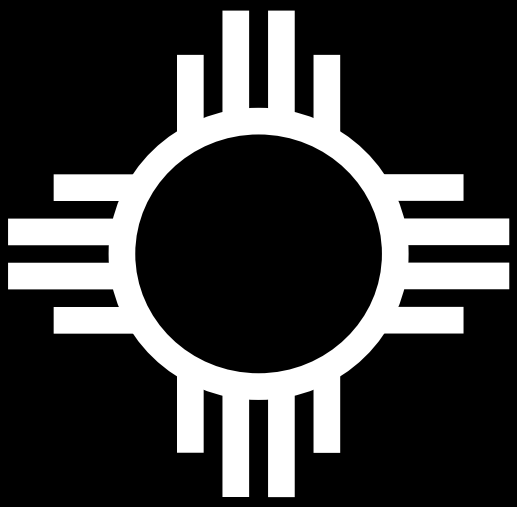
NEW MEXICO REGISTER



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Issue Number 22
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New Mexico Register

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

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

New Mexico Register

Volume XXVI, Issue 22
November 30, 2015

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The New Mexico Register

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The ***New Mexico Register*** is available free at http://www.nmcpr.state.nm.us/nmregister

Notices of Rulemaking and Proposed Rules

OFFICE OF THE STATE AUDITOR

Notice Of Proposed Rulemaking

The Office of the State Auditor is in the process of repealing and replacing in full: *The Audit Rule* (2.2.2.8 NMAC et seq.). The Audit Rule establishes policies, procedures, rules and requirements for contracting and conducting financial audits, special audits, attestation engagements, performance audits, and forensic audits of governmental agencies of the state of New Mexico, and is governed by the Audit Act, Sections 12-6-1 to 12-6- 14, NMSA 1978.

Copies of the proposed new rule are available at the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507 and on the Office of the State Auditor website, http://www.osanm.org. The Agency will consider adopting the proposed new rule at a public hearing on January 7, 2016, which will take place at 1:30 p.m. at the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507. Please mail or deliver written comments on the proposed new rule to: Kathy Neidigk, Director of Quality Control, at the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507, or by email at Kathy.Neidigk@osa.state.nm.us by December 31, 2015.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the public hearing, please contact Ms. Neidigk at least one week prior to the public hearing or as soon as possible. Public documents can be provided in various accessible formats. Please contact Ms. Neidigk at 505-476-3800 or Kathy.Neidigk@osa.state.nm.us if a summary or other type of accessible format is needed.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

FORESTRY DIVISION

Notice Of Public Meeting And Hearing

The New Mexico Energy, Minerals and Natural Resources Department and the Taxation and Revenue Department, will hold a meeting and hearing at 9:30 a.m. on Wednesday, December 16, 2015 in Porter Hall, Wendell Chino Building, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505.

During the meeting, the New Mexico Energy, Minerals and Natural Resources Department and the Taxation and Revenue Department will conduct a public hearing on proposed amendments of the Land Conservation Incentives Tax Credit rule, Subsection P of 3.13.20.7 NMAC, Subsection G of 3.13.20.10 NMAC, Subsection G of 3.13.20.11 NMAC, and Subsection B of 3.13.20.12 NMAC. The proposed amendments would revise the definition of a qualified appraisal, reflect changes in the Uniform Standards of Professional Appraisal Practice, correct formatting in 3.13.20.11 NMAC, and clarify that a revised appraisal may be submitted in response to an unfavorable preliminary appraisal review.

Copies of the proposed replacement rule may be obtained from the Energy, Minerals and Natural Resources Department, State Forestry Division web site at http://www.emnrd.state.nm.us/SFD/ or by contacting Rhonda Fitzgerald at (505) 476-3272 or rhonda.fitzgerald@state.nm.us.

All interested persons may participate in the hearing, and will be given an opportunity to submit relevant evidence, data, views, and arguments, orally or in writing.

A person who wishes to submit a written statement, in lieu of providing oral testimony at the hearing, shall submit the written statement prior to the hearing, or submit it at the hearing. No statements will be accepted after the conclusion of the hearing. Anyone wishing to submit written comments may do so via email to rhonda.fitzgerald@state.nm.us or via mail to Rhonda Fitzgerald, Forestry Division, 1220 S. St. Francis Drive, Santa Fe, New Mexico 87505.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Rhonda Fitzgerald at (505) 476-3272 at least one week prior to the hearing or as soon as possible. Public documents can be provided in various accessible formats. Please contact Rhonda Fitzgerald at (505) 476-3272 if a summary or other type of accessible format is needed.

DEPARTMENT OF HEALTH

Notice Of Public Hearing

The New Mexico Department of Health will hold a public hearing on 7.1.28 NMAC- "Health Information System Advisory Committee Responsibilities and Duties." The hearing will be held on December 15, 2015 at 9:00 a.m. in the auditorium of the Harold Runnels Building, located at 1190 St. Francis Drive in Santa Fe, New Mexico.
This hearing will be conducted to receive public comment regarding proposed new regulations regarding the duties and responsibilities of the Health Information System Act Advisory Committee. This committee will advise the Department of Health in carrying out the provisions of the Health Information System Act, which was created for the purpose of assisting in the collection, analysis, and dissemination of health information to New Mexico residents.

A copy of the proposed regulations can be obtained from:
Victoria Dirmyer
Epidemiology and Response Division
New Mexico Department of Health
1190 St. Francis Drive, Suite N-1309
Santa Fe, New Mexico 87502
(505) 476-3572
Victoria.Dirmyer@state.nm.us

Please submit any written comments regarding the proposed regulations to the attention of Victoria Dirmyer at the above address or e-mail prior to the hearing. If you are an individual with a disability who is need of special assistance or accommodations to attend or participate in the hearing, please contact Victoria Dirmyer by telephone at (505) 476-3572.

The Department requests at least ten (10) days advance notice to provide requested special accommodations.

HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

Notice of Public Hearing

The New Mexico Human Services Department (HSD) has extended the public comment period through December 14, 2015, to allow oral comment on the proposed amendment of the Supplemental Nutrition Assistance Program (SNAP) regulations. In addition to the public hearing scheduled on December 7, 2015, the Department will hold an additional public hearing on December 14, 2015. These hearings will be held on Monday, December 7, 2015, from 1:30 p.m. to 4:00 p.m., at the Department of Health (DOH) Harold Runnels Building Auditorium, 1190 St. Francis Drive, Santa Fe, NM and December 14, 2015, from 9:00 a.m. to 11:30 a.m., at the Department of Health (DOH) Harold Runnels Building Auditorium, 1190 St. Francis Drive, Santa Fe, NM.

The New Mexico register notice published on October 29, 2015, Human Services Register (HSR) Vol. 38 No. 32, gave a public comment deadline of 4:00 p.m. December 7, 2015; the deadline for public comment is being extended to December 14, 2015, at 4:00 p.m.

The Department is amending rules issued with Human Services Register (HSR) Vol. 38 No. 26 regulations to the Supplemental Nutrition Assistance Program (SNAP), Employment and Training (E&T) Program. The Department is amending 8.139.410.12 and 8.139.410.14 of the New Mexico Administrative Code (NMAC). The following is a summary of the proposed amendments:

- Defining the populations in the E&T Program.
- Providing further clarification of effective dates of mandatory E&T participants not subject to three month time limit.
- Clarifying how a participant registers for work.
- Clarification of mandatory E&T Program participation, waivers, exemptions.
- Amendment of examples of Good Cause.
- Amending sections within the rule clarifying responsibilities of both the Department and the participant.
- Providing clarification in regards to E&T components and activity requirements.
- Amending subsections of 8.139.410 12 and 14 NMAC that were not part of the initial proposal of HSR Vol. 38 No. 13.
- Revising sections of the rule by referring to Code of Federal Regulations 7.273.7 and 273.24 for clarity and alignment with Federal rules and regulations that administer the E&T Program located at http://www.ecfr.gov/cgi-bin/text-idx?SID=f7a89add9d1e5f5ef4cf5e257c440c6c&mc=true&tpl=/ecfrbrowse/Title07/7cfr273_main_02.tpl.
- The proposed amendments to NMAC will have the effect of implementing the three month time limit in accordance with 7 CFR 273.24.

The Human Services Register outlining the amendments is available on the HSD's website at: http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx. The corresponding State Plan can be found at http://www.hsd.state.nm.us/LookingForInformation/income-support-division-plans-and-reports.aspx. Individuals wishing to testify or to request a copy of the proposed regulation may contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, New Mexico 87504-2348, or by calling 505-827-7250.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the Americans with Disabilities Act Coordinator, at 505-827-7701 or through the New Mexico Relay system, toll free at #711. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 4:00 p.m., December 14, 2015. Please send comments to:

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

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

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

Notice of Public Hearing To Receive Testimony On The Proposed Rule 8.314.5 NMAC

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to amend the following rules that are part of the New Mexico Administrative Code (NMAC): 8.314.5 Developmental Disabilities Home and Community-Based Services. The register for these proposed amendments to these rules will be available November 30, 2015 on the HSD web site at http://www.hsd.state.nm.us/LookingForInformation/registers.aspx or at http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD at 1-888-997-2583 and ask for extension 7-6252. In Santa Fe call 827-6252. The Department's intent is to implement the provisions set forth by the court-approved settlement agreement in the Waldrop lawsuit against the State brought by the Disability Rights New Mexico and the ARC of New Mexico. Additional revisions are also incorporated throughout this rule to add clarity for the reader and update language throughout. The Department proposes an effective date of March 1, 2016.

Section 7

Subsection B - new definition for an adult to address waiver services for individuals 18 years of age and older.

Subsection C - new definition for an authorized representative designated by the eligible recipient.

Subsection D - new definition for child to address waiver services for individuals under 18 years of age.

Subsection E - new definition for clinical documentation that demonstrates the request for DDW services.

Subsection F - new definition for clinical justification that supports the need for services based on the eligible recipient's assessed need and DDW clinical criteria.

Subsection G - new definition for DDW clinical criteria that is approved by the Department of Health (DOH) and

applied by the outside reviewer to each DDW service.

Subsection I - new definition for the outside reviewer who is an independent third party to conduct clinical review of DDW services.

Subsection M - new definition for young adult for individuals between the ages of 18 through 20 years of age.

Section 9 - new language to clarify the waiver population, services, and applicable federal waiver statutes.

Section 10 - revise language throughout this section to add clarity for the reader, clarify required provider agreements, and update provider qualifications and provider licensure requirements.

Subsection H - insert language for intensive medical living supports provider agency from Subsection W.

Subsection W - delete this section and move qualifications to Subsection H under community living supports.

Section 11 - new language to clarify required agreements and rules.

Subsection C - delete this section which is not applicable to the DDW.

Section 12 - revise language to add clarity for the reader.

Section 13 - revise language throughout this section and add new language to clarify the Supports Intensity Scale and requirements; supplemental questions; and verification process.

Section 14 - new language to clarify waiver services for individuals under 18 years of age.

Section 15 - new language to clarify waiver services for individuals 18 years of age and older.

Subsection A - revise language to clarify the NM DDW groups and availability for an eligible recipient to request services through the outside reviewer when clinical criteria are met.

Subsection B - revise language to clarify H authorization.

Subsection D - new language to clarify that the interdisciplinary team (IDT) should consider the DDW group's suggested service package and proposed budget with the understanding that the focus must always be on the individual's support needs that can be clinically justified.

Paragraph (3) - revise language to add clarify for the reader.

Paragraph (4) - new language to address the availability of three (3) therapy disciplines.

Subparagraph (c) of Paragraph (5) - insert language for intensive medical living supports from Paragraph (20) of Subsection D.

Paragraph (20) - delete this section for intensive medical living supports and move to Subparagraph (c) of Paragraph (5) of Subsection D under living supports.

Section 17 - new language throughout section 17 to define the roles and responsibilities of the ITD and clinical justification of requested services and supports.

Subsection A - new language to define the DDW planning packet.

Subsection B - new language to define the role and responsibilities of the IDT.

Subsection C and D - new language to clarify the budget evaluation process for eligible recipients.

Section 18

Subsection D - new language to define the outside review process, application of clinical criteria, and process for Individual Service Plan (ISP) and budget denials.

Section 20 - new language to address the recipient agency review conference and attendees.

Subsection A - new language to define an authorized representative.

Subsection B - new language to address the process for resolutions of denials that are reached through the agency review conference.

Subsections C, D and E - new language to address the HSD Administrative Hearing process.

Section 21 - new language to address the automatic continuation of benefits with a recipient fair hearing request.

A public hearing to receive testimony on the proposed rule 8.314.5 NMAC will be held in the Rio Grande Conference Room, Toney Anaya Building, 2550 Cerrillos Road Santa Fe on January 4, 2016 from 10 a.m. to 12 p.m., Mountain Standard Time (MST).

Interested parties may submit written comments directly to:

Human Services Department
Office of the Secretary
ATT: Medical Assistance Division Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348.

Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to madrules@state.nm.us. Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. MST, January 4, 2016.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll-free at 1-888-997-2583 and ask for extension 7-6252. In Santa Fe call 827-6252. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

Notice of Public Hearing To Receive Testimony On The Proposed Rule 8.314.6 NMAC

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to amend a rule that is part of the New Mexico Administrative Code (NMAC): 8.314.6 *Home and Community-Based Waiver*. The register and the proposed amendments to this rule will be available November 30, 2015 on the HSD website: http://www.hsd.state.nm.us/LookingForInformation/registers.aspx and at http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD outside of Santa Fe at 505-888-997-2583 ask for extension 7-6252 or in Santa Fe at 505-827-6252. **Language that is new**

from the previously proposed rule of 2014 is *italicized.*

Throughout the rule:
Adds language that clarifies an eligible recipient's Mi Via Employer of Record (EOR) roles, responsibilities and qualifications to ensure the EOR meets the MAD provider qualifications and understands the limits of his or her role.
Adds language to ensure that services are delivered in the least restrictive environments and that the use of restraints, restrictive interventions or seclusions is not allowed in any Mi Via service.
Adds language that providers and practitioners render services within their respective practice board's scope of practice or within their licensing agency's requirements.

Section 7

Subsection B - aligns the term 'authorized representative' with MAD's current definition utilized in all other NMAC MAD rules.

Subsection L - aligns the term 'legally responsible individual' with MAD's current definition utilized in all other NMAC MAD rules.

Subsection O - defines the term 'personal representative' with MAD's current definition utilized in other NMAC MAD rules.

Section 11
The Department's proposed changes to this section will help to strengthen the caliber and accountability of Mi Via providers and update waiver service names.

Subsection A - replacing 'homemaker/*companion* workers' with 'homemaker or *direct support* workers in order to be in line with the waiver service names included in the Mi Via 1915(c) waiver as approved by CMS.

Paragraph (1) of Subsection B - adding the requirement for providers to pass a nationwide caregiver criminal history screening prior to the initial hire and every three years after initial hire. The additional language aligns the rule with the Mi Via 1915(c) waiver as approved by CMS.

Paragraph (2) of Subsection B - adding new language to vendor qualifications and requirements. The additional language provides increased accountability from a vendor to a Mi Via eligible recipient and aligns the rule with the Mi Via 1915(c) waiver as approved by CMS.

Subparagraph (c) of Paragraph (5) of Subsection B - strengthening language prohibiting a provider from soliciting an eligible recipient in any manner concerning his or her Mi Via services and benefits. The additional requirement will provide a level of protection to Mi Via eligible recipients from unethical business practices and ensure unbiased freedom of choice of providers.

Paragraph (3) of Subsection E - removing "*customized*" in-home living supports to "*in-home living supports*" to be in line with the service name included in the Mi Via 1915(c) waiver as approved by CMS.

Subparagraphs (a)-(b) of Paragraph (1), Paragraph (2) of Subsection F - adding requirements that job developer providers have experience or knowledge of the Department of Health/Developmental Disabilities Services Division resources, have substantial knowledge of the Americans with Disabilities Act, be at least of a specific age and have other job experience requirements. These updates to the qualifications reflect the need for job developers to have knowledge and resources specific to the Mi Via population.

Section 13
Eligibility Requirements for Recipient Enrollment in Mi Via - removing Subsection A through C of the rule and inserting reference to 8.290.400 NMAC *Recipient Policies* for home and community-based services waiver eligibility requirements.

Section 15

Subsection C

Paragraph (1)
Contact Requirements - adding language clarifying the requirements during monthly contact between the participant and consultant.

Paragraph (4)
Critical incident management responsibilities and reporting requirements - adding (a) new responsible reporting individuals and renaming state agencies with current titles, and (b) the term "*suspicious injury*." The additional language clarifies the process for critical incident management reporting and aligns the rule with the Mi Via 1915(c) waiver as approved by CMS.

Paragraph (5)
Conflict of Interest - clarifies an eligible recipient's Consultant/Consultant Agency's roles, responsibilities and qualifications to ensure the Consultant/Consultant Agency meets the MAD provider qualifications, and understands the limits of his or her role, does not solicit an eligible recipient nor engage in activities where he or she may have a conflict of interest to the eligible recipient.

Subsection E

Paragraph (2) Home health aide services - adding language specifically stating a home health aide must meet new supervision requirements. In addition, new language requiring the registered nurse supervision of the home health aides at least once every 60 calendar days in the eligible recipient's home. The additional language affords an eligible recipient increased professional supervision over his or her home health aide's services and aligns the rule with the Mi Via 1915(c) waiver as approved by CMS.

Previous Paragraph (3) Assisted Living - removes references to Mi Via assisted living services and providers throughout the rule. The Department proposes to end this service based upon non-utilization by the developmental disabilities and medically fragile populations during the past three waiver years. This change will also bring the waiver into alignment with CMS' final rule to maximize opportunities for an individual to have access to the benefits of community living and to receive services in the most integrated settings and aligns the rule with the Mi Via 1915(c) waiver as approved by CMS.

New Paragraph (3) In home living supports - clarification that In Home Living Supports must be provided in the home or apartment owned or leased by the eligible recipient or in the eligible recipient's home, but excludes homes or apartments owned by agency providers. The additional language will strengthen the service requirement to safeguard participant's freedom of choice when receiving this Mi Via service. Additional language clarifies that service coordination and nursing services are not included in this service as they are covered under other waiver services.

Subsection F

Paragraph (2)
Employment Supports - providing additional detail into the function of employment supports, job development, job coaching, and related employment supports. The additional language will strengthen the service requirement to afford an eligible recipient a higher degree of professional support in entering the workforce and aligns the rule with the Mi Via 1915(c) waiver as approved by CMS.

Paragraph (3)

Customized Community Supports - (a) renaming this service to "Customized Community Group Supports" in order to be in line with the waiver service names included in the Mi Via 1915(c) waiver as approved by CMS, and (b) proposing new language to have services provided in an integrated setting to support access to the eligible recipient's greater community. The Department is responding to CMS final regulations that require Mi Via services be rendered in integrated community settings whenever possible.

Subsection G

Paragraph (1)

Health and Wellness (d) Behavior support consultation - adding "positive behavior support plan" to treatment plan development; and to (v) requiring the least restrictive environment and to prohibit of any form of restraints or seclusion of a Mi Via eligible recipient while services are rendered. The Department is responding to CMS final regulations that require Mi Via services be rendered in the least restrictive environment without the use of seclusion and restraints.

Paragraph (2)

Specialized Therapies (e) Hippotherapy - clarification that hippotherapy must be performed by a Regulation and Licensing Department (RLD) licensed physical therapist, occupational therapist, or speech therapist. The additional language serves to bring the service in line with the providers' practice board's scope of practice or within their licensing agency's requirements.

Subsection H

Paragraph

(1) Transportation - *addition that transportation services for minors is not a covered service as these are services that a legally responsible individual would ordinarily provide for household members of the same age who do not have a disability or chronic illness.*

Paragraph (3)

Respite - *addition of language that clarifies respite as a service and how it is to be utilized.*

Paragraph (5)

Environmental Modifications (f) - reducing the available allocation from $7,000 to $5,000 every five years to bring the rule in line with the Mi Via 1915(c) waiver as approved by CMS. The spending limit brings equity to the environmental modifications allocations among the Mi Via Waiver, the Developmental Disabilities Waiver, and the MAD Centennial Care Managed Care Self-Directed Community Benefit. HSD proposes to include any MAD reimbursed environmental modification the eligible recipient received from the previous five years into the five-year allocation limitations of $5,000. Reviews of the utilization patterns for this service show that the proposed amount of $5,000 is reasonable to meet the needs of Mi Via eligible recipients.

Section 16

Subsection F - addition of home schooling materials and/or related supplemental materials and activities as a non-covered good as these are services that a legally responsible individual would ordinarily provide for household members of the same age who do not have a disability or chronic illness.

Subsection G - *clarification of activities that are primarily recreational or diversional in nature. Clarification is provided to be in line with the Centers for Medicare and Medicaid Services Waiver Technical Guide.*

Subsection K - *addition that cell phone insurance is not a covered service as this is a service that a household that does not include a person with disabilities would be expected to pay for as a routine household or personal expense*.

Subsection P - clarification that mileage or driver time reimbursement for vacation travel by automobile is a non-covered service as this is an service that a household that does not include a person with disabilities would be expected to pay for as a routine household or personal expense.

Subsection W - including laptops or any electronic tablets to keep current with technological advances. HSD proposes to apply the three year replacement limit to eligible recipients transferring into Mi Via. This ensures equitable spending for these types of goods among all MAD programs that cover this benefit.

Subsection X - *addition that cell phones and cell phone services for eligible recipients who are minors is a non-covered service as these are services that a legally responsible individual would ordinarily provide for household members of the same age who do not have a disability or chronic illness.*

Section 17

Subsection F Modifications to the annual budget - this section has been reformatted and edited in order to delete repetitive and lengthy language to clarify for recipients the requirements for modifications to the annual budget.

Section 21

Continuation of Benefits Pursuant to Timely Appeal - adding language to bring rule into alignment with 8.352.2 NMAC HSD administrative hearing rights and responsibilities.

Section 22

Grievance/Complaint System - removing of subsections A through D which describe the grievance and complaint process that only applies to consultant providers. Language in this section now affords participants and/or participant's families a primary contact to file complaints regarding any component of the program.

A public hearing to receive testimony on this proposed rule will be held in the Rio Grande Conference Room, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico January 4, 2016 from 1 p.m. to 3 p.m., Mountain Standard Time (MST).

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll-free at 1-888-997-2583 and ask for extension 7-6252. In Santa Fe call 827-6252. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least 10 working days advance notice to provide requested alternative formats and special accommodations.

Interested persons may address written comments to:

Human Services Department
Office of the Secretary
ATTN: Medical Assistance Division Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Recorded comments may be left at *(505) 827-1337*. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MST on January 4, 2016. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing.

REGULATION AND LICENSING DEPARTMENT
BOARD OF OPTOMETRY

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Optometry will hold a Rule Hearing on Thursday, January 7, 2016. Following the Rule Hearing the New Mexico Board of Optometry will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Optometry Rule Hearing will begin at 10:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held in the Rio Grande Room at the Regulation and Licensing Department, Toney Anaya Building located at the, 2550 Cerrillos Road in Santa Fe, New Mexico.

The purpose of the rule hearing is to consider proposed amendments to the following Board Rules and Regulations in 16.16.1 General Provisions, 16.16.5 Examination for Optometric Licensure, 16.16.7 Pharmaceutical Certification, 16.16.8 DEA Registration Requirements, 16.16.13 Continuing Education, 16.16.15 Management of Pain with Controlled Substances, 16.16.17 Advertising, 16.16.18 In-office Minor Surgical Procedures.

The Board may go into executive session pursuant to 10-15-1.H of the Open Meetings Act to discuss pending complaints and licensure issues. A final agenda for the board meeting will be available at the Board Office on December 24, 2015 or on the website at www.rld.state.nm.us.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico, or call (505) 476-4622 after December 24, 2015 or from the Board's website http://www.rld.state.nm.us/boards/ . In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than December 24, 2015. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4622 at least two weeks prior to the meeting or as soon as possible.

Gabriella Romero, Administrator
PO Box 25101, Santa Fe, NM 87505.

End of Notices of Rulemaking and Proposed Rules

Adopted Rules

Effective Date and Validity of Rule Filings

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

ENVIRONMENT DEPARTMENT

The Environment Department approved, at its 11/16/2015 hearing, to repeal its rule 20.7.6 NMAC, Wastewater Facility Construction Loan Policies and Guidelines (filed 6/16/2000) and replace it with 20.7.6 NMAC, Wastewater Facility Construction Loan Policies and Guidelines, effective 12/30/2015.

ENVIRONMENT DEPARTMENT

SYNOPSIS
20.7.6 NMAC, Wastewater Facility Construction Loan Policies and Guidelines

1. Subject matter: 20.7.6 NMAC, Wastewater Facility Construction Loan Policies and Guidelines. This is a repeal and replace of 20.7.6 NMAC, Wastewater Facility Construction Loan Policies and Guidelines, updating the rule from NMAC 1 to NMAC 2, and specifically amending language in Sections 7, 11, 16, and 21. 20.7.6 NMAC establishes policies, procedures, and guidelines in the administration of loans from the wastewater facility construction loan fund pursuant to the Wastewater Facility Construction Loan Act. It specifically establishes an application process, priority classification of applications, administrative and planning guidelines, payment policies, and project design and construction requirements. The change to 20.7.6.7 NMAC adds mutual domestic water consumer associations as defined by the Sanitary Projects Act to the list of local authorities eligible for funding. The change to 20.7.6.11 NMAC extends the loan repayment period from no later than 20 years to no later than 30 years. The change to 20.7.6.16 NMAC addresses the reserve capacity of the local authority applying for a loan and brings it into line with the change in 20.7.6.11 NMAC. Finally, the change to 20.7.6.21 NMAC amends the final repayment schedule formulation to reflect the possibility of a 30 year repayment. The changes to this rule were developed by the Construction Programs Bureau of the New Mexico Environment Department and approved by the Secretary of the New Mexico Environment Department.

2. Persons affected: The persons affected are the local authorities defined as eligible to apply for loans through this program: municipalities, counties, water and sanitation districts or any similar districts, recognized Indian tribes, mutual domestic water consumers associations as defined by the Sanitary Projects Act, or other issuing agencies created pursuant to a joint powers agreement acting on behalf of any entities listed above.

3. Interests of persons affected: Interests include the requirements and guidelines for applying for funding under the Wastewater Constructions Loan Act, the repayment requirements pursuant to the established program, and planning and construction of qualifying projects. The changes are in accordance with the recently adopted changes to 20.7.5 NMAC which potentially expand the pool of eligible applicants for funding.

4. Geographical applicability: Geographical applicability is to eligible entities established within the state of New Mexico.

5. Commercially published materials incorporated: None.

6. Telephone number and address of issuing agency: 1190 St. Francis Drive, Ste. S-2102, Santa Fe, New Mexico 87505. Telephone number: (505) 827-2425.

7. Effective date of this rule: December 30, 2015.

Certification

As counsel for the New Mexico Environment Department, I certify that this synopsis provides adequate notice of the content of 20.7.6 NMAC, Wastewater Facility Construction Loan Policies and Guidelines.

/Chris Atencio/
New Mexico Environment Department
Legal Representative

/11/17/2015/
Date

SUPERINTENDENT OF INSURANCE

The Office of Superintendent of Insurance repeals its rule 13.10.17 NMAC, Grievance Procedures, effective 1/1/2016 and replaces it with 13.10.17 NMAC, Grievance Procedures, effective 1/1/2016.

SUPERINTENDENT OF INSURANCE

TITLE 13 INSURANCE
CHAPTER 10 HEALTH INSURANCE
PART 17 GRIEVANCE PROCEDURES

13.10.17.1 ISSUING AGENCY: Office of Superintendent of Insurance (OSI), Managed Health Care Bureau (MHCB).
[13.10.17.1 NMAC - Rp, 13.10.17.1 NMAC, 1/1/16]

13.10.17.2 SCOPE:

A. Applicability. This rule applies to all health care insurers that provide, offer or administer health benefits plans including health benefits plans:

(1) with a point-of-service option that allows grievant to obtain health care services out-of-network;

(2) provided by an entity that purchases or is authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act (Sections 13-7-1 through 13-7-11 NMSA 1978);

(3) utilizing a preferred provider network, as defined under Section 59A-22A-3 NMSA 1978; and

(4) traditional

fee-for-service indemnity plans.

B. Exemptions. This rule does not apply to policies or certificates that provide coverage for:

(1) only short-term travel, accident-only, specified disease or other limited benefits; or

(2) credit, disability income, hospital indemnity, long-term care insurance, vision care or any other limited supplemental benefit.

C. Conflicts. For purpose of this rule, if any provision in this rule conflicts with any provision in 13.10.13 NMAC, Managed Health Care or 13.10.16 NMAC, Provider Grievances, the provisions in this rule shall apply.

[13.10.17.2 NMAC - Rp, 13.10.17.2 NMAC, 1/1/16]

13.10.17.3 STATUTORY AUTHORITY: Sections 59A-1-16, 59A-2-8, 59A-2-9, 59A-15-16, 59A-16-3, 59A-16-11, 59A-16-12, 59A-16-12.1, 59A-16-20, 59A-16-22, 59A-19-4, 59A-19-6, 59A-22A-7, 59A-46-10, 59A-46-11, 59A-57-2, 59A-57-4, and 59A-57-5 NMSA 1978.

[13.10.17.3 NMAC - Rp, 13.10.17.3 NMAC, 1/1/16]

13.10.17.4 DURATION: Permanent.

[13.10.17.4 NMAC - Rp, 13.10.17.4 NMAC, 1/1/16]

13.10.17.5 EFFECTIVE DATE: January 1, 2016, unless a later date is cited at the end of a section.

[13.10.17.5 NMAC - Rp, 13.10.17.5 NMAC, 1/1/16]

13.10.17.6 OBJECTIVE: The purpose of this rule is to establish procedures for filing and processing adverse determination grievances and administrative grievances regarding actions taken or inaction by a health care insurer.

[13.10.17.6 NMAC - Rp, 13.10.17.6 NMAC, 1/1/16]

13.10.17.7 DEFINITIONS: As used in this rule:

A. "Administrative grievance" means an oral or written complaint submitted by or on behalf of a grievant regarding any aspect of a health benefits plan other than a request for health care services, including but not limited to:

(1) administrative practices of the health care insurer that affects the availability, delivery, or quality of health care services;

(2) claims payment, handling or reimbursement for health care services; and

(3) terminations of coverage.

B. "Adverse determination" means any of the following: any rescission of coverage (whether or not the rescission has an adverse effect on any particular benefit at the time); a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for, a benefit including any such denial, reduction, termination, or failure to provide or make payments, that is based on a determination of a participant's or beneficiary's eligibility to participate in a plan, and including, with respect to group health plans, a denial, reduction or termination of, or a failure to provide or make payment (in whole or in part) for, a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental, or investigational or not medically necessary or appropriate.

C. "Adverse determination grievance" means a written complaint submitted by or on behalf of a grievant regarding an adverse determination.

D. "Certification" means a decision by a health care insurer that a health care service requested by a provider or grievant has been reviewed and based upon the information available, meets the health care insurer's requirements for coverage and medical necessity, and the requested health care service is therefore approved.

E. "Culturally and linguistically appropriate manner of notice" means:

(1) Notice that meets the following requirements:

(a) the health care insurer must provide oral language services (such as a telephone customer assistance hotline) that includes answering questions in any applicable non-English language and providing assistance with filing claims and appeals (including external review) in any applicable non-English language;

(b) the health care insurer must provide, upon request, a notice in any applicable non-English language; and

(c) the health care insurer must include in the English versions of all notices, a statement prominently displayed in any applicable non-English language clearly indicating how to access the language services provided by the health care insurer.

(2) For purposes of this definition, with respect to an address in any New Mexico county to which a notice is sent, a non-English language is an applicable non-English language if 10 percent or more of the population residing in the county is literate only in the same non-English language, as determined by the department of health human services (HHS); the counties that meet this 10 percent standard, as determined by HHS, are found at http://cciio.cms.gov/resources/factsheets/clas-data.html and any necessary changes to this list are posted by HHS annually.

F. "Grievant" means any of the following:

(1) a policyholder, subscriber, enrollee, or other individual, or that person's authorized representative or provider, acting on behalf of that person with the person's consent, entitled to receive health care benefits provided by the health care plan;

(2) an individual, or that person's authorized representative, who may be entitled to receive health care benefits provided by the health care plan;

(3) medicaid recipients enrolled in a health care insurer's medicaid plan; or

(4) individuals whose health insurance coverage is provided by an entity that purchases or is authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act.

G. "Health benefits plan" means a health plan or a policy, contract, certificate or agreement offered or issued by a health care insurer or plan administrator to provide, deliver, arrange for, pay for or reimburse the costs of health care services, this includes a traditional fee-for-service health benefits plan.

H. "Health care insurer" means a person that has a valid certificate of authority in good standing issued pursuant to the Insurance Code to act as an insurer, health maintenance organization, non-profit health care plan, fraternal benefit society, vision plan or pre-paid dental plan.

I. "Health care professional" means a physician or other health care practitioner, including a pharmacist, who is licensed, certified

or otherwise authorized by the state to provide health care services consistent with state law.

J. "Health care services" means services, supplies and procedures for the diagnosis, prevention, treatment, cure or relief of a health condition, illness, injury or disease, and includes, to the extent offered by the health benefits plan, physical and mental health services, including community-based mental health services, and services for developmental disability or developmental delay.

K. "Hearing officer, independent co-hearing officer (ICO)" means a health care or other professional licensed to practice medicine or another profession who is willing to assist the superintendent as a hearing officer in understanding and analyzing medical necessity and coverage issues that arise in external review hearings.

L. "Independent review" means a process that is conducted at the discretion of the grievant by an independent review organization designated by the superintendent.

M. "Independent review organization (IRO)" means an entity that conducts independent external reviews of adverse benefit determinations and final internal adverse benefit determinations; and which renders an independent and impartial decision on a final adverse benefit determination.

N. "Medical necessity or medically necessary" means health care services determined by a provider, in consultation with the health care insurer, to be appropriate or necessary, according to any applicable generally accepted principles and practices of good medical care or practice guidelines developed by the federal government, national or professional medical societies, boards and associations, or any applicable clinical protocols or practice guidelines developed by the health care insurer consistent with such federal, national and professional practice guidelines, for the diagnosis, or direct care and treatment of a physical, behavioral or mental health condition, illness, injury or disease.

O. "Provider" means a duly licensed hospital or other licensed facility, physician or other health care professional authorized to furnish health care services within the scope of their license.

P. "Rescission of coverage" means a cancellation or discontinuance of coverage that has retroactive effect; a cancellation or discontinuance of coverage is not a rescission if:

(1) the cancellation or discontinuance of coverage has only a prospective effect; or

(2) the cancellation or discontinuance of coverage is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage.

Q. "Summary of benefits" means the written materials required by Section 59A-57-4 NMSA 1978 to be given to the grievant by the health care insurer or group contract holder.

R. "Superintendent" means the superintendent of insurance.

S. "Termination of coverage" means the cancellation or non-renewal of coverage provided by a health care insurer to a grievant, but does not include a voluntary termination by a grievant or termination of a health benefits plan that does not contain a renewal provision.

T. "Traditional fee-for-service indemnity benefit" means a fee-for-service indemnity benefit, not associated with any financial incentives that encourage grievants to utilize preferred providers, to follow pre-authorization rules, to utilize prescription drug formularies, or other cost-saving procedures to obtain prescription drugs, or to otherwise comply with a plan's incentive program to lower cost and improve quality, regardless of whether the benefit is based on an indemnity form of reimbursement for services.

U. "Uniform standards" means all generally accepted practice guidelines, evidence-based practice guidelines, or practice guidelines developed by the federal government, or national and professional medical societies, boards and associations; and any applicable clinical review criteria, policies, practice guidelines, or protocols developed by the health care insurer consistent with the federal, national and professional practice guidelines that are used by a health care insurer in determining whether to certify or deny a requested health care service.

[13.10.17.7 NMAC - Rp, 13.10.17.7 NMAC, 1/1/16]

13.10.17.8 COMPUTATION OF TIME: Whenever this rule requires that an action be taken within a certain period of time from receipt of a request or document, the request or document shall be deemed to have been received within three working days of the date it was mailed.

[13.10.17.8 NMAC - Rp, 13.10.17.8 NMAC, 1/1/16]

13.10.17.9 GENERAL REQUIREMENTS REGARDING GRIEVANCE PROCEDURES:

A. Written grievance procedures required. Every health care insurer shall establish and maintain separate written procedures to provide for the presentation, review, and result of:

(1) adverse determination grievances; a health care insurer shall establish procedures for both standard and expedited review of adverse determination grievances that comply with the requirements of 13.10.17.17 NMAC through 13.10.17.22 NMAC;

(2) administrative grievances; a health care insurer shall establish procedures for reviewing administrative grievances that comply with the requirements of 13.10.17.34 NMAC through 13.10.17.37 NMAC; and

(3) if a grievance contains clearly divisible administrative and adverse decision issues; then the health care insurer shall initiate separate complaints for each issue; with an explanation of the health care insurer's actions contained in one acknowledgment letter.

B. Assistance to grievants. In those instances where a grievant makes an oral grievance or request for internal review to the health care insurer, or expresses interest in pursuing a written grievance, the health care insurer shall assist grievant to complete all the forms required to pursue internal review and shall advise grievant that the MHCB of the OSI is available for assistance.

C. Retaliatory action prohibited. No person shall be subject to retaliatory action by the health care insurer for any reason related to a grievance.

[13.10.17.9 NMAC - Rp, 13.10.17.9 NMAC, 1/1/16]

13.10.17.10 INFORMATION ABOUT GRIEVANCE PROCEDURES:

A. For grievants. A health care insurer shall:

(1) include a clear and concise description of all grievance procedures, both internal and external, in boldface type in the

enrollment materials, including a member handbooks or evidences of coverage, issued to grievants;

(2) for a person who has been denied coverage, provide him or her with a copy of the grievance procedures;

(3) notify grievants that a representative of the health care insurer and the MHCB of OSI are available upon request to assist grievants with grievance procedures by including such information and a toll-free telephone number for obtaining such assistance, in the enrollment materials and summary of benefits issued to grievants;

(4) provide a copy of its grievance procedures and all necessary grievance forms at each decision point in the grievance process; and immediately upon request, at any time, to a grievant, provider or other interested person;

(5) provide a detailed written explanation of the appropriate grievance procedure and a copy of the grievance form to a grievant or provider when the health care insurer makes either an adverse determination or adverse administrative decision; the written explanation shall describe how the health care insurer reviews and resolves grievances and provide a toll-free telephone number, facsimile number, e-mail address and mailing address of the health care insurer's consumer assistance office;

(6) provide consumer education brochures and materials developed and approved by the superintendent, annually or as directed by the superintendent in consultation with the health care insurer for distribution;

(7) provide notice to enrollees in a culturally and linguistically appropriate manner as defined in Subsection E of 13.10.17.7 NMAC;

(8) provide continued coverage for an on-going course of treatment pending the outcome of an internal appeal;

(9) not reduce or terminate an on-going course of treatment without first notifying the grievant sufficiently in advance of the reduction or termination to allow the grievant to appeal and obtain a determination on review of the proposed reduction or termination; and

(10) allow individuals in urgent care situations and receiving an on-going course of treatment to proceed with an expedited external review at the same time as the internal review process.

B. For providers. A health care insurer shall inform all providers of the grievance procedures available to grievants and providers acting on behalf of grievants, and shall make all necessary forms available to providers, including consumer education brochures and materials developed and approved the by superintendent, annually or as directed by the superintendent in consultation with the health care insurer for distribution.

C. Special needs. Information about grievance procedures must be provided in accordance with the Americans with Disabilities Act, 42 U.S.C. Sections 12101, *et seq.*, The Patient Protection and Affordable Care Act of 2010, P.L. 111-152 as codified in the U.S.C. and 13.10.13 NMAC, Managed Health Care, particularly 13.10.13.29 NMAC, Cultural and Linguistic Diversity. [13.10.17.10 NMAC - Rp, 13.10.17.10 NMAC, 1/1/16]

13.10.17.11 CONFIDENTIALITY OF A GRIEVANT'S RECORDS AND MEDICAL INFORMATION:

A. Confidentiality. Health care insurers, the superintendent, ICOs and all others who acquire access to identifiable medical records and information of grievants when reviewing grievances shall treat and maintain such records and information as confidential except as otherwise provided by federal and New Mexico law.

B. Procedures required. The superintendent and health care insurers shall establish procedures to ensure the confidential treatment and maintenance of identifiable medical records and information of grievants submitted as part of any grievance. [13.10.17.11 NMAC - Rp, 13.10.17.11 NMAC, 1/1/16]

13.10.17.12 RECORD OF GRIEVANCES:

A. Record required. The health care insurer shall maintain a grievance register to record all grievances received and handled during the calendar year. The register shall be maintained in a manner that is reasonably clear and accessible to the superintendent.

B. Contents. For each grievance received, the grievance register shall:

(1) assign a grievance number;

(2) indicate whether the grievance is an adverse determination or administrative grievance, or a combination of both;

(3) state the date, and for an expedited review, the time the grievance was received;

(4) state the name and address of the grievant, if different from the grievant;

(5) identify by name and member number the grievant making the grievance or for whom the grievance was made;

(6) indicate whether the grievant's coverage is provided by an entity that purchases or is authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act, the medicaid program, or a commercial health care insurer;

(7) identify the health insurance policy number and the group if the policy is a group policy;

(8) identify the individual employee of the health care insurer to whom the grievance was made;

(9) describe the grievance;

(10) for adverse determination grievances, indicate whether the grievance received was an expedited or a standard review;

(11) indicate at what level the grievance was resolved and what the actual outcome was; and

(12) state the date the grievance was resolved and the date the grievant was notified of the outcome.

C. Annual report. Each year, the superintendent shall issue a data call for information based on the grievances received and handled by a health care insurer during the prior calendar year. The data call will be based on the information contained in the grievance register.

D. Retention. The health care insurer shall maintain such records for at least six years.

E. Submittal. The health care insurer shall submit information regarding all grievances involving quality of care issues to the health care insurer's continuous quality improvement committee and to the superintendent; and shall document the qualifications and background of the continuous quality improvement committee members.

F. Examination. The health care insurer shall make such record available for examination upon request and provide such documents free of charge to a grievant, or state, or federal

agency officials subject to any applicable federal or state law regarding disclosure of personally identifiable health information. [13.10.17.12 NMAC - Rp, 13.10.17.12 NMAC, 1/1/16]

13.10.17.13 PRELIMINARY DETERMINATION: Upon receipt of a grievance, a health care insurer shall first determine the type of grievance at hand.

A. If the grievance seeks review of an adverse determination of a pre- or post-health care service, it is an adverse determination grievance and the health care insurer shall review the grievance in accordance with its procedures for adverse determination grievances and the requirements of 13.10.17.17 NMAC through 13.10.17.29 NMAC.

B. If the grievance is not based on an adverse determination of a pre- or post-health care service, it is an administrative grievance and the health care insurer shall review the grievance in accordance with its procedures for administrative grievances and the requirements of 13.10.17.34 NMAC through 13.10.17.41 NMAC. [13.10.17.13 NMAC - Rp, 13.10.17.13 NMAC, 1/1/16]

13.10.17.14 TIME FRAMES FOR INITIAL DETERMINATIONS:

A. Expedited decision. A health care insurer shall make its initial certification or adverse determination decision in accordance with the medical exigencies of the case. The health care insurer shall make decisions within 24 hours of the written or verbal receipt of the request for an expedited decision whenever:

(1) the life or health of a grievant would be jeopardized;

(2) the grievant's ability to regain maximum function would be jeopardized;

(3) the provider reasonably requests an expedited decision;

(4) in the opinion of the physician with knowledge of the grievant's medical condition, would subject the grievant to severe pain that cannot be adequately managed without the care or treatment that is the subject of the claim;

(5) the medical exigencies of the case require an expedited decision, or

(6) the grievant's claim involves urgent care.

B. Standard decision. A health care insurer shall make all other initial utilization management decisions within five working days. The health care insurer may extend the review period for a maximum of 10 working days if it:

(1) can demonstrate reasonable cause beyond its control for the delay;

(2) can demonstrate that the delay will not result in increased medical risk to the grievant; and

(3) provides a written progress report and explanation for the delay to the grievant and provider within the original five working day review period. [13.10.17.14 NMAC - Rp, 13.10.17.14 NMAC, 1/1/16]

13.10.17.15 INITIAL DEERMINATION:

A. Coverage. When considering whether to certify a health care service requested by a provider or grievant, the health care insurer shall determine whether the requested health care service is covered by the health benefits plan. Before denying a health care service requested by a provider or grievant on grounds of a lack of coverage, the health care insurer shall determine that there is no provision of the health benefits plan under which the requested health care service could be covered. If the health care insurer finds that the requested health care service is not covered by the health benefits plan, the health care insurer need not address the issue of medical necessity.

B. Medical necessity.

(1) If the health care insurer finds that the requested health care service is covered by the health benefits plan, then when considering whether to certify a health care service requested by a provider or grievant, a physician, registered nurse, or other health care professional shall, within the time frame required by the medical exigencies of the case, determine whether the requested health care service is medically necessary.

(2) Before a health care insurer denies a health care service requested by a provider or grievant on grounds of a lack of medical necessity, a physician shall render an opinion as to medical necessity, either after consultation with specialists who are experts in the area that is the subject of review or after application of uniform standards used by the health care insurer. The physician shall be under the clinical authority of the medical director responsible for health care services provided to grievants. [13.10.17.15 NMAC - Rp, 13.10.17.15 NMAC, 1/1/16]

13.10.17.16 NOTICE OF INITIAL DETERMINATION:

A. Certification. The health care insurer shall notify the grievant and provider of the certification by written or electronic communication within two working days of the date the health care service was certified, unless earlier notice is required by the medical exigencies of the case.

B. 24-hour notice of adverse determination; explanatory contents. The health care insurer shall notify a grievant and provider of an adverse determination by telephone or as required by the medical exigencies of the case, but in no case later than 24 hours after making the adverse determination, unless the grievant fails to provide sufficient information to determine whether, or to what extent, benefits are covered or payable under the plan or have insurance coverage. If the grievant fails to provide such information, he or she must be afforded a reasonable amount of time, taking into account the circumstances, but not less than 48 hours to provide the specified information. Additionally, the health care insurer shall notify the covered person and provider of the adverse determination by written or electronic communication sent within one working day of the telephone notice.

C. Contents of notice of adverse determination.

(1) If the adverse determination is based on a lack of medical necessity, clearly and completely explain why the requested health care service is not medically necessary; a statement that the health care service is not medically necessary will not be sufficient.

(2) If the adverse determination is based on a lack of coverage, identify all health benefits plan provisions relied on in making the adverse determination, and clearly and completely explain why the requested health care service is not covered by any provision of the health benefits plan; a statement that the requested health care service is not covered by the health benefits plan will not be sufficient.

(3) The date of service, the health care provider, the claim amount (if applicable), and a statement describing the availability, upon request, of the diagnosis code and its corresponding meaning, and the treatment code and its corresponding meaning.

(4) Include a description of the health care insurer standard that was used in denying the claim.

(5) Provide a summary of the discussion which triggered the final determination.

(6) Advise the grievant that he or she may request internal or external review of the health care insurer's adverse determination.

(7) Describe the procedures and provide all necessary forms to the grievant for requesting internal appeals and external review by an IRO.

[13.10.17.16 NMAC - Rp, 13.10.17.16 NMAC, 1/1/16]

13.10.17.17 RIGHTS REGARDING INTERNAL REVIEW OF ADVERSE DETERMINATIONS:

A. Right to internal review. Every grievant who is dissatisfied with an adverse determination shall have the right to request internal review of the adverse determination by the health care insurer.

B. Acknowledgement of request. Upon receipt of a request for internal review of an adverse determination, the health care insurer shall date and time stamp the request, and within one working day from receipt, send the grievant an acknowledgment that the request has been received. The acknowledgment shall contain the name, address and direct telephone number of an individual representative of the health care insurer who may be contacted regarding the grievance.

C. Full and fair internal review. To ensure that a grievant receives a full and fair internal review, the health care insurer must, in addition to allowing the grievant to review the claim file, and to present evidence and testimony as part of the internal claims and appeals process, provide the grievant, free of charge, with any new or additional evidence, and new or additional rationale, considered, relied upon, or generated by the health care insurer, as soon as possible and sufficiently in advance of the date of the notice of final internal adverse benefit determination to allow the grievant a reasonable opportunity to respond before the final internal adverse benefit determination is made.

D. Conflict of interest. The health care insurer must ensure that all internal claims and appeals are adjudicated in a manner designed to ensure the independence and impartiality of the persons involved in making the decisions in such a way that decisions regarding hiring, compensation, termination, promotion, or other similar matters with respect to any individual (such as a claims adjudicator or medical expert) must not be made based upon the likelihood that the individual will support the denial of benefits.

[13.10.17.17 NMAC - Rp, 13.10.17.17 NMAC, 1/1/16]

13.10.17.18 TIME FRAMES FOR INTERNAL REVIEW OF ADVERSE DETERMINATIONS: Upon receipt of a request for internal review of an adverse determination, the health care insurer shall conduct either a standard or expedited review, as appropriate.

A. Expedited review. A health care insurer shall complete an expedited internal review as required by the medical exigencies of the case, but in no case later than 72 hours from the time the internal review request was received whenever:

(1) the life or health of a grievant would be jeopardized;

(2) the grievant's ability to regain maximum function would be jeopardized;

(3) the provider reasonably requests an expedited decision;

(4) in the opinion of the physician with knowledge of the grievant's medical condition, would subject the grievant to severe pain that cannot be adequately managed without the care or treatment that is the subject of the claim; or

(5) the medical exigencies of the case require an expedited decision.

B. Standard review. A health care insurer shall complete a standard review of both internal reviews as described in 13.10.17.19 NMAC and 13.10.17.20 NMAC within 20 working days of receipt of the request for internal review in all cases in which the request for review is made prior to the service requested, and does not require expedited review, and within 40 working days of receipt of the request in all post-service requests for internal review. The health care insurer may extend the review period for a maximum of 10 working days in pre-service cases, and 20 working days for post-service cases if it:

(1) can demonstrate reasonable cause beyond its control for the delay;

(2) can demonstrate that the delay will not result in increased medical risk to the grievant;

(3) provides a written progress report and explanation for the delay to the grievant and provider within the original 30 day for pre-service or 60 day for post-service review period; and

(4) if the grievance contains clearly divisible administrative and adverse decision issues, then the health care insurer shall initiate separate complaints for each decision.

C. Failure to comply with deadline. If the health care insurer fails to comply with the deadline for completion of an internal review and the requirements of this subsection, the requested health care service shall be deemed approved unless the grievant, after being fully informed of his or her rights, has agreed in writing to extend the deadline.

[13.10.17.18 NMAC - Rp, 13.10.17.18 NMAC, 1/1/16]

13.10.17.19 FIRST AND SECOND INTERNAL REVIEW OR ADVERSE DETERMINATIONS FOR GROUP HEALTH PLANS:

A. Applicability. This section applies only to health care insurers offering group health care benefits plans and entities subject to the Health Care Purchasing Act (public employees and retirees, public school employees and retirees only) that conduct the second level of the internal appeal, and health care insurers who offer group health care benefits plans that conduct the first level of the internal appeal.

B. Scope of review. Health care insurers offering group health care benefits plans and entities subject to the Health Care Purchasing Act shall complete the review of the adverse determination within the time frames established in 13.10.17.18 NMAC.

(1) Coverage. If the initial adverse determination was based on a lack of coverage, the health care insurer shall review the health benefits plan and determine whether there is any provision in the plan under which the requested health care service could be certified.

(2) Medical necessity. If the initial adverse determination was based on a lack of medical necessity, the health care insurer shall render an opinion as to medical necessity, either after consultation with specialist who are experts in the area that is the subject of review, or after application of uniform standards used by the health care insurer.

C. Decision to reverse.

If the health care insurer reverses the initial adverse determination and certifies the requested health care service, the health care insurer shall notify the grievant and provider as required by 13.10.17.16 NMAC.

D. Decision to uphold. If the health care insurer upholds the initial adverse determination to deny the requested health care service, the health care insurer shall notify the grievant and provider as required by 13.10.17.16 NMAC and shall ascertain whether the grievant wishes to pursue the grievance.

(1) If the grievant does not wish to pursue the grievance, the health care insurer shall mail written notification of health care insurer's decision, and confirmation of the grievant's decision not to pursue the matter further, to the grievant within three working days of the health care insurer's decision.

(2) If the health care insurer is unable to contact the grievant by telephone within 72 hours of making the decision to uphold the determination, the health care insurer shall notify the grievant by mail of the health care insurer's decision and shall include in the notification a self-addressed stamped response form which asks the grievant whether he or she wishes to pursue the grievance further and provides a box for checking "yes" and a box for checking "no." If the grievant does not return the response form within 10 working days, the health care insurer shall again contact the grievant by telephone.

(3) If the grievant responds affirmatively to the telephone inquiry or by response from, the health care insurer will select a medical panel to further review the adverse determination as described in 13.10.17.20 NMAC.

(4) If the grievant does not respond to the health care insurer's telephone inquiries or return the response form, the health care insurer shall select a medical panel to further review the adverse determination when the review is an expedited review.

E. Extending the time frame for standard review. If the grievant does not make an immediate decision to pursue the grievance, or the grievant has requested additional time to supply supporting documents or information, or postponement pursuant to Subsection G of 13.10.17.20 NMAC, the time frame described in Subsection B of 13.10.17.18 NMAC shall be extended to include the additional time required by the grievant.

[13.10.17.19 NMAC - Rp, 13.10.17.20 NMAC, 1/1/16]

13.10.17.20 INTERNAL PANEL REVIEW OF ADVERSE DETERMINATIONS:

A. Selection of an internal review panel. In cases of appeal from an adverse determination or from a third-party administrator's decision to uphold an adverse determination, the health care insurer shall select an internal review panel to review the adverse determination or the decision to uphold the adverse determination.

B. Notice of review. Unless the grievant chooses not to pursue the grievance, the health care insurer shall notify the grievant of the date, time and place of the internal panel review. The notice shall advise the grievant of the rights specified in Subsection G of 13.10.17.20 NMAC. If the health care insurer indicates that it will have an attorney represent its interests, the notice shall advise the grievant that an attorney will represent the health care insurer and that the grievant may wish to obtain legal representation of their own.

C. Panel membership. The health care insurer shall select one or more representatives of the health care insurer and one or more health care or other professionals who have not been previously involved in the adverse determination being reviewed to serve on the internal review panel. At least one of the health care professionals selected shall practice in a specialty that would typically manage the case that is the subject of the grievance or be mutually agreed upon by the grievant and the health care insurer.

D. Scope of review.

(1) Coverage. The internal review panel shall review the health benefits plan and determine whether there is any provision in the plan under which the requested health care service could be certified.

(2) Medical necessity. The internal review panel shall render an opinion as to medical necessity, either after consultation with specialists who are experts in the area that is the subject of review or after application of uniform standards used by the health care insurer.

E. Information to grievant. No fewer than three working days prior to the internal panel review, the health care insurer shall provide to the grievant copies of:

(1) the grievant's pertinent medical records;

(2) the treating provider's recommendation;

(3) the grievant's health benefits plan;

(4) the health care insurer's notice of adverse determination;

(5) uniform standards relevant to the grievant's medical condition that is used by the internal panel in reviewing the adverse determination;

(6) questions sent to or reports received from any medical consultants retained by the health care insurer; and

(7) all other evidence or documentation relevant to reviewing the adverse determination.

F. Request for postponement. The health care insurer shall not unreasonably deny a request for postponement of the internal panel review made by the grievant. The time frames for internal panel review shall be extended during the period of any postponement.

G. Rights of grievant. A grievant has the right to:

(1) attend and participate in the internal panel review;

(2) present his or her case to the internal panel;

(3) submit supporting material both before and at the internal panel review;

(4) ask questions of any representative of the health care insurer;

(5) ask questions of any health care professionals on the internal panel;

(6) be assisted or represented by a person of his or her choice, including legal representation; and

(7) hire a specialist to participate in the internal panel review at his or her own expense, but such specialist may not participate in making the decision.

H. Time frame for review; attendance. The internal review panel will complete its review of the adverse determination as required by the medical exigencies of the case and within the time frames set forth in 13.10.17.18 NMAC. Internal review panel members must be present physically, or by video, or telephone conferencing to hear the grievance. An internal review panel member who is not present to hear the grievance either physically, or by video, or telephone conferencing shall not participate in the decision.

[13.10.17.20 NMAC - Rp, 13.10.17.21 NMAC, 1/1/16]

13.10.17.21 ADDITIONAL REQUIREMENTS FOR EXPEDITED INTERNAL REVIEW OF ADVERSE DETERMINATIONS:

A. In an expedited review, all information required by Subsection D of 13.10.17.20 NMAC shall be transmitted between the health care insurer and the grievant by the most expeditious method available.

B. If an expedited review is conducted during a patient's hospital stay or course of treatment, health care services shall be continued without cost (except for applicable co-payments and deductibles) to the grievant until the health care insurer makes a final decision and notifies the grievant.

C. A health care insurer shall not conduct an expedited review of an adverse determination made after health care services have been provided to a grievant.

[13.10.17.21 NMAC - Rp, 13.10.17.22 NMAC, 1/1/16]

13.10.17.22 NOTICE OF INTERNAL PANEL DECISION:

A. Notice required. Within the time period allotted for completion of its internal review, the health care insurer shall notify the grievant and provider of the internal review panel's decision by telephone within 24 hours of the panel's decision and in writing or by electronic means with one working day of the telephone notice.

