid border crossing special fuel user permit to travel in the motor carrier vehicle for which the permit was issued on New Mexico

highways, outside of the area in which the permit authorizes travel, unless the person may otherwise under law engage in that travel.

C. In addition to any other penalty that may apply, a person who violates the terms of use of a border crossing special fuel user permit, is subject to a fine of three hundred dollars (\$300).
[3.12.99.10 NMAC - N/E, 9/25/2018]

**3.12.99.11
REVOCATION OF SPECIAL
FUEL USER PERMITS:**

A. After notice and a hearing, the department may revoke the border crossing special fuel user permit of a special fuel user found to have violated the special fuels supplier tax act.

B. The hearing shall be conducted pursuant to the tax administration act.
[3.12.99.11 NMAC - N/E, 9/25/2018]

**History of 3.12.99 NMAC:
[RESERVED]**

**TAXATION AND REVENUE
DEPARTMENT**

**This is an amendment to 3.1.3
NMAC, Section 13, effective
9/25/2018.**

**3.1.3.13 AUTHORIZED
REPRESENTATIVE**

A. The authorization of any person [~~other than an attorney or accountant licensed to practice in New Mexico or, with respect to income tax only, an enrolled agent~~] to be a representative of a taxpayer must be in writing, must contain sufficient information for the department to identify the taxpayer and the representative and must be signed by the taxpayer. The authorization must be in a form prescribed by the department, and renewed at an interval set by the department.

B. Upon presentation of a proper authorization from a taxpayer's representative, the secretary or employee may reveal information concerning the taxpayer

and the taxpayer's return. If, however, the adversarial position of the representative or some change of circumstance in the relationship between the taxpayer and the taxpayer's authorized representative leads the secretary or employee to question the continued validity of the authorization, the secretary or employee may inquire of the taxpayer whether the authorization remains valid. A taxpayer may revoke an authorization of a person to be the taxpayer's representative by filing a document with the department so stating.

[11/5/85, 8/15/90, 10/31/96; 3.1.3.13 NMAC - Rn & A, 3 NMAC 1.3.13, 12/29/00, 9/25/2018]

**TAXATION AND REVENUE
DEPARTMENT**

**This is an amendment to 3.2.1
NMAC, Sections 12 and 14,
effective 9/25/2018.**

**3.2.1.12 ENGAGING IN
BUSINESS**

A. Affiliated corporations:

(1) When a corporation is carrying on or causing to be carried on, with a wholly owned subsidiary, any activity with the purpose of direct or indirect benefit, both the corporation and the subsidiary are "engaging in business".

(2) Example: B corporation, which operates a hotel supply house, sells supplies only to C Hotel Corporation, which owns all the stock in B Corporation. B claims that since it sells only to C, its parent corporation, it is not engaging in business. B and C are each engaging in business because the purpose of their activities is to benefit either or both corporations.

B. Corporation not for profit: When a corporation not for profit is carrying on or is causing to be carried on any activity with the purpose of direct or indirect benefit it is "engaging in business".

C. Leasing property:
(1) Persons

leasing property employed in New Mexico are engaging in business within the state for the purpose of direct or indirect benefit.

(2) Example: X, an out of state business, leases construction machinery to Y who employs the leased property in New Mexico. X asks if X is engaged in business in New Mexico for purpose of registration, reporting and paying the gross receipts tax. X is engaged in business in New Mexico.

D. Hotels and motels providing interstate telecommunications service to guests:

(1) Hotels, motels and similar establishments offering interstate telecommunications service to guests in conjunction with the rental of rooms or other facilities are not "engaging in interstate telecommunications business" for purposes of the Interstate Telecommunications Gross Receipts Tax Act.

(2) A hotel, motel or similar establishment is primarily engaged in the business of renting rooms and meeting facilities to the general public. Providing interstate telephone service or other interstate telecommunications services to guests is incidental to the primary business of the hotel, motel or similar establishment. Receipts from providing such service are additional receipts from engaging in the primary business and are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(3) Subsection D of 3.2.1.12 NMAC is retroactively applicable to transactions occurring on or after July 1, 1992.

E. Persons not engaging in business - foster parents: Individuals who enter into an agreement with the state of New Mexico to provide foster family care for children placed with them by the state are not thereby engaging in business. Receipts of the individuals from providing foster care pursuant to such an agreement are not receipts from engaging in business.

