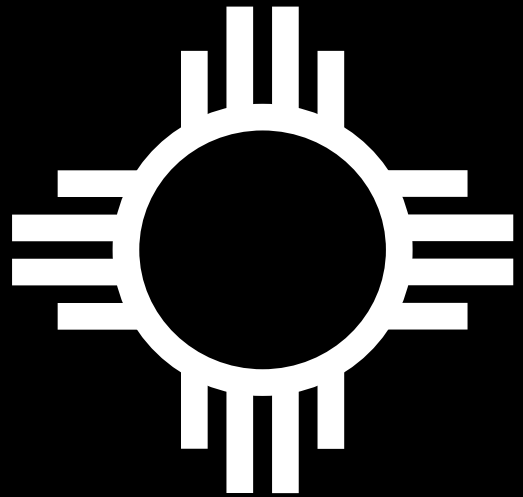


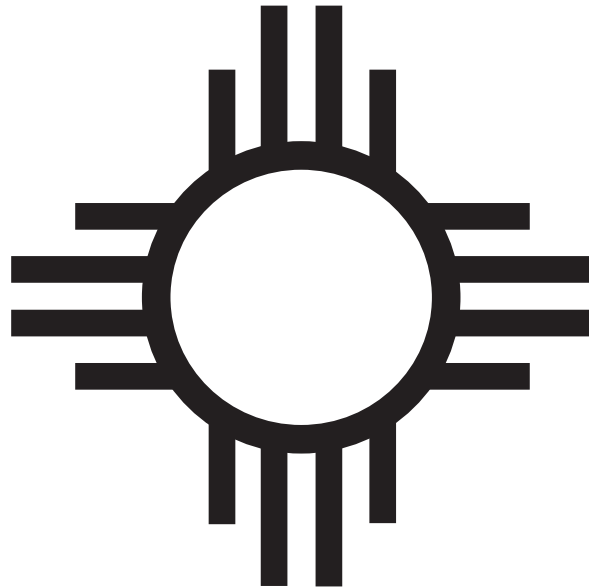
**NEW  
MEXICO  
REGISTER**



Volume XXVI  
Issue Number 16  
August 28, 2015

# **New Mexico Register**

**Volume XXVI, Issue 16  
August 28, 2015**



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

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Administrative Law Division  
Santa Fe, New Mexico  
2015

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# New Mexico Register

Volume XXVI, Issue 16

August 28, 2015

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## Notices of Rulemaking and Proposed Rules

### CHILDREN, YOUTH AND FAMILIES DEPARTMENT

#### Notice of Public Hearing

Protective Services Division (PSD) of the Children, Youth and Families Department (CYFD) will hold a public hearing in Albuquerque on Wednesday, September 9, 2015 from 1:00 p.m. to 2:30 p.m. in the large conference room located at 625 Silver Avenue NW, to take comments regarding revisions to the following policies:

- 8.10.8 NMAC “Permanency Planning”
- 8.10.9 NMAC “Youth Services”
- 8.26.2 NMAC “Placement Services”

The large conference room is accessible to people with disabilities. Documents can be available in different formats to accommodate a particular disability upon request by calling 505-412-9597. If assistance is required to attend the hearing, please call 505-412-9597 to arrange accommodation. Written comments are provided the same weight as comments received during the public hearings.

These policies may also be reviewed between 8:00 a.m.-5:00 p.m. at the Director’s office, Room 254, in the PERA building in Santa Fe. Please contact Milissa Soto, PSD Policy and Procedure Coordinator at 505-412-9597 for any further information.

### ENVIRONMENT DEPARTMENT

#### Notice Of Public Hearing To Consider Proposed Amendments To 20.7.5 NMAC – Wastewater Facility Construction Loans And 20.7.6 NMAC – Wastewater Facility Construction Loan Policies And Guidelines

The New Mexico Water Quality Control Commission will hold a public hearing beginning at 9:00 a.m. on October 13, 2015, at the State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico, 87501, to consider proposed amendments to 20.7.5 NMAC and 20.7.6 NMAC. The proposed amendments would (1) allow mutual domestic water consumer associations to be eligible for funding under the Wastewater Facility Construction Loan Act and (2) lengthen

the maximum repayment period for borrowers from twenty (20) years to thirty (30) years.

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.

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. Written comments regarding the proposed revisions may be addressed to Pam Castañeda, Commission Administrator, at the above address; reference docket number WQCC 15-06 (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, which may be obtained from the Commission Administrator or found on the Commission’s webpage. Notices of intent for the hearing must be received by the Office of the Commission Administrator by 5:00 p.m. on September 29, 2015 and should reference the name of the regulation, the date of the hearing, and docket number WQCC 15-06 (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 during the hearing.

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 September 29, 2015. 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.

### ENVIRONMENT DEPARTMENT

#### Aviso Público Que Oye Para Considerar Enmiendas Propuestas A 20.7.5 NMAC – Las Aguas Residuales De Préstamos De Construcción Y 20.7.6 NMAC – Aguas Residuales Instalaciones Préstamo De Construcción Políticas Y Directrices

La Comisión de Control de la Calidad De Agua de Nuevo Mexico se llevara a cabo un audiencia publica comensando a las 9:00 a.m. del día 13 de octubre de 2015 en el edificio del capital del estado, 490 Old Santa Fé Trail, Santa Fé, Nuevo Mexico, 87501 a tener en cuenta propuestas de enmiendas a la 20.7.5 NMAC y 20.7.6 NMAC. Las enmiendas propuestas seria (1) permitir que asociaciones del consumidor acuáticas domésticas mutuas sean elegibles para financiar según el Acto del Préstamo de Construcción de la Instalación Wastewater y (2) alargan el periodo del reembolso máximo para prestatarios de veinte (20) años a treinta (30) años.

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.

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. 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 15-06 (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 que se puede obtener del Administrador de la Comisión 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 Administrador de las 5:00 p.m. el 29 de septiembre de 2015 y debe hacer referencia al nombre de la regulación, la fecha de la audiencia, y el número de expediente WQCC 15-06 (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.

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 día 29 de septiembre de 2015. 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.

## WATER QUALITY CONTROL COMMISSION

### Notice Of Public Hearing To Consider Proposed Amendments To 20.6.4 NMAC – Standards For Interstate And Intrastate Surface Waters – The Triennial Review

The New Mexico Water Quality Control Commission (WQCC) will hold a public hearing to consider proposed amendments to various sections of 20.6.4 NMAC, Standards for Interstate and Intrastate Surface Waters, beginning at 9:00 a.m. on October 13, 2015 through October 16, 2015, in Room 307 of the New Mexico State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico. In the event that more time is needed after 5:00 p.m., the hearing will move across the street to the P.E.R.A. Building, Apodaca Hall, at 1120 Paseo de Peralta, Santa Fe, NM.

The proposed amendments, docketed as WQCC 14-05 (R), include amendments proposed by the New Mexico Environment Department's (Department) Surface Water Quality Bureau, as well as amendments proposed by Amigos Bravos, Peabody Energy Corporation, Freeport-McMoRan Chino Mines Company and San Juan Water Commission. Proposed amendments include revisions to various definitions, use attainability analysis requirements, uses and criteria for unclassified waters and some classified segments, provisions for site-specific criteria and other provisions. The petitions and proposed amendments may be viewed on the Department's website, at [www.env.nm.gov/swqb/TriennialReview/2013/](http://www.env.nm.gov/swqb/TriennialReview/2013/), or during regular business hours by contacting Pam Castaneda, Commission Administrator, 1190 S. St. Francis Drive, Room S-2102, Santa Fe, New Mexico 87502, (505) 827-2425.

The hearing will be conducted in accordance with the New Mexico Water Quality Act, NMSA 1978, § 74-6-6, the *Guidelines for Water Quality Control Commission Regulation Hearings (Guidelines)*, the *Procedural Order*, issued August 7, 2015, and the *Scheduling Order*, issued July 10, 2014, modified on January 30, 2015, and modified again on June 9, 2015. A copy of the *Guidelines*, *Procedural Order* and *Scheduling Orders* are available on the Department's website or may be obtained from the Commission Administrator at the address and phone number above. Notice of Hearing of WQCC 14-05 (R) was originally published on October 31,

2014, and then again on April 6, 2015 as a result of the hearing being moved to June 9, 2015; however, the date of the hearing has now been changed to October 13, 2015, therefore this notice is being issued. All current parties submitted their respective Notices of Intent to Present Technical Testimony by December 12, 2014. All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce relevant exhibits and to examine witnesses testifying at the public hearing.

Persons desiring to present technical testimony at the hearing must file with the WQCC a written notice of intent. The notice of intent to present technical testimony shall:

- identify the person for whom technical testimony will be presented;
- identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their education and work background;
- attach the full direct testimony of each technical witness, which shall include an express basis for all expert opinions offered;
- include the text of any recommended modifications to the proposed regulatory change; and
- identify and attach all exhibits anticipated to be offered by the person at the hearing.

The deadline for filing notices of intent is September 14, 2015 at 5:00 p.m. in the Commission Administrator's office. All documents filed in this matter, including notices of intent, must be filed with a single-sided original and fourteen copies. Any person may offer non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony at or before the hearing.

In order to present technical testimony rebutting the testimony of another party at the hearing, a person must file a notice of intent to present rebuttal testimony no later than 5:00 p.m. on October 5, 2015. The notice shall comply with the requirements set out above. In addition, if a party takes a position on proposed changes of other parties, the notice shall include the basis for that support or opposition.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. translator or sign-language interpreter, to participate in any aspect of

this process, please contact J.C. Borrego by September 28, 2015, at the New Mexico Environment Department, 1190 S. St. Francis Drive, P.O. Box 5469, Santa Fe, New Mexico 87502, (505) 827-2855. (TDD or TTY users please access the number via the New Mexico Relay Network, Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

## WATER QUALITY CONTROL COMMISSION

### Aviso De Audiencia Pública Para Considerar Las Enmiendas Propuestas Para 20.6.4 NMAC – Estándares Para Aguas Superficiales Interestatales E Intraestatales –Revisión Trienal

La Comisión de Nuevo México para el Control de la Calidad del Agua (WQCC por su sigla en inglés) celebrará una audiencia pública para considerar las enmiendas propuestas para varias secciones de 20.6.4 NMAC, Estándares para Aguas Superficiales Interestatales e Intraestatales, que comenzará a las 9:00 de la mañana del 13 de octubre de 2015 y continuará hasta el 16 de octubre de 2015, en la Sala 307 del Edificio del Capitolio Estatal de Nuevo México, 490 Old Santa Fe Trail, Santa Fe, Nuevo México. En caso de necesitarse más tiempo después de las 5:00 de la tarde, la audiencia se trasladará al edificio de enfrente: P.E.R.A. Building, Apodaca Hall, en 1120 Paseo de Peralta, Santa Fe, NM.

Las enmiendas propuestas, designadas como WQCC 14-05 (R), incluyen enmiendas propuestas por la Oficina para el Control de la Calidad del Agua Superficial del Departamento del Medio Ambiente de Nuevo México (Departamento), además de enmiendas propuestas por Amigos Bravos, Peabody Energy Corporation, Freeport-McMoRan Chino Mines Company y San Juan Water Commission. Las enmiendas propuestas incluyen revisiones de varias definiciones, requisitos para el análisis del alcance del uso, usos y criterios para aguas no clasificadas y algunos segmentos clasificados, disposiciones para criterios de lugares específicos y otras disposiciones. Las peticiones y las enmiendas propuestas podrán encontrarse en el sitio web del Departamento, [www.env.nm.gov/swqb/TriennialReview/2013/](http://www.env.nm.gov/swqb/TriennialReview/2013/), o durante el horario normal de oficinas por medio de la Administradora de la

Comisión: Pam Castaneda, Commission Administrator, 1190 S. St. Francis Drive, Room S-2102, Santa Fe, New Mexico 87502, (505) 827-2425.