B. Contents of notice. The written notice shall contain:

(1) the names, titles and qualifying credentials of the persons on the internal review panel;

(2) a statement of the internal panel's understanding of the nature of the grievance and all pertinent facts;

(3) a description of the evidence relied on by the internal review panel in reaching its decision;

(4) a clear and complete explanation of the rationale for the internal review panel's decision;

(a) the notice shall identify every provision of the grievant's health benefits plan relevant to the issue of coverage in the case under review and explain why each provision did or did not support the panel's decision regarding coverage of the requested health care service; and

(b) the notice shall cite the uniform standards relevant to the grievant's medical condition and explain whether each supported or did not support the panel's decision regarding the medical necessity of the requested health care service.

(5) notice of the grievant's right to request external review by an IRO, including the address and telephone number of the MHCB of the OSI, a description of all procedures and time deadlines necessary to pursue external review, and copies of any forms required to initiate external review; this notice of the grievant's right to request external review is in addition to the same notice provided the grievant in the summary of benefits and health benefits plan.

C. With each notice of a rescission of coverage or final adverse benefit determination, the health care insurer shall provide written notice of the grievant's right for an independent review of the determination by an IRO.

D. The notice referenced above in Subsection C shall include the following statement: "*We have rescinded your coverage or denied your request for the provision of or payment for a health care service or course of treatment. You may have the right to have our decision reviewed by a health care professional who has no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care, or effectiveness of the health care service or treatment you requested. To receive additional information about an independent review, contact OSI by phone at: (505) 827-3928 or by electronic mail at: mhcb.grievance@state.nm.us. You may also find additional information at the OSI website at: http://www.osi.state.nm.us/.*"

[13.10.17.22 NMAC - Rp, 13.10.17.21 NMAC, 1/1/16]

13.10.17.23 INDEPENDENT REVIEW ORGANIZATIONS (IRO):

A. The superintendent shall compile and maintain a list of approved IROs.

B. To be considered for placement on the list of approved IROs, an IRO shall:

(1) be accredited by a nationally recognized private accrediting entity;

(2) meet the requirement of this rule; and

(3) have written policies and procedures that ensure:

(a) all reviews are conducted within a specific time frame;

(b) the selection of qualified and impartial clinical reviewers;

(c) the confidentiality of medical and treatment records and clinical review criteria; and

(d) that any person employed by or under contract with the IRO adheres to the requirements of this rule.

C. An applicant requesting placement on the list of approved IROs shall submit for the superintendent's review:

(1) an IRO application form available on the OSI website at: http://www.osi.state.nm.us/;

(2) all documentation and information requested on the application, including proof of being accredited by a nationally recognized private accrediting entity; and

(3) the application fee to be set by the superintendent.

D. The superintendent shall, in the superintendent's sole discretion, terminate the approval of an IRO if the superintendent determines that the RO has lost its accreditation or no longer satisfies the minimum requirements for approval.

E. An IRO assigned to conduct the independent review may not have a material, professional, familial or financial conflict of interest with:

(1) the health care insurer;

(2) an officer, director, manager or management employee of the health care insurer;

(3) the health benefit plan;

(4) the plan administrator, plan fiduciaries or plan employees;

(5) the grievant;

(6) the grievant's health care provider(s);

(7) the health care provider's medical group or independent practice association;

(8) a health care facility where the service would be provided; or

(9) the developer or manufacturer of the service that would be provided.

F. An IRO shall keep and maintain written records and make

available upon request to OSI, any record for which it conducted an external review.

G. An IRO shall keep and maintain written records organized by health care insurer and make available to OSI every calendar year on January 15, a report which includes:

(1) the total number of external reviews conducted and organized by health care insurer;

(2) the number of external reviews resolved; and of those resolved, the number resolved upholding the adverse determination or final adverse determination of the health care insurer;

(3) the total number resolved reversing the adverse determination or final adverse determination of the health care insurer;

(4) the average length of time for the review;

(5) a summary of the types of coverages or cases for which the external review was sought, as provided in the format required by the superintendent;

(6) the number of external reviews that were terminated as a result of a reconsideration by the health care insurer of its adverse determination or final adverse determination after the receipt of additional information from the grievant; and

(7) any other information the superintendent may request or require.

H. An IRO must maintain written records required pursuant to this rule for at least five years.

[13.10.17.23 NMAC - N, 1/1/16]

13.10.17.24 EXTERNAL REVIEW OF ADVERSE DETERMINATIONS BY AN IRO:

A. Right to external review. Every grievant who is dissatisfied with the results of an internal or medical panel review of an adverse determination by a health care insurer and where applicable, with the results of a grievance review by an entity that purchases or is authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act, may request external review by an IRO appointed by the superintendent from the list of approved IROs, at no cost to the grievant, and on an impartial, rotational basis:

(1) there shall be no minimum dollar amount of a claim before a grievant may exercise this right to external review;

(2) the health care insurer must pay for the external review of the adverse determination by the IRO; and

(3) the health care insurer must include a description of the external review process in or attached to the summary plan description, policy certificate, membership booklet, outline of coverage or other evidence of coverage it provides to participants, beneficiaries or enrollees that provides a statement that informs the grievant the grievant's right to file a request for an external review of an adverse determination or final adverse determination with the superintendent; the statement should explain that an external review is available when the adverse determination or final adverse determination involves an issue of medical necessity, appropriateness, health care setting, level of care, or effectiveness; the statement shall include:

(a) the following telephone number: (505) 827-3928; and

(b) the following address of the superintendent: superintendent of insurance, attn: managed health care bureau - external review request, P.O. Box 1689, 1120 Paseo de Peralta, Santa Fe, NM 87504-1689; or e-mailed to mhcb.grievance@state.nm.us subject: external review request;

(c) faxed to the superintendent of insurance, attn: managed health care bureau - external review request at (505) 827-6341; or

(d) completed on-line with an OSI complaint form available at http://www.osi.state.nm.us/.

B. Exhaustion of internal appeals process. The superintendent may require the grievant to exhaust any grievance procedures adopted by the health care insurer or the entity that purchases health care benefits pursuant to the New Mexico Health Care Purchasing Act, as appropriate, before accepting a grievance for external review.

C. Deemed exhaustion. If exhaustion of internal appeals is required prior to external review, exhaustion must be unnecessary, and the internal appeals process will be deemed exhausted if:

(1) the health care insurer waives the exhaustion requirement;

(2) the health care insurer is considered to have exhausted the internal review process by failing to comply with the requirements of the internal appeals process; or

(3) the grievant simultaneously requests an expedited internal review and an expedited external review by an IRO.

D. Exception to exhaustion requirement.

(1) Notwithstanding Subsection B of 13.10.17.24 NMAC, the internal claims and appeals process will not be deemed exhausted based on violations by the health care insurer that are *de minimus* and do not cause, and are not likely to cause, prejudice or harm to the grievant, so long as the health care insurer demonstrates that the violation was for good cause or due to matters beyond the control of the health care insurer, and that the violation occurred in the context of an on-going, good faith exchange of information between the health care insurer and the grievant. This exception is not available if the violation is part of a pattern or practice of violations by the health care insurer as determined by the superintendent.

(2) The grievant may request a written explanation of the violation from the health care insurer, and the health care insurer must provide such explanation with 10 days, including a specific description of its bases, if any, for asserting that the violation should not cause the internal claims and appeals process to be deemed exhausted. If an external reviewer or a court rejects the grievant's request for immediate review under Subsection B of 13.10.17.24 NMAC on the basis that the health care insurer met the standards for the exception under Paragraph (1) of Subsection D of 13.10.17.24 NMAC, the grievant has the right to re-submit and pursue the internal appeal of the claim. In such a case, within a reasonable time after the external reviewer or court rejects the claim for immediate review (not to exceed 10 days), the health care insurer shall provide the grievant with notice of the opportunity to re-submit and pursue the internal appeal of the claim. Time periods for re-filing the claim shall begin to run upon grievant's receipt of such notice.

E. Compliance. An adverse benefit determination procedure shall be compliant with this rule and with the requirements for adverse benefit determinations set forth in 29 CFR 2560.503-1 and 45 CFR 147.136.

[13.10.17.24 NMAC - Rp, 13.10.17.23 NMAC, 1/1/16]

13.10.17.25 FILING REQUIREMENTS FOR EXTERNAL REVIEW OF ADVERSE DETERMINATIONS BY AN IRO:

A. Deadline for filing request.

(1) When required by the medical exigencies of the case. If required by the medical exigencies of the case, a grievant or provider may telephonically request an expedited review by calling the MHCB at (505) 827-3928 or 1-877-673-1732.

(2) In all other cases. To initiate an external review by an IRO, a grievant must file a written request for external review with the superintendent within 120 calendar days from receipt of the written notice of internal review decision unless extended by the superintendent for good cause shown. The cost of the external review will be borne by the health care insurer or health care plan. The request shall be:

(a) mailed to the superintendent of insurance, attn: managed health care bureau - external review request, office of superintendent of insurance, P.O. Box 1689, 1120 Paseo de Peralta, Santa Fe, NM 87504-1689; or

(b) e-mailed to mhcb.grievance@state.nm.us, subject: external review request; or

(c) faxed to the superintendent of insurance, attn: managed health care bureau - external review request at (505) 827-6341; or

(d) completed on-line with an OSI complaint form available at http://www.osi.state.nm.us./.

B. Documents required to be filed by the grievant. The grievant shall file the request for external review on the forms provided to the grievant by the health care insurer or entity that purchases health care benefits pursuant to the New Mexico Health Care Purchasing Act pursuant to Paragraph (5) of Subsection B of 13.10.17.22 NMAC, and shall also file:

(1) a copy of the notice of internal review decision;

(2) a fully executed release form authorizing the superintendent to obtain any necessary medical records from the health care insurer or any other relevant provider; and

(3) if the grievance involves an experimental or investigational treatment adverse determination, the provider's certification and recommendation as described in Subsection B of 13.10.17.29 NMAC.

C. Other filings. Within five days, the grievant may also file any other supporting documents or information the grievant wishes to submit to the IRO for review. The IRO must send any additional information from grievant to the health care insurer within one business day.

[13.10.17.25 NMAC - Rp, 13.10.17.24 NMAC, 1/1/16]

13.10.17.26 ACKNOWLEDGEMENT BY THE SUPERINTENDENT OF REQUEST FOR EXTERNAL REVIEW OF ADVERSE DETERMINATION BY AN IRO AND COPY TO HEALTH CARE INSURER:

A. Upon receipt of a request for external review, the superintendent shall immediately:

(1) assign, on a random basis, an IRO from the list of approved IROs based on the nature of the health care service that is the subject of the review;

(2) send the grievant a notice that the request has been received and an IRO assigned, and inform the claimant that the health care insurer will provide all documents listed in Paragraphs (1) thru (5) of Subsection B below, and the grievant may submit additional information to the IRO within five working days of the receipt of the notice; and

(3) send the health care insurer a copy of the request for external review and IRO assigned.

B. Upon receipt of the copy of the request for external review, the health care insurer shall, within five working days for standard review or the time limit set by the superintendent for expedited review, provide to the IRO and the grievant by any available expeditious method, the documents and any information considered in making the adverse benefit determination including:

(1) the summary of benefits;

(2) the complete health benefits plan, which may be in the form of a member handbook/ evidence of coverage;

(3) all pertinent medical records, internal review decisions and rationales, consulting physician reports, and documents and information submitted by the grievant and health care insurer;

(4) uniform standards relevant to the grievant's medical condition that were used by the internal panel in reviewing the adverse determination; and

(5) any other documents, records, and information relevant to the adverse determination and the internal review decision or intended to be relied on at the external reviewing hearing.

C. Within one business day, the IRO shall forward to the health care insurer, any copies of any documents and information submitted by the grievant.

D. If the health care insurer fails to comply with the requirements of Subsection B of 13.10.17.26 NMAC, the superintendent may reverse the adverse determination.

[13.10.17.26 NMAC - Rp, 13.10.17.25 NMAC, 1/1/16]

13.10.17.27 TIME FRAMES FOR EXTERNAL REVIEW OF ADVERSE DETERMINATIONS BY AN IRO: The IRO shall conduct either a standard or expedited external review of the adverse determination, as required by the medical exigencies of the case.

A. Expedited review.

(1) the IRO shall complete an external review as required by the medical exigencies of the case as soon as possible, but in no case later than 72 hours of receipt of the external review appointment by the superintendent, whenever:

(a) the life or health of a grievant would be jeopardized;

(b) the grievant's ability to regain maximum function would be jeopardized; or

(c) in the opinion of the grievant's attending provider, would subject the grievant to severe pain that cannot be adequately managed without the care or treatment that is the subject of the adverse benefit determination.

(2) upon receipt of the superintendent's notice that an IRO has been appointed, the health care insurer shall within one working day provide to the assigned IRO, all documents and information considered in making the adverse benefit determination as described in Subsection B of 13.10.17.26 NMAC;

(3) within one day from the date of the notice from the superintendent that the IRO has been appointed, the grievant may submit additional documentation or information to the IRO and the IRO shall forward copies of the documentation or

information received from the grievant to the health care insurer within one business day from receipt of any documentation or information from the grievant.

B. Standard review. The IRO shall conduct a standard review in all cases not requiring expedited review. The IRO shall complete the initial review within 10 working days from receipt of the appointment for external review, and from receipt of the information required of the grievant and health care insurer in Subsection B of 13.10.17.25 and Subsection B of 13.10.17.26 NMAC respectively.

C. Any request for independent external review sent to the health care provider instead of to the superintendent, shall be forwarded to the superintendent by the health insurance provider within one business day of receipt.

[13.10.17.27 NMAC - Rp, 13.10.17.26 NMAC, 1/1/16]

13.10.17.28 CRITERIA FOR EXTERNAL REVIEW OF ADVERSE DETERMINATION BY AN IRO: Upon receipt of the request for external review, OSI staff shall review the request to determine whether:

A. The grievant has provided the documents required by Subsection B of 13.10.17.25 NMAC.

B. The individual is or was a grievant of the health care insurer at the time the health care service was requested or provided.

C. The grievant has exhausted the health care insurer's internal review procedure and any applicable grievance review procedure of an entity that purchases or is authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act.

D. The health care service that is the subject of the grievance reasonably appears to be a covered benefit under the health benefits plan.

[13.10.17.28 NMAC - Rp, 13.10.17.27 NMAC, 1/1/16]

13.10.17.29 ADDITIONAL CRITERIA FOR EXTERNAL REVIEW OF EXPERIMENTAL OR INVESTIGATIONAL TREATMENT ADVERSE DETERMINATIONS BY AN IRO: If the request is for external review of an experimental or investigational treatment adverse determination, the IRO shall also consider whether:

A. Coverage: The recommended or requested health care service:

(1) reasonably appears to be a covered benefit under the grievant's health benefit plan except for the health care insurer's determination that the health care service is experimental or investigational for a particular medical condition; and

(2) is not explicitly listed as an excluded benefit under the grievant's health benefit plan.

B. Medical necessity: The grievant's treating provider has certified that:

(1) standard health care services have not been effective in improving the grievant's condition; or

(2) standard health care services are not medically appropriate for the grievant; or

(3) there is no standard health care service covered by the health care insurer that is as beneficial or more beneficial than the health care service:

(a) recommended by the grievant's treating provider that the treating provider certifies in writing is likely to be more beneficial to the grievant, in the treating provider's opinion, than standard health care services; or

(b) requested by the grievant regarding which the grievant's treating provider, who is a licensed, board certified, or board eligible physician qualified to practice in the area of medicine appropriate to treat the grievant's condition, has certified in writing that scientifically valid studies using accepted protocols demonstrate that the health care service requested by the grievant is likely to be more beneficial to the grievant than available standard health care services.

[13.10.17.29 NMAC - Rp, 13.10.17.28 NMAC, 1/1/16]

13.10.17.30 THE FINAL DECISION OF THE IRO AND GRIEVANT'S RIGHT TO HEARING AFTER FINAL IRO DECISION:

A. The decision of the IRO is binding upon the health care insurer as well as grievant except to the extent that New Mexico law allows grievant to appeal to the superintendent for a hearing pursuant the Patient Protection Act, Section 59A-57-1 NMSA 1978 *et seq*. This requirement that the decision is binding shall not preclude the health care insurer from making payment on the claim or otherwise providing benefits at any time, including after final external review decision that denies the claim or otherwise fails to require such payment or benefits. For this purpose, the health care insurer must provide benefits (including making payment on the claim) pursuant to the final external review decision with delay, regardless of whether the health care insurer intends to seek judicial review of the external review decision and unless or until there is a final judicial decision otherwise.

B. If grievant is dissatisfied with the denial of benefits by the IRO, grievant may request a hearing from the superintendent.

C. The superintendent will automatically grant the hearing.

D. The health care insurer will be responsible for paying for all costs associated with the hearing.

[13.10.17.30 NMAC - N, NMAC, 1/1/16]

13.10.17.31 HEARING PROCEDURES FOR EXTERNAL REVIEW OF ADVERSE DETERMINATIONS:

A. Conduct of hearing. The superintendent may designate a hearing officer who shall be an attorney licensed to practice in New Mexico. The hearing may be conducted by telephone conference call, video conferencing, or other appropriate technology at OSI's expense.

B. Co-hearing officers. The superintendent may designate two ICOs who shall be licensed health care professionals and who shall maintain independence and impartiality in the process. If the superintendent designates two ICOs, at least one of them shall practice in a specialty that would typically manage the case that is the subject of the grievance.

C. Powers. The superintendent or attorney hearing officer shall regulate the proceedings and perform all acts and take all measures necessary or proper for the efficient conduct of the hearing. The superintendent or attorney hearing officer may:

(1) require the production of additional records, documents and writings relevant to the subject of the grievance;

(2) exclude any irrelevant, immaterial or unduly repetitious evidence; and

(3) if the grievant or health care insurer fails to appear, proceed with the hearing or adjourn the proceedings to a future date, giving notice of the adjournment to the

absent party.

D. Staff participation. Staff may attend the hearing, ask questions and otherwise solicit evidence from the parties, but shall not be present during deliberations among the superintendent or his designated hearing officer, and any ICOs.

E. Testimony. Testimony at the hearing shall be taken under oath. The superintendent or hearing officers may call and examine the grievant, the health care insurer and other witnesses.

F. Hearing recorded. The hearing shall be stenographically recorded at OSI's expense.

G. Rights of parties. Both the grievant and the health care insurer have the right to:

(1) attend the hearing; the health care insurer shall designate a person to attend on its behalf, and the grievant may designate a person to attend on grievant's behalf if the grievant chooses not to attend personally;

(2) be assisted or represented by an attorney or other person;

(3) call, examine and cross-examine witnesses; and

(4) submit to the ICO, prior to the scheduled hearing, in writing, additional information that the ICO must consider when conducting the internal review hearing, and require that the information be submitted to the health care insurer and the MHCB staff.

H. Stipulation. The grievant and the health care insurer shall each stipulate on the record that the hearing officers shall be released from civil liability for all communications, findings, opinions and conclusions made in the course and scope of the external review.

I. Self-insured plan representative. If a grievant is insured pursuant to the Health Care Purchasing Act, and the grievant requests a hearing, if a representative from the self-insured plan is not present at any pre-hearing conference or at the hearing required by OSI, the health care insurer will be deemed to speak on behalf of the self-insured plan.

J. Decision. A decision shall be issued by the co-hearing officers within 20 working days from the date of the conclusion of the hearing.

[13.10.17.31 NMAC - Rp, 13.10.17.30 NMAC, 1/1/16]

13.10.17.32 INDEPENDENT CO-HEARING OFFICERS (ICOS):

A. Identification of ICOs. The superintendent shall provide for maintenance of a list of licensed professionals qualified to service as ICOs. The superintendent shall select appropriate professional societies, organizations or associations to identify licensed health care and other professionals who are willing to serve as ICOs in external reviews who maintain independence and impartiality of the process.

B. Disclosure of interests. Prior to accepting designation as an ICO, each potential ICO shall provide to the superintendent a list identifying all health care insurers and providers with whom the potential ICO maintains any health care related or other professional business arrangements and briefly describe the nature of each arrangement. Each potential ICO shall disclose to the superintendent any other potential conflict of interest that may arise in hearing a particular case, including any personal or professional relationship to the grievant, or to the health care insurer, or providers involved in a particular external review.

C. Compensation of hearing officers and ICOs.

(1) Compensation schedule. The superintendent shall consult with appropriate professional societies, organizations or associations in New Mexico to determine reasonable compensation for health care and other professionals who are appointed as ICOs for external grievance reviews and shall annually publish a schedule of ICO compensation in a bulletin.

(2) Statement of ICO compensation. Upon completion of an external review, the attorney and co-hearing officers shall each complete a statement of ICO compensation form prescribed by the superintendent, detailing the amount of time spent participating in the external review, and submit it to the superintendent for approval. The superintendent shall send the approved statement of ICO compensation to the grievant's health care insurer.

(3) Direct payment to ICOs. Within 30 days of receipt of the statement of ICO compensation, the grievant's health care insurer shall remit the approved compensation directly to the ICO.

(4) No compensation with early settlement. If the parties provide written notice of a settlement up to three working days prior to the date set for external review hearing, compensation will be unavailable to the hearing officers or ICOs.

D. The hearing officer and ICOs must maintain written records for a period of three years and make them available upon request to the state.

[13.10.17.32 NMAC - Rp, 13.10.17.31 NMAC, 1/1/16]

13.10.17.33 SUPERINTENDENT'S DECISION ON EXTERNAL REVIEW OF ADVERSE DETERMINATION:

A. Deliberation. At the close of the hearing, the hearing officers shall review and consider the entire record and prepared findings of fact, conclusions of law and a recommended decision. Any hearing officer may submit a supplementary or dissenting opinion to the recommended decision.

B. Order. Within the time period allotted for external review, the superintendent shall issue an appropriate order. If the order requires action on the part of the health care insurer, the order shall specify the time frame for compliance.

(1) The order shall be binding on the grievant and health care insurer and shall state that the grievant and the health care insurer have the right to judicial review pursuant to Section 59A-4-20 NMSA 1978 and that state and federal law may provide other remedies.

(2) Neither the grievant nor the health care insurer may file a subsequent request for external review of the same adverse determination that was the subject of the superintendent's order.

[13.10.17.33 NMAC - Rp, 13.10.17.32 NMAC, 1/1/16]

13.10.17.34 INTERNAL REVIEW OF ADMINISTRATIVE GRIEVANCES:

A. Request for internal review of grievance. Any person dissatisfied with a decision, action or inaction of a health care insurer, including termination of coverage, has the right to request internal review of an administrative grievance orally or in writing.

B. Acknowledgement of grievance. Within three working days after receipt of an administrative grievance, the health care insurer shall send the grievant a written acknowledgment that it has received

the administrative grievance. The acknowledgment shall contain the name, address and direct telephone number of an individual representative of the health care insurer who may be contacted regarding the administrative grievance.

C. Initial review. The health care insurer shall promptly review the administrative grievance. The initial review shall:

(1) be conducted by a health care insurer representative authorized to take corrective action on the administrative grievance; and

(2) allow the grievant to present any information pertinent to the administrative grievance.

[13.10.17.34 NMAC - Rp, 13.10.17.33 NMAC, 1/1/16]

13.10.17.35 INITIAL INTERNAL REVIEW DECISION ON ADMINISTRATIVE GRIEVANCE: The health care insurer shall mail a written decision to the grievant within 15 working days of receipt of the administrative grievance. The 15 working day period may be extended when there is a delay in obtaining documents or records necessary for the review of the administrative grievance, provided that the health care insurer notifies the grievant in writing of the need and reasons for the extension and the expected date of resolution, or by mutual written agreement of the health care insurer and the grievant. The written decision shall contain:

A. the name, title and qualifications of the person conducting the initial review;

B. a statement of the reviewer's understanding of the nature of the administrative grievance and all pertinent facts;

C. a clear and complete explanation of the rationale for the reviewer's decision;

D. identification of the health benefits plan provisions relied upon in reaching the decision;

E. reference to evidence or documentation considered by the reviewer in making the decision;

F. a statement that the initial decision will be binding unless the grievant submits a request for reconsideration within 20 working days of receipt of the initial decision; and

G. a description of the procedures and deadlines for requesting reconsideration of the initial decision; including any necessary forms.

[13.10.17.35 NMAC - Rp, 13.10.17.34 NMAC, 1/1/16]

13.10.17.36 RECONSIDERATION OF INTERNAL REVIEW OF ADMINISTRATIVE GRIEVANCE:

A. Committee. Upon receipt of a request for reconsideration, the health care insurer shall appoint a reconsideration committee consisting of one or more employees of the health care insurer who have not participated in the initial decision. The health care insurer may include one or more employees other than the grievant to participate on the reconsideration committee.

B. Hearing. The reconsideration committee shall schedule and hold a hearing within 15 working days after receipt of a request for reconsideration. The hearing shall be held during regular business hours at a location reasonably accessible to the grievant, and the health care insurer shall offer the grievant the opportunity to communicate with the committee, at the health care insurer's expense, by conference call, video conferencing or other appropriate technology. The health care insurer shall not unreasonably deny a request for postponement of the hearing made by a grievant.

C. Notice. The health care insurer shall notify the grievant in writing of the hearing date, time and place at least 10 working days in advance. The notice shall advise the grievant of the rights specified in Subsection E of 13.10.17.36 NMAC. If the health care insurer will have an attorney represent its interests, the notice shall advise the grievant that the health care insurer will be represented by an attorney and that the grievant may wish to obtain legal representation.

D. Information to grievant. No fewer than three working days prior to the hearing, the health care insurer shall provide to the grievant all documents and information that the committee will rely on in reviewing the case.

E. Rights of grievant. A grievant has the right to:

(1) attend the reconsideration committee hearing;

(2) present their case to the reconsideration committee;

(3) submit supporting material both before and at the reconsideration committee hearing;

(4) ask questions of any representative of the health care insurer; and

(5) be assisted or represented by a person of their choice.

[13.10.17.36 NMAC - Rp, 13.10.17.35 NMAC, 1/1/16]

13.10.17.37 DECISION OF RECONSIDERATION COMMITTEE: The health care insurer shall mail a written decision to the grievant within seven working days after the reconsideration committee hearing. The written decision shall include:

A. the names, titles and qualifications of the persons on the reconsideration committee;

B. the reconsideration committee's statement of the issues involved in the administrative grievance;

C. a clear and complete explanation of the rationale for the reconsideration committee's decision;

D. the health benefits plan provision relied on in reaching the decision;

E. references to the evidence or documentation relied on in reaching the decision;

F. a statement that the initial decision will be binding unless the grievant submits a request for external review by the superintendent within 20 working days of receipt of the reconsideration decision; and

G. a description of the procedures and deadlines for requesting external review by the superintendent, including any necessary forms; the notice shall contain the toll-free telephone number and address of the superintendent's office.

[13.10.17.37 NMAC - Rp, 13.10.17.36 NMAC, 1/1/16]

13.10.17.38 EXTERNAL REVIEW OF ADMINISTRATIVE GRIEVANCES:

A. Right to external review. Every grievant who is dissatisfied with the results of the internal review of an administrative decision shall have the right to request external review by the superintendent.

B. Exhaustion of remedies. The superintendent may require the grievant to exhaust any grievance procedures adopted by the health care insurer or the entity that purchases health care benefits pursuant to the New Mexico Health Care Purchasing Act, as appropriate, before accepting a grievance for external review.

C. Deemed exhaustion. If exhaustion of internal appeals is required prior to external review, exhaustion must be unnecessary and the internal appeals process will be deemed exhausted if:

(1) the health care insurer waives the exhaustion

requirement;

(2) the health care insurer is considered to have exhausted the internal appeals process by failing to comply with the requirements of the internal appeals process; or

(3) the grievant simultaneously requests an expedited internal appeals, and an expedited internal appeals, and an expedited external review.

D. Exception to exhaustion requirement.

(1) Notwithstanding Subsection B of 13.10.17.38 NMAC, the internal claims and appeals process will not be deemed exhausted based on violations by the health care insurer that are *de minimus* and do not cause, and are not likely to cause prejudice or harm to the grievant, so long as the health care insurer demonstrates that the violation was for good cause or due to matters beyond the control of the health care insurer, and that the violation occurred in the context of an on-going, good faith exchange of information between the plan and the grievant. This exception is not available if the violation is part of a pattern or practice of violations by the health care insurer.

(2) The grievant may request a written explanation of the violation from the health care insurer, and the health care insurer must provide such explanation within 10 days, including a specific description of its bases, if any, for asserting that the violation should not cause the internal claims and appeals process to be deemed exhausted. If an external reviewer or a court rejects the grievant's request for immediate review under Subsection B of 13.10.17.38 NMAC on the basis that the health care insurer met the standards for the exception under Paragraph (1) of Subsection D of 13.10.17.38 NMAC, the grievant has the right to re-submit and pursue the internal appeal of the claim. In such a case, within a reasonable time after the external reviewer or court rejects the claim for immediate review (not to exceed 10 days), the health care insurer shall provide the grievant with notice of the opportunity to re-submit and pursue the internal appeal of the claim. Time periods for re-filing the claim shall begin to run upon grievant's receipt of such notice.

[13.10.17.38 NMAC - Rp, 13.10.17.37 NMAC, 1/1/16]

13.10.17.39 FILING REQUIREMENTS FOR EXTERNAL REVIEW OF ADMINISTRATIVE GRIEVANCE:

A. Deadline for filing request. To initiate an external review, a grievant must file a written request for external review with the superintendent within 20 working days from receipt of the written notice of reconsideration decision. The request shall either be:

(1) mailed to the superintendent of insurance, attn: managed health care bureau - external review request, office of superintendent of insurance, P.O. Box 1689, 1120 Paseo de Peralta, Santa Fe, NM 87504-1689; or

(2) e-mailed to mhcb.grievance@state.nm.us, subject: external review request; or

(3) faxed to the superintendent of insurance, attn: managed health care bureau - external review request at (505) 827-6341; or

(4) completed on-line using an OSI complaint form available at http://www.osi.state.nm.us/.

B. Documents required to be filed by the grievant. The grievant shall file the request for external review on the forms provided to the grievant by the health care insurer pursuant to Subsection G of 13.10.17.37 NMAC.

C. Other filings. The grievant may also file any other supporting documents or information the grievant wishes to submit to the superintendent for review.

D. Extending time frames for external review. If a grievant wishes to supply supporting documents or information subsequent to the filing of the request for external review, the time frames for external review shall be extended up to 90 days from the receipt of the complaint form, or until the grievant submits all supporting documents, whichever occurs first.

[13.10.17.39 NMAC - Rp, 13.10.17.38 NMAC, 1/1/16]

13.10.17.40 ACKNOWLEDGEMENT OF REQUEST FOR EXTERNAL REVIEW OF ADMINISTRATIVE GRIEVANCE AND COPY TO HEALTH CARE INSURER:

A. Upon receipt of a request for external review, the superintendent shall immediately send the:

(1) grievant an acknowledgment that the request has been received; and

(2) health care insurer a copy of the request for external review.

B. Upon receipt of the copy of the request for external review, the health care insurer shall provide to the superintendent and the grievant by any available expeditious method within five working days all necessary documents and information considered in arriving at the administrative grievance decision.

[13.10.17.40 NMAC - Rp, 13.10.17.39 NMAC, 1/1/16]

13.10.17.41 REVIEW OF ADMINISTRATIVE GRIEVANCE BY SUPERINTENDENT: The superintendent shall review the documents submitted by the health care insurer and the grievant, and may conduct an investigation, or inquiry, or consult with the grievant, as appropriate. The superintendent shall issue a written decision on the administrative grievance within 20 working days of receipt of the complete request for external review in compliance with 13.10.17.40 NMAC.

[13.10.17.41 NMAC - Rp, 13.10.17.40 NMAC, 1/1/16]

HISTORY OF 13.10.17 NMAC:

NMAC history:

13.10.17 NMAC, Grievance Procedures, effective 7/1/2000.

13.10.17 NMAC, Grievance Procedures, effective 3/31/2004

13.10.17 NMAC, Grievance Procedures, effective 2/1/2008.

History of repealed material:

13 NMAC 10.17, Grievance Procedure for Enrollees Covered by Risk Management Division, filed 11/02/98 - Repealed effective 7/1/2000.

13.10.17 NMAC, Grievance Procedures, filed 6/14/2000 - Repealed effective 3/31/2004.

13.10.17 NMAC, Grievance Procedures, filed 3/12/2004 - Repealed effective 1/1/2016.

BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS

This is an amendment to 16.39.2 NMAC, Section 8, effective 1/1/2016.

16.39.2.8 CONTINUING PROFESSIONAL DEVELOPMENT - REQUIREMENTS: The purpose of the continuing professional development requirement is to enhance the continuing level of professional development of professional engineers and professional

surveyors.

A. Introduction - Every licensee shall meet the continuing professional development requirements of these regulations for professional development as a condition for license renewal.

B. Failure to meet requirements - Submission of professional development hours (PDHs) shall be made concurrently with license renewal failure to meet the PDH requirements will result in the rejection of renewal.

C. [Reserved]

D. Requirements - each licensee is required to obtain thirty (30) professional development hours (PDH) units during a biennium at least two (2) of which shall be in ethics. A maximum of ten (10) PDH units may be earned in self-directed study. If a licensee exceeds the biennial requirement in any biennial cycle, a maximum of fifteen (15) PDH units may be carried forward into the subsequent biennium in accordance with what has been previously reported to the board. PDH units may be earned from participation in qualifying activities as follows:

(1) successful completion of college courses relevant to engineering and surveying;

(2) successful completion of continuing education courses;

(3) successful completion of short courses/tutorials, [~~and~~] webinar or distance -education courses offered for self-study, independent study or group study through synchronous or asynchronous delivery method such as live, correspondence, archival or internet based instruction;

(4) presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions or conferences;

(5) teaching or instructing in Paragraphs (1) through (4) of Subsection D of 16.39.2.8 NMAC;

(6) authoring published papers, articles, or books;

(7) active participation in professional or technical societies and their committees;

(8) patents;

(9) technical reviews, including articles from periodicals, books, video/audio cassettes, tutorials and other sources, which contribute to the technical or professional education or competency of the licensee;

(10) participation in civic or community activities, relevant to the engineering and surveying professions, as a speaker, instructor, presenter or panelist;

(11) successful completion of ethics training, up to four (4) hours per biennial renewal.

E. Units - the conversion of other units of credit to PDH units is as follows:

(1) one (1) college or unit semester 45 PDH;

(2) one (1) college or unit quarter hour 30 PDH;

(3) one (1) continuing education unit 10 PDH;

(4) one (1) hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences 1 PDH;

(5) for teaching, apply multiple of two (2) (teaching credit is valid for teaching a course or seminar for the first time only; teaching credit does not apply to full-time faculty);

(6) each published paper, article, or book in the licensee's area of professional practice 10 PDH;

(7) active participation in professional and technical societies (each organization) 2 PDH/yr;

(8) each patent 10 PDH;

(9) one (1) hour of literature review 1 PDH (max 6 PDH/biennium);

(10) one (1) hour of each civic or community activity 1 PDH (max 4 PDH/biennium);

(11) one (1) hour of ethics training 1 PDH(max 4 PDH/biennium).

F. Determination of credit - the board has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit:

(1) credit for college or community college approved courses will be based upon course credit established by the college;

(2) credit for qualifying seminars, workshops, professional conventions, and courses/activities may be recommended by the professional societies;

(3) additional criteria for credit determination shall be included in the board policy.

G. Record keeping - each licensee is responsible for maintaining records that support credits claimed is the responsibility of the licensee. Records required include but are not limited to: 1) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; 2) attendance verification records in the form of completion certificates, paid receipts or other documents supporting evidence of attendance; 3) proof of membership in a technical organization issuing a publication as a part of its membership fee; 4) a log indicating the medium used for a technical review, the subject of the review, the author or sponsoring organization, the date the review was conducted, a brief written summary of the contents of the reviewed material and the time spent on the review; and 5) the organization sponsoring a civic or community activity, the date and location of the activity, the subject of the activity and the licensee's involvement in the activity. These records must be maintained for a period of three (3) years and copies may be requested by the board for audit verification purposes.

H. Exemptions - a licensee may be exempt from the professional development educational requirements for one (1) of the following reasons:

(1) new licensees by way of examination or comity/endorsement shall be exempt for the first year directly following the issuance of their license; PDH requirements will be prorated for any remaining portion of the licensing period beyond one (1) year from the date of initial licensure;

(2) a licensee serving on temporary active duty in the armed forces of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a calendar year may be exempt from obtaining the professional development hours required during that year; supporting documentation shall be furnished to the board;

(3) licensees experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt; supporting documentation must be furnished to the board;

(4) licensees who have been approved for "retired status" by the board shall be exempt from the professional development hours required; in the event such a person elects to return to active practice of professional

engineering or professional surveying, professional development hours must be earned before returning to active practice for the preceding biennial cycle.

I. Reinstatement - a licensee may bring a lapsed license to active status by obtaining all delinquent PDH units outstanding from the last biennium and complying with all other reinstatement requirements in the Engineering and Surveying Practice Act and the board's rules and regulations; however, if the total number required to become current exceeds thirty (30), then thirty (30) shall be the maximum number required.

J. Comity/out-of-jurisdiction resident - licensees who are residents of other jurisdictions shall meet the continuing professional development requirements of this board. These requirements may be deemed satisfied when a non-resident licensee provides evidence of having met requirements for another state engineering/surveying licensing board that are equal to or exceed the requirements of this board.

K. Dual licensees - the number of PDH units required shall remain the same for persons who hold a dual license as a professional engineer and professional surveyor; for persons who hold a dual license, half of the PDH units shall be in each profession.

L. Forms - all renewal applications will require the number of earned PDH units. The licensee must sign the renewal application, and submit with the appropriate fee.

[16.39.2.8 NMAC - Rp, 16 NMAC 39.2.8, 12/1/2001; A, 7/1/2006; A, 7/1/2015; A, 1/1/2016]

BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS

This is an amendment to 16.39.5 NMAC, Section 8, effective 1/1/2016.

16.39.5.8 APPLICATION - SURVEYOR INTERN AND PROFESSIONAL SURVEYOR:

A. Types of application - licensure as a professional surveyor or certification as a survey intern require that an applicant present his or her qualifications on forms prescribed by this board.

B. Any application, to be complete, must include acceptable replies from references, official transcript(s) provided directly from the university; and if applicable, verification(s) of prior examinations taken in other state(s).

C. Board members shall not be used as references.

D. Applications for surveying intern certification will be accepted after an applicant has passed the fundamentals of surveying exam and has graduated from a board-approved, four (4)-year surveying curriculum, or [~~an approved four (4)-year curriculum~~] if a graduate of an approved four (4)-year curriculum in a related science as defined by Subsection C of 16.39.5.7 NMAC above and augmented with four (4) years of combined office and field board approved surveying experience obtained under the direction of a licensed professional surveyor. Class time will not be counted in the four (4) years of experience, but work prior to or while attending school may be counted toward the four (4) years of required experience at the discretion of the board.

E. Applicants for the principles and practices of surveying examination having graduated with a board-approved four (4)-year surveying curriculum of four (4) years or more, or with a related-science degree, as determined by the board shall have a minimum of four (4) years of experience acceptable to the professional surveying committee at the date of application and shall have passed the fundamentals of surveying examination.

F. No applicant will be eligible to take the professional surveying examination whose application for eligibility has not been completed, reviewed and approved by the board, as set forth in 16.39.5.8 NMAC.

G. Applicants for the professional surveying license will be accepted after applicant has passed the professional surveying exam and has fulfilled the education and experience requirements. Successful passing of the professional surveying exam does not ensure licensure as a professional surveyor. To satisfy the statutory requirement for board-approved surveying experience prior to licensure, a candidate with a board-approved surveying curriculum of four (4) years or more as determined by the board shall have four (4) years of experience acceptable to the professional surveying committee [~~and~~]. This experience may be acquired before or after certification as a surveying intern. A candidate with a related science degree shall have four (4) years of surveying experience acceptable to the professional surveying committee subsequent to certification as a surveying intern. After successfully completing the professional surveying examination, an applicant, if necessary to meet the licensing requirements in the New Mexico Engineering and Surveying Practice Act, shall update the application as provided by Subsection H of 61.39.5.8 NMAC.

H. To update a professional survey (PS) application file in relation to experience, the applicant must complete an application update form and provide references acceptable to the professional surveying committee to verify each additional experience record.

I. Applications for licensure or certification by examination, comity or endorsement which have been approved by the professional surveying committee shall remain valid for three (3) years from the date of approval.

J. An applicant with foreign credentials requesting licensure by examination or endorsement shall provide to the professional surveying committee's satisfaction, evidence that the applicant's qualifications are equal to or exceed the qualifications for licensure in effect in New Mexico at the time of application.

K. All applicants for professional surveyor license shall show proficiency in the English language and shall have a minimum of four (4) years of experience if a graduate of a board approved, four (4) year surveying curriculum or eight (8) years if a graduate of a board approved related science curriculum, working in the United States under the direction of a licensed professional surveyor who can attest to the applicant's ability and knowledge as a competent surveyor.

[16.39.5.8 NMAC - Rp, 16 NMAC 39.5.8, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 1/1/2016]

COMMISSION OF PUBLIC RECORDS

The State Commission of Public Records Administrator approved, at her 9/22/2015 hearing, to repeal rule 1.13.10 NMAC, Records Custody, Access, Storage and Disposition (filed 6/15/2005) and replace it with 1.13.10 NMAC, Records Storage and Access, effective 11/30/2015.

The State Commission of Public Records approved, at its 11/17/2015 hearing, to repeal its rule 1.13.30 NMAC, Destruction of Public Records and Non-Records (filed

5/10/2006) and replace it with 1.13.30 NMAC, Disposition of Public Records and Non-Records, effective 11/30/2015.

The State Commission of Public Records approved, at its 11/17/2015 hearing, to repeal rules in Title 1, Chapters 15 & 19 and replace them with 1.21.3 NMAC, Local Government Records Management Guidance, effective 11/30/2015.

1.15.3 NMAC, GRRDS, General Administrative Records (For Use by Local Government and Educational Institutions), filed 9/1/2000
1.15.5 NMAC, GRRDS, General Financial Schedule (Interpretive), filed 9/1/2000
1.15.7 NMAC, GRRDS, General Personnel Records (Interpretive), filed 9/1/2000

1.19.2 NMAC, LGRRDS, Office of the County Assessor, filed 3/24/2006
1.19.3 NMAC, LGRRDS, Office of the County Clerk, filed 8/25/2006
1.19.4 NMAC, LGRRDS, Board of County Commissioners, County Managers, filed 12/7/2001
1.19.5 NMAC, LGRRDS, Office of the County Sheriff, filed 3/24/2006
1.19.6 NMAC, LGRRDS, Office of the County Treasurer, filed 6/23/2006
1.19.7 NMAC, LGRRDS, Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA), filed 12/7/2001
1.19.8 NMAC, LGRRDS, New Mexico Municipalities, filed 8/29/2001
1.19.9 NMAC, LGRRDS, New Mexico Municipal Courts, filed 3/5/2003
1.19.10 NMAC, LGRRDS, New Mexico Middle Rio Grande Conservancy District, filed 3/12/2002
1.19.11 NMAC, LGRRDS, Soil and Water Conservation Districts and Watershed Districts, filed 5/28/2004

COMMISSION OF PUBLIC RECORDS

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 13 PUBLIC RECORDS
PART 10 RECORDS STORAGE AND ACCESS

1.13.10.1 ISSUING AGENCY: State Records Administrator.
[1.13.10.1 NMAC - Rp, 1.13.10.1 NMAC, 11/30/2015]

1.13.10.2 SCOPE: All agencies that utilize the records center services and state archives.
[1.13.10.2 NMAC - Rp, 1.13.10.2 NMAC, 11/30/2015]

1.13.10.3 STATUTORY AUTHORITY: Public Records Act, Section 14-3-6 NMSA 1978.
[1.13.10.3 NMAC - Rp, 1.13.10.3 NMAC, 11/30/2015]

1.13.10.4 DURATION: Permanent.
[1.13.10.4 NMAC - Rp, 1.13.10.4 NMAC, 11/30/2015]

1.13.10.5 EFFECTIVE DATE: November 30, 2015, unless a later date is cited at the end of a section.
[1.13.10.5 NMAC - Rp, 1.13.10.5 NMAC, 11/30/2015]

1.13.10.6 OBJECTIVE: To establish requirements for the custody, access, storage and disposition of records stored at the state records center by agencies that utilize the records center services.
[1.13.10.6 NMAC - Rp, 1.13.10.6 NMAC, 11/30/2015]

1.13.10.7 DEFINITIONS:

A. "Chief records officer" means a person designated by an agency's records custodian to administrate the agency's records management program, refer to 1.13.12.9 NMAC.

B. "Custodial agency" means the agency responsible for the creation, maintenance, safekeeping and preservation of public records, regardless of physical location.

C. "Custody" means the guardianship of records, archives and manuscripts, which may include both physical possession (protective responsibility) and legal title (legal responsibility).

D. "Destruction" means the disposal of records of no further operational, legal, fiscal, or historical value by shredding, burial, pulping, electronic overwrite or some other process, resulting in the obliteration of information contained on the record.

E. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

F. "Functional records retention and disposition schedule" means a rule adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing the function of records, establishing a timetable for their life cycle and providing authorization for their disposition.

G. "Inactive record" means a record where the retention trigger event has occurred and the record is closed.

H. "Master microfilm" means the original microform produced from which duplicates or intermediates can be obtained.

I. "Microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records provided by information system technology pursuant to rules adopted by the commission.

J. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, transitory records, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency, extra copies of correspondence, preliminary drafts, blank forms, transmittal letters or forms that do not add information, sample letters and informational files.

K. "Pending litigation" means threatened, pending or active proceedings in a court of law whose activity is in progress but not yet completed.

L. "Pick-up only personnel" means personnel authorized by a records custodian, chief records officer or record liaison officer to only pick-up records from the records center.

M. "Records liaison officer" means a person designated by the records custodian to interact with the state commission of public records, refer to 1.13.12.10 NMAC.

N. "Retention" means the period of time during which records shall be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

O. "Transitory" means messages which serve to convey information of temporary importance in lieu of oral communication. Transitory messages are only required for a limited time to ensure the completion of a routine action or the preparation of a

subsequent record. Transitory messages are not required to control, support or to document the operations of government.

P. "Trigger event" means the closing event of a record which begins the retention period.

[1.13.10.7 NMAC - Rp, 1.13.10.7 NMAC, 11/30/2015]

1.13.10.8 CUSTODY OF RECORDS: In accordance with the functional records retention and disposition schedule, agency records stored at the records center shall remain in the custody of the records custodian of the custodial agency until:

A. they are destroyed with written approval from the administrator; and

B. the written consent of the records custodian or designated chief records officer of the custodial agency.

[1.13.10.8 NMAC - Rp, 1.13.10.8 NMAC, 11/30/2015]

1.13.10.9 BOX REQUIREMENTS:

A. Agencies utilizing the records center shall use storage boxes 15" x 12" x 10" in size. Records with a retention of permanent must be submitted in acid-free boxes. Agencies submitting boxes for storage containing paper records shall:

(1) place only one type of record classification with disposition dates within a three year range in each box;

(2) place the records in the box vertically, in the same order in which the records were maintained and shall coincide with the records index;

(3) place letter-sized folders across the 12-inch side, facing the front of the box;

(4) place legal-sized folders across the 15-inch side, starting from left to right;

(5) leave at least one-inch of space for ease of access;

(6) place the lid on the box;

(7) place all documents (with the exception of oversize materials) in accurately labeled standard file folders; and

(8) do not place hanging file folders in the boxes.

B. The records management division has the final authority with regard to the rejection of any box shipment or portion thereof. Reasons for rejection include, but are not limited to, the following:

(1) Any box shipment that does not agree with its corresponding storage or disposition forms shall be rejected upon delivery. The custodial agency shall be required to remove the boxes from the records center immediately.

(2) Any shipment submitted for storage that is damaged or overfilled shall be rejected upon delivery. The custodial agency shall be required to remove the shipment from the records center immediately.

(3) Any box shipment submitted for storage or disposition that is deemed hazardous by the administrator shall be rejected upon delivery. The custodial agency shall be required to remove the shipment from the records center immediately. For any box rejected for contamination, the custodial agency will be required to request permission from the administrator for onsite destruction.

C. Blueprints and maps submitted for storage shall be placed in boxes designed for that purpose.

[1.13.10.9 NMAC - Rp, 1.13.10.10 NMAC, 11/30/2015]

1.13.10.10 RECORDS CENTER ACCESS AND WITHDRAWAL OF RECORDS REQUIREMENTS:

A. Access to records stored in the records center shall be authorized in writing by the records custodian, chief records officer or records liaison officer.

B. Public access to records stored at the records center is prohibited. All requests for inspection of records shall be directed to the records custodian of the custodial agency.

C. Requests for withdrawal of records stored in the records center shall be made by the records custodian, chief records officer or records liaison officer. Withdrawal of records shall be requested on a form approved by the administrator.

D. Requests for withdrawals shall be at the box level. The records center will not honor requests for withdrawal of records at the folder level.

E. Requests to withdraw between one to 10 boxes shall be processed by the records management division within three business days. Requests to withdraw 10 or more boxes shall be evaluated and processed based on the work load of the records management division.

F. Emergency withdrawal requests will be processed within one business day of receipt. Emergency requests shall be made on a form approved by the administrator and accompanied by a letter of explanation from the records custodian or chief records officer.

G. Withdrawn boxes not retrieved within five business days of request will be returned to inventory in the records center.

[1.13.10.10 NMAC - Rp, 1.13.10.11 NMAC, 11/30/2015]

1.13.10.11 STORAGE OF RECORDS WITH A FINITE RETENTION AT THE RECORDS CENTER:

A. The records management division provides storage to agencies for inactive public records. Non-record materials shall not be submitted for storage in the records center.

B. Records involved in pending litigation, an audit or investigation are not eligible for transfer to the records center.

C. Agencies shall submit storage transmittal form(s) electronically using a form approved by the administrator.

D. Each storage transmittal form shall contain records of one media type and designate one storage location.

E. Records will not be accepted for storage whose retention will be met within 36 months.

F. Barcode labels provided by the records center staff shall be affixed to the records storage boxes prior to delivery. The labels shall be placed two to three-inches below the handle side of the storage box.

G. The records custodian, the chief records officer and the records liaison officer shall be notified by the records management division when records in storage have met the legal retention period and are eligible for destruction.

H. If an agency does not respond to the authorization to destroy records by the established deadline, the administrator shall charge the custodial agency a storage fee for the storage of records that are eligible for destruction. In addition, the return of withdrawn boxes, storage and disposition services will be suspended. For information on the fee schedule, refer to 1.13.2 NMAC.

I. Records currently stored requiring a legal hold must

be identified by the custodial agency in writing on an annual basis and permanently removed from the records center if the legal hold lasts longer than five years. Agencies will be assessed a storage fee for all records with legal holds greater than five years. Records which are immediately affected by the provisions of this section shall have until July 1, 2017 to resolve the issue by: removing the records from the records center, approving the destruction if the legal hold has been lifted or paying the storage fee assessed.
[1.13.10.11 NMAC - Rp, 1.13.10.13 NMAC, 11/30/2015]

1.13.10.12 STORAGE OF PERMANENT PAPER RECORDS:

A. Records with a retention of permanent shall include a records index on a form approved by the administrator.

B. A copy of the records index form shall be placed in the storage box. An electronic copy of the records index form shall be submitted with the corresponding storage transmittal form.

C. Records with a retention of permanent are not eligible for storage in the Albuquerque records center. Such requests shall be submitted for storage in the Santa Fe records center.

D. The barcode labels shall be affixed to the records storage boxes prior to delivery to the records center. Barcode labels provided by the records center staff shall be affixed to the records storage boxes prior to delivery. The labels shall be placed two to three-inches below the handle side of the storage box.
[1.13.10.12 NMAC - Rp, 1.13.10.14 NMAC, 11/30/2015]

1.13.10.13 STORAGE OF ELECTRONIC MEDIA:

A. For storage requirements, refer to 1.13.10.11 or 1.13.10.12 NMAC.

B. An agency shall have an approved imaging plan on file with the administrator before electronic media can be stored at the records center. For imaging plan requirements, refer to 1.14.2 NMAC.
[1.13.10.13 NMAC - Rp, 1.13.10.15 NMAC, 11/30/2015]

1.13.10.14 STORAGE OF MICROFILM:

A. For storage requirements, refer to 1.13.10.11 and 1.13.10.12 NMAC.

B. An agency shall have an approved microphotography plan on file with the records management division before master microfilm can be stored. For microfilm plan requirements, refer to 1.14.2 NMAC.

C. Microfilm shall pass inspection before it is approved for storage.
[1.13.10.14 NMAC - Rp, .1.13.10.16 NMAC, 11/30/2015]

HISTORY OF 1.13.10 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
SRC Rule 93-07, Policy on Custody of Records Stored by the Records Center, filed 6/1/1993.

History of Repealed Material:
1 NMAC 3.2.10.1, Records Custody and Access, filed 6/14/1996 - Repealed effective 6/30/2005.
1.13.10 NMAC, Records Custody, Access, Storage and Disposition, filed 6/15/2005 - Repealed effective 11/30/2015.

COMMISSION OF PUBLIC RECORDS

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 13 PUBLIC RECORDS
PART 12 DESIGNATION OF RECORDS MANAGEMENT PERSONNEL

1.13.12.1 ISSUING AGENCY: State Commission of Public Records.
[1.13.12.1 NMAC - N, 11/30/2015]

1.13.12.2 SCOPE: All agencies that utilize the records center services and state archives.
[1.13.12.2 NMAC - N, 11/30/2015]

1.13.12.3 STATUTORY AUTHORITY: Public Records Act, Section 14-3-4 NMSA 1978.
[1.13.12.3 NMAC - N, 11/30/2015]

1.13.12.4 DURATION: Permanent.
[1.13.12.4 NMAC - N, 11/30/2015]

1.13.12.5 EFFECTIVE DATE: November 30, 2015, unless a later date is cited at the end of a section.
[1.13.12.5 NMAC - N, 11/30/2015]

1.13.12.6 OBJECTIVE: To establish requirements for the designation of personnel to interact with the commission of public records and the state records administrator for the access, storage and disposition of records stored at the state records center and archives.
[1.13.12.6 NMAC - N, 11/30/2015]

1.13.12.7 DEFINITIONS:

A. "Custodial agency" means the agency responsible for the creation, maintenance, safekeeping and preservation of public records, regardless of physical location.

B. "Destruction" means the disposal of records of no further operational, legal, fiscal, or historical value by shredding, burial, pulping, electronic overwrite or some other process, resulting in the obliteration of information contained on the record.

C. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

D. "Pending litigation" means threatened, pending or active proceedings in a court of law whose activity is in progress but not yet completed.

E. "State archives" means the principle location within the state records center and archives that maintains, preserves and makes available to the public the permanent and historical records of the state of New Mexico.
[1.13.12.7 NMAC - N, 11/30/2015]

1.13.12.8 RECORDS MANAGEMENT PROGRAM PERSONNEL HEIRARCHY:

A. The records custodian for each agency may designate one chief records officer to oversee the agency's records management program. The chief records officer shall be appointed each fiscal year using a form approved by the administrator. For chief records officer responsibilities, refer to 1.13.12.9 NMAC.

B. The records custodian for each agency may designate one or more records liaison officer(s) responsible for authorizing the storage and destruction of agency records. The records liaison officer shall be appointed each fiscal year using a form approved by the administrator. For record liaison officer responsibilities, refer to 1.13.12.10 NMAC.

C. A records custodian, chief records officer or records liaison officer may designate personnel to pick-up agency records from the records center. Pick-up personnel shall be appointed each fiscal year using a form approved by the

administrator. For pick-up personnel responsibilities, refer to 1.13.12.11 NMAC.

D. If a records custodian does not designate a chief records officer or record liaison officer, the records custodian shall remain responsible for all of the duties of the personnel listed above.

E. The records custodian or designee shall notify the state commission of public records concerning any status changes regarding designated records management personnel.
[1.13.12.8 NMAC - N, 11/30/2015]

1.13.12.9 CHIEF RECORDS OFFICER: If a chief records officer is designated by the records custodian, the following responsibilities are assigned.

A. The chief records officer shall be the individual with the authority to oversee the agency's records management program.

B. The chief records officer shall perform the following duties:

(1) coordinate the response to the disposition authorization (destruction and transfer to state archives);

(2) establish and maintain a centralized tracking system for the agency's storage containers (including the containers' indices, metadata and locators) and the disposition of records;

(3) disseminate information on any pending litigation, a discovery order, subpoena, government investigation or audit;

(4) ensure staff is adequately trained on proper records management practices; and

(5) develop policies and procedures pertaining to records management issues (i.e., handling confidential materials, new hire orientation, e-mail management, disposition of records when an employee leaves the agency, metadata development, etc.).

C. The chief records officer shall have the same authorities and responsibilities as a record liaison officer. The chief records officer shall have the authority to submit records for direct transfer to archives.

D. All chief records officers shall attend the required basic records management training offered by the state commission of public records before they can store, withdraw, access or request the disposition of records.

E. Chief records officers are required to attend additional training when notified by the state commission of public records of changes to records management policies, procedures or rules.
[1.13.12.9 NMAC - N, 11/30/2015]

1.13.12.10 RECORDS LIAISON OFFICER: If a record liaison officer is designated by the records custodian, the following responsibilities are assigned.

A. Records liaison officers shall be authorized to interact with the state commission of public records and the state records administrator for the purposes of storage, withdrawal, access or disposition of records.

B. All records liaison officers shall attend the required basic records management training offered by the state commission of public records before they can store, withdraw, access or request the disposition of records.

