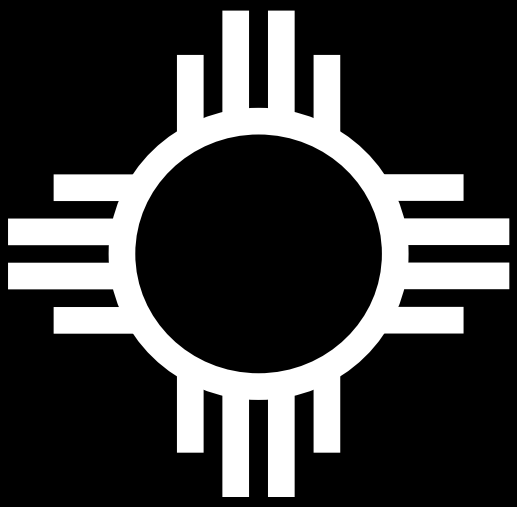
NEW MEXICO REGISTER



Volume XXVI
Issue Number 2
January 30, 2015

New Mexico Register

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The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2015

New Mexico Register

Volume XXVI, Number 2
January 30, 2015

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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 by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

A=***Amended***, E=***Emergency***, N=***New***, R=***Repealed***, Rn=***Renumbered***

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Notices of Rulemaking and Proposed Rules

NEW MEXICO OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION
SANTA FE, NEW MEXICO

The State of New Mexico, through its Oil Conservation Commission hereby gives notice pursuant to law and Commission rules of the following meeting and public hearing to be held at 9:00 A.M. on **February 13, 2015**, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, before the Oil Conservation Commission. 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 please contact Commission Clerk Florene Davidson at (505) 476-3458 or through the New Mexico Relay Network (1-800-659-1779) by **February 3, 2015**. Public documents can be provided in various accessible forms. Please contact Ms. Davidson if a summary or other type of accessible form is needed. A preliminary agenda will be available to the public no later than two weeks prior to the meeting. A final agenda will be available no later than 72 hours preceding the meeting. Members of the public may obtain copies of the agenda by contacting Ms. Davidson at the phone number indicated above. Also, the agenda will be posted on the Oil Conservation Division website at www.emnrd.state.nm.us. A party who plans on using projection equipment at a hearing must contact Florene Davidson seven (7) business days prior to the hearing requesting the use of the projection equipment. Wireless internet is available; however, the party must provide its own laptop computer.

CASE 15239: Application Of The New Mexico Oil And Gas Association To Repeal And Replace Title 19, Chapter 15, Part 34 Of The New Mexico Administrative Code Addressing Produced Water, Drilling Fluids And Other Liquid Oil Field Waste; And To Amend The Definition Of Produced Water In Title 19, Chapter 15, Part 2, Of The New Mexico Administrative Code. Applicant seeks an order repealing Title 19, Chapter 15, Part 34 of the New Mexico Administrative Code ("NMAC") and replacing it with a new proposed rule. Applicant also seeks to amend the definition of "produced water" in Title 19, Chapter 15, Part 2, NMAC. The proposed rule and amendment are intended to:

(1) Encourage and promote the recycling or re-use of produced water in the production of oil and gas in a manner that provides reasonable protection to fresh waters, the public health, and the environment;

(2) Clarify and codify when the disposition by use of produced water requires prior approval by the New Mexico Oil Conservation Division and when registration is sufficient;

(3) Require produced water recycling facilities subject to the proposed rule to either be permitted or registered with the Division;

(4) Permit by rule produced water recycling containments for a limited period of time to store, treat and recycle produced water for use in the drilling, completion, production or plugging of oil and gas wells;

(5) Prevent any use of recycling containments for the disposal of produced water or other oilfield wastes;

(6) Adopt for the proposed produced water recycling containments applicable siting, design, construction, operation, closure and site reclamation provisions;

(7) Establish when and what type of financial assurance is required for operators of produced water recycling containments and when that financial assurance can be released;

(8) Adopt provisions for seeking a variance from the requirements of the proposed rule;

(9) Retain the current provisions of 19.15.34.8 through 19.15.34.12 addressing and regulating the transportation of produced water, drilling fluids and other liquid oilfield wastes;

(10) Adopt provisions for the immediate enforcement of the proposed rule by the New Mexico Oil Conservation Division; and

(11) Modify the definition of "produced water" in Title 19, Chapter 15, Part 2, NMAC, to match the definition of "produced water" in Section 70-2-33(K) of the Oil and Gas Act.

The proposed rule and amendment are available from Division Administrator Florene Davidson at (505) 476-3458 or can be viewed on the Division's web site at http://www.emnrd.state.nm.us/ocd/whatsnew.htm. **Modifications** to the proposed rule or amendment must be received by the Division no later than 5:00 P.M. on **January 30, 2015**. Persons intending to provide **written comments** on the proposed rule change must submit their written comments no later than 5:00 p.m. on **February 6, 2015** to the Division's Administrator. Persons intending to offer technical testimony at the hearing must file six copies of a **Pre-hearing Statement** conforming to the requirements of 19.15.3.11 NMAC, and six copies of all exhibits the person will offer in evidence at the hearing, no later than **February 6, 2015**. Proposed modifications and written comments may be hand-delivered or mailed to Ms. Davidson at 1200 South Saint Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at (505) 476-3462. Pre-hearing Statements must be hand-delivered or mailed to Ms. Davidson at the above address. If you are an individual with 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, please contact Ms. Davidson at (505) 476-3458 or the New Mexico Relay Network at 1-800-659-1779.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 13th day of January, 2015.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

David Catanach
Director, Oil Conservation Division

S E A L

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT
NOTICE OF PROPOSED RULEMAKING

The Public Education Department ("Department") hereby gives notice that the Department will conduct public hearings to consider adoption of proposed new rule 6.35.2 NMAC (IMPLEMENTING THE INDIAN EDUCATION ACT).

The public hearings are scheduled as follows:

Date of Hearing	Location of Hearing	Time of Hearing
March 4, 2015	Gallup-McKinley County Schools Board Room 640 S. Boardman Gallup, NM 87503	1-3 p.m.
March 5, 2015	Farmington Municipal Schools Board Room 20th Street Conference Room 1400-B East 20th Street Farmington NM 87401	10 a.m. to noon
March 9, 2015	Public Education Department, Mabry Hall 300 Don Gaspar, Santa Fe, New Mexico 87501	1 to 3 p.m.

Interested individuals may provide comments at the public hearing and/or submit written comments to DeAlva Calabaza, Acting Director, Indian Education Division, via email at rule.feedback@state.nm.us, fax (505) 827-6464, or directed to Ms. Calabaza, Acting Director, Indian Education Division, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786. Written comments must be received no later than 5:00 p.m. on the date of the final hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (http://ped.state.nm.us/) under the "Public Notices" link, or obtained from Ms. Laura Calvert by calling (505) 476-0545.

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

NEW MEXICO PUBLIC SCHOOL INSURANCE AUTHORITY

NOTICE OF PUBLIC HEARING REGARDING PROPOSED AMENDMENT OF RULES 6.50.1 AND 6.50.10 IN ORDER TO UPDATE REGULATIONS IN ACCORDANCE WITH NEW MEXICO PUBLC SCHOOL INSURANCE AUTHORITY POLICY CHANGE.

Notice is hereby given to correct the date of the public hearing originally published on November 13, 2014 in the New Mexico Register Volume XXV, Issue 21. The public hearing will be held on February 5, 2015 at 9:00 a.m. at the New Mexico Public Schools Insurance Authority Board meeting at the Cooperative Educational Services, 4216 Balloon Park Road NE, Albuquerque, NM 87109.

NEW MEXICO RACING COMMISSION

NEW MEXICO RACING COMMISSION
NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the New Mexico Racing Commission will hold a Regular Meeting and Rule Hearing on February 12, 2015. The hearing will be held during the Commission's regular business meeting, beginning at 8:30 a.m. with executive session. Public session will begin at 10:30 a.m. The meeting will be held in the Boardroom at 4900 Alameda Blvd. NE, Albuquerque, NM.

The purpose of the Rule Hearing is to consider adoption of the proposed amendments and additions to the following Rules Governing Horse Racing in New Mexico No. 15.2.6 NMAC and 15.2.1.9 NMAC. The comments submitted and discussion heard during the Rule Hearing will be considered and discussed by the Commission during the open meeting following the Rule Hearing. The Commission will vote on the proposed rules during the meeting.

Copies of the proposed rules may be obtained from Vince Mares, Executive Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Albuquerque, New Mexico 87113, (505) 222-0700. Interested persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the commission of such needs at least five days prior to the meeting.

_____
Vince Mares
Executive Director

Dated: January 12, 2015

NEW MEXICO WATER QUALITY CONTROL COMMISSION

NEW MEXICO WATER QUALITY CONTROL COMMISSION
NOTICE OF PUBLIC HEARING
TO CONSIDER PROPOSED AMENDMENTS
TO 20.6.2 NMAC—THE DAIRY RULE

The New Mexico Water Quality Control Commission will hold a public hearing beginning at 1:00 p.m. on April 6, 2015 at the Bassett Auditorium in the Roswell Museum and Art Center, 100 West 11th Street, Roswell, New Mexico, to consider proposed amendments to the Commission's Ground and Surface Water Protection Rule, 20.6.6 NMAC, referred to as the Dairy Rule and proposed in WQCC 12-09 (R) by the Dairy Industry Group for a Clean Environment (DIGCE). The proposed amendments would establish new rules for the Dairy industry to specify measures to be taken to prevent water pollution and to monitor water quality.

The proposed amendments may be reviewed during regular business hours at the Commission Administrator's office located in the Harold Runnels Building, 1190 St. Francis Drive, Room, S-2100 Santa Fe, New Mexico, 87502. In addition, the proposed amendments and related pleadings are posted on the Commission webpage at http://www.nmenv.state.nm.us/wqcc/.

The hearing will be conducted in accordance with the Guidelines for Water

Quality Control Commission Regulation Hearings, the Water Quality Act, Section 74-6-6 NMSA 1978, and other applicable procedures and procedural orders. Written comments regarding the proposed revisions may be addressed to Pam Castañeda, Commission Administrator, at the above address; reference docket number WQCC 12-09 (R) and 13-08 (R).

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of hearing.

Persons wishing to present technical testimony must file with the Commission a written notice of intent to do so. The requirements for a notice of intent can be found in the Commission's Guidelines for Regulation Hearings and have been modified by a procedural order entered in this matter, which may be obtained from the Administrator or found on the Commission's webpage. Notices of intent for the hearing must be received by in the Office of the Commission Administrator by 5:00 pm on October 17, 2014 and should reference the name of the regulation, the date of the hearing, and docket number WQCC 12-09 (R) and 13-08 (R).

Those interested parties wishing to provide non-technical testimony or comment to the Commission on this matter may do so without submitting prior notice. Time will be reserved specifically for public comment each day of the hearing at 11:30 am and 5:00pm.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact the Personnel Services Bureau by March 9, 2013. The Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502-5469, and (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

The Commission may make a decision on the proposed regulatory changes at the conclusion of the hearing, or may convene a meeting after the hearing to consider action on the proposal.

NEW MEXICO WATER QUALITY CONTROL COMMISSION

NUEVO AVISO DE COMISIÓN DE CONTROL DE LA CALIDAD DE AGUA DE NUEVO MÉXICO AVISO PÚBLICO QUE OYE PARA CONSIDERAR ENMIENDAS PROPUESTAS A 20.6.6 NMAC - LA REGLA LÁCTEOS

La Comision de Control de la Calidad De Agua de Nuevo Mexico se llevara a cabo un audencia publica comensando a las 1:00 p.m. del dia 6 de abril de 2015 en el Auditorio Bassett en el Roswell Museo y Centro de Arte, 100 West 11th Street, Roswell, Nuevo Mexico a tener en cuenta propuestas de enmiendas a la Comisión Subterraneas y Superficiales Reglas de Protecction del Agua, Regla, 20.6.6 NMAC, conocida como la Regla Lácteos y propuesto en WQCC 12-09 (R) por el Grupo de la Industria Lechera para un Ambiente Limpio (DIGCE). Las enmiendas propuestas establecer nuevas reglas para la industria láctea para especificar las medidas que deben adoptarse para prevenir la contaminación del agua y para controlar la calidad del agua.

Las enmiendas propuestas pueden ser revisadas durante el horario regular de la oficina del Administrador de la Comisión ubicadas en el edificio Harold Runnels, 1190 St. Francis Drive, en la habitacion S-2100 Santa Fé, Nuevo Mexico, 87502. Además, las enmiendas propuestas y argumentos relacionados se publican en la página web Comisión en http://www.nmenv.state.nm.us/wqcc/.

La audiencia se llevará a cabo de conformidad con las Directrices para Audiencias Reglamento de Control de Calidad del Agua, el acto de Calidad de Agua, Sección 74-6-6 NMSA 1978, y otros procedimientos aplicables y órdenes preocedural. Los comentarios por escrito respecto a las revisiones propuestas pueden dirigirse a Pam Castañeda, Administrador de la Comisión, a la dirección anterior; número de expediente de referencia WQCC 12-09 (R) y 13-08 (R).

Todas las personas interesadas se les dará la oportunidad razonable en la audiencia para presentar pruebas pertinentes, datos, opiniones y argumentos, de forma oral o por escrito, a presentar pruebas, y para interrogar a los testigos. Cualquier persona que desee presentar una declaración por escrito no técnico para el registro en lugar del testimonio oral debe presentar dicha declaración antes del cierre de la audición.

Las personas que deseen presentar testimonio técnico deberán presentar ante la Comisión una notificación por escrito de su intención de hacerlo. Los requisitos para un aviso de intención se pueden encontrar en las directrices de la Comisión de Regulación de audición y se han modificado por una resolución procesal introducida en esta materia, que se puede obtener del administrador o que se encuentran en la página web de la Comisión. Las notificaciones de intención para la audiencia deben recibirse antes en la Oficina de la Comisión Adminstrator de las 5:00 p.m. el 17 de octubre de 2014 y debe hacer referencia al nombre de la regulación, la fecha de la audiencia, y el número de expediente WQCC 12-09(R) y13-08(R).

Las personas interesados que deseen proporcionar testimonio no técnico o comentario a la Comisión sobre este asunto, puede hacerlo sin presentar previo aviso. Tiempo se reservará específicamente para comentario público cada día de la audiencia a las 11:30 a.m. y las 5:00 p.m.

Si usted es una persona con una discapacidad y necesita ayuda o una ayuda auxiliar, por ejemplo, firmar intérprete de lenguaje, para participar en cualquier aspecto de este proceso, por favor póngase en contacto con la Oficina de Servicios de Personal del dia 7 de noviembre de 2014. La oficina puede ser alcanzado en el Departamento de Medio Ambiente de Nuevo México, 1190 St. Francis Drive, P.O. Caja de 5469, Santa Fé, NM 87502-5469, y (505) 827-9872. TDD o TDY pueden acceder a este número a través de Nuevo México Rele (usuarios Albuquerque TDD: (505) 575-7333, en el exterior de Albuquerque: 1-800-659-1779).

La Comisión podrá tomar una decisión sobre los cambios normativos propuestos en la conclusión de la audiencia, o puede transmitir una reunión después de la audiencia para considerar la acción sobre la propuesta.

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Adopted Rules

NEW MEXICO DEPARTMENT OF HEALTH

TITLE 7 HEALTH
CHAPTER 29 PRIMARY AND RURAL HEALTH CARE SERVICES
PART 5 CERTIFICATION OF COMMUNITY HEALTH WORKERS

7.29.5.1 ISSUING AGENCY: New Mexico Department of Health.
[7.29.5.1 NMAC - N, 1/30/15]

7.29.5.2 SCOPE: This rule applies to any person seeking to practice as a certified community health worker in the state of New Mexico.
[7.29.5.2 NMAC - N, 1/30/15]

7.29.5.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the following statutory authorities: 1) the Department of Health Act, Subsection E of Section 9-7-6 NMSA 1978, which authorizes the secretary of the department of health to "...make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions," and; 2) the Community Health Workers Act, Sections 24-30-1 through 24-30-7 NMSA 1978, which authorizes the department to adopt regulations to carry out the provisions of the act.
[7.29.5.3 NMAC - N, 1/30/15]

7.29.5.4 DURATION: Permanent.
[7.29.5.4 NMAC - N, 1/30/15]

7.29.5.5 EFFECTIVE DATE: January 30, 2015, unless a later date is cited at the end of a section.
[7.29.5.5 NMAC - N, 1/30/15]

7.29.5.6 OBJECTIVE: The objective of this rule is to implement the Community Health Workers Act. This rule governs the voluntary certification of community health workers (CHWs) in New Mexico.
[7.29.5.6 NMAC - N, 1/30/15]

7.29.5.7 DEFINITIONS:

A. "Action against a certificate" means any formal action taken by the department that adversely affects certification status, including but not limited to denial of initial certification or re-certification, suspension or revocation or a certificate, probation or reprimand.

B. "Applicant" means an individual applying for community health worker certification or recertification.

C. "Board" means the board of certification of community health workers established under these rules.

D. "Certificate" means the document issued by the department to qualified applicants who have successfully completed the application process for certification as community health workers.

E. "Certification" means the voluntary process by which the department grants recognition and use of a credential to individuals who are eligible to practice as certified community health workers.

F. "Certified community health worker" or **"CCHW"** means a community health worker to whom the department has issued a certificate to practice as a certified community health worker.

G. "Community health worker" or **"CHW"** means a public health worker, also known as a tribal community health representative or a promotora, who applies an understanding of the experience, language, and culture of the populations that the individual serves and who provides services aimed at optimizing individual, family and community health outcomes.

H. "Continuing education" means courses or training designed to develop and enhance knowledge, skills, and professional development to ensure that CCHWs are up to date with current practices in the field.

I. "Conviction" means a plea or adjudication of guilt, a plea of nolo contendre, or an Alford plea, and does not include a conditional discharge or deferred adjudication that results in dismissal of a charge.

J. "Core competencies" means a combination of qualities, practical skills and knowledge, defined by the department as essential to the provision of services by community health workers, demonstration of which is required for certification.

K. "Department" means the department of health.

L. "Recertification" means a renewal of certification.

M. "Scope of practice" means the roles and related tasks performed by CCHWs in the provision of services, including the knowledge, skills and attributes needed to perform work-related functions, as defined by the department.

N. "Secretary" means the secretary of the department of health.
[7.29.5.7 NMAC - N, 1/30/15]

7.29.5.8 BOARD OF CERTIFICATION OF COMMUNITY HEALTH WORKERS:

A. Board membership:

(1) The board shall be comprised of nine members who are residents of New Mexico, appointed by the secretary, and shall include:

(a) three currently practicing CHWs, including at least one tribal community health representative;

(b) the secretary or the secretary's designee, who shall serve as chair of the board; and

(c) five additional members that the secretary shall endeavor to appoint from community health stakeholders including but not limited to health care providers, tribal representatives, individuals from institutions of higher learning, or members of the community from various geographic regions of the state.

(2) Members of the board other than the department's representative shall serve for staggered terms of four years. The secretary shall appoint to the initial board three members to a four-year term, three members to a three-year term, and two members to a two-year term. Each member shall hold office until his or her successor is appointed.