La audiencia se llevará a cabo conforme a la Ley de Nuevo México para la Calidad del Agua, NMSA 1978, § 74-6-6, *Pautas para las Audiencias de Reglamentación de la Comisión para el Control de la Calidad del Agua (Pautas)*, la *Orden de Procedimientos*, emitida el 7 de agosto de 2015, y la *Orden de Programación*, emitida el 10 de julio de 2014, modificada el 30 de enero de 2015, y modificada nuevamente el 9 de junio de 2015. Los interesados podrán encontrar una copia de las *Pautas*, la *Orden de Procedimientos* y las *Órdenes de Programación* en el sitio web del Departamento o por medio de la Administradora de la Comisión en la dirección y teléfono antes mencionados. El Aviso de Audiencia de WQCC 14-05 (R) se publicó inicialmente el 31 de octubre de 2014 y nuevamente el 6 de abril de 2015 como consecuencia del cambio de fecha de la audiencia para el 9 de junio de 2015. Sin embargo, la fecha de la audiencia se ha cambiado ahora para el 13 de octubre de 2015 y, por ese motivo, se emite este aviso. Todas las partes actualmente interesadas presentaron sus respectivos Avisos de Intención de Presentar Testimonio Técnico antes del 12 de diciembre de 2014. Los interesados tendrán una oportunidad razonable durante la audiencia para presentar pruebas pertinentes, datos, puntos de vista y argumentos, oralmente o por escrito, de presentar documentos y objetos de prueba pertinentes y de interrogar a los testigos que testifiquen en la audiencia pública.

Las personas que deseen presentar testimonio de carácter técnico durante la audiencia deberán presentar ante la WQCC un aviso de intención por escrito. El aviso de intención de presentar testimonio técnico deberá:

- identificar a la persona para quien se presentará el testimonio técnico;
- identificar a cada testigo técnico que esa persona desee presentar y establecer las cualificaciones de cada testigo, incluso una descripción de su antecedentes educativos y laborales;
- adjuntar el testimonio directo completo de cada testigo técnico, el cual deberá incluir un fundamento explícito de todas las opiniones periciales ofrecidas;
- incluir el texto de toda modificación recomendada para el cambio normativo propuesto; e
- identificar y adjuntar todos los documentos u objetos de prueba que esa

persona tenga previsto presentar en la audiencia.

La fecha límite para presentar el aviso de intención es el 14 de septiembre de 2015, hasta las 5:00 de la tarde, en la oficina del Administrador de la Comisión. Todos los documentos a presentarse para este asunto, incluso los avisos de intención, deberán entregarse en originales impresos en un solo lado de la hoja y con catorce copias. Cualquier persona podrá ofrecer comentarios del público que no sean de carácter técnico durante la audiencia o presentar declaraciones escritas que no sean de carácter técnico en lugar de testimonio oral antes o durante la audiencia.

Quienes deseen presentar testimonio técnico que refute el testimonio de alguna de las demás partes durante la audiencia deberán presentar un aviso de intención de presentar testimonio de refutación antes de las 5:00 de la tarde del 5 de octubre de 2015. El aviso deberá cumplir con los requisitos antes indicados. Asimismo, si una de las partes interesadas tomara una posición con respecto a los cambios propuestos por otras partes, el aviso deberá incluir el fundamento de ese respaldo u oposición.

Las personas con discapacidades y que necesiten ayuda o un dispositivo auxiliar, por ejemplo, un intérprete de idiomas hablados o de lenguaje de señas, para participar en cualquier aspecto de este proceso, deberán comunicarse con J.C. Borrego antes del 28 de septiembre de 2015 en New Mexico Environment Department, 1190 S. St. Francis Drive, P. O. Box 5469, Santa Fe, New Mexico 87502, (505) 827-2855. (Los usuarios de TDD y de TTY podrán acceder a ese número de teléfono a través de New Mexico Relay Network; usuarios de TDD en Albuquerque: (505) 275-7333; fuera de Albuquerque: 1-800-659-1779 (voz); usuarios de TTY: 1-800-659-8331).

## End of Notices of Rulemaking and Proposed Rules



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## Adopted Rules

### Effective Date and Validity of Rule Filings

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

#### DEPARTMENT OF HEALTH

##### TITLE 7 HEALTH CHAPTER 5 VACCINATIONS AND IMMUNIZATIONS PART 4 VACCINE PURCHASING FUND

**7.5.4.1 ISSUING AGENCY:**  
Public Health Division, Department of  
Health.

[7.5.4.1 NMAC - N, 8/28/15]

**7.5.4.2 SCOPE:** These regulations govern the procedures for establishing and administering a statewide vaccine purchasing program to purchase vaccines for all children in New Mexico (NM), including children eligible for the vaccines for children program and insured children.

[7.5.4.2 NMAC - N, 8/28/15]

**7.5.4.3 STATUTORY AUTHORITY:** This rule is promulgated pursuant to Sections 24-5A-1 through 24-5A-9 of the Vaccine Purchasing Act, NMSA 1978; Section 9-7-6 of the Department of Health Act, NMSA 1978; and Section 24-1-3 of the Public Health Act, NMSA 1978.

[7.5.4.3 NMAC - N, 8/28/15]

**7.5.4.4 DURATION:**  
Permanent.

[7.5.4.4 NMAC - N, 8/28/15]

**7.5.4.5 EFFECTIVE DATE:**  
August 28, 2015, unless a later date is cited at the end of a section.

[7.5.4.5 NMAC - N, 8/28/15]

**7.5.4.6 OBJECTIVE:**  
The objective of this rule is to establish standards and administer a statewide vaccine purchasing program to:

**A.** expand access to childhood immunizations recommended by the advisory committee on immunization practices;

**B.** maintain and improve immunization rates;

**C.** facilitate the

acquisition by providers of vaccines for childhood immunizations recommended by the advisory committee on immunization practices; and

**D.** leverage public and private funding and resources for the purchase, storage, and distribution of vaccines for childhood immunizations recommended by the advisory committee on immunization practices.

[7.5.4.6 NMAC - N, 8/28/15]

**7.5.4.7 DEFINITIONS:**

**A. "Advisory committee on immunization practices"** means the group of medical and public health experts that develops recommendations on how to use vaccines to control diseases in the United States, established under Section 222 of the federal Public Health Service Act.

**B. "Department"** means the department of health.

**C. "Fund"** means the vaccine purchasing fund.

**D. "Group health plan"** means an employee welfare benefit plan to the extent that the plan provides medical care to employees or their dependents under the Employee Retirement Income Security Act of 1974 directly or through insurance, reimbursement or other means.

**E. "Health insurance coverage"** means benefits consisting of medical care provided directly or through insurance or reimbursement or other means under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

**F. "Health insurer"** means any entity subject to regulation by the office of the superintendent of insurance that:

**(1)** provides or is authorized to provide health insurance or health benefit plans;

**(2)** administers health insurance or health benefit coverage; or

**(3)** otherwise provides a plan of health insurance or health benefits.

**G. "Insured child"**

means a child under the age of 19 who is eligible to receive health insurance coverage from a health insurer or medical care pursuant to a group health plan.

**H. "Office of the superintendent"** means the office of the superintendent of insurance.

**I. "Policy"** means any contract of health insurance between a health insurer and the insured and all clauses, riders, endorsements and parts thereof.

**J. "Provider"** means an individual or organization licensed, certified, or otherwise authorized or permitted by law to provide vaccinations to insured children.

**K. "Vaccines for children program"** means the federally funded program that provides vaccines at no cost to eligible children pursuant to Section 1928 of the federal Social Security Act.

[7.5.4.7 NMAC - N, 8/28/15]

**7.5.4.8 DUTIES OF THE DEPARTMENT:** The department shall:

**A.** purchase vaccines for children in New Mexico, including children eligible for the vaccines for children program and insured children;

**B.** invoice each health insurer and group health plan to reimburse the department for the cost of vaccines provided directly or indirectly by the department to such health insurer's or group health plan's insured children;

**C.** maintain a list of registered providers who receive vaccines for insured children that are purchased by the state and provide such list to each health insurer and group health plan with every invoice;

**D.** report the failure of a health insurer to reimburse the department within 30 days of the date of the invoice to the office of the superintendent in order for the office of the superintendent to pursue the proper sanctions or monetary penalties pursuant to their rules and the Vaccine Purchasing Act;

**E.** report the failure of a health insurer or group health plan to reimburse the department within 30 days of the date of the invoice to the office of

the attorney general for collection of the invoice amount, including a civil penalty of five hundred dollars (\$500) for each day from the date the payment is due;

F. credit all receipts collected from health insurers and group health plans pursuant to the Vaccine Purchasing Act to the fund;

G. no later than July 1, 2015, and July 1 of each year thereafter, the department shall estimate the amount to be expended annually by the department to purchase, store and distribute vaccines recommended by the advisory committee on immunization practices to all insured children in the state, including a reserve of 10% of the amount estimated; and

H. no later than September 1, 2015, and each quarter thereafter, the department shall invoice each health insurer and each group health plan for one-fourth of its proportionate share of the estimated annual amount and reserve calculated pursuant to Subsection E of 7.5.4.10 NMAC.

[7.5.4.8 NMAC - N, 8/28/15]

**7.5.4.9 PROVIDER PROHIBITIONS:** To avoid duplication of payment, any providers who administer vaccines are prohibited from billing health insurers and group health plans for the cost of any vaccine which was provided to them by the department.

[7.5.4.9 NMAC - N, 8/28/15]

**7.5.4.10 PROCESS AND PROCEDURES:**

A. No later than July 1, 2015, and July 1 of each year thereafter, the department shall estimate the amount to be expended annually by the department to purchase, store, and distribute vaccines recommended by the advisory committee on immunization practices to all insured children in the state, including a reserve of 10% of the amount estimated.

B. By the due date established by the office of the superintendent, but no later than August 15, 2015, each health insurer and group health plan shall report to the office of the superintendent’s director of life and health, P.O. Box 1689, Santa Fe, NM 87504, the number of children it insured who were under the age of 19 as of December 31, 2014, excluding from such reports children who are enrolled in medicaid or in any medical assistance program administered by the department, or the human services department, and children who are American Indian or Alaska Natives. All such reports to the office of the superintendent shall be copied to the department at vpa.fund@state.nm.us.

C. By the due date established by the office of the superintendent, but no later than July 1 of each year subsequent to August 15, 2015, each health insurer and group health plan shall annually report to the office of the superintendent’s director of life and health, P.O. Box 1689, Santa Fe, NM 87504, the number of children it insures who will be under the age of 19 as of December 31 of the previous year, excluding from such reports children who are enrolled in medicaid or in any medical assistance program administered by the department, or the human services department, and children who are American Indian or Alaska Natives. All such reports to the office of the superintendent shall be copied to the department at vpa.fund@state.nm.us.

D. Each health insurer and group health plan, when reporting number of children pursuant to this section, shall also provide a designated point of contact to the department and to the office of the superintendent to include: name, title, address, e-mail address, and office phone number no later than August 15, 2015, and by July 1 of each subsequent year. In the event that the point of contact changes prior to the billing cycle referenced in the table below, then an updated point of contact shall be provided to the department and the office of the superintendent as soon as practicable after the change occurs, but no later than 30 days after the change.

E. The annual amount to be reimbursed by each health insurer or group health plan shall be a fraction, the denominator of which is the total number of insured children reported by all health insurers and group health plans and the numerator of which is the number of insured children reported by such health insurer or group health plan, multiplied by the total amount as determined by the department to be expended annually in the corresponding year. Payments shall be remitted to the department’s fiscal agent in the manner directed by the department in the invoice with a corresponding notification of remittance to vpa.fund@state.nm.us.