C. Records liaison officers are required to attend additional training when notified by the state commission of public records of changes to records management policies, procedures or rules.
[1.13.12.10 NMAC - N, 11/30/2015]

1.13.12.11 PICK-UP ONLY PERSONNEL: Pick-up personnel are authorized to pick-up agency records from the records center.
[1.13.12.11 NMAC - N, 11/30/2015]

1.13.12.12 DIGITAL SIGNATURE ISSUANCE AND USAGE:

A. A records custodian, designated chief records officer or designated records liaison officer may request a digital signature. This signature may be used exclusively for the purpose of submitting approved designation and destruction forms to the state commission of public records.

B. To request a digital signature, records management personnel shall submit a digital signature request each fiscal year using a form approved by the administrator. The original signed form must be:

(1) submitted in person to the agency analysis bureau by the records custodian, chief records officer or records liaison officer and accompanied by a government issued form of photo identification; or

(2) submitted to the agency analysis bureau by mail and include the notarized signature of the records custodian, chief records officer or records liaison officer.

C. The records custodian or designee shall notify the state commission of public records concerning any status changes regarding the authority to utilize a digital signature by designated records management personnel.

D. The digital signature shall be the last function performed on an electronic form before saving and submitting the form. Forms modified after a digital signature has been affixed will be rejected.
[1.13.12.12 NMAC - N, 11/30/2015]

HISTORY OF 1.13.12 NMAC: [RESERVED]

COMMISSION OF PUBLIC RECORDS

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 13 PUBLIC RECORDS
PART 30 DISPOSITION OF PUBLIC RECORDS AND NON-RECORDS

1.13.30.1 ISSUING AGENCY: State Commission of Public Records and the State Records Administrator.
[1.13.30.1 NMAC - Rp, 1.13.30.1 NMAC, 11/30/2015]

1.13.30.2 SCOPE: All agencies that utilize the records center services.
[1.13.30.2 NMAC - Rp, 1.13.30.2 NMAC, 11/30/2015]

1.13.30.3 STATUTORY AUTHORITY: Public Records Act, Sections 14-3-4 and 14-3-6 NMSA 1978.
[1.13.30.3 NMAC - Rp, 1.13.30.3 NMAC, 11/30/2015]

1.13.30.4 DURATION: Permanent.
[1.13.30.4 NMAC - Rp, 1.13.30.4 NMAC, 11/30/2015]

1.13.30.5 EFFECTIVE DATE: November 30, 2015, unless a later date is cited at the end of a section.
[1.13.30.5 NMAC - Rp, 1.13.30.5 NMAC, 11/30/2015]

1.13.30.6 OBJECTIVE: To establish requirements for the proper and orderly destruction of public records.
[1.13.30.6 NMAC - Rp, 1.13.30.6 NMAC, 11/30/2015]

1.13.30.7 DEFINITIONS:

A. "Chief records officer" means a person designated by an

agency's records custodian to administrate the agency's records management program, refer to 1.13.12.9 NMAC.

B. "Confidential" means information provided to, created by or maintained by a government agency and that is exempt from release under state or federal laws.

C. "Custodial agency" means the agency responsible for the creation, maintenance, safekeeping and preservation of public records, regardless of physical location.

D. "Degaussing" means the process of removing magnetism from magnetically recorded tape thereby rendering the information unreadable.

E. "Destruction" means the disposal of records of no further operational, legal, fiscal or historical value by shredding, burial, pulping, electronic overwrite or some other process, resulting in the obliteration of information contained on the record.

F. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

G. "Functional records retention and disposition schedule" means a rule adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing the function of records, establishing a timetable for their life cycle and providing authorization for their disposition.

H. "Inactive record" means a record where the retention trigger event has occurred and the record is closed.

I. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, transitory records, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency, extra copies of correspondence, preliminary drafts, blank forms, transmittal letters or forms that do not add information, sample letters and informational files.

J. "On-site destruction" means destruction of records approved by the state records administrator to be destroyed at a location other than the records center.

K. "Permanent records" means records considered unique or so valuable in documenting the history or business of an organization that they are preserved in an archives.

L. "Records" means information preserved by any technique in any medium now known or later developed, that can be recognized by ordinary human sensory capabilities either directly or with the aid of technology (1.13.70 NMAC).

M. "Records liaison officer" means a person designated by the records custodian to interact with the state commission of public records, refer to 1.13.12.10 NMAC.

N. "Records management" means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

O. "Recycling" means the process that recovers the raw materials of a medium allowing for the reuse of various media. Overwriting on magnetic media is a means of recycling.

P. "Retention" means the period of time during which records shall be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

Q. "State archives" means the principle location within the state records center and archives that maintains, preserves and makes available to the public the permanent and historical records of the state of New Mexico.

R. "Transitory" means messages which serve to convey information of temporary importance in lieu of oral communication. Transitory messages are only required for a limited time to ensure the completion of a routine action or the preparation of a subsequent record. Transitory messages are not required to control, support or to document the operations of government.

S. "Trigger event" means the closing event of a record which begins the retention period.

[1.13.30.7 NMAC - Rp, 1.13.30.7 NMAC, 11/30/2015]

1.13.30.8 ASSIGNMENT OF RESPONSIBILITIES: Section 14-3-4 NMSA 1978 authorizes the commission of public records to appoint a state records administrator to carry out the purposes of the Public Records Act. The state records administrator is responsible for establishing records management programs within state government for the purpose of ensuring the efficient and economical management of public records throughout their lifecycle from their creation, utilization, maintenance, retention, preservation and final disposition.

A. The commission of public records hereby delegates the authority to order the routine destruction of public records, in accordance with adopted records retention and disposition schedules, to the state records administrator.

B. The state records administrator shall prescribe the appropriate method of destruction of public records.

C. The state records center and archives, in accordance with the rules established by the state records administrator and the commission of public records, is the authorized facility for the receipt, storage or disposition of all inactive and infrequently used records of present or former state agencies.

[1.13.30.8 NMAC - Rp, 1.13.30.8 NMAC, 11/30/2015]

1.13.30.9 DISPOSITION OF RECORDS:

A. Agencies shall ensure the proper authorized disposition of their records regardless of format or medium.

B. Records may be destroyed with the written approval of the state records administrator and the written consent of the records custodian, designated chief records officer or records liaison officer of the custodial agency.

C. Records may be transferred to the state archives with the written approval of the state records administrator and the written consent of the records custodian or designated chief records officer of the custodial agency; once the transfer is authorized and the records are in the physical custody of the state archives, the legal custody of the records is vested in the state records administrator.

D. Agencies shall follow rules issued by the state records administrator governing the methods of destruction.

[1.13.30.9 NMAC - Rp, 1.13.30.10 NMAC, 11/30/2015]

1.13.30.10 DIRECT TRANSFER OF RECORDS TO THE STATE ARCHIVES:

A. An agency may transfer records with a retention of permanent directly to the state archives. Records eligible for direct transfer

to archives shall be submitted on a form approved by the state records administrator. No direct transfer of records shall occur without the review and approval of the state records administrator.

B. Records transferred directly to state archives shall be accompanied by an itemized records index on a form approved by the state records administrator. A copy of the index for each box shall be placed in the corresponding box. The complete index shall be attached to the request and an electronic copy shall be submitted to the state archives on a format approved by the state records administrator. The shipment box number (i.e., 1 of 10, 2 of 20, etc.) shall be affixed to the boxes prior to delivery to the state archives. All file folders in the box shall be clearly labeled and identify the contents of the folder.

C. Records involved in litigation, an audit or investigation are not eligible for transfer to the state archives.

D. Only inactive records shall be accepted for transfer to the state archives.

[1.13.30.10 NMAC - Rp, 1.13.10.18 NMAC, 11/30/2015]

1.13.30.11 ON-SITE DESTRUCTION OF RECORDS: On-site destruction of records may occur at the custodial agency's location. For approval of on-site destruction, the records custodian, chief records officer or records liaison officer shall submit a request on a form approved by the state records administrator.

A. The form may be submitted electronically with a valid digital signature issued by the state records administrator.

B. The state records administrator may order an audit prior to approval of on-site destruction.

C. The state records administrator may order the transfer of records to the state archives for review and appraisal.

D. For legal and audit purposes, the agency shall retain proof of the records destroyed.

E. Approved methods for on-site destruction of records are as follows:

(1) Records that contain confidential or sensitive information shall be destroyed through a bonded document recycling vendor by shredding in such a manner that the information cannot be read, interpreted or reconstructed.

(2) Records that do not contain confidential or sensitive information shall be destroyed by:

(a) recycling by a bonded document recycling vendor;

(b) shredding; or

(c) dumpsite burial.

(3) Records which have been contaminated may be destroyed by:

(a) any of the approved methods described above; or

(b) incineration.

(4) Agencies shall select from the following methods of destruction for electronic records:

(a) erasure from electronic media and all back up media;

(b) overwriting of reusable magnetic media multiple times as recommended by the United States (U.S.) department of defense;

(c) degaussing of the magnetic media; or

(d) physical destruction of the media as recommended by the U.S. department of defense.

[1.13.30.11 NMAC - Rp, 1.13.30.11 NMAC, 11/30/2015]

1.13.30.12 RECORDS DELIVERED TO THE RECORDS CENTER FOR DESTRUCTION: Agencies storing records at their location may deliver records that have met their retentions to the records center for destruction. For approval to deliver records to the records center for destruction, the records custodian, chief records officer or records liaison officer shall submit a request on a form approved by the state records administrator.

A. The form may be submitted electronically with a valid digital signature issued by the state records administrator.

B. The state records administrator may order an audit prior to approval of records center destruction.

C. The state records administrator may order the transfer of records to the state archives for review and appraisal.

D. The approved request for destruction shall match items delivered to the records center for destruction. When a discrepancy is found between what is listed on the approved request and what is delivered to the records center, the shipment shall be rejected and the agency shall remove the shipment from the records center.

[1.13.30.12 NMAC - Rp, 1.13.30.12 NMAC, 11/30/2015]

1.13.30.13 DISPOSITION OF RECORDS STORED IN THE RECORDS CENTER:

A. Upon receiving a disposition authorization notice for records stored in the records center, only the custodial agency's records custodian or chief records officer shall review the report of records to be destroyed or transferred to archives and respond by the established deadline. Records liaison officers do not have authority to sign the disposition authorization notice for records stored at the records center.

B. The custodial agency may request an exception to remove records from the disposition authorization notice if the records identified in the notice are involved in litigation, audit or an investigation. The custodial agency shall submit the exception request in writing to the administrator and cite the exception by the established deadline.

C. Failure to return a completed disposition authorization notice by the established deadline shall result in a storage fee charge for records that are eligible for destruction. In addition, the return of withdrawn boxes, storage and disposition services will be suspended. For information on the fee schedule, refer to 1.13.2 NMAC.

[1.13.30.13 NMAC - Rp, 1.13.10.17 NMAC, 11/30/2015]

1.13.30.14 DESTRUCTION OF NON-RECORDS: Destruction of non-records is the sole responsibility of the custodial agency and does not require the prior approval of the state records administrator. That responsibility includes identifying whether the information is a non-record or a public record. For the proper destruction of records with or without confidential or sensitive information, refer to 1.13.30.10 NMAC.

[1.13.30.14 NMAC - Rp, 1.13.30.14 NMAC, 11/30/2015]

1.13.30.15 DESTRUCTION OF RECORDS HELD BY CONTRACTORS: All records or data created or managed by a contractor or non-government entity for a governmental agency shall be disposed of in accordance with the procedures established in 1.13.30 NMAC.

[1.13.30.15 NMAC - Rp, 1.13.30.15 NMAC, 11/30/2015]

1.13.30.16 MANAGEMENT RESPONSIBILITIES: The development and implementation of an records management program is the responsibility of each agency records custodian, as defined by the Public Records Act, Section 14-3-2 (B) and (I) NMSA 1978. It is also management's responsibility to provide guidance to employees on the proper legal disposition of public records and non-records. Agency records management programs must clearly define the roles and responsibilities of users disposing public records of non-records.
[1.13.30.16 NMAC - N, 11/30/2015]

HISTORY OF 1.13.30 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
SRC Rule No. 70-3, Records Management Division, Regulations Regarding Destruction of Records and Appointment of Liaison Officers, filed 9/9/1970.
SRC Rule No. 89-05, Regulations Regarding the Public Records Act, filed 5/22/1989.

History of Repealed Material:
1.13.30 NMAC, Destruction of Public Records, filed 6/16/2004 - Repealed effective 6/01/2006.
1.13.30 NMAC, Destruction of Public Records and Non-Records, filed 5/10/2006 - Repealed effective 11/30/2015.

NMAC History:
1 NMAC 3.55, Destruction of Public Records, filed 12/1/1994.
1 NMAC 3.2.50.1, Destruction of Public Records, filed 4/18/1997.
1.13.30 NMAC, Destruction of Public Records, filed 6/16/2004.
1.13.30 NMAC, Destruction of Public Records and Non-Records, filed 5/10/2006.

COMMISSION OF PUBLIC RECORDS

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 21 FUNCTIONAL RECORDS RETENTION AND DISPOSITION SCHEDULES (FRRDS)
PART 3 LOCAL GOVERNMENT RECORDS MANAGEMENT GUIDANCE

1.21.3.1 ISSUING AGENCY: State Records Administrator.
[1.21.3.1 NMAC - N, 11/30/2015]

1.21.3.2 SCOPE: Local government including counties, municipalities and local public bodies.
[1.21.3.2 NMAC - N, 11/30/2015]

1.21.3.3 STATUTORY AUTHORITY: Public Records Act, Section 14-3-18 NMSA 1978.
[1.21.3.3 NMAC - N, 11/30/2015]

1.21.3.4 DURATION: Permanent.
[1.21.3.4 NMAC - N, 11/30/2015]

1.21.3.5 EFFECTIVE DATE: November 30, 2015, unless a later date is cited at the end of a section.
[1.21.3.5 NMAC - N, 11/30/2015]

1.21.3.6 OBJECTIVE: The administrator may advise and assist county and municipal officials in the formulation of programs for the disposition of public records maintained in county and municipal offices.
[1.21.3.6 NMAC - N, 11/30/2015]

1.21.3.7 DEFINITIONS: The following terms shall have the respective meanings provided in this rule. Terms not defined in this rule which are defined in the Public Records Act, Section 14-3-1 et seq. NMSA 1978 shall have the respective meanings accorded such terms in the act.

A. "Agency" means the administrative subdivision of a county or municipal government.

B. "Archives" means the permanent records of the state of New Mexico, which may include government and private collections of the Spanish, Mexican, territorial and statehood periods, assessed to have significant historical value to warrant their preservation by the state of New Mexico.

C. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

D. "Executive level" means elected and appointed officials, statutory agency heads and management personnel with decision making authority granted by the agency head.

E. "File closed" means the date the trigger event occurred, or, for electronic records, equivalent to the date last modified unless otherwise stated in retention.

F. "Historical" means records deemed to have archival value by the commission.

G. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, transitory records, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency, extra copies of correspondence, preliminary drafts, blank forms, transmittal letters or forms that do not add information, sample letters and informational files.

H. "Retention" means the period of time during which records should be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

I. "Transitory" means messages which serve to convey information of temporary importance in lieu of oral communication. Transitory messages are only required for a limited time to ensure the completion of a routine action or the preparation of a subsequent record. Transitory messages are not required to control, support or to document the operations of government.

J. "Trigger event" means the closing event of a record which begins the retention period.
[1.21.3.7 NMAC - N, 11/30/2015]

1.21.3.8 ABBREVIATIONS AND ACRONYMS:

A. "NMAC" stands for New Mexico administrative code.

B. "NMSA" stands for New Mexico statutes annotated.
[1.21.3.8 NMAC - N, 11/30/2015]

1.21.3.9 INSTRUCTIONS:

A. This guide identifies the types of records maintained by county and municipal governments and specifies a recommended period of time which records should be retained. A retention period may be stated in terms of months or years and is contingent upon the occurrence of a trigger event. Each record classification will be itemized by section number and title in the format listed below.

(1) Category - describes the hierarchy of the function

(2) Description

- describes the function of the record series

(3) Retention - defines the length of time records should be kept before they are eligible for destruction or archival preservation

B. Record classification descriptions are not intended to be exhaustive. Descriptions may include records that do not appear in the files, and conversely, files may include records not listed in the description.

C. Refer questions concerning the confidentiality of a record to legal counsel for the county or municipality. For the destruction of confidential records, please refer to 1.13.30.11 NMAC.

D. Public records should be maintained in their native format (paper/digital). Records may be microfilmed or digitized provided a microphotography plan has been approved by the state records administrator. Refer to Section 14-3-17 NMSA 1978 and 1.14.2 NMAC. Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction as evidence in all courts or administrative agencies. Refer to Section 14-1-6 NMSA 1978.

E. Public records should be classified according to content and retained at a minimum for the length of time specified in this guide.

F. For guidance on electronic messaging refer to 1.13.4 NMAC.

G. For guidance on the destruction of non-record material refer to 1.13.30.14 NMAC.

H. Counties must provide the state records administrator a minimum of 60 days' notice of intent to destroy public records per Section 14-1-8 NMSA 1978.

[1.21.3.9 NMAC - N, 11/30/2015]

1.21.3.10 RECORDS CLASSIFICATION: For guidance on record classifications created solely by local government refer to the *records retention and disposition guide*. For guidance on all other record classifications, refer to 1.21.2 NMAC.

[1.21.3.10 NMAC - N, 11/30/2015]

HISTORY OF 1.21.3 NMAC: [RESERVED]

COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.4 NMAC, Sections 2, 3, 6-14 & adding an annotation to the History of Repealed Material, effective 11/30/2015.

1.13.4.2 SCOPE: all state agencies as defined by the Public Records Act, Section 14-3-1 et seq. NMSA 1978.

[1.13.4.2 NMAC - Rp, 1.13.4.2 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.3 STATUTORY AUTHORITY: Public Records Act, Sections 14-3-4 and 14-3-6 NMSA 1978. [~~; Uniform Electronic Transactions Act, Section 14-16-18 NMSA 1978~~]

[1.13.4.3 NMAC - Rp, 1.13.4.3 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.6 OBJECTIVE: To ensure that electronic messages, [~~commonly known as e-mail,~~] and any attachments which may be transmitted with the electronic message, including text messages, social media and e-mail, that are identified as public records, are retained economically and efficiently for as long as they have legal, fiscal, business or historical value.

[1.13.4.6 NMAC - Rp, 1.13.4.6 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.7 DEFINITIONS:

[~~A. "Administrator"~~ ~~refer to Public Records Act, Section 14-3-2(A) NMSA 1978.~~

~~**B. "Agency"** refer to Public Records Act, Section 14-3-2(B) NMSA 1978.~~

~~**C. "Archives"** refer to 1.13.10.7 NMAC.~~

~~**D. "Attachments"** are electronic file(s) sent along with an e-mail message.~~

~~**E. "Commission"** refer to Public Records Act, Section 14-3-2(C) NMSA 1978.~~

~~**F. "Disposition"** refer to 1.13.10.7 NMAC.~~

~~**G. "E-mail"** is a text document that is created and delivered in electronic format.~~

~~**H. "E-mail system"** is software that transports e-mail messages from one computer user to another.~~

~~**I. "Non-record"** refer to 1.15.2.101 NMAC.~~

~~**J. "Public record"** refer to Public Records Act, Section 14-3-2(G) NMSA 1978.~~

~~**K. "Records center"** refer to Public Records Act, Section 14-3-2(H) NMSA 1978.~~

~~**L. "Records custodian"** refer to Public Records Act, Section 14-3-2(I) NMSA 1978.~~

~~**M. "Records retention and disposition schedule"** refer to Public Records Act, Section 14-3-2(J) NMSA 1978.~~

~~**N. "Retention"** refer to 1.13.10.7 NMAC.~~] **A. "Archives"** means the permanent records of the state of New Mexico, which may include government and private collections of the Spanish, Mexican, territorial and statehood periods, assessed to have significant historical value to warrant their preservation by the state of New Mexico.

B. "Attachments" are electronic file(s) sent along with an electronic message.

C. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

D. "Electronic message" includes, but is not limited to, a text message, social media and e-mail that is created and delivered in an electronic format.

E. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, transitory records, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency, extra copies of correspondence, preliminary drafts, blank forms, transmittal letters or forms that do not add information, sample letters, and informational files.

F. "Social media" means forms of electronic communication through which users create online communities to share information, ideas, messages and other content (e.g., twitter, facebook, instagram, pinterest, linkedin, etc.).

G. "Transitory" means messages which serve to convey information of temporary importance in lieu of oral communication. Transitory messages are only required for a limited time to ensure the completion of a routine action or the preparation of a subsequent record. Transitory messages

are not required to control, support or to document the operations of government. [1.13.4.7 NMAC - Rp, 1.13.4.7 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.8 ABBREVIATIONS: [**A. "EDRRDS"** stands for education records retention and disposition schedules.

B. "ERRDS" stands for executive records retention and disposition schedules.

C. "GRRDS" means general records retention and disposition schedules.

D. "JRRDS" means judicial records retention and disposition schedule.

E. "LRRDS" means legislative records retention and disposition schedules.

F. "NMAC" stands for New Mexico administrative code.

G. "NMSA" stands for New Mexico statutes annotated.

H. "RRDS" means all records retention and disposition schedules.] **A. "FRRDS"** means functional records retention and disposition schedule.

B. "NMAC" stands for New Mexico administrative code.

C. "NMSA" stands for New Mexico statutes annotated. [1.13.4.8 NMAC - Rp, 1.13.4.8 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.9 PUBLIC RECORDS: To comply with the Public Records Act, Section 14-3-1 et seq. NMSA 1978, [e-mail] electronic messages must be managed pursuant to established record retention and disposition schedules adopted by the commission and published in [EDRRDS, ERRDS, GRRDS, JRRDS and LRRDS (Title 1, Chapters 15 through 20 of the NMAC)] 1.21.2 NMAC, Retention and Disposition of Public Records.

[**A.** E-mail and attachments that are public records include but are not limited to:

(1) policies and directives;

(2) correspondence or memoranda that contain final directives, determinations, instructions or guidance regarding public business;

(3) minutes of governing boards, advisory groups, ad hoc committees or work groups developing programs;

(4) messages that authorize, establish or complete a business transaction; or

(5) reports or recommendations such as to legislative committees or produced by task forces or study groups.

B. Non-record materials are defined in 1.15.2.101 NMAC. Non-record e-mail may include:

(1) duplicate copies of messages sent to multiple people;

(2) personal messages and announcements not related to official agency business;

(3) transmittal e-messages that do not add substantive information to the attachment(s) being transmitted;

(4) copies of documents distributed for convenience or reference;

(5) announcements of social events, such as retirement parties;

(6) spam (unsolicited, commercial e-mail); and

(7) messages to or from e-mail distribution lists (listserv) not directly related to agency business.] [1.13.4.9 NMAC - Rp, 1.13.4.9 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.10 MANAGEMENT RESPONSIBILITIES: The development and implementation of an [e-mail] electronic message management program is the responsibility of each agency records custodian, as defined by the Public Records Act, Section 14-3-2 (B) and (I) NMSA 1978. It is also management's responsibility to provide guidance to employees on the proper retention and legal disposition of [e-mail] electronic messages. Agency records management programs must clearly define the roles and responsibilities of users in creating, receiving, categorizing, retaining and disposing or archiving [e-mails] electronic messages. [1.13.4.10 NMAC - Rp, 1.13.4.10 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.11 RETENTION AND SCHEDULING REQUIREMENTS: [E-mail classified as a public record must be categorized, filed and retained on the basis of content.

A. E-mail and attachments classified as public records shall be categorized under the appropriate record series identified in EDRRDS, ERRDS, GRRDS, JRRDS, LGRRDS or LRRDS (Title 1, Chapters 15 through 20 of the NMAC)

B. An e-mail that is identified as a public record and contains multiple subjects with different retention periods shall be retained according to the longest retention period.

C. E-mail scheduled as permanent shall be transferred to the state archives.

D. Non-record e-mail may be destroyed without the prior approval of the state records administrator.] Electronic messages determined to be a public record shall be classified, filed and retained on the basis of content.

A. Attachments classified as public records shall be categorized under the appropriate record classification identified in 1.21.2 NMAC, Retention and Disposition of Public Records.

B. An electronic message that contains multiple subjects with different retention periods shall be retained according to the longest retention period.

C. An electronic message scheduled as permanent may be transferred to the state archives under the provisions of 1.13.10 NMAC, Records Storage and Access.

D. Non-record electronic messages may be destroyed without the prior approval of the state records administrator. [1.13.4.11 NMAC - Rp, 1.13.4.11 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.12 IDENTIFYING THE OFFICIAL COPY OF RECORD: An agency policy for managing [e-mail] electronic messages should include directions regarding how to determine the official copy of record. Typically, the official copy is an [e-mail] electronic message received from an outside source, the sender's copy or the final [e-mail] electronic message of a thread discussion. [1.13.4.12 NMAC - N, 3/31/2015; A, 11/30/2015]

1.13.4.13 [FILING E-MAIL: E-mail classified as public records shall be filed either in a manual, paper-based system, or stored electronically. Procedures for filing e-mail will vary based on the agency's needs and the particular hardware and software in use.

A. The department of information technology may provide an agency with a centrally managed enterprise e-mail system. However, the department of information technology's e-mail system is not designed to be a

~~records management system. Agencies using the department of information technology e-mail system must instruct all public officials using the system how to copy public records from their e-mail account to a records management system.~~

~~**B.** E-mail sent and received from a computer outside a state e-mail system that is classified as a public record, shall be transferred to an agency's records management system for proper retention and disposition.~~

~~**C.** A process for deletion of non-record e-mail should be included in procedures implemented by an agency.~~

~~**D.** Manual filing systems require that e-mail and attachments be printed. Once an e-mail has been printed, the e-mail and attachment may be deleted from the e-mail system. The printed copy shall be the official record and must include the name(s) of the sender, all recipients and the date the message was sent.~~

~~**E.** Electronic systems used to file e-mail shall adhere to 1.13.3 NMAC, Management of Electronic Records.~~] **FILING ELECTRONIC MESSAGES:** Electronic messages classified as public records shall be filed either in a manual, paper-based system, or stored electronically. Procedures for filing electronic messages will vary based on the agency's needs and the particular hardware and software in use.

A. The department of information technology may provide an agency with a centrally managed enterprise electronic messaging system. However, the department of information technology's system is not designed to be a records management system. Agencies using a department of information technology system must instruct all public officials using the system how to copy public records from their electronic messaging account to a records management system.

B. Electronic messages sent or received from a computer outside a state electronic messaging system that is classified as a public record, shall be transferred to an agency's records management system for proper retention and disposition.

C. Non-records are not required to be retained by an agency and regular deletion should be included in an agency's procedure for management of electronic messages.

D. Electronic systems used to manage electronic messages shall ensure that:

(1) electronic messages and attachments classified as public records can be accessed, retrieved and read;

(2) metadata for electronic messages sent or received are captured and preserved; and

(3) electronic messages are retained in a usable format for their required retention period as specified in the FRRDS.

E. Manual filing systems require that electronic messages and attachments be printed. Once an electronic message has been printed, the electronic message and attachment may be deleted from the system. The printed copy shall be the official record and shall include at a minimum the name(s) of the sender, all recipients and the date the message was sent.

[1.13.4.13 NMAC - Rp, 1.13.4.12 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.14 DISPOSITION:

[~~E-mail and attachments that are public records are subject to the provisions in 1.13.10 NMAC, Records Custody, Access, Storage and Disposition and 1.13.30 NMAC, Destruction of Public Records and Non-Records.~~

~~**A.** E-mail and attachments identified as public records shall not be destroyed without the prior written approval of the state records administrator (1.13.10 NMAC, Records Custody, Access, Storage and Disposition).~~

~~**B.** E-mail potentially relevant to an audit, investigation or litigation shall be preserved, even if the retention period has been met.~~

~~**C.** E-mail that is legally confidential shall be marked as confidential.~~

~~**D.** Permanent e-mail that is legally confidential and transferred to the state archives must be identified as confidential, and the legal designation for confidentially must be cited.~~] Electronic messages and attachments that are classified as public records are subject to the provisions in 1.13.10 NMAC, Records Storage and Access and 1.13.30 NMAC, Disposition of Public Records and Non-Records.

A. Electronic messages and attachments, classified as public records, shall not be destroyed without the prior written approval of the state records administrator (1.13.30 NMAC, Disposition of Public Records and Non-Records).

B. Electronic messages potentially relevant to a pending audit, investigation or litigation shall be preserved, even if the retention period has been met.

C. An electronic message that is legally confidential should be marked as confidential.

D. An electronic message that is legally confidential and transferred to the state archives shall be identified as confidential and the legal designation for confidentially shall be cited.

[1.13.4.14 NMAC - Rp, 1.13.4.14 NMAC, 3/31/2015; A, 11/30/2015]

History of Repealed Material:
1.13.4 NMAC, Records Management Requirements for Electronic Messaging, filed 6/13/2007 - Repealed 3/31/2015.
[See Attorney General Opinion No. 60-72 for guidance related to transitory records.]

COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.21.2 NMAC, Sections 9, 114, 189, 222, 241-243, 301, 303, 341, 428, 494, 601, 604, 605 and 634; repealing Sections 302 and 422, effective 11/30/2015.

1.21.2.9 INSTRUCTIONS:

A. The records retention and disposition schedule identifies the types of records maintained by all agencies and specify a period of time which records must be retained. A retention period may be stated in terms of months or years and is contingent upon the occurrence of a trigger event. Each record classification will be itemized by NMAC section number and title in the format listed below.

(1) Category - describes the hierarchy of the function

(2) Description - describes the function of the record classification

(3) Retention - defines the length of time records must be kept before they are eligible for destruction or archival preservation

B. Record classification descriptions are not intended to be exhaustive. Descriptions may include records that do not appear in the files, and conversely, files may include records not listed in the description.

C. Refer questions concerning the confidentiality of a record to legal counsel for the agency. For the destruction of confidential records, please refer to [~~1.13.30.11 NMAC.~~] 1.13.30 NMAC.

D. Public records should be maintained in their native format (paper/digital). Records may be microfilmed or digitized provided a microphotography plan has been approved by the state records administrator. Refer to Section 14-3-17 NMSA 1978 and 1.14.2 NMAC. Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes.

E. Agencies are encouraged to create secondary and tertiary descriptors for each classification (e.g., account receivable - invoices - acme inc., goods and services - IT consulting - data hub LLC., infrastructure project files - railroad project - Lamy station upgrade, etc.). These additional descriptors will assist with the accessibility of the records.

F. Upon storage or disposition, public records shall be classified according to content and retained at a minimum for the length of time specified in the records retention and disposition schedule.

G. For guidance on electronic messaging, refer to 1.13.4 NMAC.

H. For guidance on the destruction of non-record material, refer to [~~1.13.30.14 NMAC.~~] 1.13.30 NMAC.

I. Records classifications related to the legislative and judicial branches of government provided herein are applicable for legislative and judicial agencies that utilize the records center services and permanent archival repository.

J. Non-scheduled public records created by an agency in pursuance of law or in connection with the transaction of public business shall have a retention period of permanent until such time the non-scheduled record has been scheduled and a retention period adhering to operational, legal, fiscal, historical or other purposes is established.

K. For guidance on classifying county and municipal records, refer to the records retention and disposition guidance for counties and municipalities.

L. For guidance on destruction of county records, refer to Section 14-1-8 NMSA 1978.

M. Classifications that have a disposition of transfer to archives may be submitted for direct transfer before the allotted time period specified in the retention with the approval of the custodial agency and state records administrator.

N. Upon adoption of this rule, records retained at the records center shall be reclassified according to the new records classifications for retention and disposition.

[1.21.2.9 NMAC - N, 10/01/2015; A, 11/30/2015]

1.21.2.114 PUBLICATIONS:

A. Category: Administration - general management

B. Description: Agency publications intended for distribution to the public.

C. Retention: permanent, transfer to state library when published

[1.21.2.114 NMAC - N, 10/01/2015; A, 11/30/2015]

[Refer to 1.25.10 NMAC, Publications: Filing, Distribution, Format and Style]

1.21.2.189 STUDENT TRANSCRIPTS:

A. Category: Administration - education

B. Description: Official student transcripts.

C. Retention: [~~destroy 100 years from date of birth~~] permanent, transfer to archives 100 years from date of birth

[1.21.2.189 NMAC - N, 10/01/2015; A, 11/30/2015]

1.21.2.222 ADVERSE ACTION AND REDUCTION IN FORCE:

A. Category: Employee services - personnel management

B. Description: Records related to [~~dismissal/reduction in workforce/suspension appeal files.~~] adverse action and reduction in force.

C. Retention: destroy 30 years from date file closed

[1.21.2.222 NMAC - N, 10/01/2015; A, 11/30/2015]

1.21.2.241 CONTRIBUTIONS:

A. Category: Employee services - retirement administration

B. Description: Records related to employee contributions to retirement or pension funds.

C. Retention: destroy [~~50~~] 65 years from date file created

[1.21.2.241 NMAC - N, 10/01/2015; A, 11/30/2015]

1.21.2.242 MEMBER FILES - BENEFITS EXHAUSTED:

A. Category: Employee services - retirement administration

B. Description: Record related to membership in retirement funds and plans for retired employees.

C. Retention: destroy [~~10~~] five years from date file closed

[1.21.2.242 NMAC - N, 10/01/2015; A, 11/30/2015]

1.21.2.243 MEMBER FILES - OTHER:

A. Category: Employee services - retirement administration

B. Description: Record related to membership in retirement funds and plans for former employees who are not eligible for retirement benefits.

C. Retention: destroy [~~50~~] 65 years from date file closed

[1.21.2.243 NMAC - N, 10/01/2015; A, 11/30/2015]

1.21.2.301 ACCOUNTS PAYABLE:

A. Category: Financial and accounting - accounting management

B. Description: Records relating to accounts payable including, but not limited to, purchasing and reimbursements.

C. Retention: destroy [~~three~~] six years from date audit report released

[1.21.2.301 NMAC - N, 10/01/2015; A, 11/30/2015]

1.21.2.302 [~~ACCOUNTS PAYABLE - MEDICAID:~~

~~A. Category:~~ ~~Financial and accounting - accounting management~~

~~B. Description:~~ ~~Records relating to medicaid specific accounts payable including, but not limited to, purchasing, and reimbursements.~~

~~C. Retention:~~ ~~destroy six years from date audit report released~~]

[RESERVED]

[1.21.2.302 NMAC - N, 10/01/2015; Repealed, 11/30/2015]

1.21.2.303 ACCOUNTS RECEIVABLE:

A. Category: Financial and accounting - accounting management

B. Description: Records related to accounts receivable including, but not limited to, invoicing.

C. Retention: destroy [~~three~~] six years from date audit report released

[1.21.2.303 NMAC - N, 10/01/2015; A, 11/30/2015]

1.21.2.341 INVESTMENTS:

A. Category: Financial and accounting - investment management

B. Description: Records

related to investments including, but not limited to, bonds and certificates of deposit.

C. Retention: destroy three years from the close of the fiscal year in which file [~~created~~] closed [1.21.2.341 NMAC - N, 10/01/2015; A, 11/30/2015]

1.21.2.422 [~~CAMPAIGN - PUBLIC FUNDING:~~

~~**A. Category:** Governance and compliance - election management~~

~~**B. Description:** Financial records of candidates who receive public funding and related records.~~

~~**C. Retention:** permanent, transfer to archives five years from date file closed~~] **[RESERVED]**

[1.21.2.422 NMAC - N, 10/01/2015; Repealed, 11/30/2015]

1.21.2.428 FINANCIAL - CAMPAIGN:

A. Category: Governance and compliance - election management

B. Description: Records related to candidate, elected and appointed officials financial records.

C. Retention: destroy [~~two~~] five years from date file closed [1.21.2.428 NMAC - N, 10/01/2015; A, 11/30/2015]

1.21.2.494 LOBBYIST:

A. Category: Governance and compliance - legislation and regulation management

B. Description: Records related to lobbyists.

C. Retention: [~~permanent, transfer to archives one year from date file closed~~] destroy 10 years from date file closed

[1.21.2.494 NMAC - N, 10/01/2015; A, 11/30/2015]

1.21.2.601 AGREEMENTS - OTHER:

A. Category: Legal and judiciary - contract management

B. Description: Records related to agreements not identified in other classifications.

C. Retention: destroy [~~three~~] six years from date file closed [1.21.2.601 NMAC - N, 10/01/2015; A, 11/30/2015]

1.21.2.604 GOODS AND SERVICES:

A. Category: Legal and judiciary - contract management

B. Description: Records related to contracting of goods and services.

C. Retention: destroy [~~three~~] six years from date file closed [1.21.2.604 NMAC - N, 10/01/2015; A, 11/30/2015]

1.21.2.605 LEASES:

A. Category: Legal and judiciary - contract management

B. Description: Leases and related records, does not include mineral leases.

C. Retention: destroy [~~three~~] six years from date file closed [1.21.2.605 NMAC - N, 10/01/2015; A, 11/30/2015]

1.21.2.634 INVESTIGATIONS - LEGAL MATTER MANAGMENT:

A. Category: Legal and judiciary - legal matter management

B. Description: Records related to investigations [~~including, but not limited to, criminal, evidence and crime laboratory reports.~~] with merit of alleged criminal activities and not identified in other classifications.

C. Retention: destroy 10 years from date file closed [1.21.2.634 NMAC - N, 10/01/2015; A, 11/30/2015]

COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.24.10 NMAC, Sections 5, 8, 10, 12, 15-19, 21 & 22, effective 11/30/2015.

1.24.10.5 EFFECTIVE DATE: [~~September 15, 2014~~] February 29, 2000, unless a later date is cited at the end of a section.

[1.24.10.5 NMAC - Rp, 1 NMAC 3.3.10.5, 2/29/2000; A, 9/15/2014; A, 11/30/2015]

1.24.10.8 NMAC STRUCTURE AND IDENTIFICATION:

A. The NMAC, a hierarchical structure, is divided into titles, chapters and parts, on the basis of subject matter. A title broadly organizes related governmental rule material in the first level of the hierarchy. The title is divided into chapters that identify distinct governmental functions. The chapter is divided into parts. The part relates to specific subject matter. It is at this level that rules are organized. The part is subdivided into sections. The section may be further subdivided into subsections, paragraphs and sub-paragraphs.

B. Each division of the NMAC through the section level shall have a name and number.

(1) The names and numbers of NMAC titles are listed in 1.24.10.26 NMAC, TABLE OF CONTENTS. Chapter names and numbers shall be assigned and maintained by the records center.

(2) The individual number of a title, chapter, part or section shall be expressed as a whole number. Titles shall be limited to two arabic digits; chapters shall be limited to three arabic digits; and parts and sections shall be limited to four arabic digits.

C. Subsections shall be indicated by at least one, but not more than three, upper-case alphabetic characters. Paragraphs are indicated by at least one, but not more than three, arabic digits within parentheses. Sub-paragraphs shall be indicated by at least one, but not more than three, lower-case alphabetic characters within parentheses.

D. The part name and number shall be assigned by the filing agency and subject to approval by the administrative law division of the state commission of public records [~~center~~].

(1) The part names shall be descriptive and not exceed 120 characters. Agencies shall use names that provide adequate notice of the nature and content of the part.

(2) The individual part number shall not exceed four arabic digits and shall not include dashes or alphabetic characters.

(3) "Part 1" of each chapter shall be used or reserved for the general provisions that apply to all the parts in that chapter.

E. At the beginning of each part, an agency shall identify the part by title number and name, chapter number and name, and part number and name.

F. The first seven sections of each part shall state:

(1) Section 1 - name of the issuing agency in a section entitled "ISSUING AGENCY";

(2) Section 2 - the scope of the part in a section entitled "SCOPE";

(3) Section 3 - the statutory authority under which a part is issued, in a section entitled "STATUTORY AUTHORITY";

(4) Section 4 - the intended duration of the part in a

section entitled "DURATION";

(5) Section 5 - the effective date of the part in a section entitled "EFFECTIVE DATE";

(6) Section 6 - the objective of the part in a section entitled "OBJECTIVE";

(7) Section 7 - the definitions that apply just to the part in a section entitled "DEFINITIONS." If there are no definitions for the part, Section 7 shall be reserved i.e., [RESERVED]. An annotation to general provisions may be included.

G. Section 8, and all subsequent sections, shall encompass the body of rule material specific to the part.

H. A section has both a name and number assigned by the promulgating agency. Each section shall be identified at the beginning by the full NMAC number (title number, followed by a period, chapter number, followed by a period, part number, followed by a period and the section number) followed by the name of the section. Example: Section 12 of this part is 1.24.10.12 STYLE

I. A section may be divided into subsections. Subsections may be used to further group similar paragraphs.

J. A paragraph is a unit of grammatical, tabular or other discrete, organized information that may be, although not advisably, divided into further units.

[1.24.10.8 NMAC - Rp 1 NMAC 3.3.10.15, 2/29/2000; A, 6/30/2004; A, 11/30/2015]

1.24.10.10 ISSUING AUTHORITY:

A. The issuing authority is responsible for ensuring compliance with the requirements set forth in this part.

B. Where delegation is authorized, the agency may, by rule or formal appointment, specify an issuing authority other than that named in statute. The agency shall forward, in writing, the title, name and signature of the designee to the state records administrator. The agency shall notify, in writing, the state records administrator of any change in the designation. Designation shall only be made by the issuing authority. Formally appointed designees are not allowed to appoint other designees.

C. The [~~records center~~] administrative law division shall not accept a rule filing signed by other than the issuing authority, or a formally appointed designee.

[1.24.10.10 NMAC - Rp 1 NMAC 3.3.10.9, 2/29/2000; A, 6/30/2004; A, 11/30/2015]

1.24.10.12 STYLE:

A. Style shall be guided by relevant portions of the current edition of the legislative drafting manual of the New Mexico legislature published by the New Mexico legislative council service. The following provisions are specifically adopted.

(1) Chapter 4, Bill Drafting, the portion dealing with brackets, line-through and underscoring shall apply to proposed amendments and amendments for publication in the New Mexico register. This style shall not be applied to the integrated part.

(2) Chapter 7, Legislative Style and Language Provisions, except for the portion dealing with numbers, formulas and charts, as set forth:

(a) use words for numbers zero to nine (except for dates, numbers with decimals, money or technical, scientific or statistical matter;

(b) use figures for numbers 10 and greater, except when beginning a sentence;

(c) spell out numerical figures when using percentages; the word "percent" shall be spelled out except in tables, which use the percent symbol (%); (e.g., twenty-five percent)

(d) spell out fractions standing alone (e.g., one-half, one-third, etc.);

(e) insert a hyphen between the numerator and the denominator of a fraction, unless either element already contains a hyphen; do not spell out a portion of a fraction and express the other part as a figure; and

(f) use figures for fractions with numbers 10 and greater.

(3) Figures and symbols may represent amounts of money. It is not necessary to spell out the number. If a sum of money is spelled out, follow the spelling with figures and money symbol ($) in parenthesis.

B. Special symbols shall be avoided and the common abbreviation or full spelling used instead. For example, deg. for degree and lbs. for pounds.

C. No rule filing shall be typed in all capital letters.

D. Indentions shall be standardized as follows.

(1) Section numbers shall be flush with the part's one-inch margin.

(2) One tab shall be used to indent the first line of a subsection. Tab once after the subsection designation before beginning the text.

(3) Paragraphs shall be indented two tabs. Tab once after the paragraph designation before beginning the text.

(4) Subparagraphs shall be indented three tabs. Items are to remain within the text of subparagraph. Upon request for need and upon approval by administrative law division, items may be indented four tabs. Tab once after the subparagraph or item designation before the beginning of the text.

(5) Automatic indents are not permitted.

E. Sections shall be clearly separated.

F. The name of the issuing agency in Section 1 and in full citation shall be typed in title case.

G. The first page of a new part or integrated part shall begin with the title, chapter and part numbers and names. The information shall be flush with the document's one-inch margin and typed in bold capital letters.

H. Use of tables is permissible but shall be used sparingly because tables may cause difficulties in the rule filing process and may increase publication costs. The agency shall be guided by the following when using tables.

(1) Tables shall be in portrait orientation.

(2) Text in tables shall be Times New Roman, 10-point font.

I. No rule filing shall contain footnotes.

[1.24.10.12 NMAC - N, 2/29/2000; A, 6/30/2004; A, 9/15/2014; A, 11/30/2015]

1.24.10.15 NMAC TRANSMITTAL FORM:

A. Each rule filing delivered to the records center shall be accompanied by a completed NMAC transmittal form in hard copy with an original signature in black ink or with a valid digital signature.

B. The [~~records center~~] administrative law division shall provide agencies with blank NMAC transmittal forms in electronic format.

C. The filing agency shall complete the NMAC transmittal form and submit to the administrative law division

for review and approval prior to filing.

D. The NMAC transmittal form shall not be handwritten and shall be suitable for reproduction.

E. The following shall appear on the NMAC transmittal form:

(1) issuing agency name;

(2) three digit DFA account code for the agency (if applicable);

(3) issuing agency mailing address;

(4) contact person's name, phone number, and e-mail address;

(5) type of filing - i.e., new, amendment, renumber, repeal, repeal/replace or emergency filing;

(6) total number or pages;

(7) date(s) of any public hearing(s) on the proposed rule or amendment;

(8) effective date of the rule filing (cannot precede publication in the New Mexico register unless it is an emergency rule);

(9) NMAC name and number;

(10) description of amendment (for amendment filing only, i.e. "Amending two sections");

(11) amendment's NMAC citation (i.e. 1.24.10.15 and 16 NMAC);

(12) most recent filing date of the part (if applicable and designated for administrative law division use only);

(13) declaration of incorporated material;

(14) if reference materials are attached and are protected by copyright:

(a) indication if copyright permission was obtained;

(b) the proof of permission; or

(c) material is within the definition of public domain;

(14) legal citation(s) that grants the issuing agency the authority to promulgate rules on the subject area; and

(15) legal citation(s) that specifies who can authorize the rule in the agency.

F. Each rule filing shall bear the original signature of the issuing authority or authorized designee in black ink on the paper copy of the NMAC transmittal form. If authority is delegated, the box shall be checked.

[1.24.10.15 NMAC - Rp, 1 NMAC 3.3.10.11, 2/29/2000; A, 6/30/2004; A, 9/15/2014; A, 11/30/2015]

1.24.10.16 FILING A RULE:

A. At the time of filing the filing agency shall present the following, which has been reviewed and pre-approved by administrative law division:

(1) one paper version of the completed NMAC transmittal form;

(2) one electronic version of the text of the rule or amendment;

(3) one electronic version of the integrated part (if filing an amendment); and

(4) one electronic version of the billing information sheet.

B. Other material to be published in the New Mexico register in conjunction with promulgation of the rule or amendment shall be delivered to the [~~records center~~] administrative law division at the time of filing. Examples include synopses, short-form publication, conversion tables and summaries of public comment.

C. At the time of filing, an agency may submit to the [~~records center~~] administrative law division an additional paper copy, for annotation on the first page of the rule with the date and hour of filing, to be returned to the agency (Section 14-4-3 NMSA 1978).

D. If a short-form publication or synopsis is made in accordance with the requirements of 1.24.15 NMAC, the full text of the rule shall be submitted as part of the rule filing. The full text shall be published in the NMAC at no additional cost to the agency.

E. No rule shall be valid and enforceable until it is filed with the [~~records center~~] administrative law division and published in the New Mexico register as provided by the State Rules Act. If properly submitted and not published as a result of error, the rule shall be deemed to have been published three weeks after filing with the records center (Sections 14-4-3 and 14-4-5 NMSA 1978).

F. A valid purchase order number must be included on the billing information sheet at the time of filing. A purchase order must be submitted to the records center by paper or electronic version at least one business day prior to the publication date.

[1.24.10.16 NMAC - Rp, 1 NMAC 3.3.10.10, 2/29/2000; A, 6/30/2004; A, 9/15/2014; A, 11/30/2015]

1.24.10.17 REJECTED RULE FILINGS:

A. The [~~records center~~] administrative law division shall refuse to file written material if it is not a rule as defined in 1.24.1.7 NMAC or if the materials submitted for rule filing do not conform to the style and format requirements detailed in 1.24.10 NMAC.

(1) Materials that are not rules may be filed as a publication.

(2) Rule filings that do not conform to style and format requirements shall be returned to the filing agency and shall not be filed or published in the New Mexico register.

B. The [~~records center~~] administrative law division shall identify material previously filed as a rule but not conforming to the definition of a rule. The material shall be removed from the rules collection and rule history database with [~~thirty~~] 30 days written notice to the affected agency.

C. If an affected agency finds it previously filed material as a rule that does not conform to the definition of a rule, that agency shall notify the [~~records center~~] administrative law division in writing. If the [~~records center~~] administrative law division agrees the material does not conform to the definition of a rule, the material shall be removed from the rules collection and the rule history database within 30 days of receiving the notice.

[1.24.10.17 NMAC - N, 2/29/2000; A, 6/30/2004; A 9/15/2014; A, 11/30/2015]

1.24.10.18 AMENDMENTS [~~TO AND~~] OR REPEALS OF EXISTING RULES:

A. Amendments to [~~the~~] a part shall be prepared by the agency in such a manner as to provide for full- section addition, substitution or deletion. Parts shall only be amended by replacement, deletion or addition of whole sections. Deleting, replacing or adding words and sentences to a section shall be accomplished by replacement of the whole section.

(1) If a section contains entirely new material, unrelated to the material formerly contained in the section with the same NMAC number, then the former section shall be repealed.

The repeal shall be identified within the history note at the end of the section with the appropriate notation (see 1.24.10.20 NMAC).

(2) An addition of a new section is an amendment to the part.

(3) If an entire part is being amended [~~rather than repealed, the history notes shall reflect changes only in those sections in which there have been changes, including sections that are only renumbered~~], agencies shall have to file a repeal and replace of the part.

(4) The first sentence on the first page of the text of an amendment shall state, "This is an amendment to (insert appropriate title number, chapter number, part number) NMAC, Section (insert the section number of the amended sections), effective (insert appropriate effective date)." Example: This is an amendment to 1.12.10 NMAC, Sections 8, 9 & 10, effective June 1, 2015.

(5) For clarity, agencies may precede the text of an amendment with an explanatory paragraph to be published in the New Mexico register but which shall not be part of the rule or may publish a synopsis thereof.

B. Repeals shall be done by the issuing agency at the part level by identifying an expiration in the duration section of the part or by issuing a repealer. If less than a full part is being repealed, the rule filing shall be treated as an amendment. If other parts are affected by the repeal, they shall be amended as appropriate.

(1) If a part has been entirely rewritten and restructured so that a detailed section by section comparison is not possible, the agency may repeal the existing part and issue a new part with either the same or new part number as a repeal and replace. Where a new part number is used, an agency may record a reference to the pre-existing part in the historical note of the new part.

(2) The history note shall reflect the original NMAC effective date and number. When a part has been entirely repealed, its history shall be reflected in the history of the part, which shall remain in the NMAC.

(3) Once a part number has been used in the NMAC, the history of the part shall continue to contain all NMAC history for that part, regardless of repealers.

C. Superseding rule filings are not permitted. This activity shall be handled through amendment of the part or by repeal and replacement of the part.

[1.24.10.18 NMAC - Rp, 1 NMAC 3.3.10.12, 2/29/2000; A, 6/30/2004; A, 9/15/2014; A, 11/30/2015]

1.24.10.19 ERRORS IN THE NEW MEXICO ADMINISTRATIVE CODE:

A. Agencies may report errors at any time. Differences detected between the official and compiled rules shall be reported to the [~~records center~~] administrative law division, in writing, as soon as possible.

B. The [~~records center~~] administrative law division shall effect correction of differences detected in the NMAC as soon as possible.

C. In instances where there is a difference between the filed rule and the NMAC, the filed rule prevails.

D. If the filed rule is in error it shall be corrected by agency amendment or by written authority by agency to correct minor stylistic changes (numerical, punctuation, misspellings) if caught by administrative law division post-filing.

[1.24.10.19 NMAC - N, 2/29/2000; A, 11/30/2015]

1.24.10.21 HISTORY OF THE PART:

A. Pre-NMAC history is the first division of the history of the part and shall contain the pre-NMAC development of the rule material included in the part. The records center may add this material in brackets where it has not previously been part of the NMAC.

B. History of repealed material is the second division of the history of the part and shall contain repeals of NMAC parts or sections in full.

(1) When a section is repealed and not replaced, using the short form, followed by a space, a dash, a space, and then the word" repealed", a comma, a space and the effective date of the repeal.

(2) When only a section is repealed, and replaced, that history remains in the section history note.

(3) When a part is repealed, the history of the part shall identify the part using the short form and the name, followed by a space, a dash, a space, the word "repealed", a comma, a space, and the effective date of the repeal. The history of repealed material shall be retained in the NMAC.

[1.24.10.21 NMAC - Rp 1 NMAC 3.3.10.15.11.1 & 1 NMAC 3.3.10.15.11.4, 2/29/2000; A, 11/30/2015]

1.24.10.22 MATERIAL REFERENCED IN RULES:

A. The source of material, which is fully included in the text of the rule, may be given as a citation. Where there is no intent to include in the rule additional material by incorporation from the cited reference, the source material need not be attached.

B. Referenced material (including standards, codes and manuals) incorporated or adopted by rule must be filed as part of that rule which may be accomplished by attachment.

(1) Referenced material that has been formally published does not need to meet style and format requirements of 1.24.10 NMAC. A copy of this formally published material must be filed.

(2) Other attachments must meet all style, format and filing requirements, including provision of an electronic copy, unless an exception has been granted pursuant to 1.24.10.24 NMAC.

(3) References to United States U.S. law shall be deemed to be references to the current version of such law, including subsequent amendments, unless otherwise expressly stated in the rule. References to U.S. law do not require submittal or a copy. In lieu of submitting a paper copy of these references, the issuing authority shall on the NMAC transmittal form list the references and internet site. This information shall be verified by the records center at the appropriate internet site to ensure access is available to users of the NMAC. If an internet site is not available or cannot be located, one paper copy of the attachment shall be filed with the rule for historical reference.

(4) Referenced material, other than U.S. law (including material referenced in New Mexico statutes or the NMAC), shall be the version filed with or referenced by the rule and shall not include any subsequent amendments or changes to the referenced material, unless otherwise expressly stated in the rule.

C. Referenced material that is not incorporated in the rule may be referenced in either the text or in an annotation. Annotations are not part of the rule.

[1.24.10.22 NMAC - Rp 1 NMAC 3.3.10.17.1 & 1 NMAC 3.3.10.17.2, 2/29/2000; A, 6/30/2004; A, 11/30/2015]

COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.24.15 NMAC, Sections 5, 8-14, effective 11/30/2015.

1.24.15.5 EFFECTIVE DATE: [~~September 15, 2014~~] February 29, 2000, unless a later date is cited at the end of a section.
[1.24.15.5 NMAC - Rp 1 NMAC 3.3.15.5, 2/29/2000; A, 9/15/2014; A, 11/30/2015]

1.24.15.8 REQUIREMENTS FOR AGENCIES RELATIVE TO PUBLISHING NOTICES AND RULES IN THE NEW MEXICO REGISTER:

A. Agencies shall publish in the New Mexico register:

(1) notices of rule-making; and

(2) adopted rules filed with the administrative law division of the state records center under the State Rules Act, either in full text, short-form publication or in synopsis; synopses shall have prior approval of the state records administrator and such approval shall also be published.

B. Agencies may publish other materials related to administrative law at their discretion.

C. History notes, histories of the part, and amendments to history notes need not be published in the New Mexico register.
[1.24.15.8 NMAC - Rp 1 NMAC 3.3.15.8, 2/29/2000; A, 7/15/2003; A, 9/15/2014; A, 11/30/2015]

1.24.15.9 REQUIREMENTS FOR NOTICES: All notices submitted for filing must conform to the following requirements:

A. The content of any notice must have at least the following:

(1) name of agency holding the meeting;

(2) where and when the meeting will be held, that includes the address, date and time;

(3) where copies of the meeting agenda can be found;

(4) where copies of the proposed rules can be found;

(5) what accommodations are being made for individuals with disabilities; and

(6) if public comment is allowed at the hearing, how and where to submit written or oral comments to the agency.

B. The form of any notice must conform to the following:

(1) the notice heading shall be in bold or capital letters and be centered at top of page;

(2) the notice heading shall simply and accurately describe the rulemaking hearing;

(3) the text of the notice shall be flush with the document's left margin; and,

(4) the use of legal, case, or other headings is discouraged.

C. If special or unique circumstances are requested by an agency for deviation from any of the above requirements, the state records administrator has the authority to grant an exception.
[1.24.15.9 NMAC - N, 11/30/2015]

[~~1.24.15.9~~] 1.24.15.10 REQUIREMENTS FOR SYNOPSES: Synopses of adopted rules must be certified as giving adequate notice of the contents of the rule. If an agency chooses to submit to the register a synopsis of an adopted rule in place of the full text it shall:

A. Have legal counsel (the in-house attorney or its assigned assistant attorney general) review the synopsis for its adequacy of notice.

B. Have legal counsel certify that the synopsis gives adequate notice of the content of the rule, considering at least the following:

(1) whether the subject matter is fully disclosed;

(2) whether the persons affected are fully disclosed;

(3) whether the interests of the persons affected are described;

(4) whether geographical applicability is clearly stated;

(5) where a rule incorporates commercially published material (such as the Code of Federal Regulations, Uniform Plumbing Code, etc.) and such material is a substantial portion of the rule, whether such material is clearly identified in the synopsis;

(6) whether the telephone number and address of the issuing agency or a URL are provided for obtaining the full text of the rule; and

(7) whether the effective date of the rule is clearly stated.