F. Persons not engaging in business - certain

caretakers: Individuals who enter into an agreement with the state of New Mexico to provide non-medical personal care and housekeeping assistance to low income disabled adults pursuant to the critical in home care program are not thereby engaging in business. Receipts of the individuals from such caretaking activities are not receipts from engaging in business.

G. Persons not engaging in business - home care for developmentally disabled family members: Any individual who enters into an agreement with the state of New Mexico to provide home based support services for developmentally disabled individuals in the home of the developmentally disabled individuals or the home of the support provider and receives payments which under 26 USCA 131 are “qualified foster care payments” is not thereby engaging in business. Receipts of the individuals which are “qualified foster care payments” from providing such home based support services pursuant to such an agreement are not receipts from engaging in business.

H. Owner engaged in business when selling to an owned entity:

(1) Except as provided in Paragraph (2) of this Subsection, when an owner of an entity sells property in New Mexico to, leases property employed in New Mexico to, or performs services in New Mexico for the entity or other owners of the entity, the owner is engaging in business in New Mexico except when the transaction may be characterized for federal income tax purposes as a contribution of capital.

(2) When a partner or interest holder in an entity taxed as a partnership is allocated profits or receives a guaranteed payment or other distributions for activities undertaken as a partner on behalf of the partnership such as administrative services done solely for the benefit of the partnership or for activities for third-parties transacting business with the partnership, the partner is not engaging in business separately from the partnership

and the allocations, payments, or distributions are not gross receipts.

A partner may, however engage in business separately from the partnership and any transactions between that partner and the partnership, where the partner is not acting as a partner on behalf of the partnership, constitute gross receipts from engaging in business. Indicia that a partner is not acting as a partner on behalf of the partnership may include:

(a) that the partner engages in similar transactions with third parties other than the partnership; or

(b) that the allocation, payment, or distribution made by the partnership is not made under the partnership agreement; or

(c) that the partner’s transaction(s) with the partnership involve the sale or lease of goods or the sale of services not provided by the partnership to third parties.

~~(2)~~ **(3)** For the purposes of Subsection H of 3.2.1.12 NMAC, an “entity” means any business organization or association other than a sole proprietorship.

I. Persons not engaging in business - sale or exchange of renewable-fueled electricity generated from a system installed in a personal residence. Any individual who sells or transfers electricity to an entity engaged in the business of selling electricity, for which the individual receives monetary compensation or credit against a future month’s electricity use, is not engaged in business if the electricity is generated from a renewable-fueled system installed in a personal residence.

[12/5/1969, 3/9/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 9/3/1992, 7/19/1994, 11/15/1996, 5/14/1999, 6/15/1999, 10/29/1999; 3.2.1.12 NMAC - Rn & A, 3 NMAC 2.1.12, 4/30/2001; A, 9/30/2010; A, 9/25/2018]

3.2.1.14 GROSS RECEIPTS - GENERAL

A. Gross receipts: Unless the receipt is from one or more of the following, it is not taxable:

- (1) selling property in New Mexico;
- (2) leasing property employed in New Mexico;
- (3) performing services outside of New Mexico the product of which is initially used in New Mexico; or
- (4) performing services in New Mexico.

B. Credit card sales: Gross receipts of the seller of property or services or the lessor of property include the full sale or lease contract amount of any property or service sold or of any property leased when payment is made through the use of a credit card which has been issued by a third party. The seller or lessor may not deduct from gross receipts the amount charged by the credit card company for converting the account into cash.

C. Consideration other than money:

- (1) If the consideration received by the seller or lessor for the item sold or leased or for the service performed is in a form other than money, the fair market value of the consideration received or the fair market value of the item sold or of the lease or of the service performed must be included in gross receipts. The value of the consideration received or the item sold or of the lease or of the service performed is the fair market value at the time of the transaction.

(2) Example 1: X has Y, a garage owner, repair X’s automobile. In exchange for the service performed by Y, X gives Y a deer rifle. The fair market value of the rifle at the time of the transaction is the measure of Y’s gross receipts.