(3) Board members shall be reimbursed as provided for in the Per Diem and Mileage Act, Section 10-8-1 *et seq*. NMSA 1978 and shall receive no other compensation, perquisite or allowance.

B. Meetings: The board shall convene at least once per quarter at the call of the chair and as frequently as reasonably necessary to review and make recommendations regarding the CHW certification process.

(1) Meetings shall be conducted in accordance with the Open Meetings Act, Section 10-15-1 through 10-15-4 NMSA 1978. A simple majority of the members of the board shall constitute a quorum for the purpose of transacting official business.

(2) Meeting arrangements and attendance requirements shall be determined by the board. The board shall recommend to the secretary removal of board members for non-participation or any other good cause.

C. Duties and responsibilities: The board shall advise the secretary on the implementation of standards, guidelines, and requirements relating to the training and regulation of persons seeking certification or practicing as CCHWs.

(1) The board shall make recommendations to the secretary on the following matters:

(a) standards and requirements for the establishment and approval or acceptance of community health worker education and training programs in the state;

(b) standards and requirements for approval or acceptance of continuing education courses and programs as the board may require for recertification every two years;

(c) minimum education, training, experience, and other qualifications that a certified community health worker shall possess to qualify as a trainer in any education, training, or continuing education program for community health workers;

(d) the process to acknowledge, document, and assess relevant education, training and experience or other qualifications acquired by CHWs practicing in the state before the effective date of the Community Health Workers Act for purposes of certification while waiving minimum training and experience requirements established by the act (also known as "grandfathering");

(e) the means to assess community health worker competency in connection with certification;

(f) the core competencies to be required for certification, in consideration of current New Mexico and national CHW workforce studies; and

(g) the scope of practice for CCHWs.

(2) The board may provide guidance to the program on issues or topics presented to the board at the program's discretion.

(3) Board recommendations: The board shall provide to the secretary written recommendations in accordance with the duties listed in this section, including any supporting documentation or public commentary. The secretary shall make a final determination on all board recommendations.

[7.29.5.8 NMAC - N, 1/30/15]

7.29.5.9 NEW MEXICO REGISTRY OF COMMUNITY HEALTH WORKERS: The New Mexico registry of community health workers shall be maintained at the department. The registry is voluntary and open to all persons who are CCHWs in the state of New Mexico. The registry shall contain the name, certification number, certification status, and geographic location of the CCHW. Registry information is subject to public inspection.

[7.29.5.9 NMAC - N, 1/30/15]

7.29.5.10 COMMUNITY HEALTH WORKER CERTIFICATION:

A. Initial certification:

(1) All applicants for initial certification in New Mexico shall:

(a) submit to the department a completed application in a form specified by the department to include verification that applicant has met the eligibility requirements;

(b) submit to the department the designated application fee; and

(c) if an applicant otherwise meets the eligibility requirements, then in accordance with this rule, submit a request to the department of public safety (DPS) or a DPS vendor for a state and national criminal history screening. The results of the criminal history screening shall be received by the department before a certificate can be issued.

(2) Eligibility requirements for applicants who were practicing CHWs before the effective date of the Community Health Workers Act:

(a) proof that applicant is at least 18 years of age; and

(b) verification of proficiency in the core competencies through training or experience, signed by a current or former supervisor; and

(c) two letters of reference; and

(d) documentation of 2,000 hours of work or volunteer experience as a CHW in the two years prior to application, or documentation of at least half-time paid or volunteer employment as a CHW in the five years prior to application.

(3) Eligibility requirements for applicants who were not practicing CHWs before the effective date of the Community Health Workers Act, or who otherwise do not meet the criteria for grandfathering by waiver of minimum training and experience requirements based on practice before the effective date of the Community Health Workers Act:

(a) proof that applicant is at least 18 years of age; and

(b) proof of completion of a department-approved training program that contains an examination component for each of the core competencies; and

(c) at least a high school diploma or certificate of high school equivalency.

(4) Applicants may be certified at the following levels:

(a) generalist: an applicant who provides proof of completion of a department-approved training program that contains an examination component for each of the core competencies, or an applicant who meets the requirements for certification through grandfathering;

(b) specialist I: an applicant who meets the requirements for a generalist and who demonstrates additional education or training in at least one specialty area;

(c) specialist II: an applicant who meets the requirements for a generalist and who demonstrates additional education or training in at least two specialty areas;

(d) specialist III: an applicant who meets the requirements for a generalist and who demonstrates additional education or training in three or more specialty areas;

(e) specialty areas include but are not limited to basic clinical support skills, heart health, chronic disease, behavioral health, maternal and child health or developmental disabilities.

(5) The department shall issue certificates to applicants who satisfy the requirements of this rule, unless the application is disapproved.

(6) Certificates shall be valid for two years from the date of issuance. A CCHW shall carry the CCHW certificate and present it upon request.

B. Recertification: An applicant for recertification shall:

(1) Submit to the department a completed application in a form specified by the department to include proof of current certification.

(2) Submit to the department the designated application fee.

(3) Provide proof of completion of at least 30 hours of department-approved continuing education.

(4) Every other recertification period (every four years), if an applicant otherwise meets the eligibility requirements, then in accordance with this rule, submit a request to DPS or a DPS vendor for a current state and national criminal history screening.

C. Reinstatement after lapse, suspension, or revocation:

(1) The requirements for reinstatement of a certificate that has lapsed for one year or less are the same as those for recertification, with the payment of fees as identified for reinstatement after lapse in Subsection F of 7.29.5.10 NMAC and, if required as part of

recertification, then in accordance with this rule, submission of a request to DPS or a DPS vendor for a current state and national criminal history screening.

(2) The requirements for reinstatement of a certificate that has lapsed more than one year prior to the application date are the same as those for an initial application.

(3) The requirements for reinstatement of a certificate that has been suspended or revoked are the same as those for recertification, provided that the term of suspension has been completed or terminated or approval of reinstatement after revocation has been granted. Applicant shall pay the designated fees for reinstatement after suspension or revocation in Subsection F of 7.29.5.10 NMAC and, in accordance with this rule, submit a request to DPS or a DPS vendor for a current state and national criminal history screening.

D. Disapproval:

(1) The department may disapprove an application if an applicant has not met the eligibility requirements as defined by the department or has submitted an incomplete application. The department shall send a notice of disapproval with the reasons why the applicant was disapproved and the requirements necessary to reapply.

(2) An applicant whose application has been disapproved under Paragraph (1) of Subsection D of 7.29.5.10 NMAC may not appeal the disapproval. The applicant shall be permitted to reapply and shall submit a current and complete application that meets the designated requirements within 60 days of receipt of the notice of disapproval. If the re-submitted application is received by the program within the 60 days, no new application fee is required. If the re-submitted application is received after the 60 days, applicant shall be required to pay the application fee designated in this rule.

E. Application processing:

(1) Applications, including associated fees, shall be sent to the department's office of community health workers.

(2) The department shall review applications on a rolling basis. Applicants shall be notified in writing within 30 working days of receipt of the application by the department whether their application has been approved or disapproved.

(3) If an application has been disapproved, applicants shall be notified of their ability to reapply pursuant to Paragraph (2) of Subsection D of 7.29.5.10 NMAC.

(4) If an application has been approved, then applicants shall be directed to complete a state and national criminal history screening. For applicants with no criminal history, or with no history of felony convictions, the department shall issue a certificate within 10 working days of receipt of the criminal history screening results.

(5) Applications with an associated criminal history shall be referred to the certification review committee and reviewed according to the procedure set forth in this rule.

F. Fees:

(1) The department shall charge the following fees for certification or approval services.

(a)	initial certification: generalist	$45	
(b)	initial certification: specialist I	$55	
(c)	initial certification: specialist II	$65	
(d)	initial certification: specialist III	$75	
(e)	recertification for any level	$45	
(f)	reinstatement after lapse	$75	
(g)	reinstatement after suspension or revocation	$100	
(h)	education, training, or continuing education program approval		$300
(i)	program approval renewal		$200

(2) If an applicant is certified as a generalist, prior to his or her recertification the applicant may apply to be a specialist at any level and pay the difference between the specialist fee and the generalist fee.

(3) Payment of fees: Payment of fees will be accepted in a form specified by the department. Fees are not refundable.

(4) Use of fees: The department shall apply any fee it collects under these rules to cover the costs of administering the community health worker certification program established pursuant to the Community Health Workers Act.

G. Unauthorized practice:

(1) In order to use the title "certified community health worker," the initials "CCHW" or other designation indicating that the individual is a certified community health worker, an individual shall be certified pursuant to the provisions of the Community Health Workers Act and these rules.

(2) To ensure compliance, the department may issue cease-and-desist orders to persons violating the provisions of the Community Health Workers Act or these rules.

(3) A CCHW shall engage only in those activities authorized pursuant to the Community Health Workers Act and these rules. While engaging in practice as a CCHW, an individual shall not engage in or perform any act or service for which another professional certificate, license or other legal authority is required unless he or she holds the relevant professional certificate, license or other legal authority to perform that act or service.

[7.29.5.10 NMAC - N, 1/30/15]

7.29.5.11 CRIMINAL HISTORY SCREENING:

A. The department is authorized to obtain the criminal history records of applicants and to exchange fingerprint data directly with the federal bureau of investigation (FBI), DPS and any other law enforcement agency or organization. The department shall require fingerprinting of applicants for the purposes of this section.

B. Procedure:

(1) If an applicant otherwise meets the eligibility requirements, then the department shall require the applicant to submit a request to DPS or a DPS vendor for a current state and national criminal history screening.

(2) The department shall provide applicants with the department's originating agency identification (ORI) number or other department identifier for the purposes of criminal history screening.

(3) Applicant shall provide to DPS or a DPS vendor a background check request, fingerprints, and supporting

documentation including an authorization for release of information to the department in accordance with DPS or the designated vendor's procedures.

(4) DPS or the designated DPS vendor shall review state records and also transmit the fingerprints to the FBI for a national screening. The results of the screening shall be made available to the department for review.

(5) The department shall make a determination whether the applicant has been convicted of a felony that bears upon the applicant's fitness to provide services.

(6) Applicant shall bear any costs associated with ordering or conducting criminal history screening. Fees are determined by and payable to DPS or the designated DPS vendor. Fees cannot be waived by the department.

(7) The department shall comply with applicable confidentiality requirements of DPS and the FBI regarding the maintenance, dissemination, and destruction of criminal background check information.

(8) For applicants with no criminal history, or with no history of felony convictions, the department shall issue a certificate in accordance with this rule if all other requirements for certification have been satisfied.

[7.29.5.11 NMAC - N, 1/30/15]

7.29.5.12 CERTIFICATION REVIEW COMMITTEE:

A. A certification review committee is hereby established. The committee shall be appointed by the secretary and shall be comprised of five employees of the public health division, to include the division director, the deputy director of programs, and the CHW program manager. The committee shall conduct an individualized review of the grounds for action against a certificate and shall determine whether to pursue action against a certificate by a majority vote. A certificate may be denied, suspended or revoked, or may be subject to any lesser action, including but not limited to reprimand or probation.

B. Grounds for action against a certificate:

(1) Conviction of a felony that bears upon the applicant's fitness to provide services.

(2) Fraud, deceit, or misrepresentation during the certification application process.

(3) Failure to possess and apply the knowledge, skill or care that is ordinarily possessed and exercised by CCHWs or as defined by the core competencies.

(4) Unprofessional conduct, which includes but is not limited to:

(a) verbally or physically abusing a client;

(b) unauthorized practice or practice which is beyond the defined scope of practice for CCHWs, including unauthorized use of the CCHW designation;

(c) unauthorized disclosure of medical or other confidential information;

(d) obtaining or attempting to obtain any fee for client services for one's self or for another through fraud, misrepresentation or deceit; or

(e) physical or mental incapacity which could result or has resulted in performance of CCHW duties in a manner which endangers the health and safety of others.

C. Committee review of criminal history screening results:

(1) The committee shall conduct an individualized review of applications with an associated history of felony convictions, and shall determine whether to pursue action against a certificate by a majority vote. Committee members shall meet any DPS or FBI requirements regarding individuals who handle criminal history information.

(2) The committee may request that applicants provide additional information in writing in order to make a final determination of certification, such as evidence of acquittal, dismissal, conviction of a lesser included crime or rehabilitation.

(3) The provisions of the Criminal Offender Employment Act, Section 28-2-1 through 28-2-6 NMSA 1978 shall govern any consideration of criminal records required or permitted by the Community Health Workers Act. The following factors may also be considered in order to make a final determination on certification:

(a) total number of felony convictions and type of crimes;

(b) time elapsed since last conviction or since discharge of sentence;

(c) circumstances of the crime including but not limited to whether violence was involved;

(d) activities evidencing rehabilitation, including but not limited to substance abuse or other rehabilitation programs;

(e) false or misleading statements in the application; and

(f) relation of crimes to the scope of practice.

(4) For the purposes of this section and pursuant to the Criminal Offender Employment Act, Section 28-2-4 NMSA 1978:

(a) if an applicant has been convicted of a felony, and the conviction does not directly relate to the scope of practice, there is a presumption of sufficient rehabilitation if the applicant has completed probation or parole supervision or a period of three years has lapsed after final discharge or release from any term of imprisonment without subsequent conviction; and

(b) if an applicant has been convicted of a felony, and the conviction directly relates to the scope of practice, then the burden is on the applicant to prove by a preponderance of the evidence that he or she has been sufficiently rehabilitated.

(5) Applicants shall be notified in writing of the decision to pursue action against a certificate based on the results of a criminal history review, including a statement of the grounds or subject upon which the action is based.

(6) An applicant whose certification or recertification is denied, suspended or revoked based on information obtained in a criminal history background check, shall be entitled to review the information obtained and to appeal the decision pursuant to the procedure in accordance with this rule.

D. Committee review of other grounds for action:

(1) The committee shall conduct an individualized review of the grounds for action against a CCHW or applicant and shall determine whether to pursue action against a certificate by a majority vote.

(2) The committee may request that applicants provide additional information in writing in order to make a final determination of certification.

(3) Applicants shall be notified in writing of the decision to pursue action against a certificate based on the results of the committee's review, including a statement of the grounds or subject upon which the proposed action is based.

(4) An applicant whose certification or recertification is denied, suspended or revoked shall be entitled to review the information obtained and to appeal the decision pursuant to the procedure in accordance with this rule.

E. An applicant who is reprimanded, placed on probation, or who is otherwise subjected to any lesser form of action against a certificate than denial, suspension, or revocation may upon good

cause submit a verbal or written request to the certification review committee for a secondary review. Requests for review must be submitted within 10 working days of the original decision to take action against a certificate. All decisions by the committee after a secondary review are considered final and are not subject to appeal.
[7.29.5.12 NMAC - N, 1/30/15]

7.29.5.13 HEARINGS:

A. Right to appeal: An applicant may appeal a decision by the department to deny, suspend or revoke a certificate by requesting a hearing by mailing a certified return receipt letter to the address provided in the notice of action within 20 days after service of notice.

B. Notice: The department shall serve upon an applicant written notice containing the action against a certificate and a statement of the grounds or subject upon which the action is based and instructions for requesting a hearing.

C. Notice of hearing: Upon receipt of a timely request for a hearing, the department shall appoint a hearing officer and schedule a hearing, to be held in Santa Fe, New Mexico within 60 working days of receipt of the request.

(1) Either party may request a continuance at least 10 days prior to the scheduled hearing, to be approved or denied by the hearing officer.

(2) If an applicant fails to appear after requesting a hearing, the hearing officer may proceed to consider the matter and render a report and recommendation.

(3) If no request for a hearing is made in the time and manner specified, the committee shall take the action against the certificate and such action shall be final.

D. Hearing officer duties: The hearing officer shall preside over the hearing, administer oaths, take evidence and decide evidentiary objections and rule on any motions or other matters that arise prior to the hearing.

E. Admissible evidence: The hearing officer may admit evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs. Rules of evidence shall not apply but may be considered in determining the weight to be given to any item of evidence. Action against a certificate must not be based solely on hearsay evidence.

F. Discovery: Any party is entitled to obtain the names and addresses of witnesses who will or may be called by the other party to testify and to inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing. Additional discovery may be ordered at the hearing officer's discretion.

G. Burden of proof: In accordance with the Criminal Offender Employment Act:

(1) When the action against a certificate is not based on a review of the applicant's criminal history report, the department has the burden of proving by a preponderance of the evidence the basis for the action.

(2) When the action against a certificate is based on a review of the applicant's criminal history report, and the applicant has been convicted of a felony directly related to the scope of practice, the applicant has the burden of proving sufficient rehabilitation by a preponderance of the evidence.

(3) When the action against a certificate is based on a review of the applicant's criminal history report, and the applicant has been convicted of a felony not directly related to the scope of practice, there is a presumption of rehabilitation and the department has the burden of proving by a preponderance of the evidence that the applicant has not been sufficiently rehabilitated.

H. Conduct of hearing: Hearings shall be open to the public but may be closed at either party's request, at the discretion of the hearing officer. The hearing officer shall state on the record the reasons for holding a closed hearing.

I. Legal representation: An individual entitled to a hearing under this rule shall have the right to be represented by an attorney licensed to practice in New Mexico or by a member of his or her profession or occupation, or both.

J. Hearing officer written report and recommendation(s): The hearing officer shall issue a report and recommended finding to the department secretary within 30 working days of the final submission in the case.

K. Decision of the department: The secretary shall render a final determination in writing, including the basis for the decision, within 30 calendar days of the submission of the hearing officer's written report. A copy of the final decision shall be mailed to the applicant by certified mail, return receipt requested to the most current address provided by the applicant. It is the responsibility of the applicant to provide current contact information to the program.

L. Reinstatement of a suspended or revoked certificate:

(1) Requests for reinstatement for a revoked certificate shall not be considered by the department prior to the expiration of three years from the date of the revocation indicated in the department's final decision. Requests for reinstatement of a suspended certificate shall not be considered by the department prior to the expiration of one year from the date of the suspension indicated in the department's final decision.

(2) Individuals who request reinstatement of their certificate shall provide the department with substantial evidence to support their request in the form of notarized written reports or sworn statements from individuals who have personal knowledge of the individual's activities and progress during the time that the certificate is suspended or revoked.

(3) Reinstatement of a suspended or revoked certificate requires proof of meeting the recertification requirements as set forth in this rule including payment of the reinstatement fee designated in this rule.

(4) If reinstatement of a suspended or revoked certificate is denied, individuals have a right to appeal in accordance with the hearing procedures set forth in this rule.
[7.29.5.13 NMAC - N, 1/30/15]

7.29.5.14 INSPECTION OF RECORDS: The following records are not subject to public inspection, and shall be maintained in a confidential manner:

A. Health information

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.314.5 NMAC, Sections 6, 7 and 9-20, effective 2-1-2015.

8.314.5.6 OBJECTIVE: [~~The objective of this rule is to govern the service portion of the New Mexico medicaid program. These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement.~~] The objective of this rule is to provide instruction for the service portion of the New Mexico medical assistance programs (MAP).
[8.314.5.6 NMAC - Rp, 8.314.5.6 NMAC, 11-1-12; A, 2-1-15]

8.314.5.7 DEFINITIONS:

A. **Activities of daily living (ADLs):** Those activities associated with [~~a person's~~] an individual's daily functioning. The basic skills of everyday living such as toileting, bathing, dressing, grooming, and eating and the skills necessary to maintain the normal routines of the day, such as housekeeping, shopping and preparing meals. The term also includes exercising, personal, social and community skills.