C. Include with the synopsis the following certification by the agency's legal counsel that will be printed in the register along with the synopsis:

I CERTIFY THAT THIS SYNOPSIS GIVES ADEQUATE NOTICE OF THE CONTENTS OF THE RULE DESCRIBED ABOVE
THIS _____ DAY OF
_____ 20__

BY: (name of certifying attorney) _____
_____

D. The records center shall not ordinarily accept synopses of rules for publication in the register.

(1) Exceptions may be granted for a rule on a one-time-only basis if the state records administrator determines "that publication in the register of the full text of an adopted rule would be unduly cumbersome, expensive or otherwise inexpedient."

(2) Exceptions may be granted for a rule when an agency can demonstrate that a synopsis might be more informative than publication. This might be the case when a single word is added, grammar is corrected or the proposed change is so minor as to make publication of the full section unreasonable.

(3) If an agency wishes to request an exception:

(a) the request must be submitted to the state records administrator in writing, in hard copy, along with hard copies of the proposed synopsis, the certificate of adequate notice, and the full text of the rule at least 30 days prior to the intended filing date of the rule;

(b) the request shall disclose how the agency intends to provide complete copies of the rule to the affected persons and entities.

(4) The state records administrator shall provide a written response to the request.

(5) If the synopsis is approved, a copy of the written approval for the exception by the state records administrator must be included as part of the synopsis when it is published.

(6) For guidance on filing temporary emergency rules in synopsis form see 1.24.20 NMAC.
[1.24.15.9 NMAC - Rp 1 NMAC 3.3.15.8, 2/29/2000; 1.24.15.10 NMAC - Rn, 1.24.15.9 NMAC, 11/30/2015]

[~~1.24.15.10~~] 1.24.15.11 REQUIREMENTS FOR SHORT-FORM PUBLICATION:

A. Where a part is amended, an agency may select to publish

just the section being modified.

B. Where changes are minor, an agency may choose to publish only the full text that is actually being changed.

(1) When less than a section is proposed to be published, the agency shall provide an explanatory paragraph describing the context and effect of the amendment.

(2) The full text of all changes being made by the amendment shall be published. At a minimum the published text shall be a full paragraph, but not less than a sentence.

(3) Legal counsel shall review any explanatory paragraph to ensure that the publication gives adequate notice of the amendment. In reviewing adequacy of notice, legal counsel shall consider the same elements as contained in 1.24.15.9 NMAC.

C. Publication of less than the full rule in the New Mexico register shall not affect filing requirements under 1.24.10 NMAC.

[1.24.15.10 NMAC - N, 2/29/2000; 1.24.15.11 NMAC - Rn, 1.24.15.10 NMAC, 11/30/2015]

[~~1.24.15.11~~] 1.24.15.12 TECHNICAL REQUIREMENTS FOR PUBLISHING IN THE NEW MEXICO REGISTER:

A. All agencies shall submit adopted rules in electronic format according to criteria established in 1.24.10.13 NMAC. Where requirements of 1.24.10 NMAC are met, referenced material need not otherwise be included. Electronic copies of notices and proposed rules may be submitted via e-mail, provided a paper copy is also faxed to the records center.

B. Each rule filing or notice shall be accompanied by a separate electronic document called the billing information sheet that contains the following information:

(1) agency and division (if applicable) names;

(2) three-digit agency DFA account code (for billing);

(3) contact person's name, address, phone number and e-mail address;

(4) part name(s) or document name(s);

(5) part number(s), if applicable;

(6) file names of electronic documents with application extension;

(7) New Mexico register volume number, issue number, and publication date;

(8) name of assigned administrative law division analyst; and

(9) purchase [~~document~~] order number.

C. The agency shall [~~deliver one original paper copy and~~] submit one electronic copy of notices of rule-making or adopted rules to the [~~records center~~] administrative law division for submission to the New Mexico register.

(1) Agencies that do not deliver both an original paper copy and one electronic version of an adopted rule shall have the rule rejected.

(2) Material that is filed after the cut-off date for publication shall be published in the next issue, and, if necessary, the effective date shall be modified. For emergency rule filings under unique circumstances and only if not in conflict with any other statute, the state records administrator has authority to allow publication of material filed after submittal deadline.

(3) Submissions for publication in the New Mexico register shall comply with the standards established in Subsections B and C of 1.24.10.13 NMAC.

[1.24.15.11 NMAC - Rp, 1 NMAC 3.3.15.9, 2/29/2000; A, 7/15/2003; A, 9/15/2014; 1.24.15.12 NMAC - Rn & A, 1.24.15.11 NMAC, 11/30/2015]

[~~1.24.15.12~~] 1.24.15.13 CHARGES FOR PUBLISHING IN THE NEW MEXICO REGISTER: There shall be a $2.50 per column inch charge to agencies publishing material in the New Mexico register.

[1.24.15.12 NMAC - Rp, 1 NMAC 3.3.15.10, 2/29/2000; A, 7/15/2003; A, 7/1/2009; A, 10/15/2014; 1.24.15.13 NMAC - Rn, 1.24.15.12 NMAC, 11/30/2015]

[Charges for publishing in the New Mexico register are also found in 1.13.2.18 NMAC.]

[~~1.24.15.13~~] 1.24.15.14 FEES FOR COPIES OF THE NEW MEXICO REGISTER:

A. Individual copies of the New Mexico register shall be $12.00.

B. Annual paper subscription fees for the New Mexico register shall be $270.00.

[1.24.15.13 NMAC - Rp, 1 NMAC 3.3.15.11 & 1 NMAC 3.3.15.12 & 1 NMAC 3.3.15.13 & 1 NMAC 3.3.14, 2/29/2000; A, 7/15/2003; A, 7/1/2009; 1.24.15.14 NMAC - Rn, 1.24.15.13 NMAC, 11/30/2015]

[Fees for copies of the New Mexico register are also found in 1.13.2.19 NMAC.]

REGULATION AND LICENSING DEPARTMENT

BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.1 NMAC Section 7, effective 12-17-2015.

16.34.1.7 DEFINITIONS: As used in the Barbers and Cosmetologists Act:

A. "applicant" means a person who has applied for a license;

B. "approval number" means the number assigned by the board to designate an approved provider;

C. "approved" means accepted as a provider by the board;

D. "barber" means a person, other than a student, who for compensation engages in barbering;

E. "barbering" means shaving or trimming the beard or cutting the hair, curling and waving, including permanent waving, straightening the hair, giving facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances, shampooing, bleaching or dyeing the hair or applying tonics or applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or upper part of the body, caring for and servicing wigs and hair pieces or removing of unwanted hair except by means of electrology;

F. "board" means the board of barbers and cosmetologists;

G. "booth establishment license" means a license required of an individual who rents space within another licensed establishment for the purpose of rendering licensed services as a separate, independent business;

H. "branch campus/ additional location" means an additional location that provides the same administrative services as the main campus, and offers at least one complete program entered into the programs offered at the main campus; a branch campus/ additional location must be approved by the board as a separate school with a stand-alone license;

I. "clean or cleansing" means washing with liquid soap and

water, detergent, antiseptics, or other adequate methods to remove all visible debris or residue. Cleansing is not disinfection;

[~~I.~~] J. "contact hour" means one contact hour equals a minimum of fifty minutes of instruction;

[~~J.~~] K. "cosmetologist" means a person, other than a student, who for compensation engages in cosmetology;

[~~K.~~] L. "cosmetology" means arranging, dressing, curling, waving, cleansing, cutting, bleaching, coloring, straightening or similar work upon the hair of a person, whether by hand or through the use of chemistry or of mechanical or electrical apparatus or appliances, using cosmetic preparations, antiseptics, tonics, lotions or creams or massaging, cleansing, stimulating, manipulating, beautifying or performing similar work on the body of a person, manicuring and pedicuring the nails of a person, caring for and servicing wigs and hair pieces or removing of unwanted hair except by means of electrology. A cosmetologist shall not perform any type of shaving using a straight edge (or razor blade in any form) with or without a safety guard without obtaining appropriate licensure.

[~~L.~~] M. "current work experience" means verified work that has occurred within the previous five years;

N. "disinfect or disinfection" means the use of chemical agents (after cleaning) to destroy potentially dangerous pathogens on non-porous items;

O. "disinfectant" means an EPA-registered bactericidal, virucidal and fungicidal chemical effective against pathogens of concern when used as directed on the manufacturer's label. For purposes of this rule alcohol and UV light boxes are not approved for disinfection;

[~~M.~~] P. "electrologist" means a person, other than a student, who for compensation removes hair from or destroys hair on the human body through the use of an electric current applied to the body with a needle-shaped electrode or probe;

Q. "electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;

[~~N.~~] R. "enterprise" means a business venture, firm, or organization;

[~~O.~~] S. "expansion campus facility" means any separate classroom or clinic used for educational purposes that is separate, detached and apart from the primary facility and main address; its purpose is to allow the licensed school to provide adequate space to train students who are enrolled through the primary facility and the expansion campus facility must be within a two-mile radius of the main campus;

[~~P.~~] T. "establishment" means an immobile beauty shop, barbershop, electrology clinic, salon or similar place of business in which cosmetology, barbering or electrolysis is performed;

[~~Q.~~] U. "esthetician" means a person, other than a student, who for compensation uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams or massaging, cleansing, stimulating or manipulating the skin for the purpose of preserving the health and beauty of the skin and body or performing similar work on any part of the body of a person; using the term or title of "medical esthetician" is not allowable under the act; this term is misleading and could be deemed deceptive or fraudulent;

[~~R.~~] V. "executive director" means the director for the board;

[~~O.~~] W. "expansion campus facility" means any separate classroom or clinic used for educational purposes that is separate, detached and apart from the primary facility and main address; its purpose is to allow the licensed school to provide adequate space to train students who are enrolled through the primary facility and the expansion campus facility must be within a two-mile radius of the main campus;

X. "externship" means a student enrolled in any course licensed by this act may, at the school's option, participate in an externship program upon completion of seventy-five percent of the contracted course of study. The externship program would allow students to train in a licensed establishment for one day or up to eight hours per week until graduation. The training would be supervised by a designated salon licensee and would include any activity that is routine in a salon except for offering complete services on the public, applying any chemicals, or receiving any compensation;

[~~S.~~] Y. "HSD" means the New Mexico human services department;

Z. "hands-on training" means student training on clients, students or models that includes active personal participation and practical experience necessary to gain knowledge. Training on mannequins is considered hands-on training;

[~~T.~~] AA. "instructor" means a person licensed to teach in a school of cosmetology, barbering or in a school of electrology;

BB. "jurisprudence exam" means the examination given regarding the laws, rules and regulations, which relate to the practice of barbers and cosmetologists in the state of New Mexico;

[~~U.~~] CC. "license" means a certificate, permit or other authorization to engage in each of the professions and occupations regulated by the boards enumerated in Subsection A of the act;

DD. "license in good standing" refers to a current, valid, board-issued license with no restrictions placed on the license by the board;

[~~V.~~] EE. "main campus" means a school, which has been licensed by the board; any change in location of the main campus must comply with the procedures set forth in 16.34.8 NMAC of these rules; the main campus includes the primary facilities and any separate or detached expansion campus facility of the primary training site within a two-mile radius;

[~~W.~~] FF. "manicurist-esthetician" means a person, other than a student, who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet and who uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams or massaging, cleansing, stimulating or manipulating the skin for the purpose of preserving the health and beauty of the skin and body or performing similar work on any part of the body of a person;

[~~X.~~] GG. "manicurist-pedicurist" means a person, other than a student, who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet;

[~~Y. "manicurist-shampooer" means a person who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet and practices the art of shampooing, application of conditioners, rinses and scalp manipulations to the hair and scalp of a person and on artificial hair;~~]

HH. "multi-use" means non-porous instruments, items, equipment,

implements or tools that must be cleaned and disinfected. The items must be disinfected by a complete immersion in an EPA registered, bactericidal, virucidal and fungicidal (formulated for hospitals) disinfectant that is mixed and used according to the manufacturer's directions. Non-porous items are the only items that can be disinfected;

II. "non-porous" means multi-use items such as metal, glass and plastic;

[~~Z.~~] JJ. "outreach enterprise" means an independent mobile unit, or system of units, equipped with or carrying both professional and special equipment used by a professional licensee of this act to a site or premises for the purpose of providing professional services to the handicapped, restricted, homebound, impaired, incapacitated, delicate, or otherwise constrained client;

[~~AA.~~] KK. "provider" means the person, firm, corporation, institution or agency approved to conduct or sponsor a continuing education program and ensure its integrity;

LL. "reciprocity" means a mutual exchange of privileges between states;

[~~BB.~~] MM. "revoke a license" means to prohibit the conduct authorized by the license;

[~~CC.~~] NN. "sanitation" means the maintenance of sanitary conditions to promote hygiene and the prevention of disease through the use of chemical agents or products;

[~~DD.~~] OO. "school" means a public or private instructional facility approved by the board that teaches cosmetology or barbering;

PP. "single use items" means tools or supplies that come in contact with the public and are porous (made of anything other than plastic, metal or glass) cannot be disinfected (including, but not limited to: disposable razors, pedi-pads, emery boards, sponges, cotton pads, buffing blocks, toe separators, chamois, sandpaper drill bits, waxing strip, wood sticks, cotton balls, nail wipes, disposable towels, pumice stones, flip flops, and porous files, etc.) shall be disposed of immediately after use;

[~~EE.~~] QQ. "statement of compliance" means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support;

[~~FF.~~] RR. "statement of non-compliance" means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support;

SS. "sterilize or sterilization" means to eliminate all forms of bacteria or other microorganisms;

[~~GG.~~] TT. "student" means a person enrolled in a school to learn or be trained in cosmetology, barbering or electrolysis;

UU. "supervising licensee" means licensee designated by the establishment owner or manager to act on behalf of the enterprise or establishment in the absence of the owner or manager. The supervising licensee must be licensed in all aspects of the activity being practiced in the enterprise or establishment;

[~~HH.~~] VV. "suspend a license" means to prohibit, for a stated period of time, the conduct authorized by the license; "suspend a license" also means to allow for a stated period of time the conduct authorized by the license subject to conditions that are reasonably related to the grounds for suspension;

[~~II.~~] WW. "verified work experience" means work experience in the applicable discipline in a licensed establishment, enterprise or electrology clinic as verified by:

(1) certified and notarized statement by employer(s);

(2) certified and notarized statement by licensed co-worker(s);

(3) certified and notarized statement by client(s);

(4) certified and notarized copies of tax returns;

(5) certified and notarized copies of W-2's; or

(6) other related form(s) of documentation.

[16.34.1.7 NMAC - Rp 16 NMAC 34.1.7, 06-16-01; A, 07-16-04; A, 10-04-07; A, 12-17-2015]

REGULATION AND LICENSING DEPARTMENT

BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.2 NMAC, Sections 7, 8, 9 and 10, with new Sections 13 and 14 added, effective 12-17-15.

16.34.2.7 DEFINITIONS: [~~Refer to Part 1~~]

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

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

[16.34.2.7 NMAC - Rp 16 NMAC 34.2.7, 06-16-01; A, 12-17-15]

16.34.2.8 GENERAL LICENSING PROCEDURES

A. Application forms:

(1) Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose. Applications must include the required fee in the form of a money order, cashier's check, business check, or credit card for on-line renewal only, (no personal checks will be accepted). Incomplete applications will be returned. Applications are valid for one year from date of receipt. Designated deadlines will apply to resubmitted applications.

(2) Applications for licensure must include:

(a) proof of age indicating applicant is at least seventeen years of age; please provide one of the following: a copy of birth certificate, driver's license, state issued identification card, or baptismal certificate.

(b) proof of applicable secondary education: please provide a copy of one of the following: a high school diploma, G.E.D. certificate or transcript of G.E.D. test scores, letter from the high school attended containing the school seal, copy of the high school transcript showing 10th grade equivalency or higher, a post-secondary transcript, successful completion of a 10th grade equivalency test, letter from the G.E.D. testing facility showing that the G.E.D has been passed; documents submitted in a language other than English must be accompanied by a certified translation completed by a government certified translator;

(c) a transcript of hours showing that the training hours were completed within the preceding twenty-four months; if the training hours were obtained more than twenty-four months before the application is submitted to the board, then the applicant will need to register at a licensed school, submit to a scholastic evaluation to determine his training needs, and complete a minimum of 150 hours of remedial education; upon completion and proof of the remediation, the applicant

may apply for and submit to the complete theory examination, the applicable practical examination and a state law examination.

B. Photographs: applicants for original licensure shall attach a recent passport size, color photograph, front-view of face. The photo must be at least 1.5" X 1.5" and no larger than 2" X 3".

C. Electronic signatures will be acceptable for applications submitted pursuant to16.34.1 NMAC through 16.34.16 NMAC.

D. Incomplete applications will be returned. Designated deadlines will apply to resubmitted applications.

[~~C.~~] E. Renewal is the responsibility of the licensee:

(1) Timely renewal of license(s) is the full and complete responsibility of the LICENSEE. Failure to renew the license by the expiration date will result in late fees or reexamination as set forth in the act.

(2) A licensee, with a valid instructor license for the preceding twelve months, may use the instructor license to renew or reinstate his original practitioner license.

(3) The board will issue renewal licenses within fifteen working days of receipt of the renewal request and applicable fee.

(4) Timely renewal of an establishment, enterprise, electrology clinic and school license is the full and complete responsibility of the LICENSEE. Failure to renew the license within thirty days after its expiration, will result in payments of renewal and late fees.

[16.34.2.8 NMAC - Rp 16 NMAC 34.2.8, 06-16-01; A, 07-16-04; A, 10-04-07; A, 12-17-15]

16.34.2.9 CUSTODY AND ALTERATION OF LICENSES

A. [~~Licenses issued by the board are at all times the property of the board, and may remain in the custody of the licensee only the licensee complies with the act and board rules.~~] All board issued licenses and permits are property of the board and shall remain in the custody of the licensee at the discretion of the board.

B. Licenses and permits shall not be altered in any way.

C. Inspectors or board designees may retrieve any license or permit which is altered, suspended, revoked, expired, or left by a licensee who is no longer employed at an establishment, an enterprise, an electrology clinic, or school.

[16.34.2.9 NMAC - Rp 16 NMAC 34.2.9, 06-16-01; A, 10-04-07; A, 12-17-15]

16.34.2.10 LICENSES POSTED

A. All licenses, except identification licenses, issued by the board shall be posted where clearly visible to the public upon entry to the establishment at all times.

B. Licensees must attach a recent passport size colored photograph to the board issued license and sign the license where indicated.

C. All licensees, who have been placed on probation, will be issued a license, which states the licensee is on disciplinary probation. The license shall be posted where clearly visible to the public upon entry to the establishment at all times.

D. Licensees must present a driver's license or other identification when requested by the public, the board or its authorized representative.

E. Hours of operation shall be posted where clearly visible to the public at all times.

F. Most recent inspection report shall be printed and posted in each establishment within 72 hours of the inspection and posted where clearly visible to the public. It is the responsibility of the licensee that signed the inspection report and the operator to ensure this requirement is met.

[16.34.2.10 NMAC - Rp 16 NMAC 34.2.10, 06-16-01; A, 10-04-07; A, 12-17-15]

16.34.2.13 EXPEDITED LICENSURE – MILITARY SERVICE MEMBERS, SPOUSES & VETERANS:

A. Applications shall be completed on a form provided by the board.

B. The information shall include:

(1) Completed application and fee pursuant to 16.34.2 NMAC.

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

(3) Proof of honorable discharge (DD214) or military ID card or accepted proof of military spouse status.

C. Electronic signatures will be acceptable for applications submitted pursuant to16.34.1 NMAC through 16.34.16 NMAC.

D. Renewal for a license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance set forth in 16.34.2 NMAC pursuant to Chapter 61, Articles 2 through 34 NMSA 1978.

[16.34.2.13 NMAC - N, 12-17-15]

16.34.2.14 RENEWALS EXPEDITED LICENSURE FOR MIITARY SERVICE MEMBERS, SPOUSES & VETERANS:

A. Timely renewal of license(s) is the full and complete responsibility of the LICENSEE. Failure to renew the license by the expiration date will result in late fees or reexamination as set forth in the act.

B. Practitioner licenses expire every year, at the end of the practitioner's birth month.

C. A licensee, with a valid instructor license for the preceding twelve months, may use the instructor license to renew or reinstate his original practitioner license.

D. The board will issue renewal licenses within fifteen working days of receipt of the renewal request and applicable fee.

E. Electronic signatures will be acceptable for applications submitted pursuant to16.34.1 NMAC through 16.34.16 NMAC.

[16.34.2.14 NMAC - N, 12-17-15]

REGULATION AND LICENSING DEPARTMENT

BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.4 NMAC, Sections 2, 8, 13, 14 and 15, effective 12-17-15.

16.34.4.2 SCOPE: All barbers, cosmetologists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises, and establishments;

[~~manicurist/shampooers,~~] applicants for examination and students.
[16.34.4.2 NMAC - Rp 16 NMAC 34.4.2, 06-16-01; A, 12-17-15]

16.34.4.8 [~~MANICURISTS/ SHAMPOOERS LICENSE RENEWALS:~~ ~~A manicurist/shampooer license holder is subject to the same rules and regulations that apply to manicurist/ pedicurist license holders.~~] **[RESERVED]**
[16.34.4.8 NMAC - Rp 16 NMAC 34.4.8, 06-16-01; A, 10-04-07; Repealed, 12-17-15]

16.34.4.13 QUALIFIED INSTRUCTORS

A. An eligible applicant may be issued an instructor license provided he or she submits a transcript for a 1000-hour instructor training course or proof of two years of current and consecutive work experience and passes the instructor licensing examination which can be taken only once for multiple licenses.

B. A provisional instructor license will be issued to an eligible applicant who meets the board requirements and has completed three full years of current verified full time work experience as a practitioner in the field in which he/she seeks licensure as an instructor under the following terms and conditions:

(1) The work experience must be current to ensure up-to-date knowledge in the field in which the applicant seeks provisional licensure.

(2) The provisional license will be effective until the next renewal period of March thirty-one.

(3) The provisional license will only be renewed twice upon completion of the required continuing education in professional development and the required fee as set forth by board rules.

(4) To obtain an instructor license, the holder of a provisional instructor license must complete an examination application and pass the instructor licensing examination. Failing any portion of the instructor examination automatically voids the provisional instructor license. The provisional license must then be returned to the board office.

(5) The holder of a provisional instructor license must sit for the licensing examination prior to the expiration of the provisional license.

(6) No more than fifty percent of the total instructional staff at any licensed school in the state of New Mexico may be licensed under this category. When determining ratios, more than one part-time provisional instructor may be combined to count as one instructor.
[16.34.4.13 NMAC - Rp 16 NMAC 34.4.13, 06-16-01; A, 10-04-07; A, 04-12-10; A, 12-17-15]

16.34.4.14 STUDENT PERMIT [~~LICENSE~~]:

A. Upon receipt of a complete student registration form and applicable fee, which shall be received in the board office within fifteen days of date of registration, the board will issue a student permit [~~license~~] and permit [~~license~~] number. The student permit [~~license~~] authorizes the holder to practice course related skills in an approved school and perform services on the public only after fifteen percent of the required hours for graduation from the course of study are accrued.

B. Student permit [~~licenses~~] are valid for 90 days following completion of graduation requirements. The student permit [~~licenses~~] will be issued to the student upon graduation of course of study by a school official and can be used to enter a licensed establishment and provide all services in the applicable course of study under the constant supervision of a licensee of the board, in the applicable course of study. The student permit [~~license~~] holder may not assume supervisory or managerial responsibilities of a licensed establishment at any time. The student permit [~~license~~] is valid for 90 days while waiting to test. Once the 90 days has expired the student permit [~~license~~]-must be turned into the state board office and the student must terminate working at the licensed establishment. It is the responsibility of the licensed establishment to monitor the expiration of the student permit [~~license~~]. The student permit [~~license~~] must be turned into the board with initial licensure application as part of the application process. No extensions will be given after the 90 days has terminated. The student must reapply if the course of study goes beyond one year.

C. Student permits [~~licenses~~] are the property of the board and must be returned to the board office with the notice of termination or official transcript of credit by the school. Additional requirements applicable to student permits are found in Subsection A, Paragraph 7 of 16.34.8.13 NMAC of these rules.

D. Student permits cannot be used outside a school environment without board approval.

E. Student permits are not to be used as a student externship permit as defined in 16.34.8.17 NMAC.
16.34.4.14 NMAC - Rp 16 NMAC 34.4.14, 06-16-01; A, 07-16-04; A, 10-04-07; A, 04-12-10; A, 11-14-10; A, 12-17-15]

16.34.4.15 DUPLICATE LICENSES: A duplicate license will be issued to any board licensee who submits a written [~~notarized~~] request along with the required fee.
[16.34.4.15 NMAC - Rp 16 NMAC 34.4.15, 06-16-01; A, 10-04-07; A, 12-17-15]

REGULATION AND LICENSING DEPARTMENT

BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.5 NMAC, Sections 8, 9, 10, 11 and 15 and new Section 16 is added, effective 12-17-15.

16.34.5.8 GENERAL LICENSURE REQUIREMENTS

A. Any person is eligible to be registered as a practitioner and is qualified to receive a license as a registered barber, cosmetologist, manicurist, esthetician, manicurist/ esthetician, or electrologist who submits proof that [~~he/she~~] the applicant:

(1) is at least seventeen years of age;

(2) has an education equivalent to the completion of the second year of high school;

(3) has completed the course of study for the license in a licensed school within the preceding twenty-four months;

(4) has paid the required fees as set forth in these rules; and

(5) has passed the practical and written examination conducted by the board.

B. Any person is eligible for initial registration or re-registration as an instructor and is qualified to receive a license as an instructor who submits proof that [~~he/she~~] the applicant has met all the above requirements and in addition:

(1) has an

education equivalent to the completion of four years of high school; and

(2) holds a current license in New Mexico as a practitioner in the field in which the applicant is seeking licensure as an instructor.

C. Applicants who have not completed a course of study equivalent to the license for which he/she is applying may submit notarized letters of employment or employment records to prove licensed, current, verified work experience. Six full months of work experience will equal one-hundred-fifty hours of training. Work experience less than six full months will not be considered toward training hours.

D. Applications are valid for one year from date of receipt.

E. All application fees are non-refundable.

[16.34.5.8 NMAC - Rp 16 NMAC 34.5.8, 06-16-01; A, 07-16-04; A, 12-17-15]

16.34.5.9 BARBER LICENSE (1200 HOURS OR EQUIVALENT CREDIT) A barber license permits the practitioner to perform the following services upon the upper part of the human body for cosmetic purposes:

A. shave or trim beards;

B. cut and style hair whether by hand or mechanical or electrical apparatus;

C. curl, wave, permanent wave or chemically relax the hair;

D. give facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances; [~~or other invasive techniques~~]

E. shampoo, bleach, dye, or apply tonics to the hair;

F. apply cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or upper parts of the body;

G. care for and service wigs and hairpieces; and

H. remove superfluous or unwanted hair from the body of a person by any means except electrolysis.

I. A barber shall not perform any type of nail services without obtaining appropriate licensure.

[16.34.5.9 NMAC - Rp 16 NMAC 34.5.9, 06-16-01; A, 12-17-15]

16.34.5.10 COSMETOLOGIST LICENSE (1600) HOURS OR EQUIVALENT CREDIT):

A. A cosmetologist license permits the practitioner to:

[~~A.~~] (1) cut and style hair whether by hand or mechanical or electrical apparatus;

[~~B.~~] (2) braid, natural hair braid, curl, wave, permanent wave or chemically relax the hair;

[~~C.~~] (3) give facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances, including removal of superfluous or unwanted hair except by means of shaving and electrolysis;

[~~D.~~] (4) shampoo, bleach, dye, or apply tonics to the hair;

[~~E.~~] (5) apply cosmetic preparations, antiseptics, powders, oils, clays or lotions to any part of the body of a person;

[~~F.~~] (6) manicure and pedicure the nails of a person and add nail extensions;

[~~G.~~] (7) care for and service wigs and hairpieces;

[~~H.~~] (8) cut or trim beards with clippers or scissors only;

B. A cosmetologist shall not perform any type of shaving using a straight edge (or razor blade in any form) with or without a safety guard without obtaining appropriate licensure.

[16.34.5.10 NMAC - Rp 16 NMAC 34.5.10, 06-16-01; A, 10-04-07; A, 12-17-15]

16.34.5.11 MANICURIST/ PEDICURIST LICENSE ([~~350~~] 400 HOURS OR EQUIVALENT CREDIT)

A. A manicurist/ pedicurist license permits the practitioner to:

(1) trim the nails of a person, including the trimming of otherwise healthy ingrown toenails;

(2) reduce corns or callouses by using softening preparations or abrasion in order to beautify the foot;

(3) use chemical substances on the nails for the purpose of strengthening, repairing, or lengthening the nails using nail tips, wraps, or acrylic nail products. Nail extensions may be applied only after the nails, cuticles and nail plate have been properly prepared for the service and applicable product;

(4) apply massage and manipulations to the hands, arms and feet for the purpose of stimulating and smoothing;

(5) apply polish, oils or other cosmetic preparations for the purpose of beautifying the hands and feet.

B. A manicurist/ pedicurist shall not treat an obviously infected ingrown to a nail or use any technique involving mechanical penetration of the skin beneath a callous or corn.

C. A manicurist/ pedicurist shall not perform any type of temporary or permanent hair removal techniques without first obtaining appropriate licensure.

[16.34.5.11 NMAC - Rp 16 NMAC 34.5.11, 06-16-01; A, 12-17-15]

16.34.5.15 MANICURIST/ ESTHETICIAN LICENSE ([~~600~~] 900 HOURS OR EQUIVALENT CREDIT)

A. A combined manicurist/esthetician license permits the practitioner to:

(1) trim the nails of a person, including the trimming of otherwise healthy ingrown toenails;

(2) reduce corns or callouses by using softening preparations or abrasion in order to beautify the foot;

(3) use chemical substances on the nails for the purpose of strengthening, repairing or lengthening the nails using nail tips, wraps or acrylic nail products. Nail extensions may be applied only after the nails, cuticles and nail plate have been properly prepared for the service and applicable product;

(4) apply massage and manipulations to the hands, arms and feet for the purpose of stimulating and smoothing;

(5) apply polish, oils or other cosmetic preparations for the purpose of beautifying the hands and feet;

(6) use cosmetic preparations, antiseptics, powders, oils, clays or lotion to any part of the body of a person;

(7) apply massage and manipulation techniques using the hands or mechanical apparatus;

(8) apply light therapy, high frequency and other types of facial treatments; and use specialized skin care and facial machines in applying facial treatments;

(9) apply cosmetic makeup preparations to contour and beautify the skin;

(10) perform lash and brow tinting procedures; and

(11) remove superfluous or unwanted hair from the

body of a person by any means except electrolysis or other invasive techniques and shaving.

B. A manicurist/ esthetician shall not treat an obviously infected ingrown toenail or use any technique involving mechanical penetration of the skin beneath a callous or corn.

C. A manicurist/ esthetician shall not perform facial services on any person with a communicable skin disease.

D. A manicurist/ esthetician shall not perform any services other than those listed above. To do so may lead to revocation of the license or other disciplinary action by the board.

[16.34.5.15 NMAC - Rp 16 NMAC 34.5.15, 06-16-01; A, 12-17-15]

16.34.5.16 BARBER/ COSMETOLOGY LICENSE (CROSSOVER) A barber/cosmetology license may be issued to any licensee who has completed a crossover course in either barbering or cosmetology and has taken and passed the appropriate exams. Upon completion of the crossover, the licensee must contact the board office and request that their licenses be combined.

[16.34.5.16 NMAC - N, 12-17-15]

REGULATION AND LICENSING DEPARTMENT

BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.6 NMAC, Section 8, effective 12-17-15.

16.34.6.8 RECIPROCITY

A. An applicant for licensure by reciprocity must meet all the requirements of the act and applicable rules.

B. CREDIT FOR WORK EXPERIENCE. Applicants who have not completed a course of study equivalent to the license for which he/she is applying may submit notarized letters of employment or employment records to prove licensed, current, verified work experience. Six full months of work experience will equal one-hundred-fifty hours of training. Work experience less than six full months will not be considered toward training hours. To obtain any license by reciprocity, no more than fifty percent of the hours required for licensure by in-state applicants may be obtained by work experience. Apprenticeship training hours shall be considered on an individual case basis and will not be credited for more than fifty percent of the hours required for licensure by in-state applicants.

C. FULL HOURS OR WORK EXPERIENCE, OUT-OF-STATE LICENSE. Any person who seeks licensure in the state of New Mexico through reciprocity from any other state shall:

(1) furnish an affidavit from the state regulatory agency verifying that the applicant holds a current license and is in good standing with the state;

(2) furnish a certified transcript for the course of study or affidavit of hours from the regulatory agency or school attended in the state from which the applicant is applying;

(3) complete the application for reciprocity on a form provided by the board and submit the required fee: and

(4) furnish notarized letters of employment from past employers or employment records to prove work experience as stated in B of this section, if needed.

D. FOREIGN TRAINING: All foreign trained applicants must submit to the applicable examination. Refer to 16.34.3 NMAC for requirements.

E. INCOMPLETE HOURS, OUT OF STATE LICENSE.

(1) An applicant who holds a valid license in another state and who needs additional training not in [~~access~~] excess of 100 hours may obtain the training hours in any state. Upon submitting proof of having acquired the additional training hours, the applicant may then be licensed through reciprocity.

(2) An applicant licensed in a state where the course of study is not equivalent to New Mexico's may apply work experience or apprenticeship training hours, on a case by case basis, toward the training requirements as stated in Subsection B of 16.34.6.8 NMAC, provided these hours do not exceed fifty percent of the required hours in New Mexico. If the allowed hours credited from work experience or apprenticeship training meet or exceed the equivalent of the New Mexico course of study, the applicant may obtain licensure through reciprocity.

(3) An applicant who cannot obtain a license through reciprocity with the previous training and work experience, he will be required to obtain approval of the previous hours of training as stated in Subsection I of 16.34.6.8 NMAC , obtain the additional hours needed and submit to the New Mexico licensing examination applicable to the license he is seeking.

F. In order to expedite the process of approving training hours and work experience for reciprocity applicants and transfer students, the board executive director may forward required documents to a member of the board who is also a licensee for approval.

G. Prior to licensure the applicant shall take and pass a board approved jurisprudence examination. The applicant must pass the jurisprudence exam with a minimum score of 75% or greater.

[16.34.6.8 NMAC - Rp 16 NMAC 34.6.8, 06-16-01; A, 10-04-07; A, 04/12/10; A, 12-17-15]

REGULATION AND LICENSING DEPARTMENT

BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.7 NMAC, Sections 7, 8, 9 and 10, effective 12-17-15.

16.34.7.7 DEFINITIONS:

[~~Refer to Part 1~~] The following definitions are recommended infection control standards used for cleaning (sanitizing), disinfecting, and sterilization:

A. "clean or cleansing" means washing with liquid soap and water, detergent, antiseptics, or other adequate methods to removal all visible debris or residue. Cleansing is not disinfection.

B. "disinfect or disinfection" means the use of chemical agents (after cleaning) to destroy potentially dangerous pathogens on non-porous items;

C. "disinfectant" means an EPA-registered bactericidal, fungicidal and virucidal chemical effective against pathogens of concern when used as directed on the manufacturer's label. For purposes of this rule alcohol and UV light boxes are not approved for disinfection.

D. "proper use of EPA-registered bactericidal, fungicidal and virucidal disinfectants" means disinfecting using the following:

(1) implements and surfaces shall first be thoroughly cleaned of all visible debris prior to

disinfection. EPA-registered bactericidal, fungicidal and virucidal disinfectants become inactivated and ineffective when visibly contaminated with debris, hair, dirt and particulates;

(2) some disinfectants may be sprayed on instruments, tools, or equipment to be disinfected;

(3) disinfectants in which implements are to be immersed shall be prepared fresh daily or more often if solution becomes diluted or soiled; and

(4) these chemicals are harsh and may affect the long term use of scissors and other sharp objects. Leaving items in solution in accordance with manufacturers' recommendation for effective disinfection is recommended.

E. "multi-use" means non-porous instruments, items, equipment, implements or tools that must be cleaned and disinfected. The items must be disinfected by a complete immersion in an EPA-registered, bactericidal, fungicidal and virucidal (formulated for hospitals) disinfectant that is mixed and used according to the manufacturer's directions. Non-porous items are the only items that can be disinfected;

E. "laundering" means to wash in washing machine with detergent, dried and hot to the touch, kept in enclosed container or cabinet;

F. "sanitation" means the maintenance of sanitary conditions to promote hygiene and the prevention of disease through the use of chemical agents or products;

G. "single use items" means tools or supplies that come in contact with the public and are porous (made of anything other than plastic, metal or glass) cannot be disinfected (including, but not limited to: disposable razors, pedi-pads, emery boards, sponges, cotton pads, buffing blocks, toe separators, chamois, sandpaper drill bits, waxing strip, wood sticks, cotton balls, nail wipes, disposable towels, pumice stones, flip flops, and porous files, etc.) shall be disposed of immediately after use;

H. "sterilize or sterilization" means to eliminate all forms of bacteria or other microorganisms.

[16.34.7.1 NMAC - Rp 16 NMAC 34.7.1, 06-16-01; A, 12-17-15]

16.34.7.8 APPLICATION AND REQUIREMENTS FOR ENTERPRISE OR ESTABLISHMENT LICENSE

A. A completed official application for an enterprise or establishment license must be filed with the board at least fifteen days prior to the expected opening of the enterprise or establishment: Applications must include the required fee in the form of a money order, cashier's check, business check or credit card for on-line transactions, (no personal checks will be accepted). Applications must include:

(1) a copy of the owner's business license must accompany initial application;

(2) all fees are non-refundable;

(3) incomplete applications will be returned; and

(4) electronic signatures will be acceptable for applications submitted pursuant to 16.34.1 NMAC through 16.34.16 NMAC.

B. The application, if complete, may be administratively approved. A formal inspection of the enterprise, outreach enterprise unit or establishment shall [~~occur within ninety days of opening~~] take place after the issuance of the license.

C. When an enterprise or establishment relocates within the state of New Mexico, the owner must complete a new application and obtain approval, including inspection from the board to operate the business at the new location, and pay the administrative fee.

D. If any portion of the establishment is completely segregated from the primary area, a duplicate establishment license must be acquired and posted in the separate area. A duplicate license fee will be assessed.

E. All enterprise and establishment licenses must be renewed [~~on March thirty first of each year beginning with the first renewal year after the implementation of these rules~~] each year on the last day of the month of original issue date.

F. [~~Each outreach enterprise mobile unit and establishment licensed by the board shall post the applicable license and a current copy of the statutes, rules and regulations and the most recent inspection report in an area clearly visible to the public.~~] Official enterprise or establishment license must be displayed where visible to the public upon entry to the establishment;

G. [~~Each establishment licensed by the board shall post a sign at the main entrance, which indicates the type of business being performed.~~

H. ~~Each mobile outreach unit shall post a sign indicating the type of business being performed. The outreach enterprise license will be maintained at its business address. Each mobile outreach unit shall carry and have posted a duplicate enterprise license assigned to that unit.~~

I. ~~Any establishment or mobile outreach enterprise unit licensed by the board may not be used for living or sleeping quarters or in any way for residential purposes. If an establishment is located in a private residence, a segregated area must be provided for the licensed activity and maintenance of proper water supply and toilet standards to ensure proper sanitation infection control and safety standards. Reasonable access to a restroom must be provided by the establishment or mobile outreach enterprise unit.~~

J. ~~Except as provided in 16.34.4.11 NMAC, of these rules, no services authorized under this act may be provided away from a licensed establishment.~~

K. ~~Services authorized under this act may be provided in mobile outreach units only as specified in these rules.~~

L. ~~Any licensee performing services in a mobile outreach unit must carry a current duplicate license at all times. The licensee must show the client the license upon request.~~

M. ~~Each outreach enterprise mobile unit will be equipped with or have available a cellular phone and/or other communication capability necessary for immediate access and/or prompt response.~~

N. ~~Each outreach enterprise mobile unit must have signage on at least two sides for identification information in letters no smaller than five inches.~~

O. ~~Outreach enterprise mobile units shall be used for the sole purpose stated in 16.34.1 NMAC of these rules.~~] The most recent inspection report shall be printed and posted in each establishment where visible to the public within 72 hours of the inspection. It is the responsibility of the licensee that signed the inspection report and the owner to ensure this requirement is met.

H. The following information shall be kept on file on the premises of an enterprise or establishment and available for inspection by the board:

(1) the full names of all employees in the enterprise or establishment and their exact duties;

(2) the name and address of enterprise or establishment

owner;

(3) a complete description of all services performed;

(4) implementation of proper program of identification of products during use and in storage to avoid confusion as to products or their ingredients; such program shall include efforts to ensure that ingredient information provided by manufacturers or distributors remains available with the product for use by licensed professionals and clients.

(5) safety data sheet (SDS) must be current. A file containing pertinent information regarding products. Hard copies MUST be available. Computer based storage or access may only be used when all employees have access at all hours;

(6) a copy or access to the New Mexico board of barbers and cosmetologists statutes and rules;

(7) a site specific OSHA exposure control plan;

(8) if a pedicure tub is maintained on the premises, a log is maintained by the salon showing the legible signature, license number of the person disinfecting pedicure tub as defined in 16.34.7.9 NMAC. The time and date of the disinfection process and the name of the disinfectant used. Log entries must be maintained on the salon premises for 12 months; and

(9) as defined in 16.34.7.9 NMAC a log of each autoclave use must be maintained showing all testing samples and results, and a maintenance log of all maintenance performed according to the manufacturer's directions. The salon must retain the most recent twelve months of the log at the salon for review by the board;

I. Each establishment licensed by the board shall post a sign at the main entrance, which indicates the type of business being performed.

J. Proper signage must indicate the type of services offered.

K. If establishment is attached to a residence, it shall have a separate entrance. Permission from the county or city is required prior to submittal of application.

L. Each mobile outreach unit shall post a sign indicating the type of business being performed. The outreach enterprise license will be maintained at its business address. Each mobile outreach unit shall carry and have posted a duplicate enterprise license assigned to that unit.

M. Any establishment or mobile outreach enterprise unit licensed by the board may not be used for living or sleeping quarters or in any way for residential purposes. If an establishment is located in a private residence, a segregated area must be provided for the licensed activity and maintenance of proper water supply and toilet standards to ensure proper infection control and safety standards. Reasonable access to a restroom must be provided by the establishment or mobile outreach enterprise unit.

N. Except as provided in these rules, no services authorized under this act may be provided away from a licensed establishment. Services authorized under this act may be provided in mobile outreach units only as specified in these rules.

O. Any licensee performing services in a mobile outreach unit must carry a current duplicate license at all times. The licensee must show the client the license upon request.

P. Each outreach enterprise mobile unit will be equipped with or have available a cellular phone or other communication capability necessary for immediate access or prompt response.

Q. Each outreach enterprise mobile unit must have signage on at least two sides for identification information in letters no smaller than five inches.

R. Outreach enterprise mobile units shall be used for the sole purpose stated in 16.34.1 NMAC of these rules.

[16.34.7.8 NMAC - Rp 16 NMAC 34.7.8, 06-16-01; A, 12-17-15]

16.34.7.9 [~~SANITARY AND SAFETY RULES FOR ESTABLISHMENTS AND ENTERPRISES~~] INFECTION CONTROL & SAFETY STANDARDS FOR ESTABLISHMENTS AND ENTERPRISES

A. All licensees who operate enterprise or establishments, including outreach mobile units must comply with the following minimum [~~sanitation~~] infection control and safety standards. Failure to comply with these requirements may result in an administrative fine as provided in 16.34.15 NMAC of these rules and other disciplinary action by the board.

(1) maintenance of adequate ventilation to ensure that occupants are not improperly exposed to hazardous products or chemicals;

(2) maintenance of smoking restriction to ensure that products or chemicals used are not inadvertently ignited;

(3) maintenance of spill standards to ensure that occupants are not improperly exposed to any product or chemical;

(4) [~~maintenance of hot and cold running water available in such quantities as necessary to perform professional services in a safe and sanitary manner while serving the public;~~

~~(5) maintenance of all equipment in safe working condition;~~

~~(6) maintenance of clean towels in enclosed containers or cabinets with appropriate sanitizing agents;~~

~~(7) maintenance of combs and brushes in enclosed containers or cabinets with appropriate sanitizing agents;~~

~~(8) compliance with local licensing, fire, building, health, ventilation, heating and safety requirements;~~

~~(9) every person engaged in a licensed enterprise or establishment must keep his/her person in a hygienic condition;~~

~~(10) all products and chemicals must be kept in labeled closed containers;~~

~~(11) there shall be adequate wet and dry sanitizers;~~

~~(12) floors, walls, and other fixtures must be kept reasonably clean at all times; cups, bowls, basins, jars and instruments must be sanitized prior to using on the public;~~

~~(13) rest rooms of establishments must be in working order and be segregated and have ceiling high partitions from the rest of the establishment or common area;~~

~~(14) clean towels, sheets, robes and other linens must be used for each client; towels, sheets, robes, and other linens must be changed and properly laundered after each use; the use of paper or disposable towels, linens, etc. shall be in compliance with this rule and shall be disposed of after each use;~~

~~(15) implementation of proper cleaning and sterilization of head rests, hand rests, pedicure basins, foot rests, manicure tables and other fixtures that come in contact with licensees and the public; filters and drains must be cleaned or changed according to manufacturer's~~

~~instructions;~~

~~(16) implements must be sanitized in an appropriate germicidal solution by immersion according to the product manufacturer's direction;~~

~~(17) all licensees must provide a suitable place equipped to give adequate service, as advertised to clients, subject to inspection by the board;~~

~~(18) adherence to the product manufacturer's directions for safe use that appear on the product labeling;~~

~~(19) use of protective devices when so indicated by the product manufacturer's direction for safe use or when the nature of the product indicates such protection is necessary;~~

~~(20) implementation of proper hand washing practices to ensure that appropriate sanitary standards are maintained for clients and to ensure that cosmetology and barbering professionals are not overexposed to particular cosmetic products or their ingredients;~~

~~(21) implementation of proper storage practices to ensure that products are maintained in the manner that prevents any risk of fire or of undesired reactions;~~

~~(22) implementation of proper program of identification of products during use and in storage to avoid confusion as to products or their ingredients; such program shall include efforts to ensure that ingredient information provided by manufacturers or distributors remains available with the product for use by licensed professionals and clients;~~

~~(23) implementation of proper component mixing practices to reduce the risk of undesired reactions;~~

~~(24) implementation of proper sterilization practices of working tools and implements;~~

~~(25) licensees may not perform services on the public while under the influence of alcohol or drugs;~~

~~(26) maintenance of a material safety data sheet file containing pertinent facts regarding products;~~

~~(27) the use, storage or dispensing of such beauty service products containing methyl methacrylate or other chemicals determined to be hazardous to the health of licensees or consumers by the board of any federal, state or local health agency, shall be prohibited; the identification of such materials shall be determined by proper testing procedures approved by the board;~~

~~(28) no establishment or school shall use any razor-edged device or tool for the purpose of removing skin or calluses;~~

~~(29) all instruments and supplies that come in contact with a the public and cannot be disinfected (e.g. emery boards, sponges, cotton pads), shall be disposed of immediately after use; and~~

~~(30) procedures performed by any means, by hand, chemical, mechanical, or electrical apparatus or appliance which penetrates into the dermal layer of the skin is considered invasive and is therefore prohibited.~~] maintenance of hot and cold running water available in an operable manner to perform professional services in a safe and sanitary manner while serving the public;

(5) all establishments shall be completely separated by solid partitions, or by walls where food is prepared should be enclosed and away from public areas;

(6) rest rooms of establishments must be in working order and have ceiling high partitions from the rest of the establishment or common area;

(7) hours of operation shall be posted where clearly visible to the public at all times;

(8) each establishment must have signs stating;

(a) only "disinfected tools or new disposable supplies" may be used on clients; and

(b) "single use" instruments, items and supplies must be discarded after each use.

(9) most recent inspection report shall be posted where clearly visible to the public upon entry to the establishment;

(10) each establishment owner/manager must print the inspection report within 48 hours of inspection and post the inspection in a conspicuous place;

(11) maintenance of all equipment in safe working condition;

(12) compliance with local licensing, fire, building, health, ventilation, heating and safety requirements;

(13) floors, walls, and other fixtures must be kept reasonably clean at all times;

(14) floors shall be thoroughly cleaned each day;

(15) hair cuttings must be swept up and deposited in a closed receptacle after each haircut;

(16) trash containers must be emptied daily and kept clean by washing or using plastic liners;

(17) it is the responsibility of all licensees, including the salon owner and the designated licensed salon manager to ensure that all infection control requirements are followed;

(18) implementation of proper component mixing practices to reduce the risk of undesired reactions;

(19) maintenance of safety data sheets containing pertinent facts regarding products;

(20) implementation of proper storage practices to ensure that products are maintained in the manner that prevents any risk of fire or of undesired reactions;

(21) implementation of proper disinfection practices of working tools and implements; all non-porous (multi-use) items must be cleaned and then disinfected per procedure listed in Subsection B. of 16.34.7.9 NMAC;

(22) sharps ready for disposal shall be disposed of in approved sharps containers. Contaminated waste which does not release liquid blood or body fluids when compressed or does not release dried blood or body fluids when handled may be placed in a covered receptacle and disposed of through normal, approved disposal methods. Storage of filled contaminated waste containers on-site shall not exceed 90 days; containers shall be stored as far away as possible from autoclave/clean instruments. Establishment shall maintain records of waste removal;

(23) use of an autoclave requires monthly spore tests. Autoclaves and autoclave packaging of tools are prohibited unless regular (at least once per month but not more than 30 days between tests) spore tests are performed by a contracted laboratory. If a positive spore test is received, the autoclave may not be used until a negative spore result is received;

(24) each establishment must maintain a log of each autoclave use, all testing samples

and results, and a maintenance log of all maintenance performed according to the manufacturer's directions. The salon must retain the most recent twelve months of the log at the salon for review by the board;

(25) there shall be adequate disinfectants in your place of business to perform all scheduled services for two business days;

(26) adherence to the product manufacturer's directions for safe use that appear on the product labeling; including proper mixing, replacement of solution, contact time and disposal;

(27) disinfectant solutions must be made daily, and disposed of at the end of the day or immediately if visible debris is present;

(28) if concentrated disinfectants must be diluted with water, measuring devices must be readily available and used to ensure an effective solution is made;

(29) all products and chemicals not in the original container must be kept in closed and legibly labeled container with name of product, product description (disinfectant) and manufacturer's name;

(30) disinfected implements must be stored in a disinfected, dry, covered container and be isolated from contaminants. At no time can these items come into contact with used/dirty items;

(31) all multi-use implements must be kept in covered, marked, separate containers (dirty or disinfected);

(32) maintain disinfected combs, brushes and implements in enclosed containers marked as "ready for use";

(33) maintain dirty or used combs, brushes and implements in enclosed containers marked "not ready for use";

(34) towel warmers must be disinfected daily. Salons using hot steamed towels in services must meet the following requirements:

(a) all towels, linens, sheets, robes and other linens must be laundered after each use, dried and hot to the touch, and be kept in enclosed container or cabinet;

(b) towels must be washed with detergent, (properly diluted), and dried on "hot";

(c) practitioners preparing towels for the warmers must first wash their hands or wear gloves;

(d) wet towels used in services must be prepared fresh each day. At the end of the day, unused steamed towels must be removed and laundered;

(e) clean towels, sheets, robes and other linens must be used for each client;

(f) the use of paper or disposable towels, linens, etc. shall be disposed of after each use; and

(g) a new, disposable neck strip must be used for each client or a freshly laundered unused towel be placed between chair cloth/shampoo cape and person's skin. The chair cloth and shampoo cape must not have direct contact with client's skin.

(35) filters and drains of pedicure basins must be cleaned and disinfected after each use with an EPA hospital grade disinfectant. Immediately after each service, the practitioner must follow steps listed below:

(a) dirty water is drained, and any visible debris is removed;

(b) all removable filter screens, inlet jets, footplates, impeller assemblies, and other parts are removed and debris eliminated before scrubbing with a disinfected brush and detergent and water;

(c) the tub basin is scrubbed with detergent and water, and rinsed with water, and drained;

(d) removable parts are replaced;

(e) the basin or tub is filled with clean water and an EPA-registered hospital level disinfectant is added following the manufacturer's directions;

(f) if the pedicure tub is electrical, the fan or pump must be turned on and the unit operated for the entire contact time; and

(g) after the contact time is complete, the disinfectant must be drained, and the tub rinsed with clean water.

(36) pedicure tub liners are single use items and must be disposed of immediately after use;

(37) pedicure basins shall be disinfected between clients, at the end of the day, and deep disinfection once weekly; and

(38) a log is maintained by the salon showing the legible signature, license number of the person disinfecting the tub, the time and date of the disinfection process and the name of the disinfectant used. Log entries must be maintained on the salon premises for 12 months.

B. [~~Professional licensees who perform services in an outreach enterprise mobile unit must carry at all times a duplicate license which indicates that they have met the requirements stated in 16.34.4.15 NMAC of these rules.~~] Cleaning and disinfection

(1) all single-use instruments, items, tools or supplies that come in contact with the public and are porous (made of anything other than plastic, metal or glass) cannot be disinfected (including, but not limited to: disposable razors, pedi-pads, emery boards, sponges, cotton pads, buffing blocks, toe separators, chamois, sandpaper drill bits, waxing strip, wood sticks, cotton balls, nail wipes, disposable towels, pumice stones, flip flops, toe separators, porous files and porous buffers, etc.) shall be disposed of immediately after use;

(2) prior to use on any client, all multi-use (non-porous) instruments, items, equipment, implements or tools must be cleaned and disinfected. Items must be cleaned with soap and warm water or a chemical cleaner. The items must then be disinfected by a complete immersion in an EPA-registered, bactericidal, fungicidal and virucidal (formulated for hospitals) disinfectant that is mixed and used according to the manufacturer's directions. Non-porous items are the only items that can be disinfected;

(3) before disinfecting any surface or item, any visible debris and disposable parts must be removed. After cleaning, all surfaces of non-porous, multi-use tool or implement, including handles, must be disinfected by fully submerging the item in disinfectant in a covered container for the full amount of contact time listed on the manufacturer's label;

(4) implements and surfaces shall first be thoroughly cleaned of all visible debris prior to disinfection. EPA-registered bactericidal, fungicidal and virucidal disinfectants become inactivated and ineffective when visibly contaminated with debris, hair, dirt and particulates;

(5) EPA-registered bactericidal, fungicidal and virucidal disinfectants shall be used as follows:

(a) some disinfectants may be sprayed on

the instruments, tools, or equipment to be disinfected;

(b) disinfectants in which implements are to be immersed shall be prepared fresh daily or more often if solution becomes diluted or soiled; and

(c) these chemicals are harsh and may affect the long term use of scissors and other sharp objects. Leaving items in solution in accordance with manufacturers' recommendation for effective disinfection is recommended.

(6) head rests, hand rests, pedicure basins, foot rests, manicure tables and other fixtures that come in contact with licensees and the public shall be cleaned and disinfected prior to use for each client;

(7) cups, bowls, basins, and jars must be cleaned and disinfected prior to use on each client;

(8) after each client, the implements shall be wiped with a clean paper or fabric towel and sprayed with either an EPA-registered bactericidal, fungicidal and virucidal disinfectant. Equipment, implements, tools, and materials to be cleaned and disinfected include, but are not limited to: combs and picks, haircutting shears, thinning shears/ texturizers, edgers, guards, perm rods;

(9) items MUST stay immersed or visibly moist with disinfectant for the entire contact time listed on the manufacturer's label to be effective;

(10) whether or not disposable, the following must be replaced with clean or new (including, but not limited to) towels, hair caps, headbands, brushes, gowns, makeup brushes, spatulas);

(11) items that may not be immersed can be sprayed or wiped with disinfectant sprays and wipes that are bactericidal, fungicidal and virucidal (EPA-registered disinfectants) and must remain visibly moist for contact time indicate on the product label:

(a) metal guards, clipper blades, drill bits, high frequency watts, and other removable parts must be removed. All product residue, hair skin debris, nail dust, other visible debris must be brushed or wiped off, and the removable part must be disinfected with an EPA-registered, hospital level disinfectant spray or wiped after each use. The surfaces must remain wet with the spray or wipe disinfectant for the contact time listed on the disinfectant label; and

(b) electric clippers, nail drills, flat irons, blow dryers, glass or metal electrodes, esthetic machines, steamers, or other electric or electronic tools must be cleaned and disinfected after each use, including the body and handle.

(12) clipper wash designed as cleaner, not as disinfectant, unless specified as disinfectant on label;

(13) all disinfectant solution must be changed per the manufacturer's label or sooner if contaminated;

(14) all products must be wiped cleaned and the exterior disinfected with a disinfectant wipe at the end of the day;

(15) all fluids, semi-fluids, creams, waxes, and powders must be kept in clean covered containers with a solid cover, and must be dispensed in a manner which prevents contamination of the unused supply;

(16) products in tubs must be removed with disposable or disinfected spatulas, and fingers may never be used;

(17) products removed from container must not be returned to the container and must be used or discarded;

(18) containers must be wiped cleaned and the exterior disinfected with a disinfectant wipe at the end of the day;

(19) wax pots must be kept covered and the exterior cleaned daily;

(a) if debris is found in the wax pot, or if the wax has been contaminated by contact with skin;

(b) unclean applicators, or double dipping, the wax pot must be emptied, the wax discarded, and the pot must be disinfected;

(c) disposable spatulas and wooden sticks may be dipped into the wax only once and then discarded without using the other end;

(d) applicators may be dipped only once into the wax unless the wax is a single-service item and unused wax is discarded after each service; and

(e) any surface touched by a used wax stick must be disinfected immediately after the service.