(3) Example 2: X, a New Mexico construction company, contracts with Y Electric Co-op Association for the construction of transmission lines. The contract requires X to furnish all materials and labor for a fixed price;

however, it permits a reduction of the contract price in the amount of the value of materials furnished by Y. The gross receipts of X include the value of any material supplied by the cooperative.

(4) Example

3: X is a firm engaged in the construction business in New Mexico. The receipts of X from the sale of a completed construction project include the value of construction services performed by the buyer of the construction project pursuant to a "sweat labor contract" if the performance of services are required to fulfill a contractual obligation of X. A "sweat labor contract", as used in this example, is a contract whereby the buyer of a completed construction project agrees to perform certain construction services for the seller of the construction project as partial payment of the sale price of the construction project.

(5) Example

4: M agrees to drill an oil well for the XYZ Oil Company. The contract provides that M will drill the well for \$7.50 per foot and a [7/8] one-eighth interest in the minerals which belong to XYZ. The well, when completed, produces forty barrels of oil per day for a period which is expected to last for [ten] 10 years. M admits that the \$7.50 per foot that is received from drilling the well are gross receipts subject to the gross receipts tax. M questions whether the value of the [7/8] one-eighth interest is gross receipts. The value of the mineral interest is consideration and must be included in M's gross receipts. It will be valued at its fair market value at the time the well is completed.

(6) Example

5: The A Oil Company hires the B Drilling Company to drill a well on its property. A furnishes drill bits to B, but A has the right to deduct the rental value of the bits from the total footage or day rate price it agrees to pay B for the drilling. The use of the drill bits is partial consideration, furnished by A, for the performance of the drilling service by B and the reasonable value of their use must be included in B's gross receipts. A also must include

the rental value of the bits in its gross receipts because it is leasing the drill bits to B. However, if A furnishes drill bits to B and does not have the right to deduct the rental value of the bits from the total footage or day rate price which it has agreed to pay B for the drilling, then no amounts from the drill bit transaction are includable in either A's or B's gross receipts. The same applies if B furnishes the drill bits.

D. Consideration less than fair market value:

(1) In

a transaction where the actual consideration received does not represent the fair market value of the property sold or leased or of the service sold, the fair market value shall be included in the gross receipts of the seller or lessor. Fair market value is the value which the property or service can command in an arms length transaction between two independent parties in an open market.

(2) The

following example illustrates the application of Section 7-9-3.5 NMSA 1978 with respect to consideration less than fair market value. Example: X, a land and cattle company, is a corporation which is affiliated with Y, an equipment company. Because of their affiliation, X leases a \$30,000 tractor from Y for \$1.00 a month. Y reports that its gross receipts from this transaction are \$1.00. Y's gross receipts are the market value of a monthly lease of a \$30,000 tractor. Y must pay gross receipts tax on the adjusted amount.

E. Sale of commercial paper:

(1) The full

sale or leasing contract amount of property or service sold, excluding any type of time price differential, is included in the seller's gross receipts even though the seller subsequently sells the contract and does not receive the total contract price in money. No deduction is allowed for discounts suffered from the sale of commercial paper arising from a sale or lease.

(2) Example:

X sells a washing machine to Y

under a conditional sales contract in which the full sale contract amount, excluding time price differential, is \$120. The principal on the washing machine is to be paid for over a twelve month period at \$10 a month. X collects \$20 of principal under the contract and then assigns its rights to W for \$90. Depending upon the method regularly used for reporting gross receipts, X would either pay tax on the full contract amount for the month in which the sale was made (accrual basis) or pay tax measured by the receipts as they were received (cash basis). If X had elected to pay tax measured by its receipts as they were received, X would have reported \$20 during the first two months from this transaction. When X assigned the contract, X would have to include \$100 in the gross receipts for the third month since a deduction is not allowed for a discount suffered upon the transfer of a conditional sales contract.

F. Interdepartmental transfers:

(1) Receipts

derived from an interdepartmental transfer of services or property are not subject to the gross receipts tax. To qualify as an interdepartmental transfer, the transfer must be a transfer of services or property within the same corporation or other taxable entity.