F. No later than September 1, 2015, and each quarter thereafter, the department shall invoice each health insurer and each group health plan for one-fourth of its proportionate share of the estimated amount and reserve calculated pursuant to Subsection E of 7.5.4.10 NMAC. The due dates are as follows:

Billing Cycle:	Department’s Invoice Date:	Insurer’s and Group Health Plan’s Due Date:
July 1 to September 30	September 1	October 1
October 1 to December 31	December 1	January 1
January 1 to March 31	March 1	April 1
April 1 to June 30	June 1	July 1

[7.5.4.10 NMAC - N, 8/28/15]

**7.5.4.11 AUTHORIZED USES OF THE VACCINE PURCHASING FUND:**

A. Money in the fund shall be expended only for the purposes specified in the Vaccine Purchasing Act, by warrant issued by the secretary of finance and administration pursuant to vouchers approved by the secretary of health.

B. The fund shall be audited in the same manner as other state funds are audited, and all records of payments made from the fund shall be open to the public.

C. Any balance remaining in the fund shall not revert or be transferred to any other fund at the end of a fiscal year.

D. Money in the fund shall be invested by the state investment officer in accordance with the limitations in Article 12 Section 7 of the constitution of New Mexico. Income from investment of the fund shall be credited to the fund.

E. The fund shall be used for the purchase, storage, and distribution of vaccines, as recommended by the advisory committee on immunization practices, for insured children who are not eligible for the vaccines for children program.

F. The department may update its estimated amount to be expended annually and its reserve to take into account increases or decreases in the cost of vaccines or the costs of additional vaccines that the department determines should be included in the statewide vaccine purchasing program and adjust the amount invoiced to each health insurer and group health plan the following quarter.

G. The department shall credit any balance remaining in the fund at the end of the fiscal year toward the department's purchase of vaccines the following year; provided that the department maintains a reserve of 10% of the amount estimated to be expended in the following year.

[7.5.4.11 NMAC - N, 8/28/15]

#### **7.5.4.12 UNAUTHORIZED USES OF THE VACCINE PURCHASING FUND:**

The fund shall not be used:

A. for the purchase, storage, and distribution of vaccines for children who are eligible for the vaccines for children program;

B. for administrative expenses associated with the statewide vaccine purchasing program; or

C. to pass through a federally negotiated discount pursuant to 42 U.S.C. 1396s.

[7.5.4.12 NMAC - N, 8/28/15]

#### **7.5.4.13 INITIAL ADMINISTRATIVE REVIEW OF INVOICE BY THE DEPARTMENT:**

A. Each health insurer or group health plan shall have the right to request an initial administrative review of their invoice by the department in the event of a dispute over the invoice amount only. Any other grievances shall be initiated with the office of the superintendent pursuant to their rules. Criteria for the initial administrative

review of the invoice shall be available from the department of health immunization program. Any informal hearing or administrative review of the invoice pursuant to the office of the superintendent's rules can only be commenced after the department's initial administrative review of the invoice is completed and the health insurer or group health plan receives notification by mail that the administrative review request has been completed by the department.

B. The health insurer or group health plan may submit a letter requesting an initial administrative review of the invoice and any supporting documents to the immunization program manager or designee within 10 working days of receipt of the department's invoice. Such requests shall be submitted to the immunization program manager at P.O. Box 26110, Santa Fe, NM 87502-6110, and via email at vpa.fund@state.nm.us. The health insurer or group health plan shall send a copy of the request to the office of the superintendent of insurance.

C. Within 10 working days of receipt of the request for an initial administrative review of the invoice, the department of health's immunization program manager or designee shall review the request for an initial administrative review of the invoice and any supporting documents. After the administrative review is complete the department's immunization program manager or designee shall notify the health insurer or group health plan by mail if the invoice amount will remain unchanged or modified.

D. If a modified invoice is issued by the department then payment is due within five days of receipt of the modified invoice or on the due date identified in the original invoice, whichever is later. Payment is due regardless of whether the health insurer or group health plan intends to further pursue an administrative review or informal hearing of the invoice with the office of the superintendent or an appeal to district court. Failure to remit payment will result in the department reporting the failure of a health insurer or group health plan to reimburse the department to the office of the attorney general for collection of the invoice amount, including a civil penalty of five hundred dollars (\$500) for each day from the date the payment is due.

E. If the invoice remains unchanged then the invoice amount is due within five days of receipt of the department's decision or on the due date identified in the original invoice, whichever is later. Payment is due

regardless of whether the health insurer or group health plan intends to further pursue an administrative review or informal hearing of the invoice with the office of the superintendent or an appeal to district court. Failure to remit payment will result in the department reporting the failure of a health insurer or group health plan to reimburse the department to the office of the attorney general for collection of the invoice amount, including a civil penalty of five hundred dollars (\$500) for each day from the date the payment is due.

F. If the health insurer or group health plan continues to dispute the invoice amount, then it may request an informal hearing or administrative review with the office of the superintendent pursuant to the office of the superintendent's rules as authorized by the Vaccine Purchasing Act. The health insurer or group health plan shall notify the immunization program manager if they are pursuing an informal hearing or administrative review of the invoice with the office of the superintendent via email at vpa.fund@state.nm.us.

[7.5.4.13 NMAC - N, 8/28/15]

#### **7.5.4.14 RIGHT TO AN INFORMAL HEARING OR ADMINISTRATIVE REVIEW WITH THE OFFICE OF THE SUPERINTENDENT AND THE RIGHT TO APPEAL; PENALTIES:**

A. A health insurer aggrieved pursuant to the Vaccine Purchasing Act may request an informal hearing or an administrative review with the office of the superintendent pursuant to their rules. The health insurer shall notify the immunization program manager if they are pursuing an informal hearing or administrative review with the office of the superintendent via email at vpa.fund@state.nm.us.

B. A health insurer aggrieved pursuant to the Vaccine Purchasing Act may appeal from an order of the superintendent made after an informal hearing or an administrative hearing pursuant to Section 59A-4-20, NMSA 1978. The appeal from the office of the superintendent's order shall be taken to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

C. A health insurer or group health plan that fails to file a report pursuant to Subsections B and C of 7.5.4.10 NMAC shall pay a late filing fee of five hundred dollars (\$500) per day for each day from the date the report was due.

D. The office of superintendent may require a health

insurer or group health plan subject to the Vaccine Purchasing Act to produce records that were used to prepare the report required under Subsections B and C of 7.5.4.10 NMAC. If the office of superintendent determines that there is other than a good faith discrepancy between the number of insured children reported and the number of insured children that should have been reported, the health insurer or group health plan shall pay a civil penalty of five hundred dollars (\$500) for each report filed for which the office of superintendent determines there is such a discrepancy.

**E.** Failure of a health insurer or group health plan to make timely payment of an amount invoiced pursuant to the Vaccine Purchasing Act and this rule shall subject the health insurer or group health plan to a civil penalty of five hundred dollars (\$500) for each day from the date the payment is due.

[7.5.4.14 NMAC - N, 8/28/15]

**HISTORY OF 7.5.4 NMAC:**  
[RESERVED]

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

The Human Services Department approved, at its 05/15/2015 hearing, to repeal its rule 8.200.520 NMAC, Income Standards (filed 12/02/2013) and replace it with 8.200.520 NMAC, Income Standards, effective 8/28/2015.

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

**TITLE 8 SOCIAL SERVICES  
CHAPTER 200 MEDICAID  
ELIGIBILITY - GENERAL  
RECIPIENT POLICIES  
PART 520 INCOME  
STANDARDS**

**8.200.520.1 ISSUING AGENCY:**  
New Mexico Human Services Department (HSD).  
[8.200.520.1 NMAC - Rp, 8.200.520.1 NMAC, 8-28-15]

**8.200.520.2 SCOPE:** The rule applies to the general public.  
[8.200.520.2 NMAC - Rp, 8.200.520.2 NMAC, 8-28-15]

**8.200.520.3 STATUTORY AUTHORITY:** The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 et seq. NMSA 1978.  
[8.200.520.3 NMAC - Rp, 8.200.520.3 NMAC, 8-28-15]

**8.200.520.4 DURATION:**  
Permanent.  
[8.200.520.4 NMAC - Rp, 8.200.520.4 NMAC, 8-28-15]

**8.200.520.5 EFFECTIVE DATE:**  
August 28, 2015, unless a later date is cited at the end of a section.  
[8.200.520.5 NMAC - Rp, 8.200.520.5 NMAC, 8-28-15]

**8.200.520.6 OBJECTIVE:** The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Generally, applicable eligibility rules are detailed in the medical assistance division (MAD) eligibility policy manual, specifically 8.200.400 NMAC, *General Medicaid Eligibility*. Processes for establishing and maintaining MAD eligibility are detailed in the income support division (ISD) general provisions 8.100 NMAC, *General Provisions for Public Assistance Programs*.  
[8.200.520.6 NMAC - Rp, 8.200.520.6 NMAC, 8-28-15]

**8.200.520.7 DEFINITIONS:**  
[RESERVED]

**8.200.520.8 MISSION:** To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.  
[8.200.520.8 NMAC - Rp, 8.200.520.8 NMAC, 8-28-15]

**8.200.520.9 GENERAL NEED DETERMINATION:** To be medical assistance division (MAD) eligible, an applicant or a re-determining eligible recipient must meet specific income and as applicable, resource standards.  
[8.200.520.9 NMAC - Rp, 8.200.520.9 NMAC, 8-28-15]

**8.200.520.10 INCOME STANDARDS:** This part contains the federal income poverty rate tables for use with all eligibility categories, cost of living (COLA) disregard calculations and

other applicable income tables.  
[8.200.520.10 NMAC - Rp, 8.200.520.10 NMAC, 8-28-15]

**Continued On Next Page**

**8.200.520.11 FEDERAL POVERTY INCOME GUIDELINES:**

**A.** 100% federal poverty limits (FPL):

Size of budget group	FPL per month
1	\$981*
2	\$1,328*
3	\$1,675
4	\$2,021
5	\$2,368
6	\$2,715
7	\$3,061
8	\$3,408

Add \$347 for each additional person in the budget group.

\*Use only these two standards for the qualified medicare beneficiary (QMB) program.

**B.** 120% FPL: This income level is used only in the determination of the maximum income limit for specified low income medicare beneficiaries (SLIMB) applicants or eligible recipients.

Applicant or eligible recipient	Amount
1. Individual	At least \$981 per month but no more than \$1,177 per month.
2. Couple	At least \$1,328 per month but no more than \$1,593 per month.

For purposes of this eligibility calculation, "couple" means an applicant couple or an applicant with an ineligible spouse when income is deemed.

**C.** 133% FPL:

Size of budget group	FPL per month
1	\$1,305
2	\$1,766
3	\$2,227
4	\$2,688
5	\$3,149
6	\$3,610
7	\$4,071
8	\$4,532

Add \$461 for each additional person in the budget group.

**D.** 135% FPL: This income level is used only in the determination of the maximum income limit for a qualified individual 1 (Q11) applicant or eligible recipient. For purposes of this eligibility calculation, "couple" means an applicant couple or an applicant with an ineligible spouse when income is deemed. The following income levels apply:

Applicant or eligible recipient	Amount
1. Individual	At least \$1,177 per month but no more than \$1,325 per month.
2. Couple	At least \$1,593 per month but no more than \$1,793 per month.

**E.** 185% FPL:

Size of budget group	FPL per month
1	\$1,815
2	\$2,456
3	\$3,098
4	\$3,739
5	\$4,380
6	\$5,022
7	\$5,663
8	\$6,304

Add \$641 for each additional person in the budget group.

**F.** 200% FPL:

Size of budget group	FPL per month
1	\$1,962
2	\$2,655
3	\$3,349
4	\$4,042
5	\$4,735
6	\$5,429
7	\$6,122
8	\$6,815

Add \$693 for each additional person in the budget group.

**G.** 235% FPL:

Size of budget group	FPL per month
1	\$2,305
2	\$3,120
3	\$3,935
4	\$4,749

5	\$5,564
6	\$6,379
7	\$7,193
8	\$8,008

Add \$815 for each additional person in the budget group.

**H.** 250% FPL:

Size of budget group	FPL per month
1	\$2,453
2	\$3,319
3	\$4,186
4	\$5,053
5	\$5,919
6	\$6,786
7	\$7,653
8	\$8,519

Add \$866 for each additional person in the budget group.