(20) paraffin warmers must be kept covered, the exterior cleaned daily, and the wax must be debris free. Cannot go back into paraffin tub;

(21) a new waxing stick must be used for each wax application; no double-dipping;

(22) all licensees must provide a suitable place equipped to give adequate service, as advertised to clients, subject to inspection by the board;

(23) practitioners shall wash their hands with liquid soap, or use a liquid hand sanitizer, prior to performing any services on a client. Thoroughly wash hands and the exposed portion of arms with soap and water before providing services to each client after smoking, drinking, eating and using the restroom; and

(24) proper use of protective devices when so indicated by the product manufacturer's direction for safe use or when the nature of the product indicates such protection is necessary.

C. Blood exposure procedure

(1) If a blood exposure should occur, the following steps must be followed:

(a) when possible injured party should go to a sink and rinse injury with running water and "milk" the injury if possible to remove any bacteria that may have entered the wound;

(b) supply injured party with antiseptic or single use packet of antibacterial ointment and the appropriate dressing to cover the injury; and

(c) bag all blood-soiled (contaminated) porous articles and dispose of in trash. Immediately wash and disinfect all non-porous items (do not continue service with these items). This is the responsibility of the licensee.

(2) If the client is injured, the following steps must be followed:

(a) stop service;

(b) protection - put on gloves;

(c) clean injured area;

(d) apply antiseptic;

(e) cover the injury with the appropriate dressing to prevent further blood exposure;

(f) bag and dispose of all contaminated single use items;

(g) clean and disinfect any implements or surfaces contaminated;

(h) clean hands; and

(i) return to service.

(3) disinfect all non-porous items (do not continue service with these items).

(4) do not allow containers, brushes, nozzles or liquid styptic container to touch the skin or contact the wound. Use a disposable applicator (never use styptic pencil unless specified for single use).

D Prohibitions

(1) licensees shall not use any product in providing a service authorized under the Act that is banned or deemed to be poisonous or unsafe by the United States food and drug administration (FDA) or other local, state, or federal governmental agencies responsible for making such determination;

(2) possession or storage on licensed premises of any item banned or deemed to be poisonous or unsafe by the FDA or governmental agency shall be considered *prima facie* evidence of its use;

(3) for the purpose of performing services under the Act, no licensee shall buy, sell, or use, or apply to any person liquid monomeric methyl methacrylate (MMA);

(4) the use, storage or dispensing of such beauty service products containing methyl methacrylate (MMA) or other chemicals determined to be hazardous to the health of licensees or consumers by the board of any federal, state or local health agency, shall be prohibited:

(a) fumigants, formalin (formaldehyde) tablets or formalin liquids;

(b) roll on wax is prohibited;

(c) UV light boxes;

(d) autoclaves and autoclave packaging of tools are prohibited unless regular (at least once per month but not more than 30 days between tests) spore tests are performed by a contracted laboratory. If a positive spore test is received, the autoclave may not be used until a negative spore result is received;

(e) practitioners must not use tools or implements provided by customers unless the practitioner first cleans and disinfects the tool or implement;

(f) prohibited tools must not be used even if supplied by the customer;

(g) salons must not store tools or implements in boxes for customers;

(h) licensees may not perform services on the public while under the influence of alcohol or drugs;

(i) alcohol cannot be served at any establishment without proper license;

(j) procedures performed by any means, by hand, chemical, mechanical, or electrical apparatus or appliance which comes into contact with or penetrates into the dermal layer of the skin is considered invasive;

(k) the use of any product or preparation that comes into contact with or penetrates the dermis layer of the skin;

(l) no establishment or school shall use of any razor-edged device or tool; to include but not limited to credo blades, callus shavers, rasps, graters or other tools for the purpose of removing skin or calluses that could cause an open flesh wound;

(m) no animals in establishments or mobile units unless it is a qualified service animal in accordance with the Service Animal Act, Sections 28-11-1.1 to .6 NMSA 1978; and

(n) live fish, leeches, snails, and other living creatures may not be used in any cosmetic service.

[16.34.7.9 NMAC - Rp 16 NMAC 34.7.9, 06-16-01; A, 07-16-04; A, 10-04-07; A, 12-17-15]

16.34.7.10 CHANGES OF OWNERSHIP

A. An establishment or enterprise license is nontransferable.

B. A change of ownership or control is any action by which a person or corporation obtains authority to control the actions of an enterprise or establishment. These actions may include, but are not limited to:

(1) the transfer of the controlling interest of stock of an enterprise or establishment to its parent corporation;

(2) the merger of two or more enterprises or establishments;

(3) the division of enterprise or establishment into two or more enterprises or establishments;

(4) the transfer of the assets or liabilities of an enterprise or establishment to its parent corporation;

(5) the acquisition by an individual of the controlling interest of an enterprise or establishment, whether a proprietorship, partnership or corporation;

(6) the sale of an enterprise or establishment;

(7) the lease of or right to do business as an enterprise or establishment.

C. If ownership or legal control of a licensed enterprise or establishment changes, the new owner, lessee or other legally responsible party must submit a new application as defined in Subsection A. of 16.34.7.8 NMAC and secure a new license from the board.

D. If legal control of an enterprise or establishment does not change, but the organization of the ownership does change (e.g. a sole proprietor becomes the sole stock holder of a corporation which owns the enterprise or establishment), the board must receive notarized proof of such change within thirty days of such change.

[16.34.7.10 NMAC - Rp 16 NMAC 34.7.10, 06-16-01; A, 12-17-15]

REGULATION AND LICENSING DEPARTMENT

BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.8 NMAC, Sections 8, 9, 13, 15, 16, 17, 18 and 20, effective 12-17-15.

16.34.8.8 APPLICATION FOR OPENING, RELOCATING, CHANGING NAME OF A SCHOOL

A. A school license is nontransferable.

B. A change of ownership or control is any action by which a person or corporation obtains authority to control the actions of an institution. These actions may include, but are not limited to:

(1) the transfer of the controlling interest of stock of an institution to its parent corporation.

(2) the merger of two or more institutions;

(3) the division of an institution into two or more enterprises or establishments;

(4) the transfer

of the assets or liabilities of an institution to its parent corporation;

(5) the acquisition by an individual of the controlling interest of an institution, whether a proprietorship, partnership or corporation;

(6) the sale of an institution; or

(7) the lease of or right to do business as an institution.

C. If ownership or legal control of a licensed school changes, the new owner, lessee or other legally responsible party must submit a new application and secure a new license from the board.

D. If legal control of a school does not change, but the organization of ownership does change (e.g. a sole proprietor becomes the sole stockholder of a corporation which owns the school), the board must receive notarized proof of such change within thirty days of such change.

E. A completed application to open, change ownership or relocate a school authorized under this Act must be filed with the board. An application to open a school, change ownership or relocate or change the name of a school filed by a currently licensed school owner must be filed at least fifteen days in advance of the expected date of change.

(1) Applications must be on official forms approved by the board and must include the appropriate fee.

(2) Applicants to open, change ownership or relocate a school must demonstrate that the school is financially responsible and the school has sufficient resources to ensure against precipitous closure. Applicants shall provide at least the following information: evidence of ownership; corporate or business status; identity and address of owners, partners, shareholders, and directors; copies of articles of incorporation and by-laws, if applicable; evidence of financial responsibility, including compiled financial statement and balance sheet indicating assets and liabilities; a corporate surety bond or bank letter of credit in the amount of five thousand dollars to indemnify students for fees and tuition paid to a school if the school ceases operation or terminates a program prior to the completion of a student's contract with the school; disclosure of the filing within the last seven years of bankruptcy of owner(s), partner(s), or director(s); and the identity of two business or financial references.

(3) An owner(s), partner(s), or director(s) of a school applicant must sign a release directed to financial institutions authorizing the disclosure of financial information and shall disclose loan history.

(4) An owner(s), partner(s), or director(s) of a school applicant will be required to disclose civil actions brought within ten years of the date of the application against an owner(s), partner(s), or director(s) for or involving nonpayment of debt, fraud, or misrepresentation and the disposition of such action(s).

(5) An owner(s), partner(s), or director(s) of a school applicant will be required to disclose any arrest or conviction within the ten years of the date of the application for fraud, larceny, embezzlement, or any crime involving stealing, taking, theft, robbery, or unlawful appropriation of money or anything of value that belongs to another and the disposition of such action(s).

(6) A school is not financially responsible if an owner(s), partner(s), or director(s) is not making payments in accordance with an agreement, judgment, or debt obligation, or if an owner(s), partner(s), or director(s) has been convicted of felony involving a crime described in paragraph 5 subsection E of 16.34.8.8 NMAC and that owner(s), partner(s), or director(s) is not sufficiently rehabilitated as provided in the Criminal Offender Employment Act, Section 28-2-1 through 28-2-6 NMSA 1978.

(7) In the case of a change of ownership of a school, the school establishment license of the prior owner does not expire for thirty days after the date of sale providing it is a current and valid license. In order to ensure continued training for students, the new owner may operate under the prior license until the earlier of the thirty day expiration date of the prior license or obtaining the new school establishment license.

(8) In case of a change of ownership of a school, the new school shall submit a student roster of all students enrolled at the time of the change which lists for each student the name, the date of birth, the social security number, course enrolled, the course beginning date and the student permit. The school shall submit the student roster to the Board within thirty days of the change of ownership.

F. The application, if complete, may be administratively approved. A formal inspection of the establishment shall occur within ninety days of opening. Incomplete applications without proper and complete supporting documents will be returned. [~~The initial school establishment license fee shall be prorated to the following March thirty one.~~]

G. When a school relocates within the state of New Mexico, the owner must complete a new application and obtain approval, including inspection from the board to operate the business at the new location, and pay the school relocation fee.

H. If any portion of the school is completely segregated from the primary area, a duplicate school license must be acquired and posted in the separate area. A duplicate license fee will be assessed. The school must also comply with 16.34.8.12 NMAC, expansion campus facility requirements.

I. All school licenses must be renewed on March thirty first of each year.

J. Each school licensed by the board shall post a current copy of the statutes and rules and regulations and the most recent inspection report in an area where clearly visible to the public.

K. Each school licensed by the board shall post an exterior sign which indicates the facility houses a school.

[16.34.8.8 NMAC - Rp 16 NMAC 34.8.8, 06-16-01; A, 12-17-15]

16.34.8.9 GENERAL REQUIREMENTS

A. Schools may not permit its students to perform any laboratory services on the public under any circumstances until the student has accrued fifteen percent of the total hours required within the course.

B. Schools shall display in a conspicuous place within the reception or clinic area of the school a sign which indicates that all services are performed by supervised students.

C. Schools shall not pay compensation to any of its students, either directly or indirectly.

D. Instructors or student instructors shall not be permitted to perform services on the public other than that part of the practical work which pertains directly to the teaching or demonstration of subjects included in the curriculum.

E. Schools shall provide both theory instruction and practical

skills training in all subjects applicable to the course of study according to the curriculum prescribed by the board.

F. Schools shall provide a minimum of 24 hours of infection control and safety standards theory prior to any practical procedures.

G. Instructor approved hands-on procedures in schools shall be completed by students on clients, students or models; training on mannequins is considered hands on training as defined in 16.34.1.7 NMAC.

[~~F.~~] H. Schools shall maintain the equivalent of at least one full time instructor for every twenty students in attendance or part thereof.

[~~G.~~] I. Schools must at all times be under the immediate supervision of a licensed instructor.

[~~H.~~] J. Schools, which advertise services to the public in order to attract clients for its students, must include in each advertisement the statement that all services are performed by supervised students.

[16.34.8.9 NMAC - Rp 16 NMAC 34.8.9, 06-16-01; A, 12-17-15]

16.34.8.13 REGULATIONS CONCERNING STUDENTS:

A. Student registration

(1) When a school receives an application from a prospective student, it shall promptly notify the student of the registration requirements of the board.

(2) It shall constitute a violation of the rules, within the meaning of the act, for a school to engage in failure to transmit student registration documents and fees in a timely fashion to the board pursuant to Subsection G of 16.34.15.8 NMAC, wherein fines will be imposed.

(3) It shall be the responsibility of the prospective student to comply with the registration requirements by the first day he/she attends class for credit. Failure to do so may result in loss of hours earned prior to proper registration.

(4) No school shall allow a student to attend class for credit until the student has complied with the registration requirements:

(a) Applicants for the barber, cosmetology, manicure/pedicure, esthetician, electrologist, and manicure/esthetician courses must be at least sixteen years of age and have successfully completed two years of high school or the equivalent.

(b) Applicants for the instructor course must be at least seventeen years of age and have successfully completed four years of high school or the equivalent.

(5) Acceptable proof of age and education requirements as follows:

(a) Proof of age includes a copy of a birth certificate, a driver's license or a state issued identification card, or a baptismal certificate.

(b) Proof of two years of secondary education includes a high school diploma, a G.E.D. certificate or transcript of G.E.D. test scores, a sealed letter from the high school attended, a copy of the high school transcript showing all required grades have been passed, a letter from the G.E.D. testing facility stating that the G.E.D. test has been passed, or any other test approved by the United States department of education for the purpose of determining an applicant's ability to benefit, providing that documentation of GRADE EQUIVALENCY is established by the test publisher and the required grade level for the course of study has been achieved.

(c) The board, or its executive director, may accept as proof of secondary education the applicant's notarized statement that he/she has completed the required secondary education, but has been unable to obtain documentary proof of that from a FOREIGN NATION. A notarized statement will not be accepted for students who have completed the secondary education in the United States.

(6) Evidence of compliance with the foregoing requirements shall accompany the application for registration form provided by the board.

(7) Upon receipt of a complete student registration form and applicable fee, which shall be received in the board office within fifteen days of the date of registration, the board office will then issue a STUDENT PERMIT and a permit number. The student permit authorizes the holder to practice course related skills in an approved school on the public only after successful completion of fifteen percent of the program. In addition, the student permit also authorizes the student to participate in the student externship program pursuant to 16.34.8.17 NMAC of these rules. A photograph of the student (front view, head only, at least 1.5" by 1.5") shall be attached to the permit. The permit shall be displayed in a binder in the school in which the student is enrolled and open to review by the state inspector or other board designee. Student permits are the property of the board and must be returned to the board by the school upon termination of the student's enrollment.

(8) If inspection of the student permits and school records determines that students are attending class without being properly registered with the board, the student may be denied the hours previously accrued and the school will be reported to the board for disciplinary action.

B. Student transfers/re-entries

(1) Any previously registered student desiring to transfer to another school, or re-enter the previous school shall submit a new registration form and required fees to the board. Students transferring schools as a result of a school closure shall submit a new registration form but are not required to pay a re-registration fee. Students attending a school, which undergoes a change of ownership, are not required to re-register with the board.

(2) Any student desiring to re-enter school must submit proof of the successfully completed previous training in order to receive credit for it.

(3) A student enrolled in any course may withdraw and transfer hours or equivalent credit acquired to another course not to exceed the amount of hours or equivalent credit of each subject within the new course curriculum requirements. Appropriate termination notices and course registration documents must be submitted to the board office when a student transfers to another course.

(4) Students enrolled in the cosmetology curriculum may take the examination for one of the specialty courses at which time the school certifies that the student has completed the requirements for the course in which the student seeks licensure. All other requirements for examination must also be met. The student may continue to attend classes in the cosmetology course. However, if licensure is obtained in any specialty course and the student continues attending classes in the cosmetology course, he/she cannot perform any services on the public in the school for which the individual is now licensed.

C. Records of student academic progress

(1) Schools

shall keep records of academic progress for each student and these records shall be open for inspection by members of the board or its designees.

(2) Schools will designate in the enrollment contract and other consumer information, all requirements for withdrawal or graduation. When all requirements have been met, the school must return the student's permit to the board, and submit a sealed official transcript of training to the board and to the student showing that course requirements for graduation have been met. The board recognizes for transfer, hours or equivalent credits reported on the official transcript of training. Circumstances regarding transfer of or approval of student hours may be brought to the board on an individual basis for special consideration by the board. The board may, in its discretion, recognize hours or equivalent credit or partial hours or partial credit for transfer when an official transcript of training has not been submitted by the school.

(3) If a student terminates his/her enrollment status without meeting all withdrawal or graduation requirements, the school in which he/she was enrolled shall notify the board of termination in writing within thirty days of the student's formal termination date using the format prescribed by the board, and return the student's permit.

(4) Schools offering clock hour training shall define its attendance requirements to include one hundred percent attendance for the course length for licensure or may allow excused absences for no more than ten percent of the course length for satisfactory course completion.

(a) student attendance policies are applied uniformly and fairly;

(b) attendance policies give appropriate credit for all hours attended;

(c) [~~do not add or deduct attendance hours as a penalty~~] schools shall not adjust attendance hours of students whether hours are added, as a reward, or deducted, as a penalty;

(d) the school shall report actual hours attended by the student OR shall round the hours to the nearest half hour (i.e. if a student attended forty-four minutes past the hour, the school would report the previous half hour; if a student attended forty-five minutes past the hour, the school would report the next hour);

(e) the school must maintain attendance records for each student to verify that the minimum attendance standard set forth by the board is being met; and

(f) in cases where schools are authorized to offer training via distance learning methods, the school establish standards for converting competencies achieved to clock or credit hours.

(5) To be considered a graduate, a student must have completed the course scheduled for completion and met the minimum attendance standard (or ninety percent) of the established course of study and all other academic and evaluation factors established by the school. Therefore, in addition to completion of the required hours, the student must have satisfactorily completed the practical and theoretical curriculum requirements set forth by the school. Those requirements must include documentation that the student has satisfactorily completed each unit of study prescribed by the board in the applicable course of study. The excused absences DO NOT allow a student to accelerate in their course of study. Even though they may limit excused absences, they WILL NOT be allowed to sit for the state licensing examination until the number of hours prescribed by the board for the applicable course of study have elapsed.

(6) If a student is required OR allowed by the school to train more than the scheduled hours in a class day, he/she must be given credit for the additional time in the appropriate subject. Schools have full discretion in setting forth class schedules for each course offered as long as minimum requirements for graduation meet the board standards.

(7) Students may not be called from a scheduled theory class to perform services on the public.

(8) Schools expressing academic measurement in terms of credit hours shall set forth requirements for each unit of study within a course or program which ensures that required levels of competency or skills ability have been met. Such schools must award appropriate credit for each unit of study completed satisfactorily. Records of the students' academic progress within the course of study must be maintained for all students.

(9) The school shall provide a catalog to prospective students containing enough information to permit an informed choice among training opportunities and institutions. Catalogs which comply with the school's accrediting agency will be deemed to comply with this rule.

(10) Schools must comply with the Family Education Right to Privacy Act and must guarantee the rights of students to have access to their cumulative records and provide for proper supervision and interpretation of student records when reviewed.

(11) Schools and students shall enter into a signed written agreement which fully and accurately reflects the contractual rights and obligations of the parties, particularly with regard to suspension, expulsion, refunds, tuition and fees, withdrawal and graduation requirements. Contracts which comply with the school's accrediting agency will be deemed in compliance with this rule.

D. Records regarding state board examinations: Each school shall disclose to prospective students its annual statistics regarding the school's state examination pass rate. The board or its designee will send a letter to each school after each examination containing the result information on each student, which will serve as the source documentation for calculating the disclosed statistics.

[16.34.8.13 NMAC - Rp 16 NMAC 34.8.13, 06-16-01; A, 07-16-04; A, 10-04-07; A, 12-17-15]

16.34.8.15 CURRICULUM

A. The following minimum curriculum requirements are established for all schools licensed under the act. Schools offering training in clock hours must meet the following minimum hours in each unit of study. Schools offering training in credit hours must offer an equivalent training program as prescribed by the schools accrediting agency clock hour/credit hour conversion formula. In absence of such a formula the state board will prescribe the credit hour/clock hour conversion formula. Schools may offer all or part of the courses set forth herein provided appropriate facility requirements are met and Instructors have appropriate practitioner training to teach the subjects offered. This does not preclude schools from offering non-related courses or advanced courses, which are not prescribed in these rules. Courses are automatically approved if the course units are between one hundred percent and one hundred twenty percent of the minimum. Schools desiring to offer instruction that

exceeds one hundred twenty percent of the minimum requirements (i.e. a course that is over twenty five percent of the board's published minimum requirements) must submit to the board the following:

(1) a course outline indicating all course hours or credits offered;

(2) a class schedule for the entire course indicating how and when each unit of instruction is offered;

(3) justification of why the course should be approved at the extended length.

B. Barber course curriculum - **1200** course hours or equivalent credit:

(1) THEORY: **75 hours or equivalent credit**

(a) limited to orientation;

(b) state laws and regulations;

(c) professional image;

(d) first aid;

(e) chemistry;

(f) electricity;

(g) job seeking; and

(h) ethics

(2) STERILIZATION, SANITATION, BACTERIOLOGY: **75 hours or equivalent credit**

(a) related theory and safety;

(b) preparation, procedures and practice;

(c) products, materials and implements;

(d) public sanitation;

(e) methods of sanitation and sterilization;

(f) chemical agents;

(g) types and classifications of bacteria;

(h) bacterial growth; [~~and~~]

(i) infections; and

(j) infection control and safety standards

(3) SHAMPOO, RINSES, SCALP TREATMENTS: **75 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation;

(e) procedures and practice;

(f) products, materials and implements;

(g) hair snalysis;

(h) disorders of the hair and scalp;

(i) hair and scalp treatments;

(j) related chemistry; and

(k) client record keeping and safety

(4) CHEMICAL REARRANGING - PERMS AND RELAXERS: **200 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation, procedures and practice;

(e) products, materials and implements;

(f) hair analysis and client consultation;

(g) related chemistry; and

(h) client record keeping and safety

(5) HAIRSTYLING: **150 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation, procedures and practice;

(e) products, materials and implements;

(f) hair analysis and client consultation;

(g) related chemistry;

(h) wet styling;

(i) blow drying;

(j) finger waving;

(k) air waving;

(l) hair pressing;

(m) hair extensions;

(n) hair weaving;

(o) braiding;

(p) corn rowing;

(q) client consultation and recommendations;

(r) client record keeping and safety; and

(s) care of wigs and hair pieces

(6) HAIR COLORING - BLEACHING: **125 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation, procedures and practice;

(e) products, materials and implements;

(f) hair analysis and client consultation;

(g) related chemistry;

(h) temporary, semi-permanent, and permanent applications;

(i) bleaching, tinting, toning, frosting, special effects and problems;

(j) client consultation and recommendations; and

(k) client record keeping and safety

(7) HAIR CUTTING AND BEARD TRIMMING: **250 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) shaving, honing and stropping;

(e) preparation, procedures, and practice;

(f) use of scissors, shears, razor and clippers;

(g) products, materials and implements;

(h)

client consultation and recommendations; and

(i) client record keeping and safety

(8) FACIALS: **175 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation, procedures and practice;

(e) products, materials and implements;

(f) theory of massage and facial treatments;

(g) makeup application;

(h) use of electrical appliances, currents and specialized machines for treatments;

(i) artificial eyelashes;

(j) removal of unwanted hair;

(k) eyelash and brow tinting;

(l) light therapy;

(m) client consultation and recommendations; and

(n) client record keeping and safety

(9) REQUIRED HANDS-ON-TRAINING – instructor approved procedures

(a) 40 facial shave;

(b) 30 shaving around ears and neck;

(c) 25 ladies haircuts;

(d) 75 mens haircuts;

(e) 25 hairstyling;

(f) chemical texturing:

(i) 7 permanent waving and

(ii) 7 permanent relaxing

[~~(9)~~] (10) SALON BUSINESS, RETAIL SALES: **50 hours or equivalent credit**

(a) related theory;

(b) opening a salon and business plan;

(c) written agreements;

(d) regulations and laws;

(e) salon operation, policies, practices, personnel, compensation, payroll deductions;

(f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and

(g) salon safety

[~~(10)~~] (11) MISCELLANEOUS: **25 hours or equivalent credit**

(a) to be applied by the Instructor to strengthen student performance in curriculum related areas, or

(b) for supervised field trips and other course related training;

C. Cosmetology course curriculum - **1600** course hours or equivalent credit

(1) THEORY: **75 hours or equivalent credit**

(a) limited to orientation;

(b) state laws and regulations;

(c) professional image;

(d) first aid;

(e) chemistry;

(f) electricity;

(g) job seeking; and

(h) ethics

(2) STERILIZATION, SANITATION, BACTERIOLOGY: **75 hours or equivalent credit**

(a) related theory and safety;

(b) preparation, procedures and practice;

(c) products, materials and implements;

(d) public sanitation;

(e) methods of sanitation and sterilization;

(f) chemical agents;

(g) types and classifications of bacteria;

(h) bacterial growth; [~~and~~]

(i) infections; and

(j) infection control and safety standards

(3) SHAMPOO, RINSES, SCALP TREATMENTS: **75 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation;

(e) procedures and practice;

(f) products, materials and implements;

(g) hair analysis;

(h) disorders of the hair and scalp;

(i) hair and scalp treatments;

(j) related chemistry; and

(k) client record keeping and safety

(4) CHEMICAL REARRANGING - PERMS AND RELAXERS: **200 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation, procedures and practice;

(e) products, materials and implements;

(f) hair analysis and client consultation;

(g) related chemistry; and

(h) client record keeping and safety

(5) HAIRSTYLING: **150 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation, procedures and practice;

(e) products, materials and implements;

(f) hair analysis and client consultation;

(g)

related chemistry;

(h) wet styling;

(i) blow drying;

(j) finger waving;

(k) air waving;

(l) hair pressing;

(m) hair extensions;

(n) hair weaving;

(o) braiding;

(p) corn rowing;

(q) client consultation and recommendations;

(r) client record keeping and safety; and

(s) care of wigs and hair pieces

(6) HAIR COLORING - BLEACHING: **125 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation, procedures and practice;

(e) products, materials and implements;

(f) hair analysis and client consultation;

(g) related chemistry;

(h) temporary, semi-permanent, and permanent applications;

(i) bleaching, tinting, toning, frosting, special effects and problems;

(j) client consultation and recommendations; and

(k) client record keeping and safety

(7) HAIR CUTTING: **200 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation, procedures, and practice;

(e) use of scissors, shears, razor and clippers;

(f) products, materials and implements;

(g) client consultation and recommendations; and

(h) client recordkeeping and safety

(8) FACIALS: **175 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation, procedures and practice;

(e) products, materials and implements;

(f) theory of massage and facial treatments;

(g) makeup application;

(h) use of electrical appliances, currents and specialized machines for treatments;

(i) artificial eyelashes;

(j) removal of unwanted hair;

(k) eyelash and brow tinting;

(l) light therapy;

(m) client consultation and recommendations; and

(n) client record keeping and safety

(9) MANICURING/PEDICURING: **175 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation, procedures and practice;

(e) products, materials and implements;

(f) theory of massage;

(g) advanced nail techniques;

(h) client consultation and recommendations; and

(i) client record keeping and safety

(10) REQUIRED HANDS-ON TRAINING: instructor approved procedures:

(a) 75 ladies haircuts;

(b) 25 mens haircuts;

(c) 25 hairstylings;

(d) 30 coloring;

(e) chemical texturing:

(i) 7 permanent waving; and

(ii) 7 permanent relaxing

[~~(10)~~] (11) SALON BUSINESS, RETAIL SALES: **50 hours or equivalent credit**

(a) related theory;

(b) opening a salon and business plan;

(c) written agreements;

(d) regulations and laws;

(e) salon operation, policies, practices, personnel, compensation, payroll deductions;

(f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and

(g) salon safety

[(~~11~~)] (12) MISCELLANEOUS: **300 hours or equivalent credit**

(a) to be applied by the Instructor to strengthen student performance in curriculum related areas; or

(b) for supervised field trips and other course related training

D. Manicurist/pedicurist course curriculum - [**~~350~~**] **400 course hours or equivalent credit**

(1) THEORY: **75 hours or equivalent credit**

(a) limited to orientation;

(b) state laws and regulations;

(c) professional image;

(d) first aid;

(e) chemistry;

(f) electricity;

(g) job seeking; and

(h) ethics

(2) STERILIZATION, SANITATION, BACTERIOLOGY: [~~25~~] 75 **hours or equivalent credit**

(a) related theory and safety;

(b) preparation, procedures and practice;

(c) products, materials and implements;

(d) public sanitation;

(e) methods of sanitation and sterilization;

(f) chemical agents;

(g) types and classifications of bacteria;

(h) bacterial growth; [~~and~~]

(i) infections; and

(j) infection control and safety standards

(3) MANICURING/PEDICURING: **175 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation, procedures and practice;

(e) products, materials and implements;

(f) theory of massage;

(g) advanced nail techniques;

(h) client consultation and recommendations; and

(i) client record keeping and safety

(4) REQUIRED HANDS-ON TRAINING: **instructor approved procedures**

(a) 45 manicures;

(b) 45 pedicures; and

(c) 20 acrylic nail sets

[~~(4)~~] (5) SALON BUSINESS, RETAIL SALES: **50 hours or equivalent credit**

(a) related theory;

(b) opening a salon and business plan;

(c) written agreements;

(d) regulations and laws;

(e) salon operation, policies, practices, personnel, compensation, payroll deductions;

(f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and

(g) salon safety

[~~(5)~~] (6) MISCELLANEOUS: **25 hours or equivalent credit**

(a) to be applied by the Instructor to strengthen student performance in curriculum related areas; or

(b) for supervised field trips and other course related training

E. Esthetician course curriculum - 600 course hours or equivalent credit

(1) THEORY: **75 hours or equivalent credit**

(a) limited to orientation;

(b) state laws and regulations;

(c) professional image;

(d) first aid;

(e) chemistry;

(f) electricity;

(g) job seeking; and

(h) ethics

(2) STERILIZATION, SANITATION, BACTERIOLOGY: **75 hours or equivalent credit**

(a) related theory and safety;

(b) preparation, procedures and practice;

(c) products, materials and implements;

(d) public sanitation;

(e) methods of sanitation and sterilization;

(f) chemical agents;

(g) types and classifications of bacteria;

(h) bacterial growth; [~~and~~]

(i) infections; and

(j) infection control and safety standards

(3) FACIALS: **350 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation, procedures and practice;

(e) products, materials and implements;

(f) theory of massage;

(g) facial treatments and makeup application;

(h) use of electrical appliances, currents and specialized machines for treatments;

(i) artificial eyelashes;

(j) removal of unwanted hair;

(k) eyelash and brow tinting;

(l) light therapy;

(m) client consultation and recommendations; and

(n) client record keeping and safety

(4) SALON BUSINESS, RETAIL SALES: **50 hours or equivalent credit**

(a) related theory;

(b) opening a salon and business plan;

(c) written agreements;

(d) regulations and laws;

(e) salon operation, policies, practices, personnel, compensation, payroll deductions;

(f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and

(g) salon safety

(5) REQUIRED HANDS-ON TRAINING: **instructor approved procedures:**

(a) 50 basic facial procedures;

(b) 25 machine facial procedures;

(c) 25 waxing procedures; and

(d) 10 makeup procedures

[~~(5)~~] (6) MISCELLANEOUS: **50 hours or equivalent credit**

(a) to be applied by the Instructor to strengthen student performance in curriculum related areas; or

(b) for supervised field trips and other course related training

F. [~~Manicurist/wsthetician~~] Manicurist/esthetician course curriculum - **[~~600~~] 900 course hours or equivalent** credit

(1) THEORY: [~~75~~] **100 hours or equivalent credit**

(a) limited to orientation;

(b) state laws and regulations;

(c) professional image;

(d) first aid;

(e) chemistry;

(f) electricity;

(g) job seeking; and

(h) ethics

(2) STERILIZATION, SANITATION, BACTERIOLOGY: [~~75~~] **150 hours or equivalent credit**

(a) related theory and safety;

(b) preparation, procedures and practice;

(c) products, materials and implements;

(d) public sanitation;

(e) methods of sanitation and sterilization;

(f) chemical agents;

(g) types and classifications of bacteria;

(h) bacterial growth; [~~and~~]

(i) infections; and

(j) infection control and safety standards

(3) FACIALS: [~~175~~] **350 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation, procedures and practice;

(e) products, materials and implements;

(f) theory of massage;

(g) facial treatments and makeup application;

(h) use of electrical appliances, currents and specialized machines for treatments;

(i) artificial eyelashes;

(j) removal of unwanted hair;

(k) eyelash and brow tinting;

(l) light therapy;

(m) client consultation and recommendations; and

(n) client record keeping and safety

(4) MANICURING/PEDICURING: **175 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation, procedures and practice;

(e) products, materials and implements;

(f) theory of massage;

(g) advanced nail techniques;

(h) client consultation and recommendations; and

(i) client record keeping and safety

(5) REQUIRED HANDS-ON TRAINING: **instructor approved procedures**

(a) 50 basic facial procedures;

(b) 25 machine facial procedures;

(c) 25 waxing procedures;

(d) 10 makeup;

(e) 45 manicure;

(f) 45 pedicure; and

(g) 20 acrylic nail sets

[~~(5)~~] (6) SALON BUSINESS, RETAIL SALES: [~~50~~] **75 hours or equivalent credit**

(a) related theory;

(b) opening a salon and business plan;

(c) written agreements;

(d) regulations and laws;

(e) salon operation, policies, practices, personnel, compensation, payroll deductions;

(f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and

(g) salon safety

[~~(6)~~] (7) MISCELLANEOUS: **50 hours or equivalent credit**

(a) to be applied by the Instructor to strengthen student performance in curriculum related areas; or

(b) for supervised field trips and other course related training

G. Electrology course curriculum - 600 course hours or equivalent credit

(1) THEORY: **75 hours or equivalent credit**

(a) limited to orientation;

(b) state laws and regulations;

(c) professional image;

(d) first aid;

(e) chemistry;

(f) electricity;

(g) job seeking; and

(h) ethics

(2) STERILIZATION, SANITATION, BACTERIOLOGY: **75 hours or equivalent credit**

(a) related theory and safety;

(b)

preparation, procedures and practice;
(c)
products, materials and implements;
(d)
public sanitation;
(e)
methods of sanitation and sterilization;
(f)
chemical agents;
(g)
types and classifications of bacteria;
(h)
bacterial growth; [~~and~~]
(i)
infections; and
(j)
infection control and safety standards
(3) ELECTROLYSIS AND THERMOLOGY: **350 hours or equivalent credit**
(a)
related theory;
(b)
anatomy;
(c)
physiology;
(d)
preparation, procedures and practice;
(e)
products, materials and implements;
(f)
use of electrical currents;
(g)
insertion of needles;
(h)
before and after treatment and care;
(i)
destruction of the papilla;
(j)
consultation and recommendations; and
(k)
client record keeping and safety
(4) SALON BUSINESS, RETAIL SALES: **50 hours or equivalent credit**
(a)
related theory;
(b)
opening a salon and business plan;
(c)
written agreements;
(d)
regulations and laws;
(e)
salon operation, policies, practices, personnel, compensation, payroll deductions;
(f)
use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and
(g)
salon safety
(5) MISCELLANEOUS: **50 hours or equivalent credit**
(a) to be applied by the Instructor to strengthen student performance in curriculum related areas; or
(b)
for supervised field trips and other course related training
H. Instructor course curriculum - 1000 course hours or equivalent credit
(1) THEORY: **75 hours or equivalent credit**
(a)
limited to orientation;
(b)
state laws and regulations;
(c)
employment and compensation information;
(d)
professional ethics and image;
(e)
effective communications;
(f)
first aid;
(g)
chemistry;
(h)
electricity;
(i)
job seeking;
(j)
ethics;
(k)
principles of teaching;
(l)
teacher maturity;
(m)
student learning principles; and
(n)
academic advising
(2) COURSE DEVELOPMENT AND LESSON PLANNING: **100 hours or equivalent credit**
(a)
planning;
(b)
analysis;
(c)
implementation
(d)
benefits;
(e)
outline;
(f)
examples of lesson plans;
(g)
components of effective lesson plans;
(h)
principles of preparing lesson plans; and
(i)
practical course review
(3) TEACHING METHODS: **100 hours or equivalent credit**
(a)
preparation;
(b)
presentation;
(c)
application;
(d)
testing;
(e)
lecture and workbooks;
(f)
demonstrations and return demonstrations;
(g)
discussion;
(h)
question and answer;
(i)
projects; and
(j)
field trips
(4) TEACHING AIDS: **50 hours or equivalent credit**
(a)
films or videos;
(b)
charts;
(c)
mannequins;
(d)
reference materials;
(e)
chalkboards; and
(f)
overhead projectors and transparencies
(5) THEORY TEACHING AND CLASSROOM MANAGEMENT: **200 hours or equivalent credit**
(a)
independent classroom instructing;
(b)
records and reports;
(c)
safety measures;
(d)
classroom conditions and maintenance;
(e)
class supervision and control;
(f)
classroom problems and solutions; and
(g)
academic advising
(6) TESTING AND STUDENT EVALUATION: **50 hours or equivalent credit**
(a)
measurement of student ability/ achievement;
(b)
diagnosis of student weaknesses;

(c) motivation for study;

(d) oral and written testing; and

(e) development and use of testing/ measurement Instruments

(7) LABORATORY SUPERVISION: **300 hours or equivalent credit**

(a) independent clinic supervision;

(b) client communications/reception desk;

(c) inventory control;

(d) effective dispensary procedures;

(e) supervision of clinic sanitation/client safety; and

(f) technical skills ability

(8) MISCELLANEOUS: **125 hours or equivalent credit**

(a) fundamentals of business management;

(b) to be applied by Instructor to strengthen student performance in curriculum areas; or

(c) for supervised field trips and other course related training

I. Field trips: Students enrolled in an approved course of study are allowed to supplement their training through supervised field trips. Such trips and hours or equivalent credit accrued must be supervised and verified by a school official. Field trips, which include curriculum activities such as providing services to residents of nursing homes, must be supervised by a licensed instructor. Hours or equivalent credit accrued through field trips are recorded in the miscellaneous category. If a student is actually participating in a technical skills competition, the hours may be recorded in the applicable curriculum category.

[16.34.8.15 NMAC - Rp 16 NMAC 34.8.15, 06-16-01; A, 12-17-15]

16.34.8.16 CROSSOVER CREDITS

A. Individuals who are licensed as barbers and who wish to become licensed as cosmetologists must have at least one year of full time, verified work experience in a licensed establishment and complete 175 course hours or applicable credit hours in a licensed school, unless otherwise approved by the board, as follows:

B. MANICURING/ PEDICURING: **175 hours or equivalent credit**

(1) related theory;

(2) anatomy;

(3) physiology;

(4) preparation, procedures and practice;

(5) products, materials and implements;

(6) theory of massage;

(7) advanced nail techniques;

(8) client consultation and recommendations; and

(9) client record keeping and safety

C. Individuals who are licensed as cosmetologists and who wish to become licensed as barbers must complete [~~50~~] 150 course hours or applicable credit hours in a school, unless otherwise approved by the board, as follows:

D. BEARD TRIMMING AND SHAVING: **[~~50~~] 150 hours or equivalent credit**

(1) related theory;

(2) anatomy;

(3) physiology;

(4) preparation, procedures and practice;

(5) products, materials and implements; and

(6) beard trimming, shaving, honing and stropping

E. To obtain a license with the crossover credits listed above, the applicant must submit to and pass a practical examination in the applicable subject(s) only.

F. The board will consider, on a case-by-case basis, approval of crossover credits for training in other disciplines that may directly or indirectly relate to courses approved in these rules. The applicant shall furnish copies of all applicable transcripts by subject and clock or credit hours previously earned. The board may approve such hours or equivalent credits not to exceed fifty percent of the requirements for regular applicants for licensure under these rules. Credit for work experience completed in other disciplines will not be credited toward course requirements under these rules.

[16.34.8.16 NMAC - Rp 16 NMAC 34.8.16, 06-16-01; A, 12-17-15]

16.34.8.17 STUDENT EXTERNSHIPS

A. Students enrolled in any course licensed by this act may, at the school's option, participate in an externship program upon completion of [~~fifty~~] seventy-five percent of the contracted course of study. The externship program would allow students to train in a licensed establishment for one day or up to eight hours per week until graduation. The training would be supervised by a designated salon licensee and would include any activity that is routine in a salon except offering complete services on the public. The student would be allowed, for example, to perform receptionist duties, ASSIST stylists with salon services; perform inventory or dispensary activities, sanitation duties, etc. Students will NOT be allowed to take appointments for complete services or apply chemicals (specifically hair color or bleach, perm solution, chemical relaxers, or acrylic nail products) to any client. This program will allow students who are nearing graduation to begin a professional relationship with a salon and increase the graduate's opportunities for successful employment after graduation. In addition, it will allow the salon to perform very valuable "on-the-job" training while the student is still in training. In order to qualify for the externship program, the following requirements must be met:

(1) the student must have successfully completed [~~fifty~~] seventy-five percent of the contracted course of study;

(2) the student must have taken and passed an interim FINAL written and practical examination establishing the individual's qualifications to assist in the establishment;

(3) the establishment must agree to and complete a certification of attendance and training completed during the externship. The training must relate to curriculum requirements;

(4) the student must apply for and post a [~~duplicate~~] student externship permit in the establishment while training in the establishment;

(5) the student must meet any other eligibility requirement established by the school;

(6) the establishment must notify and obtain permission from each individual client to allow the student to assist in any manner in providing services to the client.

(7) the school

must accept the training certified by the establishment and include it on the official transcript of training for state board;

(8) a school official must make periodic visits to establishments to observe and verify the program is being followed according to requirements.

B. Establishments are not required to participate in this program. However, if they elect to participate, they must agree to comply with the requirements of the program.

[16.34.8.17 NMAC - Rp 16 NMAC 34.8.17, 06-16-01; A, 12-17-15]

16.34.8.18 REFRESHER COURSES

A. Schools may offer a customized refresher course for individuals who have been out of school for [~~an extended period of time~~] 12 months or longer and not yet obtained licensure and to licensees who wish to re-enter school and update their professional skills. The following requirements must be met for those students enrolled in a refresher course who are not already licensed.

(1) The student must be re-registered with the board and all other matriculation requirements met as required for regular students;

(2) The earned hours or equivalent credit will be added to the student's existing transcript even though the requirements for licensure may have already been met.

(a) Successfully completed training must be reported on the official transcript of training accompanied by the student permit must be sent to the board office upon completion.

(b) A notice of termination and student permit must be sent to the board office upon termination from enrollment for unsuccessful completion of training.

B. Individuals who are already licensed who enroll in a refresher course must meet the following requirements.

C. The student file must contain a copy of the individual's current license, which may be reviewed by the inspector.

[16.34.8.18 NMAC - Rp 16 NMAC 34.8.18, 06-16-01; A, 10-04-07; A, 12-17-15]

16.34.8.20 SPECIAL EVENTS PERMIT: A school desiring to sponsor a special event such as a fund-raiser, garage sale, telethon, etc. that will not be conducted at the licensed establishments, must first obtain approval from the board office. The purpose of prior approval is to ensure professional integrity and that sanitation and safety requirements are met. An application on the form provided by the board office must be submitted at least ten days prior to the event. Applications for special events may be approved administratively. Special events for charities shall submit an application, no fees are required, as long as the money collected is donated to the charity specified on the application.

[16.34.8.20 NMAC - Rp 16 NMAC 34.8.22, 06-16-01; A, 12-17-15]

REGULATION AND LICENSING DEPARTMENT

BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.9 NMAC, Sections 8, 9 and 10, effective 12-17-15.

16.34.9.8 CONTINUING EDUCATION REQUIREMENTS

A. Instructors licensed to teach any course authorized under this act shall provide proof of attendance at a seminar of twelve contact hours or more per year for professional development or improvement of professional proficiency. Instructor licenses are renewed every March thirty first. Therefore, each instructor must obtain twelve contact hours of continuing education between April first and March thirty first of the following year in order to renew the license. Continuing education hours do not carry over and must be completed each year. For initial instructor licenses, the continuing education requirement will not apply until after the first full year of licensure.

B. Entities that are automatically recognized as providers of continuing education are listed below. These entities do not have to obtain formal provider approval in order to offer recognized continuing education for instructors. These entities do not have to meet the approval, recordkeeping, and certificate of attendance requirements. However, the licensee must provide proof of attendance with license renewal. Educational programs provided for the purpose of continuing or advanced education must be specific to the field of licensure.

(1) cosmetology educators of America (CEA) seminars and workshops conducted in any state;

(2) adult continuing education association programs in professional development, education, counseling, instructing or related programs;

(3) continuing education units (CEU's) recognized by four year institutions in any state in professional development, education, counseling, teaching or related programs;

(4) all schools licensed by the New Mexico state board of barbers and cosmetologists;

(5) credits recognized for teacher certification in any state according to the following conversion table:

(a) theory (cognitive/lecture): 1 credit hour = 30 clock hours;

(b) practice/demonstration: 1 credit hour = 45 clock hours.

(6) attendance at accreditation and team training workshops and instructor continuing education programs offered by nationally recognized accrediting agencies;

(7) certification of completion of Dale Carnegie professional development and business courses;

(8) the pivot point instructor symposium classes;

(9) educational classes or conferences sponsored by the Aveda institute;

(10) conferences sponsored by the American aesthetics education association;

(11) classes sponsored by Milady/Thomson learning's career institute;

(12) classes sponsored by Vidal Sassoon; or

(13) local, state, regional, or national industry trade shows with credit not to exceed fifty percent of the annual requirement for continuing education, or six hours; in addition, no more than fifty percent of the hours scheduled at such a trade show can contribute to the six hour maximum; the licensee must provide verifiable proof of attendance including an agenda of the event, a receipt for payment of attendance, or other such reasonable evidence of attendance;

(14) online faculty and professional development programs.

C. Licensee may also submit, subsequent to their attendance, copies of other programs and seminars that are not automatically approved. The board will consider such programs at the next regularly scheduled meeting and determine if credit is approved or denied. Detailed documentation of the program length and content must be submitted for the board to make a determination. Notification of approval or denial will be sent to the licensee within thirty days after the board meeting.

[16.34.9.8 NMAC - Rp 16 NMAC 34.9.8, 06-16-01; A, 10-04-07; A, 12-17-15]

16.34.9.9 CONTINUING EDUCATION PROVIDERS

A. Continuing education provider standards

(1) In order for a continuing education provider to be considered for approval by the board, the provider must demonstrate his/her/its qualifications to conduct such programs on an application provided by the board. Educational programs provided for the purpose of continuing or advanced education must be specific to the field of licensure

(2) Continuing education programs may be conducted in segments of not less than two contact hours.

B. Provider approval for conducting continuing education programs

(1) All continuing education programs shall be directed and supervised by approved providers. If the provider is an institution or corporation, the entity must designate an individual to supervise all sponsored events and must notify the board of that designee. To obtain approval, the applicant must complete an application furnished by the board and pay the required provider fee. The application must provide evidence of expertise, competency, and qualifications of the provider to present continuing education programs. Qualifications can be demonstrated by means of a resume, education and work history or other appropriate documentation. The applicant must also provide a SAMPLE DETAILED OUTLINE OF ONE TWELVE-HOUR PROGRAM for the board's consideration and provide evidence that the organization has access to appropriate facilities and resources to implement the required programs.

(2) The board, at a regular scheduled meeting, shall verify that the application complies with these rules and determine whether approval is granted.

(3) Provider approval shall be granted for a period of two years and must be renewed in order to continue providing continuing education programs. Provider approval is subject to periodic review and may be withdrawn if the board determines that adherence to the standards of the board is not maintained, or if information submitted to the board by the provider is found to be material misrepresentation of fact. Disapproval does not prohibit resubmission of the application with evidence the deficiencies have been corrected. Approval is granted for a period of two years.

(4) A list of approved providers is available from the board office upon request and receipt of an administrative fee.

(5) Applicants receiving approval will be assigned a provider number by the board. The number will be used on all the programs and correspondence to the board.

(6) The provider will be notified within fifteen days after the next regularly scheduled meeting as to the status of application. Approval, if granted, is for a period of two years.

(7) All provider licenses will be renewed on March thirty first every two years. Requests for renewal must be submitted every two years and may be renewed administratively.

(8) Timely renewal of license(s) is the full and complete responsibility of the LICENSEE. Failure to renew the license by the expiration date will result in late fees as set forth in the act.

(9) If the provider application is not approved after the evaluation by the board, the application will be returned with an itemized list of deficiencies within fifteen days of the board's evaluation.

(10) An incomplete application will be returned to the applicant by the board office within thirty days, with an explanation for the return.

C. Record keeping

(1) Records of approved provider shall be maintained by the board office.

(2) Records shall include provider qualifications and hours and rosters of participants receiving certificates of attendance.

(3) Records will be maintained by the board office for a period of two years.

(4) The provider shall send a roster of all participants to the board within thirty days of completion of the program to be entered as an official part of the participant's files for the purpose of license renewal.

D. The program provider shall develop a certificate of attendance that includes the following data:

(1) provider name, number and program name;

(2) name of participant;

(3) date program began and ended and number of hours offered; and

(4) number of contact hours to be credited to the participant.

E. The program provider shall develop a participant roster that includes the following data:

(1) provider name and number;

(2) program name and brief outline of contents;

(3) location of offering;

(4) name and license number of each participant receiving a certificate of attendance and how many hours were earned; and

(5) date program began and ended and number contact hours offered.

[16.34.9.9 NMAC - Rp 16 NMAC 34.9.9, 06-16-01; A, 12-17-15]

16.34.9.10 ADVANCED TRAINING: Educational programs provided for the purpose of continuing or advanced education in a specific field of licensure that are more than one hundred fifty hours in length must be conducted in a licensed school and supervised by a licensed instructor whether or not the program leads to licensure. Programs for advanced or continuing education of one hundred fifty hours or less will be considered seminars or workshops. They may or may not be conducted in a licensed establishment but must be supervised by a New Mexico licensee or approved provider for continuing education. Advanced training must be specific to the field of licensure.

[16.34.9.10 NMAC - Rp 16 NMAC 34.9.10, 06-16-01; A, 07-16-04; A, 12-17-15]

REGULATION AND LICENSING DEPARTMENT
BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.11 NMAC, Section 8, effective 12-17-15.

16.34.11.8 VIOLATIONS BY LICENSEES

A. When the board becomes aware of information or evidence tending to indicate that a violation of the act or these rules has been or is being committed by a licensee or student, it will review the matter and take appropriate action, or it may refer the matter to an informal subcommittee for review and recommendation, or it may make such investigation as it deems appropriate.

B. If an investigation is made, upon conclusion that a violation has occurred, the board shall:

(1) take no further action;

(2) issue a notice of contemplated action (NCA) under the Uniform Licensing Act;

(3) invite the parties to an informal conference with the board or the board's designee to aid in the board's resolution of the matter;

(4) [~~assess an administrative penalty pursuant to 16.34.15 NMAC of these rules, subject to appropriate procedural requirements and safeguards~~] issue a cease and desist order if the board determines that conditions within the establishment present a substantial danger of illness, serious physical harm or death to customers who might patronize the establishment;

(5) file a formal complaint with [~~the magistrate~~] a court of appropriate jurisdiction; or

(6) issue or direct the board's executive director to issue a letter of warning, a statement of what the board believes must be done to come into compliance with the act or these rules or a similar communication.

[16.34.11.8 NMAC - Rp 16 NMAC 34.11.8, 06-16-01; A, 07-16-04; A, 12-17-15]

REGULATION AND LICENSING DEPARTMENT
BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.13 NMAC, Section 9, effective 12-17-15.

16.34.13.9 INSPECTIONS

A. Schools and establishments licensed by the board are subject to inspection by any member of the board, its employees or agents who may enter and inspect at any time during regular business hours for the purpose of determining compliance with the Barbers and Cosmetologists Act.

B. Outreach enterprise mobile units are subject to inspection by any member of the board, its employees or agent who may enter and inspect at any time during regular business hours for the purpose of determining compliance with the Barbers and Cosmetologists Act. Inspections may occur at the enterprise's base location, a mutually convenient public pullover location, at a unit's appointment destination. The outreach enterprise will maintain with each client's service record a permission statement, provided by the board, signed by the client allowing the board inspection to be conducted on the client's property while services are being performed.

C. It shall constitute a violation of the Barbers and Cosmetologists Act when a licensee:

(1) attempts by means of any threat, force, intimidation or violence to deter, interfere with or prevent any inspector or board designee from performing any official duty of the department or board;

(2) willfully resists, does not cooperate with the inspector, does not allow an inspection to occur, delays or obstructs an inspector or board designee in the performance of his/her official duty;

(3) fails to comply with the lawful command of an inspector or board designee in the discharge of his/her official duty.

[16.34.13.9 NMAC - Rp 16 NMAC 34.13.9, 06-16-01; A, 12-17-15]

REGULATION AND LICENSING DEPARTMENT
BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.7 NMAC, Section 10 and 12, effective 12-16-15.

16.5.7.10 DOCUMENTATION REQUIREMENTS: Except as otherwise required by Subsection F of 16.5.7.8 NMAC, presumptive public service practitioners do not need to comply with the following for temporary or public service licensure. Residents or students as defined in Subsection C of 16.5.7.8 NMAC shall provide only documents described in Subsection F of this section. All other applicants for temporary or public service licensure [~~must~~] shall submit the required fees and following documentation:

A. completed application signed and notarized with a passport quality photo taken within six months; applications are valid for one year from the date of receipt;

B. verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession; verification [~~must~~] shall be sent directly to the office from the other state(s) board, [~~must~~] shall include [~~a~~] an [~~raised~~] embossed seal, and [~~must~~] shall attest to the status, issue date, license number, expiration date and other information contained on the form;

C. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

D. an affidavit from the New Mexico licensed dentist who is sponsoring the applicant attesting to the qualifications of the applicant and the activities the applicant will perform; applicants for temporary licensure in underserved areas and state institutions [~~must~~] shall:

(1) provide an affidavit from the administrative supervisor of the applicant's proposed employer organization as defined in Subsection C of 16.5.7.8 NMAC attesting to supervision and oversight by a New Mexico licensed dentist, and bearing the signature of both; or

(2) provide an affidavit from the New Mexico department of health specifying supervision will be by a licensed New Mexico dentist and bearing the signature of both;

(3) report any changes in supervision or oversight of the temporary licensee to the board within 30 days of the change; and

(4) provide proof of acceptable liability insurance coverage;

E. in addition, applicants requesting temporary licensure in public health dentistry or as a replacement practitioner [~~must~~] shall submit the following:

(1) official

transcripts or an original letter on letterhead with [~~a~~] an [~~raised~~] embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

(2) copy of national board examination certificate or score card;

(3) copy of clinical examination score card or certificate from the accepted examining agent;

(4) proof of having taken a course in infection control technique within the past 12 months;

(5) applicant shall authorize the drug enforcement administration (DEA) and American association of dental examiners clearinghouse to send verification of status directly to the board office;

(6) the board will obtain verification of applicant status from the national practitioners data bank; and

(7) a level III status report from a board designated professional background service [~~must~~] shall be received directly from a board designated professional background service; the results of the background check [~~must~~] shall either indicate no negative findings, or if there are negative findings, those findings will be considered by the board; the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public;

(8) in addition to the documentation required above, an applicant for temporary licensure in a specialty area [~~must~~] shall request official transcripts from the residency program or postgraduate training program to be sent directly to the board office from the accredited program.

F. Residents or students as defined in Subsection C of 16.5.7.8 NMAC [~~must~~] shall submit the required fees and following documentation:

(1) completed application signed and notarized with a passport quality photo taken within six months; applications are valid for one year from the date of receipt;

(2) [~~office~~] official transcripts [~~or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;~~] in the event that official transcripts are not available at the time of application, a letter from the dean of the dental school or college, on official letterhead, verifying the applicant's successful completion of all required courses, may be submitted but must be supplemented with final graduation documentation no later than 45 days from the start of the residency program.

(3) copy of national board examination certificate or score card;

(4) proof of having taken a course in infection control technique within the past 12 months or have graduation from dental school within the past 12 months;

(5) pass the jurisprudence exam with a score of at least 75 percent;

(6) if resident or student has or holds a license to practice dentistry or other health care profession they [~~must~~] shall submit verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession; verification [~~must~~] shall be sent directly to the office from the other state(s) board, [~~must~~] shall include [~~a raised~~] an embossed seal, and [~~must~~] shall attest to the status, issue date, license number, expiration date and other information contained on the form; and

(7) issue date of the license will correspond with the first date of the residency start date.

[3-14-73, 5-31-95, 9-30-96; 16.5.7.10 NMAC - Rn, 16 NMAC 5.7.10, 12-14-00; A, 06-14-01; A, 3-29-02, A, 07-16-07; A, 09-18-10; A, 01-09-12; A, 06-14-12; A, 12-16-15]

16.5.7.12 LICENSURE PROCEDURES: Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and approve the application. 2

The board shall formally accept the approval of the application at the next scheduled meeting.

A. Emergency Practitioner: Upon receipt of the necessary credentials from the practitioner and the verification from the sponsoring dentist, a professional member of the board or board administrator may declare the practitioner a temporary licensee of record and submit such information to the practitioner, sponsoring dentist, [~~and/or~~] or the hospital.

B. Any application which cannot be approved by the delegate of the board will be reviewed by the entire Board at the next scheduled meeting.

[3-14-73, 5-31-95, 9-30-96; 16.5.7.12 NMAC - Rn, 16 NMAC 5.7.12, 12-14-00; A, 12-16-15]

REGULATION AND LICENSING DEPARTMENT

BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.15 NMAC, Sections 9 and 11 through 17, effective 12-16-15.

16.5.15.9 ANESTHESIA COMMITTEE:

A. Appointment: All members of the anesthesia committee serve at the pleasure of the board. The board chair will appoint members to serve on the anesthesia committee for 5 year terms beginning on July 1. Individuals for consideration may be nominated by the New Mexico dental association, any local dental society, or the anesthesia committee.