(2) Example:

C, a company located in New Mexico, operates both an electric utility and a water utility. C records on its books the sale of the electricity to the water utility in order to comply with the ~~[Public Service Commission]~~ public service commission regulations but does not thereby incur gross receipts as that term is used in the Gross Receipts and Compensating Tax Act. Such book entries do not record receipts from selling property in New Mexico but record interdepartmental transfers. However, the value of the electricity at the time of its conversion to use by the water utility is subject to the compensating tax.

G. Service charges computed on balances:

(1) Service

charges on accounts receivable balances or installment sales contracts which are not computed at the time of sale, are time-price differential charges, are not subject to the gross receipts tax and are not to be included in the sales price of an item brought into New Mexico for the purpose of computing the compensating tax.

(2) Example: X corporation located outside New Mexico is engaged in the business of publishing books. X has several nonemployee salesmen soliciting orders on a commission basis in New Mexico. Every such order is forwarded to X's main office where it is reviewed and then either accepted or rejected. Accepted orders are shipped directly to the purchaser from X's binderies located outside of New Mexico. Since X has salesmen in New Mexico, it is an agent for collection of the compensating tax, pursuant to Section 7 9 10 NMSA 1978. The purchaser may elect to pay for the books on an installment basis. If after ~~ninety (90)~~ 90 days from purchase, the balance has not been paid, a one percent [~~1%~~] per month service charge is added to the balance. This charge is not precomputed and no portion thereof is due unless the purchaser elects to pay on an installment plan extending over ~~ninety (90)~~ 90 days. Such a charge is a time-price differential and is not a part of the sales price of the item. Therefore, it should not be included in the sales price when considering the amount of compensating tax that should be paid over to the state of New Mexico.

H. Corporations and organizations not organized for profit - fund raising activities:

(1) Receipts of a corporation or organization not organized for profit, other than an organization granted a 501(c)(3) determination by the internal revenue service, derived from fund raising activities which are in the nature of donations, gifts, and contributions are not subject to the gross receipts tax.

(2) The department will presume that the total receipts of such a nonprofit

organization from a fund raising activity are receipts derived from a taxable activity if the project involves the performance of any service or the sale or lease of any property by the organization. This presumption may be overcome by establishing the following:

(a) the purchaser or lessee of the property or service intended by the purchase or lease to make a gift, donation, or contribution to the organization; and

(b) the purchase or lease price clearly exceeded the fair market value of the service or property or the fair rental value of the property.

(3) If these conditions are satisfied, the amount of consideration received by the organization in excess of the fair market price or fair rental value is not subject to the gross receipts tax.

I. Discount coupons: The gross receipts attributable to a sale in which a seller accepts discount coupons provided by buyers are measured by the cash received plus the value of the coupon. However, if the discount coupon is not redeemable by the seller, the acceptance of the coupon constitutes a cash discount allowed and taken and is excluded from gross receipts.

J. Gross receipts embezzled: Receipts that have been embezzled or lost through bookkeeping errors are not a cash discount allowed and taken; such receipts are not deductible under Section 7 9 67 NMSA 1978 because they are not a refund, allowance or uncollectible debt.

K. Vending machines:

(1) A vending machine is a device that, when the appropriate payment has been inserted into it, whether payment is made by coins, tokens, paper money, credit card, debit card or other means, dispenses tangible personal property, performs a service (including entertainment) or dispenses tickets, tokens or similar objects redeemable for money, tangible personal property or services; but "vending machine" does not include any device which

is designed to primarily or solely to play a game of chance, such as slot machines, video gaming machines and the like.

(2) Amounts received from allowing the vending machine to be placed in a location as well as amounts received from use of or sales from vending machines are gross receipts and are subject to the gross receipts tax. The vending machine owner is responsible for reporting the receipts and paying the gross receipts tax.

(3) Receipts derived from allowing vending machines to be placed in a location not owned or rented by the vending machine owner are gross receipts and are subject to the gross receipts tax. Except as provided otherwise in Subsection K of Section 3.2.1.14 NMAC, the person receiving the receipts is responsible for reporting the receipts and paying the gross receipts tax with respect to such receipts.

(4) If the vending machine owner and a person controlling the premises where the machine is located enter into a written agreement similar to the one below, the department will presume that a joint venture has been created, that the joint venture is registered with the department and that the vending machine owner has agreed to pay all gross receipts tax due with respect to the joint venture. In such a case, the person owning the machine, on behalf of the joint venture, will report and pay the gross receipts tax due on all the receipts derived from either allowing the vending machine to be placed in a location or sales from the vending machine for all parties in the joint venture and the person controlling the premises is relieved of the duty to report or pay gross receipts tax on those same receipts.