[8.200.520.11 NMAC - Rp, 8.200.520.11 NMAC, 8-28-15]

**8.200.520.12 COST OF LIVING ADJUSTMENT (COLA) DISREGARD COMPUTATION:** The countable social security benefit without the COLA is calculated using the COLA increase table as follows:

**A.** divide the current gross social security benefit by the COLA increase in the most current year; the result is the social security benefit before the COLA increase;

**B.** divide the result from Subsection A above by the COLA increase from the previous period or year; the result is the social security benefit before the increase for that period or year; and

**C.** repeat Subsection B above for each year, through the year that the applicant or eligible recipient received both social security benefits and supplemental security income (SSI); the final result is the countable social security benefit.

	Period and year	COLA increase	= benefit before
1	2015 Jan – Dec	1.017	Jan 15
2	2014 Jan - Dec	1.015	Jan 14
3	2013 Jan – Dec	1.017	Jan 13
4	2012 Jan – Dec	1.037	Jan 12
5	2011 Jan - Dec	0	Jan 11
6	2010 Jan – Dec	1	Jan 10
7	2009 Jan – Dec	1	Jan 09
8	2008 Jan – Dec	1.058	Jan 08
9	2007 Jan – Dec	1.023	Jan 07
10	2006 Jan – Dec	1.033	Jan 06
11	2005 Jan – Dec	1.041	Jan 05
12	2004 Jan – Dec	1.027	Jan 04
13	2003 Jan – Dec	1.021	Jan 03
14	2002 Jan – Dec	1.014	Jan 02
15	2001 Jan – Dec	1.026	Jan 01
16	2000 Jan – Dec	1.035	Jan 00
17	1999 Jan – Dec	1.025	Jan 99
18	1998 Jan – Dec	1.013	Jan 98
19	1997 Jan – Dec	1.021	Jan 97
20	1996 Jan – Dec	1.029	Jan 96
21	1995 Jan – Dec	1.026	Jan 95
22	1994 Jan – Dec	1.028	Jan 94
23	1993 Jan – Dec	1.026	Jan 93
24	1992 Jan – Dec	1.03	Jan 92

	Period and year	COLA increase	= benefit before
25	1991 Jan – Dec	1.037	Jan 91
26	1990 Jan – Dec	1.054	Jan 90
27	1989 Jan – Dec	1.047	Jan 89
28	1988 Jan – Dec	1.04	Jan 88
29	1987 Jan – Dec	1.042	Jan 87
30	1986 Jan – Dec	1.013	Jan 86
31	1985 Jan – Dec	1.031	Jan 85
32	1984 Jan – Dec	1.035	Jan 84
33	1982 Jul – 1983 Dec	1.035	Jul 82
34	1981 Jul – 1982 Jun	1.074	Jul 81
35	1980 Jul – 1981 Jun	1.112	Jul 80
36	1979 Jul – 1980 Jun	1.143	Jul 79
37	1978 Jul – 1979 Jun	1.099	Jul 78
38	1977 Jul – 1978 Jun	1.065	Jul 77
39	1977 Apr – 1977 Jun	1.059	Apr 77

[8.200.520.12 NMAC - Rp, 8.200.520.12 NMAC, 8-28-15]

**8.200.520.13 FEDERAL BENEFIT RATES (FBR) AND VALUE OF ONE-THIRD REDUCTION (VTR):**

Year	Individual FBR	Institution FBR	Individual VTR	Couple FBR	Institution FBR	Couple VTR
1/89 to 1/90	\$368	\$30	\$122.66	\$553	\$60	\$184.33
1/90 to 1/91	\$386	\$30	\$128.66	\$579	\$60	\$193.00
1/91 to 1/92	\$407	\$30	\$135.66	\$610	\$60	\$203.33
1/92 to 1/93	\$422	\$30	\$140.66	\$633	\$60	\$211.00
1/93 to 1/94	\$434	\$30	\$144.66	\$652	\$60	\$217.33
1/94 to 1/95	\$446	\$30	\$148.66	\$669	\$60	\$223.00
1/95 to 1/96	\$458	\$30	\$152.66	\$687	\$60	\$229.00
1/96 to 1/97	\$470	\$30	\$156.66	\$705	\$60	\$235.00
1/97 to 1/98	\$484	\$30	\$161.33	\$726	\$60	\$242.00
1/98 to 1/99	\$494	\$30	\$164.66	\$741	\$60	\$247.00
1/99 to 1/00	\$500	\$30	\$166.66	\$751	\$60	\$250.33
1/00 to 1/01	\$512	\$30	\$170.66	\$769	\$60	\$256.33
1/01 to 1/02	\$530	\$30	\$176.66	\$796	\$60	\$265.33
1/02 to 1/03	\$545	\$30	\$181.66	\$817	\$60	\$272.33
1/03 to 1/04	\$552	\$30	\$184.00	\$829	\$60	\$276.33
1/04 to 1/05	\$564	\$30	\$188	\$846	\$60	\$282.00
1/05 to 1/06	\$579	\$30	\$193	\$869	\$60	\$289.66
1/06 to 1/07	\$603	\$30	\$201	\$904	\$60	\$301.33
1/07 to 1/08	\$623	\$30	\$207.66	\$934	\$60	\$311.33
1/08 to 1/09	\$637	\$30	\$212.33	\$956	\$60	\$318.66
1/09 to 1/10	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/10 to 1/11	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/11 to 1/12	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/12 to 1/13	\$698	\$30	\$232.66	\$1,048	\$60	\$349.33



1/13 to 1/14	\$710	\$30	\$237	\$1,066	\$60	\$355
1/14 to 1/15	\$721	\$30	\$240	\$1082	\$60	\$361
1/15 to 12/15	\$733	\$30	\$244	\$1,100	\$60	\$367

A. Ineligible child deeming allocation is \$350.00.

B. Part B premium is \$104.90 per month.

C. VTR (value of one third reduction) is used when an individual or a couple lives in the household of another and receives food and shelter from the household or when the individual or the couple is living on his or her own household but receiving support and maintenance from others.

D. The SSI resource standard is \$2000 for an individual and \$3000 for a couple.

[8.200.520.13 NMAC - Rp, 8.200.520.13 NMAC, 8-28-15]

**8.200.520.14 UNISEX LIFE ESTATE AND REMAINDER INTEREST TABLES:**

Age	Life Estate	Remainder
0	.97188	.02812
1	.98988	.01012
2	.99017	.00983
3	.99008	.00992
4	.98981	.01019
5	.98938	.01062
6	.98884	.01116
7	.98822	.01178
8	.98748	.01252
9	.98663	.01337
10	.98565	.01435
11	.98453	.01547
12	.98329	.01671
13	.98198	.01802
14	.98066	.01934
15	.97937	.02063
16	.97815	.02185
17	.97700	.02300
18	.97590	.02410
19	.97480	.02520
20	.97365	.02635
21	.97245	.02755
22	.97120	.02880
23	.96986	.03014
24	.96841	.03159
25	.96678	.03322
26	.96495	.03505
27	.96290	.03710
28	.96062	.03938
29	.95813	.04187
30	.95543	.04457
31	.95243	.04746
32	.94942	.05058
33	.94608	.05392
34	.94250	.05750
35	.93868	.06132
36	.93460	.06540
37	.93026	.06974
38	.92567	.07433
39	.92083	.07917
40	.91571	.08429
41	.91030	.08970
42	.90457	.09543
43	.89855	.10145
44	.89221	.10779
45	.88558	.11442
46	.87863	.12137
47	.87137	.12863
48	.86374	.13626

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49	.85578	.14422
50	.84743	.15257
51	.83674	.16126
52	.82969	.17031
53	.82028	.17972
54	.81054	.18946
55	.80046	.19954
56	.79006	.20994
57	.77931	.22069
58	.76822	.23178
59	.75675	.24325
60	.74491	.25509
61	.73267	.26733
62	.72002	.27998
63	.70696	.29304
64	.69352	.30648
65	.67970	.32030
66	.66551	.33449
67	.65098	.34902
68	.63610	.36690
69	.62086	.37914
70	.60522	.39478
71	.58914	.41086
72	.57261	.42739
73	.55571	.44429
74	.53862	.46138
75	.52149	.47851
76	.50441	.49559
77	.48742	.51258
78	.47049	.52951
79	.45357	.54643
80	.43659	.56341
81	.41967	.58033
82	.40295	.59705
83	.38642	.61358
84	.36998	.63002
85	.35359	.64641
86	.33764	.66236
87	.32262	.67738
88	.30859	.69141
89	.29526	.70474
90	.28221	.71779
91	.26955	.73045
92	.25771	.74229
93	.24692	.75308
94	.23728	.76272
95	.22887	.77113
96	.22181	.77819
97	.21550	.78450
98	.21000	.79000
99	.20486	.79514
100	.19975	.80025
101	.19532	.80468
102	.19054	.80946
103	.18437	.81563
104	.17856	.82144
105	.16962	.83038
106	.15488	.84512
107	.13409	.86591
108	.10068	.89932
109	.04545	.95455

**8.200.520.15 SUPPLEMENTAL SECURITY INCOME (SSI) LIVING ARRANGEMENTS:**

**A. Individual living in his or her own household who own or rent:**

Payment amount: \$733 Individual  
\$1,100 Couple

**B. Individual receiving support and maintenance payments:** For an individual or couple living in his or her

own household, but receiving support and maintenance from others (such as food, shelter or clothing), subtract the value of one third reduction (VTR).

Payment amount: \$733 - \$244 = \$489 Individual  
\$1,100 - \$367 = \$733 Couple

**C. Individual or couple living household of another:** For an individual or couple living in another person's

household and not contributing his or her pro-rata share of household expenses, subtract the VTR.

Payment amount: \$733 - \$244 = \$489 Individual  
\$1,100 - \$367 = \$733 couple

**D. Child living in home with his or her parent:**

Payment amount: \$733

**E. Individual in institution:**

Payment amount: \$30.00

[8.200.520.15 NMAC - Rp, 8.200.520.15 NMAC, 8-28-15]

**8.200.520.16 MAXIMUM COUNTABLE INCOME FOR INSTITUTIONAL CARE MEDICAID AND HOME AND COMMUNITY BASED WAIVER SERVICES (HCBS) CATEGORIES:** Effective January 1, 2015, the maximum countable monthly income standard for institutional care medicaid and the home and community based waiver categories is \$2,199.

[8.200.520.16 NMAC - Rp, 8.200.520.16 NMAC, 8-28-15]

**8.200.520.17 MAXIMUM COUNTABLE INCOME FOR CHILDREN YOUTH AND FAMILIES (CYFD):** Effective July 1, 1995, the maximum countable monthly income standard for CYFD medicaid is \$231.00.

[8.200.520.17 NMAC - Rp, 8.200.520.17 NMAC, 8-28-15]

**8.200.520.18 SSI RELATED CATEGORIES - DEEMING INCOME WHEN AN APPLICANT CHILD IS LIVING WITH INELIGIBLE PARENT:**

**A. Monthly computation:**

- (1) total gross unearned income of parent;
- (2) deduct living allowance for ineligible child and SSI-eligible sponsored alien (one half of the monthly SSI FBR LA code A\*) for each ineligible child/SSI-eligible sponsored alien);
- (3) subtotal;
- (4) deduct \$20.00 general income exclusion - 20.00;
- (5) unearned income subtotal;
- (6) total gross earned income of parent;
- (7) deduct any remaining allocation for ineligible child and/or SSI-eligible sponsored alien; see Paragraph

(2) above;

- (8) subtotal;
- (9) deduct any remaining portion of the \$20.00 general income exclusion only if not already totally

deducted in Paragraph (4) above;

- (10) subtotal;
- (11) deduct \$65.00; do not apply this deduction if the only income is unearned - 65.00;
- (12) subtotal;
- (13) subtract one-half of Paragraph (12); do not apply this deduction if the only income is unearned;
- (14) earned income subtotal;
- (15) total of Paragraph (5) plus Paragraph (14);
- (16) deduct parental allocation (1 parent = SSI FBR for an individual LA code A\*) (2 parents = SSI FBR for an eligible couple LA code A\*);

an eligible couple LA code A\*);

- (17) income deemed to applicant child; if there is more than one applicant child, divide this amount equally between the children: \* LA Code A = the full SSI FBR for an individual or a couple.