B. **Individual service plan (ISP):** A treatment plan for an eligible recipient that includes the eligible recipient's needs, functional level, intermediate and long range goals, statement for achieving the goals, and specifies responsibilities for the care needs. The [~~plan~~] ISP determines the services allocated to the eligible recipient within [~~program~~] the developmental disabilities waiver (DDW) allowances.

C. **Person centered planning:** Addresses health and long-term services and support needs in a manner that reflects [~~individual~~] the eligible recipient's preferences, strengths and goals.

D. **SIS sum ABE:** Refers to the sum of the standards scores from supports intensity scale (SIS) Section 1. Support needs scale, part A: home living activities; part B: community living activities; and part E: health and safety activities.

E. **Supports intensity scale (SIS):** A standardized assessment tool that provides a reliable framework to quantify the support needs of individuals with developmental disabilities.

F. **Waiver:** Permission from the centers for medicaid and medicare services (CMS) to cover a particular population or service not ordinarily allowed.

[8.314.5.7 NMAC - N, 11-1-12; A, 6-15-14; A, 2-1-15]

8.314.5.9 DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES WAIVER: To help New Mexicans who have a developmental disability, intellectual disability (ID) or a specified related condition to receive services in a cost-effective manner, the New Mexico medical assistance division (MAD) has obtained a waiver of certain federal regulations to provide home and community-based services [~~waiver (HCBSW) programs~~] (HCBS) to eligible recipients as an alternative to institutionalization.

[8.314.5.9 NMAC - Rp, 8.314.5.9 NMAC, 11-1-12; A, 2-1-15]

8.314.5.10 ELIGIBLE PROVIDERS:

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

B. Eligible providers must be approved by the department of health (DOH) developmental disabilities support division ([~~DOH/~~] DDSD) or its designee and have an approved MAD PPA as a [~~developmental disabilities waiver~~] DDW provider.

C. MAD through its designee, [~~DOH/~~] DDSD, follows a subcontractor model for certain DDW services. A provider agency, following the [~~DOH/~~] DDSD model, must ensure the subcontractors or employees meet all required qualifications. [~~Provider agencies~~] A provider agency must provide oversight of subcontractors and employees to ensure subcontractors or employees meet all required MAD and [~~DOH/~~] DDSD qualifications. There must be oversight of subcontractors and employees by the provider agency to ensure the services are delivered in accordance with the all requirements set forth by [~~DOH/~~] DDSD DDW service definition, all requirements outlined in the DDW services standards, [~~and the~~] applicable NMAC rules, MAD supplement, and as applicable, his or her New Mexico licensing board's scope of practice and licensure. Pursuant to federal regulations, an agency may not employ or subcontract with the spouse of an eligible recipient or the parent of [~~a minor child~~] an eligible recipient under 18 years of age receiving MAD services to provide direct care services for the [~~their spouse or minor child~~] eligible recipient.

D. **Qualifications of case management agency providers:** Case management providers, their case managers, whether subcontractors or employees must comply with [~~all accreditation policies and requirements set forth by the DOH/DDSD, DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules. Case management providers must ensure that all case managers, whether subcontractors or employees, meet all qualifications set forth by DOH/DDSD and its DDW service standards and the applicable NMAC rules.~~] Section 10 of this rule. In addition, case management providers must ensure that case managers meet the following qualifications:

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

(2) one of the following:

(a) social worker licensure as defined by the [~~NM board of social work examiners~~] New Mexico regulation and licensing department (RLD); or

(b) registered nurse (RN) licensure as defined by the [~~NM~~] New Mexico board of nursing; or

(c) bachelor's or master's degree in social work, psychology, counseling, nursing, special education, or closely related field;

(3) training requirements as specified by [~~DOH/~~] DDSD; and

(4) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the caregiver criminal history screening (CCHS).

E. **Qualifications of respite provider agencies:** Respite provider agencies must comply [~~with DOH/DDSD accreditation policy and all requirements set forth by the DOH/DDSD service definition, all requirements outlined in the DDW service standards, and the applicable NMAC rules. Respite provider agencies must ensure that all direct support personnel, whether subcontractors or employees, meet all qualifications set forth by DOH/DDSD and in its DDW service standards and the applicable NMAC rules.~~] and ensure that all direct support personnel, whether subcontractors or employees comply with Section 10 of this rule. In addition, respite provider agencies and direct support personnel must:

(1) comply with all training requirements as specified by [~~DOH/~~] DDSD;

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

(3) have written notification from [~~DOH/~~] DDSD that he or she does not have a disqualifying conviction after submitting to the caregiver criminal history screening (CCHS).

F. **Qualifications of adult nursing provider agencies:** [~~Adult nursing provider agencies must comply with all requirements set forth by DOH/DDSD, DDW service standards and all applicable state and federal laws and all medicaid rules. Adult nursing provider agencies must ensure that all nurses, whether subcontractors or employees, meet all qualifications set forth by the DOH/DDSD, and its DDW service standards and applicable NMAC rules. Adult nursing provider agencies must ensure that all nurses, whether subcontractors or employees meet all qualifications set forth by the DOH/DDSD service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules. Direct nursing services are provided by registered or practical nurses licensed by the New Mexico state board of nursing. Nurses must have a minimum of one year of supervised nursing experience, in accordance with the New Mexico Nursing Practice Act and must comply with all aspects of the New Mexico Nursing Practice Act, including requirements regarding delegation of specific nursing functions.~~] Adult nursing provider agencies must comply and ensure whether it has subcontractors or employees, including nurses, must comply with DDW service definitions, DDW service standards, applicable NMAC rules, MAD billing instructions, utilization review instructions, and supplements, and applicable federal and state laws, rules and statutes. Direct nursing services shall be provided by a New Mexico licensed RN or licensed practical nurse (LPN) and must comply with all aspects of the New Mexico Nursing Practice Act, including requirements regarding delegation of specific nursing function and Section 10 of this rule.

G. **Qualifications of therapy provider agencies:** Therapy provider agencies must comply [~~with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules and MAD supplements. Therapy provider agencies must ensure that all therapists including physical, occupational, and speech therapists, physical therapy assistants (PTAs) and certified occupational therapy assistants (COTAs) whether subcontractors or employees, meet all qualifications set forth by DOH/DDSD and the applicable NMAC rules and DDW service standards including relevant licensure or certification in their respective discipline from the New Mexico regulation and licensing department.~~] and ensure that all therapists including physical therapists (PT), occupational therapists (OT), and speech therapists (SLP), physical therapy assistants (PTAs) and certified occupational therapy assistants (COTAs), whether subcontractors or employees, comply with Section 10 of this rule.

H. **Qualifications for community living supports provider agencies:** Living supports consist of family living and supported living. Living supports provider agencies must comply with accreditation policy and all requirements set forth by the [~~DOH/~~] DDSD, DDW service definition, all requirements outlined in the DDW service standards and the MAD rules. Living supports provider agencies must ensure that all direct support personnel meet all qualifications set forth by [~~DOH/~~] DDSD and its DDW service standards and applicable NMAC rules.

(1) Living supports provider agencies and direct support personnel must:

(a) comply with all training requirements as specified by [~~DOH/~~] DDSD;

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

(c) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the CCHS.

[~~(1)~~] (2) Family living provider agencies must ensure that all direct support personnel, whether subcontractors or employees, meet all qualifications set forth by [~~DOH/~~] DDSD and its DDW service standards and the applicable NMAC rules. The direct support personnel employed by or subcontracting with the provider agency must be approved through a home study completed prior to provision of services and conducted at subsequent intervals required of the provider agency.

[~~(2)~~] (3) Supported living provider agencies must ensure that all direct support personnel meet all qualifications set forth by [~~DOH/~~] DDSD and the applicable NMAC rules and its DDW service standards. Supported living provider agencies for supporting living services must employ or subcontract with at least one licensed [~~registered nurse~~] RN and comply with the New Mexico Nurse Practicing Act.

I. **Qualifications of customized community supports provider agencies:** Customized community supports provider agencies must comply with [~~accreditation policy and all requirements set forth by the DOH/DDSD, DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules. Customized community supports provider agencies must ensure that all direct support personnel meet all qualifications set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules.~~] and ensure that all direct support comply with Section 10 of this rule. In addition, customized community supports provider agencies and direct support personnel must:

(1) comply with all training requirements as specified by [~~DOH/~~] DDSD;

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

(3) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the CCHS.

J. **Qualifications of community integrated employment provider agencies:** Community integrated employment provider agencies must comply with [~~the DOH/DDSD accreditation policy and all requirements set forth by the DOH/DDSD DDW service definition, all requirements outlined in the DDW services standards and the applicable NMAC rules. Community integrated employment provider agencies must ensure that all direct support personnel meet all qualifications set forth by DOH/DDSD and the DDW service standards and applicable NMAC rules.~~] and ensure that all direct support personnel comply with Section 10 of this rule. In addition, community integrated employment provider agencies direct support personnel must:

(1) comply with all training requirements as specified by [~~DOH/~~] DDSD;

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

(3) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the CCHS.

K. **Qualifications of behavioral support consultation provider agencies:** Behavioral support consultation provider agencies must comply with [~~all requirements set forth by the DOH/DDSD, DDW service standards and applicable NMAC rules. Behavioral support consultation provider agencies must ensure that all behavioral support consultants, whether subcontractors or employees, meet all qualifications set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules~~] and ensure that all behavioral support consultants, whether subcontractors or employees comply with

Section 10 of this rule.

(1) Providers of behavioral support consultation services must be currently licensed in one of the following professions and maintain that licensure by the [~~NM~~] appropriate RLD board or licensing authority:

(a) a licensed mental health counselor (LMHC), or

(b) a licensed clinical psychologist; or

(c) a licensed psychologist associate, (masters or Ph.D. level); or

(d) a licensed independent social worker (LISW); or

(e) a licensed master social worker (LMSW); or

(f) a licensed professional clinical counselor (LPCC); or

(g) a licensed marriage and family therapist (LMFT); or

(h) a licensed practicing art therapist (LPAT).

(2) Other related licenses and qualifications may be considered with [~~DOH/~~] DDSD prior written approval.

(3) Providers of behavioral support consultation must have a minimum of one year of experience working with individuals with intellectual disabilities (IID).

(4) Behavioral support consultation providers must receive training in accordance with DOH/DDSD training policy.

L. **Qualifications of nutritional counseling provider agencies:** Nutritional counseling provider agencies must comply with [~~all requirements set forth by DOH/DDSD DDW service definitions, all requirements outlined in the DDW service standards and applicable NMAC rules. Nutritional counseling provider agencies must ensure that all nutritional counseling providers, whether subcontractors or employees, meet all qualifications set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules.~~] and ensure that all nutritional counseling providers, whether subcontractors or employees comply with Section 10 of this rule. In addition, nutritional counseling providers must be registered as dietitians by the commission on dietetic registration of the American dietetic association and be licensed [~~in New Mexico~~] by RLD as a nutrition counselor.

M. **Qualifications of environmental modification provider agencies:** Environmental modification contractors and their subcontractors must be bonded, licensed by [~~the state of New Mexico~~] RLD, and authorized by DDSD to complete the specified project. Environmental modification provider agencies must comply with [~~all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules. Environmental modification provider agencies must meet all qualifications set forth by the DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules.~~] Section 10 of this rule. All services shall be provided in accordance with applicable federal, state and local building codes.

N. **Qualifications of crisis supports provider agencies:** Crisis supports provider agencies must comply with [~~all requirements set forth by the DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules. Crisis supports provider agencies must ensure that direct support personnel, whether subcontractors or employees, meet all qualifications set forth by the DOH/DDSD and the DDW service standards.~~] and must ensure that direct support personnel, whether subcontractors or employees comply with Section 10 of this rule. In addition, crisis supports provider agencies and direct support personnel must:

(1) comply with all training requirements as specified by [~~DOH/~~] DDSD;

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

(3) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the CCHS.

O. **Qualifications for non-medical transportation provider agencies:** Non-medical transportation provider agencies must comply with [~~all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules. Non-medical transportation provider agencies must ensure that all transportation provider agencies meet all qualifications set forth by DOH/DDSD DDW definition, all requirements outlined in the DDW service standards and applicable NMAC rules.~~] Section 10 of this rule. In addition, non-medical transportation provider agencies and direct support personnel must:

(1) comply with all training requirements as specified by [~~DOH/~~] DDSD;

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

(3) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the CCHS.

P. **Qualifications of supplemental dental care provider agencies:** Supplemental dental care provider agencies must comply with [~~all requirements set forth by the DOH/DDSD, DDW service standards and all applicable state and federal laws.~~] Section 10 of this rule. Supplemental dental care providers must contract with New Mexico licensed dentists and dental hygienists who are licensed [~~as per New Mexico regulation and licensing department~~] by RLD, 61-5A-1 et seq., NMSA 1978. The supplemental dental care provider will ensure that a RLD licensed dentist [~~per New Mexico regulation and licensing~~] provides the oral examination; ensure that a RLD licensed dental hygienist [~~certified by the New Mexico board of dental health care~~] provides the routine dental cleaning services; demonstrate fiscal solvency; and will function as a payee for the service.

Q. **Qualifications of assistive technology purchasing agent providers and agencies:** Assistive technology purchasing agent providers and agencies must comply with [~~all requirements set forth by the DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules.~~] Section 10 of this rule.

R. **Qualifications of independent living transition service provider agencies:** Independent living transition service provider agencies must comply with [~~all requirements and must meet all qualifications set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules.~~] Section 10 of this rule.

S. **Qualifications of personal support technology/on-site response service provider agencies:** Personal support technology/on-site response service provider agencies must comply [~~and must meet all qualifications with all requirements set forth by DOH/DDSD DDW service definition and all requirements outlined in the DDW service standards and the applicable NMAC rules.~~] with Section 10 of this rule. In addition, personal support technology/on-site response service provider agencies must comply with all laws, rules, and regulations from the federal communications commission (FCC) for telecommunications.

T. **Qualifications of preliminary risk screening and consultation related to inappropriate**

sexual behavior (PRSC) **provider agencies:** [~~Preliminary risk screening and consultation related to inappropriate sexual behavior provider agencies must comply with all requirements set forth by the DOH/DDSD, DDW service standards and all applicable state and federal laws. Preliminary risk screening and consultation related to inappropriate sexual behavior provider agencies must meet all qualifications set forth by the DOH/DDSD and the DDW service standards. Preliminary risk screening and consultation related to inappropriate sexual behavior provider agencies must have a current independent practice license through a board of the New Mexico regulation and licensing department in a counseling or counseling-related behavioral health field (e.g., counseling and therapy practice, psychologist examiners, social work examiners), and a master's or doctoral degree in a counseling or counseling-related field from an accredited college or university. Preliminary risk screening and consultation related to inappropriate sexual behavior provider agencies must comply with all training requirements as specified by DOH/DDSD.~~] A PRSC provider agency must comply with Section 10 of this rule and all training requirements as specified by DDSD. Additionally, the PRSC provider agency must have on staff:

(1) a RLD independently licensed behavioral health practitioner, such as counseling and therapy, a social worker, or a psychologist; or

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

U. **Qualifications of socialization and sexuality education provider agencies:** Socialization and sexuality education provider agencies must comply with [~~all requirements set forth by the DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules. Socialization and sexuality education provider agencies must meet all qualifications set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules.~~] Section 10 of this rule. Agencies must be approved by the DDSD, bureau of behavior supports (BBS) as a socialization and sexuality education provider, and must meet training requirements as specified by DDSD. In addition, socialization and sexuality education provider agencies must have one of the following providers rendering the service:

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

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

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

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

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

(6) a [~~New Mexico registered nurse or as a licensed practical nurse~~] RLD licensed RN or LPN;

(7) a bachelor's degree in special education; or

(8) hold a certification in special education.[~~and~~

~~(9) been approved by the DDS office of behavioral services as a socialization and sexuality education provider; and~~

~~(10) must meet training requirements as specified by DDSD.~~]

V. **Qualifications of customized in-home supports provider agencies:** The customized in-home supports provider agencies must comply with [~~DOH/DDSD accreditation policy and all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules. Customized in-home supports provider agencies must ensure that all direct support personnel, whether subcontractors or employees, meet all qualifications set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules.~~] and ensure direct support personnel, whether subcontractors or employees comply with Section 10 of this rule. In addition, customized in-home supports provider agencies and direct support personnel must:

(1) comply with all training requirements as specified by [~~DOH/~~] DDSD;

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

(3) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the CCHS.

W. **Qualifications of [~~intense~~] intensive medical living supports provider agencies:** [~~Intense~~] Intensive medical living supports provider agencies must comply with [~~the accreditation policy and all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules. Intense medical living supports provider agencies must employ or subcontract with at least one licensed registered nurse. by the New Mexico state board of nursing. Nurses must have a minimum of one year of supervised nursing experience, in accordance with the New Mexico Nursing Practice Act. Intense medical living supports provider agencies must ensure that all direct support personnel meet all qualifications set forth by the DOH/DDSD, DDW service standards and applicable NMAC rules. Intense~~] and ensure RNs, whether subcontractors or employees comply with Section 10 of this rule. Intensive medical living supports provider agencies must employ or subcontract with at least one New Mexico licensed nurse (RN) who must have at a minimum of one year of supervised nursing experience and comply with the New Mexico Nursing Practice Act. In addition, intensive medical living supports provider agencies and direct support personnel must:

(1) comply with all training requirements as specified by [~~DOH/~~] DDSD; [~~and~~]

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

(3) have written notification from DOH that he or she does not have a disqualifying conviction after submitting to the CCHS.

[8.314.5.10 NMAC - Rp, 8.314.5.10 NMAC, 11-1-12; A, 6-15-14; A, 2-1-15]

8.314.5.11 PROVIDER RESPONSIBILITIES:

A. A provider who furnishes services to a [~~medicaid or other health care programs~~] MAP eligible recipient must comply with all federal and state laws, regulations, rules, and executive orders relevant to the provision of services as specified in the MAD provider participation agreement. A provider also must [~~conform~~] meet and adhere to all NMAC rules and instructions as specified in the provider rules manual and its appendices, DDW service standards, DDW service definitions, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and the centers for medicare and medicaid services (CMS) correct coding initiatives, including not improperly unbundling or upcoding services.