(5) Agreement: Total amounts collected from the vending machine shall be allocated between the vending machine owner and the person controlling the location. The vending machine owner will receive a percentage of the amounts collected

net of gross receipts tax due, plus an amount equal to the gross receipts tax payable on the entire proceeds from the vending machine. The person controlling the location will receive a percentage of the amounts collected net of gross receipts tax due. The vending machine owner will report and pay any gross receipts tax due on all the receipts derived from either the use of or sales from the vending machine.

(6) In the event that no such agreement exists, the department will presume that no joint venture exists. In such a case, the vending machine owner will be subject to gross receipts tax on the entire amounts collected from the use of or sales from the vending machine, and the person controlling the premises will be subject to gross receipts tax on the amount that person receives from the vending machine owner for allowing the placement of the machine on the premises.

(7) In the event the vending machines are leased to the person who services them, the term "vending machine owner" means the lessee of the vending machines.

L. "Gross receipts" excludes leased vehicle surcharge: For the purposes of Subparagraph (b) of Paragraph (3) of Subsection A of Section 7-9-3.5 NMSA 1978, the term "leased vehicle gross receipts tax" includes the leased vehicle surcharge. The amount of any leased vehicle surcharge may be excluded from gross receipts.

M. Receipts from furnishing parts or labor under automotive service contract:

(1) When an automobile dealer, who is the promisor under an automotive service contract as that term is defined under Subsection C of Section 3.2.1.16 NMAC, furnishes parts or labor or both to satisfy the promisor's obligation to repair the breakdown involving a part specified in the contract, the dealer has taxable gross receipts equal to the retail value of the parts and labor furnished. A transfer of property or performance of service for a consideration has occurred

and therefore a receipt from selling property or performing services has been realized by the dealer.

(2) The consideration received by the dealer is the discharge of the dealer's obligation to make the repair which obligation arose when the covered breakdown occurred.

(3) Receipts of a repair facility, including an automobile dealer, from furnishing parts and labor to fulfill the obligation of another person under an automotive service contract are gross receipts and not deductible under Sections 7 9 47 and 7 9 48 NMSA 1978, even though the seller has received NTTCs for other transactions.

N. Receipts from deductibles/co-payments under automotive service contracts: The receipts of a New Mexico automotive dealer or other repair facility, including the promisor under an automotive service contract, from the "deductible" or "co-payment" amount paid by a customer as required by automotive service contract as that term is defined in Subsection C of Section 3.2.1.16 NMAC in connection with the provision of repair services under contract are gross receipts.

O. Receipts of dealer from own reserve:

(1) The receipts of a New Mexico auto dealer for repairs provided by the dealer under an automotive service contract as that term is defined in Subsection C of Section 3.2.1.16 NMAC, on which the dealer is obligated as promisor are not gross receipts if:

(a) the receipts are paid from a reserve account established by the dealer under an agreement with an auto service contract administrator or an insurance company, or both, and

(b) the dealer is entitled to a return of any amounts in the reserve account not used to pay for parts and labor or to pay other charges against the dealer in connection with the auto service contract.

(2) In this

situation, the dealer is being "paid" from the dealer's own funds and has no receipts. However, the dealer as promisor is liable for gross receipts tax on the retail value of the parts or labor or both furnished to discharge the dealer's obligation.

P. Water conservation fee: Section 74-1-13 NMSA 1978 imposes the water conservation fee on the operator of a public water supply system. The fee is measured by the amount of water produced. The operator is not authorized to impose the water conservation fee on the operator's customers. If the operator of the system separately bills an amount characterized as a reimbursement of the water conservation fee to the operator's customers, the separately stated amount is simply an element of the price of the water sold and the "reimbursement" is included in gross receipts. The definition of "gross receipts" does not exclude the water conservation fee or amounts characterized as reimbursements of water conservation fee paid.