**B.** If the deemed income plus the applicant child's separate income exceeds the income standard for an individual, the applicant child is not eligible for that month.

[8.200.520.18 NMAC - Rp, 8.200.520.18 NMAC, 8-28-15]

**8.200.520.19 LIFE EXPECTANCY TABLES:**

**A. Males:**

Age	Life expectancy	Age	Life expectancy	Age	Life expectancy
0	71.80	40	35.05	80	6.98
1	71.53	41	34.15	81	6.59
2	70.58	42	33.26	82	6.21
3	69.62	43	32.37	83	5.85

4	68.65	44	31.49	84	5.51
5	67.67	45	30.61	85	5.19
6	66.69	46	29.74	86	4.89
7	65.71	47	28.88	87	4.61
8	64.73	48	28.02	88	4.34
9	63.74	49	27.17	89	4.09
10	62.75	50	26.32	90	3.86
11	61.76	51	25.48	91	3.64
12	60.78	52	24.65	92	3.43
13	59.79	53	23.82	93	3.24
14	58.82	54	23.01	94	3.06
15	57.85	55	22.21	95	2.90
16	56.91	56	21.43	96	2.74
17	55.97	57	20.66	97	2.60
18	55.05	58	19.90	98	2.47
19	54.13	59	19.15	99	2.34
20	53.21	60	18.42	100	2.22
21	52.29	61	17.70	101	2.11
22	51.38	62	16.99	102	1.99
23	50.46	63	16.30	103	1.89
24	49.55	64	15.62	104	1.78
25	48.63	65	14.96	105	1.68
26	47.72	66	14.32	106	1.59
27	46.80	67	13.70	107	1.50
28	45.88	68	13.09	108	1.41
29	44.97	69	12.50	109	1.33
30	44.06	70	11.92	110	1.25
31	43.15	71	11.35	111	1.17
32	42.24	72	10.80	112	1.10
33	41.33	73	10.27	113	1.02
34	40.23	74	9.27	114	0.96
35	39.52	75	9.24	115	0.89
36	38.62	76	8.76	116	0.83
37	37.73	77	8.29	117	0.77
38	36.83	78	7.83	118	0.71
39	35.94	79	7.40	119	0.66
<b>B.</b>	<b>Females:</b>				
	Life		Life		Life
Age	expectancy	Age	expectancy	Age	expectancy
0	78.79	40	40.61	80	9.11
1	78.42	41	39.66	81	8.58
2	77.48	42	38.72	82	8.06
3	76.51	43	37.78	83	7.56
4	75.54	44	36.85	84	7.08
5	74.56	45	35.92	85	6.63
6	73.57	46	35.00	86	6.20
7	72.59	47	34.08	87	5.79
8	71.60	48	33.17	88	5.41
9	70.61	49	32.27	89	5.05
10	69.62	50	31.37	90	4.71
11	68.63	51	30.48	91	4.40
12	67.64	52	29.60	92	4.11
13	66.65	53	28.72	93	3.84
14	65.67	54	27.86	94	3.59
15	64.68	55	27.00	95	3.36
16	63.71	56	26.15	96	3.16
17	62.74	57	25.31	97	2.97
18	61.77	58	24.48	98	2.80
19	60.80	59	23.67	99	2.64
20	59.83	60	22.86	100	2.48
21	58.86	61	22.06	101	2.34
22	57.89	62	21.27	102	2.20
23	56.92	63	20.49	103	2.06
24	55.95	64	19.72	104	1.93
25	54.98	65	18.96	105	1.81

26	54.02	66	18.21	106	1.69
27	53.05	67	17.48	107	1.58
28	52.08	68	16.76	108	1.48
29	51.12	69	16.04	109	1.38
30	50.15	70	15.35	110	1.28
31	49.19	71	14.66	111	1.19
32	48.23	72	13.99	112	1.10
33	47.27	73	13.33	113	1.02
34	46.31	74	12.68	114	0.96
35	45.35	75	12.05	115	0.89
36	44.40	76	11.43	116	0.83
37	43.45	77	10.83	117	0.77
38	42.50	78	10.24	118	0.71
39	41.55	79	9.67	119	0.66

[8.200.520.19 NMAC - Rp, 8.200.520.19 NMAC, 8-28-15]

#### 8.200.520.20 COVERED QUARTER INCOME STANDARD:

Date	Calendar Quarter Amount
Jan 2015 – Dec. 2015	\$1,220 per calendar quarter
Jan 2014 – Dec. 2014	\$1,200 per calendar quarter
Jan 2013 – Dec. 2013	\$1,160 per calendar quarter
Jan 2012 – Dec. 2012	\$1,130 per calendar quarter
Jan. 2011 – Dec. 2011	\$1,120 per calendar quarter
Jan. 2010 – Dec. 2010	\$1,120 per calendar quarter
Jan. 2009 – Dec. 2009	\$1,090 per calendar quarter
Jan. 2008 – Dec. 2008	\$1,050 per calendar quarter
Jan. 2007 – Dec. 2007	\$1,000 per calendar quarter
Jan. 2006 – Dec. 2006	\$970 per calendar quarter
Jan. 2005 – Dec. 2005	\$920 per calendar quarter
Jan. 2004 – Dec. 2004	\$900 per calendar quarter
Jan. 2003 – Dec. 2003	\$890 per calendar quarter
Jan. 2002 – Dec. 2002	\$870 per calendar quarter

[8.200.520.20 NMAC - Rp, 8.200.520.20 NMAC, 8-28-15]

#### 8.200.520.21 STANDARD OF NEED (SON):

Budget group size	Gross income test		Net income test	
	85% Federal poverty limit (FPL)	AFDC July 16, 1996 185% Standard of need	Standard of need	
	072 JUL and 049/059 Refugee	030 Pregnant women	072 JUL and 049/059 Refugee	AFDC July 16, 1996 030 Pregnant woman
1	\$791	\$427	\$266	\$231
2	\$1,072	\$574	\$357	\$310
3	\$1,352	\$720	\$447	\$389
4	\$1,633	\$868	\$539	\$469
5	\$1,913	\$1,014	\$630	\$548
6	\$2,194	\$1,160	\$721	\$627
7	\$2,474	\$1,306	\$812	\$706
8	\$2,755	\$1,452	\$922	\$785
+1	+ \$281	+ \$147	+ \$91	+ \$79

[8.200.520.21 NMAC - Rp, 8.200.520.21 NMAC, 8-28-15]

**HISTORY OF 8.200.520 NMAC:** The material in this part was derived from that previously filed with the State Records Center:

8 NMAC 4.MAD.500, Eligibility Policies, Income and Resource Standards, filed 12-30-94.

8 NMAC 4.MAD.500, Eligibility Policies, Income and Resource Standards, filed 6-20-95.

#### History of Repealed Material:

8.200.520 NMAC, Income Standard, filed 12-18-00 - Repealed effective 1-1-14.

8.200.520 NMAC, Income Standards, filed 12-2-13 - Repealed effective 8-28-15.

## PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.30.5 NMAC, Sections 7 and 12, effective August 28, 2015.

### 6.30.5.7 DEFINITIONS:

**A.** “Scientifically-based reading research” is the application of rigorous, systematic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties.

**B.** “Developmentally appropriate practices” result from the process of professionals making decisions about the well being and education of children based on at least three important kinds of information:

(1) child development and learning;  
(2) strengths, interests, and needs of each individual child; and  
(3) knowledge of the social and cultural contexts in which children live.

**C.** “MEM” means “membership,” which is total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, include students absent from the public school for as many as ~~ten~~ 10 consecutive school days. (Subsection B of Section 22-8-2 NMSA 1978).

**D.** “Department” means the public education department.

**E.** “Interim assessment” means an assessment conducted three to four times a year for all students to assess specific skills and to identify those at risk academically.

~~[E:]~~ **E.** “Kindergarten entry assessment” means an assessment conducted within the first 30 ~~[calendar]~~ instructional days of the school year.

~~[F:]~~ **G.** “Progress monitoring” means assessments conducted between ~~[screenings]~~ interim assessments on students who are receiving targeted and intensive interventions to determine whether the student is benefitting from interventions.

~~[G:]~~ “Screening” means an assessment conducted three to four times a year for all students to assess specific skills and to identify those at risk academically.]

[6.30.5.7 NMAC - N, 11-14-2000; A, 06-13-2014; A, 08-28-2015]

### 6.30.5.12 PROGRAM ELEMENT: ASSESSMENT

**A.** Beginning with the 2016-2017 school year, all students in kindergarten must be administered the New Mexico kindergarten entry assessment provided by the department. Kindergarten entry assessment data must be reported through the department’s data collection reporting system no later than October ~~[+]~~ 15 of each school year.

**B.** All students in kindergarten must be administered a department-approved ~~[screening]~~ interim assessment at least three times per school year to determine if students are making adequate progress toward grade level reading proficiency by the end of the school year. ~~[Screening]~~ Interim assessment data must be reported to the department’s data collection and reporting system within the first 30 instructional days of the school year. Any student identified with a reading deficiency based on the ~~[screening]~~ interim assessment measure must receive more frequent progress monitoring to determine if the student is on target to meet grade level expectations by the end of the school year.

**C.** Public schools districts having both half-day and full-day state-funded kindergarten programs will assess performance of all kindergarten students.

[6.30.5.12 NMAC - N, 11-14-2000; A, 11-13-2009; A, 06-13-2014; A, 08-28-2015]

## REGULATION AND LICENSING DEPARTMENT FINANCIAL INSTITUTIONS DIVISION

12 NMAC 25.2, Escrow Company Act (filed 9/17/97) is being repealed and replaced by 12.25.2 NMAC, Escrow Company Act, effective 10/1/2015.

## REGULATION AND LICENSING DEPARTMENT FINANCIAL INSTITUTIONS DIVISION

**TITLE 12 TRADE,  
COMMERCE AND BANKING  
CHAPTER 25 ESCROW  
COMPANIES  
PART 2 ESCROW  
COMPANY ACT**

### 12.25.2.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, New Mexico 87505. Telephone No. (505) 476-4885.

[12.25.2.1 NMAC - Rp, 12 NMAC 25.2.1, 10/1/15]

**12.25.2.2 SCOPE:** All escrow companies required to be licensed by the state of New Mexico.

[12.25.2.2 NMAC - Rp, 12 NMAC 25.2.2, 10/1/15]

**12.25.2.3 STATUTORY  
AUTHORITY:** Section 58-22-6(A)

NMSA 1978.

[12.25.2.3 NMAC - Rp, 12 NMAC 25.2.3, 10/1/15]

**12.25.2.4 DURATION:**

Permanent.

[12.25.2.4 NMAC - Rp, 12 NMAC 25.2.4, 10/1/15]

**12.25.2.5 EFFECTIVE DATE:**

October 1, 2015, unless a later date is cited at the end of a section.

[12.25.2.5 NMAC - Rp, 12 NMAC 25.2.5, 10/1/15]

**12.25.2.6 OBJECTIVE:** The objective of this sub-part is to effectuate the purposes of the Escrow Company Act. [12.25.2.6 NMAC - Rp, 12 NMAC 25.2.6, 10/1/15]

**12.25.2.7 DEFINITIONS:**

**A.** “Act” means the Escrow Company Act, Sections 58-22-1 NMSA 1978 *et seq.*, as amended.

**B.** “Banking day” means a day a financial institution is open for the normal conduct of its business, but does not include Saturday, Sunday or any legal holiday.

**C.** “Director” means the director of the financial institutions division.

**D.** “Division” means the financial institutions division of the regulation and licensing department, state of New Mexico.