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

C. When services are billed to and paid by a MAD fee-for-service

coordinated services contractor authorized by HSD, under an administrative services contract, the provider must also enroll as a provider with the coordinated services contractor and follow that contractor's instructions for billing and for authorization of services. See 8.302.1 NMAC.
[8.314.5.11 NMAC - Rp, 8.314.5.11 NMAC, 11-1-12; A, 6-15-14; A, 2-1-15]

8.314.5.12 ELIGIBLE RECIPIENTS: [~~DD waiver~~] DDW services are intended for [~~individuals~~] MAP eligible recipients who have developmental disabilities limited to intellectual disability (ID) or a specific related condition. MAP eligibility criteria [~~is~~] are located [~~at Subsection B of~~] in 8.290.400.10 NMAC.
[8.314.5.12 NMAC - Rp, 8.314.5.12 NMAC, 11-1-12; A, 2-1-15]

8.314.5.13 MAP RECIPIENT STANDARDIZED ASSESSMENT:

A. [~~DOH/~~] DDSD shall utilize the supports intensity scale (SIS) to assess the needs of all adult recipients transitioning into the waiver and of adults who are new allocations into the waiver, and to conduct assessments on each eligible recipient [~~every three years~~] within the third year thereafter. The SIS assessment shall be administered to [~~eligible recipients who are~~] an eligible recipient who is 17 years of age or older and will be at least 18 years of age at the time of [~~their~~] his or her individual service plan (ISP) start date. The SIS quantifies the pattern and intensity of support needs of an eligible recipient with intellectual or developmental disabilities by obtaining information about the needs of each eligible recipient through an assessment process. Supplemental questions related to: [~~exceptional behavior and exceptional medical support needs are asked at the end of the SIS assessment.~~]

(1) severe medical risk;

(2) severe community safety risk - convicted;

(3) severe community safety risk - not convicted; or

(4) severe risk of injury to self.

B. The SIS assessment shall be scheduled 30-90 calendar days prior to the individual's [~~individual service plan begin~~] ISP start date and at least three years after the last SIS assessment was conducted so that the interdisciplinary team can receive results and plan services accordingly. Recipients shall be offered options for dates and times to schedule the SIS assessment.

C. The SIS scheduling process shall include planning for accommodations, education about choice of respondents, and setting the time and location.

D. The [~~person~~] individual being assessed is strongly encouraged to be involved in the entire assessment but must at least meet the SIS interviewer.

E. At least two primary respondents who are usually primary caregivers [~~and~~] or direct support professionals in residential and day service programs must attend the assessment. The individual being assessed can also be a primary respondent. Primary respondents are not required to have [~~to have~~] clinical expertise or professional degrees. Qualifications for primary respondents include:

(1) [~~knowing the person~~] have known the individual for at least the last three months;

(2) have recently observed the [~~person~~] individual in one or more settings at least several hours per setting; and

(3) [~~having~~] have the ability to describe the individual's support needs.

F. A guardian or close family member are strongly encouraged and [~~welcome~~] welcomed to be involved, [~~and may or~~] however may not be qualified as a primary respondent.

G. The attendance of ancillary respondents is optional. Typically, medical, behavioral or therapy professionals may serve as ancillary respondents. They can provide clinical information that adds perspective particularly for individuals with complex support needs.

H. Standard guidelines for administering the SIS assessment include:

(1) the SIS assessor is trained and certified to provide SIS assessments;

(2) the SIS assessor provides information to the primary and [~~secondary~~] ancillary respondents about the SIS assessment process prior to starting the assessment;

(3) the SIS assessment is conducted face to face;

(4) the SIS assessor met the individual [~~(DDW participant)~~];

(5) each question in the assessment is explained to respondents prior to it being scored;

(6) each question is asked and discussed during the assessment;

(7) the final score of each question is shared with the respondents; and

(8) medical and behavioral needs are discussed with the respondents.

I. [~~An eligible recipient may request a SIS reassessment (prior to three year schedule) when:~~] Within an eligible recipient's three year assessment cycle, he or she or the authorized representative may request a new SIS assessment when:

(1) [~~the recipient~~] the eligible recipient or his or her authorized representative believes there is a substantial departure from standard guidelines for administering the SIS; and

(2) the eligible recipient has experienced a change of condition that results in a significant change to the pattern and intensity of supports [~~and services~~] needed to maintain the eligible recipient's health and safety [~~of the eligible recipient~~].

J. SIS reassessments must be requested according to procedure and timelines established by DDSD, and require [~~the~~] prior written approval of [~~DOH/~~] DDSD.

K. The New Mexico (NM) DDW groups A through G are assigned through standardized application of decision rules associated with select SIS scores, and when relevant, the supplemental question verification process.

(1) Medical support score refers to the total score in SIS section 3.A. titled: medical support needed.

(2) Behavior support score refers to the total score in SIS section 3.B. titled: behavioral support needed.

(3) Extraordinary medical risk is determined by verification of positive responses to supplemental questions through a document review by subject matter experts.

(4) Dangerousness to others or extreme self-injury risk is determined by verification of responses to supplemental questions through a document review by [~~two~~] subject matter experts.

(5) Table identifying standard decision rules to define the NM DDW groups A through G:

[*Please see TABLE on page 33*]

NM DDW groups	SIS sum ABE	[~~SIS sum ABE national percentile~~]	Section 3A medical support score	Section 3B behavior support score
A: Mild support needs and low to moderate behavioral challenges	≥ 0 to ≤ 24	[~~25th percentile or less~~]	≥ 0 to ≤ 6	≥ 0 ≤ to 6
B: Low to moderate support needs and behavioral challenges	≥ 25 to ≤ 30	[~~26th to 50th percentile~~]	≥ 0 to ≤ 6	≥ 0 to ≤ 6
C: Mild to above average support needs and moderate to above average behavioral challenges	≥ 0 to ≤ 36	[~~1st to 75th percentile~~]	≥ 0 to ≤ 6	≥ 7 to ≤ 10
D: Above average support needs and low to moderate behavioral challenges	≥ 31 to ≤ 36	[~~51st to 75th percentile~~]	≥ 0 to ≤ 6	≥ 0 to ≤ 6
E: High support needs and mild to above average behavioral challenges	≥ 37 to ≤ 55	[~~76th percentile or greater~~]	≥ 0 to ≤ 6	≥ 0 to ≤ 10
F: Extraordinary medical challenges	any	[~~any~~]	≥ 7 to ≤ 32 **OR** extraordinary medical risk	≥ 0 to ≤ 10
G. Extraordinary behavioral challenge	any	[~~any~~]	any	≥ 11 to ≤ 26 **OR** dangerousness to others or extreme self-injury risk

L. Information from the SIS assessment [~~can~~] should be used for person-centered planning.

[8.314.5.13 NMAC - Rp, 8.314.5.13 NMAC, 11-1-12; 8.314.5.13 NMAC - N, 6-15-14; A, 2-1-15]

8.314.5.14 DDW COVERED WAIVER SERVICES: The DDW program is limited to the number of federally authorized unduplicated eligible recipient (UDR) positions and program funding. All DDW covered services in an [~~individual service plan~~] ISP must be authorized and cannot exceed the allowable funding amount associated with the assigned service package. [~~Covered~~] DDW services must be provided in accordance with all requirements set forth by [~~DOH/~~] DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules, supplements and guidance. MAD covers the following services for a specified and limited number of waiver eligible recipients as a cost effective alternative to institutionalization in an intermediate care facilities for individuals with intellectual disabilities (ICF-IID).

A. There are seven NM DDW groups (labeled A-G) each of which has a corresponding service package and budget. The service package for each NM DDW group is based on assessed need and consists of a base budget, a professional services budget, and other services budget that make up the total funding authorized in the eligible recipient's ISP. The service package for each of the seven NM DDW groups allows an eligible recipient flexibility to choose services to meet his or her needs within the maximum amount allowed in the service package assigned to the corresponding NM DDW group.

B. Covered waiver services by NM DDW group assignments:

NM DDW GROUP	BASE BUDGET ELIGIBILITY	PROFESSIONAL SERVICES
A: Mild support needs and low to moderate behavioral challenges	case management customized in-home supports: independent or family/natural supports including respite day services-including employment, customized community supports	physical therapy, speech therapy, occupational therapy- prioritize one discipline behavior support consultation

B: Low to moderate support needs and behavioral challenges	case management customized in-home supports: independent or family/natural supports including respite day services-including employment, customized community supports	physical therapy, speech therapy, occupational therapy- prioritize one discipline behavior support consultation
C: Mild to above average support needs and moderate to above average behavioral challenges	case management customized in-home supports, family living or supported living: independent or family/natural supports including respite day services- including employment, customized community supports	physical therapy, speech therapy, occupational therapy- prioritize one discipline behavior support consultation, increase to core hours
D: Above average support needs and low to moderate behavioral challenges	case management customized in-home supports, family living or supported living: independent or family/natural supports including respite day services- including employment, customized community supports	physical therapy, speech therapy, occupational therapy- prioritize two disciplines behavior support consultation
E: High support needs and mild to above average behavioral challenges	case management customized in-home supports, family living or supported living: independent or family/natural supports including respite day services-including employment, customized community supports	physical therapy, speech therapy, occupational therapy- three disciplines if clinical criteria met for each discipline behavior support consultation
F: Extraordinary medical challenges	case management customized in-home supports, family living or supported living: independent or family/natural supports including respite, intensive medical living services day services- including employment, customized community supports	physical therapy, speech therapy, occupational therapy- three disciplines if clinical criteria met for each discipline behavior support consultation
G: Extraordinary behavioral challenges	case management customized in-home supports, family living or supported living: family/natural supports including respite day services- including employment, customized community supports, individualized Intensive behavior customized community supports with prior approval	physical therapy, speech therapy, occupational therapy- prioritize two disciplines behavior support consultation, increase to core hours

C. [~~Other services in the service standards are available to all NM DDW groups with prior authorization from the DDSD regional director.~~] Environmental modifications, preliminary risk screening, and crisis supports require prior authorization from DDSD. Other services in the service standards are available to all NM DDW groups as follows:

(1) environmental modifications every five years with a prior authorization;

(2) personal support technology with a prior authorization;

(3) assistive technology with a prior authorization;

(4) independent living transition;

(5) supplemental dental care, one visit per year;

(6) non-medical transportation, with caps applicable by mileage [~~of~~] and passes with a prior authorization;

(7) adult nursing with a prior authorization;

(8) nutritional counseling with a prior authorization;

(9) initial assessments for therapies and behavior support consultation;

(10) preliminary risk screening and consultation related to inappropriate sexual behavior with a prior authorization;

(11) socialization and sexuality education, six classes per lifetime; and

(12) crisis supports with a prior authorization.

D. Group H is reserved for [~~individuals who have~~] an eligible recipient who has extenuating circumstances or extremely complex needs that may require services that exceed the service package options corresponding to the assigned NM DDW group. Services outside of the maximum amount allowed in the services package assigned to the corresponding NM DDW group may be authorized for [~~individuals~~] an eligible recipient through group H designation on a categorical basis as deemed appropriate by DDSD, on either a temporary (less than 90 calendar days) or long-term basis (greater than 90 calendar days).

(1) Categorical group H assignment includes:

(a) [~~individuals~~] an eligible recipient included in the class established in the matter of Walter Stephen Jackson, et al vs. Fort Stanton Hospital and Training School et. al, (757 F. Supp. 1243 DNM 1990) [~~are~~] is to receive categorical NM DDW group H approval, regardless of their NM DDW group assignment. Jackson class members may receive service types and amounts consistent with those approved in their ISP; and

(b) [~~individuals~~] an eligible recipient assigned to NM DDW group A or B who are 55 or older and who [~~have~~] has been receiving DDW supported living prior to March 1, 2013. These eligible recipients may continue to receive supported living services if desired.

(2) The review process for temporary group H requests for service is as follows:

(a) the interdisciplinary team (IDT) convenes and determines the need for consideration for a temporary group H request by identifying the specific need or service, and number of units necessary;

(b) the IDT is responsible for first completing any prior authorization processes and obtaining the maximum amounts of services available within the current NM DDW group assignment;

(c) the case manager submits a group H request for services to the regional office (RO);

(d) the RO director or designee makes a determination based on criteria from [~~the~~] DDSD whether the request meets the definition of extenuating circumstances or extremely complex needs. Once a determination on the review is made, the case manager or [~~individuals legal~~] an eligible recipient, or his or her authorized representative will be notified of the decision in writing;

(e) if temporary group H request for services is approved by DDSD, the case manager shall submit a budget revision with the DDSD prior authorization to the third party assessor (TPA).

(3) The review process for long-term group H requests for service is as follows:

(a) the IDT convenes and determines the need for consideration for a long-term group H request by identifying the specific need or service and the number of units necessary;

(b) the IDT is responsible for first completing any prior authorization processes and obtaining the maximum amounts of services available within the current NM DDW group assignment;

(c) the case manager submits a group H request for services to the [~~regional office~~] RO;

(d) the RO director or designee makes a determination whether the request is appropriate for review by the group H committee for long-term group H by verifying:

(i) the options within the [~~individual's~~] eligible recipient's current NM DDW group assignment have been fully explored;

(ii) that generic/natural resources to address the extenuating circumstance or complex need have been explored;

(iii) that the nature of the extenuating circumstance or complex need is anticipated to last longer than 90 calendar days, and

(iv) that the individual's need for a long-term group H request for services is not exclusively due to a significant change in condition that can otherwise be addressed through temporary group H request for services needed outside the current NM DDW group assignment [~~while waiting for a~~] pending the scheduling of a SIS reassessment;

(e) [~~the group H review committee~~] DDSD makes a determination based on its criteria [~~from the~~] set by DDSD whether the request meets the definition of extenuating circumstances or extremely complex needs; once a determination is made, the case manager and the [~~individual or individual's legal~~] eligible recipient or his or her authorized representative will be notified of the decision in writing;

(f) [~~in~~] if the long-term group H request for services is approved by DDSD, the case manager shall submit a budget revision with the [~~DDSD~~] approved prior authorizations to the TPA.

E. Services available in service packages:

(1) **Case management services:** Case management services assist an eligible [~~recipients~~] recipient to access [~~medicaid waiver services and medicaid state plan services. Case managers also link~~] MAD covered services. A case manager also links the eligible recipient to needed medical, social, educational and other services, regardless of funding source. [~~Waiver~~] DDW services are intended to enhance, not replace existing natural supports and other available community resources. Services will emphasize and promote the use of natural and generic supports to address the eligible recipient's assessed needs in addition to paid supports. Case managers facilitate and assist in assessment activities, as appropriate. Case management services are person-centered and intended to support an eligible [~~recipients~~] recipient in pursuing his or her desired life outcomes while gaining independence, and access to services and supports. Case management is a set of interrelated activities that are implemented in a collaborative manner involving the active participation of the eligible recipient, his or her [~~designated representative/ guardian~~] authorized representative, and the entire interdisciplinary team. The case manager is an advocate for the eligible recipient [~~they serve~~] he or she serves, is responsible for developing the [~~individualized service plan~~] ISP and for ongoing monitoring of the provision of services included in the ISP. Case management services include but are not limited to activities such as:

(a) assessing needs; facilitating eligibility determination for persons with developmental disabilities;

(b) directing the service planning process;

(c) advocating on behalf of the eligible recipient;

(d) coordinating service delivery;

(e) assuring services are delivered as described in the [~~individualized service plan~~] ISP; and

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

(i) Cost-effectiveness is a [~~waiver program~~] DDW requirement mandated by federal [~~policy~~] regulation. The fiscal responsibilities of the case manager include assuring cost containment by preventing the expense of [~~waiver~~] DDW services from exceeding a maximum cost established by

DOH and by exploring other options to address expressed needs.

(ii) Case managers must evaluate and monitor direct service through face-to-face visits with the eligible recipient to ensure the health and welfare of the eligible recipient, and to monitor the implementation of the ISP.

(iii) Case management services must be provided in accordance with [~~the accreditation policy and with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and applicable NMAC rules.~~] Section 10 of this rule.

(2) **Respite services:** Respite [~~is~~] services are a flexible family support service for an eligible recipient. The primary purpose of respite services is to provide support to the eligible recipient and give the primary, unpaid caregiver relief and time away from [~~their~~] his or her duties. Respite services include assistance with routine activities of daily living (e.g., bathing, toileting, preparing or assisting with meal preparation and eating), enhancing self-help skills and providing opportunities for play and other recreational activities; community and social awareness; providing opportunities for community and neighborhood integration and involvement; and providing opportunities for the eligible recipient to make [~~his/her~~] his or her own choices with regard to daily activities. Respite services will be scheduled as determined by the primary caregiver. An eligible recipient receiving living supports [~~and~~] or customized in-home supports (when an eligible recipient is not living with a family member), may not access respite services. Respite services may be provided in the eligible recipient's own home, in a provider's home, or in a community setting of the eligible recipient family's choice. Respite services must be provided in accordance with [~~the accreditation policy and all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules.~~] Section 10 of this rule.

(3) **Adult nursing services:** Adult nursing services are provided by a licensed [~~registered nurses~~] RN or [~~licensed practical nurses~~] LPN under the supervision of a RN to an eligible adult recipient. Adult nursing services are intended to support the highest practicable level of health, functioning and independence for a DDW eligible recipient age 21 and older with a variety of health conditions [~~except for~~]. The exception is an eligible recipient receiving nursing supports through supported living and intensive medical living services, where such nursing supports are included as part of the living service and addressed within those respective services standards. Any adult nursing service provided during the hours of customized community supports cannot be billed as a separate [~~rate~~] service because nursing is included in the customized community supports [~~rate~~] services. There are two categories of adult nursing services: (a) assessment and consultation services which include a comprehensive health assessment and basic nurse consultation of and with an eligible recipient; and (b) ongoing services, which require prior authorization and are tied to the eligible recipient's specific health needs revealed in the comprehensive health assessment. Adult nursing services must comply with Section 10 of this rule.

~~[(a) Adult nursing services support the delivery of professional nursing services in compliance with the New Mexico Nurse Practice Act and in accordance with professional standards of practice.~~

~~(b) [Eligible children and youth recipients] DDW eligible recipients under 21 years of age receive medically necessary nursing services through the medicaid state plan early periodic screening, diagnostic and treatment (EPSDT) program and are, therefore, not eligible for this service through the waiver.~~

~~(c) Adult nursing services for eligible recipients must be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules.~~]

(4) **Therapy services:** Therapy services are to be delivered consistent with the participatory approach philosophy and two models of therapy services (collaborative-consultative and direct treatment). These models support and emphasize increased participation, independence and community inclusion in combination with health and safety. Therapy services are designed to support achievement of ISP outcomes and prioritized areas of need identified through therapeutic assessment. [~~Physical therapy (PT), occupational therapy (OT) and speech-language pathology (SLP)~~] PT, OT and SLP are skilled therapies that are recommended by an eligible recipient's [~~interdisciplinary team~~] IDT members and a clinical assessment that demonstrates the need for therapy services. Therapy services for an eligible adult [~~recipients~~] recipient require a prior authorization except for [~~an~~] his or her initial assessment. A RLD licensed practitioner, as specified by applicable state laws and standards, provides the skilled therapy services. Therapy services for eligible adult recipients must [~~be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules. For therapy services, eligible children and youth recipients receive medically necessary nursing services through the medicaid state plan EPSDT benefits.~~] comply with Section 10 of this rule. For an eligible recipient under 21 years of age, he or she accesses covered therapy services through the early and periodic screening, diagnostic and treatment program (EPSDT).

(a) **Physical therapy (PT):** [~~Physical therapy~~] PT is a skilled, RLD licensed therapy service involving the diagnosis and management of movement dysfunction and the enhancement of physical and functional abilities. Physical therapy addresses the restoration, maintenance, and promotion of optimal physical function, wellness and quality of life related to movement and health. Physical therapy prevents the onset, symptoms and progression of impairments, functional limitations, and disability that may result from diseases, disorders, conditions or injuries. A RLD licensed physical therapy assistant (PTA) may perform physical therapy procedures and related tasks pursuant to a plan of care/therapy intervention plan written by the supervising physical therapist. Therapy services for eligible recipients must comply with Section 10 of this rule.