Q. Sales of items subject to the federal manufacturer's excise tax:

(1) The gross receipts from sales of items such as motor vehicle tires include the total amount of money or the value of other consideration received even though this amount includes the Federal Manufacturer's Excise Tax, 26 U.S.C.A. Section 4061 et seq., (1986) which is separately stated on the invoice. Gross receipts do not include the amount of money attributable to the Federal Communications Excise Tax, 26 U.S.C.A. Section 4251, et seq., (1986), and the Federal Air Transportation Excise Tax, 26 U.S.C.A. Section 4261 et seq., (1986), which are user's taxes.

(2) Example: A tire dealer sells a tire in New Mexico to a retail customer for \$40.00 and separately states \$1.00 for Federal Manufacturer's Excise Tax on the sales ticket. The seller's gross receipts for this transaction are \$41.00.

R. Transactions among

related persons are gross receipts

(1) Each person engaging in business in New Mexico is subject to the provisions of the Gross Receipts and Compensating Tax Act. Each person who is a member of any group of related or affiliated persons and who engages in business in New Mexico is a taxpayer. The provisions of the Gross Receipts and Compensating Tax Act apply to the transactions between that taxpayer and all other persons, including the other related or affiliated persons, even though consideration is not received in the form of cash or other monetary remuneration.

(2) Example 1: A cooperative association and X both engage in business in New Mexico. The cooperative sells services to X, one of its members. The cooperative is a taxpayer and the receipts from this transaction are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(3) Example 2: Both X and a cooperative association engage in business in New Mexico. X is a member of the cooperative and sells services to it. X is a taxpayer and the receipts from this transaction are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(4) Example 3: X engages in business in New Mexico, specifically by selling office supplies. X is also a partner in a partnership. Sales by X to the partnership are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(5) Example 4: C is a corporation engaging in business in New Mexico. S, an individual who is the majority stockholder in C, buys in New Mexico services and goods from C. C's receipts from these transactions with S are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(6) Example 5: C and S are corporations engaging in business in New Mexico. S is a wholly-owned subsidiary of C. C sells tangible personal property in New Mexico to S. C's receipts from

the transaction are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(7) Example 6: X and Y are both divisions of corporation Z. X and Y are both parts of the same person, Z, and are not "related persons". Receipts from transactions between these two divisions are activities within Z and do not constitute gross receipts.

(8) Example 7: P, an individual, operates two businesses as sole proprietorships. One of P's businesses transfers tangible personal property to the other. Since both businesses and P are the same person, they are not "related persons" and the transaction does not constitute gross receipts.

S. Owner's receipts from transactions with owned entity are gross receipts

(1) Except as provided in Paragraph (2) of this Subsection, ~~When~~ when a person who owns all or part of an entity has receipts from the sale of property in New Mexico to, the lease of property employed in New Mexico to or the performance of services in New Mexico for the entity, the person's receipts are gross receipts except when the transaction may be characterized for federal income tax purposes as a contribution of capital. The person's receipts include the actual amount of money received by the person plus the value of any additional consideration. Additional consideration includes forbearance of charges against the person's ownership interest. These gross receipts are subject to the gross receipts tax unless an exemption or deduction applies.

(2) When a partner or interest holder in an entity is allocated profits or receives a guaranteed payment or other distributions for activities undertaken as a partner on behalf of the partnership such as administrative services done solely for the benefit of the partnership or for activities for third-parties transacting business with the partnership, these receipts of the partner are not gross receipts and are

not subject to the gross receipts tax. When a partner engages in business separately from the partnership any transactions of that partner with the partnership, where the partner is not acting as a partner on behalf of the partnership, are gross receipts. Indicia that a partner is not acting as a partner on behalf of the partnership may include:

(a) that the partner engages in similar transactions with third parties other than the partnership;

(b) that the allocation, payment, or distribution made by the partnership is not made under the partnership agreement;

(c) that the partner's transaction(s) with the partnership involve the sale or lease of goods or the sale of services not provided by the partnership to third parties.

~~[(2)]~~ (3) For the purposes of Subsection S of Section 3.2.1.14 NMAC, an "entity" means any business organization or association other than a sole proprietorship.