**E.** “Escrow” means any transaction wherein any written instrument, money, evidence of title to real or personal property or other thing of value is delivered to a person not otherwise having any right, title or interest therein for the purpose of effecting the sale, transfer, encumbrance or lease of real or personal property, to be held by that person as a neutral third-party until the happening of a specified event or the

performance of a prescribed condition when it is then to be delivered by such person to a grantee, grantor, promise, promisor, obligee, obligor, bailee, bailor or any agent or employee of any of them pursuant to the written instructions of the principals to the transaction; escrow also includes accepting payments on loans for remission to a third party, otherwise known as "servicing".

**F.** "Escrow agent" means any person, other than escrow closing agent as defined in Subsection F of 12.25.2.7 NMAC, who engages in the business of receiving escrows for deposit or delivery and who receives or is promised any fee, commission, salary or other valuable consideration, whether contingent or otherwise, for or in anticipation of performance.

**G.** "Escrow closing agent" means an escrow company which, in the normal course of business, acts as the agent of a buyer and seller of real estate for the purpose of consummating a sale, including, but not limited to, the performance of the following described functions:

- (1) preparation of deeds, mortgages, promissory notes, deeds of trust, real estate contracts, assignments or other documents incidental to the sale as permitted by law;
- (2) calculations and disbursements of prorated taxes, insurance premiums, utility bills and other charges incidental to the sale;
- (3) preparation of buyers' and seller' closing statements;
- (4) supervision of signing of documents;
- (5) collection and disbursement of a down payment, realtors' commissions, fees and other charges pursuant to a sales agreement; and
- (6) recordation of documents.

**H.** "Escrow company" means any person, other than an escrow closing agent as defined in Subsection F of 12.25.2.7 NMAC, engaged in the business of receiving escrows for deposit or delivery for compensation who is required to be licensed under the Escrow Company Act.

**I.** "Generally accepted accounting principles" means professional standards of accounting practice as promulgated from time to time by the American institute of certified public accountants.

**J.** "Ledger" means a chronological record of dated debits and credits maintained either in a bookkeeping ledger book or in a readily retrievable

electronic format.

**K.** "Licensee" means a person holding a valid license as an escrow company or escrow agent.

**L.** "Person" means an individual, cooperative, association, company, firm, partnership, corporation or other legal entity.

**M.** "Principal(s)" means all the actual parties or legal entities to the escrow closing transaction, and the term principal(s) shall be deemed to include a duly appointed agent or attorney-in-fact. [12.25.2.7 NMAC - Rp, 12 NMAC 25.2.7, 10/1/15]

#### 12.25.2.8 ESCROW COMPANY ACT REGULATIONS:

**A.** Surety bond:

- (1) the surety bond shall run concurrent with the licensing period and shall be in the minimum amount of \$100,000.00 for the benefit of the people of the state of New Mexico;
- (2) it shall be in a form devised by the director; and
- (3) the escrow company shall provide the director with notice of cancellation of the bond at least fifteen (15) days prior to the effective date of cancellation.

**B.** A person may satisfy the requirements of Subsection A of 12.25.2.8 NMAC by depositing with the financial institutions division, in an amount equal to the surety required, a deposit consisting only of the following: cash, certificates of deposit in any financial institution doing business in the state of New Mexico which are insured by the federal deposit insurance corporation or the national credit union administration, or any combination of these. The deposit shall be accepted and held by the financial institutions division. No claimant or judgment creditor of the escrow company or escrow agent shall have the right to attach or levy upon any of the assets or securities held on deposit. The director, by order, shall have discretion to use such deposit, as follows:

- (1) to satisfy any final judgment entered against the escrow company for actual damages suffered by any person by reason of any fraud, dishonesty, misrepresentation or concealment of material fact growing out of any escrow transaction;
- (2) for use in the liquidation of the escrow company under the provisions of Section 58-22-27 (B) NMSA 1978 of the Escrow Company Act; and
- (3) to release

any or all of such deposit to the escrow company when, in the opinion of the director, such deposit is no longer required by state law.

**C.** Manager's experience: The office manager of an applicant to be licensed as an escrow company under the act shall be an employee of the applicant, and shall:

- (1) not have been convicted of a felony or a misdemeanor involving moral turpitude, subject to the provisions of the "Criminal Offender Employment Act," Section 28-2-1 NMSA 1978 *et seq*; and
- (2) have at least two (2) years previous escrow experience with a title company, abstract company, real estate company, trust department of a bank or any other entity conducting an escrow business; and
- (3) have at least two (2) years experience in the bookkeeping or accounting field, one (1) year of which involved the handling of custodial funds while in the employ of a financial organization; or
- (4) have such other experience as the director may deem acceptable.

**D.** Accounting controls:

- (1) An escrow company shall establish and maintain on a current basis the following books and records, which shall be maintained in accordance with generally accepted accounting principles:

- (a) a separate ledger for each escrow account, which shall contain a record of all receipts and disbursements made on that particular escrow account;
- (b) a general ledger and a cash receipts and disbursements journal;
- (c) a control ledger with each bank the escrow company is doing business with, listing the name and account number of the buyer or obligor and recording the monies paid to the escrow company by the buyer or obligor for taxes and insurance; the control ledger shall be reconciled at least once each calendar month with the trust account(s) and copies of the monthly reconciliation accompanied by corresponding bank statements, for the three (3) months immediately preceding the license renewal, shall be remitted to the division as part of the license renewal package;
- (d) trust funds held for future payments, such as semiannual or annual payments, shall be documented and reconciled showing

the current balance; a separate ledger or control sheet shall be maintained, showing all trust funds collected by the escrow company and not disbursed.

(2) An escrow company shall post all receipts and disbursements to the cash receipts and disbursements journal and the general ledger. The reconciliation necessary to trace the individual transaction in an examination and shall be preserved and maintained in a logical sequence.

(3) Receipts shall be reconciled with disbursements at least once each calendar month, and a permanent record of each reconciliation and shall be retained by the escrow company.

(4) Each entry on the general ledger and the cash receipts and disbursements journal shall include a cross reference to the separate escrow ledger to which it relates. Receipts and disbursements corresponding to the same cross referenced transaction on the separate escrow ledger shall be in balance.

(5) The general ledger and cash receipts and disbursements journal shall be reconciled with the trust account at least monthly and not later than the 30th day after the last day of each calendar month. The net interim debits and credits reflected on the general ledger and cash receipts and disbursements journal shall be in balance with the debits and credits to the trust account(s) during the same time period or the differences, if any, shall be explained to the satisfaction of the director. All reconciliations shall be approved and signed by the escrow manager or by an employee otherwise designated by the escrow manager. A permanent record of each reconciliation shall be retained by the escrow company.

(6) The provisions of Paragraph (5) of Subsection D above, shall also apply to any other accounts maintained by the escrow company, provided, however, that such accounts must be reconciled monthly or as frequently as statements are issued by the depository institution.

(7) An escrow company shall submit to the director at the time of license renewal the following information for the tax or accounting year most recently closed:

(a) copy of the federal and state tax return for the year immediately preceding the license renewal or if the income and expenses of the escrow company are reported on an individual federal tax return, then the schedule C associated with the escrow

company;

(b) a statement of financial condition of the escrow company prepared in accordance with generally accepted accounting principles;

(c) a statement of income and expense;

(d) a financial statement of the principal owners prepared in accordance with generally accepted accounting principles;

(e) a summary of the amount of trust funds received and disbursed each month and the amount of trust funds received and disbursed for the entire year;

(f) a list of total number of accounts serviced and dollar amount serviced by the escrow company;

(g) reconciliations for the three (3) months immediately preceding renewal, accompanied by the corresponding bank statements; and

(h) in the event that required information is not available, the director shall use discretion as to whether a conditional license will be issued pending receipt of requisite information.

**E. Records:**

(1) The records of an escrow company shall include, but are not limited to:

(a) copies of all pre-numbered cash receipt forms used by the escrow company, which shall be filed in numerical order with all numbers accounted for, including voided cash receipts;

(b) all pre-numbered vouchers and pre-numbered blank checks used by the escrow company, which shall be stored in numerical order with all numbers accounted for, including voided vouchers and checks with signature blocks removed from voided checks;

(c) copies of all forms, other than checks, used by the escrow company to make transfers of funds between customer escrow accounts; and

(d) an accounting for all lost or missing receipts, checks, vouchers or transfer memos; such statement shall be renewed at least once in each calendar quarter, and shall be dated and signed by the person designated, by the escrow company, as responsible for maintaining the records required by this section.

(2) No cash

shall be received in trust by the escrow company without issuing a receipt therefor. No funds shall be disbursed out of trust by an escrow company without issuing a check or obtaining a wire transfer memo or electronic confirmation from the bank to account for the transaction. All cash receipt forms and checks used by the escrow company shall be pre-numbered in consecutive numerical order and, when used, shall bear the number of the pertinent escrow account on its face.

**F. Record inspection:**

(1) The offices, places of business, books, records, accounts, safes, files and papers of an escrow company shall be maintained freely accessible and available for inspection or examination during normal business hours by the director or a duly authorized representative of the director.

(2) The escrow company shall, upon request, provide to the director or the director's designee, continuing authorization to certify the actual balance in any trust account. Such authorization shall be placed on file with the depository institution in which the account is maintained and a copy filed with the director. The director shall give twelve (12) hours advance notice to the escrow company before using the continuing authorization unless waived by the escrow company.

(3) Section 58-22-19 NMSA 1978 of the Escrow Company Act provides that division examination reports, financial information contained in licensee applications and renewal applications and information on investigations relating to violations of the Escrow Company Act that do not result or have not yet resulted in administrative, civil or criminal action are not subject to the Inspection of Public Records Act, are not subject to subpoena, and may be disclosed only with the consent of the director.

**G. Preservation of records:** An escrow company shall preserve for at least six (6) years all bank statements of its bank accounts and all records required by these regulations.

**H. Trust fund accounts:**

(1) All money deposited in escrow shall be deposited and maintained in a federally insured bank, savings and loan association or credit union and kept separate and distinct and apart from funds belonging to the escrow company or escrow agent. Such funds, when deposited, are to be designated as trust funds, indicating that the funds are not the funds of the escrow company.



(2) The escrow company shall notify the director in writing of the opening and closing of pooled trust accounts within ten (10) days following the date of opening or closing. The notification shall include the licensed name of the escrow company, the name of the bank, savings and loan association or credit union, the number of each account opened or closed and the designation for each account opened.

(3) Each escrow company shall maintain a permanent record of all investments of trust funds, including, but not limited to, amounts and dates of deposits and withdrawals, copies of certificates of deposit, corresponding debits and credits to affected trust accounts, and amounts and dates of interest earned or credited.

(4) Trust funds are not subject to execution or attachment on any claim against an escrow company.

**I.** Written escrow instructions:

(1) An escrow company or escrow agent may not accept funds, property or documents in escrow without dated, written escrow instructions from the principals to the transaction, or their agent, or a dated executed agreement in writing between the principals to the transaction.

(2) An escrow company or escrow agent may not close an escrow or disburse any funds or property except as provided by Paragraph (6) of Subsection I of 12.25.2.8 NMAC without obtaining dated escrow instructions in writing from the principals to the transaction or their duly appointed agent, adequate to administer and close the transaction, or, in the case of disbursement, to disburse the funds and property.

(3) An escrow company or escrow agent may not solicit or accept any original, amended or supplemental escrow instructions containing any blank to be filled in after signing. An escrow company or escrow agent shall not allow any alteration of original, amended or supplemental escrow instructions, unless the alteration is signed or initialed by the principals.

(4) If a real estate contract or promissory note which is the subject of an escrow provides for a late payment fee, the fee shall be treated by the escrow company as the property of the payee, unless expressly stated otherwise in the contract, note or written escrow instructions.

(5) An escrow company, except a company acting as

an escrow closing agent as defined in these codes, shall use, deliver or transfer documents or other property deposited in escrow only in accordance with the written instructions of the principals to the escrow transaction or pursuant to an order of a court of competent jurisdiction.