(b) **Occupational therapy (OT):** [~~Occupational therapy~~] OT is a skilled, RLD licensed therapy service involving the use of everyday life activities (occupations) for the purpose of evaluation, treatment, and management of functional limitations. Therapy services for eligible recipients must comply with Section 10 of this rule. Occupational therapy addresses physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well-being and quality of life. [~~Certified occupational therapy assistants~~] COTAs may perform occupational therapy procedures and related tasks pursuant to a therapy intervention plan written by the supervising [~~occupational therapist and in accordance with the current NM Occupational Therapy Act. Occupational therapy~~] OT as allowed by RLD licensure. OT services typically include:

(i) evaluation and customized treatment programs to improve the eligible recipient's ability to engage in daily activities;

(ii)

evaluation and treatment for enhancement of an eligible recipient's performance skills;

(iii) health and wellness promotion to the eligible recipient;

(iv) environmental access and assistive technology evaluation and treatment for use by the eligible recipient; and

(v) training/consultation to eligible recipient's family members and direct support personnel.

(c) **Speech-language pathology:** [~~Speech-language pathology~~] SLP service, also known as speech therapy, is a skilled therapy service, provided by a speech-language pathologist that involves the non-medical application of principles, methods and procedures for the diagnosis, counseling, and instruction related to the development of and disorders of communication including speech, fluency, voice, verbal and written language, auditory comprehension, cognition, swallowing dysfunction and sensory-motor competencies. Therapy services for eligible recipients must comply with Section 10 of this rule. Speech-language pathology services are also used when an eligible recipient requires the use of an augmentative communication device. For example, [~~speech-language pathology~~] SLP services are intended to:

(i) improve or maintain the eligible recipient's capacity for successful communication or to lessen the effects of an eligible recipient's loss of communication skills; or

(ii) treat a specific condition clinically related to an intellectual developmental disability of the eligible recipient; or

(iii) improve or maintain the eligible recipient's ability to safely eat foods, drink liquids or manage oral secretions while minimizing the risk of aspiration or other potential injuries or illness related to swallowing disorders.

(5) **Living supports:** Living supports are residential habilitation services intended for NM DDW groups C through G that are individually tailored to assist an eligible recipient 18 years [~~or~~] and older who is assessed to need daily support or supervision with the acquisition, retention, or improvement of skills related to living in the community to prevent institutionalization. Living supports include residential instruction intended to increase and promote independence and to support an eligible recipient to live as independently as possible in the community in a setting of his or her own choice. Living support services assist and encourage an eligible recipient to grow and develop, to gain autonomy, become self-governing and pursue [~~their~~] his or her own interests and goals. Living support providers take positive steps to protect and promote the dignity, privacy, legal rights, autonomy and individuality of each eligible recipient who receives services. Services promote inclusion in the community and an eligible [~~recipients are~~] recipient is afforded the opportunity to be involved in the community and actively participate using the same resources and doing the same activities as other community members. Living supports will assist an eligible recipient to access generic and natural supports and opportunities to establish or maintain meaningful relationships throughout the community. Living supports providers are responsible for providing an appropriate level of services and supports up to 24 hours per day, seven days per week. Room and board costs are reimbursed through the eligible recipient's social security insurance (SSI) or other personal accounts and cannot be paid through [~~the medicaid waiver. Living supports services must be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules.~~] the DDW. Therapy services for eligible recipients must comply with Section 10 of this rule. Living supports consists of family living and supported living as follows.

(a) **Family living:** Family living is intended for an eligible recipient who is assessed to need residential habilitation to ensure health and safety while providing the opportunity to live in a typical family setting. Family living is a residential habilitation service that is intended to increase and promote independence and to provide the skills necessary to prepare an eligible recipient to live on his or her own in a non-residential setting. Family living services are designed to address assessed needs and identified individual eligible recipient outcomes. Family living is direct support and assistance to no more than two eligible recipients furnished by a natural or host family member, or companion who meets the requirements and is approved to provide family living services in the eligible recipient's home or the home of the family living direct care personnel. The eligible recipient lives with the paid direct support personnel. The provider agency is responsible for substitute coverage for the primary direct support personnel to receive sick leave and time off as needed.

(i) Home studies: The family living services provider agency shall complete all [~~DOH/~~] DDSD requirements for approval of each direct support personnel, including completion of an approved home study and training prior to placement. After the initial home study, an updated home study shall be completed annually. The home study must also be updated each time there is a change in family composition or when the family moves to a new home. The content and procedures used by the provider agency to conduct home studies shall be approved by DDSD.

(ii) Family living services: Family living can be provided to no more than two eligible recipients with developmental disabilities at a time. An exception may be granted by [~~DOH/~~] DDSD if three eligible recipients are in the residence, but only two of the three are on the [~~waiver~~] DDW and the arrangement is approved by [~~DOH/~~] DDSD based on the home study documenting the ability of the family living services provider agency to serve more than two eligible recipients in the residence; or there is documentation that identifies the eligible recipients as siblings or there is documentation of the longevity of a relationship (e.g., copies of birth certificates or social history summary). Documentation shall include a statement of justification from a social worker, psychologist, and any other pertinent professionals working with the eligible recipients. Family living services cannot be provided in conjunction with any other living supports service, respite, or nutritional counseling.

(b) **Supported living:** Supported living is intended for an eligible recipient who is assessed to need residential habilitation to ensure health and safety. Supported living is a residential habilitation service that is intended to increase and promote independence and to provide the skills necessary to prepare an eligible recipient to live on his or her own in a non-residential setting. Supported living services are designed to address assessed needs and identified individual eligible recipient outcomes. The service is provided to two to four eligible recipients in a community residence. Prior authorization is required from [~~DOH/~~] DDSD for an eligible recipient to receive this service when living alone. Supported living services cannot be provided in conjunction with any other living supports service, respite, or nutritional counseling.

(6) **Customized community supports:** Customized community supports consist of individualized services and supports that enable an eligible recipient to acquire, maintain, and improve opportunities for independence, community integration and employment. Customized community supports services are designed around

the preferences and choices of each eligible recipient and offer skill training and supports to include: adaptive skill development; educational supports; citizenship skills; communication; social skills, socially appropriate behaviors; self-advocacy, informed choice; community integration and relationship building. This service provides the necessary support to develop social networks with community organizations to increase the eligible recipient's opportunity to expand valued social relationships and build connections within local communities. This service helps to promote self-determination, increases independence and enhances the eligible recipient's ability to interact with and contribute to his or her community.

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

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

(c) Customized community supports services may be provided regularly or intermittently based on the needs of the eligible recipient and are provided during the day, evenings and weekends.

(d) Customized community supports may be provided in a variety of settings to include the community, classroom, and site-based locations. Services provided in any location are required to provide opportunities that lead to participation and integration in the community or support the eligible recipient to increase his/her growth and development.

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

(f) Customized community supports services must be provided in accordance with [~~all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules.~~] Section 10 of this rule.

(7) **Community integrated employment:** Community integrated employment provides supports that achieve employment in jobs of the eligible recipient's choice in his or her community to increase his or her economic independence, self-reliance, social connections and ability to grow within a career. Community integrated employment results in employment alongside non-disabled coworkers within the general workforce or in business ownership. This service may also include small group employment including mobile work crews or enclaves. An eligible recipient is supported to explore and seek opportunity for career advancement through growth in wages, hours, experience or movement from group to individual employment. Each of these activities is reflected in individual career plans. Community integrated employment services must not duplicate services covered under the Rehabilitation Act or the Individuals with Disabilities Education Act (IDEA). Compensation shall comply with state and federal laws including the Fair Labor Standards Act. [~~Medicaid~~] DDW funds (e.g., the provider agency's reimbursement) may not be used to pay the eligible recipient for work. Community integrated employment services must [~~be provided in accordance with the DOH/DDSD DDW service definitions and standards.~~] comply with Section 10 of this rule. Community integrated employment consists of job development, self-employment, individual community integrated employment and group community integrated employment models.

(a) **Self-employment:** The community integrated employment provider provides the necessary assistance to develop a business plan, conduct a market analysis of the product or service and establish necessary infrastructure to support a successful business. Self-employment does not preclude employment in the other models. Self-employment may include but is not limited to the following:

(i) [~~complete~~] completing a market analysis of product/business viability;

(ii) [~~creation of~~] creating a business plan including development of a business infrastructure to sustain the business over time, including marketing plans;

(iii) [~~referral to and coordination~~] referring and coordinating with the division of vocational rehabilitation (DVR) for possible funds for business start-up;

(iv) [~~assist~~] assisting in obtaining required licenses necessary tax [~~IDs~~] identifications, incorporation documents and completing any other business paperwork required by local and state codes;

(v) [~~support the eligible recipient to develop and implement a system for bookkeeping and records management~~] supporting the eligible recipient in developing and implementing a system of bookkeeping and records management;

(vi) [~~provide~~] providing effective job coaching and on-the-job training and skill development; and

(vii) [~~arrange~~] arranging transportation or public transportation during self-employment services.

(b) **Individual community integrated employment:** Is job coaching for an employed eligible [~~recipients~~] recipient in integrated community based settings. The amount and type of individual support needed will be determined through vocational assessment including on-the-job analysis. Individual community integrated employment may include, but is not limited to the following:

(i) provide effective job coaching and on-the-job training as needed to assist the eligible recipient to maintain the job placement and enhance skill development; and

(ii) arrange transportation or public transportation during individual community integrated employment services.

(c) **Group community integrated employment:** Is when more than one eligible recipient works in an integrated setting with staff supports on site. Regular and daily contact with non-disabled coworkers or the public occurs. Group community integrated employment may include but is not limited to the following:

(i) participate with the [~~interdisciplinary team~~] IDT to develop a plan to assist an eligible recipient who desires to move from group employment to individual employment; and

(ii) provide effective job coaching and on-the-job training as needed to assist the eligible recipient to maintain the job placement and enhance skill development.

(8) **Behavioral support consultation services:** Behavioral support consultation services guide the IDT to enhance the eligible recipient's quality of life by providing positive behavioral supports for the development of functional and relational skills. Behavioral support consultation services also identify distracting, disruptive, or destructive behavior that could compromise quality of life and provide specific prevention and intervention strategies to manage and lessen the risks this behavior presents. Behavioral support consultation services do not include individual or group therapy, or any other behavioral services that would typically be provided through the behavioral health system.

(a) Behavioral support consultation services are intended to augment functional skills and positive behaviors that contribute to quality of life and reduce the impact of interfering behaviors that compromise quality of life. This service is provided by an authorized behavioral support consultant and includes an assessment and positive behavior support plan development, IDT training and technical assistance, and monitoring of an eligible recipient's behavioral support services.

(b) Behavioral support consultation services must [~~be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules.~~] comply with Section 10 of this rule.

(9) **Nutritional counseling services:** Nutritional counseling services include the assessment, evaluation, collaboration, planning, teaching, consultation and implementation and monitoring of a nutritional plan that supports the eligible recipient to attain or maintain the highest practicable level of health. Nutritional counseling services are in addition to those nutritional or dietary services allowed in the eligible recipient's medicaid state plan benefit, or other funding source. This service does not include oral-motor skill development services, such as those services provided by a speech pathologist. Because nutritional counseling is included in the reimbursement rate for living supports, nutritional counseling cannot be billed as a separate service during the hours of living supports. Nutritional counseling services must [~~be provided in accordance with the DOH/DDSD DDW service definitions and standards.~~] comply with Section 10 of this rule.

(10) **Environmental modification services:** [~~Environmental modifications services include the purchase and installation of equipment or making physical adaptations to an eligible recipient's residence that are necessary to ensure the health, welfare and safety of the individual or enhance the eligible recipient's access to the home environment and increase the eligible recipient's ability to act independently.~~] Environmental modifications services include the purchasing and installing of equipment or making physical adaptions to an eligible recipient's residence that are necessary to ensure the health, welfare and safety of the eligible recipient or enhance his or her access to the home environment and increase his or her ability to act independently.

(a) Adaptations, instillations and modifications include:

(i) heating and cooling adaptations;

(ii) fire safety adaptations;

(iii) turnaround space adaptations;

(iv) specialized accessibility, safety adaptations or additions;

(v) installation of specialized electric and plumbing systems to accommodate medical equipment and supplies;

(vi) installation of trapeze and mobility tracks for home ceilings;

(vii) installation of ramps and grab-bars;

(viii) widening of doorways or hallways;

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

(x) purchase or installation of air filtering devices;

(xi) purchase or installation of lifts or elevators;

(xii) purchase and installation of glass substitute for windows and doors;

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

(xiv) purchase and installation of alarm and alert systems or signaling devices.

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

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

(d) Environmental modification services must [~~be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules.~~] comply with Section 10 of this rule.

(11) **Crisis supports:** Crisis supports are services that provide intensive supports by appropriately trained staff to an eligible recipient experiencing a behavioral or medical crisis either within the eligible recipient's present residence or in an alternate residential setting. Crisis support must [~~be provided in accordance with the DOH/DDSD DDW service definitions and standards.~~] comply with Section 10 of this rule.

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

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

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

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

(e) The timeline may exceed 90 calendar days under extraordinary circumstances, with approval from [~~office of behavioral services (OBS),~~] the BBS in which case duration and intensity of the crisis intervention will be assessed weekly by [~~OBS~~] BBS staff.

(12) **Non-medical transportation:** Non-medical transportation services assists the eligible recipient in accessing other waiver supports and non-waiver

activities identified in [~~the individual service plan~~] his or her ISP. Non-medical transportation enables the eligible recipient to gain physical access to non-medical community services and resources promoting the eligible recipient opportunity and responsibility in carrying out his or her ISP activities. This service is to be considered only when transportation is not available through the [~~state~~] medicaid state plan or when other arrangements cannot be made. Non-medical transportation includes funding to purchase a pass for public transportation for the eligible recipient. Non-medical transportation provider services must [~~be provided in accordance with all requirements set forth by DOH/ DDSD DDW service definition~~] comply with Section 10 of this rule.

(13) **Supplemental dental care:** [~~Supplemental dental care provides one routine oral examination and cleaning to eligible recipients on the waiver for the purpose of preserving or maintaining oral health. Supplemental dental care provided on the waiver is for eligible recipients that require routine cleaning more frequently than covered under the medicaid state plan. The supplemental dental care service must be provided in accordance with the DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules~~] Supplemental DDW dental care services are provided for an eligible recipient that requires routine oral health care more frequently than the coverage provided under other MAP benefit plans. Supplemental dental care provides one oral examination and one cleaning once every ISP year to an eligible recipient for the purpose of preserving or maintaining oral health. The supplemental dental care service must comply with Section 10 of this rule.

(14) **Assistive technology purchasing agent service:** Assistive technology purchasing agent service is intended to increase the eligible recipient's physical and communicative participation in functional activities at home and in the community. Items purchased through the assistive technology service assist the eligible recipient to meet outcomes outlined in [~~the~~] his or her ISP, increase functional participation in employment, community activities, activities of daily living, personal interactions, or leisure activities, or increase the eligible recipient's safety during participation of the functional activity.

(a) Assistive technology services allows an eligible recipient to purchase needed items to develop low-tech augmentative communication, environmental access, mobility systems and other functional assistive technology, not covered through the eligible recipient's medicaid state plan benefits.

(b) Assistive technology purchasing agent providers act as a fiscal agent to either directly purchase, or reimburse team members who purchase devices or materials which have been prior authorized by [~~the DOH/~~] DDSD on behalf of [~~an~~] the eligible recipient.

(c) Assistive technology purchasing agent services must [~~be provided in accordance with all requirements set forth by DOH/ DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules~~] comply with Section 10 of this rule.

(15) **Independent living transition services:** Independent living transition services are one-time set-up expenses for an eligible recipient who transitions from a 24 hour living supports setting into a home or apartment of [~~their~~] his or her own with intermittent support that allows [~~the individual~~] him or her to live more independently in the community. The service covers expenses associated with security deposits that are required to obtain a lease on an apartment or home, set-up fees or deposits for utilities (telephone, electricity, heating, etc.), and furnishings to establish safe and healthy living arrangements, such as a bed, chair, dining table and chairs, eating utensils and food preparation items, and a telephone. The service also covers services necessary for the eligible recipient's health and safety such as initial or one-time fees associated with the cost of paying for pest control, allergen control or cleaning services prior to occupancy. Independent living transition services must [~~be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules~~] comply with Section 10 of this rule.

(16) **Personal support technology/on-site response service:** Personal support technology/ on-site response service is an electronic device or monitoring system that supports [~~the eligible recipients~~] the eligible recipient to be independent in the community or in [~~their~~] his or her place of residence with limited assistance or supervision of paid staff. This service provides 24-hour response capability or prompting through the use of electronic notification and monitoring technologies to ensure the health and safety of the eligible recipient in services. Personal support technology/ on-site response service is available to [~~eligible recipients who have~~] the eligible recipient who has a demonstrated need for timely response due to health or safety concerns. Personal support technology/ on-site response service includes the installation of the rented electronic device, monthly maintenance fee for the electronic device, and hourly response funding for staff that support the eligible recipient when the device is activated. Personal support technology/on-site response services must [~~be provided in accordance with the DOH/ DDSD DDW service definitions and standards~~] comply with Section 10 of this rule.

(17) **Preliminary risk screening and consultation related to inappropriate sexual behavior: [~~Preliminary risk screening and consultation related to inappropriate sexual behavior~~]** PRSC identifies, screens, and provides periodic technical assistance and crisis intervention when needed to the IDTs supporting the eligible [~~recipients~~] recipient with risk factors for sexually inappropriate or offending behavior, as defined in the DDW definitions and DDW standards. This service is part of a continuum of behavior support services (including behavior support consultation, and socialization and sexuality services) that promote community safety and reduce the impact of interfering behaviors that compromise quality of life.

(a) The key functions of [~~preliminary risk screening and consultation related to inappropriate sexual behavior services~~] PRSC are to:

(i) provide a structured screening of the eligible recipient's behaviors that may be sexually inappropriate;

(ii) develop and document recommendations the eligible recipient in the form of a report or consultation notes;

(iii) [~~development and periodic revisions of~~] develop and periodically review of risk management plans for the eligible recipient, when recommended; and

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

(b) Preliminary risk screening and consultation related to inappropriate sexual behavior services must [~~be provided in accordance with all requirements set forth by DOH/ DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules~~] comply with Section 10 of this rule.

(18) **Socialization and sexuality education service:** Socialization and sexuality education service is carried out through a series of

classes intended to provide a proactive educational program about the values and critical thinking skills needed to form and maintain meaningful relationships, and about healthy sexuality and sexual expression. Social skills learning objectives include positive self-image, communication skills, doing things independently and with others, and using paid and natural supports. Sexuality learning objectives include reproductive anatomy, conception and fetal development, safe sex and health awareness. Positive outcomes for the eligible recipient include safety from negative consequences of being sexual, assertiveness about setting boundaries and reporting violations, expressing physical affection in a manner that is appropriate, and making informed choices about the relationships in [~~his/her~~] the eligible recipient's life. Independent living skills are enhanced and improved work outcomes result from better understanding of interpersonal boundaries, and improved communication, critical thinking and self-reliance skills. Socialization and sexuality education services must [~~be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules~~] comply with Section 10 of this rule.