B. Terms: Each member shall be appointed to serve a term of five years, however, the appointments shall be staggered so that no more than forty percent of the members will expire in any given year.

[~~**C.** Reimbursement: The anesthesia committee examiners shall be paid one hundred dollars, in addition to mileage and per diem for exams outside of the community where they practice dentistry, upon the completion of each office anesthesia examination and evaluation.~~]

[~~**D**~~] **C.** Committee composition: The anesthesia committee shall consist of licensed dentists, including at least 1 board certified oral and maxillofacial surgeon, 1 general dentist, 1 dentist board member, 1 dentist not engaged in the use of sedation techniques, and when possible, representatives of other interested dental specialties. Each anesthesia committee member should be currently practicing some form of sedation and be currently qualified as an examiner, except the non-sedating dentist.

[~~**E**~~] **D**. Duties: Establish policies and procedures for the evaluation of applications, inspections of facilities, and examination of applicants; make

recommendations to the board in regard to each application; report to the board, as needed, at regularly scheduled board meetings the status of activities of the anesthesia committee; Inform the board of any licensee who fails to cooperate with the requirements for application, registration or renewal of permits; inspect facilities upon request of the board; and upon request, assist the board in the investigation of complaints concerning the administration of anesthesia or analgesia.

[~~F~~] **E.** Designated examiners: The anesthesia committee chair may appoint a designated examiner with an anesthesia permit of an equal or greater level to perform evaluations on licensed dental applicants to serve at the pleasure of the New Mexico board of dental health care (NMBODHC) chair. This designated examiner must be actively practicing his anesthesia level to be considered by the board.

[16.5.15.9 NMAC - Rp, 16.5.15.9 NMAC, 3-17-05; A, 07-16-07; A, 12-16-15]

16.5.15.10 PEDIATRIC GUIDELINES: Unless otherwise described in this section, all anesthesia for patients 12 years and under shall follow the American academy of pediatric dentistry's "guideline for monitoring and management of pediatric patients during and after sedation for diagnostic and therapeutic procedures".

[16.5.15.10 NMAC - N, 12-16-15]

[~~16.5.15.10~~] **16.5.15.11 ADMINISTRATION OF NITROUS OXIDE OR ENTERAL ANXIOLYSIS (MINIMAL SEDATION) ANALGESIA:**

A. NITROUS OXIDE:

(1) Registration required: Each licensed dentist who administers or supervises the prescribed administration of nitrous oxide inhalation analgesia shall be registered with the board. A registration form will be provided upon initial application or upon request, and contain information to verify the dentist, facility, and staff meet the requirements specified in Paragraph (2) of Subsection A of 16.5.15.10 NMAC. When the registration has been approved by the secretary-treasurer of the board the applicant will be sent a wall certificate which does not expire. Administration of nitrous oxide inhalation analgesia without registration is a violation of these rules and may result in disciplinary action against the licensee.

(2) Requirements for registration: Each licensed dentist who administers or prescribes administration of nitrous oxide inhalation analgesia shall meet the following requirements:

(a) completed a course of training leading to competency while a student in an accredited school of dentistry or through postgraduate training;

(b) have adequate equipment which includes fail-safe features and a 25% minimum oxygen flow and an effective scavenging system;

(c) each dentist and auxiliary personnel who monitors the use of, or administers nitrous oxide shall have current basic life support certification;

(d) all use of nitrous oxide inhalation analgesia shall be under the indirect supervision of a licensed dentist;

(e) the patient's record shall reflect evidence of appropriate monitoring of vital signs, including blood pressure, pulse, and respiratory rate; and

(f) current permit holders would be grandfathered by New Mexico laws in effect at the time of original issue of their permit.

B. ENTERAL ANXIOLYSIS (MINIMAL SEDATION): The following requirements for anxiolysis do not require a conscious sedation permit. Each licensed dentist who holds a non-restricted drug enforcement administration (DEA) license and who administers or supervises the administration of enteral anxiolytic medication shall be responsible for the following:

(1) completed a course of training while a student in an accredited school of dentistry or through postgraduate training;

(2) have adequate equipment to monitor patient's vital signs;

(3) each dentist and auxiliary personnel who monitors shall have current basic life certification;

(4) all use of enteral medication shall be under the indirect supervision of a licensed dentist;

(5) the patient's record shall reflect evidence of appropriate monitoring of vital signs, including blood pressure, pulse, and respiratory rate during procedures and effect of medication;

(6) shall verify the patient has other means of transportation to be released from the office;

(7) administration of enteral anxiolytic medications in doses that do not exceed the normal therapeutic dosage recommended by the manufacturer in published literature and that are within the accepted scope of the practice and prescriptive authority of the dentist so as not to produce conscious sedation; does not require the dentist to hold a conscious sedation I permit.

[16.5.15.10 NMAC - Rp, 16.5.15.10 NMAC, 3-17-05; A, 07-16-07; A, 01-09-12; A, 06-14-12; Rn & A, 16.5.11 NMAC, 12-16-15]

[~~16.5.15.11~~] **16.5.15.12 ADMINISTRATION OF CONSCIOUS AND DEEP SEDATION:** The following three categories of anesthesia shall not be administered in a dental facility unless the licensed dentist has obtained a permit from the board. The conscious sedation II and deep sedation/general anesthesia permits are issued to the dentist for a specific practice location, unless the anesthesia provider holds an anesthesia permit at large. Administration without a permit is grounds for disciplinary action against the licensee.

A. Conscious sedation I permit allows a licensed dentist to use only oral or rectal medications or combined inhalation-enteral conscious sedation to obtain conscious sedation on an outpatient basis for dental patients.

B. Conscious sedation II permit allows a licensed dentist to use parenteral injection to obtain conscious sedation on an outpatient basis for dental patients. Conscious sedation II facility permits shall only allow medications designed for conscious sedation and not deep sedation, regardless of the licensee providing the anesthesia.

(1) A dentist with a conscious sedation II permit shall not administer or employ any agent(s) which has a narrow margin for maintaining consciousness, or is federally classified as a general anesthetic including, but not limited to:

(a) Ultra short acting barbiturates including, but not limited to, sodium methohexital, thiopental, and thiamylal;

(b) Alkylphenols - propofol (Diprivan) including precursors or derivatives;

(c) Neuroleptic agents;

(d) Dissociative agents - i.e. ketamine;

(e) Etomidate, and similarly acting drugs;

(f) Volatile inhalational agents; or

(g) Any quantity of agent(s) or technique(s), or any combination thereof, that renders a patient deeply sedated or generally anesthetized.

(2) The drugs/techniques enumerated in Paragraph (1) of Subsection B of 16.5.15 NMAC are presumed to produce general anesthesia and may only be used by a licensee holding a valid deep sedation/general anesthesia permit issued by the board, or by a corresponding licensing board if the licensee is not a dentist (eg., MD, CRNA).

C. Deep sedation/general anesthesia permit allows a licensed dentist to use deep sedation or general anesthesia on an outpatient basis for dental patients.

D. Permit levels: The level of permits in order of increasing complexity are conscious sedation I, conscious sedation II, and deep sedation/general anesthesia. When a permit is issued for [~~one~~] a higher level, all levels of lesser complexity are considered within the scope of that permit.

[16.5.15.11 NMAC - Rp, 16.5.15.11 NMAC, 3-17-05; Rn & A, 16.5.15.12 NMAC, 12-16-15]

[~~16.5.15.12~~] **16.5.15.13 PERMIT REQUIREMENTS:**

A. Conscious sedation I:

(1) To administer enteral [~~and/or~~] or combination inhalation-enteral conscious sedation (combined conscious sedation) the dentist must satisfy one of the following criteria:

(a) must have completed training to the level of competency in enteral [~~and/or~~] or combination inhalation-enteral conscious sedation (combined conscious sedation) consistent with the that prescribed in part I and part III of the current ADA guidelines for teaching the comprehensive control of anxiety and pain in dentistry;

(b) completion of an american dental association (ADA) accredited post-doctoral training program, which affords comprehensive and appropriate training necessary to administer and manage enteral [~~and/or~~] or combination inhalation-enteral conscious sedation (combined conscious sedation) consistent with that prescribed in part II of the current ADA guidelines for teaching the comprehensive control of anxiety and pain in dentistry;

(c) current permit holders would be grandfathered by New Mexico laws in effect at the time of original issue of their permit.

(2) The dentist maintains a properly equipped facility for the administration of conscious sedation, staffed with supervised clinical auxiliary personnel capable of handling procedures, problems and emergencies.

(3) The dentist and auxiliary clinical personnel have current basic life support certification.

(4) The patient's record shall reflect that the pre-operative patient evaluation, pre-operative preparation, monitoring, recovery, discharge and documentation was performed.

(5) The following rules shall apply to the administration of enteral [~~and/or~~] or combination inhalation-enteral conscious sedation (combined conscious sedation) in the dental office.

(a) Administration of enteral [~~and/or~~] or combination inhalation-enteral conscious sedation (combined conscious sedation) by another duly qualified dentist, physician or certified nurse anesthetist (CRNA) requires the operating dentist and his/her clinical staff to maintain current expertise in basic life support (BLS). The operating dentist shall ensure that the acting anesthetist is duly licensed in New Mexico to provide anesthesia and be a member in good standing of the staff of an accredited New Mexico hospital in the community in which the anesthesia occurs. The operating dentist shall be responsible for notifying the anesthesia committee of the New Mexico board of dental health care of all anesthetists used.

(b) A dentist administering enteral [~~and/or~~] or combination inhalation-enteral conscious sedation (combined conscious sedation) must document current successful completion of a basic life support (BLS) course.

(c) A dental facility shall be registered with the board as a conscious sedation I facility.

(d) The operating dentist must ensure that the anesthesia permit holder/provider provides for the anesthetic management, adequacy of the facility, and the treatment of emergencies associated with the administration of enteral [~~and/or~~] or combined conscious sedation, including immediate access to pharmacologic antagonists, if any, and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen.

B. Conscious sedation II:

(1) To administer parenteral conscious sedation the dentist must satisfy one of the following criteria:

(a) completion of a comprehensive training program in parenteral conscious sedation that satisfies the requirements described in part III of the current ADA guidelines for teaching the comprehensive control of anxiety and pain in dentistry;

(b) completion of an ADA accredited post-doctoral training program (e.g. general practice residency), which affords comprehensive and appropriate training necessary to administer and manage parenteral conscious sedation;

(c) current permit holders would be grandfathered by New Mexico laws in effect at the time of original issue of their permit.

(2) The dentist maintains a properly equipped facility for the administration of conscious sedation in accordance with the current ADA guidelines for the use of conscious sedation, deep sedation and general anesthesia for dentists.

(3) The office is staffed with supervised clinical auxiliary personnel capable of handling procedures, problems and emergencies incident thereto.

(4) The dentist and auxiliary clinical personnel have current basic life support certification.

(5) The patient's record shall reflect that the pre-operative patient evaluation, pre-operative preparation, monitoring, recovery, discharge and documentation was performed in accordance with the current ADA guidelines for the use of conscious sedation, deep sedation and general anesthesia for dentists.

(6) The dentist passes the examination and receives approval after facility inspection by the anesthesia committee or designated examiner.

(7) The following requirements shall apply to the administration of parenteral conscious sedation in the dental office.

(a) Administration of parenteral conscious sedation by another duly qualified dentist, physician or CRNA requires the

operating dentist and his/her clinical staff to maintain current expertise in basic life support (BLS). The operating dentist shall ensure that the acting anesthetist is certified in advanced cardiac life support (ACLS), is duly licensed in New Mexico to provide anesthesia and is a member in good standing of the staff of an accredited New Mexico hospital. The operating dentist shall be responsible for notifying the anesthesia committee of the New Mexico board of dental health care of all anesthetists used.

(b) A dentist administering parenteral conscious sedation must document current successful completion of:

(i) a basic life support (BLS) course;

(ii) advanced cardiac life support (ACLS) or an appropriate equivalent as approved by the anesthesia committee.

(c) A dental facility utilizing dentist, physician or CRNA anesthetists shall be registered with the board as a conscious sedation II facility and the facility and staff shall be evaluated as such.

(d) The operating dentist must ensure that the anesthesia permit holder/ provider is responsible for the anesthetic management, adequacy of the facility, and the treatment of emergencies associated with the administration of parenteral conscious sedation, including immediate access to pharmacologic antagonists, if any, and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen.

C. Deep sedation/general anesthesia:

(1) To administer deep sedation/general anesthesia, the dentist must satisfy one of the following criteria:

(a) completion of an advanced training program in anesthesia and related subjects beyond the undergraduate dental curriculum that satisfies the requirements described in part II of the current ADA guidelines for teaching and comprehensive control of anxiety and pain in dentistry;

(b) completion of an ADA accredited post-doctoral training program (e.g. oral and maxillofacial surgery, dental anesthesiology), which affords comprehensive and appropriate training necessary to administer and manage deep sedation/general anesthesia, commensurate with these rules;

(c) current permit holders would be grandfathered by New Mexico laws in effect at the time of original issue of their permit.

(2) The dentist maintains a properly equipped facility for the administration of deep sedation or general anesthesia in accordance with the current ADA guidelines for the use of conscious sedation, deep sedation and general anesthesia for dentists.

(3) The office is staffed with supervised clinical auxiliary personnel capable of handling procedures, problems and emergencies incident thereto.

(4) The dentist and auxiliary clinical personnel have current basic life support certification.

(5) The patient's record shall reflect that the pre-operative patient evaluation, pre-operative preparation, monitoring recovery, discharge and documentation was performed in accordance with the current ADA guidelines for the use of conscious sedation, deep sedation and general anesthesia for dentists.

(6) The dentist passes the examination and receives approval after facility inspection by the anesthesia committee or designated examiner.

(7) The following rules shall apply to the administration of deep sedation/general anesthesia in the dental office.

(a) Administration of deep sedation/general anesthesia by another duly qualified dentist, physician or CRNA requires the operating dentist and his/her clinical staff to maintain current expertise in basic life support (BLS). The operating dentist shall ensure that the acting anesthetist is certified in advanced cardiac life support (ACLS), is duly licensed in New Mexico to provide anesthesia and is a member in good standing of the staff of an accredited New Mexico hospital. The operating dentist shall be responsible for notifying the anesthesia committee of the New Mexico board of dental health care of all anesthetists used.

(b) A dentist administering deep sedation/ general anesthesia must document current, successful completion of an advanced cardiac life support (ACLS) course, or an equivalent as approved by the anesthesia committee.

(c) A dental facility utilizing dentist, physician or CRNA anesthetists shall be registered with the board as a deep sedation/general anesthesia facility and the facility and staff shall be evaluated as such.

(d) The operating dentist must ensure that the anesthesia permit holder/ provider is responsible for the anesthetic management, adequacy of the facility, and the treatment of emergencies associated with the administration of deep sedation and general anesthesia, including immediate access to pharmacologic antagonists and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen. Advanced airway equipment, resuscitation medications and a defibrillator must also be immediately available. Appropriate pharmacologic agents must be immediately available if known triggering agents of malignant hyperthermia are part of the anesthesia plan.

D. Anesthesia permit at large: This permit allows the holder to provide anesthesia services to patients in dental offices on an out-patient basis. The holder of the "anesthesia permit at large" assumes all responsibility for the administration of the sedation or anesthesia in the dental office.

(1) To hold an "anesthesia permit at large" a dentist must meet the requirements of Subsection C of 16.5.12 NMAC deep sedation/general anesthesia.

(2) The holder of a "permit at large" may be evaluated and inspected by the anesthesia committee as deemed necessary to assure safety to the public.

(3) The holder of such a permit agrees to have available at all times all monitors, emergency equipment, and other necessary drugs and materials when administering conscious sedation, deep sedation, and general anesthesia.

(4) The permit holder will inform the board of all dental facilities where anesthesia services are to be provided and follow all other procedures as outlined in Subsection C of 16.5.15.12 NMAC, deep sedation/general anesthesia.

[16.5.15.12 NMAC - Rp, 16.5.15.12 NMAC, 3-17-05; A, 07-16-07; Rn & A, 16.5.15.13 NMAC, 12-16-15]

[~~16.5.1513~~] **16.5.15.14 REPORTING ADVERSE INCIDENTS:** Each licensed dentist must submit a

written report to the board within a period of thirty days of any significant morbidity or mortality or other incident which results in temporary or permanent physical or mental injury of a patient during, or as a result of, nitrous oxide inhalation analgesia, conscious sedation administered via oral, rectal, or parenteral routes, deep sedation, or general anesthesia. The report is required regardless of the need for hospitalization after the incident and shall include the following:

A. description of the dental procedure;

B. description of the pre-operative physical condition of the patient;

C. list of drugs and dosage administered and route of administration;

D. description in detail of techniques utilized in administering the drugs utilized;

E. the names of auxiliary personnel in attendance; and

F. description of the adverse occurrence to include the following: detailed description of symptoms, of any incident; treatment initiated on the patient; response of the patient to the treatment; description of the patients condition on termination of treatment; and, copies of the patient record, medical history and operative report.

[16.5.15.13 NMAC - Rp, 16.5.15.13 NMAC, 3-17-05; Rn & A, 16.5.15.14 NMAC, 12-16-15]

[~~16.5.15.14~~] **16.5.15.15 FAILURE TO REPORT:** Failure to comply with the reporting requirements of 16.5.15.13 NMAC of this part shall be grounds for disciplinary action against the licensee. In accordance with the provisions of the Uniform Licensing Act, the board may take any actions enumerated in 16.5.16 NMAC, as well as revoke the anesthesia permit.

[16.5.15.14 NMAC - Rp, 16.5.15.14 NMAC, 3-17-05; Rn & A, 16.5.15.15 NMAC, 12-16-15]

[~~16.5.15.15~~] **16.5.15.16 PERMIT APPLICATION PROCEDURE:**

A. Applications may be obtained from the board office. The completed application, accompanied by the required permit fee as defined in 16.5.5 NMAC, is forwarded to the anesthesia committee for evaluation.

B. Temporary permits: The anesthesia committee evaluates the application and identifies any additional information required. If the application appears to be in order, the anesthesia committee may recommend the board issue a temporary permit. Temporary permits allow time to complete processing of the application, administer the examination and inspect the facility.

(1) A dentist having a valid temporary dental license in good standing may apply for a CSI, CSII and deep sedation temporary anesthesia permit not to exceed the term of the first temporary license. After receipt of proper documentation, and at the discretion of the anesthesia committee or anesthesia designator, the application may be approved by the board at the next regular scheduled meeting.

(2) The temporary permit shall not be valid for more than 12 months.

(3) The permit application fee includes the cost of the temporary permit and the initial permit.

(4) A temporary permit shall [~~be revoked by the board~~] expire automatically on the following grounds:

(a) the applicant fails the anesthesia committee's examination;

(b) the applicant is found to be practicing outside the recognized standard of care in regard to administration of anesthesia;

(c) or the applicant fails to cooperate with the timely scheduling of the examination and facility inspection.

C. Examination/evaluation: The anesthesia committee will schedule the examination and facility inspection, when required, with the applicant. The anesthesia committee uses the American association of oral and maxillofacial surgeons office anesthesia evaluation manual as a guide for the examinations. Incomplete applications will be returned by the anesthesia committee to the board office with a clear indication of the deficient areas.

D. Final approval: After final evaluation of the application and examination results, the anesthesia committee recommends final action on the application to the board. The board makes the final determination on approval of the permit. If an application is denied for failure to meet the requirements of 16.5.15.10 NMAC the areas of non-compliance will be identified and the applicant may re-apply when the requirements are met.

[16.5.15.15 NMAC - Rp, 16.5.15.15 NMAC, 3-17-05; A, 07-16-07; A, 07-17-08; Rn & A, 16.5.15.16 NMAC, 12-16-15]

[~~16.5.15.16~~] **16.5.15.17 PERMIT EXPIRATION AND RENEWAL:**

A. Expiration: Anesthesia permits are issued for six years from the last day of the month in which the initial permit was issued.

B. Renewal: Renewal applications will be sent to each dentist prior to the expiration date of the anesthesia permit. The completed application, along with the required fee must be returned to the board office prior to permit expiration. The permit renewal application will be forwarded to the anesthesia committee, which will schedule a re-examination for holders of conscious sedation II and general anesthesia permits.

C. Education requirements: Any holders of any permit level holding CSI, CSII, deep sedation and AAL are required to have a minimum of five hours of continuing education for the permit renewal for every six years in medical emergencies, air way management, pharmacology, or anesthesia related topics.

D. New facility evaluation: A dentist who holds a conscious sedation II or general anesthesia permit and who relocates his practice requires a new permit based on re-examination. The permit fee will be charged and the new permit will be issued in accordance with Subsection B or C of 16.5.15.12 NMAC.

E. Re-examination/evaluation: The board may require a re-examination or a re-evaluation of the credentials, facilities, equipment, personnel, and procedures of a permit holder to determine if the dentist is currently qualified to administer anesthesia. The board or its agents shall notify the dentist to be re-examined or re-evaluated 180 days in advance of permit expiration. The notification will indicate the content and format of the examination/evaluation.

F. Permit Expiration: Failure of a dentist to renew his license and permit, or to schedule a required office re-evaluation within thirty days of receipt of the notification, or failure on the part of the licensee to successfully complete the examination/evaluation, will cause the permit to expire.

G. Verification of continuing education: The board will select renewal application for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements.

Continuing education records may be audited by the board at any time. The records identified in Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for one year following the renewal cycle in which they are earned. Additionally and at renewal time, holders of any permit level may be requested to demonstrate competency in maintenance of airway patency to the anesthesia committee, it's designated examiner or the board either on a "board approved" simulator, or other device as may be acceptable to the board. There may be an announced audit of any permit holder by the anesthesia committee or by the board designated examiner during the permitted time for the purpose of demonstrating airway management and airway competency, either on the board designated model or other device approved by the board.

[16.5.15.16 NMAC - Rp, 16.5.15.16 NMAC, 3-17-05; A, 07-16-07; Rn & A, 16.5.15.17 NMAC, 12-16-15]

REGULATION AND LICENSING DEPARTMENT

BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.17 NMAC, Section 12, effective 12-16-15.

16.5.17.12 COLLABORATIVE DENTAL HYGIENE PRACTICE AND LIMITATIONS:

A. A dental hygienist in a collaborative practice may perform the procedures in a dental hygienist's scope of practice listed in 16.5.29 NMAC without general supervision while the hygienist is in a cooperative working relationship with a consulting dentist, pursuant to rules promulgated by the board and the committee.

B. A collaborative practice dental hygienist may have more than one consulting dentist.

C. A dentist shall have a consulting agreement with no more than three collaborative practice dental hygienists. The board may grant exception to this limitation for public health settings on a case-by-case basis.

D. The collaborative practice dental hygienist may own and manage a dental hygiene practice, or enter into a contractual arrangement, in any location or setting in New Mexico.

E. The committee, through the board, may take any disciplinary action allowed by the Uniform Licensing Act, against a dental hygienist certified in collaborative practice.

F. Collaborative dental hygienist can administer local anesthesia under general supervision as defined in 16.5.28.8 NMAC and 16.5.28.12 NMAC.

G. A collaborative dental hygienist may assess for pit and fissure sealants without a dentist's evaluation as provided in Subsection D of 16.5.29.8 NMAC.

H. A collaborative dental hygienists may prescribe, administer and dispense topically applied fluoride and topically applied antimicrobials as provided for in 16.5.29.11 NMAC.

I. Perform dental hygiene focused assessment.

J. A collaborative practice dental hygienist shall not:

(1) administer local anesthesia except under the general supervision of a dentist; and only if certified to do so through the committee and ratified by the board;

(2) administer a drug or medication, except those directly indicated as dental topical therapeutic or preventive agents; other therapeutic agents may only be dispensed if the collaborative practice dental hygienist holds a class C clinic license; any drugs dispensed as a class C clinic (as designated and defined by the New Mexico board of pharmacy) shall be on the specific individual authorization of a dentist:

(a) all non-controlled substance medications requiring a prescription or order from the dentist may only be dispensed for immediate use in the collaborative practice dental hygienist office, and only on the specific order or protocol from the consulting dentist; a log of these dispensing shall be kept and a copy of this log shall be sent to the corresponding consulting dentist every six months; collaborative practice dental hygienists may not dispense or administer any controlled substance;

(b) prescription drugs, which are kept in bulk at the collaborative practice dental hygienist's office, to be dispensed or used by the collaborative practice dental hygienist as in 16.5.17.12 NMAC, shall be purchased on an order or prescription by a consulting dentist;

(3) diagnose dental disease, but may advise the patient of suspected pathology and periodontal status;

(4) perform oral hygiene procedures on any patient identified as having a significant health risk from the procedures; unless the patients' current health history has been reviewed by the patient's dentist of record or the consulting dentist; or for patients who reside in residential or long term care facilities, the patient's dentist or physician;

(5) perform treatments requiring the diagnosis of a dentist without a prescription/ order from the consulting dentist; such treatments include but are not limited to, root planing, sealant application in presence of cavitation, administration of therapeutic agents and other services defined in Section 61-5A-4(B) NMSA 1978 as within the scope of dental hygiene practice but which require a dentists diagnosis;

(6) modify the standard collaborative practice protocol without a prescription or order from the consulting dentist;

(7) take impressions for bleaching trays, deliver bleaching materials or provide systems of home bleaching, or provide instructions to patients on using bleaching materials unless it is authorized on a case by case basis by prescription from a consulting dentist;

(8) provide in office bleaching systems unless under indirect supervision of a consulting dentist.

K. Effective July 1, 2015, a collaborative practice hygienist who owns a dental practice shall register with the board as a non-dentist owner. No additional license or fee is required for this registration. A collaborative practice hygienist who owns a dental practice must notify the board, in writing, if the dental practice has been sold or has closed.

[2-14-00; 16.5.17.12 NMAC - Rn & A, 16 NMAC 5.17.12, 12-14-00; A, 06-14-01; A, 04-16-08; A, 07-19-10; A, 01-09-12; A, 01-15-15; A, 04-16-15; A, 12-16-15]

REGULATION AND LICENSING DEPARTMENT

BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.28 NMAC, Sections 8, 11, 12 and 13, effective 12-16-15.

16.5.28.8 REQUIREMENT TO BE CERTIFIED: Local anesthesia administration is not included as a function of dental hygiene licensure; it may only be performed by dental hygienists who have been separately certified by the committee to perform the expanded function. The administration of local anesthesia requires the indirect supervision of a dentist. Local anesthesia may only be administered by a dental hygienist under general supervision [~~under the following conditions; the dental hygienist shall:~~] as outlined in 16.5.28.11 NMAC.

[~~**A.** be currently certified to administer local anesthesia in New Mexico and have a New Mexico license in good standing;~~

~~**B.** have administered local anesthesia under the indirect supervision of a dentist for at least two consecutive years;~~

~~**C.** administered at least 20 cases of local anesthesia under the indirect supervision of the same dentist during that two year period;~~

~~**D.** provide a signed affidavit from the supervising dentist attesting to the length of employment, supervision, and observation of the 20 certifying cases, and attest that the dental hygienist is qualified to administer local anesthesia and to handle possible emergencies or side effects in a dental facility. The affidavit is valid for subsequent or additional locations in which the licensee may practice.~~]

[3/14/73, 5/31/95; 16.5.28.8 NMAC - Rn, 16 NMAC 5.28.8, 04/17/06; A, 01/09/12; A, 01-15-15; A, 12-16-15]

16.5.28.11 CERTIFICATION OF LOCAL ANESTHESIA UNDER GENERAL SUPERVISION: An applicant for certification in local anesthesia under general supervision must possess the following qualifications and submit the following documentation along with a completed application.

A. An applicant must possess the following qualifications:

(1) have a current active license in good standing to practice dental hygiene in New Mexico;

(2) possess a New Mexico certification to administer local anesthesia under the indirect supervision of a licensed dentist; and

(3) have administered 20 cases of local anesthesia under the indirect supervision of a dentist during two consecutive years.

B. An applicant must provide the board office with the following documentation:

(1) a copy of a current New Mexico dental hygiene license;

(2) a copy of the applicant's certificate to administer local anesthesia under indirect supervision; and

(3) a signed affidavit, on a board-approved form, from the supervising dentist attesting to the applicant's qualifications for a certificate to administer local anesthesia under general supervision. The affidavit is valid for subsequent or additional locations in which the applicant may practice.

[16.5.28.11 NMAC - N, 12-16-15]

[~~**16.5.28.11**~~] **16.5.28.12 CERTIFICATION PROCEDURE:** Upon receipt of a completed local anesthesia application, including all required documentation and fees, a committee member or designee of the committee will review the application and determine eligibility for certification.

[3/16/94, 5/31/95, 12/15/97; 16.5.28.11 NMAC - Rn, 16 NMAC 5.28.11, 04/17/06; Rn & A, 16.5.28.12 NMAC, 12-16-15]

[~~**16.5.28.12**~~] **16.5.28.13 LIMITATIONS OF LOCAL ANESTHESIA ADMINISTRATION:** Administration of local anesthetic under general supervision may occur when:

A. certification has been received as defined in 16.5.28.11 NMAC and meets the following requirements:

(1) the supervising or consulting dentist has written or verbally ordered local anesthetic for the specific patient; and

(2) verbal orders shall be converted to written record or electronic record in the patient's dental record; and

B. emergency medical services are available by:

(1) local 911 service with a response time of less than 10 minutes; or

(2) by arrangement with a local physician(s), oral surgeon, or other medical or dental professional holding an advanced cardiovascular life support (ACLS) certification; this arrangement to provide emergency services shall be in writing and on file in the board office with the dental hygienists license; and

C. indirect supervision is required for continuing education and clinical examinations.

[16.5.28.12 NMAC - N, 01/09/12; Rn & A, 16.5.28.13 NMAC, 12-16-15]

REGULATION AND LICENSING DEPARTMENT

BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.29 NMAC, Section 8, effective 12-16-15.

16.5.29.8 SCOPE OF PRACTICE: A dental hygienist may perform dental hygiene services as defined in NMSA 1978, Section 61-5A-4 B thru F NMSA 1978 of the act with the supervision defined. In addition, a licensed hygienist may:

A. prescribe, administer or dispense therapeutic agents as per the formulary as defined in Subsection C of 16.5.29.11 NMAC;

B. function as an expanded function dental auxiliary after passing the certifying exam and completing the apprenticeship accepted by the board;

C. function as a community dental health coordinator after completing a program certified by the board;

D. except in cases where a tooth exhibits cavitation of the enamel surface, assessing without a dentist's evaluation whether the application of pit and fissure sealants is indicated;

E. except in cases where a tooth exhibits cavitation of the enamel surface, applying pit and fissure sealants without mechanical alteration of the tooth;

F. administration of local anesthesia as defined in 16.5.28 NMAC; and

G. such other closely related services as permitted by the rules of the committee and the board.

H. Effective July 1, 2015, a dental hygienist who owns a dental practice must register as a non-dentist owner. No additional license or fee is required for this registration. A dental hygienist who owns a dental practice must notify the board, in writing, if the dental practice has been sold or has closed.

[10-21-70, 5-31-95; 16.5.29.8 NMAC - Rn, 16 NMAC 5.29.8, 04-17-06; A, 01-09-12; A, 12-15-12; A, 01-04-14; A, 01-15-15; A, 04-16-15; A, 12-16-15]

REGULATION AND LICENSING DEPARTMENT
BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.30 NMAC, Section 10, effective 12-16-15.

16.5.30.10 GUIDELINES: The committee shall define the following as guidelines for disciplinary action.

A. "Gross incompetence" or "gross negligence" means, but shall not be limited to, a significant departure from the prevailing standard of care in patient treatment.

B. "Unprofessional conduct" means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental hygiene profession;

(2) failure to advise the patient in simple understandable terms of the treatment rendered, the expectations for success, and the responsibility the patient must assume;

(3) failure to inform dentist or patient of periodontal assessment;

(4) failure to provide patient education of oral health care regimens which assist in maintaining good oral health throughout life;

(5) sexual misconduct;

(6) failure to use appropriate infection control techniques and sterilization procedures;

(7) breach of ethical standards, an inquiry into which the committee will begin by reference to the most recent version of the American dental hygienists association's code of ethics [~~of the American dental hygienists' association~~];

(8) fraud, deceit or misrepresentation in any application;

(9) violation of any order of the committee, and ratified by the board, including any probation order;

(10) injudicious administration of any drug or medicine;

(11) failure to report to the committee or board any adverse action taken by any licensing board, peer review body, malpractice insurance carrier or any other entity as defined by the board or committee, the surrender of a license to practice in another state, surrender of membership on any medical staff or in any dental hygiene or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(12) deliberate and willful failure to reveal, at the request of the committee, the incompetent, dishonest, or corrupt practices of a dentist or dental hygienist licensed or applying for licensure by the committee or board; and

(13) cheating on an examination for licensure;

(14) failure of a dental hygienist to comply with the following advertising guidelines:

(a) shall not advertise in a false, fraudulent, or misleading manner, and

(b) shall include in the advertisement the name of the hygienist, the name of the employer dentist(s), the practice address(es) and telephone number(s);

(15) failure of a collaborative practice dental hygienists to refer a patient for dental care; or

(16) failure of a collaborative practice dental hygienist to comply with the terms of a signed collaborative practice agreement;

(17) failure of a collaborative practice dental hygienist to professionally and effectively communicate with a patients dentist of record, or consulting dentist, in a professional manner in regard to a shared patient's care under 16.5.17 NMAC of these rules;

(18) failure of a collaborative dental hygienist to comply with the following advertisement guidelines, no person shall:

(a) practice dental hygiene under the name of a corporation , company, association , limited liability company, or trade name without full and outward disclosure of his/her full name, which shall be the name used in his/her license or renewal certificate as issued by the board;

(b) practice dental hygiene without displaying his/her full name as it appears on the license issued by the board on the entrance door of each office;

(c) shall include in all advertisements the dental hygienist's name, address and telephone number or direct reference where the name of the dental hygienist(s) can be found as defined in 16.5.30.7 NMAC; and

(d) shall not advertise a practice in a false, fraudulent or misleading manner;

(19) assisting a health professional, or be assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

(20) conviction of either a misdemeanor or a felony punishable by incarceration;

(21) aiding and abetting a dental auxiliary who is not properly certified;

(22) patient abandonment;

(23) habitually addicted as defined in 61.5A-21 4 & 6 and Subsections C and D 61.5B-3 NMSA 1978 habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act,30-31-1 NMSA 1978 or habitual or excessive use or abuse of alcohol;

(24) failure of the licensee to furnish the committee within 10 business days of request; its investigators or representatives with information requested by the committee, and ratified by the board;

(25) failure to appear before the board when requested by the committee, and ratified by the board, in any disciplinary proceeding; and

(26) failure to be in compliance with the Parental Responsibility Act Section 40-5A-3 seq., NMSA1978.

[3-14-73, 4-10-81, 10-16-92, 5-31-95, 9-30-96, 1-1-99, 2-14-00; 16.5.30.10 NMAC - Rn & A, 16 NMAC 5.30.10 12-14-00; A, 07-19-10; A, 01-09-12; A, 12-15-12; A, 07-17-13; A, 12-16-15]

REGULATION AND LICENSING DEPARTMENT
BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.42 NMAC, Sections 9 and 10, effective 12-16-15.

16.5.42.9 EDUCATION AND EXAMINATION REQUIREMENTS FOR EXPANDED FUNCTION DENTAL AUXILARY:

A. satisfactory completion of an accepted expanded function dental auxiliary course at an

institution accredited by the board or joint commission on dental accreditation where in the offering program is also accredited by the commission; or

B. for dental auxiliaries that have five years experience and "independent preparation" for the requirements:

(1) applicant must have a minimum of five years of continuous employment as a dental assistant or dental hygienist with a minimum of 1,000 hours per year;

(2) achieved certification in all expanded functions as defined in 16.5.33 NMAC;

(3) taken a course of study in dental anatomy, dental materials, placing and shaping direct restorations, fitting and shaping of stainless steel crowns, and occlusion function and passed a post-test approved by the board verifying readiness for taking the certification examination;

(4) recommended for an expanded function dental auxiliary (EFDA) certification by the supervising dentist as defined in Subsection G of 16.5.42.7 NMAC;

(5) instructors must have higher or same level of licensure or certification in respective courses they are teaching;

C. pass a clinical examination accepted by the board for certification of EFDA;

D. completed the jurisprudence examination with a score of at least 75 percent;

E. exemptions; an expanded function dental auxiliary who is certified to perform EFDA duties in another state or jurisdiction with requirements not less stringent than those in New Mexico may be certified based on credentials;

F. after passing a board accepted examination or being certified by credentials, EFDA candidates must complete an apprenticeship under the close personal supervision of a supervising dentist;

(1) the board will send to the EFDA candidate upon receipt of the completed application the following:

(a) permit to start apprenticeship to be displayed during apprenticeship; and

(b) [~~affadivit~~] affidavit form to be signed by supervising dentist at start and completion of apprenticeship;

(2) the [~~affadavit~~] affidavit shall state that the supervising dentist assures that the EFDA candidate is competent in the procedures allowed by an EFDA and that the supervising dentist assumes full responsibility and liability for the training and actions of the EFDA;

(3) once the permit is issued by the board office the EFDA candidate has 180 days to complete the apprenticeship; and

(4) upon completion of the apprenticeship the candidate must return the EFDA permit and the signed [~~affadivit~~] affidavit to the board; once the permit and signed [~~affadavit~~] affidavit have been received and verified by the board a certificate for EFDA may be issued.

[16.5.42.9 NMAC - N, 01/09/12; A, 06/14/12; A, 07/17/13; A, 12-16-15]

16.5.42.10 REQUIRED DOCUMENTATION: Each applicant for an expanded function dental auxiliary certification shall submit to the board or its agent the required fees and the following documentation. Applications are valid for one year from the date of receipt by the board; after one year, the applicant shall submit to the board a new application.

A. Each application for licensure who completed an EFDA program must submit the following documentation:

(1) completed application with a passport quality photo taken within six months affixed to the application;

(2) official transcripts or certification verifying successful completion of an EFDA program accredited by the commission on dental accreditation;

(3) copy of clinical examination accepted by the board for certification as EDFA; the results of the exam are valid in New Mexico for a period not to exceed five years:

(a) the applicant shall apply directly to a board approved testing agency for examination;

(b) results of the clinical examination shall be sent directly to the board office; and

(4) [~~affadavit~~] affidavit letter from supervising dentists.

B. An applicant who has not graduated from an accredited expanded function dental auxiliary program can apply for certification if they meet all requirements in Subsection B, D and F of 16.5.42.9 NMAC and must submit the following:

(1) completed application with a passport quality photo taken within six months affixed to the application;

(2) shall provide proof of five years of continuous employment as a dental assistant or dental hygienist with a minimum of 1,000 hours per year;

(3) shall have achieved certification in all expanded function as defined in 16.5.33 NMAC;

(4) shall provide proof of successful completion of courses in dental anatomy, dental materials, placing and shaping direct restorations, fitting and shaping of stainless steel crowns, and occlusion function;

(5) shall provide [~~a letter~~] an affidavit executed on dentist letterhead from a supervising dentist recommending the applicant for EFDA certification and verifying the applicant's competency; [~~must be on dentist letterhead;~~] and

(6) copy of clinical examination score card or certificate[~~; and~~].

[~~**(7)** affidavit letter from the supervising dentist of competency.~~]

C. Certification by credentials. Applicants can apply for certification by credentials if they meet all requirements as defined in Subsections A, C, D and F of 16.5.42.9 NMAC and must submit the following:

(1) completed application with a passport quality photo taken within six months affixed to the application;

(2) verification of a current active certification in good standing from another state; and

(3) copy of clinical examination score card or certificate; the results of the examination are valid in New Mexico for a period not to exceed five years:

(a) the applicant shall apply directly to a board approved testing agency for examination, and

(b) the results of the clinical examination must be sent directly to the board office; and

(4) affidavit letter from the supervising dentist of competency.

[16.5.42.10 NMAC - N, 01/09/12; A, 06/14/12; A, 07/17/13; A, 12-16-15]

REGULATION AND LICENSING DEPARTMENT
BOARD OF PHARMACY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 19 PHARMACISTS
PART 37 MINIMUM STANDARDS FOR OUTSOURCING FACILITIES

16.19.37.1 ISSUING AGENCY: Regulation and Licensing Department - Board of Pharmacy.
[16.19.37.1 NMAC - N, 12-13-15]

16.19.37.2 SCOPE: All outsourcing facilities, resident and nonresident, and all persons or entities that own or operate, or are employed by, an outsourcing facility for the purpose of providing pharmaceutical products or services.
[16.19.37.2 NMAC - N, 12-13-15]

16.19.37.3 STATUTORY AUTHORITY: Section 61-11-6 A(6) NMSA 1978 authorizes the board of pharmacy to provide for the licensing of drug manufacturers and for the inspection of their facilities and activities; and to enforce the provisions of all state laws pertaining to the practice of pharmacy and the manufacture,
production, sale or distribution of drugs, cosmetics or poisons, including the New Mexico Drug, Device and Cosmetic Act, Chapter 26, Article I NMSA 1978. Pursuant to Section 26-1-18 of the Drug, Device and Cosmetic Act, the board is authorized to promulgate regulations for the efficient enforcement of the act.
[16.19.37.3 NMAC - N, 12-13-15]

16.19.37.4 DURATION: Permanent.
[16.19.37.4 NMAC - N, 12-13-15]

16.19.37.5 EFFECTIVE DATE: December 13, 2015, unless another date is cited at the end of a section.
[16.19.37.5 NMAC - N, 12-13-15]

16.19.37.6 OBJECTIVE: The objective of 16.19.37 NMAC is to establish standards for the safe and competent manufacture and distribution of drugs by outsourcing facilities.
[16.19.37.6 NMAC - N, 12-13-15]

16.19.37.7 DEFINITIONS:

A. "Administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means as a result of an order of a licensed practitioner.

B. "Board" means the New Mexico board of pharmacy.

C. "CFR" means code of federal regulations.

D. "Compounding" means;

(1) manufacturing by an outsourcing facility in accordance with the conditions and requirements of Section 503B of the Federal Food, Drug, and Cosmetic Act; and

(2) manufacturing by a dual purpose facility in accordance with the conditions and requirements of Section 503A, and 503B as applicable, of the Federal Food, Drug, and Cosmetic Act; and

(3) the combining, admixing, mixing, diluting, pooling, reconstituting, or otherwise altering of a drug or bulk drug substance to create a drug; by an outsourcing facility or dual purpose facility.

E. "Dispense" means the evaluation and implementation of a prescription, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to or use by a patient.

F. "Distribute" means the delivery of a drug or device other than by administering or dispensing.

G. "Dual purpose facility" an outsourcing facility licensed in the state of New Mexico that is also licensed in the state of New Mexico as a pharmacy or non-resident pharmacy.

H. "Manufacture" means the steps in the preparation, propagation, processing or compounding of a drug - the making by chemical, physical, biological or other procedures of any articles which meet the definition of drugs and includes manipulation, sampling or control procedures resulting in the finished dosage form. Manufacture includes all the steps performed on the product itself, which do not affect intrinsically the safety, purity or potency of the product.

I. "Nonresident outsourcing facility" means any outsourcing facility located outside New Mexico, that ships, mails or delivers, in any manner, prescription drugs into New Mexico.

J. "Outsourcing facility" means a facility that is currently registered with the Food and Drug Administration (FDA) as an outsourcing facility under Section 503B of the Federal Food, Drug, and Cosmetic Act, and that meets the requirements of that agency to engage in the compounding and distribution of sterile drugs.

K. "Pharmacist in charge" means a pharmacist who accepts responsibility for the operation of a dual purpose facility or outsourcing facility in conformance with all laws and rules pertinent to the facility operational standards, the practice of pharmacy, and the distribution or dispensing of drugs and who is personally in full and actual charge of the facility and its personnel.

L. "REMS" means a FDA approved risk evaluation and mitigation strategy.

M. "Resident state" means the state in which the nonresident outsourcing facility is physically located in.

N. "The finished dosage form" of a prescription drug is defined as that form of the drug which is or is intended to be dispensed or administered to the patient and requires no further manufacturing or processing other than packaging and labeling.
[16.19.37.7 NMAC - N, 12-13-15]

16.19.37.8 LICENSURE OR REGISTRATION:

A. Any outsourcing facility that is engaged in the compounding of sterile drugs in this state shall be registered as an outsourcing facility under the Federal Food, Drug, and Cosmetic Act and be licensed as an outsourcing facility in this state.

B. Any nonresident outsourcing facility, that distributes or causes to be distributed, compounded sterile drugs into New Mexico shall be registered as an outsourcing facility under the Federal Food, Drug, and Cosmetic Act and be licensed as a nonresident outsourcing facility.

C. No outsourcing facility shall ship, mail or deliver controlled substances in or into this state unless registered by the Drug Enforcement Administration (DEA) and the board for controlled substances.

D. Applications for a nonresident outsourcing facility under this section shall be made on a form furnished by the board. The board may require such information as it deems is reasonably necessary to carry out the purposes of this section.

E. The board shall not

issue an initial or renewed license for an outsourcing facility unless the facility furnishes the board with a report, issued by the appropriate regulatory agency of the resident state, or entity approved by the appropriate regulatory agency of the resident state, or by the FDA, of an inspection that has occurred within the 12 months immediately preceding receipt of the license application by the board (with no intervening change in outsourcing facility ownership). The board may deny licensure unless the applicant submits documentation satisfactory to the board that any deficiencies noted in an inspection report have been corrected.

F. No license shall be issued or renewed for an outsourcing facility unless the applicant supplies the board with proof of such registration by the FDA.

G. No license shall be issued or renewed for a non-resident outsourcing facility that is required to be licensed or registered by the state in which it is physically located unless the applicant supplies the board with proof of such licensure or registration. The board may establish, by rule, standards for the licensure of an outsourcing facility that is not required to be licensed or registered by the state in which it is physically located.

H. The license fee shall be as specified in 16.19.12 NMAC, and shall be renewed biennially before the last day of December each year.

I. The board may deny, revoke or suspend an outsourcing facility's registration for any violation of the state drug laws.

[16.19.37.8 NMAC - N, 12-13-15]

16.19.37.9 OPERATIONAL STANDARDS: The following minimum standards shall apply to all outsourcing facilities and dual purpose facilities for which licenses have been issued by the board:

A. All drugs and chemicals used in the manufacturing process or held for sale shall conform to the Drug, Device and Cosmetic Act and shall be stored, preserved and disposed of as prescribed by laws regulating the labeling and manufacture of drugs. When necessary, and/or according to label requirements, all drugs and chemicals which require refrigeration shall be stored and preserved under proper temperature.

B. Facilities must comply with applicable FDA current good manufacturing practice requirements as set forth in title 21, CFR, Subsection 211.1 to 211.208 inclusive (or successor regulations). The definitions and interpretations contained in Section 201 of the Federal Food and Drug Act shall be applicable.

C. Facilities must be in compliance with applicable DEA regulations.

D. Facilities must comply with applicable United States Pharmacopeia requirements.

[16.19.37.9 NMAC - N, 12-13-15]

16.19.37.10 MINIMUM REQUIREMENTS:

A. PHARMACIST IN CHARGE.

(1) Any drugs compounded in an outsourcing facility or dual purpose facility licensed pursuant to this rule shall be compounded by or under the direct supervision of a licensed pharmacist and in accordance with all applicable federal and state laws.

(2) Any drugs repackaged in an outsourcing facility licensed pursuant to this rule shall be repackaged by or under the direct supervision of a licensed pharmacist and in accordance with all applicable federal and state laws.

(3) The pharmacist in charge shall be responsible for the maintenance and implementation of appropriate policies and procedures.

(4) The pharmacist in charge shall be responsible for ensuring proper training and competence of personnel for all duties assigned to or undertaken by personnel.

(5) The pharmacist in charge shall be responsible for ensuring personnel are properly licensed or registered with the board.

(6) The pharmacist in charge shall be responsible for compliance with all federal regulations applicable to outsourcing facilities, and all regulations administered by the board.

B. DUAL PURPOSE FACILITY.

(1) No outsourcing facility may dispense any drug to any person pursuant to a prescription unless it is also licensed as a pharmacy (or nonresident pharmacy) in this state and meets all other applicable requirements of federal and state law.

(2) Required records of the outsourcing facility shall be maintained separate from required records of the pharmacy.

C. RESTRICTIONS.

(1) Any drugs compounded in an outsourcing facility licensed pursuant to this rule shall be compounded in accordance with all applicable federal and state laws.

(2) Any drugs repackaged in an outsourcing facility licensed pursuant to this rule shall be repackaged in accordance with all applicable federal and state laws.

(3) Each repackaged drug product is also accompanied by a copy of the prescribing information that accompanied the original drug product that was repackaged.

(4) The drug product is included on a report submitted to FDA each June and December identifying the drug products made by the outsourcing facility during the previous six month period, and providing the active ingredient(s); source of the active ingredient(s); national drug code (NDC) number of the source ingredient(s), if available; strength of the active ingredient(s) per unit; the dosage form and route of administration; the package description; the number of individual units produced; and the NDC number of the final product, if assigned.

D. LABELING OF DRUGS COMPOUNDED OR REPACKAGED BY AN OUTSOURCING FACILITY.

(1) The label of any drug compounded by an outsourcing facility shall include, but not be limited to the following:

(a) a statement that the drug is a compounded drug or a reasonable comparable alternative statement that prominently identifies the drug as a compounded drug;

(b) the name, address, and phone number of the applicable outsourcing facility; and

(c) with respect to the drug:

(i) the lot or batch number;

(ii) the established name of the drug;

(iii) the dosage form and strength;

(iv) the statement of quantity or volume, as appropriate;

(v) the date that the drug was compounded;

(vi) the expiration date;

(vii) storage and handling instructions;

(viii) the NDC number, if available;

(ix) the statement that the drug is not

for resale, and if the drug product is distributed by an outsourcing facility other than pursuant to a prescription for an individual identified patient, the statement "office use only";

(x) a list of the active and inactive ingredients, identified by established name, and the quantity or proportion of each ingredient.

(2) The label on the immediate container (primary packaging, e.g., the syringe) of the repackaged product includes the following:

(a) the statement "this drug product was repackaged by (name of outsourcing facility)";

(b) the address and phone number of the outsourcing facility that repackaged the drug product;

(c) the established name of the original, approved drug product that was repackage;

(d) the lot or batch number of the repackaged drug product;

(e) the dosage form and strength of the repackaged drug product;

(f) a statement of either the quantity or volume of the repackaged drug product, whichever is appropriate;

(g) the date the drug product was repackaged;

(h) the beyond use date of the repackaged drug product;

(i) storage and handling instructions for the repackaged drug product;

(j) the NDC number of the repackaged drug product, if available;

(k) the statement "not for resale," and, if the drug product is distributed by an outsourcing facility other than pursuant to a prescription for an individual identified patient, the statement "office use only";

(l) when included on the label of the FDA approved drug product from which the drug product is being repackaged, a list of the active and inactive ingredients, unless such information is included on the label for the container from which the individual units are removed, as described below:

(i) the label on the container from which the individual units are removed for administration (secondary packaging, e.g., the bag, box, or other package in which the repackaged products are distributed) includes;

(ii) the active and inactive ingredients, if the immediate drug product label is too small to include this information;

(iii) the directions for use, including, as appropriate, dosage and administration, and the following information to facilitate adverse event reporting: www.fda.gov/medwatch and 1-800-FDA-1088.

E. CONTAINER**.** The container from which the individual units of the drug are removed for dispensing or for administration (such as a plastic bag containing individual product syringes) shall include:

(1) a list of active and inactive ingredients, identified by established name, and the quantity or proportion of each ingredient; and

(2) any other information required by regulations promulgated by the commissioner to facilitate adverse event reporting in accordance with the requirements established in Section 310.305 of title 21 of the Code of Federal Regulations (CFR).

F. BULK DRUGS. A drug may only be compounded in an outsourcing facility that does not compound using bulk drug substances as defined in Section 207.3(a)(4) of title 21 of the CFR or any successor regulation unless:

(1) the bulk drug substance appears on a list established by the FDA identifying bulk drug substances for which there is a clinical need;

(2) the drug is compounded from a bulk drug substance that appears on the federal drug shortage list in effect at the time of compounding, distributing, and dispensing;

(3) if an applicable monograph exists under the USP-NF, or another compendium or pharmacopeia recognized by the FDA and the bulk drug substances each comply with the monograph; and

(4) the bulk drug substances are each manufactured by an establishment that is registered with the federal government.

G. INGREDIENTS. When an outsourcing facility uses ingredients, other than bulk drug substances, such ingredients must comply with the standards of the applicable USP-NF monograph, if such monograph exists, or of another compendium or pharmacopeia recognized by the FDA for purposes of this subdivision, if any.

H. UNSAFE OR INEFFECTIVE DRUGS. No outsourcing facility may compound or repackage a drug that appears on a list published by the FDA that has been withdrawn or removed from the market because such drugs or components of such drugs have been found to be unsafe or not effective.

I. PROHIBITION ON WHOLESALING. No compounded or repackaged drug will be sold or transferred by any entity other than the outsourcing facility that compounded or repackaged such drug. This does not prohibit the administration of a drug in a health care setting or dispensing a drug pursuant to a properly executed prescription.

J. PROHIBITION AGAINST COPYING AN APPROVED DRUG. No outsourcing facility may compound a drug that is essentially a copy of one or more approved drugs.

K. PROHIBITION AGAINST COMPOUNDING DRUGS PRESENTING DEMONSTRABLE DIFFICULTIES. No outsourcing facility may compound a drug:

(1) that is identified, directly or as part of a category of drugs, on a list published by the FDA that present demonstrable difficulties for compounding that are reasonably likely to lead to an adverse effect on the safety or effectiveness of the drug or category of drugs, taking into account the risks and benefits to patients; or

(2) that is compounded in accordance with all applicable conditions identified on the drug list as conditions that are necessary to prevent the drug or category of drugs from presenting demonstrable difficulties.

L. DISPENSING, COMPOUNDING, AND SALE OF DRUGS; LIMITATIONS. A resident pharmacy shall limit the interstate dispensing of compounded sterile human drug preparation to five percent of the total prescriptions dispensed by that pharmacy, unless registered with the FDA and the board as an outsourcing facility. This requirement will be effective at the time it becomes enforced by the FDA in states that have not entered into a memorandum of understanding with the FDA.

M. ADVERSE EVENT REPORTS.

(1) Outsourcing

facilities shall submit a copy of all adverse event reports submitted to the FDA in accordance with the content and format requirements established in section 310.305 of title 21 of the CFR, or any successor regulation, to the executive director of the board. Upon request, follow up reports required by the FDA shall be submitted to the executive director of the board.

(2) Outsourcing facilities shall develop and implement written processes for the surveillance, receipt, evaluation, and reporting of adverse events for the drug products it compounds or repackages as described in 310.305(a) and 211.198 of title 21 of the CFR.

N. DRUG THAT IS THE SUBJECT OF A REMS. If the outsourcing facility compounds from a drug that is the subject of a REMS approved with elements to assure safe use, or from a bulk drug substance that is a component of such drug, the outsourcing facility must demonstrate to FDA before beginning to compound that it will use controls comparable to the controls applicable under the REMS.

O. DRUG RECORDS.

(1) Outsourcing facilities shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of compounded sterile drugs. These records shall include the following information:

(a) the identity and quantity of the drugs received and distributed or disposed of;

(b) the dates of receipt and distribution or other disposition of the drugs;

(c) the name, location and license number of the business, health care practitioner or other entity appropriately licensed to possess, dispense, distribute, administer or destroy prescription drugs.

(2) There shall be a mechanism for tracking and retrieving products that have been recalled.

(3) Resident outsourcing facilities shall maintain compounded sterile preparation batch records in accordance with Subsection B of 16.19.36.15 NMAC.

(4) A record of drugs repackaged must be kept, and include the following: the name and strength of the drug, lot number, name of manufacturer or distributor, beyond use date, date of repackaging, total number of dosage units repackaged, quantity or volume per repackaged container, number of dosage units wasted, initials of repackager and of pharmacist performing final check.

(5) All drugs repackaged by a pharmacist intern or pharmacy technician must undergo a final check by the pharmacist.

(6) Every registrant under the Controlled Substances Act, manufacturing, distributing or dispensing a controlled substance shall maintain, on a current basis, a complete and accurate record of each substance manufactured, received, sold or delivered by him in accordance with regulations of the board.

(7) Records shall be kept by all persons licensed pursuant to the Pharmacy Act of all dangerous drugs, their receipt, withdrawal from stock and use or other disposal. The records shall be open to inspection by the board or its agents, and the licensee shall be responsible for the maintenance of the records in proper form.

(8) Records required by board-administered law or regulation shall be available for inspection and photocopying by the board's state drug inspectors for three years.

P. SUCCESSOR REGULATIONS OR FEDERAL FOOD, DRUG AND COSMETIC ACT SECTIONS. 16.19.37 NMAC shall apply to any successor or re-designated CFR, or Federal Food, Drug, and Cosmetic Act section referenced in this part.

[16.19.37.10 NMAC - N, 12-13-15]

HISTORY OF 16.19.37 NMAC: [RESERVED]

REGULATION AND LICENSING DEPARTMENT

BOARD OF PHARMACY

This is an amendment to 16.19.4 NMAC, Section 11, effective 12-13-2015.

16.19.4.11 CONSULTANT PHARMACIST:

A. DUTIES AND RESPONSIBILITIES:

(1) To abide by the code of ethics of the *American society of consultant pharmacists*. Must be qualified to practice as a consultant pharmacist and is to be aware of all federal and state drug laws, rules and regulations related to pharmacy services, and to provide the facility with current information pertaining to drug service.

(2) Ensure that drugs are handled in the facility in which he/she is the consultant pharmacist, in a manner that protect the safety and welfare of the patient.

(3) Set the policy and procedures in the facility as related to all facits of drug handling and distribution; these policies and procedures to be reviewed and updated on an annual basis.