~~Example: Q is a partner in a partnership. Q is entitled to 25% of the partnership's profits and losses and to bear 25% of its expenses. Q also operates a stationery store in New Mexico as a sole proprietor. Q's store sells some merchandise to the partnership for the partnership's use. The partnership pays Q the amount charged and apportions 25% of the cost to Q's ownership interest. Q's receipts from the sale are gross receipts and are subject to gross receipts tax unless an exemption or deduction applies. Same facts as above except that Q is not paid by the partnership but instead receives amounts characterized as reimbursements directly from the other partners totaling 75% of the amount charged for the merchandise. Q's ownership account is not charged any expense with respect to this transaction. Q's sole proprietorship has gross receipts from the transaction. The gross receipts equal the sum of the money received~~

from the other partners plus the value of the amount not charged to Q's ownership account by the partnership (in this case one-third of the amount received from the other partners). The deduction provided by Section 7-9-67 NMSA 1978 for refunds and allowances does not apply to this transaction.

~~(4)~~ Example:

L is a partner in a partnership. L performs services for third parties as part of L's duties as a partner and is compensated for doing so by the partnership. To the extent that such compensation may be treated as wages for federal income tax purposes, L's receipts from the partnership in the form of compensation are exempt.]

~~[(5)]~~ (4) Example:

C is a corporation and S is C's wholly owned subsidiary corporation. C and S create L, a limited liability company; C and S each own ~~[50%]~~ fifty percent of L. L purchases a ~~[20%]~~ twenty percent interest in P, a limited partnership. C sells goods to P. P pays the amount charged. C has gross receipts from this transaction equal to the amount received for the goods.

[9/29/1967, 12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1982, 5/4/1984, 4/2/1986, 4/20/1990, 11/26/1990, 9/20/1993, 2/22/1995, 11/15/1996, 5/31/1997, 6/15/1999; 3.2.1.14 NMAC - Rn & A, 3 NMAC 2.1.14, 4/30/2001; A, 12/30/2003; A, 9/25/2018]

**END OF ADOPTED
RULES**

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Other Material Related To Administrative Law

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF EMERGENCY RULEMAKING

The New Mexico Human Services Department (HSD) is issuing a temporary emergency rule to be effective October 1, 2018. The HSD is required to make changes to 8.102.500 of the New Mexico Administrative Code (NMAC) and 8.106.500 NMAC.

The Standard Utility Allowances and the Federal Poverty Guidelines are determined by the United States Department of Agriculture (USDA) and Food and Nutrition Services (FNS) each federal fiscal year. These amounts are used to determine the maximum Supplemental Nutrition Assistance Program, Cash Assistance and Low Income Heating and Energy Assistance Programs benefit issuance amounts.

The Department received notification of the adjusted amounts and will make the adjustments effective for benefit month October 2018 for Federal Fiscal Year (FFY) 2019. The Department has received less than sixty days of notice for the Federal Cost-of-Living Adjustments (COLA) and has insufficient time to follow the regular rulemaking process.

Regulations issued pursuant to the act are contained in 45 CFR Parts 200-299.

Administration of HSD, including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).

The emergency rule is being implemented to comply with the Federal mandate; failure to implement the emergency rule would place the Department in violation of Federal law. The emergency rule will remain

in effect until a permanent rule takes effect under normal rulemaking process.

The Human Services Register Vol. 41 No. 20 outlining the temporary emergency regulations is available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support/division-registers.aspx>.

END OF OTHER MATERIAL RELATED TO ADMINISTRATIVE LAW

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Submittal Deadlines and Publication Dates

Volume XXIV, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 16
Issue 2	January 18	January 30
Issue 3	February 1	February 13
Issue 4	February 15	February 27
Issue 5	March 1	March 13
Issue 6	March 15	March 27
Issue 7	March 29	April 10
Issue 8	April 12	April 24
Issue 9	April 26	May 15
Issue 10	May 17	May 29
Issue 11	May 31	June 12
Issue 12	June 14	June 26
Issue 13	June 28	July 10
Issue 14	July 12	July 24
Issue 15	July 26	August 14
Issue 16	August 16	August 28
Issue 17	August 30	September 11
Issue 18	September 13	September 25
Issue 19	September 27	October 16
Issue 20	October 18	October 30
Issue 21	November 1	November 13
Issue 22	November 15	November 27
Issue 23	November 29	December 11
Issue 24	December 13	December 27

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 material related to administrative law. 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.nmcpr.state.nm.us/nmregister>. For further information, call 505-476-7942.