(19) **Customized in-home supports:** Customized in-home support services is not a residential habilitation service and is intended for an eligible recipient that does not require the level of support provided under living supports services. Customized in-home supports provide an eligible recipient the opportunity to design and manage the supports needed to live in [~~their~~] his or her own home or [~~their~~] family home. Customized in-home supports includes a combination of instruction and personal support activities provided intermittently [~~as he or she would normally occur~~] to assist the eligible recipient with ADLs, meal preparation, household services, and money management. The services and supports are individually designed to instruct or enhance home living skills, community skills and to address health and safety of the eligible recipient, as needed. This service provides assistance with the acquisition, improvement or retention of skills that provides the necessary support to achieve personal outcomes that enhance the eligible recipient's ability to live independently in the community. Customized in-home support services must [~~be provided in accordance with policy and all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules~~] comply with Section 10 of this rule.

(20) [~~**Intense**~~] **Intensive medical living supports:** [~~Intense medical living supports agencies provide community living supports for an eligible recipient who requires daily direct skilled nursing, in conjunction with community living supports that promote health and assist the eligible recipient to acquire, retain or improve skills necessary to live in the community and prevent institutionalization, consistent with each eligible recipient's ISP. An eligible recipient must be assigned to NM DDW group F and meet criteria for intense medical living supports according to eligibility parameters in the DOH/DDSD service definitions and standards for this service and require nursing care, ongoing assessment, clinical oversight and health management that must be provided directly by a registered nurse or a licensed practical nurse in accordance with the New Mexico Nursing Practice Act at least once per day.~~] An intensive medical living supports agency provides residential supports for an eligible recipient in a supported living environment who requires daily direct skilled nursing, in conjunction with community living supports that promote health and assist the eligible recipient to acquire, retain or improve skills necessary to live in the community and prevent institutionalization, consistent with his or her ISP. An eligible recipient must be assigned a NM DDW group F and meet criteria for intensive medical living supports according to DDW service definitions and DDW standards for this service and he or she requires nursing care, ongoing assessment, clinical oversight and health management that must be provided directly by a MAD recognized RN or LPN, see Section 10 of this rule.

(a) These medical needs include:

(i) skilled nursing interventions;

(ii) delivery of treatment;

(iii) monitoring for change of condition; and

(iv) adjustment of interventions and revision of services and plans based on assessed clinical needs.

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

(c) The [~~intense~~] intensive medical living provider will be responsible for providing the appropriate level of supports, 24 hours per day seven days a week, including necessary levels of skilled nursing based on assessed need of the eligible recipient. Daily nursing visits are required; however, a [~~nurse~~] RN or a LPN under a RN's supervision is not required to be present in the home during periods of time when skilled nursing services are not required or when an eligible recipient is out in the community. An on-call [~~nurse~~] RN or LPN, under the supervision of a RN must be available to staff during periods when a [~~nurse~~] RN or a LPN under a RN's supervision is not present. [~~Intense~~] Intensive medical living supports require supervision by a [~~registered nurse in compliance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules.~~] RN, and must comply with Section 10 of this rule.

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

(e) The [~~intense~~] intensive medical living supports provider will be responsible for providing access to customized community support and employment as outlined in the eligible recipient's ISP. This includes any skilled nursing needed by the eligible recipient to participate in customized community support and development and employment services. [~~This service~~] The intensive medical living provider must arrange transportation for all medical appointments, household functions and activities, and to-

and-from day services and other meaningful community options.

(f) [~~Intense~~] Intensive medical services must [~~be provided in accordance with all requirements set forth by DOH/DDSD DDW service definition, all requirements outlined in the DDW service standards and the applicable NMAC rules.~~] comply with Section 10 of this rule.

[8.314.5.14 NMAC - Rp, 8.314.5.14 NMAC, 11-1-12; 8.314.5.14 NMAC - Rn & A, 8.314.5.13 NMAC, 6-15-14; A, 2-1-15]

8.314.5.15 NON-COVERED SERVICES: [~~Only the services listed as covered waiver services are covered under the MAD DOH/DDW program. Medicaid non-waiver services may also be available to an eligible waiver recipient through state plan medicaid services. Medicaid does not cover room and board as waiver service or ancillary services~~.] Only those services listed in the DDW benefit package may be reimbursed through the DDW. Room, board and ancillary services are not covered DDW services. An eligible recipient may access, as medically necessary, all medicaid state plan benefits in addition to his and her DDW services. If the eligible recipient is an enrolled member of a HSD managed care organization (MCO), he or she may access, as medically necessary, the benefits listed in 8.308.9 NMAC.

[8.314.5.15 NMAC - Rp, 8.314.5.15 NMAC, 11-1-12; 8.314.5.15 NMAC - Rn & A, 8.314.5.14 NMAC, 6-15-14; A, 2-1-15]

8.314.5.16 INDIVIDUALIZED SERVICE PLAN (ISP): An ISP must be developed by an [~~interdisciplinary team IDT of professionals~~] IDT in consultation with the eligible recipient and others involved in the eligible recipient's care. The ISP is developed using information relevant to the care of the [~~individual~~] eligible recipient. The ISP will be developed utilizing the service package available with the individual's NM DDW group. The ISP must [~~be in accordance with policy and all requirements set forth by DOH/DDSD DDW services definition, all requirements outlined in the DDW service standards and the applicable NMAC rules.~~] comply with Section 10 of this rule. The ISP is submitted to [~~DOH/~~] DDSD or its designee for final approval. [~~DOH/~~] DDSD or its designee must approve any changes to the ISP; see 7.26.5 NMAC.

A. The IDT must review the eligible recipient's treatment plan every 12 months or more often if indicated.

B. The ISP must contain the following information:

(1) statement of the nature of the specific needs of the eligible recipient;

(2) description of the functional level of the eligible recipient;

(3) statement of the least restrictive conditions necessary to achieve the purposes of treatment of an eligible recipient;

(4) description of intermediate and long-range goals, with a projected timetable for eligible recipient's attainment and the duration and scope of services;

(5) statement and rationale of the treatment plan for achieving these intermediate and long-range goals, including provision for review and modification of the [~~plan~~] eligible recipient's ISP; and

(6) specification of responsibilities for areas of care, description of needs, and orders for medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet and special procedures recommended for the health and safety of the eligible recipient.

C. All services must be provided as specified in the ISP.

[8.314.5.16 NMAC - Rp, 8.314.5.16 NMAC, 11-1-12; 8.314.5.16 NMAC - Rn & A, 8.314.5.15 NMAC, 6-15-14; A, 2-1-15]

8.314.5.17 PRIOR AUTHORIZATION AND UTILIZATION REVIEW: All MAD services, including services covered under [~~this medicaid waiver~~] the DDW, are subject to utilization review for medical necessity and program compliance. Reviews may be performed before services are furnished, after services are furnished and before payment is made, or after payment is made; see [~~8.302.5~~] 8.310.2 NMAC. Once enrolled, providers receive instructions and documentation forms necessary for prior authorization and claims processing.

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

B. **DDSD prior authorization:** Certain services are subject to utilization review by DDSD, including group H [~~services~~] requests.

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

D. **Reconsideration:** Providers who disagree with the denial of a prior authorization request or other review decisions may request a reconsideration. See 8.350.2 NMAC.

[8.314.5.17 NMAC - Rp, 8.314.5.17 NMAC, 11-1-12; 8.314.5.17 NMAC - Rn & A, 8.314.5.16 NMAC, 6-15-14; A, 2-1-15]

8.314.5.18 REIMBURSEMENT: [~~Waiver~~] DDW service providers must submit claims for reimbursement to [~~the MAD medicaid management information system (MMIS) contractor~~] MAD's fiscal contractor for processing. [~~Claims must be filed per the billing instructions in the medicaid policy manual. Providers must follow all medicaid billing instructions. See 8.302.2 NMAC. Once enrolled, providers receive instructions on documentation, billing, and claims processing~~]. A DDW provider must follow 8.302.2 NMAC, MAD billing instructions, utilization review instructions, and supplements. Reimbursement to providers of waiver services is made at a predetermined reimbursement rate.

[8.314.5.18 NMAC - N, 11-1-12; 8.314.5.18 NMAC - Rn & A, 8.314.5.17 NMAC, 6-15-14; A, 2-1-15]

8.314.5.19 [~~RIGHT TO A HEARING:~~ ~~HSD/MAD must grant an opportunity for an administrative hearing pursuant to 42 CFR Section 431.220(a)(1) and (2), Section 27-3-3 NMSA 1978, and 8.352.2 NMAC.~~

~~A. Agency conference.~~

~~(1) At the eligible recipient's request, or upon initiation by DOH/DDSD, an agency conference may be scheduled at any time prior to the date of the hearing to discuss the issues that are the subject of the fair hearing. The agency conference is optional and does not delay or replace the hearing process.~~

~~(2) The conference may include the eligible recipient and the eligible recipient's authorized representative, if applicable and DOH/DDSD staff. The purpose of the conference is to informally review the agency action and to determine whether the issues can be resolved by mutual agreement. The issues to be decided at the hearing may also be clarified or further defined. Regardless of~~

~~the outcome of the agency conference, the hearing shall still be held as scheduled, unless the eligible recipient makes an oral or written withdrawal of the request for the hearing. An oral withdrawal shall be confirmed by the agency or designee in writing, sent to the eligible recipient, and allow for the eligible recipient to change his/her mind within ten days of the date of the confirmation letter.~~] **RIGHT TO A HSD ADMINISTRATIVE HEARING:** MAD has established a process to determine if an individual is eligible to request a HSD administrative hearing. Once the individual requests a HSD administrative hearing, the individual is referred to as a claimant. MAD has also established a process for an individual or the individual's authorized representative to request a HSD administrative hearing when an adverse action is intended or has been taken by MAD, its utilization review (UR) contractor or designee against the individual. See 8.352.2 NMAC for a detailed description of a claimant's HSD administrative hearing rights and responsibilities.
[8.314.5.19 NMAC - N, 11-1-12; 8.314.5.19 NMAC - Rn & A, 8.314.5.18 NMAC, 6-15-14; A, 2-1-15]

8.314.5.20 [~~**CONTINUATION OF BENEFITS PURSUANT TO TIMELY APPEAL:**~~

~~A. Continuation of benefits may be provided to an eligible recipient who requests a hearing and continuation of benefits within 13 calendar days of the date on the notice of fair hearing. The notice will include information on the right to continued benefits and on the eligible recipient's potential responsibility for repayment if the hearing decision is not in the eligible recipient's favor. Repayment of benefits shall be in accordance with 8.352.2.16 NMAC.~~

~~B. Once the eligible recipient requests a continuation of benefits, his/her budget that is in place at the time of the request is termed a continuation budget. The continuation budget may not be revised until the conclusion of the fair hearing process, unless a revision is agreed to in writing by the DDW eligible recipient (or appropriate representative) and DDSD.~~]
CONTINUATION OF BENEFITS PURSUANT TO A TIMELY APPEAL AND A HSD ADMINISTRATIVE HEARING PROCEEDING: A continuation of an existing DDW benefit is provided to an eligible recipient claimant when he or she requests a continuation of the benefit through MAD, its UR contractor or its designee as directed on the claimant's notice of action within 10 calendar days of the mailing of the MAD, its UR contractor or its designee's notice of action. MAD, its UR contractor or it designee's notice of action will include information on the rights to the continued benefit and on the claimant responsibility for repayment if the HSD administrative hearing decision is not in his or her favor. The continuation of a benefit is only available to a claimant that is currently receiving the appealed benefit. The continuation of the benefit will be the same as the claimant's current allocation, budget or LOC unless a revision is agreed to in writing by the DDW claimant (or authorized representative) and DDSD. See 8.352.2 NMAC for a detailed description of a claimant's HSD rights to the continuation of the eligible recipient claimant's benefit.
[8.314.5.20 NMAC - Rn, & A, 8.314.5.19 NMAC, 6-15-14; A, 2-1-15]

NEW MEXICO MEDICAL BOARD

The New Mexico Medical Board repeals its rules entitled Physician Assistants: Licensure and Practice Requirements, 16.10.15 NMAC (filed 06/08/01) repealed and replaced by 16.10.15 NMAC, Physician Assistants: Licensure and Practice Requirements, effective 01/30/15.

NEW MEXICO MEDICAL BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS
PART 15 PHYSICIAN ASSISTANTS: LICENSURE AND PRACTICE REQUIREMENTS

16.10.15.1 ISSUING AGENCY: New Mexico Medical Board hereafter called the board.
[16.10.15.1 NMAC - Rp, 16.10.15.1 NMAC, 1/30/15]

16.10.15.2 SCOPE: This part applies to physician assistants and their supervising physicians.
[16.10.15.2 NMAC - Rp, 16.10.15.2 NMAC, 1/30/15]

16.10.15.3 STATUTORY AUTHORITY: This part is adopted pursuant to the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978.
[16.10.15.3 NMAC - Rp, 16.10.15.3 NMAC, 1/30/15]

16.10.15.4 DURATION: Permanent.
[16.10.15.4 NMAC - Rp, 16.10.15.4, 1/30/15]

16.10.15.5 EFFECTIVE DATE: January 30, 2015, unless a later date is cited at the end of a section.
[16.10.15.5 NMAC - Rp, 16.10.15.5 NMAC, 1/30/15]

16.10.15.6 OBJECTIVE: This part regulates the licensing and practice of physician assistants and their supervision by licensed physicians.
[16.10.15.6 NMAC - Rp, 16.10.15.6 NMAC, 1/30/15]

16.10.15.7 DEFINITIONS:

A. "AAPA" means American academy of physician assistants.

B. "Interim license" means permission issued by the board that allows a physician assistant to practice for one year pending completion of all licensing requirements.

C. "Effective supervision" means the exercise of physician oversight, control, and direction of services rendered by a physician assistant. Elements of effective supervision include:

(1) on-going availability of direct communication, either face-to-face or by electronic means;

(2) active, ongoing review of the physician assistants services, as appropriate, for quality assurance and professional support;

(3) a predetermined plan for emergency situations; and

(4) identification of other supervising physicians, as appropriate to the practice setting.

D. "Lapsed" means a license that has not been renewed by March 1 of the expiration year and has been suspended for non-renewal. A license that has lapsed is not valid for practice in New Mexico.

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

F. "Criminal history screening" means a criminal history background investigation of an applicant for licensure by examination or endorsement, or a licensee applying for licensure renewal, through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of

investigation, resulting in the generation of a nationwide criminal history record for that applicant.

G. "NCCPA" means national commission on certification of physician assistants.

H. "Direct communication" means communication between the supervising physician and physician assistant, in person, telephonically, by email or other electronic means.

I. "Scope of practice" means duties and limitations of duties placed upon a physician assistant by their supervising physician and the board; includes the limitations implied by the field of practice of the supervising physician.

J. "Supervising physician" means a physician who holds a current unrestricted license, provides a notification of supervision, assumes legal responsibility for health care tasks performed by the physician assistant and is approved by the board. A physician under an active monitoring contract with the New Mexico monitored treatment program who meets the other qualifications of this subsection may also act as a supervising physician.

K. "Suspended for non-renewal" means a license that has not been renewed by May 31 of the expiration year, and is lapsed, which is a non-disciplinary action.

L. "Military service member" means a person who is serving in the armed forces of the United States or in a reserve component of the armed forces of the United States, including the national guard, or the spouse of such an individual.

M. "Recent veteran" means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applies for a physician assistant license pursuant to section 16.10.15.17 NMAC. The veteran shall submit a copy of form DD214, or its equivalent, as part of the application process.

[16.10.15.7 NMAC - Rp, 16.10.15.7 NMAC, 1/30/15]

16.10.15.8 QUALIFICATIONS FOR LICENSURE AS A PHYSICIAN ASSISTANT:

A. graduation from a program for physician assistants accredited by the committee on allied health education and accreditation (CAHEA) of the American medical association, the accreditation review committee on education for the physician assistant (ARC-PA) or its successor agency, or passed the physician assistant national certifying examination administered by NCCPA prior to 1986 and has proof of continuous practice with an unrestricted license as a physician assistant in another state for four years prior to application;

B. current NCCPA certification;

C. good moral and professional character; and

D. any other proof of competency as may be requested by the board.

[16.10.15.8 NMAC - Rp, 16.10.15.8 NMAC, 1/30/15]

16.10.15.9 LICENSURE PROCESS: Each applicant for a license as a physician assistant shall submit the required fees and following documentation.

A. A completed application for which the applicant has supplied all information and correspondence requested by the board on forms and in a manner acceptable to the board. Applications are valid for one year from the date of receipt.

B. Two letters of recommendation from physicians licensed to practice medicine in the United States or physician assistant program directors, or the director's designee, who have personal knowledge of the applicant's moral character and competence to practice.

C. Verification of licensure in all states where the applicant holds or has held a license to practice as a physician assistant, or other health care profession. Verification must be sent directly to the board from the other state board(s).

D. Verification of all work experience in the last two years, if applicable, provided directly to the board.

E. All applicants may be scheduled for a personal interview before the board or the board's designee for an interview and must present original documents, as the board requires. The initial license will be issued following completion of any required interview, or approval by a member or agent of the board.

F. The initial license is valid until March 1 of the year following NCCPA expiration.

G. License by endorsement from New Mexico board of osteopathic examiners. Applicants who are currently licensed in good standing by the New Mexico board of osteopathic examiners may be licensed by endorsement upon receipt of a verification of licensure directly from the New Mexico board of osteopathic examiners, a supervising physician form signed by the medical doctor who will serve as supervising physician.

H. All applicants for initial licensure as a physician assistant are subject to a state and national criminal history screening at their expense.

(1) Applications for licensure will not be processed until receipt of the background check requirements verification.

(2) Applications will be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

(3) If the criminal background screening reveals a criminal arrest or charge, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board. Failure to report a criminal arrest or charge is a violation of the Medical Practice Act.

[16.10.15.9 NMAC - Rp, 16.10.15.9 NMAC, 1/30/15]

16.10.15.10 INTERIM AND TRAINING PERMITS:

A. Interim permits are issued to qualified applicants who have completed the application process and complied with all other licensure requirements except certification by the NCCPA.

(1) Physician assistants not currently certified by NCCPA have a one-time grace period of one year from the date of graduation from a program approved by ARC-PA or its successor agency to become certified.

(2) Interim permits expire at the end of the one year grace period. Upon expiration of the interim permit the physician assistant may no longer practice, but may reapply upon NCCPA certification.

B. Training permits may be issued to qualified applicants, regardless of NCCPA certification status, who have completed the application process and who have not been actively and continuously in clinical practice for the two years prior to application and who are required by the board to undertake appropriate retraining prior to licensure or reinstatement. A training permit shall be valid for one year and may not be renewed.

[16.10.15.10 NMAC - Rp, 16.10.15.10 NMAC, 1/30/15]

16.10.15.11 APPROVAL OF SUPERVISING PHYSICIANS:

A. Pursuant to Section 61-6-10 NMSA 1978, a physician may supervise as many physician assistants as the physician can effectively supervise and communicate within the circumstances of their particular practice setting.

B. All supervising physicians shall submit written notice of intent to supervise a physician assistant on forms prescribed by the board.