(4) To visit the facility, commensurate with his duties, as specified by board regulations relative to the facility or by written contract with the administration of the facility not inconsistent with board regulations.

(5) His/her primary goal and objective shall be the health and safety of the patient, and he/she shall make every effort to assure the maximum level of safety and efficacy in the provision of pharmaceutical services.

(6) The consultant pharmacist shall not condone or participate in any transaction with any practitioner of another health profession, or any other persons whosoever under which fees are divided, or rebates or kickbacks paid or caused to be paid, or which may result in financial exploitation of patients or their families in connection with the provision of drugs and medication or supplies or pharmaceutical services.

B. CONSULTANT PHARMACIST SERVING SKILLED NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES - UPPER LEVEL CARE - LONG TERM CARE FACILITIES BY ANY OTHER TITLE:

(1) The consultant pharmacist's agreement with the facility shall include but is not limited to the following duties and responsibilities.

(a) Serve as a member of appropriate committees, and attend these meetings.

(b) Development of the drug control procedures manual.

(c) Monitor on a routine basis all aspects of the total drug distribution system - to be accomplished in a manner designed to monitor and safeguard all areas of the drug distribution system.

(d)
Maintain active pharmacist status registration in the state.

(e)
Assume responsibility for the destruction or removal of unwanted dangerous drugs and any controlled substances as prescribed by law and regulations.

(f)
Maintain a log of all visits and activities in the facility indicating dates and other pertinent data; such logs are to be available to inspection by state drug inspectors upon request.

(g)
Furnish and replenish emergency drug supply in acceptable containers. Maintain a log of use and replacement of drugs in the emergency tray.

(h)
Make routine inspections of drug storage areas, patient health records, and review drug regimen of each patient at least once a month. Report irregularities, contraindication, drug interactions, etc., to the medical staff.

(i)
Provide or make arrangements for provision of pharmacy services to the facility on a 24-hour 7 days a week basis, including stat orders.

(j)
Provide in-service training of staff personnel as outlined in the procedures manual.

(k)
Meet all other responsibilities of a consultant pharmacist as set forth in the board regulations and federal or state laws and which are consistent with quality patient care.

(l)
The contract consultant pharmacist to a SNF or ICF facility, that is required to review patients' drug regimen as set forth in Subparagraph h of Paragraph (1) of Subsection B of 16.19.4.11 NMAC, who is under contract as sole supplier of unit-doses/state of the art medications, shall be exempt from charges of unprofessional conduct under Paragraph (10) of Subsection B of 16.19.4.9 NMAC.

(m)
The consultant pharmacist to a SNF or ICF facility who delivers drugs in a unit-dose system, approved by an agent of the board, which is a tightly sealed, unopened, individual dose, shall be exempt from the requirements of 16.19.6.14 NMAC[~~, Prohibition of Resale of Drugs~~]. The regulation shall not prohibit the return to the pharmacy stock, where partial credit may be given in accordance with any federal or state law or regulation, to the patient for such medication, when the physician discontinues the drug therapy, the patient expires or for any other reason, other than an outdated drug.

(n)
Customized Patient Medication Packages; In lieu of dispensing one, two, or more prescribed drug products in separate containers or standard vial containers, a pharmacist may, with the consent of the patient, the patient's care-giver, the prescriber, or the institution caring for the patient, provide a customized patient medication package. The pharmacist preparing a patient medication package must abide by the guidelines as set forth in the current edition of the U.S. Pharmacopoeia for labeling, packaging and record keeping.

(o)
Repackaging of Patient Medication Packages; In the event a drug is added to or discontinued from a patient's drug regimen, when a container within the patient medication package has more than one drug within it, the pharmacist may repackage the patient's patient medication package and either add to or remove from the patient medication packaged as ordered by the physician. The same drugs returned by the patient for repackaging must be reused by the pharmacist in the design of the new patient medication package for the new regimen, and any drug removed must either be destroyed, returned to the DEA or returned to the patient properly labeled. Under no circumstances may a drug within a container of a patient medication package which contains more than one drug be returned to the pharmacy stock.

(p)
Return of Patient Medication Package Drugs.

(i)
Patient medication package's with more than one drug within a container: Patient medication packages with more than one drug within a container may not under any circumstances be returned to a pharmacy stock.

(ii)
Patient medication package's with only one drug within a container: 1 Non-Institutional: A patient medication package stored in a non-institutional setting where there is no assurance of storage standards may not be returned to pharmacy stock. 2 Institutional: A patient medication package stored in an institutional setting where the storage and handling of the drugs are assured and are consistent with the compendia standards may be returned to the pharmacy stock provided the following guidelines are followed: (1) the drug is to be kept within the patient medication package and it is to remain sealed and labeled until dispensed; (2) the expiration date of drug shall become 50% of the time left of the expiration for the drug; (3) no Schedule II drugs may be returned to inventory; and (4) proper record keeping for the addition of other scheduled drugs into inventory must be done.

(2) When a consultant pharmacist enters into a written contractual agreement with a facility to which he/she will provide service.

(a)
The consultant pharmacist whose practice is not in the immediate vicinity of the facility for which he has entered into a written service agreement, shall have a written agreement with a local pharmacist to be available on any emergency basis. The consultant pharmacist shall be responsible for the proper training and instruction of such local pharmacist. Said local pharmacist shall be known as a "co-consultant". The vendor shall be responsible for the safety and efficacy of back-up pharmaceutical services he provides.

(b)
A copy of these agreements must be filed with the board of pharmacy and the facility. Any termination of such agreement shall be reported in writing, within [~~ten~~] 10 days, of termination to the board and to the administrator.

(c)
Should a local pharmacist (co-consultant) not be available, the consultant pharmacist must provide an alternative procedure approved by the board. If the consultant is also the vendor, then such alternative procedure must reasonably assure rapid delivery of drugs; medical supplies and pharmacy service to the facility.

C. CONSULTANT PHARMACIST - CLINIC FACILITY:

(1) The consultant pharmacist providing services to a clinic shall.

(a)
Assume overall responsibility for clinic pharmacy services, for clinic pharmacy supportive personnel, and for procedures as outlined in the procedures manual, including all records of drugs procured, administered, transferred, distributed, repackaged or dispensed from the clinic.

(b)
Assume responsibility for the destruction or removal of unwanted or outdated dangerous drugs, including controlled substances, as required by laws and

regulations.

(c) Develop the pharmacy services procedures manual for the clinic establishing the system for control and accountability of pharmaceuticals.

(d) Provide in-service education and training to clinic staff, as applicable.

(e) Report in writing to the board within [~~ten~~] 10 days, any termination of services to the clinic. Report in writing to the board the names and places of employment of any pharmacy technicians under the supervision of the consultant pharmacist.

(f) Comply with all other provisions of Part 10, Limited Drug Clinics, as applicable to the individual clinic facility.

(g) The consultant pharmacist shall personally visit the clinic on the minimum basis described in Items (i) through (iv) of Subparagraphs (a) through (c) [~~(i) through (iv)~~] to ensure that the clinic is following set policies and procedures. Visitation schedules are as follows.

(i) Class A clinics shall have the on-site services of a consultant pharmacist for the dispensing or distribution of dangerous drugs. The consultant pharmacist shall comply with Paragraphs (4), (5) and (7) of Subsection A of 16.19.4.16 NMAC of this regulation.

(ii) Class B clinics shall have the services of a consultant pharmacist as listed below: 1. Category 1 clinics shall be visited by the consultant pharmacist at least bi-monthly. 2. Category 2 clinics shall be visited by the consultant pharmacist at least monthly. 3. Category 3 clinics shall be visited by the consultant pharmacist at least bi-weekly.

(iii) Class C clinics shall be visited by the consultant pharmacist at least every three months.

(iv) Class D clinic shall be reviewed at least once yearly during school session.

(h) The consultant pharmacist shall review the medical records of not less than 5% of a Class B clinics patients who have received dangerous drugs (as determined by the dispensing or distribution records) since the consultant pharmacist's last visit. Such review shall be for the purpose of promoting therapeutic appropriateness, eliminating unnecessary drugs, and establishing the medical necessity of drug therapy, by identifying over-utilization or under-utilization, therapeutic duplication, drug-disease contraindications, drug-drug contraindications, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, appropriate medication indication, and/or clinical abuse/misuse. Upon recognizing any of the above, the consultant pharmacist shall take appropriate steps to avoid or resolve the problem which shall, if necessary, include consultation with the prescriber.

(i) The consultant pharmacist shall maintain a log or record of all visits and activities in the clinic. Such record shall include a log of all medical records reviewed, along with a record of all consultant pharmacist interventions and/or consultations. This log or record shall be available for inspection by state drug inspectors upon request.

[~~**(j)** The consultant pharmacist shall review Class D clinics annually to ensure the clinic is in compliance with training and protocols required by the department of health (DOH).~~

~~**(i)** clinic staff designated by the department of health shall complete a board of pharmacy self-inspection form;~~

~~**(ii)** self-inspection form shall be approved by the consultant pharmacist; and~~

~~**(iii)** clinic staff shall submit the self-inspection form to the board upon initial licensure and at each renewal.~~]

(j) Consultant pharmacist serving a Class D school based emergency medicine clinic shall:

(i) review records at least annually; this review shall include a review of the *self-assessment form*, receipt and disposition records, and storage records; this annual review does not require an on-site visit by the consultant pharmacist;

(ii) oversee the removal of expired or unwanted dangerous drugs; removal options are transfer to another licensed location, return to the legitimate source of supply or to a reverse distributor; remaining portions of used dangerous drugs may be destroyed by the consultant pharmacist;

(iii) review dangerous drug administration records within 72 hours of administration; this review shall be documented and available for inspection at the licensed location for three years; review shall include verification of compliance with procedures and protocols, including administration by properly trained personnel.

(iv) ensure required records are available for inspection at the licensed location for three years, including a log of comments and activities of consultant pharmacist;

(v) verify a current list of trained staff, in accordance with New Mexico department of health requirements, is maintained at the licensed location and available for inspection;

(vi) approve a policy and procedures manual outlining procedures for the receipt, storage, record keeping, administration and accountability of all dangerous drugs; this includes policies and procedures for the removal and destruction of unwanted, unused, outdated or recalled dangerous drugs; must verify compliance with all training and protocols required by the NewMexico department of health.

(2) A clinic may petition the board for an alternative visitation schedule as set forth in Subsection R of 16.19.10.11 NMAC.

D. CONSULTANT PHARMACISTS SERVING CUSTODIAL CARE FACILITIES:

(1) Custodial care facility as used in this regulation includes: Any facility which provides care and services on a continuing basis, for two or more in-house residents, not related to the operator, and which maintains custody of the residents' drugs.

(2) Any facility which meets the requirements outlined in Paragraph (1) of Subsection D of 16.19.4.11 NMAC [~~of this section~~] shall be licensed by the board of pharmacy, engage a consultant pharmacist, whose duties and responsibilities are indicated in Paragraph (3) of Subsection D of 16.19.8.11 [~~.A~~] NMAC.

(3) Procurement of drugs or medications for residents will be on the prescription order of a licensed physician - written or by oral communication, which order shall be reduced to writing by the pharmacist as required by law. Refills shall be as authorized by the physician. When refill authorization is indicated on the original prescription, a refill for a resident may be requested by the administrator of the licensed facility or his designee by telephone to the consultant pharmacist, or the providing pharmacy.

(4) The administrator or a designated employee of the facility will sign a receipt for prescription drugs upon delivery.

(5) All prescription drugs will be stored in a locked cabinet or room and the key will be assigned to a designated employee or the administrator as indicated in the procedures manual.

(6) Proper storage as stipulated in the official compendium USP/NF will be the responsibility of the licensed facility.

(7) Records - the consultant pharmacist shall be responsible for the following records:

(a) incoming medications - including refills;

(b) record of administration;

(c) waste or loss; This accountability record shall be maintained on a patient log, on forms provided to the consultant pharmacist by the board of pharmacy.

(8) All prescription containers shall be properly labeled as required in 16.19.11 NMAC. No bulk containers of legend drugs will be kept on the premises, except in a facility with a 24-hour per day and 365 day per year on-site licensed nurse. Only the following stock dangerous drugs may be kept:

(a) tuberculin testing solution; and

(b) vaccines as recommended by the centers for disease control (CDC) and prevention's advisory committee on immunization practices and appropriate for the facility population served.

(9) Consultant pharmacist shall include in the procedures manual the name of individual(s) responsible for the assistance with the medication.

(10) It shall be the responsibility of the pharmacist to give proper training/instruction to the person(s) at the facility who have day-to-day responsibility for receipt and administration of medications to resident when adverse reactions, special diet, or any other information relative to the administration of a drug is needed by the staff.

(11) The consultant pharmacist shall be required to maintain a patient profile on each individual, if applicable to the facility and individual.

(12) The consultant pharmacist shall visit the facility no less than once a quarter or more often, commensurate with patient drug regimen and shall be available in emergencies, when needed. A log shall be maintained indicating all visits to the facility and noting any activities or irregularities to be recorded or reported. This log shall be available for state drug inspectors' review upon request.

(13) The consultant shall be responsible for the preparation of a procedures manual outlining procedures for the receipt, storage, record keeping, maintenance of patient profiles, administration and accountability of all legend drugs and procedures for the removal and destruction of unwanted, unused, outdated or recalled drugs - controlled substances shall be handled pursuant to state and federal regulations.

E. No drug that has been dispensed pursuant to a prescription and has left the physical premises of the facility licensed by the board shall be dispensed or reused again except the re-labeling and reuse of pharmaceuticals may be permitted in the following situations: in a correctional facility, licensed by the board, under the following circumstances dangerous drugs, excluding controlled substances, may be re-used:

(1) the patients must reside in the same facility;

(2) the reused medication must have been discontinued from the original patient's drug regimen;

(3) the drug was never out of the possession of the licensee "keep on person pharmaceuticals may never be reused";

(4) the drugs were originally dispensed in packaging that is unopened, single-dose or tamper-evident containers;

(5) the patient receiving the re-labeled medication must have a valid prescription/order for the medication that is to be reused;

(6) repackaging and re-labeling may only be completed on site by the consultant pharmacist designated for that facility.

F. The consultant pharmacist must maintain records at the facility for three years containing the following information:

(1) date when the re-labeling occurred;

(2) the name and ID of the patient for whom the medication was originally intended for and the date in which it was discontinued from his or her drug regimen;

(3) the name and ID of the patient who will receive the reused medication;

(4) the name, strength and amount of the medication being reused;

(5) the name of pharmacist re-labeling the medication;

(6) pursuant to 16.19.10.11 NMAC the pharmacist must label the reused pharmaceutical and maintain a dispensing log for all such re-issued pharmaceuticals and the expiration date for such re-issued drugs shall be no greater than 50 percent of the time remaining from the date of repackaging until the expiration date indicated on the original dispensing label or container.

[08-27-90; 16.19.4.11 NMAC - Rn, 16 NMAC 19.4.11, 03-30-02; A, 06-30-06; A, 10-24-14; A, 12-13-15]

REGULATION AND LICENSING DEPARTMENT

BOARD OF PHARMACY

This is an amendment to 16.19.5 NMAC, Section 8, effective 12-13-2015.

16.19.5.8 SUMMARY OF OBJECTIVES:

A. Internship training, using academic training as a foundation, is to provide a learning experience in real life situations that will result in a complete professional, who is competent to practice pharmacy, and render professional services on his own, without supervision, at the time of licensure. The objectives shall be.

(1) A practically, accurately and safely trained intern.

(2) An ethically trained intern.

(3) A legally trained intern. Standards of practice and internship program constitute the basic implementation of the approved internship program.

B. Instructional materials, affidavits, evaluation forms and reports.

(1) Forms shall be made available by the board.

(a) Application for registration of intern.

(b) Employers affidavit for internship.

(c) Employers affidavit for externship/ clinical.

(d)
Annual preceptors evaluation of intern.

(e)
Annual intern evaluation of preceptor.

(f)
Certification as approved preceptor by the board standards of practice.

(2) Reports and project assignments as may be required to accompany forms under the approved program.

(3) This regulation relating to the internship program shall be furnished to the intern. All other laws and regulations or manuals shall be available at a nominal fee or at reimbursement cost to the board.

C. Requirements for approved training: Areas will include retail and hospital pharmacies, radiopharmacies, state and county institutions, federal installations, agencies and clinics, and board approved researchers, drug manufacturers who participate in the approved NPI programs.

(1) General requirements include.

(a)
Current license or permit.

(b)
No deficiencies relevant to the observance of all federal, state and municipal laws and regulations governing any phase of activity in which the facility is engaged.

(c)
Required references: One current professional reference book of choice or internet access to approved resources.

(2) A preceptor will be in direct supervision of all repackaging, labeling and dispensing of drugs for distribution in field offices by state and county health offices.

D. Requirements for preceptor. Each preceptor shall.

(1) Be certified as a preceptor by the board or be an approved preceptor for intern training in another state, by that state board of pharmacy.

(2) Have been actively engaged in the practice of pharmacy for one year.

(3) Be engaged in full-time practice of pharmacy.

(4) Not have been convicted of violation of any laws or regulations relating to pharmacy, unless this provision is waived by the board on an individual basis.

(5) Submit all required forms, and evaluations to the board on or before the due date.

(6) Be aware and responsible for following regulations governing legal and ethical professional conduct as outlined in the standards of practice and train the intern in this area.

(7) Notify the board of any change of address or employment in writing, within [~~ten~~] 10 days. Change of employment shall serve to suspend certification as preceptor in the former place of employment where the individual was training an intern.

(8) Not be permitted to leave the intern alone to assume the responsibility of a pharmacist.

E. Requirements for intern.

(1) Application shall be made to the board on the required application form provided by the board prior to the beginning of internship. An applicant for registration as a pharmacist intern shall have satisfactorily completed not less than [~~15~~] 30 semester hours or the equivalent thereof, in a college of pharmacy curriculum accredited by the ACPE and meet other requirements established by regulations of the board.

(2) The intern shall wear the standard identification tag, approved and issued by the board during any pharmacy area employment. A nominal fee is applicable. The intern will be responsible for imprinting his/her name on the identification tag.

(3) The intern shall make such reports and certifications as required under the approved program.

(4) The intern is responsible for the knowledge and observation of the extent of his legal liability and legal restrictions applicable under the federal, state and municipal laws and regulations.

(5) The intern shall be responsible for ascertaining proper certification for him or herself, completion of all assignments, submittal of all forms, and reports under the approved program. After all assignments have been completed the preceptor will certify the affidavit and verify the completion of all requirements. Internship will not be evaluated or certified by the board until all forms are turned in to the board office in the form of certified affidavits.

(6)
Employment and the internship training period are not to be interpreted as being the same. An intern may work in excess of his computed time. A maximum of 48 hours per week, however, shall be considered computed time for the purpose of completing the internship requirement of 1500 hours.

(7) The intern shall submit, annually, at the time of registration renewal, all completed required forms for the prior year or period of computed time.

(8) Any or all of the training period may be obtained after graduation.

(9) The intern shall notify the board of any change of address, employment or preceptor, in writing, within [~~ten~~] 10 days of such change.

(10) The intern certificate of registration and renewal shall be displayed in the training area where the intern is employed.

(11) The registration shall be renewable under the following conditions:

(a)
the intern has received a degree from an ACPE accredited college of pharmacy, but has not completed the required intern hours to take the state board examination; or the intern has not completed the required number of hours and is enrolled as a pharmacy student;

(b)
a candidate who has failed the NAPLEX exam and the state board jurisprudence examination may renew intern registration to be valid until the next scheduled examination date; provided the renewal does not exceed the period allowed under 16.19.2 NMAC; or

(c)
by prior approval or by direction of the board.

(12) The intern registration must be renewed annually on/or before the last day of September. Annual renewal fee is $25.00.

F. Revocation of suspension of certification or certificate: A certification or certificate may be revoked or suspended upon violation of a statute or regulation; the failure to comply with the approved program or internship; or suspension of an intern from university or college attendance; and after due notice is filed pursuant to the Uniform Licensing Act.

G. Out-of-state training.

(1) New Mexico registered interns wishing to earn intern hours out of state must comply with the regulation relating to internship and the approved program, or the equivalent thereof; certification of the preceptor shall be made to the board by the board of pharmacy in the reciprocal state.

(2) Out of state

registered interns or students wishing to earn internship hours in New Mexico must comply with the regulations relating to internship and the approved program of this state and shall register with the board.

(3) Computed time, under equivalent approved programs, submitted to the board by out-of-state applicants for licensure, will be evaluated.

[08-27-90; A, 03-02-99; 16.19.5.8 NMAC - Rn, 16 NMAC 19.5.8, 03-30-02; A, 07-15-02; A, 08-12-13; A, 12-19-13; A, 12-13-15]

REGULATION AND LICENSING DEPARTMENT
BOARD OF PHARMACY

This is an amendment to 16.19.6 NMAC, adding Section 29, effective 12-13-2015.

16.19.6.29 REMOTE PHARMACY TECHNICIAN DATA ENTRY SITES:

A. General requirements.

(1) A New Mexico licensed pharmacy located in New Mexico may employ one or more certified pharmacy technicians for the purpose of data input in remote practice sites provided that all security requirements are met.

(2) All pharmacy technicians employed to work at a remote data entry practice site must be registered as a certified pharmacy technician with the board and have a minimum of one year experience performing data entry functions as a certified pharmacy tech.

(3) All remote pharmacy technician data entry sites will operate under a New Mexico licensed pharmacy located in New Mexico under the authority of its pharmacist-in-charge.

(4) No drug inventory shall be kept at any remote pharmacy technician data entry site and no dispensing shall take place from a remote pharmacy technician data entry site.

(5) All remote pharmacy technician data entry sites will have a procedure for identifying the pharmacy technician and the pharmacist responsible for each aspect of the prescription preparations.

(6) All remote pharmacy technician data entry sites will have quality monitoring and improvement programs in place.

B. Personnel.

(1) The pharmacist-in-charge shall:

(a) provide a written policy and procedure document outlining the operation and security of each remote pharmacy technician data entry sites location; the document shall be available at each practice site;

(b) keep a continuously updated list of all remote pharmacy technician data entry sites to include address, phone number and hours of operation for each site; the record shall be retained as part of the records of the licensed pharmacy;

(c) is responsible for ensuring that the New Mexico licensed pharmacy and each remote data entry pharmacy technician has entered into a written agreement outlining all conditions and policies governing the operation of the remote site;

(d) ensure that all computer equipment used at the remote site is in good working order, provides data protection and complies with all security and HIPAA requirements.

(2) Data entry pharmacy technician shall:

(a) be a certified pharmacy technician registered with the board and reside in New Mexico;

(b) have a minimum of one year experience performing data entry functions as a certified pharmacy technician;

(c) be trained in the use of all equipment necessary for secure operation of the remote site.

C. Operations.

(1) If the remote pharmacy technician data entry sites is located within a home there must be a designated area in which all of the pharmacy technicians work will be performed.

(2) All computer equipment used at the remote pharmacy technician data entry sites must be able to establish a secure connection which the site is operating. Remote equipment must be configured so that patient information is not stored at the remote site electronically or in printed form.

(3) Computer equipment may only be used for remote pharmacy technician data entry. No other use of equipment will be allowed.

(4) Computer equipment must be locked or shut down whenever the pharmacy technician is absent.

(5) All remote pharmacy technician data entry sites are subject to unannounced inspection by representatives of the New Mexico board of pharmacy during established hours of operation.

D. Security.

(1) Remote pharmacy technician data entry sites shall have adequate security to maintain patient confidentiality.

(2) Must utilize equipment that prevents unauthorized storage or transfer of patient information.

(3) If the remote site is in a home, the equipment must be located in a designated area where patient information cannot be viewed by anyone other than the remote pharmacy technician.

[16.19.6.29 NMAC - N, 12-13-15]

REGULATION AND LICENSING DEPARTMENT
BOARD OF PHARMACY

This is an amendment to 16.19.10 NMAC, Section 11, effective 12-13-2015.

16.19.10.11 PUBLIC HEALTH CLINICS:

A. CLINIC LICENSURE:

(1) All clinics where dangerous drugs are administered, distributed or dispensed shall obtain a limited drug permit as described in Section 61-11-14 B (6) of the Pharmacy Act which consists of the following types:

(a) Class A clinic drug permit for clinics where:

(i) dangerous drugs are administered to patients of the clinic;

(ii) more than 12,500 dispensing units of dangerous drugs are dispensed or distributed annually;

(iii) clinics dispensing only one class of dangerous drug or controlled substance, such as oral contraceptives or methadone, may be approved by the board as a Class B3 clinic;

(b) Class B clinic drug permit for clinics where dangerous drugs are:

(i) administered to patients of the clinic; and

(ii) dispensed or distributed to patients of the clinic. Class B drug permits shall be issued by categories based on the number of dispensing units of dangerous drugs to be dispensed or distributed annually, as follows: 1. CATEGORY 1 up to 2,500 dispensing units; 2. CATEGORY 2 from 2,501 - 7,500 dispensing units; 3. CATEGORY 3 from 7,501 - 12,500 dispensing units;

(c) Class C clinic drug permit for clinics where dangerous drugs are administered to patients of the clinic.

(d) Class D clinic drug permit for [~~school health offices (which does not include a Class A, B, or C school based health clinic) where emergency dangerous drugs are maintained for administration to students of the school.~~] school based emergency medicine (SBEM) clinic (which does not include a Class A, B, or C school based health clinic) - any school based facility that chooses to possess a stock supply of emergency dangerous drugs; these emergency dangerous drugs are albuterol aerosol canisters with spacers and epinephrine standard-dose and pediatric-dose auto-injectors; these emergency dangerous drugs are for administration to students of the school; these emergency dangerous drugs shall be the property of the facility; these facilities will not stock of any other dangerous drug.

B. FORMULARIES:

(1) For all clinic types, drug procurement and storage is limited to the drugs listed in the dispensing formulary for the clinic. The formulary shall be developed by the pharmacy and therapeutics committee of the facility, or if no such committee exists, by the pharmacist and medical director of the clinic. The formulary drugs shall be appropriate for the scope of medical services provided at the clinic facility. A dangerous drug with the same generic name is considered one drug within the formulary (ie) all dosage forms and packages of ampicillin are considered one drug.

(2) For all clinic types, drug procurement and storage is limited to the drugs listed in the administration formulary for on-site administration. The formulary shall be developed by the pharmacy and therapeutics committee of the facility, or if no such committee exists, by the pharmacist and medical director of the clinic. The formulary drugs shall be appropriate for the scope of medical services provided at the clinic facility. A dangerous drug with the same generic name is considered one drug within the formulary (ie) all dosage forms and packages of ampicillin are considered one drug.

(3) For Class D[~~clinic drug permits the approved drugs are albuterol inhaler and epinephrine auto-injector~~], (SBEM) clinic may only stock the approved dangerous drugs; albuterol aerosol canisters with spacers and epinephrine standard-dose and pediatric-dose auto-injectors.

(4) A clinic may petition the board for an alternative dispensing formulary as set forth in Subsection R of 16.19.10.11 NMAC.

C. CONSULTANT PHARMACIST:

(1) Any facility licensed as a clinic by the board which does not employ a staff pharmacist must engage the services of a consultant pharmacist, whose duties and responsibilities are described in Subsection C of 16.19.4.11 NMAC.

(2) The consultant pharmacist shall wear an identification badge listing his name and job title while on duty in the clinic.

D. PHARMACY TECHNICIANS AND SUPPORT PERSONNEL:

(1) Pharmacy technicians, working in a clinic under the supervision of the pharmacist, may perform activities associated with the preparation and distribution of medications, including prepackaging medications and the filling of a prescription or medication order. These activities may include counting, pouring, labeling and reconstituting medications.

(2) The pharmacist shall ensure that the pharmacy technician has completed the initial training required in Subsection A of 16.19.22.9 NMAC.

(3) A written record of the initial training and education will be maintained by the clinic pursuant to requirements of Subsection C of 16.19.22.9 NMAC.

(4) The permissible ratio of pharmacy technicians to pharmacists on duty is to be determined by the pharmacist in charge or consultant pharmacist.

(5) Support personnel may perform clerical duties associated with clinic pharmacy operations, including computer data entry, typing of labels, processing of orders for stock, duties associated with maintenance of inventory and dispensing records.

(6) The pharmacist is responsible for the actions of personnel; allowing actions outside the limits of the regulations shall constitute unprofessional conduct on the part of the pharmacist.

(7) Name tags including job title, shall be required of all personnel while on duty in the clinic.

E. PROCUREMENT OR RECEIPT OF DANGEROUS DRUGS:

(1) The system of procurement for all drugs shall be the responsibility of the pharmacist.

(2) Records of receipt of dangerous drugs and inventories of controlled substances shall be maintained as required by the Drug, Device and Cosmetic Act 26-1-16 and the Controlled Substances Act 30-31-16 and board of pharmacy regulation 16.19.20 NMAC.

F. REPACKAGING:

(1) Repackaging from bulk containers to dispensing units for distribution at locations other than the site of repackaging requires FDA registration, whether or not the repackaged drugs enter interstate commerce. (See FDA Regulations Title 21, Sections 207, 210 and 211).

(2) Repackaging of drug from bulk containers into multiple dispensing units for future distribution to clinic patients at the site of repackaging may be done by a physician, dentist, pharmacist, or by a pharmacy technician under the supervision of the pharmacist as defined in Subsection B of 16.19.22.7 NMAC. All drugs repackaged into multiple dispensing units by a pharmacy technician must undergo a final check by the pharmacist.

(3) A record of drugs repackaged must be maintained, to include the following.

(a) Date of repackaging.

(b) Name and strength of drug.

(c) Lot number or control number.

(d) Name of drug manufacturer.

(e) Expiration date (per USP requirements).

(f) Total number of dosage units (tabs, caps) repackaged (for each drug).

(g) Quantity per each repackaged unit

container.

(h) Number of dosage units (tabs, caps) wasted.

(i) Initials of repackager.

(j) Initials of person performing final check.

(4) All dispensing units of repackaged medication must be labeled with the following information.

(a) Name, strength, and quantity of the drug.

(b) Lot number or control number.

(c) Name of manufacturer.

(d) Expiration date.

(e) Date drug was repackaged.

(f) Name or initials of repackager.

(g) Federal caution label, if applicable.

(5) Repackaged units must be stored with the manufacturer's package insert until relabeled for dispensing. as specified under Subsection G of 16.19.10.11 NMAC.

G. CLINIC DISPENSING OR DISTRIBUTING:

(1) Drugs shall be dispensed or distributed only to clinic patients on the order of a licensed practitioner of the clinic.

(2) The clinic practitioner shall record the prescribed drug therapy on the patient medical record indicating the name, strength, quantity and directions for use of the prescribed drug. This information shall be initialed or signed by the practitioner. A separate prescription form in addition to the medical record may be used.

(3) The prescription order may then be prepared by the practitioner, pharmacist or technician under the supervision of the pharmacist and a dispensing label affixed to the dispensing unit of each drug. The following information shall appear on the label affixed to the dispensing unit.

(a) Name of patient.

(b) Name of prescriber.

(c) Date of dispensing.

(d) Directions for use.

(e) Name, strength, and quantity of the drug.

(f) Expiration date.

(g) Name, address and phone number of the clinic.

(h) Prescription number, if applicable.

(4) The pharmacist or practitioner must then provide a final check of the dispensing unit and sign or initial the prescription or dispensing record.

(5) Refill prescription orders must also be entered on the patient's medical record and the dispensing record.

H. PATIENT COUNSELING:

(1) Each clinic licensed by the board shall develop and provide to the board policies and procedures addressing patient counseling which are at least equivalent to the requirements of Subsection F of 16.19.4.16 NMAC.

(2) If the consultant pharmacist is absent at the time of dispensing or distribution of a prescription from clinic drug stock to a clinic patient, the patient shall be provided written information when appropriate on side effects, interactions, and precautions concerning the drug or device provided. The clinic shall make the consultant pharmacist's phone number available to patients for consultation on drugs provided by the clinic.

I. DISPENSING RECORDS: A record shall be kept of the dangerous drugs dispensed indicating the date the drug was dispensed, name and address of the patient, the name of the prescriber, and the quantity and strength of the drug dispensed. The individual recording the information and the pharmacist or clinic practitioner who is responsible for dispensing the medication shall initial the record.

J. SAMPLE DRUGS: Samples of medications which are legend drugs or which have been restricted to the sale on prescription by the New Mexico board of pharmacy are subject to all the record keeping, storage and labeling requirements for prescription drugs as defined by NMSA 26-1-16 and other applicable state and federal laws.

K. DRUG STORAGE:

(1) Space for the storage and dispensing of drugs shall have proper ventilation, lighting, temperature controls, refrigeration and adequate security as defined by the board or its' agent. Minimum space requirements for main drug storage areas are as follows:

(a) for Class A clinics - 240 square foot room;

(b) for Class B clinics;

(i) categories 1, and 2 - 48 square foot room; and

(ii) category 3 - 96 square foot room;

(c) for Class C clinics - an area adequate for the formulary.

(d) for Class D clinics - an area adequate for the formulary:

(i) medication is stored in its original packaging until the time of administration, and secured in a secondary tamper-evident container;

(ii) the dangerous drug is stored in a restricted area, secure but unlocked, and readily accessible to authorized, trained personnel;

(iii) for Class D clinics only, the pre-licensing inspection may be completed by a New Mexico board of pharmacy state drug inspector's approval of record keeping procedures; the policy and procedure manual; any other required forms or documents; and photographs of the proposed dangerous drug storage area, secondary tamper-evident container, and drug storage area thermometer; this pre-licensing inspection may not require an onsite inspection.

(2) Controlled substances must be stored as defined in 16.19.20.48 NMAC.

(3) All drug containers in the facility shall be clearly and legibly labeled as required under Subsection F of 16.19.10.11 NMAC – (REPACKAGING and Sections 26-1-10 and 26-1-11 of the Drug, Device and Cosmetic Act).

(4) Purchase, storage and control of drugs shall be designed to prevent having outdated, deteriorated, impure or improperly standardized drugs in the facility.

(5) Access to the drug storage area shall be limited to clinic practitioners, the pharmacist, and supportive personnel who are performing pharmacy-related functions.

(6) Clinics licensed by the board prior to adoption of this regulation are exempt from the minimum space requirements set forth

in Paragraph (1) of Subsection K of 16.19.10.11 NMAC. When these facilities change ownership, remodel the drug storage area, or relocate after May 15, 1996, the requirements of Paragraph (1) of Subsection K of 16.19.10.11 NMAC shall apply.

L. DISPOSITION OF UNWANTED OR OUTDATED DRUGS:

(1) The pharmacist shall be responsible for removal of recalled, outdated, unwanted or otherwise unusable drugs from the clinic inventory.

(2) Options for disposal are destruction under the supervision of the pharmacist or return to the legitimate source of supply.

M. REFERENCE MATERIAL: Adequate reference materials are to be maintained in the clinic. These shall include a current product information reference such as USPDI, facts and comparisons, or American hospital formulary service; a copy of the state drug laws and regulations and a poison treatment chart with the regional poison control center's telephone number.

N. PROCEDURES MANUAL:

(1) Written policies and procedures shall be developed by the pharmacy and therapeutics committee, or if none, by the pharmacist-in-charge and clinic's executive director, and implemented by the pharmacist-in-charge.

(2) The policy and procedure manual shall include but not be limited to the following:

(a) a current list of the names and addresses of the pharmacist-in-charge, consultant-pharmacist, staff pharmacist(s), supportive personnel designated to provide drugs and devices, and the supportive personnel designated to supervise the day-to-day pharmacy related operations of the clinic in the absence of the pharmacist;

(b) functions of the pharmacist-in-charge, consultant pharmacist, staff pharmacist(s) and supportive personnel;

(c) clinic objectives;

(d) formularies;

(e) a copy of the written agreement, if any, between the pharmacist and the clinic;

(f) date of the last review or revision of policy and procedure manual; and

(g) policies and procedures for

(i) security;

(ii) equipment;

(iii) sanitation;

(iv) licensing;

(v) reference materials;

(vi) drug storage;

(vii) packaging and repackaging;

(viii) dispensing and distributing;

(ix) supervision;

(x) labeling and relabeling;

(xi) samples;

(xii) drug destruction and returns;

(xiii) drug and device procuring;

(xiv) receiving of drugs and devices;

(xv) delivery of drugs and devices;

(xvi) record keeping; and

(xvii) scope of practice.

(3) The procedures manual shall be reviewed on at least an annual basis. A copy of the manual shall be kept at the clinic at all times.

(4) A written agreement defining specific procedures for the transfer, storage, dispensing and record keeping of clinic dangerous drug stock from a licensed New Mexico pharmacy will be included in the procedures manual. The agreement will be signed by a clinic official and pharmacy official and reviewed annually.

O. PATIENT RECORD: clinics shall maintain patient records as defined in Subsection C of 16.19.4.16 NMAC.

P. DRUG TRANSFER TO A PHARMACY:

(1) Dangerous drug stock unopened containers, except samples, may be transferred physically or electronically to a pharmacy licensed in New Mexico for dispensing to clinic patients.

(a) record of transfer shall be maintained at the clinic and the pharmacy. It will include:

(i) date of transfer or shipment;

(ii) name and strength of drug;

(iii) package size;

(iv) number of packages;

(v) manufacturer or repackager; and

(vi) lot number and expiration date, unless transferred from a clinic supplier to a pharmacy.

(b) A copy of the transfer or shipment record will be provided to the pharmacy at the time of transfer. This record will be compared with the drugs for accuracy and retained by the pharmacy as the receipt document separate from other receiving records of the pharmacy.

(c) Transferred clinic drugs will be stored in the restricted area of the pharmacy and physically separated from all other pharmacy drugs.

(d) Drugs returned to the clinic by the pharmacy will be documented in a transfer record as described in Subparagraph (a) of Paragraph (1) of Subsection P of 16.19.10.11 NMAC. A copy will be maintained by the pharmacy and the clinic.

(2) A clinic may petition the board for an alternative drug transfer system as set forth in Subsection Q of 16.19.10.11 NMAC.

(3) The formulary of transferred drugs for pharmacy dispensing is restricted to the clinic's scope of practice.

Q. PHARMACY DISPENSING: Clinic drug stock may be transferred to, and maintained by, a pharmacy for dispensing to clinic patients as provided in this regulation. Clinic drug stock may be dispensed by the pharmacy if:

(1) the drugs are dispensed only to a clinic patient with a valid prescription from a practitioner of that clinic;

(2) clinic prescriptions for clinic drugs are maintained separately from other prescriptions of the pharmacy;

(3) the prescription is dispensed in a container with a label attached which reads "DISPENSED FOR (clinic name and

address) BY (pharmacy name and address)";

(4) all packaging and labeling requirements for prescriptions dispensed by a pharmacy have been met; and

(5) patient records and counseling requirements have been maintained separately for all clinic patients whose prescriptions were filled by the pharmacy from clinic drug stock.

R. PETITION FOR ALTERNATIVE PLAN:

(1) A clinic may petition the board for an alternative visitation schedule, dispensing formulary, or drug transfer system (each an "alternative plan") as follows.

(a) Prior to implementation of any alternative plan, the clinic shall provide to the board a written petition that describes the proposed alternative plan and justifies the request. The petition shall include an affidavit that states that the clinic has a current policy and procedures manual on file, has adequate security to prevent diversion of dangerous drugs, and is in compliance with all rules applicable to the clinic. The affidavit shall be signed by the medical director, the consultant pharmacist, and the owner or chief executive officer of the clinic. In addition, a petition for an alternative drug transfer system must include a detailed, written description of the proposed alternative transfer system in the policy and procedures manual describing:

(i) drug ownership;

(ii) drug ordering;

(iii) drug shipping;

(iv) drug receiving;

(v) drug accountability system;

(vi) formulary for transfer; and

(vii) records of transfer.

(b) The board may approve or deny the petition for an alternative plan, at the board's discretion. The board may consider the following:

(i) degree of compliance by the clinic on past compliance inspections;

(ii) size and type of the patient population;

(iii) number and types of drugs contained in the clinic's formulary;

(iv) the clinic's objectives; and

(v) impact on the health and welfare of the clinic's patients.

(2) A copy of the board approved alternative plan shall be maintained at the clinic's license location for review by the board or its agent.

(3) The board may terminate the alternative plan if the board determines that the clinic's status or other circumstances justifying the alternative plan have changed.

S. Class D (SBEM) clinic:

(1) Only trained personnel may administer epinephrine. Trained personnel can be a school employee, agent or volunteer who has completed epinephrine administration training documented by the school nurse, school principal or school leader and approved by the New Mexico department of health and who has been designated by the school principal or school leader to administer epinephrine on a voluntary basis outside of the scope of employment. Epinephrine is administered on the standing order of a health care practitioner employed or authorized by the New Mexico department of health. If administering epinephrine, written policies and procedures must be maintained on the premises. These policies and procedures must follow New Mexico department of health requirements as well as any policy or procedure requirement listed in 16.19.10.11 NMAC. Documentation of New Mexico department of health required training must be maintained on-site for each trained and authorized person.

(2) Only a school nurse may administer albuterol to a student who is perceived to be in respiratory distress. Written policies and procedures must be maintained at the licensed location. Documentation of New Mexico department of health required training must be maintained on-site for each nurse.

(3) The following records must be kept on-site and available for inspection for three years:

(a) receipt records;

(b) destruction or other disposition records;

(c) storage records; storage records include daily (on school days) documented drug storage area temperature; documented verification that medication is sealed in its original packaging until the time of administration, and secured but unlocked in a secondary tamper-evident container; dangerous drugs are stored in a restricted area, unlocked, and readily accessible to trained personnel; policies and procedures must be in place to ensure proper drug storage conditions on non-school days;

(d) usage records; if a dangerous drug is used, a record must be kept; the consultant pharmacist must be notified within a 72-hour period in order to review the record; in addition, all New Mexico department of health guidelines must be followed;

(e) annual self-assessment form; this form will be supplied by the New Mexico board of pharamcy and shall be reviewed by the consultant pharmacist at least annually;

(f) consultant pharmacist record of activities and comments;

(g) a current copy of facility's New Mexico board of pharmacy registration and the consultant pharmacist's current license will be posted in the drug storage area;

(h) policy and procedure manual.

(4) Albuterol and epinephrine must be stored in a secure but unlocked, temper evident, container. This container must be in a restricted area but readily accessible to trained personnel. A list of the contents, including expiration dates, must be posted on the outside of the container.

[05-15-96; 16.19.10.11 NMAC - Rn, 16 NMAC 19.10.11, 03-30-02; A, 08-12-13; A, 10-24-14; A, 12-13-15]

REGULATION AND LICENSING DEPARTMENT

BOARD OF PHARMACY

This is an amendment to 16.19.11, Section 8, effective 12-13-2015.

16.19.11.8 MINIMUM STANDARDS:

A. MINIMUM STANDARDS FOR THE DISTRIBUTION, STORAGE, HANDLING AND RECORD KEEPING OF DRUGS:

(1) The pharmaceutical service shall be organized and maintained primarily for the benefit and safety of the patient.

(2) All medications administered to patients shall be by direct order of a physician, or other licensed practitioner, as defined in the Pharmacy Act, 61-11-2P.

(3) The pharmaceutical service shall be under the direction of a registered pharmacist, who may be on a part-time or consultant basis.

(4) Policies relating to the control, distribution and administration of medications shall be developed by the pharmacist. Preparation of a written procedures manual shall be the responsibility of the pharmacist.

(5) An automatic stop-order policy shall be adopted to provide guidance in these instances where medications ordered are not specifically limited as to time or number of doses.

(6) Adequate facilities to be provided for storage of medications. Proper labeling is required on each patient's medication container.

(7) Complete records - In addition to those records specifically required by federal and state laws, records shall be maintained of the receipt, use, or disposition of medications. The receipt and destruction journal shall show:

(a) date;

(b) patient's name;

(c) pharmacy's name;

(d) name of drug;

(e) strength and dosage form;

(f) prescription number;

(g) quantity;

(h) initials of person accepting delivery; and

(i) inventory of drugs to be destroyed.

(8) Appropriate current drug reference sources shall be provided at the facility.

(9) In licensed nursing homes an emergency drug supply shall be maintained to be used in a medical emergency situation, contents and quantity to be determined by a physician, nursing director and the pharmacist of each institution. In licensed custodial care facilities [~~a~~] an emergency drug supply may be used. This emergency drug supply shall be [~~assessed~~] accessed only when licensed personnel are on duty. In licensed custodial care facilities [~~only~~] without a 24-hour/365 day per year on-site nurse, the emergency drug tray shall not contain any controlled substances. Licensed custodial care facilities, with a 24-hour/365 day per year on-site nurse may use an emergency drug tray containing controlled substances. A list of the contents of the emergency drug supply shall be attached [~~tot~~] to the outside of the tray.

(10) Medication errors and drug reactions should be documented and a method of reporting shall be addressed in the pharmacy procedure manual.

B. POLICY AND PROCEDURES MANUAL:

(1) The pharmacist shall be responsible for the preparation of a written procedures manual, the aim of which shall be:

(a) To improve communications with the facility;

(b) To improve patient care;

(c) To aid in personnel training;

(d) To increase legal protection;

(e) To aid in evaluating performance;

(f) To promote consistency and continuity.

(2) There shall be a copy of the policy and procedure manual at each facility location. This copy must be read and initialed by all personnel responsible for the procurement, administration or control of the patient's medication.

(3) The consultant pharmacist shall make an annual review of the procedures manual. Findings of which shall be reported to the facility administration.

(4) Guidelines for developing a pharmaceutical procedures manual;

(a) Drug Policy: A written policy concerning methods and procedures for the pharmaceutical services stating the appropriate methods and procedures for obtaining, dispensing and administering drugs and biologicals.

(b) Prescription Drug Orders: The designated agent of the facility may transcribe prescription drug orders from a licensed practitioner and transmit those orders via telephone or facsimile to the pharmacy.

(c) Licensed practitioners will identify the designated agents of a facility by written authorization according to the facility's policy and procedures manual.

(d) The facility shall have a medication administration record (MAR) documenting medications administered to residents, including over-the-counter medications. This documentation shall include:

(i) Name of resident;

(ii) Date given;

(iii) Drug product name;

(iv) Dosage and form;

(v) Strength of drug;

(vi) Route of administration;

(vii) How often medication is to be taken;

(viii) Time taken and staff initials;

(ix) Dates when the medication is discontinued or changed;

(x) The name and initials of all staff administering medications.

(e) Any medications removed from the pharmacy container or blister pack must be given immediately and documented by the person assisting.

(f) All PRN medications shall have complete detail instructions regarding the administering of the medication. This shall include:

(i) Symptoms that indicate the use of the medication;

(ii) Exact dosage to be used;

(iii) The exact amount to be used in a 24 hour period.

(g) Describe medication storage, procedures, and function at the nursing stations.

(h) Describe the medication administration system used with means of verifying accuracy of delivered dosage. Describe the procedure for recording missed or refused doses and the procedure followed for missed or refused doses.

(i) State that medications prescribed for one patient shall not be administered to any other patient.

(j)
Describe policy concerning self-administration of medications by patients. A physician's order shall be required before any resident is allowed to self-administer medications.

(k)
State procedures for documenting medication errors and drug reactions:

(i)
Should a staff member of the facility notice an error, possible overdose, or any discrepancy in any of the prescriptions filled by the pharmacy, they will immediately contact the pharmacy. If necessary, the pharmacy will contact the physician.

(ii)
In the event of [~~a~~] an adverse drug reaction the facility will immediately contact the physician.

(l)
List labeling and storage requirements of medications in conformity with the official compendium (USP/NF).

(5) OTHER INFORMATION

(a)
Emergency Drug Tray - use, inventory control, replacement of drugs, security when licensed staff is not on duty.

(b)
Location of Emergency Drug Tray.

(c)
24-hour emergency pharmaceutical services.

(d)
Part-time or consultant pharmacist hours on premises.

(e)
In-service training.

(f)
Drug information service.

(g)
Automatic stop orders.

(h)
Controlled substances - inventory, security and control.

(i)
Renewal of physician's orders.

(j) A policy concerning "PASS" medications.

(k)
Discontinued medication.

(l)
Records and standards of storage of over-the-counter drugs.

(m)
Drug receipt and disposition records.

(6) DRUG DISTRIBUTION

(a)
All dangerous drugs [~~will~~] shall be obtained from a properly licensed facility. Stock dangerous drugs acquired, maintained and administered by or at the nursing home shall be listed in the nursing home policy and procedure manual [~~and approved by the Board of Pharmacy~~]. The stock dangerous drugs shall be used when a licensed nurse (LPN or RN) is on duty. The following is the approved list of stock dangerous drugs:

(i)
Sterile normal saline and water - injectable;

(ii)
Sterile normal saline and water - irrigation;

(iii)
Tuberculin testing solution;

(iv)
[~~Hepatitis B vaccine;~~] Vaccines as recommended by the centers for disease control (CDC) and prevention's advisory committee on immunization practices and appropriate for the facility population served;

(v)
[~~Flu vaccine.;~~] Any additional nursing home stock dangerous drugs must be defined and listed in the policy and procedure manual and must be approved by the board of pharmacy or board's agent prior to obtaining or using.

(b)
No drugs will be compounded by other than a pharmacist unless done in accordance with that exemption in the State Pharmacy Act - Section 61-11-22.

(c)
The pharmacist shall be responsible for the proper removal and destruction of unused, discontinued, outdated or recalled drugs.

(d)
The pharmacist shall require the person receiving a patient's drugs from the pharmacist or his agent to sign a drug receipt record listing those prescriptions received from the pharmacy.

(e)
The pharmacist shall provide the staff with a receipt listing those prescriptions removed from the facility.

(f)
Medications will be released to patients on discharge from the facility only upon the authorization of the physician.

(7) DRUG CONTROL

(a)
All state and federal laws relating to storage, administration and disposal of controlled substances and dangerous drugs shall be complied with.

(b)
Separate sheets shall be maintained for controlled substances records indicating the following information for each type and strength of controlled substances: date, time administered, name of patient, dose, physician's name, signature of person administering dose, and balance of controlled substance in the container.

(c)
All drugs shall be stored in locked cabinets, locked drug rooms, or state of the art locked medication carts.

(d)
Medication requiring refrigeration shall be kept in a secure locked area of the refrigerator or in the locked drug room.

(e)
All refrigerated medications will be kept in separate refrigerator or compartment from food items.

(f)
Medications for each patient shall be kept and stored in their originally received containers, and stored in separate compartments. Transfer between containers is forbidden, waiver shall be allowed for oversize containers and controlled substances at the discretion of the drug inspector.

(g)
Prescription medications for external use shall be kept in a locked cabinet separate from other medications.

(h)
No drug samples shall be stocked in the licensed facility.

(i)
All drugs shall be properly labeled with the following information:

(i)
Patient's full name;

(ii)
Physician's name;

(iii)
Name, address and phone number of pharmacy;

(iv)
Prescription number;

(v)
Name of the drug and quantity;

(vi)
Strength of drug and quantity;

(vii)
Directions for use, route of administration;

(viii)
Date of prescription (date of refill in case of a prescription renewal);

(ix)
Expiration date where applicable: The dispenser shall place on the label a suitable beyond-use date to limit the patient's use of the medication. Such beyond-use date shall be not later than (a) the expiration date on the manufacturer's container, or (b) one year from the date

the drug is dispensed, whichever is earlier;

(x) Auxiliary labels where applicable;

(xi) The Manufacturer's name;

(xii) State of the art drug delivery systems using unit of use packaging require items (i) and (ii) above, provided that any additional information is readily available at the nursing station.

(j) Customized Patient Medication Packages: In lieu of dispensing one, two, or more prescribed drug products in separate containers or standard vial containers, a pharmacist may, with the consent of the patient, the patient's care-giver, the prescriber, or the institution caring for the patient, provide a customized patient medication package. The pharmacist preparing a patient medication package must abide by the guidelines as set forth in the current edition of the U. S. Pharmacopoeia for labeling, packaging and record keeping.

(k) Repackaging of Patient Medication Packages: In the event a drug is added to or discontinued from a patient's drug regimen, when a container within the patient medication package has more than one drug within it, the pharmacist may repackage the patient's patient medication package and either add to or remove from the patient medication packaged as ordered by the physician. The same drugs returned by the patient for repackaging must be reused by the pharmacist in the design of the new patient medication package for the new regimen, and any drug removed must either be destroyed, returned to the DEA or returned to the patient properly labeled. Under no circumstances may a drug within a container of a patient medication package which contains more than one drug be returned to the pharmacy stock.

(l) Return of Patient Medication Package Drugs: Patient medication packages with more than one drug within a container may not under any circumstances be returned to a pharmacy stock.

(m) Patient Medication Packages with only one drug within a container:

(i) Non-Institutional: A patient medication package stored in a non-institutional setting where there is no assurance of storage standards may not be returned to pharmacy stock;

(ii) Institutional: A patient medication package stored in an institutional setting where the storage and handling of the drugs are assured and are consistent with the compendia standards may be returned to the pharmacy stock provided the following guidelines are followed: (1) the drug is to be kept within the patient medication package and is to remain sealed and labeled until dispensed; (2) the expiration date of drug shall become 50% of the time left of the expiration for the drug; (3) no Schedule II drugs may be returned to inventory; and (4) proper record keeping for the addition of other scheduled drugs into inventory must be done.

(8) DRUG INFORMATION

(a) The pharmacist shall be accessible for providing drug information.

(b) A current reference books shall be located in each nursing station.

(c) Each nursing station shall have poison control information and phone number and a conversion chart for pharmaceutical weights and measures, and as a part of the drug procedures manual.

(9) EMERGENCY DRUG SUPPLY

(a) There shall be an accountability record indicating the following:

(i) Name of drug, strength, and amount of medication used;

(ii) Date used;

(iii) Time;

(iv) Patient's name;

(v) Physician's name;

(vi) Nurse administering drug;

(vii) Nature of emergency.

(b) Pharmacist shall make notation of date and time medication replacement is made on the line following that line containing withdrawal information and sign his name, unless the pharmacy chooses to change out the complete emergency box each time it is used. The pharmacy shall keep a record of each time the box is changed and a list of all drugs that were replaced in the box.

(10) Destruction of dispensed drugs for patients in health care facilities or institutions:

(a) The drugs are inventoried and such inventory is verified by the consultant pharmacist. The following information shall be included on this inventory:

(i) name and address of the facility or institution;

(ii) name and pharmacist license number of the consultant pharmacist;

(iii) date of drug destruction;

(iv) date the prescription was dispensed;

(v) unique identification number assigned to the prescription by the pharmacy;

(vi) name of dispensing pharmacy;

(vii) name, strength, and quantity of drug;

(viii) signature of consultant pharmacist destroying drugs;

(ix) signature of witness(es); and

(x) method of destruction.

(b) The drugs are destroyed in a manner to render the drugs unfit for human consumption and disposed of in compliance with all applicable state and federal requirements.

(c) The actual destruction of the drug is witnessed by the consultant pharmacist and one of the following:

(i) An agent of the New Mexico board of pharmacy;

(ii) Facility administrator;

(iii) The director of nursing.

(11) A consultant pharmacist may utilize a waste disposal service or reverse distributor to destroy dangerous drugs and controlled substances in health care facilities, boarding homes or institutions provided the following conditions are met:

(a) The inventory of drugs is verified by the consultant pharmacist. The following information must be included on this inventory:

(i) Name and address of the facility or institution;

(ii)

Name and pharmacist license number of the consultant pharmacist;

(iii) Date of packaging and sealing of the container;

(iv) Date the prescription was dispensed;

(v) Unique identification number assigned to the prescription by the pharmacy;

(vi) Name of dispensing pharmacy;

(vii) Name, strength and quantity of drug;

(viii) Signature of consultant pharmacist packaging and sealing container; and

(ix) Signature of the witness.

(b) The consultant pharmacist seals the container or drugs in the presence of the facility administrator, the director of nurses or an agent of the board of pharmacy.

(c) The sealed container is maintained in a secure area at the facility or pharmacy until transferred to the waste disposal service or the reverse distributor by the consultant pharmacist, facility administrator, director of nursing or agent of the board of pharmacy.

(d) A record of the transfer [~~tot he~~] to the waste disposal service or reverse distributor is maintained and attached [~~tot he~~] to the inventory of drugs. Such records shall contain the following information:

(i) Date of the transfer;

(ii) Signature of the person who transferred the drugs to the waste disposal service or reverse distributor;

(iii) Name and address of the waste disposal service or reverse distributor;

(iv) Signature of the employee of the waste disposal service or the reverse distributor who receives the container; and

(v) The waste disposal service or reverse distributor shall provide the facility with proof of destruction of the sealed container.

(12) Record Retention: All records required above shall be maintained by the consultant pharmacist and the health care facility or institution for three years from the date of destruction.

[16.19.11.8 NMAC - Rp 16.19.11.8, 12-15-02; A, 10-24-14; A, 12-13-15]

REGULATION AND LICENSING DEPARTMENT

BOARD OF PHARMACY

This is an amendment to 16.19.12 NMAC, Sections 13, 14, 15, 18 and 20, effective 12-13-2015.

16.19.12.13 LICENSE FEES:

A. [~~License fee for~~] Drug manufacturer
$700.00 bi-ennially

B. Wholesale drug distributor
$700.00 bi-ennially

C. Drug manufacturer/ re-packager
$700.00 bi-ennially

D. Re-packager
$700.00 bi-ennially

E. Retail pharmacy [~~license~~]
$300.00 bi-ennially

F. Hospital pharmacy [~~license~~]
$300.00 bi-ennially

[~~**G.** Hospital drug room pursuant to Section 61-11-7 of Pharmacy Act $60.00~~

~~**H.** Duplicate license $10.00~~

~~**I.**~~] **G.** Nonresident [~~pharmacies~~] pharmacy
$400.00 bi-ennially

[~~**J.**~~] **H.** Seller or dispenser of contact lenses
$400.00 bi-ennially

[~~**K.**~~] **I.** Alternative reduced licensure fee for wholesale drug distributor/manufacturer/re-packager as determined by the board or board's designee.