(6) If an escrow agent receives conflicting demands from the parties, regarding the performance of duties, the escrow agent may hold any money or documents related to the conflicting demands. The money or documents may be held until mutual instructions, that resolve the conflict, are received by all parties to the escrow or until a civil action has been finally concluded in a court of competent jurisdiction determining the rights of all parties to the escrow. In any civil action commenced to resolve the conflicting demands of the parties to the escrow, the escrow agent may recover a reasonable amount of attorney's fees and costs.

**J.** Restriction on escrow clients:

(1) When an escrow company is appointed by the parties to an escrow as their mutual or dual agent, the escrow company shall not act with partiality to any of the parties to the escrow.

(2) An escrow company shall not act as an escrow agent in any escrow transaction in which it or any of its owners, officers, directors, partners or employees may directly or indirectly have a monetary or title interest in the real property either as buyer or seller, unless the escrow company upon acquiring knowledge of the existence of an interest discloses that interest to the parties to the escrow.

(3) An escrow company shall not act as escrow agent in any transaction in which the escrow company is related to any party to a promissory note, mortgage, deed of trust, real estate contract or other debt instrument for which the escrow company acts as escrow agent, unless the escrow company, upon acquiring knowledge of the existence of a relationship, fully discloses such relationship to the parties to the escrow.

(4) An escrow company, upon acquiring knowledge of either an "interest" as described in Paragraph (2) of Subsection J of 12.25.2.8 NMAC, or a "relationship" as described in Paragraphs (3) and (5) of Subsection J of 12.25.2.8 NMAC, shall:

(a) immediately upon receipt of the escrowed documents, deliver or cause

to be delivered to the parties to the document a written notice disclosing the nature and extent of the relationship; the notice shall contain substantially the following statement: "we call this interest (relation) to your attention in order to be perfectly open and fair with you; this interest (relation) will not, IN OUR OPINION, prevent us from being a fair and impartial escrow agent in this transaction; nevertheless, you may request that this transaction be handled by some other escrow company or agent if you so desire";

(b) obtain proof of a receipt from each party to whom the notice is delivered;

(c) maintain a separate file of all notices delivered and proof of receipt obtained pursuant to this section;

(d) if, within ten (10) business days after delivery of a notice of disclosure required by this section, any party to the document requests in writing that the file be transferred to another escrow company or agent, then the escrow company shall permit such transfer, without imposing any additional fees against the party.

(5) For the purposes of this section, an escrow company shall be deemed to be "related" to a party if:

(a) the escrow company is owned in whole or in part by the party or by an owner, officer, director, partner or an employee of the party;

(b) the escrow company or any of its owners, officers, directors, partners or employees owns, in whole or in part, a party which is a legal entity;

(c) any owner, officer, director, partner or employee of the escrow company is also a party or is an owner, officer, director, partner or an employee of a party; and

(d) any owner, officer, director, partner or employee of the escrow company is related by blood or marriage to a party, or to any owner, officer, director, partner or employee of a party which is a legal entity.

**K.** Required notice to the director:

(1) Except as otherwise provided, an escrow company or escrow agent shall notify the director of:

(a) the entry of a judgment against the escrow company in any civil action involving

the alleged misconduct of the escrow company or escrow agent in an escrow transaction;

(b) the entry of a judgment against an officer, director, partner, employee or owner of the escrow company involving the alleged misconduct of the officer, director, partner, employee or owner in an escrow transaction handled by the escrow company or escrow agent; and

(c) the entry of a conviction judgment by a court of competent jurisdiction in any criminal proceeding involving the alleged misconduct of the escrow company or of any officer, director, partner, employee or owner of the escrow company or escrow agent in an escrow transaction handled by the escrow company or escrow agent.

(2) The notification to the director required by Paragraph (1) of Subsection K of 12.25.2.8 NMAC shall be in writing and shall include a brief description of the escrow transaction involved and the names of the principals. In a civil action, the notification shall include a copy of the conviction judgment entered.

(3) The notification of the director required by Paragraphs (1) and (2) of Subsection K of 12.25.2.8 NMAC shall be made within ten (10) business days after the date of entry of the judgment. Notification shall include whether or not the judgment has been or will be appealed. If a judgment is appealed, each subsequent decision of an appellate court shall be subject to the notification requirements of this section.

L. Required notice to parties to an escrow account:

(1) Within ten (10) business days of a written request made by a party to the escrow agreement, a licensee shall provide a full statement of the escrow account, setting forth credits to principal and interest for the period and other information requested.

(2) Within ten (10) business days following a buyer depositing the final payment on an account, the licensee shall send a notice to the seller and the buyer of property, containing a final statement of account, which statement shall disclose at a minimum the following:

(a) the names of all sellers and all buyers on the account;

(b) the address or legal description of real property or a definitive description of the property if it is not real property;

(c) a statement that the account was paid in full;

(d) the amount of the final payment;

(e) the date that the final payment was deposited with the licensee; and

(f) the date that the final payment was or is expected to be disbursed by the licensee; money shall be disbursed within five (5) business days of the money becoming available to the licensee.

(3) A copy of the notice required by this section shall be retained by the licensee and shall be available for examination by the director pursuant to Section 58-22-17 NMSA 1978.

M. Unauthorized business practices: In addition to the unauthorized business practices listed in Section 58-22-26 NMSA 1978 as amended, it shall be an unauthorized business practice for an escrow company to do the following:

(1) refuse to provide to any party to an escrow account, upon written request, any information pertaining to that party's escrow account such as the date a payment was received and disbursed, a history which provides all details as to monies received and disbursed and amount applied to interest and principal, and copies of the escrow instructions;

(2) arbitrarily charge higher fees to individuals who transfer their escrow account from one (1) escrow company to another;

(3) assess escrow fees without notifying in writing all parties to the escrow account to be charged;

(4) borrow or otherwise appropriate trust funds for the use of the escrow company, escrow agent or its owners, officers, directors, partners or employees; or

(5) operate a trust account which for any reason is unable to meet its current obligations.

N. Escrow fees: Escrow fees charged by the escrow company for collection or disbursement shall be withdrawn from any trust account within two (2) business days after the fees become available, except that if escrow fees are recorded on a fee ledger separate from the account ledger they shall be withdrawn from the trust account no less than once each month. The check or voucher used to withdraw the escrow fees shall disclose the pertinent escrow account number and the amount of each

fee included in the check total.

O. Escrow closing agents: The following requirements shall be applicable to escrow closing agents.

(1) All funds received in conjunction with an escrow closing shall be considered trust funds and shall be placed in a trust account. All trust funds received into escrow shall be deposited in the trust account no later than the close of business of the business day following the date of receipt, unless the escrow closing agent is instructed in writing by all principals to the transactions to delay such deposit.

(2) Immediately upon deposit of trust funds, the escrow closing agent shall create and maintain a separate ledger dedicated to each individual escrow upon which funds have been received. The escrow closing agent shall close and escrow only upon specific written instructions from all principals to the transaction. Such written escrow instructions shall be in the form of loan closing instructions from a lender in the case of loan closings or by any other specific document executed by all principals to the transaction which incorporates instructions for closing.

(3) Upon completion of an escrow transaction, an escrow closing agency shall deliver to each principal to the transaction, an appropriate, duly verified statement of the applicable escrow account in writing. The statement shall specify all receipts and disbursements of escrow funds for that account and shall include to whom made.

(4) All documents furnished to or prepared by the escrow closing agent together with the escrow closing agent's accounting records shall be retained for a period of not less than six (6) years.

P. Internal controls: An escrow company shall maintain the following:

(1) an operations guide containing detailed daily operating procedures of the escrow company;

(2) written procedures regarding cash controls and deposit policies; written procedures including, but not limited to, accepting payments, cash accounting, handling and safeguarding, separation of duties; written procedures regarding dual controls and security;

(3) an employee manual that includes definitive information on employee positions and duties.

[12.25.2.8 NMAC - Rp, 12 NMAC 25.2.8, 10/1/15]

**HISTORY OF 12.25.2 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center under: Regulation 84-2, Escrow Company Act Regulations, filed 12/12/84. Regulation 87-4, Escrow Company Act Regulations, filed 6/11/87.

**History of Repealed Material:**

12 NMAC 25.2, Escrow Company Act, filed 9/17/97 - Repealed 10-1-15.

**REGULATION AND  
LICENSING DEPARTMENT  
BOARD OF PHARMACY**

Explanatory paragraph: This is an amendment to 16.19.6 NMAC, Sections 25 and 27, effective 09-06-2015. In 16.19.6.25 NMAC, Subsection A, Subsection C through F were not published as there were no changes.

**16.19.6.25 CENTRALIZED PRESCRIPTION DISPENSING:** The purpose of these regulations is to provide mandatory standards for centralized prescription dispensing by a retail or nonresident pharmacy.

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**B. Operational standards and minimum requirements.**

(1) A retail pharmacy may outsource prescription drug order dispensing to another retail or nonresident pharmacy provided the pharmacies:

- (a) have the same owner or;
- (b) have entered into a written contract or agreement which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations; and
- (c) share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to dispense or process a prescription drug order.

(2) The pharmacist-in-charge of the dispensing pharmacy shall ensure that:

- (a) the pharmacy maintains and uses adequate storage or shipment containers and shipping processes to ensure drug stability and potency; such shipping processes shall

include the use of appropriate packaging material [and] or devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process; and

(b) the dispensed prescriptions are shipped in containers which are sealed in a manner as to show evidence of opening or tampering.

(3) A retail or nonresidential dispensing pharmacy shall comply with the provisions of 16.19.6 NMAC and this section.

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[16.19.6.25 NMAC - N, 06-30-06; A, 06-07-15; A, 09-06-15]

**16.19.6.27 [RESERVED]  
AUTOMATED DRUG  
DISTRIBUTION SYSTEMS IN  
LICENSED HEALTH CARE  
FACILITIES:**

**A. Scope:** This section applies only to the use of automated drug distribution systems located within the facilities specified in Subsection B of this section.

**B. Definitions as used in this section.**

(1) "Automated drug distribution system", or "automated medication system" or "system" means a mechanical system that performs operations or activities, other than compounding or administration, related to the storage, packaging, or dispensing of drugs, and collects, controls, and maintains transaction information and records.

(2) "Health care facility" means a facility licensed under 16.19.11 NMAC or an inpatient hospice facility licensed under 16.19.10.12 NMAC.

(3) "Managing pharmacy" means an in-state retail pharmacy licensed by the board, pursuant to 16.19.6 NMAC that controls and is responsible for the operation of an automated drug distribution system.

(4) "Multi-disciplinary committee" means the pharmacist-in-charge, or the consultant pharmacist, and one or more representatives of the health care facility.

(5) "Override medication" means:

- (a) a drug that may be removed from an automated medication system prior to pharmacist review because the multi-disciplinary committee has determined

that the clinical status of the patient would be compromised by delay;

(b) a drug determined by the multi-disciplinary committee to have a low risk of drug allergy, drug interaction, dosing error, or adverse patient outcome, which may be removed from an automated medication system independent of a pharmacist's review of the medication order or clinical status of the patient.

**C. Authorization:**

A managing pharmacy may use an automated drug distribution system to supply medications for patients of a health care facility. The automated drug distribution system may be located in a health care facility that is not at the same location as the managing pharmacy. When located within a health care facility, the system is considered to be an extension of the managing pharmacy. When the automated drug distribution system is used to deliver routine doses of controlled substances, the managing pharmacy submit and maintain a separate registration with the drug enforcement administration.

**D. Notification:** At least 60 days prior to the initial use of an automated drug distribution system, the pharmacist-in-charge of the managing pharmacy must provide the board with written notification of the following:

- (1) the physical address at which the automated drug distribution system will be located;
- (2) the health facility's board of pharmacy registration type and number;
- (3) the managing pharmacy's registration number, address, and pharmacist-in-charge;
- (4) written

policies and procedures that govern the operation of the system; the policies and procedures must address the requirements of Subsection F of this section and the rules of the board;

- (5) the managing pharmacy pharmacist-in-charge must notify the board within 10 days whenever an automated drug distribution system is taken permanently out of service.