C. Within 30 days after an employer terminates the employment

of a physician assistant, the supervising physician or the physician assistant shall submit a written notice to the board providing the date of termination and reason for termination.

D. A physician assistant who is employed by the United States government and who works on land or in facilities owned or operated by the United States government or a physician assistant who is a member of the reserve components of the United States and on official orders or performing official duties as outlined in the appropriate regulation of that branch may be licensed in New Mexico with proof that their supervising physician holds an active medical license in another state.

[16.10.15.11 NMAC - Rp, 16.10.15.11 NMAC, 1/30/15]

16.10.15.12 SUPERVISION OF PHYSICIAN ASSISTANT: Supervision of a physician assistant must be rendered by a licensed supervising physician.

A. Responsibility of supervising physician.

(1) Provide direction to the physician assistant to specify what medical services should be provided under the circumstances of each case. This may be done through a written utilization plan or by other direct communications.

(2) Provide a means for immediate communication between the physician assistant and the supervising physician.

(3) Comply with the quality assurance requirements specified in Subsection B of 16.10.15.12 NMAC.

B. Quality assurance requirements. A quality assurance program for review of medical services provided by the physician assistant must be in place.

C. Compensation of physician assistants.

(1) The salary of a physician assistant may be paid by an agency or person other than the supervising physician.

(2) Under no circumstances can a physician assistant submit a separate bill to any patient of the physician.

[16.10.15.12 NMAC - Rp, 16.10.15.12 NMAC, 1/30/15]

16.10.15.13 SCOPE OF PRACTICE:

A. Unless otherwise provided by law, physician assistants may provide medical services delegated to them by the supervising physician when such services are within the physician assistant's skills and form a usual component of the physician's scope of practice.

B. A physician assistant may assist a designated supervising physician in an inpatient or surgical health care institution within the institution's bylaws or policies including act as a first surgical assistant in the performance of surgery, when permitted by the institution's bylaws or regulations.

[16.10.15.13 NMAC - Rp, 16.10.15.13 NMAC, 1/30/15]

16.10.15.14 PRACTICE LIMITATIONS: Practice limitations are determined by the supervising physician's specialty and practice setting in addition to the physician assistant's education and training.

[16.10.15.14 NMAC - Rp, 16.10.15.14 NMAC, 1/30/15]

16.10.15.15 EXEMPTION FROM LICENSURE:

A. A physician assistant student enrolled in a physician assistant or surgeon assistant educational program accredited by the committee on allied health education and accreditation or by its successor shall be exempt from licensure while functioning as a physician assistant student.

B. A physician assistant employed by the United States government and who works on land or in facilities owned or operated by the United States government or a physician assistant who is a member of the reserve components of the United States and on official orders or performing official duties as outlined in the appropriate regulation of that branch.

[16.10.15.15 NMAC - Rp, 16.10.15.15 NMAC, 1/30/15]

16.10.15.16 LICENSE EXPIRATION, RENEWAL, CHANGE OF STATUS:

A. Physician assistant licenses expire on March 1 of the year following NCCPA expiration. To avoid additional penalty fees, a completed renewal application, accompanied by the required fees, proof of current NCCPA certification and other documentation must be submitted through the online renewal system, post-marked or hand-delivered on or before March 1 of the expiration year. A New Mexico physician assistant license that has not been renewed by March 1 of the renewal year will remain temporarily active with respect to medical practice until June 1 of the renewal year at which time, the board shall suspend the license for non-renewal and the status shall be changed to lapsed.

B. The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to assure the board has accurate address information and to make a timely request for the renewal application if one has not been received prior to license expiration.

C. Renewal applications postmarked or hand-delivered after March 1 but prior to April 15 must be accompanied by the completed renewal application, proof of current NCCPA certification, the renewal fee and late fee indicated in 16.10.9.9 NMAC.

D. Renewal applications postmarked or hand-delivered on or after April 16 but prior to May 30 must be accompanied by the completed renewal application, proof of current NCCPA certification, the renewal fee and late fee indicated in 16.10.9.9 NMAC.

E. A physician assistant who has not passed the NCCPA six year recertification exam prior to the date of license expiration may apply to the board for an emergency deferral of the requirement. A designee of the board may grant deferrals of up to one year.

(1) A physician assistant who is granted an emergency deferral shall pay the renewal fee and additional late fee indicated in 16.10.9.9 NMAC.

(2) The license of a physician assistant who is granted an emergency deferral shall expire two years after the original renewal date, regardless of the duration of the emergency deferral.

F. The board shall suspend for non-renewal and change the status to lapsed on June 1 of the renewal year. The license of any physician assistant who has failed within 90 days after the license renewal date to renew their license, or to change the license status, or to pay all required fees, or to comply with NCCPA certification requirements, or to provide required documentation, or to request an emergency deferral.

G. At the time of license renewal a physician assistant may request a status change.

(1) A license that is placed on inactive status requires payment of a fee as defined in 16.10.9.9 NMAC. A license in inactive status is not valid for practice in New Mexico but may be reinstated in accordance with the provisions of 16.10.15.16 NMAC.

(2) On request, a license may be placed on retired status. There is no charge for this change in status. A retired license is not valid for practice in New Mexico and such license may not subsequently be reinstated. A physician assistant with a retired license who chooses to reinstate the license must re-apply as a new applicant.

(3) A physician assistant who does not wish to renew the active license in New Mexico and will

voluntarily allow the license to lapse may inform the board of the wish not to renew. A voluntarily lapsed license is not valid for practice in New Mexico but may be reinstated in accordance with the provisions of 16.10.15.16 NMAC.

H. Reinstatement within two years. An inactive, lapsed, voluntarily lapsed or suspended license may be placed on active status upon completion of a renewal application in which the applicant has supplied all required fees and proof of current NCCPA certification.

I. Reinstatement after two years. An inactive, lapsed, voluntarily lapsed or suspended license may be placed on active status upon completion of a reinstatement application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board. Applicants may be required to personally appear before the board or the board's designee for an interview.

J. All renewal and reinstatement applications will be subject to a one-time nationwide and statewide criminal history screening.

(1) Renewal and reinstatement applications will be processed pending the completion of the statewide criminal history screening and may be granted while the screening still pending.

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

K. Additional continuing medical education requirements. The specific continuing medical education requirements set forth at 16.10.14 NMAC shall be satisfied for license renewal. Proof of satisfaction of these requirements shall be submitted directly to the board. Any education credits so submitted may also be separately submitted to satisfy NCCPA requirements.

[16.10.15.16 NMAC - Rp, 16.10.15.16 NMAC, 1/30/15]

16.10.15.17 EXPEDITED MEDICAL LICENSURE FOR MILITARY AND SPOUSES LICENSED IN ANOTHER JURISDICTION. If a military service member, the spouse of a military service member, or a recent veteran submits an application for a physician assistant license and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and issue the appropriate license as soon as practicable. Any qualified applicant seeking expedited consideration pursuant to this section shall submit a copy of form DD214 or its equivalent with their application.

[16.10.15.17 NMAC - Rp, 16.10.15.20 NMAC, 1/30/15]

HISTORY of 16.10.15 NMAC:

Pre-NMAC history: Material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:

NMBME Rule 79-14, Rules and Regulations Governing the Issuance of Certificates of Qualification of Physicians' Assistants, 9/19/79

NMBME Rule 79-15, Rules and Regulations Pertaining to Physicians' Assistants, 9/19/79

NMBME Rule 79-15, Rules and Regulations Pertaining to Physicians' Assistants, 10/4/79

NMBME Rule 79-15, Amendment No. 1, 1/21/81

Rule 86-2, Physician Assistants - Approval of Supervising Physicians, 2/5/86

Rule 89-PA1, Physician Assistant-Definitions, 6/16/89

Rule 89-PA2, Physician Assistants - Qualifications of Physician Assistants, 6/16/89

Rule 89-PA3, Physician Assistant - Registration, 6/16/89

Rule 89-PA4, Physician Assistants - Approval of Supervising Physicians, 6/16/89

Rule 89-PA5, Physician Assistant - Relationship of Physician Assistants to Designated Supervising Physicians, 6/16/89

Rule 89-PA6, Physician Assistants - Scope of Practice, 6/16/89

Rule 89-PA9, Physician Assistants - Physician Assistant Students, 6/16/89

Rule 92-PA6, Physician Assistants - Scope of Practice, 1/14/92

PA Rule 3, Physician Assistant - Registration, 10/27/94

PA Rule 5, Physician Assistant - Relationship of Physician Assistants to Designated Supervising Physicians, 10/27/94

NMAC History:

16 NMAC 10.15, Qualifications and Licensure for Physician Assistants, 3/5/97.

16 NMAC 10.15, Qualifications and Licensure for Physician Assistants, 6/16/98.

History of the Repealed Material:

16 NMAC 10.15, Qualifications and Licensure for Physician Assistant - Repealed, 7/15/01.

16.10.15 NMAC, Physician Assistants: Licensure and Practice Requirements - Repealed, 1/30/15.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

BOARD OF OCCUPATIONAL THERAPY

16.15.3 NMAC, Occupational Therapists -Supervision, (filed 06-19-2000) repealed and replaced by 16.15.3 NMAC, Occupational Therapists - Supervision, effective 1/30/2015.

16.15.4 NMAC, Occupational Therapists - Continuing Education Requirements, (filed 06-19-2000) repealed and replaced by 16.15.4 NMAC, Occupational Therapists - Continuing Education Requirements, effective 1/30/2015.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

BOARD OF OCCUPATIONAL THERAPY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 15 OCCUPATIONAL THERAPISTS
PART 3 SUPERVISION

16.15.3.1 ISSUING AGENCY: Board of Examiners for Occupational Therapy.

[16.15.3.1 NMAC - Rp, 16 15.3.1 NMAC, 1/30/2015]

16.15.3.2 SCOPE: All those individuals who wish to practice occupational therapy in the state of New Mexico.

[16.15.3.2 NMAC - Rp, 16.15.3.2 NMAC, 1/30/2015]

16.15.3.3 STATUTORY AUTHORITY: Section 61-12A-5 NMSA 1978.

[16.15.3.3 NMAC - Rp, 16.15.3.3 NMAC, 1/30/2015]

16.15.3.4 DURATION: Permanent.

[16.15.3.4 NMAC - Rp, 16.15.3.4 NMAC, 1/30/2015]

16.15.3.5 EFFECTIVE DATE: January 30, 2015, unless a later date is cited at the end of a section.

[16.15.3.5 NMAC - Rp, 16.15.3.5 NMAC, 1/30/2015]

16.15.3.6 OBJECTIVE: To outline minimum supervision definitions and requirements.

[16.15.3.6 NMAC - Rp, 16.15.3.6 NMAC,

1/30/2015]

16.15.3.7 DEFINITIONS: In this section, the following terms have the meanings indicated:

A. "Aide" means a person who is not licensed by the board and who provides supportive services to occupational therapists and occupational therapy assistants. An aide shall function under the guidance and responsibility of the occupational therapist and may be supervised by the occupational therapist or an occupational therapy assistant for specifically selected routine tasks for which the aide has been trained and has demonstrated competency.

B. "Board" means the board of examiners for occupational therapy.

C. "Competence" refers to an individual's capacity to perform job responsibilities.

D. "Competency" refers to an individual's actual performance in a specific situation.

E. "Limited permit holder" means an individual who has completed the academic and fieldwork requirements of this Act for occupational therapists or occupational therapy assistants, has not yet taken or received the results of the entry level certification examination, and has applied for and been granted limited permit status.

F. "Occupational therapist" means a person who holds an active license to practice occupational therapy in New Mexico.

G. "Occupational therapy assistant" means a person having no less than an associate degree in occupational therapy and holding an active license to practice occupational therapy in New Mexico who assists an occupational therapist under the supervision of the occupational therapist.

H. "Supervision" means a cooperative process in which two or more people participate in a joint effort to establish, maintain, and elevate a level of competence and performance. Within the scope of occupational therapy practice, supervision is aimed at ensuring the safe and effective delivery of occupational therapy services and fostering professional competence and development.

[16.15.3.7 NMAC - Rp, 16.15.3.7 NMAC, 1/30/2015]

16.15.3.8 SUPERVISION: Occupational therapy assistants: supervision involves guidance and oversight related to the delivery of occupational therapy services and the facilitation of professional growth and competence. It is the responsibility of the occupational therapist and the occupational therapy assistant to seek the appropriate quality and frequency of supervision to ensure safe and effective occupational therapy service delivery.

A. The specific frequency, methods, and content of supervision may vary by practice setting and is dependent upon the:

(1) complexity of client needs;

(2) number and diversity of clients;

(3) skills of the occupational therapist and the occupational therapy assistant;

(4) type of practice setting;

(5) requirements of the practice setting; and

(6) other regulatory requirements.

B. More frequent supervision may be necessary when:

(1) the needs of the client and the occupational therapy process are complex and changing;

(2) the practice setting provides occupational therapy services to a large number of clients with diverse needs; or

(3) the occupational therapist and occupational therapy assistant determine that additional supervision is necessary to ensure safe and effective delivery of occupational therapy services.

C. A variety of types and methods of supervision may be used. Methods may include direct face-to-face contact and indirect contact. Examples of methods or types of supervision that involve direct face-to-face contact include but are not limited to observation, modeling, co-treatment, discussions, teaching, instruction, and video teleconferencing. Examples of methods or types of supervision that involve indirect contact include but are not limited to phone conversations, written correspondence, electronic exchanges, and other methods using secure telecommunication technology. All methods should be compliant with confidentiality requirements of government agencies, facilities, employers, or other appropriate bodies.

D. Occupational therapists and occupational therapy assistants must document a supervision plan and supervision contacts. Documentation shall include the:

(1) frequency of supervisory contact;

(2) method(s) or type(s) of supervision;

(3) content areas addressed;

(4) names and credentials of the persons participating in the supervisory process.

[16.15.3.8 NMAC - Rp, 16.15.3.8 NMAC, 1/30/2015]

16.15.3.9 TASK DELEGATION: Regardless of the setting in which occupational therapy services are delivered, the occupational therapist and the occupational therapy assistant assume the following generic responsibilities during evaluation, intervention, and outcomes evaluation.

A. Evaluation.

(1) The occupational therapist directs the evaluation process.

(2) The occupational therapist is responsible for directing all aspects of the initial contact during the occupational therapy evaluation, including:

(a) determining the need for service;

(b) defining the problems within the domain of occupational therapy that need to be addressed;

(c) determining the client's goals and priorities;

(d) establishing intervention priorities;

(e) determining specific further assessment needs; and

(f) determining specific assessment tasks that can be delegated to the occupational therapy assistant.

(3) The occupational therapist initiates and directs the evaluation, interprets the data, and develops the intervention plan.

(4) The occupational therapy assistant contributes to the evaluation process by implementing delegated assessments and by providing verbal and written reports of observations and client capacities to the occupational therapist.

(5) The occupational therapist interprets the information provided by the occupational therapy assistant and integrates that information into the evaluation and decision making process.

B. Intervention planning.

(1) The occupational therapist has overall responsibility for the development of the occupational therapy intervention plan.

(2) The occupational therapist and the occupational therapy assistant collaborate with the client to develop the plan.

(3) The occupational therapy assistant is responsible

for being knowledgeable about evaluation results and for providing input into the intervention plan, based on client needs and priorities.

C. Intervention Implementation.

(1) The occupational therapist has overall responsibility for implementing the intervention.

(2) Then delegating aspects of the occupational therapy intervention to the occupational therapy assistant, the occupational therapist is responsible for providing appropriate supervision.

(3) The occupational therapy assistant is responsible for being knowledgeable about the client's occupational therapy goals.

(4) The occupational therapy assistant selects, implements, and makes modifications to therapeutic activities and interventions that are consistent with demonstrated competency levels, client goals, and the requirements of the practice setting.

D. Intervention Review.

(1) The occupational therapist is responsible for determining the need for continuing, modifying, or discontinuing occupational therapy services.

(2) The occupational therapy assistant contributes to this process by exchanging information with and providing documentation to the occupational therapist about the client's responses to and communications during intervention.

E. Outcome Evaluation.

(1) The occupational therapist is responsible for selecting, measuring, and interpreting outcomes that are related to the client's ability to engage in occupations.

(2) The occupational therapy assistant is responsible for being knowledgeable about the client's targeted occupational therapy outcomes and for providing information and documentation related to outcome achievement.

(3) The occupational therapy assistant may implement outcome measurements and provide needed client discharge resources.

[16.15.3.9 NMAC - Rp, 16.15.3.9 NMAC, 1/30/2015]

HISTORY of 16.15.3 NMAC:

Pre-NMAC History:

Material in this Part was derived from that previously filed with State Records and Archives:

BOTP 84-1, Licensing Regulations, filed 12-10-84

BOTP 90-1, Licensing Regulations, filed 04-27-90

Rule 92-1, Licensing Regulations, filed 04-15-92

Rule 95-1, Licensing Regulations, filed 02-14-95

Rule 95-1, Licensing Regulations, filed 04-13-95.

History of the Repealed Material:

16.15.3 NMAC, Occupational Therapists - Supervision, filed 06-19-2000, repealed 1/30/2015.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

BOARD OF OCCUPATIONAL THERAPY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 15 OCCUPATIONAL THERAPISTS

PART 4 CONTINUING EDUCATION REQUIREMENTS

16.15.4.1 ISSUING AGENCY: Board of Examiners for Occupational Therapy.

[16.15.4.1 NMAC - Rp, 16.15.4.1 NMAC, 1/30/15]

16.15.4.2 SCOPE: All those individuals who wish to practice occupational therapy in the state of New Mexico.

[16.15.4.2 NMAC - Rp, 16.15.4.2 NMAC, 1/30/15]

16.15.4.3 STATUTORY AUTHORITY: Section 61-12A-15, NMSA 1978.

[16.15.4.3 NMAC - Rp, 16.15.4.3 NMAC, 1/30/15]

16.15.4.4 DURATION: Permanent.

[16.15.4.4 NMAC - Rp, 16.15.4.4 NMAC, 1/30/15]

16.15.4.5 EFFECTIVE DATE: January 30, 2015, unless a later date is cited at the end of a section.

[16.15.4.5 NMAC - Rp, 16.15.4.5 NMAC, 1/30/15]

16.15.4.6 OBJECTIVE: To inform licensees of continuing education requirements for license renewal.

[16.15.4.6 NMAC - Rp, 16.15.4.6 NMAC, 1/30/15]

16.15.4.7 DEFINITIONS: "Continuing education" means any organized educational program relating to the topic of health, designed to expand a licensee's knowledge beyond the basic education requirements for occupational therapists and occupational therapy assistants as recognized by the board. Topics include, but are not limited to, administration, education, communication and clinical practice skills. One "continuing education contact hour" is equivalent to sixty (60) minutes. One continuing education contact hour is equivalent to one continuing education unit.

[16.15.4.7 NMAC - Rp, 16.15.4.7 NMAC, 1/30/15]

16.15.4.8 ANNUAL CONTINUING EDUCATION REQUIREMENTS:

A. Every licensed occupational therapist and occupational therapy assistant must earn a minimum of twenty (20) continuing education contact hours per year during each year of licensure. Continuing education contact hours must be earned prior to license renewal the following year. The first year during which twenty (20) contact hours must be earned is the year beginning on October 1st following license issuance and ending on the following September 30th. Occupational therapists and occupational therapy assistants licensed during the first year will be expected to pay the annual renewal fee and may submit continuing education contact hours during this first year for carryover. A maximum of twenty (20) contact hours may be carried over.