[~~**L.**~~] **J.** Dangerous drug research
$200.00 bi-ennially

[~~**M.**~~] **K.** Drug warehouse
$200.00 bi-ennially

L. Duplicate license or permit(for all types)
$10.00 per each request

M. Letter of good standing, verification, and certification
$10.00 per each request

N. Roster of New Mexico board of pharmacy license database
$30.00 per license category

[03-07-80...05-01-93; 16.19.12.13 NMAC - Rn, 16 NMAC 19.12.13, 03-30-02; A, 09-30-03; A, 07-15-04; A, 01-15-2005; A, 12-15-05; A, 01-31-07; A, 11-15-10; A, 12-13-15]

16.19.12.14 DRUG ROOM PERMIT:

A. Drug room permit in adult shelter care or custodial care facility:

(1) 10 or fewer beds:
$100.00 bi-ennially

(2) 11 or more beds:
$200.00 bi-ennially

B. Drug room permit in an intermediate nursing home facility
$200.00 bi-ennially

C. Drug room permit in a skilled nursing home facility
$200.00 bi-ennially

[~~**D.** Duplicate license $10.00~~]

[03-07-80...08-27-90; 16.19.12.14 NMAC - Rn, 16 NMAC 19.12.14, 03-30-02; A, 09-30-03; A, 10-24-14; A, 12-13-15]

16.19.12.15 CLINIC LICENSE FEES: [~~Clinic license fees shall be:~~]

A. [~~Limited clinic~~] Class A, B, or C Clinic
$300.00 bi-ennially

[~~**B.** Intermediate clinic $300.00 bi-ennially~~

~~**C.** Major clinic $300.00 bi-ennially~~

~~**D.**~~] **B.** [~~Class D school clinic~~] Class D clinic
[~~$30.00 bi-ennially~~] $50.00 bi-ennially

[~~**E.** Duplicate license $10.00~~

~~**F.**~~] **C.** Animal control clinic
$100.00 bi-ennially

[03-07-80...08-06-94; 12-15-99; 16.19.12.15 NMAC - Rn, 16 NMAC 19.12.15, 03-30-02; A, 09-30-03; A, 10-24-14; A, 12-13-15]

16.19.12.18 INSPECTION FEE:[~~Fee for required inspections shall be $150.00~~]

A. Initial inspection or reinspection
$150.00

B. Pre-licensing inspection for Class D clinic
$30.00

[03-07-80...02-22-93; 16.19.12.18 NMAC - Rn, 16 NMAC 19.12.18, 03-30-02; A, 12-13-15]

16.19.12.20 REINSTATEMENT FEES:

A. Any person whose board registration or license has expired

and who seeks reinstatement of the certificate of license must pay the following reinstatement fee in addition to all delinquent renewal fees:

(1) Pharmacists $25.00

(2) All other licenses issued by the board of pharmacy under the Pharmacy Act and the Drug Precursor Act including, but not limited to, licenses for retail pharmacy, non-resident pharmacy, wholesale drug distributor, drug manufacturer, hospital pharmacy, drug room, nursing home, clinic facility, wholesalers, retailers or distributors of veterinary drugs, and drug precursor, 25% of the license renewal fee not **to** exceed $100.00

B. Controlled substance registrations are exempt from reinstatement fees.

[03-07-80...02-22-93; 16.19.12.20 NMAC - Rn, 16 NMAC 19.12.20, 03-30-02; A, 12-13-15]

REGULATION AND LICENSING DEPARTMENT

BOARD OF PHARMACY

This is an amendment to 16.19.20 NMAC, Sections 65, 66, 68 and 69, effective 12-13-2015.

16.19.20.65 SCHEDULE I:

A. NMSA 1978 Section 30-31-6 Schedule I shall consist of the following drugs and other substances, by whatever name, common or usual name, chemical name or brand name designated, listed in this section; **OPIATES**, unless specifically exempt or unless listed in another schedule, any of the following opiates, including its' isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

(1) Acetylmethadol
(2) Allylprodine
(3) Alphacetylmethadol
(4) Alphameprodine
(5) Alphamethadol
(6) Alpha-methyl fentanyl
(7) Benzethidine
(8) Betacetylmethadol
(9) Betameprodine
(10) Betamethadol
(11) Betaprodine
(12) Clonitazene
(13) Desmethyltramadol
[~~(13)~~] **(14)** Dextromoramide
[~~(14)~~] **(15)** Diampromide
[~~(15)~~] **(16)** Diethylthiambutene
[~~(16)~~] **(17)** Dimethylthiambutene
[~~(17)~~] **(18)** Difenoxin
[~~(18)~~] **(19)** Dimenoxadol
[~~(19)~~] **(20)** Dimepheptanol
[~~(20)~~] **(21)** Dimethylthiambutene
[~~(21)~~] **(22)** Dioxaphetyl Butyrate
[~~(22)~~] **(23)** Dipipanone
[~~(23)~~] **(24)** Ethylmethylthiambutene
[~~(24)~~] **(25)** Etonitazene
[~~(25)~~] **(26)** Etoxeridine
[~~(26)~~] **(27)** Furethidine
[~~(27)~~] **(28)** Hydroxypethidine
[~~(28)~~] **(29)** Ketobemidone
[~~(29)~~] **(30)** Levomoramide
[~~(30)~~] **(31)** Levophenacylmorphan
[~~(31)~~] **(32)** Morpheridine
[~~(32)~~] **(33)** Noracymethadol
[~~(33)~~] **(34)** Norlevorphanol
[~~(34)~~] **(35)** Normethadone
[~~(35)~~] **(36)** Norpipanone
[~~(36)~~] **(37)** Phenadoxone
[~~(37)~~] **(38)** Phenampromide
[~~(38)~~] **(39)** Phenomorphan
[~~(39)~~] **(40)** Phenoperidine
[~~(40)~~] **(41)** Piritramide
[~~(41)~~] **(42)** Proheptazine
[~~(42)~~] **(43)** Properidine
[~~(43)~~] **(44)** Propiram
[~~(44)~~] **(45)** Racemoramide
[~~(45)~~] **(46)** Tilidine
[~~(46)~~] **(47)** Trimeperidine

B. OPIUM DERIVATIVES: Unless specifically exempt or unless listed in another schedule, any of the following opium derivatives, its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation.

(1) Acetorphine
(2) Acetyl dihydrocodeine
(3) Benzyl morphine
(4) Codeine methylbromide
(5) Codeine-N-Oxide
(6) Cyprenorphine
(7) Desomorphine
(8) Dehydro morphine
(9) Etorphine
(10) Heroin
(11) Hydromorphinol
(12) Methyldesorphine
(13) Methyldihydromorphine
(14) Morphine methylbromide
(15) Morphine methylsulfonate
(16) Morphine-N-Oxide
(17) Myrophine
(18) Nicocodeine
(19) Nicomorphine
(20) Normorphine
(21) Pholcodine
(22) Thebacon
(23) Drotebanol
(24) Beta-Hydroxy-3-Methylfentanyl
(25) 3-Methylthiofentanyl
(26) Acetyl-Alpha-Methyl fentanyl
(27) Alpha-Methylthiofentanyl
(28) Beta-hydroxfentanyl
(29) Para-Fluoro fentanyl
(30) Thiofentanyl

C. HALLUCINOGENIC SUBSTANCES: Unless specifically exempt or unless

listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation (for purpose of this sub-section only, the term "isomers" includes the optical position, and geometric isomers).

(1) 3,4 -methylenedioxy amphetamine

(2) 5 - methoxy - 3,4-methylenedioxy amphetamine

(3) 3,4,5 -trimethoxy amphetamine

(4) Bufotenine

(5) Diethyltryptamine; DET

(6) Dimethyltryptamine; DMT

(7) 4-methyl-2,5-dimethoxy-amphetamine; DOM or STP

(8) Lysergic acid [~~diethylamide~~] amide

(9) Lysergic acid diethylamide

(10) Marijuana

(11) Mescaline

(12) Peyote

(13) N-ethyl-3-piperidyl benzilate

(14) N-methyl-3-piperidyl benzilate

(15) Psilocybin

(16) Psilocyn

(17) Tetrahydrocannabinols

(18) Parahexyl (synthetic analog of delta-9-tetra-hydrocannabinol (THC) an active ingredient of cannabis)

(19) Hashish

(20) 2, 5 -dimethoxyamphetamine; 2, 5-DMA

(21) 4-bromo-2, 5-dimethoxy-amphetamine; 2,5-DMA

(22) 4-methoxyamphetamine; PMA

(23) Ethylamine N-ethyl-1-phenylcyclohexylamine (PCE)

(24) Pyrrolidine 1-(1-phenylcyclohexyl)-pyrrolidine (PCPy), (PHP) analog of the drug phencyclidine

(25) Thiophene (analog of phencyclidine) TCP or TPCP

(26) Alpha-ethyltryptamine

(27) 2, 5-dimethoxy-4-ethylamphet-amine

(28) Ibogaine

(29) 2,.5 dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7)

(30) Alpha-methyltryptamine (AMT)

(31) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT)

(32) 2-(4-bromo-2.5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25B-NBOMe)

(33) 2-(4-chloro-2.5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe)

(34) 2-(4-iodo-2.5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe)

(35) Synthetic cannabinoids: Unless specifically exempted or unless listed in another schedule, any material, compound, mixture of preparation which contains any quantity of the following synthetic cannabinoids which demonstrates binding activity to the cannabinoid receptor or analogs or homologs with binding activity:

(a) CP 55,244 ((hydroxymethyl)-4-[2-hydroxy-4-(2-methyloctan-2-yl) phenyl] 1,2,3,4,4a,5,6,7,8,8a-decahydronaphthalen-2-ol)

(b) CP 55,940 (5-hydroxy-2-(3-hydroxypropyl) cyclohexyl]-5-(2-methyloctan-2-yl) phenol)

(c) JWH-081 (1-pentyl-3-[1-(4-methoxynaphthoy)] indole)

(d) JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl) indole)

(e) JWH-133 3-(1,1-dimethylbutyl)-6a,7,10,10a-tetrahydro -6,6,9-trimethyl-6H dibenzo[b,d]pyran

(f) JWH 203 1-pentyl-3-(2-chlorophenylacetyl) indole)

(g) JWH 210 4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone

(h) AM-694 (1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole)

(i) AM-1221 (1-(N-methylpiperdin-2-yl) methyl-2-methyl-3-(1-naphthoyl)-6-nitroindole

(j) AM-2201 (1-(5-fluoropentyl)-3-(1-naphthoyl)indole)

(k) RCS-4 or SR-19 (1-pentyl-3-[(4-methoxy)-benzoyl]indole)

(l) RCS-8 or SR-18 (1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole)

(m) JWH-210 (1-pentyl-3-(4-ethylnaphthoyl) indole)

(n) WIN-49,098 (Pravadoline) (4-methoxyphenyl)-[2-methyl-1-(2-morpholin-4-ylethyl)indol-3-yl] methanone

(o) WIN-55,212-2 (2,3-dihydro-5-methyl-3-(4-morpholinylmethyl) pyrrolo-1,4-benzooxazin6- yl)-1-naphthalenylmethanone)

(p) Any of the following synthetic cannabinoids, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation.

(i) Naphthoylindoles: Any compound containing a 3-(1- naphthoyl) indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, JWH-210, JWH-398 and AM-2201.

(ii) Naphthylmethylindoles: Any compound containing a1Hindol- 3-yl-(1-naphthyl) methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-175, JWH-184, and JWH-199.

(iii) Naphthoylpyrroles: Any compound containing a 3-(1- naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in

the naphthyl ring to any extent including, but not limited to, JWH-307.

(iv) Naphthylmethylindenes: Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-176.

(v) Phenylacetylindoles: Any compound containing a 3- phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, JWH-203, JWH-250, JWH-251, and RCS-8.

(vi) Cyclohexylphenols: Any compound containing a 2-(3- hydroxycyclohexyl) phenol structure with substitution at the 5- position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not substituted in the cyclohexyl ring to any extent including, but not limited to, Cannabicyclohexanol (CP 47,497 C8 homologue), CP 47,497 and CP 55,490.

(vii) Benzoylindoles: Any compound containing a 3-(benzoyl) [5] OTS-3833.4 indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4- morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, AM-694, Pravadoline (WIN 48,098), RCS-4, and AM-1241.

(q) UR-144 1-(pentyl-1H-indol-3-yl) (2,2,3,3-tetramethylcyclopropyl) methanone

(r) XLR11 1-(5-fluoro-pentyl)-1H-indol-3-yl(2,2,3,3-tetramethylcyclopropyl) methanone

(s) AKB48 N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide

(36) Substances determined by the board to have the pharmacological effect of the substance, the risk to the public health by abuse of the substance and the potential of the substance to produce psychic or physiological dependence liability is similar to the substances described in Paragraph (1) or (2) of 30-31-23C NMSA 1978. Substances include but are not limited to:

(a) salvia divinorum

(b) salvinorin A (methyl (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(furan-3-yl)-6a,10b-dimethyl-4,10-dioxododecahydro-2*H*-benzo[f]isochromene-7-carboxylate)

(37) 4-methyl-ethylcathinone (4-MEC)

(38) 4-ethyl-methcathinone (4-EMC)

(39) 2-ethylamino-1-phenyl-propan-1-one (ethcathinone)

(40) 3',4'-methylenedioxyethcathinone (ethylone)

(41) beta-keto-N-methyl-3,4-benzodioxyolybutanamine (bk-MBDB, butylone)

(42) naphthylpyrovalerone (NRG-1, naphyrone)

(43) N,N-dimethylcathinone (metamfepramone)

(44) alpha-pyrrolidinopropiophenone (alpha-PPP)

(45) alpha-pyrrolidinobutiophenone (α-PBP)

(46) 4'-methoxy-alpha-pyrrolidinopropiophenone (MOPPP)

(47) 4'-methyl-α-pyrrolidinopropiophenone (MPPP)

(48) 3',4'-methylenedioxy-alpha-pyrrolidinopropiophenone (MDPPP)

(49) 3',4'-methylenedioxy-alpha-pyrrolidinobutiophenone (MDPBP)

(50) 4'-methyl-α-pyrrolidinobutiophenone (MPBP)

(51) alpha-pyrrolidinovalerophenone (alpha-PVP)

(52) 5,6-methylenedioxy-2-aminoindane (MDAI)

(53) alpha-methylamino-butyrophenone (buphedrone)

(54) beta-keto-ethylbenzodioxolylbutanamine (eutylone)

(55) beta-keto-ethylbenzodioxolylpentanamine

(56) beta-keto-methylbenzodioxolylpentanamine (pentylone)

(57) 4-Bromo-2,5-dimethoxyphenethylamine (2c-B, Nexus)

(58) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alphamethyl-3,4(methylenedioxy)-phenethylamine, and N-hydroxy MDA

(59) 5-methoxy-N,N-dimethyltryptamine (5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT

(60) 4-methylmethcathinone (Mephedrone)

(61) 3,4-methylenedioxypyrovalerone (MDPV)

(62) 2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C-E)

(63) 2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C-D)

(64) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl] ethanamine (2C-T-2)

(65) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T4)

(66) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)

(67) 2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N)

(68) 2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C-P)

(69) 3,4-Methylenedioxy-N-methylcathinone(Methylone)

(70) Aminorex (2-amino-5-phenyl-2-oxazoline)

(71) Quinolin-8-yl 1-pentyl-1*H*-indole-3-carboxylate (PB-22, QUPIC)

(72) Quinolin-8-yl 1-(5-fluropentyl-1*H*-indole-3-carboxylate (5-fluro-PB22; 5F-PB22)

(73) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-flurobenzyl)-1*H*-indazole-3-carboxamide (AB-FUBINACA)

(74) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-

1*H*-indazole-3-carboxamine (ADB-PINACA)

(75) Pentedrone

(76) 4-fluro-N-methylcathinone (4-FMC; flephedrone)

(77) 3-fluro-N-methylcathinone (3-FMC)

(78) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (AB-CHIMINACA)

(79) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (AB-PINACA)

(80) [1-(5-fluropentyl)-1*H*-indazol-3-yl] (naphthalen-1-yl)methanone (THJ-2201)

(81) 3-methylmethcathinone (3-MMC)

(82) 3,4-Dimethylmethcathinone (3,4 DMMC)

(83) 3-Methyl-N-ethylcathinone (3-MEC)

(84) 2-Methylamino-1-(4-methylphenyl)butan-1-one (4-methylbuphedrone; 4-MeBP)

(85) 4-Methylthioamphetamine (4 MTA)

(86) 5-Methyl-3,4-methylenedioxyamphetamine (5-Me MDA)

(87) 6-benzofuran (6-APB)

(88) 4-Methoxyamphetamine (PMA)

(89) 2,5-dimethoxy-4-bromophenethylamine (2C-B)

(90) 2,5-dimethoxy-4-chlorophenethylamine (2C-C)

(91) 4-methyl-2,5-dimethoxyphenethylamine (2C-D)

(92) 2,5-dimethoxy-4-ethylphenethylamine, (2C-E, Aquarust, Cindy)

(93) 3,4-Dimethyl-2,5-dimethoxyphenethylamine (2C-G)

(94) 2,5-Dimethoxy-4-iodophenethylamine (2C-I)

(95) 2-[2,5-Dimethoxy-4-(2-fluoroethylthio) phenyl]ethanamine (2C-T21)

(96) 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1] benzofuran-4-yl)ethanamine (2C-B-FLY)

(97) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl) propan-2-amine, (Bromo-DragonFLY, 3C-Bromo-Dragonfly, DOB-Dragonfly)

(98) 2,5-Dimethoxy-4-bromoamphetamine (DOB)

(99) 2,5-Dimethoxy-4-chloroamphetamine (DOC)

(100) 2,5-Dimethoxy-4-methylamphetamine (DOM)

(101) 2,4,5-trimethoxyamphetamine (TMA2)

(102) 2,4,6-trimethoxyamphetamine (TMA6)

(103) 6,7-Methylenedioxy-2-aminotetralin (MDAT)

(104) 4-acetoxy-N,N-diisopropyltryptamine (4-acetoxy DiPT, ipracetin)

(105) O-Acetylpsilocin (4-acetoxy DMT, psilacetin)

(106) 4-hydroxy-N-methyl-N-ethyltryptamine (4-HO MET, metocin)

(107) 4-hydroxy-N-methyl-N-isopropyltryptamine (4-HO MiPT, hats)

(108) 5-methoxy-α-methyltryptamine, (5-MeO-aMT, Alpha-O)

(109) N-[2-(5-methoxy-1H-indol-3-yl)ethyl]-N-methylpropan-2-amine (5-MeO-MiPT)

(110) N,N-diisopropyltryptamine (DiPT)

(111) Dipropyltryptamine (DPT)

(112) N,N-diallyl-5-methoxytryptamine (5-MeO-DALT)

(113) 3-Methoxyphencyclidine (3-MeO PCP)

(114) 4-Methoxyphencyclidine (4-MeO PCP)

(115) Dizocilpine (MK-801)

(116) Tetrachloroethylene (PCE, perchloroethylene, Perchloroethene, Perc)

(117) 3-MeO-2-Oxo-PCE (Methoxetamine)

(118) Phencyclamine, N-(1-phenylcyclohexyl) propanamine (PCPr)

(119) 1-(1-(2-Thienyl)cyclohexyl)piperidine (Tenocyclidine)

(120) 3-Methoxyeticyclidine, N-ethyl-1-(3-methoxyphenyl)cyclohexanamine (3-MeO PCE)

(121) 6-ethyl-6-nor-lysergic acid diethylamide (ETH-LAD)

(122) 6-allyl-6-nor-LSD (AL-LAD)

(123) 10-didehydroergoline-8-carboxamide (PRO-LAD)

D. DEPRESSANTS: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its' salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone

(2) Methaqualone

(3) Benzodiazepines

(a) bromazepam

(b) camazepam

(c) cloxazolam

(d) delorazepam

(e) ethylloflazepate

(f) fludiazepam

(g) flunitrazepam

(h) haloxazolam

(i) ketazolam

(j) loprazolam

(k) lormetazepam

(l) medazepam

(m) nimetazepam

(n) nitrazepam

(o) nordiazepam

(p) oxazolam

(q) pinazepam

(r) tetrazepam

(4) Gamma hydroxybutyric acid and any chemical compound that is metabolically converted to GHB.

(5) Gamma butyrolactone and any chemical compound that is metabolically converted to GHB.

(6) 1-4 butane diol and any chemical compound that is metabolically converted to GHB.

(7)

γ-Hydroxyvaleric acid (GHV, 4-methyl-GHB)

(8) γ-Valerolactone (GVL)

(9) Methylmethaqualone (MMQ)

(10) Mebroqualone (MBQ)

E. STIMULANTS: Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its' salts, isomers, and salts of isomers.

(1) Fenethylline

(2) N-ethylamphetamine

(3) cis-4-methylaminorex

(4) N, N-dimethylamphetam

(5) N-benzylpiperazine (BZP, 1-benzylpiperazine)

(6) 2,3-Dichlorophenylpiperazine (DCPP)

(7) Dibenzylpiperazine (DBZP)

(8) Methylbenzylpiperazine (MBZP)

(9) meta-Chlorophenylpiperazine (mCPP)

(10) Methylenedioxybenzylpiperazine (MDBZP)

(11) para-Methoxyphenylpiperazine (meOPP)

(12) para-Chlorophenylpiperazine (pCPP)

(13) para-Fluorophenylpiperazine (pFPP)

(14) 2-diphenylmethylpiperidine, (2-DPMP, Desoxypipradrol)

(15) diphenyl-2-pyrrolidinemethanol (D2PM, Diphenylprolinol)

(16) Methylnaphthidate (HDMP-28)

(17) 3α-carbomethoxy-4β-(4-chlorophenyl)-N-methylpiperidine (Nocaine, (+)-CPCA)

(18) Butyltolylquinuclidine (2-Butyl-3-(p-tolyl)quinuclidine, BTQ)

F. Any material, compound, mixture of preparation which contains any quantity of the following substances.

(1) 3-Methylfentanyl(N-3-methyl-1-(2-phenyl-ethyl)-4-Piperidyl)-N-phenylpropanamide, its' optical and geometric isomers, salts and salts of isomers.

(2) 3, 4-methylenedioxymethamphetamine (MDMA), its' optical, positional and geometric isomers, salts and salts of isomers.

(3) 1-methyl-4-phenyl-4-proprionoxypiperidine (MPPP), its' optical isomers, salts, and salts of isomers.

(4) 1-(-2-phenylethyl)-4-phenyl-4-acetoxy piperidine (PEPAP), its' optical isomers, salts and salts of isomers.

(5) Cathinone.

(6) Methcathinone.

[16.19.20.65 NMAC - Rp 16 NMAC 19.20.28, 07-15-02; A, 06-30-05; A, 01-15-08; A, 05-14-10; A, 11-27-11; A, 06-15-12; A, 08-31-12; A, 12-19-13; A, 06-28-14; A, 12-13-15]

16.19.20.66 SCHEDULE II:

A. Shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section. Substance, vegetable origin or chemical synthesis. Unless specifically exempt or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(1) Opium and opiate, and any salts, compound, derivative, or preparation of opium or opiate excluding naloxone, dextrorphan, nalbuphine, naltrexone and apomorphine but including the following:

(a) raw opium

(b) opium extracts

(c) opium fluid extracts

(d) powdered opium

(e) granulated opium

(f) tincture of opium

(g) codeine

(h) ethylmorphine

(i) etorphine hydrochloride

(j) hydrocodone

(k) hydromorphone

(l) metopon

(m) morphine

(n) oxycodone

(o) oxymorphone

(p) thebaine

(q) alfentanil

(r) oripavine

(2) Any salt, compound derivative, or preparation thereof, which is chemically equivalent or identical with any of the substances referred to in 16.19.20.66.A.(1) NMAC, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include de-cocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

B. OPIATES: Unless specifically excepted or unless in another schedule any of the following opiates, including its' isomers, esters, ethers, salts and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation except dextrose and levopropoxyphene.

(1) Alphaprodine

(2) Anileridine

(3) Bezitramide

(4) Diphenoxylate

(5) Dihydrocodeine

(6) Dextropropoxyphene (bulk) non-dosage form

(7) Fentanyl

(8) Isomethadone

(9 Levomethorphan

(10) Levorphanol

(11) Metazocine

(12) Methadone

(13) Methadone-Intermediate

(14) Monamide-Intermediate

(15) Pethidine

(16) Pethidine-Intermediate A

(17) Pethidine-Intermediate B

(18) Pethidine-Intermediate C

(19) Phenazocine

(20) Piminodine

(21) Racemethorphan

(22) Racemorphan

(23) Sufentanil

(24) Carfentanil

(25) Levo-alphacetylmethadol (LAAM)

(26) Tapentadol

C. STIMULANTS:
Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system. **(See 16.19.21 NMAC- Drug Precursors)**

(1) Amphetamine, its' salts, optical isomers and salts of its' optical isomers.

(2) Methamphetamine, its' salts, isomers and salts of isomers.

(3) Phenmetrazine and its' salts.

(4) Methylphenidate

(5) Lisdexamfetamine

D. DEPRESSANTS:
Unless specifically exempt or unless listed in another schedule any material, compound mixture or preparation which contains any quantity of the substance having a depressant effect on the central nervous system, including its' salts, isomers and salts of isomers is possible within the specific chemical designation.

(1) Amobarbital

(2) Secobarbital

(3) Pentobarbital

(4) Phencyclidine

(5) Glutethimide

(6) 1-phenylcyclohexylamine

(7) 1-piperidinocyclohexanecarbonitrile

E. HALLUCINOGENIC SUBSTANCES:
Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its' salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purpose of this paragraph only, the term "isomers" includes the optical position, and geometric isomers):[~~Nabilone~~]

(1) Nabilone

(2) Phenylacetone (P2P, benzyl methyl ketone; methyl benzyl ketone)

F. MISCELLANEOUS:

(1) Dihydroetorphine

(2) Bulk dextropropoxyphene

(3) Remifentanil

[16.19.20.66 NMAC - Rp 16 NMAC 19.20.28(1), 07-15-02; A, 06-30-05; A, 01-15-08; A, 05-14-10; A, 06-28-14; A, 12-13-15]

16.19.20.68 SCHEDULE IV:
Shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section:

A. DEPRESSANTS:
Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Alfaxalone

(2) Alprazolam

(3) Barbital

(4) Chloral Betaine

(5) Chloral Hydrate

(6) Chlordiazepoxide

(7) Clobazam

(8) Clonazepam

(9) Clorazepate

(10) Clotiazepam

(11) Diazepam

(12) Estazolam

(13) Ethchlorvynol

(14) Ethinamate

(15) Flurazepam

(16) Fospropofol

[~~(16)~~] **(17)** Halazepam

[~~(17)~~] **(18)** Lorazepam

[~~(18)~~] **(19)** Mebutamate

[~~(19)~~] **(20)** Meprobamate

[~~(20)~~] **(21)** Methohexital

[~~(21)~~] **(22)** Methylphenobarbital

[~~(22)~~] **(23)** Midazolam

[~~(23)~~] **(24)** Oxazepam

[~~(24)~~] **(25)** Paraldehyde

[~~(25)~~] **(26)** Petrichloral

[~~(26)~~] **(27)** Phenobarbital

[~~(27)~~] **(28)** Prazepam

[~~(28)~~] **(29)** Quazepam

(30) Suvorexant

[~~(29)~~] **(31)** Temazepam

[~~(30)~~] **(32)** Triazolam

[~~(31)~~] **(33)** Zopiclone

B. FENFLURAMINE:
Any material, compound, mixture or preparation which contains any quantity of the following substance, including its' salts, isomers (whether optical position, or geometric) and its' salts, or such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine

C. LORCASERIN:
Any material, compound, mixture or preparation which contains any quantity of the following substance, including its' salts, isomers (whether optical position, or geometric) and its' salts, or such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Lorcaserin

[~~C.~~] D. STIMULANTS:
Unless specifically exempt or unless listed in another schedule any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its' salts, isomers (whether optical position, or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Diethylpropion

(2) Phentermine

(3) Pemoline

(including organometallic complexes and chelates thereon)

(4) Pipradrol

(5) SPA ((-)-1-dimethyl amino-1,2-diphenylmethane)

(6) Mazindol

(7) Cathine

(8) Fencamfamin

(9) Fenproporex

(10) Mefenorex

(11) Modafinil

(12) Sibutramine

D. OTHER SUBSTANCES: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its' salts:

(1) Dextropropoxyphene(Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane)

(2) Pentazocine

(3) Carisoprodol

(4) Nalbuphine Hydrochloride

(5) Butorphanol Tartrate

(6) Dezocine

(7) Dichloralphenazone

(8) Zaleplon

(9) Zolpidem

(10) Tramadol

E. NARCOTIC DRUG: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof: Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

F. EXEMPTION OF CHLORAL: When packaged in a sealed, oxygen-free environment, under nitrogen pressure, safeguarded against exposure to the air. Chloral when existing under the above conditions is a substance which is not intended for general administration to a human being or another animal, and contains no narcotic controlled substances and is packaged in such a form that the package quantity does not present any significant potential for abuse. All persons who engage in industrial activities with respect to such chloral are subject to registration; but shall be exempt from Section 30-31-16 through 19 of the New Mexico Controlled Substances Act and 16.19.20.19 NMAC through 16.19.20.52 NMAC of the board of pharmacy regulations.

G. EXEMPT COMPOUNDS: Librax and Menrium are preparations which contain chlordiazepoxide, a depressant listed in Schedule IV, 16.19.20.68.A.5 NMAC and other ingredients in such combinations, quantity, preparation or concentration as to vitiate the potential for abuse of chlordiazepoxide, and are hereby exempt preparations.

(1) Librax

(2) Menrium, 5-2

(3) Menrium, 4-5

(4) Menrium, 10-4

[16.19.20.68 NMAC - Rp 16 NMAC 19.20.28(3), 07-15-02; A, 06-30-05; A, 05-14-10; A, 03-07-11; A, 08-31-12; A, 09-07-14; A, 12-13-15]

16.19.20.69 SCHEDULE V:

A. Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone.

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(6) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

B. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers.

(1) Pyrovalerone.

(2) Pseudoephedrine as a drug that includes any compound, mixture, or preparation that contains any detectable quantity of pseudoephedrine, its salts or its optical isomers, or salts of its optical isomers. Pursuant to 30-31-10.C the following substances are excluded from Schedule V controlled substances: pseudoephedrine products in liquid form including liquid filled gel caps and pseudoephedrine products already classified as dangerous drugs.

C. Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Lacosamide [(R)-2acetoamido-N-benzyl-3-methoxy-propionamide]

(2) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid]

(3) Ezogabine [N-[2-amino-4-(4-flurobenzylamino-phenyl]-carbamic acid ethyl ester]

[16.19.20.69 NMAC - Rp 16 NMAC 19.20.28(4), 07-15-02; A, 06-30-05; A, 06-30-06; A, 01-31-07; A, 05-14-10; A, 12-13-15]

REGULATION AND LICENSING DEPARTMENT

BOARD OF PHARMACY

This is an amendment to 16.19.30 NMAC, Sections 7 and 9, effective 12-13-2015.

16.19.30.7 DEFINITIONS: In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

A. "Active pharmaceutical ingredient (API)" any substance or mixture of substances intended to be used in the compounding of a drug preparation, thereby becoming the active ingredient in that preparation and furnishing pharmacological activity

or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans and animals or affecting the structure and function of the body.

[~~A.~~] B. "Beyond-use date (BUD)" the date after which a compounded preparation should not be used and is determined from the date the preparation was compounded.

[~~B.~~] C. "Component" any ingredient intended for use in the compounding of a drug product, including those that may not appear in such product labeling.

[~~C.~~] D. "Compounding" the preparation, mixing assembling, packaging, or labeling of a drug or device (reconstitution of commercial products is not considered compounding for purposes of this article).

(1) as the result of a practitioner's prescription order, based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(2) preparing limited quantities of prescription orders based upon a history of receiving valid prescriptions issued within an established practitioner-patient-pharmacist relationship in the course of professional practice;

(3) reconstitution of commercial products not considered compounding for purpose of this article.

[**~~D.~~**] **E. "FDA"** Food and Drug administration.

[~~E.~~] F. "SOP's" standard operating procedures.

[~~F.~~] G. "USP/NF" the current edition of the United States Pharmacopeia/ National Formulary.

[16.19.30.7 NMAC - N, 09-15-06; A, 12-13-15]

16.19.30.9 OPERATIONAL STANDARDS:

A. General requirements.

(1) Non-sterile drug products may be compounded in licensed pharmacies as a result of a practitioner's prescription order based on the practitioner-patient-pharmacist relationship in the course of professional practice.

(2) Preparing limited quantities of prescription drug orders in anticipation based upon a history of receiving valid prescriptions issued within an established practitioner-patient-pharmacist relationship in the course of professional practice.

(a) The beyond-use date should be based on the criteria outlined in USP Chapter <795>.

(b) Any product compounded in anticipation of future prescription drug or medication orders shall be labeled. Each label shall contain:

(i) name and strength of the compounded medication or list of the active ingredient and strengths;

(ii) facility's lot number;

(iii) beyond-use date;

(iv) quantity or amount in the container.

(3) Commercially available product may be compounded for dispensing to individual patients provided the following conditions are met:

(a) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet patient's needs; and

(b) the prescribing practitioner has requested that the drug be compounded; or

(c) if the compounded product is changed to produce for that patient a significant difference, as authorized by the prescriber, between the compounded drug and the comparable commercially available drug product, or if use of the compounded product is in the best interest of the patient; "significant difference" would include the removal of a dye for medical reason such as an allergic reaction; when a compounded product is to be dispensed in place of a commercially available product, the prescriber and patient shall be informed that the product will be compounded.

(4) Compounding veterinarian products.

(a) Products for animals may be compounded based on an order or prescription from a duly authorized veterinarian.

(b) These products are to be handled and filled the same as the human prescriptions.

(5) Compounding pharmacies/pharmacists may advertise and promote the fact that they provide non-sterile prescription compounding services which may include specific drug products and classes of drugs.

B. Environment.

(1) Pharmacies regularly engaging in compounding shall have a designated and adequate area for the safe and orderly compounding of drug products including the placement of equipment and materials. Pharmacies involved in occasional compounding shall prepare an area prior to each compounding activity, which is adequate for safe and orderly compounding.

(2) Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of a drug compounding operation.

(3) A sink with hot and cold running water, exclusive of rest room facilities, shall be accessible to the compounding areas and be maintained in a sanitary condition.

(4) When drug products that require special precautions to prevent contamination, such as penicillin, are involved in a compounding operation, appropriate measures, including dedication of equipment for such operations or the meticulous cleaning of contaminated equipment prior to its' use for the preparation of other drug products, must be used in order to prevent cross-contamination.

C. Equipment and supplies. The pharmacy shall:

(1) have a Class A prescription balance, or analytical balance and weights when necessary which shall be properly maintained and subject to inspection by the New Mexico board of pharmacy; and

(2) have equipment and utensils necessary for the proper compounding of prescription or medication drug orders; such equipment and utensils used in the compounding process shall be:

(a) of appropriate design and capacity, and be operated within designated operational limits;

(b) of suitable composition so that surfaces that contact components, in-process material or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality or purity of the drug product beyond the desired result;

(c) cleaned and sanitized appropriately prior to each use; and

(d) routinely inspected, calibrated when necessary or checked to ensure proper performance.

D. Labeling. In addition to the labeling requirements of the pharmacy's specific license classification, the label dispensed or distributed pursuant to a prescription or medication drug order shall contain the following:

(1) the generic name(s) or the designated name and the strength of the compounded preparation;

(2) the quantity dispensed;

(3) the date on which the product was compounded;

(4) a lot or batch number; and

(5) the beyond-use date after which the compounded preparation should not be used;

(a) in the absence of stability information applicable for a specific drug **or preparation** in the USP/NF the preparation shall adhere to the following maximum beyond-use date guidelines:

[~~**(i)** non-aqueous liquids and solid formulations (where the manufactured drug product is the source of active ingredient) 25% of the time remaining until the manufacturer's product's expiration date or six (6) months, whichever is earlier;~~

~~**(ii)** water-containing formulations (prepared from ingredients in solid form) not later than fourteen (14) days when refrigerated between 2-8 degrees Celsius or 36-46 degrees Fahrenheit;~~

~~**(iii)** all other formulations: intended duration of therapy or 30 days, whichever is earlier;~~]

(i) for non-aqueous formulations – the BUD is not later than the time remaining until the earliest expiration date of any API or six months, whichever is earlier;

(ii) for water-containing oral formulations - the BUD is not later than 14 days when stored at controlled cold temperatures;

(iii) for water-containing topical/dermal and mucosal liquid and semisolid formulations - the BUD is not later than 30 days.

(b) beyond-use date limits may be exceeded when supported by valid scientific stability information for the specific compounded preparation; **the BUD shall not be later than the expiration date on the container of any component.**

E. Drugs, components and material used in non-sterile compounding.

(1) Drugs used in non-sterile compounding shall preferably be a USP/NF grade substance manufactured in a FDA registered facility.

(2) In the event that USP/NF grade substances are not available, documentation of stability and purity must be established and documented.

(3) A pharmacy may not compound a drug product which has been withdrawn or removed from the market for safety reasons.

F. Compounding process. The safety, quality and performance of compounded prescriptions depend on correct ingredients and calculations, accurate and precise measurements, appropriate formulation conditions and procedures, and prudent pharmaceutical judgment. Each pharmacy shall develop and follow written SOP's based on established compounding procedures as outlined in chapter 795 of the USP/NF concerning pharmacy compounding of non-sterile preparations designed to ensure accountability, accuracy, quality, safety, and uniformity in the compounding process.

G. Quality control.

(1) The safety, quality, and monitoring is used to insure that the output of compounded drug products for uniformity and consistency such as capsule weight variations, adequacy of mixing, clarity or pH of solutions are met. When developing these procedures, pharmacy personnel shall consider the provisions of Chapter 795 of the USP/NF concerning pharmacy compounding of non-sterile preparations, chapter 1075 of the USP/NF concerning good compounding practices, and chapter 1160 of the USP/NF concerning pharmaceutical calculations in prescription compounding. Such procedures shall be documented and be available for inspection.

(2) Compounding procedures that are routinely performed, including batch compounding, shall be completed and verified according to written procedures. The act of verification of a compounding procedure involves checking to ensure that calculations, weighing and measuring, order of mixing, and compounding techniques were appropriate and accurately performed.

(3) Unless otherwise indicated or appropriate, compounded preparations are to be prepared to ensure that each preparation shall contain not less than 90.0 percent and not more than 110.0 percent of the theoretically calculated and labeled quantity of active ingredient per unit volume and not less than 90.0 percent and not more than 110.0 percent of the theoretically calculated weight or volume per unit of the preparation.

[16.19.30.9 NMAC - N, 09-15-06; A, 06-29-13; A, 12-19-13; A, 12-13-15]

REGULATION AND LICENSING DEPARTMENT

SIGNED LANGUAGE INTERPRETING PRACTICES BOARD

This is an amendment to 16.28.1 NMAC, Section 7, effective 12-16/15

16.28.1.7 DEFINITIONS: As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning:

A. "Accredited" means approved by the:

(1) New England association of schools and colleges;

(2) middle states association of colleges and secondary schools;

(3) north central association of colleges and schools;

(4) northwest association of schools and colleges;

(5) southern association of colleges and schools; or

(6) western association of schools and colleges.

B. "ACET" refers to the associate continuing education tracking system within [~~RID~~] registry of interpreters for the deaf (RID).

C. "Act" means the Signed Language Interpreting Practices Act, Section 61-34-1 through 61-34-17 NMSA 1978.

D. "Administrator" or "board administrator" means the staff person assigned certain express or implied executive and administrative functions of the board as defined by board regulations or as required to carry out the provisions of the [~~act~~] Signed Language Interpreting Practices Act.

E. "Adult" means the all persons [~~18~~] eighteen (18) years of age or older.

F. "Applicant" means a person who has completed all educational requirements of the eligibility

requirements for licensure and has submitted a complete application to the board. An applicant is seeking approval of his or her application by the board to advance him or her to candidacy for licensure.

G. "Board" means the signed language interpreting practices board.

H. "Board regulations" or "regulations" means any part adopted by the board pursuant to authority under the act and includes any superseding regulation.

I. "CEU" refers to continuing education units as is used by the registry of interpreters for the deaf.

J. "CMP" means the certification maintenance program as is used by the registry of interpreters for the deaf.

K. "Community signed language interpreter" means an interpreter holding one or more certifications recognized by RID with the exception of educational certificate: K-12 (ED: K-12) and holding a community signed language interpreter's license. A community signed language interpreter's license entitles its holder to provide signed language interpreting services in community, K-12 educational, and post-secondary educational settings as appropriate under the [~~NAD-RID~~] national association of the deaf - registry of interpreters for the deaf (NAD-RID) code of professional conduct.

L. "Annual compliance review" means an annual review conducted by the board ensuring that interpreters holding a provisional signed language interpreting license are in compliance with all requirements established by the statute and rules.

M. "Consumer" means a person using the services of a signed language interpreter.

N. "Confidential communication" means a communication that is not intended to be disclosed to third persons other than those present to further the interest of the person requiring the interpreting.

O. "Copy Signing" means signing verbatim a comment or question for those who are not able to see the original signed message due to a visual obstruction.

[~~O.~~] **P.** "Deaf person" means a person who has either no hearing or who has significant hearing loss.

[~~P.~~] **Q.** "Deaf-blind person" means a person who has either no hearing or who has significant hearing loss and a significant vision loss.

[~~Q.~~] **R.** "Department" means the New Mexico regulation and licensing department.

[~~R.~~] **S.** "Educational signed language interpreter" means an interpreter holding the ED: K-12 credential from the registry of interpreters for the deaf and holding an educational signed language interpreter's license. An educational signed language interpreter's license entitles its holder to provide signed language interpreting services in K-12 educational settings as appropriate under the NAD-RID code of professional conduct.

[~~S.~~] **T.** "EIPA" refers to the educational interpreter performance assessment, a diagnostic tool that measures proficiency in interpreting for children or young adults in an educational setting.

[~~T.~~] **U.** "Filed with the board" means hand delivered or postal mail received during normal business hours by the board office in Santa Fe, New Mexico.

[~~U.~~] **V.** "Hard-of-hearing person" means a person who has either no hearing or who has significant hearing loss.

W. "Intern" means a student in training who is currently enrolled in an interpreter education program, interpreter preparation program, or a program of study in signed language interpreting at an accredited institution of higher learning approved by the board, and actively supervised by an interpreter holding a community or educational signed language interpreter license or a consumer of interpreting services approved by the institution in which the intern is enrolled.

[~~V.~~] **X.** "Interpreter" means a person who practices signed language interpreting.

[~~W.~~] **Y.** "Interpreter education program" or "interpreter preparation program" means a post-secondary degree program of at least two (2) year's duration accredited by the state or similar accreditation by another state, district or territory; or a substantially equivalent education program approved by the board.

[~~X.~~] **Z.** "Interpreting" means the process of providing accessible communication between deaf, hard of hearing, or deaf-blind persons and hearing persons, including communication between signed language and spoken language and other modalities such as visual, gesture and tactile methods, not to include written communication. A person is interpreting if the person advertises, offers to practice, is employed in a position described as interpreting or holds out to the public or represents in any manner that the person is an interpreter in New Mexico

[~~Y.~~] **AA.** "Licensee" means an interpreter who holds a current license issued under the act and these rules.

[~~Z.~~] **BB.** "NAD" means the national association of the deaf.

[~~AA.~~] **CC.** "New Mexico administrative code" or "NMAC", Section 14-4-7.2 NMSA 1978 is the official compilation of current rules filed by state agencies in accordance with New Mexico statutes.

[~~BB.~~] **DD.** "New Mexico statutes annotated 1978 or NMSA 1978" is the official compilation of state laws.

[~~CC.~~] **EE.** "Open Meetings Act" or "OMA", 10-15-1 through 10-15-4 NMSA 1978 is the statutory provision requiring that public business be conducted in full public view; providing guidelines governing both public and closed meetings, and regulating the notice, agenda and minutes of such meetings.

[~~DD.~~] **FF.** "Properly made application" means a completed application form for a signed language interpreter license filed with the board that is complete in all particulars and appears on its face to satisfy all minimum age, educational, supervision, payment and other requirements for licensure as required by the act and these regulations.

[~~EE.~~] **GG.** "Provisional signed language interpreter" means an interpreter who holds a provisional signed language interpreter's license. A provisional signed language interpreter's license entitles its holder to provide signed language interpreting services in community and educational settings as appropriate under the NAD-RID code of professional conduct for a maximum of five years while working to satisfy the requirements for a community signed language interpreter's license or an educational signed language interpreter's license.

[~~FF.~~] **HH.** "RID" refers to the registry of interpreters for the deaf, which is a national association of signed language interpreters.

[~~GG.~~] **II.** "Rule" means board regulations.

[~~HH.~~] **JJ.** "State Rules Act", Sections 14-4-1 through 14-4-5 NMSA 1978, is the statutory provision that ensures that state agencies file with the state records center and archives all rules and regulations including amendments or repeals.

[~~H.~~] **KK.** "Statute" means a law that governs conduct within its scope. A bill passed by the legislature becomes a statute; and "statutory authority" means the boundaries of the board's lawful responsibility as laid out by the statute that created it.

[~~JJ.~~] **LL.** "Substantial compliance" means sufficient compliance with the statutes or rules so as to carry out the intent for which the statutes or rules were adopted and in a manner that accomplished the reasonable objective of the statutes or rules.

[~~KK.~~] **MM.** "Supervised interpreter intern or student" means a person who is currently enrolled in an interpreter education program, interpreter preparation program, or a program of study in signed language interpreting at an accredited institution of higher learning.

[~~LL.~~] **NN.** "Uniform Licensing Act" or "ULA", Section 61-1-1 through 61-1-33 NMSA 1978 is the statutory provision that governs the major duties of the board in area of:

(1) procedures which must be followed to accord due process to applicants for licensure and to licensees if the board takes action against the licensee for acts of misconduct that would adversely affect public health, safety and welfare, and

(2) rulemaking procedures that the board shall follow in adopting valid regulations affecting signed language interpreters.

[16.28.1.7 NMAC - N, 07/21/09; A, 08/18/11; A, 01/15/14; A, 12/16/15]

REGULATION AND LICENSING DEPARTMENT

SIGNED LANGUAGE INTERPRETING PRACTICES BOARD

This is an amendment to 16.28.2 NMAC, Sections 8, 9, effective 12/16/15.

16.28.2.8 EDUCATION REQUIREMENTS: The board shall issue a license as a signed language interpreter to an applicant, otherwise qualified, who furnishes evidence satisfactory to the board that the applicant has fulfilled the degree requirements for certification as established by [~~RID~~] registry of interpreters for the deaf (RID). Official or unofficial transcripts showing the degree awarded is acceptable evidence.

[16.28.2.8 NMAC - N, 07/21/09; A, 12/16/15]

16.28.2.9 CONTINUING EDUCATION REQUIREMENTS:

A. Community or educational signed language interpreter license shall submit a copy of the applicant's current RID membership card or verification letter from the RID member portal showing current membership status documenting compliance with the requirements of the certification maintenance program (CMP) which requires eight (8) RID-approved continuing education units (CEUs) (eighty (80) contact hours) per four (4)-year CMP cycle. Should RID change its number of CEUs required an interpreter must comply with the new requirement in order to maintain licensure in New Mexico.

B. Provisional license: two (2) CEUs (twenty (20) hours) of continuing education annually documented on the applicant's associate continuing education tracking (ACET) transcript from RID. Interpreting students should be aware that they need to become associate members of RID before the end of March in their year of graduation for CEU's earned prior to July 1st to be tracked on their ACET transcripts.

C. Provisional licensees who are within their first year may provide certificates of completion to the board office if the approved CEUs are not on ACET transcripts.

[16.28.2.9 NMAC - N, 07/21/09; A, 08/18/11; A, 01/15/14; A, 12/16/15]

REGULATION AND LICENSING DEPARTMENT

SIGNED LANGUAGE INTERPRETING PRACTICES BOARD

This is an amendment to 16.28.3 NMAC, Sections 11, 19 and 20, effective 12/16/15.

16.28.3.11 APPLICATION FOR LICENSURE:

A. An application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose.

B. All applications for licensure must include:

(1) a completed and signed application;

(2) applicant name;

(3) proof of age indicating applicant is at least eighteen years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(4) mailing address;

(5) business address;

(6) phone number;

(7) non-refundable application fee as required by the board;

(8) photograph: applicants for original licensure shall attach a recent color photograph, front-view of face.

C. An application for a community signed language interpreter license must also include: a copy of the applicant's current [~~RID~~] registry of interpreters for the deaf (RID) membership card or verification letter from the RID member portal showing that the applicant holds one (1) or more certifications recognized by RID at the time of application for licensure with the exception of educational certificate: K-12 (ED: K-12).

D. An application for an educational signed language interpreter license must also include: proof of [~~EIPA~~] educational interpreter performance assessment (EIPA) rating of 4.0 - 5.0 and a copy of the applicant's current RID membership card or verification letter from the RID member portal showing that the applicant holds the ED: K-12 certified member status by virtue of EIPA rating; or a copy of the applicant's current RID membership card or verification letter from the RID member portal showing that the applicant holds one or more certifications currently recognized by RID.

E. An application for a provisional signed language interpreter license must also include: proof of completion of an interpreter education program or interpreter preparation program at an accredited institution; or proof of employment as a community signed language interpreter or an educational signed language interpreter at the time the act became effective (June 15, 2007) and after the applicant reached the age of eighteen (18); and a copy of the applicant's current RID membership card or verification letter from the RID member portal showing that the applicant is an associate member for purposes of tracking [~~CEU~~] continuing education units (CEUs) requirements through the [~~ACET~~] associate continuing education tracking (ACET) program as outlined in Subsection B of 16.28.2.9 NMAC). In lieu of proof of completion

of an interpreter training program, deaf applicants may submit proof of satisfying the training requirement established by RID to take the certified deaf interpreter (CDI) written exam.

F. If an applicant submits an incomplete license application they will be requested to submit any missing documentation; failure to do so within six (6) months of receipt of the original application will result in the application file being closed. After the file has been closed, the applicant will be required to submit a new application and application fee to apply again.

G. ELECTRONIC APPLICATIONS: In accordance with Section 14-16-1 thru 14-16-21 NMSA 1978 of the Uniform Electronic Transactions Act, the board or its designee will accept electronic applications.

(1) Any person seeking a New Mexico signed language interpreting license may do so by submitting an electronic application. Applicants are required to also submit all required information as stated in 16.28.3.11 NMAC.

(2) Any licensee may renew his or her license electronically through a designated website provided by the board. All license holders renewing their signed language interpreting license are also required to submit all documentation as stated in 16.28.3.17 NMAC.

(3) Any person whose license has been expired may apply electronically to the board for renewal of the license at any time within sixty (60) days of the expiration. Any persons seeking renewal are also required to submit all supporting documents as stated in 16.28.3.17 NMAC.

(4) Any person whose license has been lapsed may apply electronically to the board for reinstatement of the license at any time. Any persons seeking reinstatement are also required to submit all supporting documents as stated in 16.28.3.17 NMAC.

H. ELECTRONIC SIGNATURES: Electronic signatures will be acceptable for applications submitted pursuant to Sections 14-16-1 through 14-16-19 NMSA 1978.

I. ADMINISTRATIVE ERRORS: In the event that a community or educational license is issued due to an administrative error, and if the Interpreter is qualified for a provisional license, the permitted five (5) years for the provisional license shall began at the time of the issuance of the erroneously issued license.

[16.28.3.11 NMAC - N, 07/21/09; A, 08/18/11; A, 01/15/14; A, 12/16/15]

16.28.3.19 EXEMPTIONS:

A. The Signed Language Interpreting Practices Act does not apply to:

(1) non-resident interpreters working in New Mexico less than thirty (30) calendar days per year;

[~~**(2)** interpreting in religious or spiritual settings;~~

~~**(3)** interpreting in informal settings for friends, families or guests;~~

~~**(4)** interpreting in emergency situations where the deaf, hard-of-hearing or deaf-blind person or that person's legal representative decides that the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the consumer;~~

~~**(5)** the activities or services of a supervised interpreter intern or student in training who is enrolled in an interpreter education program, interpreter preparation program, or a program of study in signed language interpreting at an accredited institution of higher learning approved by the board; or~~

~~**(6)** multilingual interpreting in order to accommodate the personal choice of the consumer~~]

(2) non-resident interpreters must contact the board administrator via e-mail prior to providing Interpreting services in New Mexico, regardless of the number of hours of service they provide each time. interpreters must provide the following for the purpose of tracking the number of days services are provided in New Mexico:

(a) name;

(b) address;

(c) email address;

(d) credentials, (a copy of their current RID card or other credentials)

(e) date(s) and city or cities in which services will be provided.

B. [~~Persons falling under these exemptions are not required to apply for licensure or otherwise notify the board of their exempted interpreting practice.~~] This exception is for interpreters living outside of New Mexico and providing occasional services within the state. It is not for use by interpreters in the process of moving to New Mexico temporarily or permanently.

(1) interpreting in religious or spiritual settings;

(2) interpreting in informal settings for friends, families or guests;

(3) interpreting in emergency situations where the deaf, hard-of-hearing or deaf-blind person or that person's legal representative decides that the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the consumer;

(4) the activities or services of a supervised interpreter intern or student in training who is enrolled in an interpreter education program, interpreter preparation program, or a program of study in signed language interpreting at an accredited institution of higher learning approved by the board;

C. Interpreter interns must contact the board administrator via email at the beginning of their internship period and provide the following:

(1) name;

(2) address;

(3) email address;

(4) institution at which they are enrolled;

(5) name of program internship coordinator;

(6) anticipated date of graduation;

[16.28.3.19 NMAC - N, 07/21/09; A, 08/18/11; A, 12/16/15]

16.28.3.20 LICENSE DENIAL, SUSPENSION, OR REVOCATION:

A. In accordance with procedures contained in the Uniform Licensing Act [61-1-1 NMSA 1978], the board may deny, revoke or suspend a license held or applied for under the Signed Language Interpreting Practices Act, upon grounds that the licensee or applicant:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license;

(2) is guilty of gross incompetence;

(3) is guilty of unprofessional or unethical conduct as defined by rule of the board;

(4) uses untruthful or misleading advertising;

(5) is habitually or excessively using controlled substances or alcohol to such a degree the licensee or applicant is rendered unfit to practice as a signed language interpreter pursuant to the Signed Language Interpreting Practices Act;

(6) has violated the Signed Language Interpreting Practices Act;

(7) is guilty of aiding and abetting a person not licensed to practice signed language interpreting pursuant to the Signed Language Interpreting Practices Act; or

(8) as evidenced by a certified copy of the record of jurisdiction, has had a license, certificate or registration to practice signed language interpreting revoked, suspended or denied in any state or territory of the United States for actions pursuant to this section.

B. Disciplinary proceedings may be initiated by a complaint of a person, including members of the board, and shall conform with the provisions of the Uniform Licensing Act.

C. A person filing a complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

D. In the event that a community or educational license is issued in error by an interpreter, and if the interpreter is qualified for a provisional license the permitted five (5) years for the provisional license shall began at the time of the issuance of the improperly issued license.

[16.28.3.20 NMAC - N, 12/16/15]

REGULATION AND LICENSING DEPARTMENT

SIGNED LANGUAGE INTERPRETING PRACTICES BOARD

This is an amendment to 16.28.7 NMAC, Section 10, effective 12/16/15

16.28.7.10 RENEWAL REQUIREMENTS:

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance and for the renewal of a license pursuant to Chapter 61, Articles 2 through 34 NMSA 1978.

(1) An application for a community signed language interpreter license must also include: a copy of the applicant's current registry of interpreters for the deaf (RID) membership card or verification letter from the RID member portal showing that the applicant holds one or more certifications recognized by the RID at the time of application for licensure with the exception of educational certificate: K-12 (ED: K-12).

(2) An application for an educational signed language interpreter license must also include: proof of educational interpreters performance assessment (EIPA) rating of 4.0 - 5.0 and a copy of the applicant's current RID membership card or verification letter from the RID member portal showing that the applicant holds the ED: K-12 certified member status by virtue of EIPA rating; or a copy of the applicant's current RID membership card or verification letter from the registry of interpreters for the deaf (RID) member portal showing that the applicant holds one or more certifications currently recognized by RID.

(3) An application for a provisional signed language interpreter license must also include: proof of completion of an interpreter education program or interpreter preparation program at an accredited institution; or proof of employment as a community signed language interpreter or an educational signed language interpreter at the time the act became effective (June 15, 2007) and after the applicant reached the age of 18; and a copy of the applicant's current RID membership card or verification letter from the RID member portal showing that the applicant is an associate member (for purposes of tracking continuing education units (CEUs) requirements through the associate continuing education tracking (ACET) program as outlined in Subsection B of 16.28.2.9 NMAC).

B. Original and renewed community and educational license shall be valid for a period of two years.

C. Original and completed compliance reviewed provisional license shall be valid for a period of one year, not to exceed four consecutive annual compliance review cycles.

D. Prior to the expiration of the license, all licensed interpreters shall apply for license renewal and shall pay the renewal fee as set forth in 16.28.6.9 NMAC.

[16.28.7.10 NMAC - N, 01/15/14; A, 12/16/15]

End of Adopted Rules

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Issue 8	April 18	April 30
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Issue 16	August 16	August 31
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Issue 18	September 16	September 30
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