**E. Operation of automated drug distribution systems:**

The pharmacist-in-charge shall assure compliance with all requirements of the Pharmacy Act, Drug Device and Cosmetic Act, Controlled Substances Act and be responsible for the following:

- (1) maintaining a record of each transaction or operation;
- (2) controlling

access to the automated medication system;

(3) maintaining policies and procedures for:

(a)

operating the automated medication system;

(b)

training personnel who use the automated medication system;

(c)

maintaining patient services whenever the automated medication system is not operating;

(d)

defining a procedure for a pharmacist to grant access to the drugs in the automated medication system or to deny access to the drugs in the automated medication system;

(e)

maintaining security of the automated medication system;

(f)

assuring that a patient receives the pharmacy services necessary for appropriate pharmaceutical care;

(g)

assuring that the automated medication system maintains the integrity of the information in the system and protects patient confidentiality;

(h)

establishing a procedure for stocking or restocking the automated medication system; and

(i)

insuring compliance with all requirements for packaging, storing, and labeling.

(4) A pharmacist shall perform prospective drug use review and approve each medication order prior to administration of a drug except an override medication.

(5) A

pharmacist shall perform retrospective drug use review for an override medication.

(6) The

pharmacist-in-charge shall convene or identify a multi-disciplinary committee, which is charged with advising on the operations of the automated medication system.

**F. Stocking or restocking of an automated medication system:**

(1) responsibility for accurate stocking and restocking of an automated medication system lies with the pharmacist-in-charge and with any pharmacist tasked with supervising such functions;

(2) the stocking or restocking of an automated medication

system, where performed by someone other than a pharmacist, shall follow one of the following procedures to ensure correct drug selection:

(a)

a pharmacist shall conduct and document a daily audit of drugs placed or to be placed into an automated medication system, which audit may include random sampling;

(b)

a barcode verification, electronic verification, or similar verification process shall be utilized to assure correct selection of drugs placed or to be placed into an automated medication system; the utilization of a barcode, electronic, or similar verification process shall require an initial quality assurance validation, followed by a quarterly quality assurance review by a pharmacist; when a barcode verification, electronic verification, or similar verification process is utilized as specified in this section, stocking and restocking functions may be performed by a pharmacy technician or by a registered nurse trained and authorized by the pharmacist-in-charge.

(3) The pharmacist performing the quality assurance review shall maintain a record of the quality assurance process that occurred and the pharmacist approval of the drug stocking, restocking or verification process.

(4) Any drug that has been removed from the automated medication system shall not be replaced into the system unless: the drug's purity, packaging, and labeling have been examined according to established policies and procedures.

**G. Quality Assurance**

**Program:** The pharmacist-in-charge shall be responsible for implementing and maintaining a quality assurance program for the automated medication system. The program shall provide for:

(1) review of override medication utilization;

(2) investigation and reporting of any medication error related to drugs distributed or packaged by the automated medication system;

(3) review of any discrepancy or transaction reports and identification of patterns of inappropriate use or access of the automated drug distribution system;

(4) review of the operation of the automated medication system;

(5) integration of the automated medication quality assurance program with the overall

continuous quality improvement program of the managing pharmacy; and

(6) assurance that individuals working with the automated medication system receive appropriate training on operation of the system and procedures for maintaining pharmacy services when the system is not in operation.

**H. Records:** The managing pharmacy pharmacist-in-charge shall maintain, for at least three years, the following records related to the automated medication system in a readily retrievable manner:

(1) managing pharmacy's distribution records for all dangerous drugs, including controlled substances, transferred to each automated medication system

(2) perpetual inventories of controlled substances contained within each automated medication system;

(3) at the time of any event involving the contents of the automated drug distribution system, the device shall automatically produce on demand, a written or electronic record showing:

(a) the date and time of transaction;

(b) the type of transaction;

(c) the nature of the emergency;

(d) the name, strength, and quantity of medication;

(e) the name of the patient for whom the drug was ordered;

(f) the name or identification code (electronic signature) of the person making the transaction;

(g) the name of the prescribing practitioner;

(h) the name of the pharmacist conducting the drug utilization review; and

(i) the identity of the device accessed.

(4) A delivery record shall be generated on demand for all drugs supplied to a facility for use by an automated drug distribution system which shall include:

(a) date of receipt;

(b) drug name;

(c) dosage form;

(d)

strength;

(e)

quantity;

(f)

identity of device; and

(g)

documentation of individual accepting delivery.

(5) Any report

or analysis generated as part of the quality assurance program required by Subsection G of this section.

**I. The multi-disciplinary committee shall:**

(1) establish the criteria and process for determining which drug qualifies as an override medication;

(2) develop policies and procedures regarding the operation of the automated drug distribution system;

(3) conduct an annual review of override medications.

[16.19.6.27 NMAC - N, 06-07-15; A, 09-06-15]

**REGULATION AND LICENSING DEPARTMENT BOARD OF PHARMACY**

Explanatory paragraph: This is an amendment to 16.19.26 NMAC, Section 9 through 12, effective 09-06-2015. In 16.19.26.9 NMAC, Subsections A, C and D; 16.19.26.10 NMAC, Subsections A, C through E; and 16.19.26.11 NMAC, Subsections A, C through E were not published as there were no changes.

**16.19.26.9 VACCINES:**

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**B. EDUCATION AND TRAINING:**

(1) The pharmacist must successfully complete a course of training, accredited by the accreditation council for pharmacy education (ACPE), provided by: a) the centers for disease control and prevention (CDC); or b) a similar health authority or professional body approved by the board.

(2) Training must include study materials, hands-on training and techniques for administering vaccines, comply with current CDC guidelines, and provide instruction and experiential training in the following content areas:

(a) mechanisms of action for vaccines, contraindication, drug interaction, and

monitoring after vaccine administration;

(b)

standards for pediatric, adolescent, and adult immunization practices;

(c)

basic immunology and vaccine protection;

(d)

vaccine-preventable diseases;

(e)

recommended pediatric, adolescent, and adult immunization schedule;

(f)

vaccine storage management;

(g)

biohazard waste disposal and sterile techniques;

(h)

informed consent;

(i)

physiology and techniques for vaccine administration;

(j)

pre and post-vaccine assessment and counseling;

(k)

immunization record management;

(l)

management of adverse events, including identification, appropriate response, documentation and reporting;

(m)

reimbursement procedures and vaccine coverage by federal, state and local entities.

(3) Continuing

education: Any pharmacist exercising prescriptive authority for vaccines shall complete a minimum of 0.2 CEU of live ACPE approved vaccine related continuing education every two years. Such continuing education shall be in addition to requirements in 16.19.4.10 NMAC.

(4) Basic life support/cardiopulmonary resuscitation (BLS/CPR): Any pharmacist exercising prescriptive authority for vaccines shall complete and have current live BLS/CPR certification.

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**E. NOTIFICATION:**

Upon signed consent of the patient or guardian the pharmacist shall:

(1) notify the New Mexico department of health immunization program and the patient's designated physician or primary care provider [or] and;

(2) update the New Mexico department of health immunization program's electronic database (NMSIIS) of any vaccine administered.

[16.19.26.9 NMAC - N, 12-15-02; 16.19.26.9 NMAC - Rn, 16.19.26.8 NMAC & A, 07-15-04; A, 01-31-07; A, 09-06-15]

**16.19.26.10 EMERGENCY CONTRACEPTION DRUG THERAPY:**

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**B. EDUCATION AND TRAINING:**

(1) The pharmacist must successfully complete a course of training, accredited by the accreditation council for pharmacy education (ACPE), in the subject area of emergency contraception drug therapy provided by: a) the department of health; or b) planned parenthood or c) a similar health authority or professional body approved by the board.

(2) Training must include study materials and instruction in the following content areas:

(a) mechanisms of action, contraindication, drug interaction, and monitoring of emergency contraception drug therapy;

(b) current standards for prescribing emergency contraception drug therapy;

(c) identifying indications for the use of emergency contraception drug therapy;

(d) interviewing patient to establish need for emergency contraception drug therapy;

(e) counseling patient regarding the safety, efficacy and potential adverse effects of drug products for emergency contraception;

(f) evaluating patient's medical profile for drug interaction;

(g) referring patient follow-up care with primary healthcare provider;

(h) informed consent;

(i) record management;

(j) management of adverse events, including identification, appropriate response, documentation and reporting.

(3) Continuing education: Any pharmacist exercising prescriptive authority for emergency contraception drug therapy shall complete a minimum of 0.2 CEU of [five] ACPE approved emergency contraception drug therapy related continuing education every

two years. Such continuing education shall be in addition to requirements in 16.19.4.10 NMAC.

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[16.19.26.10 NMAC - N, 12-15-02;  
16.19.26.10 NMAC - Rn, 16.19.26.9  
NMAC & A, 07-15-04; A, 09-06-15]

**16.19.26.11 TOBACCO  
CESSATION DRUG THERAPY:**

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**B. EDUCATION AND  
TRAINING:**

(1) The pharmacist must successfully complete a course of training, accredited by the accreditation council for pharmacy education (ACPE), in the subject area of tobacco cessation drug therapy provided by: a) the department of health; or b) health and human services or c) a similar health authority or professional body approved by the board.

(2) Training must include study materials and instruction in the following content areas:

(a)

mechanisms of action for contraindications, drug interactions, and monitoring cessation;

(b) current standards for prescribing tobacco cessation drug therapy;

(c) identifying indications for the use of tobacco cessation drug therapy;

(d) interviewing patient to establish need for tobacco cessation drug therapy;

(e) counseling patient regarding the safety, efficacy and potential adverse effects of drug products for tobacco cessation;

(f) evaluating patient's medical profile for drug interaction;

(g) referring patient follow-up care with primary healthcare provider;

(h) informed consent;

(i) record management;

(j) management of adverse events, including identification, appropriate response, documentation and reporting;

(k) reimbursement procedures and tobacco cessation drug therapy and education coverage by federal, state and local

entities.

(3) Continuing education: Any pharmacist exercising prescriptive authority for tobacco cessation drug therapy shall complete a minimum of 0.2 CEU of [five] ACPE approved tobacco cessation drug therapy related continuing education every two years. Such continuing education shall be in addition to requirements in 16.19.4.10 NMAC.

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[16.19.26.11 NMAC - N, 07-15-04; A,  
09-06-15]

**16.19.26.12 TB TESTING:  
A. PROTOCOL:**

(1) Prescriptive authority for Tuberculosis (TB) testing shall be exercised solely in accordance with the written protocol for TB testing drug therapy approved by the board.

(2) Any pharmacist exercising prescriptive authority for TB testing must maintain a current copy of the written protocol for TB testing approved by the board.

**B. EDUCATION AND  
TRAINING:**

(1) The pharmacist must successfully complete training as specified by the [~~centers for disease control~~] New Mexico department of health tuberculosis department.

(2) Continuing education: Any pharmacist exercising prescriptive authority for TB testing shall complete continuing education as specified by the centers for disease control.

**C. AUTHORIZED  
DRUGS:**

(1) TB skin antigen serum(s).

(2) Prescriptive authority for TB testing shall be limited to those drugs delineated in the written protocol approved by the board.

**D. RECORDS:**

(1) The prescribing pharmacist must generate a written or electronic prescription [~~for~~] for any TB test administered.

(2) Informed consent must be documented in accordance with the approved protocol for TB testing and a record of such consent maintained in the pharmacy for a period of at least three years.

**E. NOTIFICATION:**

Upon signed consent of the patient, the pharmacist shall notify the patient's designated physician or primary care

provider and the department of health of any positive TB test.  
[16.19.26.12 NMAC - N, 03-07-11; A,  
09-06-15]

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**End of Adopted Rules**

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