B. No license will be renewed in the absence of satisfactory evidence that the required continuing education contact hours have been earned.

C. The board office will mail a renewal application to each licensee at least thirty (30) days prior to the expiration date of the license.

D. Each licensee is responsible for submitting the required renewal fee and continuing education by the expiration.

E. Each licensee is responsible for filing address changes and maintaining a current address with the board office.

[16.15.4.8 NMAC - Rp, 16.15.4.8 NMAC, 1/30/15]

16.15.4.9 APPROVAL OF CONTINUING EDUCATION:

A. No licensee may obtain credit for any continuing education contact hours without approval of those continuing education contact hours by the board.

B. Prior approval of continuing education contact hours may be obtained upon request by the licensee or continuing education provider. Final

determination of values and approval of continuing education contact hours will remain at the discretion of the board.

C. Continuing education contact hours may be earned in the following ways:

(1) Attendance at a seminar, workshop, webinar, on-line course, or program; applicants must provide all of the following:

(a) program agenda with number of contact hours;

(b) evidence that the program attended was sponsored by a component of the American occupational therapy association or some other sponsor approved by the board for continuing education credit;

(c) statement of the program's subject matter and stated objectives;

(d) statement indicating the instructor's background/expertise; and

(e) proof of actual program attendance; such proof shall be a certificate of completion signed by the presenter or program sponsor.

(2) Preparation and presentation of a workshop/in-service. Credit may be given only once for preparation or presentation of the same workshop and the board will determine the number of continuing education contact hours approved. Applicant must provide proof of preparation and presentation. Proof of preparation may be an outline, copy of handouts, presentation slides, and a copy of the agenda showing name of licensee as presenter. Contact hours for the presenter will be calculated at three (3) times the number of hours of audience participation (e.g. a two (2) hour workshop equals six (6) hours for the presenter). A maximum of twelve (12) contact hours per renewal year is allowed in this area.

(3) Completion of accredited university college or community courses. Applicant must provide the name of the course; number of credit hours; inclusive dates of attendance; completed transcript or grade report with a passing grade of "C" or better, name of instructor and institution; and a brief summary indicating the course's relationship to the licensee's present or future position in the field of occupational therapy. Non-credit community college courses may be accepted at the board's discretion. A maximum of twenty (20) contact hours is allowed for a three (3) credit course; a maximum of fifteen (15) contact hours is allowed for a two (2) credit course; and a maximum of ten (10) contact hours is allowed for a one (1) credit course.

(4) Attendance at workplace in-service programs. The applicant must provide the name of the program; number of hours spent in the program; inclusive dates of attendance; name of the instructor or supervisor of the program; name of the institution; and a brief course summary indicating the course's relationship to the philosophical tenets of occupational therapy. A maximum of ten (10) contact hours will be allowed in this area.

(5) Reading a book. The applicant must provide the name of the book; number of pages; name of the author; and a typewritten summary explaining how the information obtained from the book applies to physical therapy philosophical tenets of occupational therapy. The board may approve, on an individual basis, up to two (2) contact hours for each book read. A maximum of four (4) contact hours will be allowed in this area.

(6) Writing a book. The applicant must provide a copy of the book written. The book will be returned to the licensee upon request.

(a) The book must have been copyrighted in the year for which the continuing education contact hours are requested.

(b) Up to forty (40) contact hours may be awarded at the board's discretion.

(7) Audio or Visual Media. An applicant must provide the title of the audio and visual media; the length of presented material, time; name of the presenter; and a summary of the presentation and how it pertains to the philosophical tenets of occupational therapy. A maximum of ten (10) contact hours per year is allowed in this area.

(8) Presentation of a paper. The applicant must provide a copy of the paper along with the duration and location of the presentation. The presentation must have been made in the year for which the continuing education contact hours are requested. Credit may be given only once for any individual presentation and the board will determine the number of continuing education contact hours approved.

(9) Publication of a paper or article. The applicant must provide a copy of the published paper, which must have been published prior to license renewal. Publication must be in a recognized journal or publication. The board will determine the number of continuing education contact hours approved.

(10) Conducting research. The board will determine the number of continuing education contact hours approved. The applicant must provide the following:

(a) title and description of research project, including brief timeline;

(b) names of other persons involved in project (i.e., co-investigators or supervisors);

(c) a brief statement indicating philosophical tenants of occupational therapy;

(d) provide a copy of the competed annual research report.

(11) Specialty/ certification programs. Applicants or licensees wishing to receive continuing education for certification programs must submit a certificate of completion signed by the program sponsor. The licensee or applicant must indicate how the specialty/ certification maintains the philosophical tenets of occupational therapy. The board will determine the number of continuing education contact hours approved.

(12) Supervising level II fieldwork. Applicants should provide a copy of the student evaluation (cover and signature pages only). The student's name should be blacked out for confidentiality. A maximum of twelve (12) contact hours will be approved for each OT fieldwork II rotation of twelve (12) weeks. A maximum of eight (8) contact hours will be approved for each OTA fieldwork II rotation of eight (8) weeks. A maximum of twelve (12) contact hours per renewal year is allowed in this area.

(13) Mentoring. Applies to an OT or OTA who has been practicing at least one (1) year prior to entering a new area of practice only. Mentoring shall occur for a minimum of six (6) months and no longer than one (1) year. The mentor shall have at least one (1) year of experience in the specialty area of practice and not be the direct supervisor of the mentored therapist. The "mentoring log" should be used as proof of hours mentored. Both the mentor and mentored will be allowed up to a maximum of five (5) contact hours per year.

D. Credit screening procedures are as follows:

(1) the board or its designee must approve each request for continuing education credit;

(2) the licensee will be informed of the board's action within thirty (30) calendar days of receipt of the request; and

(3) the licensee whose request has been denied may appeal to the board within thirty (30) calendar days of the notification of the board's decision.

E. Continuing education audit.

(1) The board shall audit a percentage of renewal

applications each year to verify the continuing education requirement.

(2) If a notice of audit letter is received with the annual renewal form, evidence of continuing education hours earned during the renewal year must be submitted to the board as requested and as required in the Occupational Therapy Act and by this rule.

(3) If the licensee is not audited, all documentation of attendance and agendas should be retained by the licensee for a minimum of three (3) years immediately preceding the current renewal.

(4) The board reserves the right to audit continuing education attendance certificates whenever there is reasonable doubt the courses submitted, dates, or hours may be incorrect.

(5) Proof of attendance for all continuing education programs is required on all renewal applications submitted after the expiration date.

F. Credit for excess continuing education contact hours accumulated may be used only during the following year. Documentation of excess continuing education contact hours which are being submitted for credit must be submitted with the annual renewal fee and application. The board will allow a maximum of twenty (20) continuing education contact hours to be carried over into the next licensing year.

[16.15.4.9 NMAC - Rp, 16.15.4.9 NMAC, 1/30/15]

HISTORY of 16.15.4 NMAC:

Pre-NMAC History:

Material in this Part was derived from that previously filed with State Records and Archives:

BOTP 84-3, Continuing Education Regulations, filed 12-10-84

BOTP 89-3, Continuing Education Regulations, filed 10-31-89

BOTP 90-3, Continuing Education Regulations, filed 04-27-90

Rule 92-3, Continuing Education Regulations, filed 04-15-92

[Rp, 16 NMAC 15.4.3A, 06-29-00]

History of the Repealed Material:

16.15.4 NMAC, Occupational Therapists - Continuing Education Requirements, filed 06-19-2000, repealed 1/30/2015.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

BOARD OF OCCUPATIONAL THERAPY

This is an amendment to 16.15.1 NMAC, Sections 7 and 16, effective 01/30/2015.

16.15.1.7 DEFINITIONS: [~~RESERVED~~]:

A. "Board" means the board of examiners for occupational therapy.

B. "Occupational therapist" means a person who holds an active license to practice occupational therapy in New Mexico.

C. "Occupational therapy assistant" means a person having no less than an associate degree in occupational therapy and holding an active license to practice occupational therapy in New Mexico who assists an occupational therapist under the supervision of the occupational therapist.

[06-14-97; 16.15.1.7 NMAC - Rn, 16 NMAC 15.1.7, 06-29-00; A, 01-30-15]

16.15.1.16 COERCION PROHIBITED: No person(s) shall coerce an occupational therapist or occupational therapy assistant into compromising client safety by requiring them to delegate activities or tasks if the occupational therapist or occupational therapy assistant determines that it is inappropriate to do so. Occupational therapists or occupational therapy assistants shall not be subject to disciplinary action by the board for refusing to delegate or refusing to provide the required training for delegation if the occupational therapist or occupational therapy assistant determines that delegation may compromise client safety.

[16.15.1.16 NMAC - N, 01-30-15]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

BOARD OF OCCUPATIONAL THERAPY

This is an amendment to 16.15.2 NMAC, Sections 7, 9, 14 thru 17 and adding Section 19, effective 01/30/2015.

16.15.2.7 DEFINITIONS:

A. Military service member: means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.

B. Recent veteran: means a person who has received an honorable discharge or separation from military service within the two (2) years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.

C. Spouse: means a person married to the military service member or recent veteran, in a marriage recognized by the state of New Mexico.

[06-14-97; 16.15.2.7 NMAC - Rn, 16 NMAC 15.2.7, 06-29-00; A, 01/30/2015]

16.15.2.9 INITIAL APPLICATION FOR LICENSURE:

A. An application packet may be obtained from the state licensure board office.

B. The application must be submitted on completed forms as supplied by the board.

C. A photograph of the applicant taken within six (6) months prior to filing application must be submitted with the application. (Passport size recommended; scanned or computer-generated photographs must be printed on photo quality paper).

D. Application fees in the form of a check or money order must be submitted in full with the application. Personal checks may delay processing of your application for up to ten (10) days.

E. Verification of registration or certification may be provided in any of the following ways.

(1) Written verification must be received by the board directly from the national board for certification in occupational therapy (NBCOT) certifying that the applicant's certification is active and in good standing.

(2) Written verification of initial certification must be received by the board directly from the national board for certification in occupational therapy (NBCOT) and verification of licensure from each state in which the applicant has been licensed. Such proof of licensure must be received by the board directly from the state boards where currently and previously licensed. For applicants who practiced in states that do not require licensure, written verification of employment shall be received by the board office directly from the applicant's previous employers on a verification of employment form to be provided by the board.

F. An occupational therapy assistant (OTA), shall file with the board a signed, current statement of supervision by the occupational therapist (OT) who will be responsible for the supervision of the occupational therapy assistant (OTA). Both the supervisor and supervisee carry responsibility for notifying the board within ten (10) work days when

there is a change of supervisor.

G. On-line applications will require a notarized signature card be filed with the board office.

H. All licenses are the property of the board and shall forthwith be returned to the board, if requested.

I. No license is valid without the official board seal.

J. Questions of felony convictions or misdemeanors involving moral turpitude have to be satisfactorily resolved. The board may require proof that the person has been sufficiently rehabilitated to warrant the public trust. Proof of sufficient rehabilitation may include, but not be limited to; certified proof of completion of probation or parole supervision, payment of fees, community service or any other court ordered sanction.
[06-14-97; 02-14-98; 16.15.2.9 NMAC - Rn, 16 NMAC 15.2.9, 06-29-00; A, 04-03-03; A, 08-29-05; A, 01/30/2015]

16.15.2.14 EXPIRED LICENSE OR NON-PRACTICE:

A. A license not renewed on the annual renewal date is expired.

B. Validation of competency for applicants who have not practiced since his or her graduation from an occupational therapy program, or who have not practiced as an occupational therapist or occupational therapy assistant for a period of more than three (3) years, full licensure requires the following;

(1) a completed application form as required under 16.15.2.9 NMAC;

(2) passage of the jurisprudence exam;

(3) twenty (20) continuing education contact hours for each year the applicant was not practicing as an occupational therapist or occupational therapy assistant, not to exceed one hundred (100) hours (course work to be pre-approved by the board); and

(4) the board may require the applicant to provide or demonstrate additional evidence of his or her competency to practice (e.g. passage of the national board for certification in occupational therapy exam, AOTA courses, university sponsored courses, supervision or mentorship.
[06-14-97; 16.15.2.14 NMAC - Rn & A, 16 NMAC 15.2.14, 06-29-00; A, 04-03-03; A, 08-29-05; A, 01/30/2015]

16.15.2.15 INACTIVE LICENSE

A. A license in good standing may be transferred to inactive status upon written request to the board. Such request shall be made prior to the expiration of the license.

B. An annual inactive fee must be submitted to the board. (Refer to Part 6, Fee Schedule).

C. A licensee may reactivate the license upon submission of the following:

(1) A renewal form.

(2) Payment of the annual renewal fee for the year in which the licensee wishes to reactivate.

(3) Proof of continuing education units for each year of inactive status.

(4) Additional proof of competency as requested and prescribed by the Board will be required after five (5) years of an inactive license.

(5) Passage of the jurisprudence exam.

(6) Completion of a verification of employment form for licensees [~~that~~] who have practiced outside New Mexico while on inactive status.
[06-14-97; 16.15.2.15 NMAC - Rn, 16 NMAC 15.2.15, 06-29-00; A, 04-03-03; A, 01/30/2015]

16.15.2.16 REINSTATEMENT OF LICENSURE:

A. Reinstatement of a New Mexico occupational therapist or occupational therapy assistant license that has lapsed for less than one year requires the following:

(1) completion of the renewal form;

(2) payment of late fee;

[~~**(3)** payment of the renewal fee;~~

~~**(4)**~~] **(3)** proof of the required continuing education contact hours; [~~and~~]

[~~**(5)**~~] **(4)** passage of the jurisprudence examination; and

[~~**(6)**~~] **(5)** submit a notarized statement, by the therapist, that they have not practiced occupational therapy in New Mexico while their license was expired.

B. Reinstatement of an occupational therapist or occupational therapy assistant license that has lapsed in New Mexico for more than one (1) year, where there is evidence of continued practice with an unrestricted license/registration/certification in another state requires the following:

(1) completion of the [~~reinstatement~~] initial application;

(2) payment of the [~~reinstatement~~] application;

(3) payment of the current year renewal fee;

(4) proof of twenty (20) continuing education hours for each year of the lapsed New Mexico license; not to exceed one hundred (100) hours.

(5) passage of the jurisprudence examination; and

(6) verification of all current, valid unrestricted licenses/registrations/certifications from other U.S. jurisdictions; verifications may be received by the board via regular mail, electronic mail, or facsimile; verifications must be signed and dated by an official of the agency licensing the applicant and include the following data:

(a) name and address of the applicant;

(b) license/registration/certification number and date of issuance;

[~~**(c)** current of the license;~~]

(c) expiration date of the license/registration/certification;

(d) a statement of whether the applicant was denied a license/registration/certification by the agency;

[~~**(f)**~~] **(e)** a statement of whether any disciplinary action is pending or has been taken against the applicant; and

[~~**(g)**~~] **(f)** receipt of verification of employment for states not requiring licensure, registration, or certification.
[16.15.2.16 NMAC - N, 08-29-05; A, 01/30/2015]

16.15.2.17 PROVISIONS FOR EMERGENCY LICENSURE:

A. Occupational [~~therapist's~~] therapists and occupational [~~therapist~~] therapy assistants currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster upon:

(1) a completed application signed and notarized and accompanied by proof of identity, which may consist of a copy of a [~~driver's~~] driver's license, passport or other photo identification issued by a governmental entity;

(2) proof of successful completion of the national board for certification in occupational therapy (NBCOT) and New Mexico jurisprudence exam;

(3) verification of licenses held in other states and verification of employment if applicable. (verification may be obtained by mail, fax or email, through online verification from the state of licensure)

(4) proof or documentation of residency and employment in the area of the federal disaster.

B. The board may waive the following requirements for licensure:

(1) application fee's prorated for four (4) months;

(2) the specific forms required under 16.15.2.9 NMAC if the applicant is unable to obtain documentation from the federal declared disaster areas.

C. Nothing in this section shall constitute a waiver of the requirements for licensure contained in the board's rules and regulations.

D. Licenses issued under (this emergency provision) shall expire four (4) months following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before October 1, following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal.

[16.15.2.17 NMAC - N/E, 11-16-05; A, 01/30/2015]

16.15.2.19 EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS

A. Application Requirements:

(1) Applications for registration shall be completed on a form (electronic or hard copy) provided by the department.

(2) The information shall include:

(a) completed application and fee;

(b) satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States, that has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license the applicant applies for pursuant to Chapter 61, Articles 2 through 34 NMSA 1978;

(c) proof of honorable discharge (DD214) or military identification card or proof of marriage for spousal status.

(3) Electronic signatures will be acceptable for applications submitted pursuant to section 14-16-1 through 14-16-21 NMSA 1978.

[16.15.2.19 NMAC - N, 01/30/2015]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

BOARD OF OCCUPATIONAL THERAPY

This is an amendment to 16.15.6 NMAC, Sections 8, effective 1/30/2015.

16.15.6.8 SCHEDULE OF FEES: (note, these fees are nonrefundable)

A. Application for full (non-provisional) Licensure received between September 1 and May 31.

(1) occupational therapist: $110.00

(2) occupational therapy assistant: $100.00

B. applications for full (non-provisional) licensure received between June 1 and August 31 [~~$50.00~~]

(1) occupational therapist: $60.00

(2) occupational therapy assistant: $50.00 **C.** Provisional permit: $25.00

D. List of licensees: $50.00

E. Labels of addresses: $80.00

F. Electronic data disk: $80.00

G. Verification of licensure: $20.00

H. Jurisprudence exam: $10.00

I. Annual renewal fees:

(1) occupational therapist: [~~$70.00~~] $85.00

(2) occupational therapy assistant: [~~$50.00~~] $60.00

J. Duplicate of license (issued only in cases of loss or if licensee wishes name change due to divorce, marriage, etc.): $15.00

K. Penalty fee for renewals not postmarked by October 1st of the renewal year: $100.00

L. Continuing education approval for course provider: $25.00

M. Copy charges for public documents (per page): $1.00

N. Inactive status fees:

(1) initial inactive status fee: $15.00

(2) annual inactive status fee: $15.00

(3) reactivation from inactive status fees:

(a) occupational therapist: $70.00

(b) occupational therapy assistant: $50.00

O. Returned check charge (per check): $20.00

[6-14-97; 16.15.6.8 NMAC - Rn & A, 16 NMAC 15.6.8, 06-29-00; A, 04-03-03; A, 08-29-05; A, 01/30/2015]

End of Adopted Rules Section

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Issue Number 7	April 1	April 16
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 14
Issue Number 10	May 15	May 29
Issue Number 11	June 1	June 16
Issue Number 12	June 17	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 30
Issue Number 15	July 31	August 14
Issue Number 16	August 17	August 28
Issue Number 17	August 31	September 15
Issue Number 18	September 16	September 29
Issue Number 19	September 30	October 15
Issue Number 20	October 16	October 29
Issue Number 21	October 30	November 16
Issue Number 22	November 17	November 30
Issue Number 23	December 1	December 15
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